



Purchase Order Terms and Conditions

(P.O. T&Cs v01-Oct-19)

This P.O. Terms and Conditions ("P.O.") is made and entered into as of the date indicated on the first page of the this P.O., as indicated above ("Effective Date"), by and between LinkRunner, LLC d/b/a NetAlly, a Delaware corporation, having principal offices at 2075-A Research Parkway Colorado Springs, CO 80920 United States ("NetAlly") and the company identified on the first page of P.O. above, ("Vendor"), which incorporates this P.O. by reference and is signed by duly authorized representatives of Vendor and NetAlly (NetAlly and Vendor may be collectively be referred to as "Parties" and/or individually as "Party").

NOW, THEREFORE, in consideration of the promises and covenants contained herein the Parties agree as of the Effective Date to the following:

1. **Acceptance of Purchase Order.** By Vendor providing software, hardware, products, goods, and/or services hereby ordered, or its commencement of such performance, or acceptance of any payment, shall constitute acceptance by Vendor of this P.O. subject to these P.O. terms and conditions. In the event that this P.O. does not state price or delivery, NetAlly will not be bound to any prices or delivery to which it has not specifically agreed in writing. Any terms or conditions proposed by Vendor inconsistent with or in addition to the terms and conditions of purchase herein contained shall be *null* and *void* and of no effect, unless specifically agreed to by an authorized representative of NetAlly, in writing specifically excluding electronic mail. Modifications hereof or additions hereto, to be effective, must be made in writing and be signed by NetAlly's authorized representative. These terms and conditions, together with any referenced exhibits, attachments or other documents referenced herein, constitute the entire agreement between the parties with respect to the subject matter of this P.O. and supersede any prior or contemporaneous written or oral agreements pertaining thereto. For orders placed in support of and charged to a U.S. Government Prime Contract or subcontract thereunder procuring an item meeting the Federal Acquisition Regulation (FAR) definition of a commercial item, the following clauses set forth in the FAR or the Defense Federal Acquisition Regulation Supplement (DFARS) in effect as of the date of said prime contract are incorporated herein by reference. In all clauses listed herein the terms "Government" and "Contractor" shall be revised to identify properly the contracting parties under this P.O.

2. **Shipping Instructions.** Vendor shall (i) be responsible for ensuring the proper packaging of materials hereunder. No charges will be allowed for packing, crating, freight, local cartage, and/or any other services unless so specified in this P.O.; (ii) at all times comply with NetAlly's written shipping instructions, unless otherwise directed, all items shipped on the same day from and to a single location must be consolidated on one bill of lading or airbill, as appropriate; (iii) submit all required shipping papers to NetAlly prior to final payment; (iv) unless stated otherwise herein, ensure all shipment hereunder are F.O.B. Destination; and (v) ensure that all P.O. number(s) must appear on all correspondence, shipping labels, and shipping documents, including all packing sheets, bills of lading, airbills, and invoices. For material purchased F.O.B. destination, the Vendor shall not insure and not declare a value except when transportation rates are based on "released value," in which instance the Vendor shall annotate on the bill of lading the lowest released value provided in applicable tariffs.

3. **Delivery; Notice of Delay.** Vendor hereby acknowledges and agrees that "Time is of the Essence" and failure to deliver in accordance with the delivery schedule under this P.O., if unexcused, shall be considered a material breach of this P.O. No acts of NetAlly, including without limitation modifications of this P.O. or acceptance of late deliveries, shall constitute waiver of this provision. NetAlly also reserves the right to refuse or return at Vendor's risk and expense shipments made in excess of NetAlly's orders or in advance of required schedules, or to defer payment on advance deliveries until scheduled delivery dates. Vendor shall notify NetAlly in writing immediately of any actual or potential delay to the performance of this P.O. Such notice shall include a proposed revised schedule but such notice and proposal or NetAlly's receipt or acceptance thereof shall not constitute a waiver to NetAlly's rights and remedies hereunder.

4. **Inspection.** All material and workmanship shall be subject to inspection and test at all reasonable times and places by NetAlly or NetAlly's customer before, during and after performance and delivery. NetAlly may require Vendor to repair, replace or reimburse the purchase price of rejected material or NetAlly may accept any materials and upon discovery of nonconformance, may reject or keep and rework any such materials not so conforming. Cost of repair, rework, replacement, inspection, transportation, repackaging, and/or reinspection by NetAlly shall be at Vendor's expense. If inspection and test are made on the premises of Vendor or Vendor's lower tier subcontractors, Vendor shall furnish without additional charge all reasonable facilities, information and assistance necessary for the safe and convenient inspection and tests required by the inspectors in the performance of their duty. NetAlly's failure to inspect does not relieve Vendor of any responsibility to perform according to the terms of the P.O.

5. **Customers.** As used in this P.O., NetAlly's customer(s) shall include its direct and indirect customers such as direct sale end-users, higher tier subcontractors, prime contractors and the ultimate user under relevant prime contract(s). Remedies shall be at NetAlly's election, including repair, replacement or reimbursement of the purchase price of nonconforming materials and, in the case of services either correction of the defective services at no cost or reimbursement of the amounts paid for such services.

6. **Warranty & Representations.** Vendor warrants and represents that (i) all materials delivered pursuant to this P.O. shall be new (unless indicated otherwise on this P.O.), free from defects in workmanship, materials, and design and to be in accordance with all the requirements of this P.O.; (ii) the performance of work and services pursuant to the requirements of this P.O. shall conform to high professional standards utilizing Vendor's best efforts. These warranties shall survive final acceptance and payment and shall inure to the benefit of both NetAlly and NetAlly's customers. Vendor shall be liable for, indemnify and hold NetAlly harmless from any loss, damage, or expense whatsoever that NetAlly may suffer from breach of any of these warranties.

7. **License.** Unless specified otherwise on the first page of this P.O. with respect to all software provided hereunder to NetAlly by Vendor, Vendor hereby grants to NetAlly a nonexclusive, transferable, royalty-free, perpetual, world-wide, fully-paid up license to (i) use, distribute, modify and/or create derivative works of the software in object-code/executable form or otherwise for NetAlly's internal, external and commercial business needs; and (ii) make a commercially reasonable number of copies of the software in object-code/executable form only, for nonproductive backup purposes. Unless otherwise expressly agreed in writing to the contrary, all specifications, information, data, drawings, software and other items supplied to NetAlly by Vendor shall be disclosed to NetAlly on a nonproprietary basis and may be used and/or disclosed by NetAlly without restriction, unless (i) otherwise required by the U.S. Government Regulations referred to below; or (ii) a duly authorized representative of NetAlly has signed a separate written agreement (specifically excluding any clickwrap, clickthrough, shrinkwrap, or webwrap agreements) restricting the use and disclosure of such information, data, software and the like.

8. **Proprietary Rights.** Unless otherwise expressly agreed in writing to the contrary all specifications, information, data, drawings, software and other items which are supplied to Vendor by NetAlly; or obtained or developed by Vendor in the performance of this P.O. or paid for by NetAlly shall (i) be proprietary to



NetAlly; (ii) be used only for purposes of providing goods or services to NetAlly pursuant to this P.O.; and (iii) shall not be disclosed to any third party without NetAlly's express written consent. All such items supplied by NetAlly or obtained by Vendor in performance of this P.O. or paid for by NetAlly shall be promptly provided to NetAlly on request or upon completion of this P.O. Any invention or intellectual property first made or conceived by Vendor in the performance of this P.O. or which is derived from or based on the use of information supplied by NetAlly shall be considered to be the property of NetAlly and shall be considered a "work made for hire". Vendor hereby agrees to execute any such documents necessary and reasonable to enable NetAlly to perfect such title. Any work performed pursuant to this P.O. which includes any copyright interest shall be considered a "work made for hire". Applicable Government Procurement Regulations incorporated into this P.O. shall, when applicable, take precedence over any conflicting provision of this Section 8, "Proprietary Rights" to the extent that such regulations so require. The incorporation by reference of such Government Regulations dealing with subcontractors rights in technical data, inventions, copyrights, software and similar intellectual property are not intended to, and shall not, unless otherwise required by applicable law, obviate or modify any greater rights which Vendor may have previously granted to NetAlly pursuant to prior agreements between the parties hereto.

9. NetAlly's Property & Liability for Injury. All drawings, tools, jigs, dies, fixtures, materials, and other items supplied or paid for by NetAlly shall be and remain the property of NetAlly; and NetAlly shall have the right to enter Vendor's premises and remove any such property at any time without being liable for trespass or damages of any sort; further, the parties hereto specifically agree that such removal shall not be considered as "self-help". All such items shall be used only in the performance of work under this P.O. unless NetAlly consents otherwise in writing. Material made in accordance with NetAlly's specifications and drawings shall not be furnished or quoted by Vendor to any other person or concern without NetAlly's prior written consent. Vendor shall have the obligation to maintain any and all property furnished by NetAlly to Vendor and shall be responsible for all loss or damage to said property except for normal wear and tear. Further, Seller shall indemnify and hold NetAlly harmless against loss and liability for personal injury and property damage caused by anything furnished pursuant to this P.O.; suits, claims or demands arising therefrom; and all related attorneys' fees and costs.

10. Release of Information. Vendor shall not publish, distribute, or use any information developed under or about the existence of this P.O., or use NetAlly's name or the name of any division, affiliate or subsidiary thereof, logo, trademark, service mark, or trade dress for the purpose of advertising, making a press release, creating a business reference, creating a website content or for products or service endorsement without prior written approval of NetAlly.

11. Termination for Convenience. NetAlly may, by notice in writing, terminate this P.O. or work under this P.O. for convenience and without cause, in whole or in part, at any time, and such termination shall not constitute default. In the event of partial termination, Vendor is not excused from performance of the non-terminated balance of work under the P.O. NetAlly may take immediate possession of all work so performed upon written notice of termination to Vendor. Vendor's obligations, including but not limited to obligations under the warranty, proprietary rights, infringement, and indemnity against claims provisions of this P.O., shall survive such termination.

12. Termination for Default. NetAlly may, by notice in writing, terminate this P.O. in whole or in part at any time for breach of any one or more of its terms, for failure to make progress so as to endanger performance of this P.O., or failure to provide adequate assurance of future performance. In the event of partial termination, Vendor is not excused from performance of the non-terminated balance of work under the P.O. In the event of Vendor's default hereunder, NetAlly may exercise any or all rights accruing to it, both at law, including without limitation, those set forth in Article 2 of the Uniform Commercial Code, or in equity. Vendor's obligations, including but not limited to obligations under

the warranty, proprietary rights, infringement, and indemnity against claims provisions of this P.O., shall survive such termination.

13. Order of Precedence. In the event of any inconsistency or conflict between or among the provisions of this P.O., such inconsistency or conflict shall be resolved by the following descending order of preference: (i) order-specific provisions, which are typed or handwritten on the P.O. as additions to the pre-printed terms; (ii) documents incorporated by reference on the face page(s) of this P.O.; (iii) these P.O. Terms and Conditions and Supplements thereto; (iv) any applicable statement of work incorporated by reference herein; and, then (v) specifications attached hereto or incorporated by reference. NetAlly's specifications shall prevail over those of the United States Government, and both of the foregoing shall prevail over specifications of Vendor. In the event of conflict between specifications, drawings, samples, designated type, part number, or catalog description, the specifications shall govern over drawings, drawings over samples, whether or not approved by NetAlly, and samples over designated type, part number, or catalog description. In cases of ambiguity in the specifications, drawings, or other requirements of this P.O., Vendor must, before proceeding, consult NetAlly, whose written interpretation shall be final.

14. Changes. NetAlly shall have the right by written order to suspend work or to make changes from time to time in the services to be rendered or the materials to be furnished by Vendor hereunder or the delivery date. If such suspension or changes cause an increase or decrease in the cost of performance of this P.O. or in the time required for its performance, an equitable adjustment shall be negotiated promptly and the P.O. shall be modified in writing accordingly. Any claim by Vendor for adjustment under this Section 14 "Changes" (i) must be asserted in writing within seven (7) days from the date of receipt by Vendor of notification of the change or suspension and shall be followed as soon as practicable with specification of the amount claimed and supporting cost figures. However, nothing herein shall excuse the Vendor from proceeding with this P.O. as changed pending resolution of the claim. Information, advice, approvals or instructions given by NetAlly's technical personnel or other representatives shall be deemed expressions of personal opinion only and shall not affect NetAlly's and Vendor's rights and obligations hereunder unless set forth in a writing which is signed by NetAlly's purchasing representative and which states it constitutes an amendment or change to this P.O.

15. Infringement. Vendor warrants and represents that all software, goods, products, work, materials, services, equipment, parts and other items provided by Vendor pursuant to this P.O., which are not of NetAlly's design, shall be free from claims of infringement (including misappropriation) of third party intellectual property rights and that any use or sale of such items by NetAlly or any of NetAlly's customers shall be free from any claims of infringement. Vendor shall indemnify and hold NetAlly and its customers harmless from any and all expenses, liability, and loss of any kind (including all costs and expenses including attorneys' fees) arising out of claims, suits, or actions alleging such infringement, which claims, suits, or actions Vendor, hereby, agrees to defend, at Vendor's expense. Vendor may replace or modify infringing items with comparable goods acceptable to NetAlly of substantially the same form, fit, and function so as to remove the source of infringement, and Vendor's obligations under this P.O. including those contained in Section 6 "Warranty & Representations" and in this Section 15, "Infringement" shall apply to the replacement and modified items. If the use or sale of any of the above items is enjoined as a result of such claim, suit or action, Vendor, at no expense to NetAlly, shall obtain for NetAlly and its customers the right to use and sell said item.

16. Taxes. Unless this P.O. specifies otherwise, the price of this P.O. includes, and Vendor is liable for and shall pay, all taxes, impositions, charges and exactions imposed on or measured by this P.O. except for applicable sales and use taxes that are separately stated on Vendor's invoice. Prices shall not include any taxes, impositions, charges or exactions for which NetAlly has furnished a valid exemption certificate or other evidence of exemption. To the extent that NetAlly is required to do so under applicable United States law or tax regulations,



NetAlly may deduct from any payments due to Vendor pursuant to this P.O. such taxes as NetAlly is required to withhold from such payments and pay such taxes to the relevant tax authorities; provided, however, that NetAlly provides Vendor with relevant tax receipts or other suitable documentation evidencing the payment of such taxes promptly after such taxes are paid.

17. Assignments. Vendor may not assign any rights or delegate any of its obligations due or to become due under this P.O. without the prior written consent of NetAlly. Any purported assignment or delegation by Vendor without such consent shall be *voidable* by NetAlly. NetAlly may assign this P.O. to: (i) any affiliated company; (ii) any successor in interest; and/or (iii) NetAlly's customer. NetAlly shall have the right at any time to set off any amount owing from Vendor to NetAlly or NetAlly's subsidiaries and/or affiliates against any amount due and owing to Vendor or any of its subsidiaries and/or affiliates pursuant to this P.O. or any other contractual agreement between NetAlly and Vendor or their respective subsidiaries and/or affiliates. Vendor shall promptly notify NetAlly in writing in advance of any organizational changes planned by Vendor, including name or ownership changes, mergers or acquisitions.

18. Compliance with Law. Vendor warrants and represents that (i) materials to be furnished and the services to be rendered under this P.O. shall be manufactured, sold, used and rendered in compliance with all relevant federal, state, local law, orders, rules, ordinances, and regulations and in compliance with applicable international prohibitions on child labor; (ii) with respect to the production of the articles and/or the performance of the services covered by this P.O., Vendor has fully complied with the Fair Labor Standards Act of 1938, as amended, and of regulations and orders of the United States Department of Labor under Section 14 thereof, if applicable; (iii) all equipment and materials delivered under this P.O. are in conformance with the latest OSHA requirements; (iv) in the performance of this P.O., it will comply with all applicable U. S. Department of Transportation regulations on hazardous materials and any other pertinent federal, state, or local statutes, laws, rules, or regulations; (v) Vendor has complied with the Anti-Kickback Act of 1986 and has not offered or given and will not offer or give to any employee, agent, or representative of NetAlly any gratuity or any kickback within the meaning of the Anti-Kickback Act of 1986. Any breach of this warranty shall be a material breach of each and every contract between NetAlly and Vendor. The Vendor shall include the terms of this Article, including this Section 18, "Compliance with Law"; and (vi) in all purchase orders or subcontracts awarded under this P.O., Vendor further agrees to save NetAlly harmless from any loss, damage, fine, penalty, or expense whatsoever that NetAlly may suffer as a result of Vendor's failure to comply with the warranties stated herein. The foregoing is in addition to and not in mitigation of any other requirements of this P.O.

19. Disputes. Any controversy or claim that may arise out of or in connection with this P.O. that after good faith negotiations cannot be resolved to both parties' mutual satisfaction may be resolved by submitting the claim to a court of competent jurisdiction. Pending resolution or settlement of any dispute arising under this P.O., Vendor will proceed diligently as directed by NetAlly with the performance of this P.O. respective of the place of performance, this P.O. will be construed and interpreted according to the laws of the State of Colorado, without resort to said state's conflicts of laws provisions. Neither Party shall be deemed the drafter of this P.O. Both Parties hereto specifically acknowledge they have had the option to seek the advice of counsel, of their own choosing, prior to entering into this P.O.

20. Waiver. Except as otherwise provided herein, the rights and remedies of both parties hereunder shall be in addition to their rights and remedies at law or in equity. Failure of either party to enforce any of its rights shall not constitute a waiver of such rights or of any other rights and shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies; rather, the same shall remain in full force and effect.

21. Force Majeure. Except for defaults of Vendor's subcontractors at any tier, neither NetAlly nor Vendor shall be liable for any failure to perform due to any cause beyond their reasonable control and without their fault or negligence. Such causes include, but are not limited to, acts of God or of the public enemy, terrorist acts, fires, floods, epidemics, terrorism, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In the event that performance of this P.O. is hindered, delayed or adversely affected by causes of the type described above ("Force Majeure"), then the party whose performance is so affected shall so notify the other party's authorized representative in writing and, at NetAlly's option, this P.O. shall be completed with such adjustments as are reasonably required by the existence of Force Majeure or this P.O. may be terminated for convenience.

22. Notice. All notices under this P.O. 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 DSR receives a confirmation of "read receipt" and "delivery receipt" and such notice shall only be valid if sent to DL-legal@netally.com.

[End]
