

STATE OF TEXAS §
 § ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT
COUNTY OF COLLIN §

This Economic Development Incentive Agreement ("Agreement") is made by and between City of Allen, Texas ("City") and NetScout Systems Texas, LLC, a Delaware limited liability company ("Company") (each a "Party" and collectively the "Parties"), acting by and through their respective authorized representatives.

W I T N E S S E T H:

WHEREAS, Kaizen Development Partners, LLC ("Kaizen") and the Allen Economic Development Corporation ("AEDC") have entered that certain purchase and sale agreement dated May 8, 2017 (the "PSA") for the land described in Exhibit "A" (the "Land") and a related restriction agreement (the "Restriction Agreement") pursuant to which BTS One Bethany North, LP, a Texas limited partnership and an affiliate of Kaizen ("Landlord") has agreed to construct the Improvements and Parking Garage (hereinafter defined); and

WHEREAS, Company has or intends to enter a lease with Landlord to lease the Improvements and the Parking Garage following completion thereof for a period of at least twelve (12) years (hereinafter defined as the "Lease"); and

WHEREAS, Company is a world leader in application and network performance management products and solutions with over thirty (30) years of research and innovation into network operations, and has developed the unique ability to capture, order, and analyze network traffic in real time; and

WHEREAS, Company has advised City that a contributing factor that would induce Company to enter the Lease and relocate its operations to the Improvements would be an agreement by City to provide Annual Grants (hereinafter defined) to Company to defray a portion of the costs of relocation to the Improvements; and

WHEREAS, City desires to encourage business relocations and expansions within City that will add property tax base and generate additional sales tax and other revenue for City; and

WHEREAS, City has adopted programs for promoting economic development, and this Agreement and the economic development incentives set forth herein are given and provided by City pursuant to and in accordance with those programs; and

WHEREAS, City is authorized by Article III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380 to provide economic development grants to promote local economic development and to stimulate business and commercial activity in City; and

WHEREAS, City has determined that making the Annual Grants to Company in accordance with this Agreement is in accordance with City Economic Development Program and will: (i) further the objectives of City; (ii) benefit City and City's inhabitants; and (iii) will promote local economic development and stimulate business and commercial activity in City;

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Article I Definitions

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

"AEDC" shall mean the Allen Economic Development Corporation.

"Annual Grants" shall mean ten (10) consecutive annual economic development grants to be provided by City to Company, each in an amount equal to fifty percent (50%) of the ad valorem taxes assessed by City against the Improvements, the Parking Garage and the Tangible Personal Property and collected by the City for the applicable Grant Year.

"Appraisal District" shall mean the Collin County Appraisal District, or its successor.

"Bankruptcy or Insolvency" shall mean the dissolution or termination of a Party's existence as a going business, insolvency, appointment of receiver for any part of such Party's property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such Party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

"Capital Investment" shall mean the capitalized cost paid by Landlord and/or Company: (i) to construct the Parking Garage and Improvements; and (ii) of acquiring new Tangible Personal Property or Tangible Personal Property previously acquired by Company, and in each case located at the Improvements.

"City" shall mean City of Allen, Texas.

"Commencement Date" shall mean the date a certificate of occupancy is issued by the City for the occupancy of the Improvements by Company and the Lease Inception Date has occurred.

“Commencement of Construction” shall mean that: (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for commencement of construction of the Improvements and the Parking Garage; (ii) all necessary permits for the commencement of construction of the Improvements and the Parking Garage, as the case may be, pursuant to the respective plans therefore have been issued by all the applicable governmental authorities; and (iii) in the case of the Improvements, clearing and/or grading of the Land and vertical construction of the Improvements has commenced, and in the case of the Parking Garage, grading of the Land has commenced.

“Company” shall mean NetScout Systems Texas, LLC, a Delaware limited liability company.

“Company Affiliate” shall mean a wholly owned and/or majority owned affiliate entity related to Company by direct or indirect common or overlapping majority ownership or control.

“Completion of Construction” shall mean: (i) substantial completion of the Improvements and the Parking Garage; and (ii) the City has issued a certificate of occupancy for occupancy of the Improvements by the Company, and with respect to the Parking Garage a final inspection by the City has been conducted or a certificate of occupancy has been issued.

“Employment Period” shall mean each twelve (12) consecutive month period following the Commencement Date during the Term of this Agreement.

“Employment Positions” shall mean FTE Position eligible for employee benefits that have been created, maintained and filled at the Improvements per Employment Period provided however not more than ten percent (10%) of the required Employment Positions may include full time employees eligible for benefits scheduled to work at the Improvements for a combined total of at least 1664 hours during an Employment Period.

“Expiration Date” shall mean the date of payment of the last of the Annual Grants, unless sooner terminated as provided herein.

“FTE Position” or “FTE” means a position filled by an individual scheduled to work at the Improvements for a combined total of at least 2,080 hours during an Employment Period.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, terrorist act, or threat thereof, riot, civil commotion, insurrection, government action or inaction (unless caused by the intentionally wrongful acts or omissions of the Party), fires, earthquake, tornado, hurricane, explosions, floods, strikes, a delay by Landlord in the

Commencement of Construction and/or Completion of Construction not due to the actions or inactions of Company, slowdowns or work stoppages.

“Freeport Goods” shall have the same meaning as assigned by Section 11.251 of the Tax Code and Article VIII, Section 1-j of the Texas Constitution and located on the Improvements. Freeport Goods does not include “Goods in Transit” as defined by Tax Code, Section 11.253.

“Goods in Transit” shall have the same meaning assigned by Tax Code, Section 11.253.

“Grant Year” shall mean a given Tax Year, except the “First Grant Year” shall mean the Tax Year beginning January 1 of the calendar year following the Commencement Date.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on Company or any property or any business owned by Company within City.

“Improvements” shall mean a Class A office building of at least three (3) stories in height containing a minimum of 142,500 square feet of leasable space following construction thereof on the Land.

“Land” shall mean the real property described in Exhibit “A”.

“Lease” shall mean a lease for a minimum of 142,500 square feet of leasable space in the Improvements and of the Parking Garage for a period of at least twelve (12) years commencing on the Lease Inception Date.

“Lease Inception Date” shall mean the date the term of the Lease commences but no later than sixty (60) days after Completion of Construction of the Improvements and the Parking Garage.

“Parking Garage” shall mean a structured above ground parking garage to be constructed on the Land containing approximately 535 parking spaces, being the number of parking spaces that are required to satisfy not less than ninety percent (90%) of the number of the off-street parking spaces required for the Improvements as determined by the City.

“Payment Request” shall mean a written request from Company to City for payment of the applicable Annual Grant, which request shall be accompanied by: (i) copies of the applicable tax statement and/or receipt(s) and/or other evidence reasonably satisfactory to City to establish that the ad valorem taxes assessed by City against the Improvements and the Tangible Personal Property have been timely paid for such Grant

Year; (ii) employment records and other records as may be reasonably requested by City to establish and document the required Employment Positions; and other records as may be reasonably requested by City and (iii) invoices, receipts, bills and other records as may be reasonably requested by City to establish and document the Capital Investment.

“Real Property” shall collectively mean the Land and the Improvements.

“Related Agreements” shall mean any agreement (not including this Agreement) between the AEDC and/or City and Company or any Company Affiliate.

“Required Use” shall mean the continuous use for office and technology uses by Company including the operation of Company’s business of the application and network performance management products and solutions serving the public and its customers. Required use shall require Company to maintain at least one hundred (100) Employment Positions.

“Tangible Personal Property” shall mean any personal property, equipment, furniture and fixtures, owned or leased by Company and located on the Improvements. Tangible Personal Property shall not include Freeport Goods or Goods in Transit.

“Tax Year” shall have the meaning assigned to such term in Section 1.04 of the Texas Tax Code (i.e., the calendar year).

“Taxable Value” shall mean the appraised value as certified by the Appraisal District, or its successor, for a given year.

Article II

Term

The term of this Agreement shall begin on the last date of execution hereof (the “Effective Date”) and continue until the Expiration Date, unless sooner terminated as provided herein.

Article III

Project; Economic Development Grants

3.1 Annual Grants.

(a) Annual Grants. Subject to the continued satisfaction of all the terms and conditions of this Agreement by Company, and the obligation of Company to repay the Annual Grants pursuant to Article V hereof, City agrees, to provide Company with the Annual Grants, to be paid within thirty (30) days after City’s receipt of the applicable Payment Request following March 1 of each calendar year (or the immediately following business day if March 1 is not a business day), beginning with March 1 of the calendar year following the first Grant Year; provided City has timely received the ad valorem taxes assessed against the Real Property and the Tangible Personal Property in full for the respective Grant Year (i.e., the tax year immediately preceding the year in

which an Annual Grant is to be made. Company shall submit the applicable Payment Request no earlier than the March 1 of the calendar year and no later than One Hundred Eighty (180) days after such date. Failure to timely submit a Payment Request for a given Grant Year shall operate as a forfeiture of the Annual Grant for such Grant Year provided City has provided written notice thereof to Company not earlier than March 1 of the applicable calendar year and not later than 90 days after March 1, of the applicable calendar year.

(b) Tax Protest. In the event Company or another party timely and properly protests or contests (including any motion to correct the appraisal roll) the Taxable Value and/or the taxation of the Real Property and/or the Tangible Personal Property with the Appraisal District, the obligation of City to provide the Annual Grant with respect to the respective Improvements, the Parking Garage and/or the Tangible Personal Property, for such Tax Year shall be abated until a final determination has been made of such protest or contest. In the event Company or another party protests and/or contests results in a final determination that changes the appraised value and/or the Taxable Value of the Real Property and/or the Tangible Personal Property or the amount of ad valorem taxes assessed and due for the Real Property and/or the Tangible Personal Property after an Annual Grant has been paid for such Tax Year, the Annual Grant for such Tax Year shall be adjusted (increased or decreased as the case may be) accordingly on the date of payment of the next Annual Grant or within thirty (30) business days after such determination in the event no further Annual Grants are due under the Agreement.

(c) Refunds and Underpayments of Annual Grants. In the event City or Company reasonably determines that the amount of an Annual Grant paid by City to Company was incorrect, such Party (the "Requesting Party") shall notify the other Party (the "Receiving Party") in writing within sixty (60) days of payment of the applicable Annual Grant. Such notice shall include such records, reports and other information reasonably necessary to support such determination. Receiving Party shall have thirty (30) days after receipt of such notification to dispute the Requesting Party's determination. If Receiving Party disputes the determination of the Requesting Party the Parties shall seek to amicably resolve the matter, subject to the Parties' right to pursue any available rights or remedies in connection therewith. If the adjustment is not disputed, the Company shall, within sixty (60) days after receipt of written notification thereof from City specifying the amount by which such Annual Grant exceeded the correct amount to which Company was entitled, pay such amount to City. If City reasonably determines that the amount by which such Annual Grant was less than the correct amount to which Company was entitled (together with such records, reports and other information necessary to support such determination), City shall, within sixty (60) days, pay the adjustment to Company.

3.2 Limitations of Grants. None of the obligations of City under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution without the prior written consent of City.

3.3 Current Revenue. The Annual Grants made hereunder shall be paid solely from lawfully available funds pursuant to Texas Constitution Article II, Section 52-a, and Texas Local Government Code Chapter 380. Consequently, notwithstanding any other provision of this Agreement, City shall have no obligation or liability to provide any Annual Grants except as

allowed by law. Under no circumstances shall the obligations of City hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. The Grants shall be paid from the general funds of City or from such other funds of City consistent with Article III, Section 52(a) of the Texas Constitution.

Article IV Conditions to Grants

The obligation of City to pay the Annual Grants shall be conditioned upon the compliance and satisfaction by Company of the terms and conditions of this Agreement and each of the conditions set forth in this Article IV.

4.1 Payment Request. Company shall, as a condition precedent to the payment of the applicable Annual Grant, timely provide City with the applicable Payment Request. Subject to Section 3.1 (a), the failure to timely submit the Payment Request for the respective Annual Grant shall operate as a forfeiture of the Annual Grant for which the Payment Request is submitted.

4.2 Good Standing. Company shall not have an uncured breach or default of this Agreement or a Related Agreement.

4.3 Required Use. During the term of this Agreement following the Commencement Date and continuing thereafter until the Expiration Date, the Improvements shall not be used for any purpose other than the Required Use, and the operation and occupancy of the Improvements in conformance with the Required Use shall not cease for more than thirty (30) days except in connection with, and to the extent of an event of Force Majeure.

4.4 Lease. Company and Landlord shall have executed the Lease on or before September 30, 2017. Company shall occupy the Improvements on or before the Lease Inception Date.

4.5 Continuous Lease and Occupancy. Company and/or Company Affiliate shall, beginning on the Commencement Date and continuing for a period of ten (10) years thereafter: (i) continuously lease and occupy the Improvements; and (ii) maintain at least one hundred (100) Employment Positions.

4.6 Minimum Taxable Value. Except in the event of a casualty, the combined Taxable Value of the Improvements, the Parking Garage and the Tangible Personal Property shall be at least Forty Million Dollars (\$40,000,000.00) as of January 1 of the calendar year immediately following the Commencement Date and as of January 1 of each calendar year thereafter during the term of this Agreement.

4.7 Construction of the Improvements. Company shall, in cooperation with Landlord and subject to events of Force Majeure, cause the Commencement of Construction of the Improvements and Parking Garage to occur on or before March 31, 2018, and, subject to events

of Force Majeure, cause the Completion of Construction of the Improvements and the Parking Garage to occur on or before June 30, 2019.

4.8 Capital Investment. The total combined Capital Investment within three (3) years after the Commencement Date shall be at least Fifty-Five Million Dollars (\$55,000,000.00).

Article V

Termination; Repayment

5.1 Termination. This Agreement terminates on the Expiration Date, and may, prior to the Expiration Date, be terminated upon any one or more of the following:

- (a) by mutual written agreement of the Parties;
- (b) upon written notice by either Party, if the other Party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof;
- (c) upon written notice by City, if any Impositions owed to City or the State of Texas by Company shall have become delinquent (provided, however, Company retains the right to timely and properly protest and contest any such taxes or Impositions);
- (d) upon written notice by City, if Company suffers an event of Bankruptcy or Insolvency; or
- (e) upon written notice by either Party if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable.

5.2 Repayment. In the event the Agreement is terminated by City pursuant to Section 5.1 (b), (c), (d) or (e), Company shall immediately refund to City an amount equal to the amount of the Annual Grants that have been provided by City to Company prior to the date of such termination. The repayment obligation of Company set forth in this Section 5.2 hereof shall survive termination.

5.3 Offsets. City may at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to City from Company, regardless of whether the amount due arises pursuant to the terms of this Agreement, a Related Agreement or otherwise, and regardless of whether the debt due City has been reduced to judgment by a court.

Article VI

Miscellaneous

6.1 Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the Parties hereto.

6.2 Limitation on Liability. It is understood and agreed between the Parties that Company and City, in satisfying the conditions of this Agreement, have acted independently, and City assumes no responsibilities or liabilities to third parties in connection with these actions.

6.3 No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties.

6.4 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement. The undersigned officers and/or agents of the Parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the Parties hereto. City Manager shall have the authority to approve any amendments to this Agreement and any instruments related thereto.

6.5 Notice. Any notice required or permitted to be delivered hereunder shall be delivered and deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below (or such other address as such Party may subsequently designate in writing) or on the day actually received if sent by overnight delivery, courier or otherwise hand delivered.

If intended for City, to:

Peter H. Vargas
City Manager
City of Allen, Texas
305 Century Parkway
Allen, Texas 75013

With a copy to:

Peter G. Smith
City Attorney
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard
Dallas, Texas 75201

If intended for Company, to:

NetScout Systems Texas, LLC
310 Littleton Road
Westford, MA 01886
Attn: Real Estate (S.Doben)

With a copy to:

NetScout Systems
Texas, LLC
310 Littleton Road
Westford, MA 01886
Attn: Legal

6.6 Entire Agreement. This Agreement is the entire Agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the Parties that in any manner relates to the subject matter of this Agreement.

6.7 Governing Law. The Agreement shall be governed by the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction; and exclusive venue for any action concerning this Agreement shall be in the State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.8 Amendment. This Agreement may only be amended by the mutual written agreement of the Parties. City Manager, or designee, shall have the authority to enter into any amendments to this Agreement on behalf of City.

6.9 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.10 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

6.11 Successors and Assigns. This Agreement may not be assigned without the prior written consent of City Manager, except Company may assign this Agreement to a Company Affiliate, provided the Company Affiliate expressly assumes the obligations and liabilities of the Company under the Agreement pursuant to an agreement in form and substance reasonably approved by City.

6.12 Recitals. The recitals to this Agreement are incorporated herein.

6.13 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.14 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.15 Employment of Undocumented Workers. During the term of this Agreement, Company agrees not to knowingly employ any undocumented workers, and if convicted of a violation under 8 U.S.C. Section 1324a (f) Company shall repay the Annual Grants herein and any other funds received by Company from City as of the date of such violation within one hundred twenty (120) days after the date Company is notified by City of such violation, plus interest at the rate of four percent (4%) compounded annually from the date of violation until paid. Company is not liable for a violation of this Section by a Company Affiliate, or franchisees of Company or by a person or entity with whom Company contracts.

6.16 Conditions Precedent. This Agreement is subject to and conditioned upon the following conditions which are a condition precedent to the effectiveness of this Agreement and obligations of the Parties hereunder: (i) Company and Landlord having entered the Lease on or before September 30, 2017 and having provided a redacted copy of the Lease to the City; (ii) Kaizen, or its assigns, and AEDC having closed the purchase and sale of the Land pursuant to the PSA on or before August 1, 2017; and (iii) Company occupying the Improvements on or before the Lease Inception Date.

[Signature Page to Follow]

EXECUTED on this _____ day of _____, 2017.

CITY OF ALLEN, TEXAS

By: _____
Peter H. Vargas, City Manager

APPROVED AS TO FORM:

By: _____
Peter G. Smith, City Attorney

EXECUTED on this 8th day of June, 2017.

NETSCOUT SYSTEMS TEXAS, LLC

By:  _____
Name: Greg Allen
Title: Controller

EXHIBIT "A"

Being an approximately 4.5± acre tract of land out of Lot 2, Block A, MILLENNIUM OFFICE PARK LOT 2, 2R-6, 2R-7 2R-8, BLOCK A, an addition to the City of Allen, Collin County, Texas, according to the plat thereof recorded as Instrument No. 20161216010005450, Official Public Records, Collin County, Texas, the boundaries of which are generally depicted on Exhibit "A-1," attached hereto and incorporated herein by reference, but which, along with the final determination of area, shall be determined prior to the Closing of the sale of the Land pursuant to the PSA.

