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3.3 Transmission and Posting. Without limiting the generality of the foregoing, You may not (and may not permit or encourage any third party to) transmit any Software, Confidential Information (defined below), or other information, materials and documents made available to You in connection with this Agreement (collectively, "NETGEAR Materials") over a network or from one computer to another (other than on a limited basis over Your local area network), or upload the NETGEAR Materials or other Confidential Information to electronic bulletin boards, web sites, or otherwise distribute them (or any portion thereof), whether electronically, or on

tangible media.

3.4 Cooperation. You shall cooperate with NETGEAR, and shall render all reasonable assistance requested by NETGEAR, to assist NETGEAR in preventing and identifying any use of, or access to, the Software in violation of this Agreement.

4. FEES, MAINTENANCE AND SUPPORT. NETGEAR may terminate access to the Windows and Mac client applications for the ReadyNAS or the ReadyCLOUD web portal without notice and/or implement fees or surcharges for them. NETGEAR may also discontinue, stop support of, stop upgrades for, or stop enhancements to the Windows and Mac client applications for the ReadyNAS or the ReadyCLOUD web portal at any time and without reason.

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5.2 Rights in Supportive Information and Derivatives. Any ideas, bug reports, feedback regarding usability, and any other suggestions and feedback provided by or on behalf of You with respect to the Software ("Supportive Information") as well as any Derivatives of the Software made by or for You (whether or not permitted hereunder) including any and all intellectual property therein and thereto, shall be the sole and exclusive property of NETGEAR or its licensors.

5.3 Assignment of Rights. You irrevocably agree to assign, and hereby assign, all right, title, and interest worldwide in the Supportive Information or Derivatives and all intellectual property rights therein to NETGEAR and agree to assist NETGEAR, at

NETGEAR's expense, in perfecting, recording and enforcing such rights. To the extent that such assignment is invalid under applicable law, You irrevocably agree to grant, and hereby grant, to NETGEAR an exclusive, transferable, sub-licensable, unlimited, perpetual, and worldwide license to use, copy, and otherwise utilize or commercialize such Supportive Information and Derivatives in any manner known or conceived in the future.

6. US GOVERNMENT RESTRICTED RIGHTS.

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7. TERMINATION.

7.1 Term of Agreement. This Agreement is effective as of the date You accept this Agreement and will continue until terminated as set forth herein.

7.2 Termination. Without prejudice to any other rights or remedies available to NETGEAR, this Agreement will automatically terminate upon Your failure to comply with any term or condition of this Agreement. You may also terminate this Agreement at any time by destroying all copies of the Software in your possession or control. If NETGEAR makes a request via public announcement or press release to stop using the copies of the Software, you will comply immediately with this request. Following termination of this Agreement or license with respect to any Software for any reason, the provisions of Sections 1, 3, 5, 6, 7.2, 8, 9, 11, 12 and 13 shall survive in accordance with their terms.

8. TRADEMARKS.

8.1 No Trademark License. You acknowledge that this Agreement does not grant You any rights to use any of the corporate names, trademarks, service marks, certification marks trade names, slogans, logos or other designation of NETGEAR or any of its subsidiaries or affiliates (collectively, any "NETGEAR Marks") even if such marks appear on

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10.2 Disclaimers. Neither NETGEAR nor its suppliers warrant that the Software will meet Your requirements, or that its use will be uninterrupted or error-free (or that any defects will be corrected), or make any warranties regarding the use or the results of the Software including with respect to correctness, accuracy, reliability or otherwise. EXCEPT FOR THE EXPRESS LIMITED WARRANTY PROVIDED IN SECTION 10.1, THE SOFTWARE IS PROVIDED "AS IS" AND NETGEAR AND ITS SUPPLIERS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS AND SATISFACTORY QUALITY. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY NETGEAR OR ANY OF ITS AGENTS SHALL CREATE ANY WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY.

11. LIMITATION OF LIABILITY. NETGEAR AND ITS SUPPLIERS SHALL NOT HAVE ANY LIABILITY TO YOU OR ANY THIRD PARTY (WHETHER BASED IN CONTRACT OR TORT,

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NETGEAR'S MAXIMUM LIABILITY TO YOU FOR DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT WILL NOT EXCEED THE LOWER OF NETGEAR'S LIST PRICE OR THE AMOUNT(S) PAID BY YOU, FOR THE PARTICULAR SOFTWARE GIVING RISE TO THE CAUSE OF THE ACTION (OR THE PRODUCT WITH WHICH THE SOFTWARE WAS MADE AVAILABLE).

THIS LIMITATION OF LIABILITY FOR DAMAGES WILL NOT BE AFFECTED IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

12. QUALIFICATION OF DISCLAIMERS AND LIMITATIONS. The disclaimers and limitations in sections 10 and 11 are made to the full extent permitted by applicable law. You acknowledge and agree that such disclaimers and limitations constitute an essential part of this agreement and accurately reflect the allocation of risk expressly agreed to by the parties. NOTWITHSTANDING THE FOREGOING, SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES OR THE LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR CERTAIN PRODUCTS. THUS THE LIMITATION OF LIABILITY AND EXCLUSIONS MAY BE LIMITED IN THEIR APPLICATION TO YOU.

13. GENERAL PROVISIONS.

13.1 Taxes. You are solely responsible for any taxes, duties or fees, if any, which may be assessed on the Software or Your use thereof or Your performance under this Agreement. You shall be responsible for paying any such taxes, duties and fees assessed against NETGEAR, except for those applicable to NETGEAR's net income or payroll.

13.2 Your Consideration. The rights and licenses granted herein are subject to Your compliance with the terms and conditions of this Agreement. You acknowledge and agree that Your sole and exclusive consideration for Your performance under this Agreement are the rights and licenses granted herein and that You shall not become entitled to any remuneration, reimbursement or other consideration from NETGEAR or its suppliers.

13.3 Injunctive Relief. You acknowledge and agree that the copying, disclosure or use of the Software or any information, materials or services provided hereunder in a manner inconsistent with any provision of this Agreement shall cause irreparable injury to NETGEAR for which NETGEAR will not have an adequate remedy at law. Accordingly, NETGEAR shall be entitled to equitable relief in court, including but not limited to temporary restraining orders, preliminary injunctions and permanent injunctions.

13.4 No Partnership. The parties undertake their respective obligations under this Agreement as independent contractors. This Agreement does not, and is not intended to, create any employment, agency, distributorship, franchise, joint venture, legal partnership or other similar legal relationship between NETGEAR and You. Neither party will have any right or authority to act on behalf of, or to bind, the other party and neither party will represent to any third party that it has such right or authority.

13.5 No Assignment. You may not assign or otherwise transfer this Agreement or the rights or obligations hereunder (either in whole or in part, whether voluntarily, by way of merger, by operation of law or otherwise), without the prior written consent of NETGEAR, which consent may be withheld in NETGEAR's sole discretion, and any attempted transfer or assignment is null and void and shall be deemed a material breach of this Agreement.

13.6 Entire Agreement; Amendment. This Agreement represents the complete, final and exclusive agreement concerning the subject matter hereof. Any law or regulation which provides that the language of a contract shall be construed against the drafter shall not apply to this Agreement. This Agreement may not be amended in whole or in part except by written amendment executed by an authorized representative of NETGEAR.

13.7 Waiver. A waiver of any default hereunder or of any of the terms and conditions of this Agreement shall not be deemed to be a continuing waiver or a

waiver of any other default or of any other term or condition, but shall apply solely to the instance to which such waiver is directed.

13.8 Governing Law and Language. This Agreement shall be governed by California law provisions (except to the extent applicable law, if any, provides otherwise), excluding its conflict-of-law provisions and the laws of the United States. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly disclaimed. The parties hereto confirm that they have requested that this Agreement and all related documents be drafted in English. Unless the law applicable to you provides otherwise, the official text of this Agreement is in the English language and any interpretation or construction of this Agreement will be based thereon. In the event that this Agreement or any documents or notices related to it are translated into another language, the English version will control unless the law applicable to you provides otherwise.

13.9 Jurisdiction. You hereby submit to the exclusive jurisdiction of, and waive any venue objections against, the Superior Court of the County of Santa Clara and/or the United States District Court for the Northern District of California with respect to any dispute arising out of this Agreement. Notwithstanding the above, either NETGEAR or You may obtain preliminary or permanent injunctive relief from any court of competent jurisdiction worldwide.

13.10 Export. You acknowledge that the export or re-export of any Software is subject to import and export regulations including the Export Administration Regulations, 15 C.F.R. Parts 730-774. You shall comply strictly with all such United States export controls and shall not export, re-export, transfer or divert any of the Software or any direct product thereof, to any destination, end-use or end-user that is prohibited or restricted under such United States export control laws and regulations, except as

specifically authorized by the United States Department of Commerce. You agree to indemnify and hold NETGEAR and its suppliers harmless from and against any claim, loss, liability or damage suffered or incurred by NETGEAR and its suppliers resulting from or related to your violation of this paragraph.

13.11 Severability. If a competent court holds any provision of this Agreement illegal, invalid or unenforceable in whole or in part under applicable law such provision or such portion thereof shall be ineffective as to the jurisdiction in which such court is located to the extent of its illegality, invalidity or unenforceability and shall be deemed modified to the extent necessary to conform to applicable law so as to give the maximum effect to the intent of the parties. The illegality, invalidity or unenforceability of such provision in that jurisdiction shall not in any way affect the legality, validity or enforceability of such provision or of any other provisions of this Agreement in any other jurisdiction.

13.12 Force Majeure. Except for the obligation to pay license fees, neither party shall be liable for any failure or delay in performance under this Agreement which might be due in whole or in part, directly or indirectly, to any contingency, delay, failure, or cause of, any nature beyond the reasonable control of such party. Such causes include, without in any way limiting the generality of the foregoing, fire, explosion, earthquake, storm, flood or other weather, unavailability of necessary utilities or raw materials, power outage, strike, lockout, unavailability of components, activities of a combination of workmen or other labor difficulties, war, act of terrorism, insurrection, riot, act of God or the public enemy, law, act, order, export control regulation, proclamation decree, regulation, ordinance, or instructions of Government or other public authorities, or judgment or decree of a court of competent jurisdiction (not arising out of breach by such party of this Agreement).