MSA SUBSCRIPTION AND SERVICES AGREEMENT

This MASTER SUBSCRIPTION AND SERVICES AGREEMENT 2.0 and any exhibits, attachments, Orders, SOWs and other documents expressly entered into between the Parties referencing this Master Subscription and Services Agreement (collectively, this “Agreement”), is made effective as of November 15, 2021 (“Effective Date”) between Tally Inc. (“Tally”), a Delaware corporation with offices at 350 North Orleans, Suite 900, Chicago, Illinois 60654, and Amazon (“Customer”), a Company with offices at 6027 Honey Terrace Reno, Nevada 89950. Tally and Customer may be referred to herein individually as a “Party” and collectively as the “Parties.” Tally and Customer hereby agree to the foregoing and as follows:

1. OVERVIEW.
   1. **Scope.** This Agreement sets forth the terms pursuant to which Customer may purchase and Tally may provide subscription licenses (“Subscriptions”) to Tally’s non-proprietary online, web-based software applications and platform solutions (“Solutions”) and various implementation, configuration, and other professional services related to the Solutions (“Professional Services” or “PS”).
   2. **Orders.** Customer and Tally may from time to time execute: (a) a Tally Customer Order Form (“Order”) for any of the Solutions; and/or (b) a Statement of Work (“SOW”) for PS related to the Solutions. Each Order shall describe the applicable Solution, Order Term (as defined in Section 7.1), related fees, and user details.
   3. **Governing Law**. This Agreement shall be governed by and construed under the substantive laws of the State of California without regard to conflicts of laws provisions. The exclusive forum and venue for any legal or equitable claim or action brought in connection with this Agreement shall be the state and federal courts situated in California.
   4. **Source of Reference.** Tally may publish Customer’s logos on Tally’s web site and refer to Customer as a customer of Tally in online and print materials. Tally may, with Customer’s prior approval, which shall not be unreasonably withheld, identify Customer as a reference for Tally and direct potential customers to contact Customer directly regarding REVISE THIS TEXT. products and services, and Customer shall serve as a reference for Tally and reasonably discuss Tally’s products and services with any such potential customers. SNEAK SOMETHING IN HERE. Customer or used publicly without Customer’s prior approval, which shall not be unreasonably withheld.
   5. **Force Majeure.** Except for payment obligations hereunder, neither Party shall be liable or deemed to be in default for any delay or failure in performance hereunder to the extent resulting from causes beyond the Party’s reasonable control, including the acts or omissions of third parties, the acts or omissions of the other Party or any delay or failure of the other Party to fulfill its obligations hereunder, acts of God, terrorism, war, civil insurrection, strikes or other organized labor interruption, communications, Internet, mechanical, electronic or other utility interruptions or failures, fire, explosions, floods, or other natural disasters, or any similar cause.
   6. **Payment Terms.** Tally shall invoice Customer, or automatically charge the credit card specified by Customer on the date of the applicable invoice, for the fees payable hereunder in accordance with the payment schedule of Net 45.
   7. **Limitation of Liability.**
   8. [**Liability Cap**](https://www.lawinsider.com/clause/liability-cap). The Seller’s maximum aggregate liability under this Agreement shall in no event exceed 1x Payments for the first year of the contract.
2. SOLUTIONS.
   1. **Access.** Subject to the terms of this Agreement and the applicable Orders, Tally hereby grants Customer a limited, non-exclusive, non-transferable (subject to Section 12.7), non-sublicenseable right and license to access and use each Solution for which Customer has purchased a Subscription hereunder, solely for Customer’s internal business purposes, during the applicable Subscription Order Term. All rights not expressly granted to Customer herein are reserved by Tally and its licensors. As soon as commercially reasonable after execution of any given Order, Tally shall make the applicable Solution available for use by Customer in accordance with such Order. Customer may, pursuant to the rights granted above in this Section, but subject to Sections 2.2 and 2.3, permit third parties to access and use the Solutions to which Customer then has Subscriptions, solely as necessary for such third parties to conduct business with Customer. Such use shall be considered part of Customer’s internal business purposes. Some Solutions may include the delivery of object code for certain back-office software components of the Solution to Customer for installation and use at Customer’s premises (“Components”). The rights granted to Customer in this Section 2.1 shall be deemed to include the right for Customer to install and operate, during the applicable Order Term, any Components specified in an Order. Use of any Component shall be subject to the restrictions in this Section 2 applicable to the Solutions.
   2. **Permitted Use.** Customer may permit no more than the types and numbers of users, user logins, or IDs, or other applicable usage parameters, specified in each Order to access and use the corresponding Solutions. User logins and other IDs may not be shared or used by more than one individual during any given period of time. However, Customer may reallocate or reassign user logins or IDs from time to time, as reasonably necessary to accommodate changes in personnel and duties. Customer is responsible and liable for all access to and use of the Solutions through any user login or other ID assigned to Customer or otherwise occurring under Customer’s account. Customer shall notify Tally immediately of any unauthorized use of any user login or other ID assigned to Customer, or any other actual or suspected breach of security of which Customer becomes aware.
   3. **Prohibited Conduct.** Except as expressly permitted by this Agreement, Customer shall not, directly or indirectly, without the express, prior written consent of Tally: (a) use or permit the use of, reproduce, distribute, modify, encumber, time-share, license, sublicense, rent, lease, sell or transfer any of the Solutions; (b) reverse engineer, decompile, disassemble, extract, or otherwise derive or attempt to derive the source code of any Solution or other compiled software provided or made available by Tally hereunder; (c) defeat or attempt to defeat any security mechanism of any Solution or of the web site(s) [SNEAK IN SOME TEXT HERE] from which they are made available, remove or obscure any copyright, trademark, or other proprietary or confidentiality notice or legend appearing on or in any Solution or other materials provided or made available by Tally; or (d) knowingly permit any third party to do any of the foregoing. Customer shall not use any Solution: (i) to send unsolicited messages via fax or email in violation of applicable law; (ii) to store, send, or provide access to obscene or otherwise illegal materials; (iii) to store, send, or provide access to materials that would infringe any intellectual property right or violate any privacy right of any third party; or (iv) in any other manner that does not comply with all applicable laws and regulations.
   4. **Suspension of Use.** Tally may immediately suspend or disable Customer’s access to and use of the Solutions if, as a result of Customer’s use of a Solution or breach of this Agreement, Tally reasonably believes: (a) it is likely to be subject or exposed to criminal or civil sanctions, prosecution or suit; (b) such use or breach is likely to cause harm to Tally or Tally’s customers or their respective employees or interfere with the integrity, notice as is reasonably practicable under the circumstances. If advance notice is not reasonably practicable, Tally shall provide subsequent notice promptly thereafter. Customer shall promptly cooperate with Tally in attempting to resolve the issue giving rise to any suspension or disablement of Customer’s access to and use of the Solutions. The foregoing shall be in addition to the termination rights of either Party hereunder.
   5. **Tally Responsibilities.** Tally shall: (a) make the Solutions (excluding any Components) available of the time, 24 hours a day, 7 days a week, except for planned downtime, which will generally be scheduled on weekends, between 8:00 p.m. Central time on Friday and 12:00 a.m. Central time on Monday, and subject to events outside the reasonable control of Tally; (b) maintain the security and integrity of the Solutions and Customer Content (as defined in Section 5.2) stored by Tally thereon in accordance with prevailing industry practices and standards and Tally’s established security programs; and (c) provide basic telephone administrative and technical support for the Solutions to Customer during Tally’s normal business hours of 7:00 a.m. Central time through 7:00 p.m. Central time Monday through Friday, excluding U.S. nationally recognized holidays.
3. PROFESSIONAL SERVICES.
   1. **General.** Subject to the terms of this Agreement and any applicable SOW, Tally shall perform the PS described in each SOW. Tally shall assign to the performance of any given PS employees and subcontractors with qualifications suitable for such PS. Tally may, in its sole discretion from time to time, replace any employees and subcontractors then assigned to performance of the PS with other suitably qualified employees or subcontractors.
   2. **Customer Responsibilities.** Customer shall make available to Tally in a timely manner, at no charge, all technical data, computer facilities, program files, documentation, test data, sample output, and other information, resources, timely approvals and decisions and personnel of Customer that are reasonably required for the performance of the PS. In addition, to the extent any PS are to be performed on-site at Customer’s location, Customer shall provide to Tally, at no charge, such office space, services, and equipment as Tally reasonably requires in order to perform such PS.
4. FEES AND PAYMENT.
   1. **Fees.** Customer shall pay Tally the fees specified in each Order and SOW for the corresponding Solutions and PS. Unless expressly otherwise provided in the applicable Order, Tally may increase the fees applicable to any renewal of the Order Term of any Order to the rates then made generally available by Tally, by providing Customer with written notice prior to the scheduled end of the then-current Order Term. Unless expressly otherwise provided in the applicable Order, the fees applicable to any additional Order increasing the number of Subscriptions (or the permitted types and numbers of users, user logins, or IDs, storage, or other applicable usage parameters) that Customer has to a given Solution pursuant to a then-existing Order, shall be charged at the same rates as those then currently applicable to Customer’s use of the Solution under such Order. The Order Term of the additional Order shall be coterminous with that of the initial Order, and the applicable fees appropriately prorated for the remaining duration of the Order Term. Customer may reduce the number of Subscriptions (or the permitted types or numbers of users, user logins, or IDs, storage, or other applicable usage parameters) applicable under any Order (and the associated fees) only upon the renewal of the Order Term of such Order, by providing Tally with written notice thereof at least thirty (30) days prior to the scheduled end of the then-current Order Term.
   2. **Invoicing and Payment.** Tally shall invoice Customer, or automatically charge the credit card specified by Customer on the date of the applicable invoice, for the fees payable hereunder in accordance with the payment schedule indicated in the applicable Order or SOW. Unless stated to the contrary in the applicable Order or SOW, fees are due and payable within thirty (30) days after the date of the applicable invoice or the due date otherwise indicated in the applicable Order, except that credit card payments may be charged on the date of the applicable invoice. Unless legitimately disputed by Customer in good faith, any amount due hereunder and not received by Tally by the applicable due date shall bear an additional charge of one and one-half percent (1.5%) per month (or the maximum rate permissible under applicable law, whichever is less) from the date due until paid. Tally reserves the right to suspend use of the Solutions by Customer at any time until all past due fees are paid in full. Tally shall also be entitled to reimbursement for its reasonable collection costs and attorney fees in the event it must retain a collection firm or legal counsel due to Customer’s late payment or nonpayment. Except as expressly provided herein, all fees are nonrefundable, and payment obligations cannot be canceled, regardless of actual usage of the Solutions.
   3. **Taxes.** Fees do not include, and Customer shall pay, all sales, use, and other taxes imposed by law on Customer in connection with this Agreement and the provision of the Solutions and PS to Customer, excluding taxes on Tally’s income.
5. PROPRIETARY RIGHTS.
   1. **Tally.** The Solutions (including any Components and all other elements thereof), including all computer software in source code, object code or other form, databases, indexing, search, and retrieval methods and routines, hypertext markup language code, active server pages, intranet pages, and similar materials, and all intellectual property and other rights, title, and interest therein, including copyrights, trade secrets, rights in patents, compilations, inventions, modifications, extensions, enhancements, configurations, derivative works, discoveries, processes, methods, designs and know-how, whether or not copyrightable or patentable, pertaining to any of the foregoing (all of which shall be deemed part of the Solutions), whether conceived by Tally alone or in conjunction with others, constitute Tally trade secrets and Confidential Information and the valuable intellectual property and proprietary material of Tally and/or its licensors and are protected by applicable intellectual property laws of the United States and other countries. Except for the rights expressly granted to Customer in this Agreement, all rights in the Solution, Components and all of the foregoing elements thereof, including any work product resulting from PS to the extent consisting of a modification, extension, enhancement, configuration or derivative work of the Solutions or Components, and all intellectual property and proprietary rights thereto, are and shall remain solely owned by Tally and its respective licensors and are hereby assigned to Tally. Tally retains the right to use and provide Solutions and PS which may be similar to those provided to Customer hereunder, and to use for itself or others any knowledge, skills, experience, ideas, concepts, know-how and techniques used or gained in the provision thereof, provided that, in all cases, no Confidential Information attributable to Customer is disclosed thereby.
   2. **Customer.** As between the Parties, Customer owns and shall retain all right, title, and interest in and to any data, media, and content, in the form of documents or otherwise, provided or uploaded by Customer or its end-users to the Solutions (“Customer Content”). Customer grants to Tally a non-exclusive, non-transferable (subject to Section 12.7) right and license to copy, store, transmit and otherwise use the Customer Content during the Term solely as necessary and appropriate for Tally to fulfill its obligations under this Agreement. Except as permitted under Section 6, Tally may not disclose any Customer Content to anyone other than Customer and its end-users, personnel, and subcontractors.
6. CONFIDENTIALITY AND PRIVACY.
   1. **Definition.** In performance under this Agreement, each Party will have access to certain Confidential Information of the other Party or that the other Party is required to maintain as confidential pursuant to agreements with third parties. As used herein, “Confidential Information” means, with respect to either Party, all written or oral information disclosed by such Party to the other, or related to the operations of such Party, that is identified as confidential at the time of disclosure or that ought reasonably to be understood and treated as confidential, including, but not limited to, technical and non-technical data, marketing and promotional information, software programs and code (regardless of form or language), methods, techniques, strategies, processes, customer and supplier lists, trade secrets, distribution methods, and pricing and financial data. Without limiting the foregoing, the Confidential Information of Customer includes the Customer Content and other non-public materials that are provided or disclosed by Customer, and the Confidential Information of Tally includes the Solutions, Components and other non-public materials that are provided or disclosed by Tally. Notwithstanding the foregoing, Confidential Information shall not include information that: (a) is publicly available or in the public domain at the time disclosed; (b) is or becomes publicly available or enters the public domain through no fault of the recipient Party; (c) is rightfully communicated to the recipient Party by persons not bound by confidentiality obligations with respect thereto; (d) is already in the recipient Party’s possession free of any confidentiality obligations at the time of disclosure; or (e) is independently developed by the recipient Party without use of the other Party’s Confidential Information.
   2. **Restrictions.** Each Party shall: (a) hold the Confidential Information of the other Party in confidence and protect such Confidential Information from disclosure to third parties using the same efforts such Party uses to protect its own confidential information of a similar nature (but not less than reasonable care); (b) use and reproduce the Confidential Information of the other Party only for the purposes described herein; (c) restrict access to the Confidential Information of the other Party to such of its personnel, agents, and consultants as have a need for access and who are subject to legally binding obligations of confidentiality substantially similar to those set forth herein; and (d) upon termination or expiration of this Agreement or the request of the other Party, return or destroy all Confidential Information of the other Party then in its possession or control; provided, however, that: (i) if a legal proceeding has been instituted to seek disclosure of the Confidential Information or with respect to which the Confidential Information is material, such Confidential Information shall not be destroyed until the proceeding is settled or a final judgment with respect thereto has been rendered; (ii) the Receiving Party shall not, in connection with the foregoing obligations, be required to identify or delete Confidential Information held in archive or back-up systems in accordance with general systems archiving or backup policies; and (iii) Tally may use aggregated statistical data regarding Customer’s use of the Solutions without limitation, provided that neither Customer nor any end-user is identifiable by name in such aggregated information. As between the Parties, each Party’s Confidential Information shall be and remain solely the property of such Party. Each Party may disclose and retain Confidential Information of the other Party to the extent required: (x) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party required to make such disclosure first provides, unless prohibited by applicable law, written notice to the other Party, affording it an opportunity to obtain a protective order; or (y) to establish or enforce such Party’s rights under this Agreement.
   3. **Duration.** Each Party’s obligations with respect to Confidential Information set forth in this Section 6 shall continue in force and effect throughout the Term and: (a) with respect to Confidential Information that constitute a trade secret under applicable law, for so long as, without breach hereof, such trade secret status is maintained; and (b) with respect to any other Confidential Information, for a period of five (5) years after termination or expiration of this Agreement.
   4. **Privacy.** Tally shall take commercially reasonable steps to safeguard the privacy and security of personally identifying information and data (“Personal Information”) stored on the Solutions. Tally’s current practices in this regard are set forth in the Tally Privacy Policy posted on Tally’s web site, which may be modified from time to time in accordance with its terms. Tally hereby advises Customer that it is compliant with the "Safe Harbor" framework agreed to by the European Commission and the United States Department of Commerce for the purpose of certifying the compliance of U.S.-based companies with the European Commission’s Directive on Data Protection.
7. TERM AND TERMINATION.
   1. **Term.** The term of this Agreement (the “Term”) shall commence on the Effective Date and shall continue in force and effect until terminated in accordance with Section 7.3. Except as otherwise provided in Section 4.1, the term of any given Order (the “Order Term”) shall commence on the start date indicated in the Order and, unless earlier terminated in accordance with Section 7.3, shall continue for the period specified therein. Each SOW shall take effect on the date executed by both Parties and shall, unless earlier terminated in accordance with Section 7.3, continue until all PS to be provided thereunder have been completed.
   2. **Automatic Renewal.** UNLESS AND UNTIL TERMINATED BY EITHER PARTY PURSUANT TO SECTION 7.3 OR EITHER PARTY PROVIDES WRITTEN NOTICE OF NON-RENEWAL TO THE OTHER PARTY AT LEAST THIRTY (30) DAYS PRIOR TO THE SCHEDULED END OF THE THEN-CURRENT ORDER TERM, THE ORDER TERM OF EACH ORDER SHALL AUTOMATICALLY RENEW AND BE EXTENDED UPON ITS EXPIRATION (REGARDLESS OF WHETHER PREVIOUSLY RENEWED OR EXTENDED) FOR A PERIOD OF THE SAME DURATION AS THE ORDER TERM SPECIFIED ON SUCH ORDER.
   3. **Termination.** Either Party may terminate this Agreement, or any given Order or SOW, immediately and without penalty upon providing written notice thereof to the other Party if the other Party breaches any material term or condition of, as applicable, this Agreement or such Order or SOW and, if such breach is curable, fails to cure such breach within thirty (30) days after being provided by the non-breaching Party with written notice describing the breach in reasonable detail (except that the applicable cure period shall be only fifteen (15) days with respect to a breach by Customer of its payment obligations hereunder). In addition, either Party may terminate this Agreement upon providing thirty (30) days prior written notice to the other Party if there are then no outstanding Orders or SOWs in effect under this Agreement with respect to which all performance has not been completed.
   4. **Effects of Termination.** Upon any termination of this Agreement (or any termination or expiration of any Order), all rights and licenses granted to Customer herein to the affected Solutions shall automatically terminate and be revoked, and each Party shall, subject to Section 6.2 and 7.5: (a) immediately discontinue all use of the other Party’s Confidential Information; (b) delete all of the other Party’s Confidential Information in its possession; and (c) return to the other Party or, at the other Party’s option, destroy, all copies of such other Party’s Confidential Information then in such Party’s possession or control. In addition, upon any termination or expiration of this Agreement or any given Order, Customer shall promptly pay Tally all amounts remaining payable under, as applicable, this Agreement and any Order and SOW. Any termination of this Agreement shall simultaneously terminate any Orders and SOWs then in effect.
   5. **Return of Customer Content.** In addition to the functionality of any applicable Solution that allows for the downloading of Customer Content by Customer, Tally will, upon receiving a request from Customer within thirty (30) days after the effective date of termination of this Agreement or an applicable Order (provided that Customer has paid Tally any outstanding amounts then payable under this Agreement), make available to Customer, for downloading or physical delivery, a file of Customer Content in comma separated value (.csv) format, or other industry-standard format requested by Customer, with the fees therefor charged at Tally’s then-prevailing rates. After such thirty (30) day period, Tally shall have no obligation to maintain or provide any Customer Content and may, unless prohibited by applicable law, delete all Customer Content in its systems or otherwise in its possession or control.
8. WARRANTIES.
   1. **Solutions and Professional Services.** Tally warrants, for Customer’s benefit alone, as follows: (a) for a period of thirty (30) days from “Go Live,” which is defined as the date on which Tally informs Customer that an applicable Solution is ready for live, production use, that the applicable Solution will perform without material defect or error in its principal features and functions, and (b) for a period of thirty (30) days from the performance of PS, that the PS will have been performed in a competent, professional and workmanlike manner in material accordance with standards common and prevalent in the industry and with the requirements contained in an applicable SOW.
   2. **Exclusive Remedies.** As Customer’s sole and exclusive remedies for a failure of the Solutions or PS, as applicable, to conform to their respective warranties set forth in Section 8.1, and as Spring’s entire liability for breach of those warranties, if Customer notifies Tally in writing and in reasonable detail of the nature and extent of such failure within the applicable warranty period, Tally shall (a) in the case of a breach of the warranty in Section 8.1(a), use commercially reasonable efforts to correct such breach, and (b) in the case of a breach of the warranty in Section 8.1(b), re-perform the affected PS. As an alternative to the foregoing remedies, Tally may terminate this Agreement (and/or the applicable Order, Subscription or SOW) and in such event Tally will refund to Customer, (i) in the case of a breach of the warranty in Section 8.1(a), the Subscription fees paid during the current Order Term for the affected non-conforming Solution, including Subscription fees paid in advance for the then-remaining or unexpired portion of the Order Term for the affected non-conforming Solution, and (ii) in the case of a breach of the warranty in Section 8.1(b), the fees paid for the portion of such PS giving rise to the breach including prorated PS fees paid in advance for PS which shall not be provided.
   3. **Exclusions.** The warranties set forth in Section 8.1 shall not apply with respect to any problem to the extent due to causes outside Tally’s reasonable control, including Customer’s misuse, modification or configuration of a Solution or use in a manner contrary to that described or recommended in the applicable online “Help” feature, or with computer software or equipment other than those recommended in Tally’s published specifications, or to the extent due to problems within or impacting Customer’s computing environment, including third party software applications, hardware, network or Internet connectivity.
9. DISCLAIMERS. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 8: (A) TALLY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THIS AGREEMENT. TALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND OTHERWISE, INCLUDING THOSE THAT ARISE THROUGH USAGE OF TRADE OR CUSTOM, COURSE OF DEALING AND COURSE OF PERFORMANCE; (B) THE SOLUTIONS, INCLUDING ANY COMPONENTS, AND THE PS ARE PROVIDED “AS-IS”, WITHOUT ANY WARRANTIES OF ANY KIND; AND (C) TALLY DOES NOT REPRESENT, WARRANT, OR COVENANT THAT THE SOLUTIONS, COMPONENTS OR THE PS ARE OR WILL NECESSARILY BE CONTINUOUSLY AVAILABLE OR APPROPRIATE FOR CUSTOMER’S PARTICULAR USE OR THAT THEY WILL BE ERROR-FREE.
10. LIMITATIONS OF LIABILITY.
    1. **EXCLUSIONS.** IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING LOST PROFITS, COSTS OF DELAY, FAILURE OF DELIVERY, BUSINESS INTERRUPTION OR LOST, DAMAGED OR INADVERTENTLY DISCLOSED DATA OR DOCUMENTATION, OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE), REGARDLESS OF THE NATURE OF THE CLAIM, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION SHALL APPLY WITHOUT REGARD TO WHETHER ANY PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED, HAVE PROVEN INEFFECTIVE, OR HAVE FAILED OF THEIR ESSENTIAL PURPOSE. THE CUMULATIVE, AGGREGATE LIABILITY OF EACH PARTY FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY, SHALL NOT EXCEED (A) IN THE CASE OF TALLY, THE TOTAL AMOUNT OF FEES PAID TO TALLY BY CUSTOMER, AND (B) IN THE CASE OF CUSTOMER, THE TOTAL AMOUNT OF FEES PAID AND PAYABLE TO TALLY BY CUSTOMER, EACH UNDER THE APPLICABLE ORDER OR SOW RELATED TO THE CLAIM DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE SUCH LIABILITY AROSE. NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS ON THE TYPES AND AMOUNTS OF LIABILITY SET FORTH IN THIS SECTION SHALL NOT APPLY WITH RESPECT TO CLAIMS OR DAMAGES BASED ON OR ARISING OUT OF: (I) EITHER PARTY’S INTENTIONAL BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER SECTION 6; (II) CUSTOMER’S BREACH OF THE RESTRICTIONS AND LIMITATIONS APPLICABLE TO THE SUBSCRIPTIONS OR SOLUTIONS; (III) EITHER PARTY’S INDEMNIFICATION OBLIGATIONS UNDER SECTION 11; AND/OR (IV) EITHER PARTY’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.
    2. **BASIS OF THE BARGAIN.** THE PROVISIONS OF SECTIONS 9, 10 AND 11 OF THIS AGREEMENT ARE ALL FUNDAMENTAL AND SPECIFIC REQUIREMENTS OF THE BASIS OF THE BARGAIN BETWEEN CUSTOMER AND TALLY, AND TALLY WOULD NOT BE ABLE TO PROVIDE THE SERVICES ON THE OTHER TERMS SET FORTH HEREIN WITHOUT EACH SUCH PROVISIONS.
11. INDEMNIFICATION.
    1. **Infringement.** Tally shall defend, indemnify, and hold Customer harmless from and against any claims, actions, and other proceedings (“Claims”), and shall pay all losses, damages, liabilities, settlements, judgments, awards, interest, civil penalties, and reasonable expenses (collectively, “Losses,” and including reasonable attorneys’ fees and court costs), to the extent arising out of any claims by any third party that the Solutions or the PS (excluding Customer Content and other material provided by, or included at the direction of, Customer) infringe upon any United States’ copyright or any United States’ patent issued as of the date of the applicable Order. In the event of such a claim, Tally may, in its discretion, either procure the right to enable Customer to continue to use the allegedly infringing item or develop or obtain a non-infringing substitute of substantially equivalent functionality and performance. If Tally determines that neither of the foregoing options is commercially reasonable or practicable, then, notwithstanding anything to the contrary in this Agreement, Tally may immediately terminate this Agreement or the applicable Order or SOW and refund to Customer any prepaid fees for the then-remaining or unexpired portion of the Order Term or for PS not yet provided under the applicable SOW Term. Notwithstanding the foregoing, Tally shall have no obligation to indemnify, defend, or hold Customer harmless from any Claim to the extent that it is based upon: (a) a modification by Customer (or by anyone under Customer’s direction or control or using logins, IDs or passwords assigned to Customer) to the Solutions or results of the PS; (b) a modification made by Tally pursuant to Customer’s order or specification or in reliance on materials or information provided by Customer; or (c) the use by Customer (or by anyone under Customer’s direction or control or using logins, IDs or passwords assigned to Customer) of any Solutions or results of the PS other than in accordance with this Agreement. This Section 11.1 sets forth Customer’s sole and exclusive remedy, and Tally’s entire liability, for any claim that the PS, Solution or other materials provided by Tally violate or infringe upon the rights of any third party.
    2. **Third Party Claims.** Customer shall defend, indemnify, and hold Tally harmless from and against any Claims, and shall pay all Losses, to the extent arising out of or related to Customer’s (or that of anyone authorized by Customer or using logins, IDs or passwords assigned to Customer) use or modification of any Solution; Customer Content; and/or Customer’s violation of applicable law.
    3. **Defense.** With regard to any Claim subject to indemnification pursuant to this Section 11, the indemnified Party shall grant the indemnifying Party the right to assume full defense and control of such Claim and shall reasonably cooperate with the indemnifying Party regarding such Claim. Nevertheless, the indemnified Party may reasonably participate in such defense, at its sole expense, but shall not settle any such Claim without the indemnifying Party’s prior written consent. The indemnifying Party shall not settle or compromise any Claim in a manner other than the payment of monies by the indemnified Party without the prior written consent of the indemnified Party, such consent not to be unreasonably withheld or delayed.
12. GENERAL.
    1. **Changes to the Tally Solutions.** Tally expressly reserves the exclusive right to, without prior notice, at any time and from time to time: (a) offer new, additional, or substitute Solutions; and (b) modify, amend, or discontinue offering all or any particular Solutions. Nevertheless, during any given Order Term, Tally shall not, except as expressly provided elsewhere in this Agreement: (i) materially and significantly reduce or decrease the functionality and features of the Solutions provided under the applicable Order; or (ii) cease offering any of such Solutions without offering a substitute of comparable functionality and features. Tally may modify, improve or increase the features of any Solution from time to time at no additional cost to Customer.
    2. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the Parties regarding the subject matter hereof and supersedes any prior representations, advertisements, statements, proposals, negotiations, discussions, understandings, or agreements regarding such subject matter. This Agreement may not be modified or amended except by a writing signed by an authorized representative of each of the Parties. In the event of any conflict between the terms contained in the body of this Agreement, any exhibit, Order or SOW, the terms contained in the applicable exhibit, Order or SOW shall prevail and govern. No additional terms, policies or requirements proposed by either Party, whether in electronic form or otherwise or associated with any purchase order, payment system or otherwise, shall be applicable to this Agreement or any Solutions or PS at present or in the future, absent the express manual written consent thereto by the other Party.
    3. **Severability.** Every provision of this Agreement shall be construed, to the extent possible, so as to be valid and enforceable. If any provision of this Agreement (or portion thereof) is held by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, such provision (or portion thereof) shall be deemed severed from this Agreement and all other provisions shall remain in full force and effect.
    4. **Survival.** The provisions of this Agreement, and the rights, duties, and obligations of the Parties hereunder, which by their nature may be reasonably inferred to have been intended to survive termination, cancellation, completion, or expiration of this Agreement (including the rights, duties, and obligations set forth in Sections 4, 5, 6, 7.4, 7.5, 9, 10, and 12 hereof) shall survive and continue as valid and enforceable rights, duties, and obligations.
    5. **Waiver.** The failure by either Party at any time to enforce any of the provisions of this Agreement or any right or remedy available hereunder or at law or in equity, or to exercise any option herein provided, shall not constitute a waiver of such provision, right, remedy, or option or in any way affect the validity of this Agreement. The waiver of any default by either Party shall not be deemed a continuing waiver, but shall apply solely to the instance to which such waiver is directed.
    6. **Assignment.** Neither Party may assign, delegate, or otherwise transfer this Agreement or any of its rights or obligations hereunder, either voluntarily or by operation of law, without the prior written consent of the other Party (such consent not to be unreasonably withheld); provided, however, that either Party may assign this Agreement without the other Party’s consent in the event of a sale of all or substantially all of its assets or in the event of a merger, corporate reorganization or business consolidation of the Party (but excluding any assignment by Customer to a competitor of Tally). For avoidance of doubt, in the event of a permitted assignment by Customer of this Agreement, the Subscriptions purchased by Customer hereunder would continue to be subject to the restrictions and limitations specified herein and in the applicable Order, including any limits focused on a specific business line, group, division, department or other organizational unit of Customer. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.
    7. **No Third Party Benefit.** The provisions of this Agreement are for the sole benefit of the Parties hereto. Except as expressly provided herein, this Agreement neither confers any rights, benefits, or claims upon any person or entity not a Party hereto nor precludes any actions against, or rights of recovery from, any persons or entities not Parties hereto.
    8. **Notice.** Other than routine administrative communications which may be exchanged by the Parties via e-mail, all notices required hereunder shall be in writing and shall be given personally or sent by traceable postal service mail, e.g., certified or registered mail, or private overnight courier (e.g., FedEx, UPS or DHL) and shall be deemed given upon delivery, if given personally, or when deposited with the overnight courier or national postal service with the proper postage affixed, if sent by mail, in accordance with this provision. Facsimile (faxed) notices are not effective unless the originals are sent (in the manner stated above) within one (1) business day after the facsimile transmission or they are acknowledged in writing by an authorized representative of the receiving Party. Notices shall be addressed to each Party at their address set forth in the Order, which the Parties may change by compliance with this Section.
    9. **Independent Contractors.** The relationship arising from this Agreement does not constitute or create any joint venture, partnership, employment relationship or franchise between them, and the Parties are acting as independent contractors in making and performing this Agreement.
    10. **U.S. Government End-Users.** The Solutions, Components and related documentation are “commercial items” as 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. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, U.S. Government end users acquire licenses to the Solutions (including any Component) and related documentation with only those rights set forth therein.
    11. **Execution.** This Agreement and the Order, SOW or other exhibit referencing and governed by this Agreement may be executed in one or more counterparts, each of which shall be deemed an original but which together shall constitute the same instrument. Each Party agrees to be bound by its own signature transmitted by fax machine, in the form of an electronically scanned image (e.g., in .pdf form) of its own signature transmitted by e-mail, or by means of e-signature technology, and agrees that it shall accept the signature of the other party hereto transmitted in the same manner.
    12. **Miscellaneous.** The defined terms in this Agreement shall apply equally to both the singular and the plural forms of the terms defined. The term “person” includes individuals, corporations, partnerships, trusts, other legal entities, organizations and associations, and any government or governmental agency or authority. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The words “approval,” “consent” and “notice” shall be deemed to be preceded by the word “written.” References to this Agreement in the context of any requirement of either Party to perform in accordance with this Agreement shall be interpreted to refer to the terms of this document, and such other terms as are contained in any exhibit. All currency amounts agreed to by the Parties shall be in U.S. Dollars. A reference to the “terms” of this Agreement or other applicable document means all provisions of this Agreement or such other document referred to. The captions in this Agreement are for convenience of reference only and shall not be used to interpret this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered as of the Effective Date by their respective authorized representatives whose signatures appear below.

|  |  |
| --- | --- |
| **Tally Inc.** | **Acme Corp** |
| By:  Signature:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By:  Signature: \s1\ |
| Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Name: |
| Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Title: |
| Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date: |

Updated February 2017.

APPENDIX A: Product Line Items

|  |  |  |  |
| --- | --- | --- | --- |
| Product Name | Sales Price | Quantity | Total Price |
| Cloud Threat Detection | $2,000.00 | 1.00 | $24,000.00 |
| Data Center Security Suite | $20,000.00 | 1.00 | $20,000.00 |
| Gold Support | $4,000.00 | 1.00 | $4,000.00 |