



DataPath Inc. International General Terms and Conditions of Sale

1. TAXES. Except as otherwise specified, the prices stated do not include any state, federal, or local sales, use or excise taxes applicable to the sale, delivery, or use of products sold hereunder, including, as applicable, associated software delivered with such products, and the Buyer expressly agrees to pay to Seller, in addition to the prices stated, the amount of any such taxes, domestic or foreign, which may be imposed upon or payable by Seller.

2. PAYMENT TERMS. Notwithstanding any statement of terms or time of payment to the contrary appearing on the face of the order, Seller reserves the right to require payment in advance of shipment or to ship C.O.D. In the event Buyer fails to pay any invoice when due, in addition to any other right reserved hereunder, Seller reserves the right to suspend or limit performance until all past due sums are paid. Further, Seller reserves the right to charge interest at the rate of one and one half percent (1.5%) per month, or the maximum rate permitted by law, whichever rate is lower, on any unpaid balance owing by Buyer from the date due until the date paid. If the purchase price (whole or part thereof) is to be paid on an installment basis, Buyer will prior to the time of delivery execute a note, security agreement and financing statement for such purchase price in the form agreed between Seller and Buyer upon the acceptance of the purchase order, or, if no such form was agreed, in the form set in **Exhibit A** hereto..

3. SECURITY INTEREST IN PRODUCT AND SOFTWARE. Buyer grants Seller a first priority security interest in all products and software delivered until payment in full for such products and software has been received by Seller. Buyer hereby grants Seller the right to file such protective financing or similar statements to confirm and record Seller's security interest in all products and software.

4. DELIVERY. Unless otherwise specified in writing, delivery will be made EXW (Incoterms 2020) the place or location of Seller's factory from which Seller elects to make shipment, according to the delivery schedule specified, which schedule is subject to delays due to causes beyond Seller's control. Cancellation or rescheduling of the delivery by Buyer may be subject to additional charges by Seller.

5. FORCE MAJEURE (EXCUSABLE DELAY). Seller shall not be liable for default or for delay in deliveries due to causes beyond its control and without its fault or negligence, including but not limited to inability to obtain material, labor or manufacturing facilities, acts of God, or of the public enemy, any preference, priority or allocation order issued by the U.S.A. Government, changes in applicable law or any other act of government, fires, floods, unusually severe weather, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of Seller's suppliers. In the event of any such delay, delivery dates shall be extended accordingly for a period equal to the time lost by reason of such delay. Seller shall use commercially reasonable efforts to remove the cause of delay and resume work as soon as possible and to mitigate delivery schedule delay. In no event shall Seller be liable for any damage. Seller reserves the right to provide, at no change in price, a substitute product of equal or better capability provided however that such substitute product maintains the form, fit and functionality of the original product and its associated software.

6. SHIPMENT AND RISK OF LOSS. In the absence of specific instructions in writing, Seller will select the carrier to whom delivery will be made for shipment to Buyer. Except for its obligations under the sections hereof entitled "Warranty" and "Patent and Copyright Indemnification," all responsibility of Seller, including but not limited to risk of loss for all items purchased hereunder by Buyer, shall pass to Buyer EXW (Incoterms 2020) the place or location of Seller's factory from which Seller elects to make shipment at the time the articles are duly delivered to the carrier. All claims to the carrier for products damaged or lost in transit shall be made by the Buyer.

7. WARRANTY.

The products sold hereunder and its associated software delivered hereunder are subject to the following warranties:

7.1 Seller agrees to repair or replace at its sole discretion, without charge, any such product, which is defective as to design, workmanship or material, and which is returned to Seller at its factory, transportation prepaid, provided:

7.1.1 (i) Written notice of the claimed defect is given to Seller within one (1) year from date of delivery and the product is returned in accordance with Seller's instructions. (ii) Such product shall not be deemed to be defective, if, due to exposure to any condition in excess of those published in the product specification, it shall fail to operate in a normal manner. (iii) Seller's obligations with respect to such product are conditioned upon the proper installation, operation and maintenance of such product by Buyer in accordance with Seller's written directions. (iv) The warranty stated in this Section 7.1 shall be void if such product is altered or repair is attempted or made by other than Seller or Seller's authorized service center.

7.1.2 Seller warrants that any software delivered hereunder, either embedded in products described herein or specifically designed for use in or with such products, will substantially provide the functions(s) set forth in the applicable specification (or absent a specification, as described in the applicable service bulletin). Seller will, at its option, without charge, revise or replace such nonconforming software provided: (i) Written notice of the claimed defect is given to Seller within one (1) year from the date of delivery. (ii) Software shall not be deemed to be defective if the software or the host medium is exposed to any computer virus or to any condition in excess of those published in the applicable specification(s). (iii) Seller's obligations are conditioned upon the proper installation and operation of software and the host medium in accordance with Seller's written instructions. (iv) The warranty stated in this Section 7.1.2 shall be void if such software (or its host medium) is altered (or alterations are attempted) by other than Seller or Seller's authorized service center. Exclusions. For purposes of this warranty, the following products are excluded from coverage: (x) Expendables, including but not limited to: light bulbs; batteries; cables and accessories, (y) Products and software not manufactured by Seller or from Seller's designs. Such third-party products and software are subject only to such warranties as Seller may obtain from the supplier thereof.

7.2 DISCLAIMER. EXCEPT AS SET FORTH IN SECTION 7.1 ABOVE, SELLER MAKES NO OTHER WARRANTIES OF ANY KIND IN CONNECTION WITH THE PRODUCTS SOLD OR, SOFTWARE DELIVERED HEREUNDER AND SELLER HEREBY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESSED, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE THE PROVISIONS OF SECTION 7.1 SHALL CONSTITUTE THE BUYER'S SOLE RIGHT AND REMEDY WITH RESPECT TO WARRANTY RIGHTS UNDER THIS AGREEMENT.

8. PATENT AND COPYRIGHT INDEMNIFICATION.

8.1 **IP Indemnity.** Seller agrees that it will defend, at its own expense, all claims against Buyer for infringement of any third party intellectual property rights relating to, or allegedly relating to, the products sold by Seller and Seller agrees that it will pay all sums which, as determined by final judgment or court decree in any such claims, may be assessed against the Buyer on account of such infringement, provided that Seller shall be given (i) prompt written notice by Buyer of all claims of any such infringement and of any suits brought or threatened against Buyer within fifteen (15) days of Buyer's notice of the same and (ii) authority from Buyer to assume the sole defense thereof through its own counsel and to compromise or settle any claims so far as this may be done without prejudice of the right of the Buyer to continue the use, as contemplated, of the product so purchased. If in any such claim so defended the product is held to constitute an infringement and its use is enjoined, or if in the light of any claim of infringement Seller deems it advisable to do so in its sole discretion, Seller may either procure the right to continue the use of the same for the Buyer, or replace the same with non-infringing product, or modify said product so as to be non-infringing, or, if the foregoing options are not reasonably available, take back the infringing product and refund the purchase price less a reasonable allowance for use, damage or obsolescence.

8.2 **Exclusions.** Notwithstanding the requirements of Section **Error! Reference source not found.**, Seller will have no liability for any claim based upon or arising out of the (i) combination, operation, or use of any product or associated software by Buyer or any third party in a manner for which it was not designed nor contemplated; or

(ii) any modification of any product or associated software by the Buyer or any third party that causes the product or associated software to become infringing. This Section **Error! Reference source not found.** is the entire obligation of Seller with respect to intellectual property rights infringements.

9. INDEMNIFICATION.

9.1 Either Party assumes the entire responsibility and liability for, and agrees to release, indemnify, defend and hold harmless the other Party, its corporate affiliates and their respective directors, officers, agents, employees, successors, and assigns, from and against any and all losses, expenses (including without limitation, reasonable attorneys' and other professional fees), costs, damages (including consequential and incidental damages), demands, liabilities, suits and claims in connection with or arising out of any actual or alleged personal injury (including death) or damage or destruction to property (including loss of use) by whomsoever suffered, sustained or alleged to have been sustained by reason of (i) any act, error or omission, whether negligent or not, of the indemnitor or its agents, employees, suppliers, subcontractors and consultants, provided that such injury, death, damage or destruction is occasioned by the sole negligence of the indemnitor or its agents, employees and subcontractors, or (ii) any failure of the other Party or its agents, employees, suppliers, subcontractors, or consultants to comply with any applicable law.

9.2 Upon the assertion of any claim or the commencement of any suit or proceeding against an indemnitee by any third party that may give rise to liability of an indemnitor hereunder, the indemnitee shall promptly notify the indemnitor of the existence of such a claim and shall give the indemnitor reasonable opportunity to defend and to settle the claim at its own expense and with counsel of its own selection. The indemnitee shall cooperate with the indemnitor, shall at all times have the right to participate in such a defense at its own expense and shall not be obligated, against its consent, to participate in any settlement which it reasonably believes would have an adverse effect on its business.

10. SOFTWARE LICENSE FOR PRODUCT SPECIFIC SOFTWARE. Software delivered hereunder, either embedded in product described herein or specifically designed for use in or with such product, is copyrighted by Seller and shall remain the sole and exclusive property of Seller. Seller grants the Buyer a perpetual, worldwide, non-exclusive license to use the software only in or with the specific product for which it was delivered. The Buyer shall not copy, modify, or disassemble the software, or permit others to do so. Buyer shall not transfer the license granted hereby or possession of the software except as part of or with the product, such transfer being subject to the restrictions contained herein. Seller may terminate this license upon written notice for violation of any of the terms of the foregoing license.

11.COMPLIANCE WITH THE FOREIGN CORRUPT PRACTICES ACT AND OTHER ANTI-CORRUPTION LAWS AND REGULATIONS.

11.1 Buyer shall comply with all applicable laws and regulations relating to anti-corruption including without limitation, (i) the United States Foreign Corrupt Practices Act (FCPA) (15 U.S.C. §§78dd-1, et. seq.) irrespective of the place of performance, and (ii) laws and regulations implementing the Organization for Economic Cooperation and Development's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the U.N. Convention Against Corruption, and the Inter-American Convention Against Corruption in Buyer's country or any country where performance of this Agreement will occur. Compliance with the requirements of this Section 11 is a material requirement of this Agreement.

11.2 In performing this Agreement, Buyer represents that it has not paid, offered, promised to pay or authorized and will not pay, offer, promise to pay, or authorize the payment directly or indirectly of any monies or anything of value to (i) any person or firm employed by or acting for on behalf of any customer, whether private or governmental, or (ii) any government official or employee or any political party or candidate for political office for the purpose of influencing any act or decision or inducing or rewarding any action by the customer in any commercial transaction



or in any governmental matter or securing any improper advantage to assist Seller in obtaining or retaining business or directing business to any person.

11.3 Buyer has not made and will not make, either directly or indirectly, any improper payments. Buyer has not made and will not make any facilitating payment (as that term is defined in the FCPA). Buyer shall promptly disclose to Seller together with all pertinent facts any violation, or alleged violation of this Section 11 in connection with the performance of this Agreement.

12. EXPORT CONTROL

12.1 Buyer shall comply with all applicable U.S. and non-U.S. sanctions and export control laws, rules and regulations relating to the products sold or software delivered under this Agreement, the International Traffic in Arms Regulation ("ITAR"), 22 C.F.R. 120 et seq., the Export Administration Regulations ("EAR"), 15 C.F.R. 730- 774, the Foreign Assets Control Regulations, 31 C.F.R. 500-598 and applicable EU controls on exports of dual- use items and technology implemented pursuant to Council Regulation (EC) No. 428/2009. Without limiting the foregoing, Buyer shall not transfer any export controlled item or data, including transfers to dual/third country nationals employed by or associated with, or under contract to Buyer or Buyer's lower tier suppliers, unless authorized in advance by an export license agreement (e.g. Technical Assistance Agreement (TAA) or Manufacturing Licensing Agreement (MLA)), license exception or license exemption, as required.

12.2 Buyer hereby represents that neither Buyer nor any parent, subsidiary, affiliate of Buyer, Buyer's customer, or the intended end-user is included on any of the restricted party lists maintained by the U.S. Government, including the Specially Designated Nationals List administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), Denied Parties List, Unverified List or Entity List maintained by the U.S. Commerce Department's Bureau of Industry and Security ("BIS") or the List of Statutorily Debarred Parties maintained by the U.S. State Department's Directorate of Defense Trade Controls, or the consolidated list of asset freeze targets designated by the United Nations, European Union, and United Kingdom (collectively, "Restricted Party Lists"). Buyer shall immediately notify Seller if Buyer or any parent, subsidiary, affiliate of Buyer, Buyer's customer or intended end-user is, or becomes, listed on any Restricted Party List or if Buyer's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. or non-U.S. government entity or agency, or by any entity or agency of Buyer's own country.

12.3 Buyer shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of Buyer, its directors, officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Section 12.

13. INFORMATION OF SELLER.

13.1 Information provided by Seller to Buyer remains the property of Seller. Buyer shall comply with the terms of any proprietary information agreement with Seller and comply with all proprietary information markings and restrictive legends applied by Seller to anything provided hereunder to Buyer. Buyer shall not use any Seller provided information for any purpose except to perform this Agreement and shall not disclose such information to third parties without the prior written consent of Seller. Buyer shall maintain data protection processes and systems sufficient to adequately protect Seller provided information and comply with any law or regulation applicable to such information.

13.2 If Buyer becomes aware of any compromise of information provided by Seller to Buyer, its directors, officers, employees, agents, suppliers, or subcontractors (an "Incident"), Buyer shall take appropriate immediate actions to investigate and contain the Incident and any associated risks, including prompt notification to Seller after learning

of the Incident. As used in this Section 13 “compromise” means that any information provided by Seller has been exposed to unauthorized access, inadvertent disclosure, known misuse, loss, destruction, or alteration other than as required to perform the work. Buyer shall provide reasonable cooperation to Seller in conducting any investigation regarding the nature and scope of any Incident.

13.3 Any costs incurred in investigating or remedying Incidents shall be borne by Buyer. Any Seller provided information identified as proprietary or subject to restrictions on public disclosure by law or regulation shall be encrypted (i) if transmitted via the Internet, or (ii) during electronic storage if potentially accessible by the Internet or otherwise by non-authorized users. The provisions set forth above are in addition to and do not alter, change or supersede any obligations contained in a proprietary information agreement between the parties.

14. CONFIDENTIALITY

14.1 In the event that the Buyer and Seller have signed a confidentiality agreement prior to the signature of the Agreement, concerning the subject-matter of this Agreement, said confidentiality agreement shall prevail over this Section. The terms and conditions of that certain pre-existing non-disclosure agreement between the Parties are incorporated herein by this reference and shall continue in full force and effect throughout the term of this Agreement and five (5) additional years after termination, rescission or expiration of this Agreement.

14.2 In the event there is no pre-existing non-disclosure agreement between the Buyer and Seller, throughout the duration of performance of this Agreement, along with any related agreement, for a duration of five (5) years following its expiry, termination or rescission, the Parties agree not to communicate, to any persons other than those required for the performance of this Agreement, any proprietary documents, specifications, plans and other written and/or oral information, in any form and/or on any medium whatsoever, received from the other Party in the performance of this Agreement or any related agreement. Each Party agrees to take all steps necessary with its personnel and with respect to those persons and/or companies with which it has relations so that this prohibition shall be strictly complied with.

14.3 The terms and conditions of this Agreement as well as its existence cannot under any circumstances be the subject of direct or indirect publicity without the prior written agreement of the Parties.

14.4 Exclusions. This restriction shall not apply to any proprietary or confidential information which is already known by the receiving Party, is or becomes publicly available through no fault of the receiving party, or is required to be disclosed by government or judicial order.

14.5 All proprietary and confidential information provided to a party under this Agreement shall be returned to the disclosing Party or destroyed promptly upon termination of this Agreement.

14.6 With regard to confidential information that constitutes a trade secret, the obligations in this Section 14 will continue for so long as such information constitutes a trade secret under applicable law.

14.7 Notwithstanding the above, Seller may disclose general details concerning the purchase order to be incorporated in a 6K form or similar announcement to the stock exchange without the Buyer’s consent, provided that, the identity of the Buyer and the end-user will not be disclosed.

15. TERMINATION

15.1 Termination for Cause. If either Party commits a material breach of any provision of this Agreement and if such breach is not cured within thirty (30) days after receiving written notice from the other Party specifying such

breach in a reasonable detail, the non-breaching Party shall have the right to immediately terminate this Agreement.

15.2 Termination for Insolvency. Either Party has the right to terminate this Agreement immediately where the other Party becomes insolvent, fails to pay its bills when due, makes an assignment for the benefit of creditors, goes out of business, or ceases production.

16. LIMITATION OF LIABILITY. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE SELLER WILL NOT BE RESPONSIBLE TO BUYER FOR CONSEQUENTIAL, EXEMPLARY, PUNITIVE, SPECIAL OR INCIDENTAL DAMAGES (SUCH AS LOSS OF PROFITS OR EMPLOYEE'S TIME OR LOSS DATA) REGARDLESS OF THE REASON EVEN IF THE SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR FOR ANY CLAIM AGAINST THE BUYER BY ANY OTHER PARTY. TO THE EXTENT PERMITTED BY APPLICABLE LAW, SELLER'S AGGREGATE LIABILITY FOR ALL CLAIMS OF ANY KIND, WHETHER IN CONTRACT OR IN TORT INCLUDING WITHOUT LIMITATION NEGLIGENCE, RELATING TO THIS AGREEMENT AND THE PRODUCTS SOLD OR SOFTWARE DELIVERED HEREUNDER SHALL NOT EXCEED THE AGGREGATE AMOUNT PAID BY OR PAYABLE TO SELLER FROM BUYER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE DATE OF ANY CLAIM EVENT, ACT OR OMISSION GIVING RISE TO THE LIABILITY.

17. INDEPENDENT CONTRACTOR. The Seller's relationship with the Buyer is that of an independent contractor and nothing in this Agreement will be construed to create a joint partnership, joint venture, agency or employer-employee relationship.

18. INSURANCE. Each Party agrees to maintain insurance in commercially reasonable amounts calculated to protect itself and the other Party to this Agreement from any and all claims of any kind or nature for damage to property or personal injury, including death, made by anyone, that may arise from activities performed or facilitated by this Agreement, whether these activities are performed by the Party, its employees, agents, or anyone directly or indirectly engaged or employed by that Party or its agents.

19. NONASSIGNABILITY. Without the prior written consent of the Seller, the Buyer may not assign this Agreement. Any attempt by the Buyer to assign any of the rights or obligations of the Agreement without such consent is void.

20. WAIVER. No failure by either party to exercise and no delay in exercising any right, power or privilege hereunder will operate as a waiver hereof, nor will any single or partial exercise of any right or privilege hereunder preclude further exercise of the same right or the exercise of any right hereunder. A waiver on one or more occasions of any of the provisions hereof shall not be deemed a continuing one.

21. COMPLIANCE WITH LAWS. Both Seller and Buyer will comply, at their own expense, with all laws applicable to the Agreement.

22. GOVERNING LAW AND VENUE.

22.1 This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to its conflict of law principles and specifically excluding the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods. Any dispute, controversy, or claim arising out of or relating to this Agreement, or the breach, termination, or validity thereof, shall be exclusively resolved by the federal courts located in the Southern District of New York, U.S.A. Each party consents to the exclusive jurisdiction and venue of such courts and waives any objection to the inconvenience of laying a forum in such courts.



22.2 EACH PARTY, KNOWINGLY AND AFTER CONSULTATION WITH COUNSEL, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, WAIVES ALL RIGHT TO TRIAL BY JURY OF ANY CLAIM ARISING WITH RESPECT TO THIS AGREEMENT OR ANY MATTER RELATED IN ANY WAY THERETO.

23. NOTICES. All notices shall be in writing and shall be delivered personally, by United States certified or registered mail, postage prepaid, return receipt requested, or by a recognized overnight delivery service. Any notice must be delivered to the parties at their respective addresses set forth below their signatures or to such other address as shall be specified in writing by either party according to the requirements of this Section 23. The date that notice shall be deemed to have been made shall be the date of delivery, when delivered personally; on written verification of receipt if delivered by overnight delivery; or the date set forth on the return receipt if sent by certified or registered mail.

24. HEADINGS. The headings used in this Agreement are inserted for the convenience of the parties and shall not define, limit, or describe the scope or the intent of the provisions of this Agreement.

25. AMENDMENT. Changes to this Agreement must be in writing and must be signed by both Parties.

26. CONFLICT. In the event that these general terms and conditions conflict with any term or condition set forth in any related agreement or other document, the term or condition set forth herein shall control unless otherwise specified by the Parties. This Agreement will prevail over any conflicting provisions of any purchase order or any other instrument of the Buyer.

27. COUNTERPARTS. This Agreement may be executed in multiple counterparts, any one of which will be considered the original, but all of which will constitute one and the same instrument.

28. ATTORNEYS' FEES: The prevailing Party in any action arising out of or relating to this Agreement will be entitled to recovery of its costs and expenses including reasonable attorneys' fees incurred in such action.

29. SURVIVABILITY. Any provision of this Agreement that logically ought to survive termination or expiration of this Agreement shall survive, including but not limited to, all rights and obligations under this Agreement with respect to restrictions on the use of products and services, protection of intellectual property rights, payment of fees, confidentiality, governing law, limitations of liability and indemnifications shall survive the expiration or termination of this Agreement.

30. COMPLETE AGREEMENT. Buyer acknowledges that it has read the Agreement, understands it, and agrees to be bound by its terms and conditions. Further, Buyer represents and agrees that this Agreement, including its applicable exhibits and schedules (Statement of Work, Product Specifications, Pricing and Delivery, etc.) along with the "*Software License Agreement*" and/or "*Software Maintenance Plan*", if applicable, set forth the complete and exclusive statement of the agreement including the governing terms and conditions between the parties, which shall prevail over and supersede all proposals, printed provisions on subordinate Buyer documents including purchase orders, oral or written agreements, the Buyer's general terms and conditions and all other communications between the parties relating to the subject matter of the Agreement. Buyer's acknowledgment and/or payment, or Seller's commencement of performance, shall constitute Buyer's unqualified acceptance of this Agreement.

Exhibit A
Form of Letter of Credit

ISSUING BANK

CONFIRMED BY _____

FORM:

IRREVOCABLE AND CONFIRMED

DATE & PLACE OF EXPIRY:

MM/DD/YY, U.S.A.

APPLICANT:

BENEFICIARY:

DataPath Inc.
2205 Northmont Parkway
Duluth, Georgia 30096
U.S.A.

CURRENCY & AMOUNT:

AVAILABLE:

PAYMENT TERMS:

AT SIGHT UPON PRESENTATION OF THE DOCUMENTS BELOW

PARTIAL SHIPMENT:

PERMITTED

TRANSSHIPMENT:

PERMITTED

LOADING ON BOARD / DISPATCHING: ANY AIRPORT/SEAPORT

FINAL DESTINATION:

NAME OF AIR / SEA PORT

LATEST DAY OF SHIPMENT

INSERT DATE (DD MM YY)

COVERING:

GOODS DESCRIPTION

PRICE BASIS:

EXW (INCOTERMS 2020) SELLER'S FACTORY

CHARGES:

ALL L/C CHARGES ARE TO APPLICANT ACCOUNT

CONFIRMATION:

YOU MAY ADD YOUR CONFIRMATION SUBJECT TO
BENEFICIARY'S REQUEST

All Payments but the Down Payment shall be made against the presentation of the following documents:

- Commercial invoice (3 originals/true to original)
- Lading / Air waybill (3 originals/true originals)