

**GENERAL TERMS AND CONDITIONS**  
(v31-Jan-21)

These General Terms and Conditions ("General T&Cs") are by and between the Channel Company 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, as well as 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. 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:

"AllyCare Services" means the optionally purchased Maintenance Services, which an End-User may purchase hereunder which can be reviewed at <https://www.netally.com/allycare-enabled/>.

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

"Channel Company" means a valid legal entity, in good standing, which has entered into a commercial agreement with NetAlly, allowing for the licensing or re-licensing of Software or distribution, sale, or resale of Products and Service.

"Company Data" means information that Channel Company uploads or uses in conjunction with Channel Company's use of the Products.

"Data" 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), and other applicable regulations which seek to protect the processing and storage of personal information.

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

"End-User" means an individual and/or a valid legal entity that is utilizing the Products and/or receiving the Services.

"End-User Data" means information that End-User uploads or uses in conjunction with End-User's use of the Products.

"Evaluation Product" means software that contains a license key, which disables the Software after thirty (30) calendar days, or other term as agreed to by the parties.

"Maintenance Services" &/or "Maintenance" means the support services for the Products, including but not limited to the AllyCare Services, provide by NetAlly to Company.

"Order" means the combination of Company's P.O., a Quote issued by NetAlly or a NetAlly Company, and these General T&Cs.

"P.O." means a purchaser order or document, in tangible or intangible form (*e.g.* .rtf, .pdf, formats, etc.), issued by Company indicating Company's acceptance of the Quote and these General T&Cs, without regards to any conflicting terms and conditions presented therein, except with respect to price, quantity, and location of Products or Services.

"Personal Data" means any information relating to an identified or identifiable natural person (hereafter a "Data Subject"); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity.

"Portal" shall mean URL(s) hosted by NetAlly used to communicate, provided Maintenance Services, Software updates and upgrades to the Company.

"Quote" means the document under which NetAlly offers for sale and licenses its Products, Maintenance, and other services.

"Services" means the AllyCare Services, Maintenance Services as well as any other services offered by NetAlly to Company from time to time.

2. Shipment & Delivery Terms: NetAlly ships all Products hereunder FOB Origin. Unless otherwise agreed to by the parties, all shipments will be made using the carrier designated by Company. If Company does not designate a carrier, NetAlly reserves the right to choose a carrier at Company's expense. For Software available for electronic download, delivery will be deemed to have occurred once NetAlly has made the Software available for download by Company or Company's designate agent or representative. Unless otherwise stated conspicuously on the face of the applicable Order, NetAlly reserves the right to fulfill Orders *via* multiple shipments. For all Products shipped

internationally, 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.

3. **License Grant & Restrictions:** Subject to payment of the applicable license fee and the terms set forth in an applicable Order, NetAlly grants Company a limited, non-exclusive, non-transferable, revocable license to use the Software and the Documentation for Company's own internal business purposes.

(a) **Evaluation License.** NetAlly hereby grants Company a temporary, non-exclusive, non-transferable, revocable license to use the Evaluation Product set forth in the applicable NetAlly Evaluation Request Form solely for internal testing, evaluation, or demonstration purposes. If Company chooses not to purchase a license for the Evaluation Product, the Evaluation Product must be removed from Company's system(s) and all permitted copies of such Evaluation Product immediately destroyed. A Return Materials Authorization number ("RMA #") for any Hardware Evaluation Product must be obtained prior to return of such Product.

(b) **Pre-Released Products.** If the Product Company has received with this license is not yet commercially available ("Pre-Released Product"), then NetAlly grants Company a temporary, non-exclusive, non-transferable, revocable license to use the Pre-Released Product and the associated Documentation, if any, as provided to Company by NetAlly solely for internal evaluation purposes. NetAlly may terminate Company's right to use the Pre-Released Product at any time at NetAlly's discretion. Company's use of the Pre-Released Product is limited to thirty (30) days unless otherwise agreed to in writing by NetAlly. Company acknowledges and agrees that (i) NetAlly has not promised or guaranteed to Company that the Pre-Released Product will be announced or made available to anyone in the future; (ii) NetAlly has no express or implied obligation to Company to announce or introduce the Pre-Released Product; (iii) NetAlly may not introduce a product similar to or compatible with the Pre-Released Product; and (iv) any use of the Pre-Released Product or any product associated with the Pre-Released Product is entirely at Company's own risk. During the term of these General T&Cs, if requested by NetAlly, Company will provide feedback to NetAlly regarding use of the Pre-Released Product. Company will not disclose any features or functions of any Pre-Released Product until NetAlly makes the Pre-Released Product publicly available.

(c) **License Restrictions.** Except as required by law, Company will not, and will not cause or permit others to, derive the source code of the Software, or reverse engineer, disassemble, or de-compile the Products. Company may not (i) create derivative works of the Software, (ii) lend, rent, lease, assign, sublicense, and/or make available through timesharing or service bureau the Software, or (iii) transfer the Software or provide third party access to the Software.

(d) **Third-party Technology.** The Products may contain embedded third-party technology ("Third-party Materials"). Such Third-party Materials are licensed for use solely with the Product. Third-party Materials are provided subject to the applicable third-party terms of use ("TOU"). Company agrees to abide by the TOU and/or to obtain any additional licenses that may be required to use the Third-party Materials.

(e) **Ownership.** NetAlly and its third-party licensors retain all right, title, and interest in and to the Products, Third party Technology. Company retains all right, title and interest in and to the Data.

4. **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 on violation of the AUP.

5. **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.

6. **Term & Termination:** These General T&Cs shall continue unless terminated pursuant to this Section; provided, that the applicable subscription term for any licenses purchased hereunder shall continue for the period of time specified in the applicable Quotation. Either party may terminate these General T&Cs immediately upon providing written notice of breach to the other party, if such other party materially breaches any of its obligations hereunder but fails to cure such breach within a period of thirty (30) days following receipt of such written notice. Upon any termination of these General T&Cs (i) all licenses granted hereunder shall immediately terminate, (ii) Company will either return the Software, Documentation, and Copies or, with NetAlly's prior consent, destroy the Software, Documentation, and Copies.

7. **Confidentiality:** "Confidential Information" shall mean any and all non-public technical, financial, commercial or other confidential or proprietary information, Services, Product roadmaps, pricing, software code, Documentation, techniques and systems, and any and all results of benchmark testing run on the Products. Neither party will disclose Confidential Information to any third party except to the extent such

disclosure is necessary for performance of these General T&Cs, or it can be documented that any such Confidential Information is in the public domain and generally available to the general public without any restriction. Each party will use the same degree of care to protect Confidential Information as Company uses to protect Company's own confidential information but in no event less than reasonable care.

8. Warranties: NetAlly warrants, for Company's benefit alone, (i) that the Hardware will be free from material defects for a period of twelve (12) months following the date of shipment of the Hardware ("Hardware Warranty Period"); and (ii) the Software, will conform materially and substantially to the Documentation for a period of ninety (90) 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 8, "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.

9. 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.

10. EXCLUSION OF CONSEQUENTIAL DAMAGES: EXCEPT FOR BREACH BY COMPANY OF SECTION 3, "LICENSE GRANT & RESTRICTIONS", 4. "ACCEPTABLE USE", 5 "COMPANY & PERSONAL DATA", 7 "CONFIDENTIALITY", 14.4 "COMPLIANCE & EXPORT CONTROLS", 14.6 "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.

11. 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.

12. Indemnification: For any claims based on Company's breach of Section 3, "License Grant & Restrictions", 4. "Acceptable Use", 5 "Company & Personal Data", 7 "Confidentiality", 8 "Warranties", 14.4 "Compliance & Export Controls", 14.6 "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.

13. 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.

14. General Provisions.

14.1 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.

14.2 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-constructed 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 7 "Confidentiality", 9 "Limitation of

Liability”, 10 “Exclusion of Consequential Damages”, 11 “Essential Purpose”, 12 “Indemnification”, and 14 “General Provisions”.

14.3 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 binds the parties, their respective participating subsidiaries, affiliates, successors, and permitted assigns.

14.4 Compliance & Export Controls. Company 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 Company’s business activities in connection with these General T&Cs. Company acknowledges that the NetAlly Products and/or NetAlly Services are subject to United States Government export control laws. Company 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.

14.5. 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.

14.6 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.

14.7 Applicable Law & Disputes. The 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 Colorado, United States of America, without reference and/or regard to its conflicts of laws principles. The parties hereto specifically agree that the exclusive jurisdiction for any and all resulting claims and/or counterclaims arising out of these General T&Cs shall be the federal and local courts of Denver, Colorado.

14.8 Force Majeure. Neither party shall be liable for any failure or delay in performing any other obligation under this 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, pandemic, endemic, epidemic, outbreak(s), 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 14.8 “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) days from receipt of such notice, then either party hereto may terminate this Tier 1 Channel Partner Tier-1 Agreement, without penalty or liability, by providing no less than thirty (30) calendar days prior written notice.

14.9 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.

15. Notices: All notices under these General T&Cs shall be in English and shall be in writing and given to the address indicated upon the cover page and 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 only be deemed received once Company receives a confirmation of “read receipt” and “delivery receipt” and such notice shall only be valid if sent to [legal@netally.com](mailto:legal@netally.com).

{End}  
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