



PURCHASE ORDER
TERMS AND CONDITIONS

These P.O. Terms and Conditions ("PO-T&Cs") are made and entered into as of the date ("Effective Date") as indicated on an applicable purchase order ("P.O."), which incorporates these PO-T&Cs by reference, by and between NetAlly, LLC, a Delaware limited liability company, having principal offices at 2075 Research Parkway, Suite 190, Colorado Springs, CO 80920 United States ("NetAlly") and the company identified on such P.O. ("Vendor"), (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 hereto agree as of the Effective Date to the following:

1. Acceptance of Purchase Order. Vendor's provision of software, hardware, products, materials, goods, and/or services hereby ordered, or Vendor's commencement of such performance, or acceptance of any payment, shall constitute acceptance by Vendor of these PO-T&Cs. In the event that the P.O. does not state price or delivery, NetAlly will not be bound by 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 (email). These terms and conditions, together with the P.O. and any referenced exhibits, attachments or other documents referenced herein, constitute the entire agreement between the parties with respect to the subject matter thereof 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 these PO-T&Cs

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 an applicable 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 these PO-T&Cs, if unexcused, shall be considered a material breach of these PO-T&Cs. No acts of NetAlly, including without limitation, modifications to these PO-T&Cs or acceptance of late deliveries, shall constitute a 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 these PO-T&Cs. 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 of 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 these PO-T&Cs.

5. Customers. All uses granted within these PO-T&Cs shall include NetAlly and NetAlly's customer(s), which include but are not limited to NetAlly's direct and indirect customers., e.g., direct sale end-users, channel sale end-users, higher-tier subcontractors, prime contractors, and the ultimate end-user under any relevant prime-/sub- agreements (collectively referred to herein as "NetAlly User(s)").

6. Warranty & Representations. Vendor warrants and represents that (i) all hardware, products, materials, goods delivered pursuant to these PO-T&Cs shall be new, unless specifically indicated otherwise (e.g. hardware, products, materials, goods marked as "*refurbished*") on the P.O.), free from defects in workmanship, materials, and design and to be in accordance with all the requirements of these PO-T&Cs; (ii) the performance of work and provisioning of services pursuant to the requirements of these PO-T&Cs shall conform to highest professional standards for which Vendor shall use all best efforts. These warranties and representations shall survive any acceptance (final or partial) and payment. Further, these warranties and representations shall inure to the benefit of both NetAlly and any applicable NetAlly Users. Vendor shall be liable for, indemnify and hold NetAlly and NetAlly Users harmless from any loss, damage, or expense whatsoever that NetAlly may suffer from breach of any of these warranties and representations.

7. License. Unless specified otherwise on an applicable P.O. with respect to all software provided hereunder to NetAlly and/or NetAlly Users by Vendor, Vendor hereby grants to NetAlly and/or as applicable NetAlly Users, 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 and NetAlly Users by Vendor shall be disclosed to NetAlly and NetAlly Users on a nonproprietary basis and may be used and/or disclosed by NetAlly and NetAlly Users 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 restricting the use and disclosure of such information, data, software and the like, specifically excluding any clickwrap, clickthrough, shrinkwrap, or webwrap agreements.

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 these PO-T&Cs, 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 these PO-T&Cs; 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 these PO-T&Cs or paid for by NetAlly shall be promptly provided to NetAlly on request or upon completion of the applicable P.O. Any invention or intellectual property first made or conceived by Vendor in the performance of these PO-T&Cs 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 these PO-T&Cs which includes any copyright interest shall be considered a "work made for hire". Applicable Government Procurement Regulations (hereinafter referred to as "GSA Regs") incorporated into this PO-T&Cs 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 GSA Regs 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. 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 or in furtherance of these PO-T&Cs unless NetAlly consents otherwise in writing. Materials 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 these PO-T&Cs, including but not limited to any suits, claims, or demands arising therefrom and all related attorneys' fees and costs.

10. Release of Information. Vendor shall not publish, distribute, nor use any information developed under or in furtherance of these PO-

T&Cs, 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 these PO-T&Cs or any individual P.O. under these PO-T&Cs for convenience, with or without cause, in whole or in part, at any time. Such termination shall not constitute default by NetAlly. In the event of partial termination, Vendor is not excused from (i) performance of the non-terminated balance of work; or (ii) providing the remaining software, hardware, products, materials, goods, under any applicable P.O. NetAlly may take immediate possession of all work so performed, and software, hardware, products, materials, goods due 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 these PO-T&Cs, shall survive such termination.

12. Termination for Default. NetAlly may, by notice in writing, terminate these PO-T&Cs in whole or in part, at any time for (i) breach of any one or more of its terms; (ii) for Vendor's failure to make progress; (iii) any actions or inactions that may endanger performance of under these PO-T&Cs; or (iii) failure to provide adequate and timely assurances of future performance. In the event of partial termination, Vendor is not excused from (i) performance of the non-terminated balance of work; and/or (ii) providing the remaining software, hardware, products, materials, goods, due under these PO-T&Cs. 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 warranties, representations, proprietary rights, infringement, and indemnity against claims provisions of these PO-T&Cs, shall survive such termination.

13. Order of Precedence. In the event of any inconsistency or conflict between or among the provisions of these PO-T&Cs, such inconsistency or conflict shall be resolved by the following descending order of preference: (i) order-specific provisions, which are typed or handwritten on an applicable P.O. as additions to the pre-printed terms; (ii) documents incorporated by reference via an applicable P.O.; (iii) these PO-T&Cs and any 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 these PO-T&Cs, 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 to the services to be rendered or the remaining software, hardware, products, materials, goods, 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 these PO-T&Cs or in the time required for performance, an equitable adjustment shall be negotiated promptly, and these PO-T&Cs 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) calendar days from the date of receipt by Vendor of notification of the change or suspension; and (ii) shall be followed as soon as practicable with specification of the amount claimed and supporting cost figures. However, nothing stated herein shall excuse the Vendor from proceeding in furtherance of any applicable P.O. incorporated into these PO-T&Cs, as changes are pending resolution of a 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.

15. Infringement. Vendor warrants and represents that all software, goods, products, work, materials, services, equipment, parts and other items provided by Vendor pursuant to these PO-T&Cs, which are not of NetAlly's design, shall be free from claims of infringement, including but not limited to misappropriation of third-party intellectual property rights, and that any use or sale of such by NetAlly or any NetAlly Users shall be free from any claims of infringement. Vendor shall indemnify and hold NetAlly and NetAlly Users harmless from any and all expenses, liability, and loss of any kind (including but not limited to 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 these PO-T&Cs 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 NetAlly Users the right to use and sell said item.

16. Taxes. Unless these PO-T&Cs specify otherwise, the prices set for in any applicable P.O. include, and Vendor is liable for and shall pay, all taxes, VAT, impositions, charges, and exactions imposed on or measured or levied in furtherance of any P.O. under these PO-T&Cs 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 under these PO-T&Cs such taxes as NetAlly is required to withhold from such payments and pay such taxes to the relevant tax authorities; provided, however, that NetAlly shall provide to Vendor a relevant tax receipt, tax exemption certificate, 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 these PO-T&Cs 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 these PO-T&Cs to: (i) any affiliated company; (ii) any successor in interest; and/or (iii) NetAlly Users, at any time. 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 these PO-T&Cs 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) software, hardware, products, materials, goods, and/or services to be furnished under these PO-T&Cs 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 these PO-T&Cs, Vendor has fully complied with the U.S. Fair Labor Standards Act of 1938, as amended ("FLSA"), and of regulations and orders of the United States Department of Labor the FLSA, if applicable; (iii) all equipment and materials delivered under these PO-T&Cs are in conformance with the latest U.S. Occupational Safety and Health Administration ("OSHA") requirements; (iv) in the performance of these PO-T&Cs, Vendor 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 U.S. 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 U.S. Anti-Kickback Act of 1986; and/or (vi) shall adhere and comply with all applicable U.S. laws, regulations, and executive orders, including but not limited to the U.S. Foreign Corrupt Practices Act, U.S. Antiboycott Laws, U.S. Export Administration Regulations ("EAR"), U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), and the International Traffic In Arms Regulations ("ITAR"). Any breach of the any warranties and representations set forth in this Section 18 "Compliance with Laws" shall be a material breach of each and every P.O. and contract between NetAlly and Vendor. The Vendor shall include the terms of this Section 18, "Compliance with Law" in all purchase orders or subcontracts awarded under these PO-T&Cs. Vendor further agrees to indemnify and hold 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 and representation stated in this Section 18 "Compliance with Laws". The foregoing is in addition to and not in mitigation of any other warranties, representations and/or requirements under these PO-T&Cs.

19. Disputes. Any controversy or claim that may arise out of or in connection with these PO-T&Cs that after good faith negotiations cannot be resolved to both parties' mutual satisfaction shall be resolved through binding arbitration conducted by the American Arbitration Association (AAA), in front of a single arbitrator, the location of such arbitration shall be Denver, Colorado US. Each party hereto waives any claims of *forum non conveniens*. The language of the arbitration shall be English. Pending resolution or settlement of any dispute arising under these PO-T&Cs, Vendor will proceed diligently, as directed by NetAlly with the performance set forth in these PO-T&Cs. Irrespective of the place of performance, these PO-T&Cs 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 these PO-T&Cs. Both Parties hereto specifically acknowledge they have had the option to seek the advice of counsel, of their own choosing, prior to entering into these PO-T&Cs.

20. Waiver & Remedies. 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. All remedies are cumulative and shall be at NetAlly's election, including repair, replacement, or reimbursement of the purchase price, without off-set in-whole or in-part, 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 software, hardware, products, materials, goods, and/or services.

21. Force Majeure. Neither Party shall be liable for any failure or delay in performing any other obligation under these PO-T&Cs, nor for any damages suffered by the other by reason of such failure or delay, which is, indirectly or directly, caused by an event beyond such Party's foreseeable control including but not limited to strikes, riots, natural catastrophes, terrorist acts, pandemics, endemics, epidemics, outbreaks, governmental intervention, or other acts of God, or any other causes beyond such Party's reasonable control ("Force Majeure Event"). The Party seeking relief under this Section 21 "Force Majeure" ("Impacted Party") shall provide to the other Party hereto notice within fifteen (15) calendar days of a Force Majeure Event, stating a good-faith estimate of the expected time and effect of such Force Majeure Event ("Impact"). The Impacted Party shall use commercially reasonable efforts to mitigate the Impact of such Force

Majeure Events. In the event such Impact continues for more than forty (45) calendar days from receipt of such notice, then either Party hereto may terminate these PO- T&Cs, without penalty or liability, by providing no less than thirty (30) calendar days prior written notice.

22. Notice. All notices under these PO-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 notice set forth in (iii) above such notice shall only be deemed received once Vendor receives a confirmation of "read receipt" and "delivery receipt" and such notice. All Notices sent to NetAlly shall only be valid if sent to

NetAlly, LLC
Attn: Legal Department
2075 Research Parkway, Suite 190
Colorado Springs, CO 80920
United States
legal@netally.com

[End]
