

## **GENERAL TERMS AND CONDITIONS**

These General Terms and Conditions ("General T&Cs") are by and between the Channel Partner and/or the End-User which has purchased and/or licensed the Products, as set forth in the applicable Order (hereinafter Channel Partner and End-User may collectively be referred to as the "Company"), and provided the terms, conditions, rights and restrictions for which NetAlly, LLC and any of its subsidiaries and affiliates (collectively or individually referred to as "NetAlly") is willing to sell devices ("Hardware"), license NetAlly's proprietary software including any firmware residing on such Hardware ("Software") (hereinafter Hardware and Software may be collectively referred to as the "Product(s)"), and provide services to Company ("Services"). NetAlly's provisioning of Products and/or Services to Company is expressly contingent upon Company's acceptance of these General T&Cs "AS IS".

Receipt without return of any Products from NetAlly by Company shall be deemed as acceptance of this Order and shall also constitute Company's confirmation that the Products descriptions, quantities, term, and prices set forth in the Order accurately represent Company's intended purchase. All additional and conflicting terms and conditions presented with or in any communication, including but not limited to those set forth in any P.O., except with respect to price, quantity, and location are hereby rejected and shall be deemed *null* and *void*.

### **1. Definitions:**

"Alliance Partner Program Guide" shall mean the document titled "*Alliance Partner Program Guide Terms & Guidelines*" that defines the different rights, obligations of, and the criteria for, each Partner Level Designation, a then-current copy of which can be reviewed at <http://www.netally.com/b2b-legal>.

"AllyCare Service(s)" shall mean the optionally purchased Maintenance Services, which may be purchased or included with the purchase of Products, which are subject to the "*AllyCare Product Support/Subscription Services Terms & Conditions*" a then-current copy of which can be reviewed at <https://www.netally.com/allycare-terms-and-conditions>.

"AUP" shall mean the Acceptable Use Policy published by NetAlly governing the permitted uses of any Services provided hereunder, which NetAlly may update from time-to-time and can be reviewed at <https://www.netally.com/aup/>.

"Company Data" shall mean information that Company uploads or uses in conjunction with Company's use of the Products and/or NetAlly Services.

"Channel Partner" shall mean the legal entity which either has (i) entered into a separate commercial agreement for the distribution and/or resale of NetAlly Products; or (ii) agreed to these General T&Cs *via* an Order or by a representative of such legal entity by clicking {*ACCEPT*}, {*AGREE*}, or {*SUBMIT*}, or similar means while accessing or using the Partner Portal.

"Channel Agreement" shall mean a commercial agreement, between a valid legal entity in good standing and NetAlly, which allows for such legal entity to directly and/or indirectly resell, refer, re-license, and/or distribute certain NetAlly Products and/or NetAlly Services.

"Data" shall mean collectively the Company Data and the End-User Data.

"Data Protection Act" means the Health Information Portability and Accountability Act (HIPAA) (29 U.S. Code § 1181, *et seq.*), Gramm Leach Bliley Act (GLBA) (15 U.S. Code § 1681), General Data Protection Regulation (GDPR) (EU 2016/679), the California Consumer Privacy Act (CCPA) (Cal. Civ. Code §§ 1798.100-1798.199) and other applicable regulations which seek to protect the processing and storage of personal information.

"Data Subject" shall mean an identified or identifiable natural person.

"Deal Registration Program" shall mean the process in which a Channel Partner may notify, reserve, and receive applicable discounts as further detailed in the Alliance Partner Program Guide.

"Demo Program" shall mean the plan as detailed in the Alliance Partner Program Guide, which enables the Channel Partner to purchase a NetAlly Product for demonstration, evaluation, or proof of concept purposes.

"Demo Unit(s)" shall mean the Products purchased by the Channel Partner to be used for demonstration, evaluation, or proof of concept purposes.

"Denied Party(ies)" shall mean those individuals or legal entities specified by the U.S. Department of Commerce's Bureau of Industry and Standards, the U.S. Department of Treasury's Office of Foreign Assets Control, or other applicable U.S. Government bureau or agencies, as being prohibited from receiving commodities, software and technology due to U.S. trade and economic restrictions.

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

“Embargoed Country(ies)” shall mean those countries specified by the U.S. Department of Commerce’s Bureau of Industry and Standards, the U.S. Department of Treasury’s Office of Foreign Assets Control or other applicable U.S. Government bureau or agencies, as subject to comprehensive export prohibitions and/or restrictions by the U.S.

“End-User(s)” shall mean a natural person or legal entity that purchases or licenses Products and/or Services for its own internal use and not for resale, re-license, or distribution and has agreed to these General T&Cs *via* an Order or by clicking {ACCEPT}, {AGREE}, {SUBMIT}, or a similar means while accessing the Services, which incorporates these General T&Cs by reference or otherwise.

“End-User Data” shall mean information that End-User uploads or uses in conjunction with End-User’s use of the Products.

“EULA” shall mean the device resident, software embedded, or URL referenced terms and conditions which an End-User is required to accept in order to use or receive the benefit from Products and/or Services, a then-current copy of which may be reviewed at <https://www.netally.com/eula>.

“Evaluation Product(s)” shall mean a not-for-resale version of the Products which a Channel Partner and/or End-User may use for demonstration, evaluation, or proof of concept purposes and must be returned to NetAlly after the applicable evaluation has been completed.

“Federal Reseller Pricing Program(s)” shall mean the requirements, criteria, processes, and procedures for selling and/or licensing NetAlly Products and Services to the U.S. Government’s General Administration Services Department (“GSA”) or National Aeronautics and Space Administration (“NASA”) Solutions for Enterprise-Wide Procurement (“SEWP”) programs detailed in the Alliance Partner Program Guide.

“INV Report(s)” shall mean the required report for certain Partner Level Designations required to provide regular inventory and PoS Data reports, as further identified and detailed in the Alliance Partner Program Guide.

“Maintenance Service(s)” shall mean then-current maintenance and support services for the applicable Products, as made commercially available to Channel Partner and End-User and as further set forth in the Alliance Partner Program Guide and/or the Partner Portal.

“NetAlly Representative(s)” shall mean the authorized individual assigned by NetAlly to manage the commercial relationship with the Company.

“Order(s)” shall mean collectively the Purchase Order, SOA, and the OFA, which are governed solely by a then-current Channel Agreement or the General T&Cs.

“Order Fulfillment Acknowledgement(s)” &/or “OFA(s)” shall mean the document issued by an authorized NetAlly Representative, via electronic mail, indicating that NetAlly has processed and provisioned or made ready for shipment the NetAlly Products or Services reflected in the Purchase Order and the Order Acknowledgement.

“Partner Enabled Support” shall mean the technical and help desk support, which Channel Partner is permitted to provide in accordance with Channel Partner’s Partner Level Designation.

“Partner Portal” shall mean the designated subdomains of the universal resource location address located at <https://partners.netally.com/aspx/login>, for which Channel Partner will be assigned a user ID and permission to access, so long as Channel Partner is in good standing under the applicable Channel Partner Agreement and Alliance Partner Program Guide.

“Partner Level Designation” shall mean the various designations of rights, responsibilities, commitments, criteria, and metrics assigned to Channel Partner by NetAlly, and/or based-on Channel Partner’s performance hereunder.

“Partner Obligation(s)” shall mean the obligations set forth in the Alliance Partner Program Guide applicable to Channel Partner’s assigned Partner Level Designation and the requirements set forth herein.

“Personal Data” shall mean any information relating to a Data Subject which enables such Data Subject to be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to physical, physiological, mental, economic, cultural or social identity.

“PoS Report(s)” &/or “Point of Sales Report(s)” shall mean a regularly provided report by Channel Partner to NetAlly which identifies certain transaction specific information, including but not limited to the unique stock keeping unit (SKU) code, description, currency type, quantity, price, End-User name and ship-to geographic location, as further detailed in the Alliance Partner Program Guide.

“Purchase Order(s)”, “P.O.(s)” &/or “PO(s)” shall mean a Channel Partners’ issued document, in tangible or intangible form (*e.g.* .rtf, .pdf formats, *etc.*), indicating the price, number, End-User(s) and location for Products and/or NetAlly Services, which is subject to NetAlly’s approval and acceptance as further detailed in the Alliance Partner Program Guide.

“Return Materials Authorization(s)” &/or “RMA(s)”

shall mean a numbered authorization issued by the NetAlly Representative, *via* electronic mail, provided upon request to the Channel Partner indicating that NetAlly has received a request for return of Products and that such Products are eligible for return and credit.

“RMA Number(s)” shall mean a unique identifying number issued when a request for return of Products is approved by NetAlly’s Channel Operations department.

“Service(s)” shall mean those services that NetAlly makes commercially available, including but not limited to installation, customization, AllyCare Services, Maintenance, support and/or training services.

“Rotation Eligible Partner(s)” shall mean certain Channel Partners that pursuant to their Partner Level Designation are eligible to participate in the Stock Rotation Plan.

“Sales Order Acknowledgement(s)” & “SOA(s)” shall mean the document issued by an authorized NetAlly Representative, *via* electronic mail, indicating that NetAlly has submitted the Purchase Order to NetAlly’s Manufacturing Department for fulfillment.

“Stock Rotation Plan” shall mean the process and procedures for which Rotation Eligible Partners may return stocked Products that have been held in Channel Partner’s inventory for less than one (1) year from the date of return request to NetAlly and exchange such Products for new Products of equal or lesser value, as further detailed in the Alliance Partner Program Guide.

“Territory(ies)” shall mean a geographic region set forth and defined in the NetAlly Territory Definitions documents, copies of which may be viewed and reviewed at <https://www.netally.com/b2b-legal>.

## 2. Alliance Partner Program Guide:

NetAlly will designate Channel Partner’s specific Partner Level Designation in accordance with NetAlly’s then-current Alliance Partner Program Guide Terms & Guidelines (“Program Guide”). Channel Partner’s applicable Partner Level Designation is set forth on Cover Page of the Channel Partner Agreement. NetAlly will designate which Products and NetAlly Services Channel Partner is authorized to resell, re-license, and/or distribute (or portions thereof). Channel Partner’s rights under these General T&Cs are subject to Channel Partner’s compliance with these General T&Cs and with the obligations set forth in the Alliance Partner Program Guide applicable to Channel Partner’s assigned Partner Level Designation. Failure to meet the Partner Obligations may result in a downgrade of Channel Partner’s assigned Partner Level Designation or termination of these General T&Cs by NetAlly under Section 7.2. “Termination for Convenience”, provided, however, NetAlly has no obligation to terminate, upgrade, downgrade, or otherwise alter Channel Partner’s, or

any other channel partner’s, assigned Partner Level Designation.

## 3. Orders, Shipping & Delivery:

3.1 Orders. Company shall submit Purchase Orders in accordance with NetAlly’s Order process, further detailed in the Alliance Partner Program Guide available through the Partner Portal. Purchase Order terms that are inconsistent, conflicting, or additional to the terms in these General T&Cs will be *null* and *void*. NetAlly may refuse, cancel, or delay fulfillment of Purchase Orders, issuance of an SOA and/or OFA, or performance under these General T&Cs if Channel Partner breaches these General T&Cs or Alliance Partner Program Guide. Channel Partner will ensure that all Orders submitted in furtherance of these General T&Cs will expire within ninety (90) calendar days from such Order’s issuance date. Further, during the Term of these General T&Cs and for three (3) months thereafter, Channel Partner and NetAlly agree (*via* dropship or otherwise) to accept valid Orders and their applicable discounts and incentives.

3.2 Shipping & Delivery Terms. NetAlly ships all Products hereunder F.O.B. Origin. For all Products shipped internationally, Company or an authorized agent or representative of Company (as documented in writing to NetAlly by Company) will be the importer of record. Company agrees that it will not remove any NetAlly General T&Cs or other agreement from the NetAlly Product(s) and/or associated packaging. Company is responsible for conducting Denied Party screening prior to submitting an Order under these General T&Cs. Further, Company shall not submit any Orders to NetAlly on behalf of any Denied Party or End-User located in an Embargoed Country.

## 4. License Grant & Restrictions:

Subject to payment of the applicable license fee and the terms set forth in an applicable Order, NetAlly grants End-User a limited, non-exclusive, non-transferable, revocable license to use the Software and the Documentation for End-User’s own purposes, as further detailed in the EULA, a then-current copy of which may be reviewed at <https://www.netally.com/eula>.

## 5. Acceptable Use:

Company specifically agrees to limit the use of the Products and/or Services to those specifically granted in these General T&Cs. Without limiting the foregoing, Company specifically agrees *\*not\** to (i) attempt to reverse engineer, decompile, disassemble, or attempt to derive the source code of the Software or any portion thereof; (ii) modify, port, translate, localize or create derivative works of the Software; (iii) remove any of NetAlly’s, or its vendors, copyright notices and proprietary legends; (iv) use the Products to (a) infringe on the intellectual property rights of any third party or any rights of publicity or privacy; (b) violate any law, statute, ordinance, or regulation (including but not limited to

the laws and regulations governing export/import control, unfair competition, anti-discrimination and/or false advertising); or (c) propagate any virus, worms, Trojan horses or other programming routine intended to damage any system or data; (v) file copyright or patent applications that include the Product or any portion thereof; and/or (vi) use of the Portal, Products and/or Services in violation of the AUP, a copy of which may be viewed and reviewed at <https://www.netally.com/aup/>.

#### 6. Company & Personal Data:

During the Term, Company may provide NetAlly with Data. NetAlly may use such Data in connection with the performance of its obligations under these General T&Cs. Company hereby agrees to strictly comply with any and all applicable Data Protection Acts with regards to the transfer, handling, storage, and processing of Personal Data. Company acknowledges and agrees that should Company transfer such Personal Data to NetAlly, or other third-parties, Company will serve as such Personal Data's "*CONTROLLER*", as set forth in the applicable Data Protection Acts. Further, in the event of a breach of Personal Data attributed to Company's actions or inactions in furtherance of these General T&Cs in violation of the Data Protection Acts, Company shall promptly (i) take all necessary steps to curtail such breach; (ii) undertake all necessary actions to mitigate damages; (iii) provide the necessary notification and remediation, as set forth in the applicable Data Protection Act; and (iv) aid and assist in NetAlly's efforts to do the same, at Company's sole cost and expense.

#### 7. Term & Termination:

7.1 Term. These General T&Cs commence on the Effective Date and will continue for an initial term of one (1) year ("Initial Term"); thereafter, these General T&Cs will renew automatically on successive ninety (90) days basis ("Renewal Term"), adjusted such that each successive Renewal Term shall be based on the fiscal quarter, year ending December (Initial Term and Renewal Term may collectively be referred to as "Term").

7.2 Termination for Convenience. Either Party may terminate these General T&Cs for any reason upon thirty (30) days prior written notice, with the effective date of termination being thirty (30) calendar days from the notification date. NetAlly may terminate these General T&Cs immediately, with the effective date of termination being the last day of then-current fiscal quarter, year ending December. Up to the effective date of termination, NetAlly and Company hereby agree to honor all Orders, properly submitted, received, and accepted up to the effective termination date.

7.3 Termination for Material Breach. Either Party may terminate these General T&Cs immediately upon written notice if the other Party commits a material breach of these General T&Cs and fails to cure such breach within thirty (30)

days of the breaching Party's receipt of written notice from the non-breaching Party specifying such breach. NetAlly may, but is not obligated to, terminate these General T&Cs immediately upon written notice if Company (i) is acquired by, acquires, or merges with a competitor of NetAlly, as determined at NetAlly's sole discretion; (ii) engages in any unlawful, illegal, or fraudulent business practice; (iii) develops, is in the process of developing, or announces that Company or a third party on Company's behalf is developing or has developed a product or service that competes with the Products or Service, as determined in NetAlly's sole discretion; or (iv) has filed against it a petition in bankruptcy, voluntary or involuntary, that is not dismissed within forty-five (45) days, has a receiver appointed to handle its assets or affairs, admits that it is insolvent or is otherwise unable to pay its debts as they mature, or ceases or announces that it shall cease to do business in the ordinary course.

7.4 Termination Process & Procedures. Subject to the obligations set forth in Section 3.1 "Orders", which shall survive any such termination of this Agreement, upon termination of these General T&Cs, as of the effective date of termination, all rights granted to Company under these General T&Cs, including but not limited to, the rights to resell, distribute, and sublicense the Products and Services, and if applicable any rights to provide Partner Enabled Support, will cease. If applicable, so long as Company has adhered to the Inventory Stock Rotation Program in a material and substantial manner, Company shall have the right to return all Products in its inventory at the full value paid to NetAlly subject to (i) such items being in new resalable condition; and (ii) the criteria set forth in the Inventory Stock Rotation Program. Company will immediately pay all amounts due to NetAlly and will cease to use, resell, distribute, sublicense, or otherwise provide the Products, Services and/or the Partner Enabled Support, as applicable. Termination of these General T&Cs will not terminate license rights and warranties granted and still in effect to End-Users, in furtherance of these General T&Cs.

#### 8. Confidentiality:

8.1 Confidential Information. "Confidential Information" means any information of a disclosing Party ("Discloser") and/or others possessed by the Discloser (i) which when provide receiving Party ("Receiver") to is marked as *CONFIDENTIAL*, *PROPRIETARY*, *TOP SECRET*, *SECRET*, and/or similar conspicuously mark; (ii) relating to, among other things, the Discloser's products, technology, specifications, manufacturing methods, know-how, business or marketing plans, or business relationships; and/or (iii) any information a Receiver should reasonably recognize as being of a confidential and/or proprietary nature.

8.2 Exclusions. Confidential Information shall not include information that: (i) was in the public domain when disclosed; (ii) becomes lawfully in public domain after disclosure, other than as a result of the Receiver's violation of its confidentiality obligation with Discloser ; (iii) was in the

Receiver's lawful possession when disclosed and was not acquired directly or indirectly from the Discloser; (iv) is shown by written evidence to have been developed by the Receiver, \*independently\* after disclosure without benefit of the Confidential Information; and/or (v) was received after disclosure from a third party who did not require it to be held in confidence and who did not acquire it directly or indirectly from the Discloser.

8.3 Use of Confidential Information. The Receiver: (i) will not disclose Confidential Information, except to its employees or to potential suppliers or subcontractors which (a) are bound by a written confidentiality agreement, which provides for protection of confidential information; (b) have a reasonable "NEED TO KNOW" such confidential information) and (c) has agreed to comply with Receiver's obligations under this Tier-1 Agreement; (ii) will not use Confidential Information except for the purposes contemplated by and in furtherance of this Tier-1 Agreement; (viii) will use at least the same degree of care to safeguard Confidential Information that it uses to protect its own confidential and proprietary information, and in any event not less than a reasonable prudent degree of care under the circumstances; (iii) will make copies of Confidential Information only as needed for the aforementioned purposes, and (iv) shall include any existing markings indicating that such information is Confidential Information of the Discloser, or any other such markings supplied by the Receiver.

#### 9. Warranties:

NetAlly warrants, for End-User's benefit alone, (i) that the Hardware will be free from material defects for a period of twelve (12) months from the proof of purchase date for such Hardware ("Hardware Warranty Period"); and (ii) the Software, will conform materially and substantially to the Documentation for a period of ninety (90) calendar days following the date when first made available to Company for download ("Software Warranty Period"). The warranties set forth herein do not apply to any failure of the Software or Hardware caused by (a) Company's failure to follow NetAlly's installation, operation, or maintenance instructions, procedures, or Documentation; (b) Company's mishandling, misuse, negligence, or improper installation, de-installation, storage, servicing, or operation of the Product; (c) modifications or repairs not authorized by NetAlly; (d) use of the Products in combination with equipment or software not supplied by NetAlly or authorized in the Documentation; and/or (e) power failures or surges, fire, flood, accident, actions of third parties, or other events outside NetAlly's reasonable control. NetAlly cannot and does not warrant the performance or results that may be obtained by using the Products, nor does NetAlly warrant that the Products are appropriate for Company's purposes or error-free. If during the Software Warranty Period or Hardware Warranty Period, a nonconformity is reported to NetAlly, NetAlly, at its option, will use commercially reasonable efforts to repair or replace the non-conforming Software or Hardware. THIS REMEDY IS COMPANY'S SOLE AND EXCLUSIVE REMEDY,

AND NETALLY'S SOLE LIABILITY FOR A BREACH OF WARRANTY. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THIS SECTION 9, "WARRANTIES" NETALLY DISCLAIMS ALL WARRANTIES ON MERCHANDISE SUPPLIED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

#### 10. LIMITATION OF LIABILITY:

NETALLY SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE UNLESS SUCH LOSS OR DAMAGE IS DUE TO NETALLY'S GROSS NEGLIGENCE AND/OR WILLFUL MISCONDUCT. IF NETALLY IS FOUND LIABLE, THE AMOUNT OF NETALLY'S MAXIMUM LIABILITY FOR ANY AND ALL LOSSES AND/OR DAMAGES (IN CONTRACT, TORT, OR OTHERWISE) SHALL NOT EXCEED THE TOTAL AMOUNT OF ALL LICENSE FEES ACTUALLY PAID TO NETALLY FOR THE RELEVANT NETALLY PRODUCT(S) OR SERVICE(S) WITHIN THE PRIOR SIX (6) MONTHS FROM WHICH SUCH CLAIM ARISES.

#### 11. EXCLUSION OF CONSEQUENTIAL DAMAGES:

EXCEPT FOR BREACH BY COMPANY OF SECTION 4, "LICENSE GRANT & RESTRICTIONS", 5. "ACCEPTABLE USE", 6 "COMPANY & PERSONAL DATA", 8 "CONFIDENTIALITY", 15.4 "COMPLIANCE & EXPORT CONTROLS", 15.6 "ANTI-CORRUPTION & ANTI-BRIBERY", IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, AND/OR INCIDENTAL DAMAGES, WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF DATA, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE; PROVIDED, HOWEVER, THAT NOTHING STATED HEREIN IS INTENDED TO LIMIT NOR HINDER THE INDEMNIFICATION OBLIGATIONS SET FORTH HEREIN.

#### 12. ESSENTIAL PURPOSE:

THE LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES STATED HEREIN SHALL APPLY REGARDLESS OF THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. BOTH PARTIES HEREUNDER SPECIFICALLY ACKNOWLEDGE THAT THESE LIMITATIONS OF LIABILITY ARE REFLECTED IN THE PRICING.

#### 13. Indemnification:

For any claims based on Company's breach of Section



4, “License Grant & Restrictions”, 5 “Acceptable Use”, 6 “Company & Personal Data”, 8 “Confidentiality”, 9 “Warranties”, 15.4 “Compliance & Export Controls”, 15.6 “Anti-Corruption & Anti-Bribery” and/or Company use of Product(s), Company hereby agrees to indemnify, defend, and hold NetAlly harmless against such claim(s) at expense and pay all damages.

#### 14. Relationship with Third Parties:

The relationship between the parties established by these General T&Cs is that of independent contractors, and nothing contained in these General T&Cs shall be construed to: (i) give either Party the power to direct or control the day-to-day activities of the other; (ii) constitute the Parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking or franchise; (iii) allow Company to create or assume any obligation on behalf of NetAlly for any purpose whatsoever; or (iv) allow any customer, End-User, or other person or entity not a Party to these General T&Cs to be considered a third-Party beneficiary of these General T&Cs.

#### 15. General Provisions:

15.1 Entire Agreement & Integration. These General T&Cs and all Exhibits referencing these General T&Cs represent the entire agreement between the parties on the subject matter hereof and supersede all prior discussions, agreements and understandings of every kind and nature between the parties. Neither Party shall be deemed the drafter of these General T&Cs. No modification of these General T&Cs shall be effective unless in writing and signed by both parties. All additional and conflicting terms and conditions presented with or in any communication, including but not limited to Company’s P.O., except with respect to price, quantity, and location specified in a P.O., are hereby rejected, and shall be deemed *null* and *void*.

15.2 Severability & Survival. The illegality or unenforceability of any provision of these General T&Cs shall not affect the validity and enforceability of any legal and enforceable provisions hereof. Should any provision of these General T&Cs be deemed unenforceable by a court of competent jurisdiction then such clause shall be re-construed to provide the maximum protection afforded by law in accordance with the intent of the applicable provision. Any provision contained herein, which by its nature should survive the termination of these General T&Cs shall survive, including, but not limited to, Section 8 “Confidentiality”, 10 “Limitation of Liability”, 11 “Exclusion of Consequential Damages”, 12 “Essential Purpose”, 13 “Indemnification”, and 15 “General Provisions”, 16 “Force Majeure” and 17 “Notices”.

15.3 Assignment. Neither Party may assign any rights or delegate any obligations hereunder, whether by operation of law or otherwise, except in the case of a sale of either Party’s business whether by merger, sale of assets, sale of

stock or otherwise, or except with the prior written consent of the other Party, which consent will not be unreasonably withheld. These General T&Cs bind the parties, their respective participating subsidiaries, affiliates, successors, and permitted assigns.

15.4 Compliance & Export Controls. Channel Partner shall comply fully with all applicable laws, rules, and regulations including those of the United States, and any and all other jurisdictions globally which apply to Channel Partner’s business activities in connection with this Tier-1 Agreement, including but not limited to the U.S. Foreign Corrupt Practices Act, U.S. Antiboycott Laws, U.S. Export Administration Regulations (“EAR”), U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”), the International Traffic In Arms Regulations (“ITAR”), and applicable Federal Reseller Pricing Programs. Channel Partner acknowledges that the NetAlly Products and/or NetAlly Services are subject to United States Government export control laws. Channel Partner shall comply with all applicable export control laws, obtain all applicable export licenses, and will not export or re-export any part of the Products and/or Services to any country in violation of such restrictions or any country that may be subject to an embargo by the United States Government or to End-Users owned by, or with affiliation to, such countries embargoed by the United States Government.

15.5. U.S. Government Use Notice. The NetAlly Software is a “*COMMERCIAL ITEM*”, as that term is defined at 48 C.F.R. § 2.101, consisting of “*COMMERCIAL COMPUTER SOFTWARE*” and “*COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION*”, as such terms are used in 48 C.F.R. § 12.212 and 48 C.F.R. § 227.7202, as applicable. Consistent with 48 C.F.R. § 12.212 and 48 C.F.R. § 227.7202-1 through 227.7202-4, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government End-Users (a) only as Commercial Items and (b) with only those rights as are granted to all other End-Users pursuant to the terms and conditions herein. For some components of the Software as specified in the Exhibit, Attachment, and/or Schedule, this Software and Documentation are provided on a RESTRICTED basis. Use, duplication, or disclosure by the United States Government is subject to restrictions set forth in Subparagraphs (c) (1) and (2) of the Commercial Computer Software Restricted Rights at 48 CFR 52.227-19, as applicable.

15.6 Anti-Corruption & Anti-Bribery. Company will not make or permit to be made any improper payments and will comply with the U.S. Foreign Corrupt Practices Act, the UK Bribery Act, the Organization for Economic Co-operation and Development (“OECD”) Convention on Anti-Bribery, and other applicable local anti-bribery laws and international anti-bribery standards. Company represents and warrants that it will not pay any commission, finder’s fee, or referral fee, or make any political contribution, to any person in connection with activities on behalf of NetAlly.

15.7 Applicable Law & Disputes. Parties specifically agree that the U.N. Convention on the International Sale of Goods, the Uniform Computer Information Transactions Act (“UCITA”), and the International Commercial Terms issued by the International Chamber of Commerce (“Incoterms”) shall not apply to any and all actions performed by either Party hereunder in furtherance of these General T&Cs. These General T&Cs and all resulting claims and/or counterclaims shall be governed, construed, enforced and performed in accordance with the laws of the State of Delaware, United States of America, without reference and/or regard to its conflicts of laws principles. The Parties hereto specifically agree that any and all resulting claims and/or counterclaims arising out of these General T&Cs shall be resolved through binding arbitration conducted by the American Arbitration Association (“AAA”), in front of a single AAA arbitrator and that the location of such arbitration shall be Denver, Colorado US. Each party hereto waives any claims of *forum non conveniens*. The language of the arbitration shall be English.

15.8 Waiver. Each Party agrees that the failure of the other Party at any time to require performance by such Party of any of the provisions herein shall not operate as a waiver of the rights of such Party to request strict performance of the same or like provisions, or any other provisions hereof, at a later time.

16. Force Majeure:

Neither Party shall be liable for any failure or delay in performing any other obligation under these General T&Cs, nor for any damages suffered by the other by reason of such failure or delay, which is, indirectly or directly, caused by an event beyond such Party’s foreseeable control including but not limited to strikes, riots, natural catastrophes, terrorist acts, pandemics, endemics, epidemics, outbreaks, governmental

intervention, or other acts of God, or any other causes beyond such Party’s reasonable control (“Force Majeure Event”). The Party seeking relief under this Section 16 “Force Majeure” (“Impacted Party”) shall provide to the other Party hereto notice within fifteen (15) calendar days of a Force Majeure Event, stating a good-faith estimate of the expected time and effect of such Force Majeure Event (“Impact”). The Impacted Party shall use commercially reasonable efforts to mitigate the Impact of such Force Majeure Events. In the event such Impact continues for more than forty (45) calendar days from receipt of such notice, then either Party hereto may terminate these General T&Cs, without penalty or liability, by providing no less than thirty (30) calendar days prior written notice.

17. Notice:

All notices under this Tier-1 Agreement shall be in English, shall be in writing, and given to the authorized contact signatory on the Agreement, or the applicable Party’s registered agent, which may be sent either by (i) registered airmail; (ii) overnight delivery through a reputable third-party courier; or (iii) *via* electronic mail (email) sent *READ RECEIPT* and *DELIVERY RECEIPT*. With respect to NetAlly’s receipt of electronic notice set forth in (iii) above such notice shall be deemed received only once Channel Partner receives a confirmation of *READ RECEIPT* and *DELIVERY RECEIPT* and such notice shall be valid only if sent to [legal@netally.com](mailto:legal@netally.com).

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