



NetScout Systems, Inc.
Gold Support Services Terms

These Gold Support Services Terms ("Maintenance Description") state the terms and conditions under which NetScout will deliver technical support services for the following NetScout products OneTouch™, LinkRunner™, AirCheck™ and AirMagnet Mobile which includes firmware ("Software") and hardware ("Hardware" and together with Software collectively referred to as "Product") that have been purchased from NetScout or a NetScout authorized reseller or distributor. The Products are subject to the terms of the agreement under which the Product was originally purchased ("Agreement"). In the event of a conflict between the terms of the Agreement and this Maintenance Description, the terms this Maintenance Description will govern. NetScout reserves the right to change or discontinue the offerings described in this Maintenance Description provided Maintenance does not change for the remainder of the then-current Maintenance term. Terms not defined in this Maintenance Description are as defined in the Agreement.

1. Gold Maintenance Description.

A. General

1. Subject to the terms herein, Gold support services includes: 24x7 access to technical support; maintenance releases, enhancements, corrections, bug fixes, and modifications made to the Software that are provided to NetScout customers generally as part of these Gold support services (collectively referred to as "Updates") for covered Products; access to electronic incident submission and technical documentation such as user guides, frequently asked questions, and release notes; 24x7 access to self-help on the MyAccount or My AirMagnet Portal for technical answers; and knowledge transfer through NetScout's online learning center. The Gold technical support team is staffed 24x5 and provides on call weekend support for severity 1 issues (NETSCOUT product completely down with no workaround). All non-severity 1 issues received by telephone message, email or web on the weekend will be returned during staffed hours.
2. Access to NetScout Products and systems, networks, and equipment may be necessary to perform Maintenance services. "Staffed Hours" are 8:00pm Sunday through 8:00pm Friday Eastern Standard Time; weekends on call. NetScout holidays are recognized. 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.

B. Hardware/Accessory Repair or Replacement

1. When Hardware has been pre-qualified as defective or faulty by NetScout's technical assistance center, NetScout at its sole discretion will either repair or replace the unit. Replacement units will be the same or higher model and may be refurbished. Accessories that were originally shipped with the Hardware or Software may be entitled to repair or replacement in accordance with these terms at NetScout's sole discretion; commercial off the shelf accessories including but not limited to WiFi network adaptors and general purpose batteries are expressly excluded.
2. Any service repair must be performed by a NetScout authorized service representative. Requests for service must be submitted via the internet or by phone and will be pre-qualified by NetScout's Technical Assistance Center (TAC).
3. Damage attributable to natural depreciation ("ordinary wear and tear") or due to abuse of the Hardware does not qualify for Gold support services. NetScout reserves the right to determine if the cause of failure or out of specification performance is due to abuse of the Product. Should NetScout determine that the Product failure is due to abuse, any applicable warranty or Gold support service coverage will be immediately voided for that Product. Abuse includes damage resulting from dropping the instrument. Future coverage will be denied to such Product unless it has undergone repair and is deemed suitable for coverage by an authorized NetScout service repair facility.

4. A Return Material Authorization ("RMA") number must be obtained prior to the return of defective Products for repair or replacement. If NetScout receives Products without a valid or correct RMA number identified on the outside of the packaging of such Products, NetScout will have no obligation to provide Gold Support with respect to such Products. NetScout will pay shipping charges for Hardware replacements under Gold support services. Shipping from NetScout is by common carrier, "2 day" unless circumstances require later shipment. Shipping back to NetScout and any return shipping will be "second day" ship. Prior to returning defective Products to NetScout for repair or replacement, Customer must remove any confidential, proprietary, or personal information, including without limitation, personal health information or personally identifiable information, as such is defined under applicable local law, regulation or directive, including without limitation, in the United States, the Gramm-Leach-Bliley Act, Health Insurance Portability and Accountability Act, and HITECH Act. 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 of this Maintenance Description.
5. Repair/exchange (with pre-paid shipping) for primary Hardware/Accessories are not available in certain countries worldwide. For a list of countries where these services are available, please see the Gold Availability list under the Support Section at <http://enterprise.netscout.com/gold/support-availability> .

C. Hardware Loaner Units

1. NetScout will provide Customer with a refurbished loaner unit ("Loaner Unit") during the period in which Hardware this is eligible for replacement services under Gold support services is being replaced. Loaner Units only apply to OneTouch, OptiView XG and AirCheck units. Loaner Units are the property of NetScout and must be returned within five (5) business days of receipt of the repaired/serviced equipment. In the event a Loaner Unit is not returned within 5 business days after they received the repaired/serviced equipment, NetScout will invoice and Customer will pay NetScout's then-current rates for such Loaner Unit. Failure to return a Loaner Unit is grounds for termination of the Gold support services. Loaner Units are not provided during a voluntary Enhancement to the product.
2. NetScout will pay shipping charges for loaner and exchange equipment under a valid Gold support services. Shipping from NetScout is by common carrier, "next day" unless circumstances require later shipment. Return shipping to NetScout is "second day" ship.
3. Loaner units (with pre-paid shipping) for primary Hardware/Accessories are not available in certain countries worldwide. Refer to <http://enterprise.netscout.com/gold/support-availability> for a list of countries.

D. Eligibility

1. Product must either be under warranty or continuously covered under Gold support services to be eligible for the services described in this Maintenance Description. In order to receive services for Hardware that is not covered under warranty and not under Gold support, Customer must pay back support (e.g. Gold fees for the period of time during which the Hardware was not covered by warranty or by one of NetScout's support service offerings) prior to NetScout performing any such repair/replacement services. Software that is not covered by warranty or by one of NetScout's support service offerings must be on the most recent feature and maintenance release prior to the commencement of Gold Support. Release upgrade may be attained via a support reinstatement fee equal to the amount of support fees for the period of time during which the Software did not receive NetScout maintenance plus 12 months ("Reinstatement Fee"). In such an instance, the Gold Support services start date will be back-dated to the next day after original service expiration. Gold Support services are non-transferable.

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

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

Support services will be as negotiated between such channel partner and Customer. Payments are non-refundable. Expired Gold Support coverages may be subject to a Recertification Fee or Reinstatement Fee as set forth in this Maintenance Description.

4. Continuing Availability. If NetScout discontinues a Product, NetScout will continue to make Gold Support available for no less than two years from the date of discontinuation of sale. Gold support on a discontinued software product will be limited to technical support. Bug fixes will only be identified for the then-current Software release. Repair of hardware products will be restricted to parts availability.

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

6. Limitations and Exclusions. NetScout is not obligated to provide troubleshooting or updates containing additional features and enhancements other than defect corrections, or to provide Gold Support on Software beyond one release back from the current version. NetScout is not liable for delays caused by third parties. Geographical restrictions or limitations may apply to the Maintenance support services described herein and such services may not be available in all areas. NetScout is not obligated to provide Maintenance support services with respect to claims resulting from the fault or negligence of customer or a third party; fault in third party hardware or programs used in conjunction with the Software; improper or unauthorized use of the Products; modifications or repair of Products by a party other than NetScout or its authorized contractor; a force majeure event and any causes external to the Product such as power failure or electric power surge; modification to factory default configurations; or use of the Products in combination with equipment or software not supplied by NetScout or recommended in the Product documentation. Functional upgrades such as faster processors; increased memory / flash, etc. are not covered under Gold Support and are separately chargeable at the then-current list price.

7. Confidential Information. All technical and business information, including without limitation all Software and Updates provided by NetScout, contain valuable trade secrets of NetScout and constitute confidential information. Customer agrees to protect the confidentiality of such information with the same degree of care by which it protects its own such confidential information, but no less than reasonable care. Customer may not provide access to or disclose confidential information to any third party without the prior written consent of NetScout. Confidentiality obligations set forth in the then-current end user product license agreement accompanying the Products will apply.

8. Limitation of Liability. NETSCOUT WILL NOT BE LIABLE TO CUSTOMER FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR INCIDENTAL DAMAGES OF ANY KIND RESULTING FROM THE PROVISION OF PRODUCTS OR MAINTENANCE SUPPORT SERVICES HEREUNDER. IN NO EVENT WILL NETSCOUT'S TOTAL LIABILITY TO CUSTOMER FOR ANY OTHER DAMAGES EXCEED THE AMOUNT PAID OR PAYABLE FOR THE PRODUCT OR MAINTENANCE SUPPORT SERVICES GIVING RISE TO THE CLAIM.

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