

## STANDARD TERMS AND CONDITIONS OF PURCHASE

These Standard Terms and Conditions of Purchase apply to each purchase or lease of products or services by you ("Customer") from **Sidepath, Inc.** ("Sidepath"), except to the extent different or additional terms have been expressly agreed to by Customer and Sidepath in writing. These Terms and Conditions shall become effective on the date that Sidepath has accepted Customer's purchase order, signed quotation or signed Statement of Work as indicated under Overview (Section 1.a.) below.

These Terms and Conditions may be revised at any time by Sidepath in its sole discretion, without notice to Customer. The Terms and Conditions that apply to each purchase or lease of products or services by Customer are those Terms and Conditions that were in effect at the time of the order.

These Terms and Condition may be accessed online at [www.sidepath.com/terms](http://www.sidepath.com/terms) or such other site as Sidepath may inform Customer of in writing. A hard copy of these Terms and Conditions is also available from Sidepath by written request.

### 1. **Overview**

a. These Terms and Conditions govern the purchase and/or lease of Products and Services from Sidepath as set forth in Customer's purchase order that has been accepted by Sidepath or Sidepath's quotation that has been signed by Customer (each, an "Order"), and/or in a Statement of Work signed by the parties (an "SOW"), as applicable. "Products" are the hardware and software products and related maintenance and support services that Sidepath procures from vendors for resale to its customers from time to time. "Services" are professional services that Sidepath or its authorized subcontractors perform for Sidepath's customers, but do not include maintenance and support services. Provisioning of Services is contingent upon Customer providing Sidepath with any equipment, software, licenses, technical information, design documentation, and any other information or documentation reasonably required to perform the Services as specified in each Order or SOW.

b. Any additional or different terms and conditions contained in or included with any Customer purchase order will not apply to any Order notwithstanding any Sidepath acknowledgment or acceptance of such additional and/or different terms and conditions.

c. If a conflict exists between language within these Terms and Conditions and an SOW or other written agreement signed by the parties, the terms of the SOW or such other signed agreement shall control.

### 2. **Products; Maintenance and Support**

a. Sidepath agrees to sell and Customer agrees to purchase the Products described in each purchase order submitted by Customer and accepted by Sidepath in accordance with these Terms and Conditions.

b. Products purchased hereunder may only be used by Customer in connection with its business operations, and may not be resold or transferred to any third party.

c. Sidepath may offer and Customer may agree to purchase maintenance and support services for Products in accordance with the terms and conditions specified in the applicable Order.

### 3. **Services**

a. If Customer orders Services, Sidepath or its authorized subcontractors shall provide such Services as set forth in the applicable Order or SOW. The Order or SOW shall incorporate, as applicable, the following; (a) identification of all deliverables, including all mutually agreed to Product deliverables; (b) a detailed description of all activities to be performed by Sidepath and Customer and the location of each activity; and (c) a timetable for completion of each phase of the project.

b. Sidepath shall furnish the labor, supervision, tools, equipment, materials and supplies for any such Services as specified in the Order or SOW.

#### **4. Orders and Delivery**

a. Customer shall issue an Order for any Products ordered hereunder, and shall issue an Order or execute an SOW for any Services ordered hereunder. Each Order or SOW shall include the following terms, as applicable, for the Products and/or Services ordered thereunder: (a) quantities; (b) item descriptions; (c) pricing; (d) delivery destination and shipping terms; and (e) billing information.

b. Customer may request, by written notice to Sidepath prior to shipment of the Products and/or commencement of Services, to cancel an Order for Products and/or Services, or any part thereof, postpone the Delivery Date of some or all of the Products, change the destination to which some or all of the Products and/or Services are to be delivered or rendered, and/or change the scope of Services, it being understood and agreed, however, that Sidepath and/or the manufacturer/vendor, as applicable, may reject the request or impose price changes or surcharges.

c. Sidepath shall use commercially reasonable efforts to cause the Products to be shipped and delivered to the destination(s) set forth in each Order on or before the specified delivery date.

d. Any damages or defects discovered after delivery must be reported within ten (10) business days and an RMA number must be received prior to return of the Product. All other Product issues must be handled through the manufacturer's or vendor's standard warranty process.

#### **5. Payment and other Financial Terms**

a. Customer will pay invoices in full within thirty (30) days after the invoice date, unless a different payment term has been negotiated as indicated on the applicable quotation. If Customer fails to pay any such invoice, interest will accrue on the unpaid balance after a grace period of another thirty (30) days at a rate equal to the lesser of 1.5% per month (eighteen percent (18%) per annum) or the maximum rate allowed by law. Sidepath's provision of Products and/or Services is subject to credit approval of Customer for each Order.

b. Unless otherwise stated in the applicable Order or SOW for Services, Customer shall reimburse Sidepath for Sidepath's reasonable expenses approved in advance by Customer and incurred by Sidepath in the performance of the Services.

c. Prices are exclusive of any applicable taxes unless otherwise indicated, and Customer shall pay when due all applicable taxes associated with the purchase and/or license of Products and/or Services, exclusive of any taxes based on Sidepath's net income.

d. Title to Products purchased by Customer will not pass to Customer, and Customer agrees that the Products are and shall remain personal property, and not fixtures, whatever their mode of attachment to Customer's premises, until all amounts due for such Products under these Terms and Conditions have been paid in full. Until all amounts due have been paid in full, Customer will maintain adequate insurance against fire, theft or other loss.

e. If requested by Sidepath, Customer hereby grants Sidepath a purchase money security interest in each Product purchased by Customer, and all replacements, proceeds, additions and accessions. The security interest will remain in full force and effect for each Product until all amounts due have been paid in full. Customer agrees to execute documentation reasonably required to perfect the security interest.

## **6. Limited Warranties**

- a. With respect to any Products purchased by Customer hereunder, the warranty for such Products shall pass through from the manufacturer. Customer's remedy under the Product warranty shall be as stated in the manufacturer's warranty.
- b. With respect to any Services purchased by Customer hereunder, Sidepath warrants that all such Services shall be provided in a professional, workmanlike manner, in accordance with applicable industry standards and the terms contained in the applicable Order or SOW.
- c. If requested by Customer, repairs necessitated during the warranty period that are not covered by the manufacturer's Product warranty, or repairs outside of the warranty period, may be made by Sidepath or an authorized subcontractor at Sidepath's then standard charges for time and materials, together with shipping and handling charges related to performing such repairs. All such repair services shall be subject to a separate written agreement between the parties.
- d. Without limiting anything herein, Sidepath is not responsible for security, including virus protection of the Customer's network, unless otherwise agreed upon in writing by an authorized representative of Sidepath and Customer. Sidepath will take commercially reasonable efforts to secure Sidepath-provided architecture, but cannot guarantee such security. Unless otherwise agreed in writing, with respect to security, Sidepath is only responsible for installing or implementing manufacturer-issued security-related upgrades, updates and/or patches on Products sold and/or maintained by Sidepath.
- e. EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION, SIDEPATH DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS AND/OR SERVICES COVERED HEREUNDER, AND IN PARTICULAR DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NON-INFRINGEMENT. ALL WARRANTIES RELATED TO ANY THIRD PARTY EQUIPMENT, MATERIAL, SERVICES OR SOFTWARE NOT PROVIDED HEREUNDER ARE EXPRESSLY EXCLUDED.

## **7. Limitation of Liability**

SIDEPATH SHALL HAVE NO LIABILITY FOR LOSS, DAMAGES OR EXPENSE, DIRECTLY OR INDIRECTLY, ARISING FROM CUSTOMER'S USE OF PRODUCTS AND/OR SERVICES OR ITS INABILITY TO USE THE SAME, OR ANY THIRD PARTY'S UNAUTHORIZED USE OF PRODUCTS AND/OR SERVICES, OR, WITH RESPECT TO SIDEPATH'S OBLIGATIONS HEREUNDER, FOR INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, EVEN IF SIDEPATH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, DAMAGES OR EXPENSE, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER AND OTHER EQUIPMENT FAILURE OR MALFUNCTION, LOST PROFITS OR OPPORTUNITIES, OR COMMERCIAL LOSS. SIDEPATH'S AGGREGATE LIABILITY HEREUNDER, WHETHER ARISING OUT OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR WARRANTY, WILL NOT EXCEED THE AMOUNTS PAID BY CUSTOMER FOR THE PRODUCTS AND/OR SERVICES HEREUNDER.

## **8. Intellectual Property**

Customer acknowledges and agrees that the Products and/or Services contain, embody and are based on, patented or patentable inventions, trademarks, trade secrets, copyrights and other intellectual property rights (collectively, "Intellectual Property Rights") owned or controlled by Sidepath or the manufacturer, as

applicable, and that Sidepath or the manufacturer, as applicable, shall continue to be the exclusive owner of all such Intellectual Property Rights.

## **9. Confidentiality**

a. For purposes of these Terms and Conditions, “Confidential Information” means: (i) information contained in any Order or SOW or any separate written agreement between Customer and Sidepath, and any correspondence, quotes, proposals and written communications concerning the same; (ii) the pricing and quantity of Products or Services ordered by Customer; and (iii) other proprietary and confidential information disclosed by one Party (the “Disclosing Party”) to the other party (the “Receiving Party”) hereunder that is marked with a “confidential,” “proprietary” or similar legend, or otherwise designated by the Disclosing Party as Confidential Information at the time of disclosure, or that should be reasonably understood by the Receiving Party to be confidential information of the Disclosing Party under the circumstances.

b. Confidential Information does not include information that: (i) was acquired by the Receiving Party prior to the time of its disclosure, as shown by documentary evidence in existence at the time of disclosure, and at a time when the Receiving Party was under no obligation to the Disclosing Party to keep such information confidential; (ii) is or becomes available in the public domain through no act of the Receiving Party that violates these Terms and Conditions; (iii) is received by the Receiving Party from a third person or entity that is not known by the Receiving Party to be sharing such information in violation of the rights of the Disclosing Party; (iv) is developed by, or on behalf of, the Receiving Party without any use of Confidential Information of the Disclosing Party; or (v) is at any time furnished to a third party by the party to whom such information belongs without restrictions on such third party’s rights to disclose.

c. The Receiving Party shall: (i) treat the Disclosing Party’s Confidential Information as it does its own valuable and sensitive information of a similar nature, but in any event with at least a reasonable degree of care and protection; (ii) not divulge the Confidential Information to any third party, except: (A) its officers, directors, attorneys, accountants, independent auditors, employees, parent company, lenders, attorneys and accountants, and then only on a need to know basis and only after such third party agrees to confidentiality provisions at least as restrictive as those set forth in this Section; or (B) in order to comply with applicable law, subject to subsection (d) below; (iii) refrain from copying the Confidential Information, in whole or in part, except as required for its performance hereunder and subject to the accurate reproduction of all proprietary legends and notices located in the originals; and (iv) not use the Confidential Information, except as necessary for the intended purpose.

d. Unless prohibited by law, the Receiving Party will promptly notify the Disclosing Party if the Receiving Party is compelled to disclose any of the Disclosing Party’s Confidential Information pursuant to applicable law, court order or governmental demand. Upon the Disclosing Party’s request and at its expense, the Receiving Party will cooperate with the Disclosing Party in seeking a protective order or other arrangement to preserve the confidentiality of the Disclosing Party’s Confidential Information. If the Receiving Party is ultimately compelled to make the disclosure, it shall disclose only that portion of the Confidential Information as is required to satisfy the applicable requirement.

e. Upon the Disclosing Party’s written request, the Receiving Party will return, or certify the destruction of, all Confidential Information in the Receiving Party’s possession or under its control, provided that the Receiving Party may retain an archive copy of any Confidential Information, subject to its continuing confidentiality obligations hereunder.

## **10. Other Provisions**

a. Entire Agreement. These Terms and Conditions, including all documents referenced herein, constitute the entire agreement and understanding between the parties relating to its subject matter, and

supersedes all prior or contemporaneous negotiations or agreements, whether written or oral, relating to its subject matter. THESE TERMS AND CONDITIONS MAY NOT BE MODIFIED, CHANGED, AMENDED OR SUPPLEMENTED EXCEPT BY A WRITTEN AGREEMENT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF EACH PARTY.

b. No Waiver. No action taken by either party shall be deemed to constitute a waiver of compliance with any term or condition contained herein unless such waiver is in writing and signed by a senior executive of the waiving party. The waiver by a party of a breach of any provision hereof will not operate or be construed as a waiver of any subsequent breach.

c. No Assignment. Customer may not assign any rights or obligations hereunder without the prior written consent of Sidepath.

d. Notices. Notices required under these Terms and Conditions shall be sufficient if contained in writing and delivered by hand or sent by facsimile, express or overnight mail, or by registered or certified mail, postage prepaid, return receipt requested, addressed to the parties as specified below or at such other address as a party may subsequently direct in writing. All notices shall be deemed given when received by the intended recipient.

To Sidepath:

Sidepath, Inc.  
22892 Mill Creek Drive  
Laguna Hills, CA 92653  
Attn: President

To the Customer:

to the address specified by Customer in writing  
(or if none, to such address(es) Sidepath may  
have on file)

e. Severability. If any provision of these Terms and Conditions is for any reason held to be unenforceable, all other provisions hereof will remain in full force and effect and the unenforceable provision shall be replaced by a mutually acceptable enforceable provision consistent with the parties' original intent.

f. Governing Law. THESE TERMS AND CONDITIONS IS MADE, EXECUTED AND DELIVERED IN THE STATE OF CALIFORNIA AND WILL BE GOVERNED AND CONSTRUED FOR ALL PURPOSES IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO ITS CONFLICT OF LAWS PROVISIONS.

g. Arbitration. Should any dispute arise between the parties relating to these Terms and Conditions or any Order or SOW (including the scope and validity of this arbitration provision), the parties will first negotiate in good faith, for a period of at least fifteen (15) days, and attempt to resolve the dispute. In the event the dispute is not so resolved, the parties agree that such dispute shall be resolved exclusively by binding arbitration before a single arbitrator conducted through Judicial Arbitration & Mediation Services (JAMS) in Orange County, California. Each party will be responsible for its own legal and expert fees and expenses, and will share equally the expenses of the arbitrator and the other related costs of arbitration. However, nothing herein shall prohibit either party from seeking a temporary restraining order, preliminary injunction or other equitable relief (particularly in the event of a default arising out of the confidentiality provisions) from a court of competent jurisdiction if, in such party's judgment, such action is necessary to avoid irreparable damage or to preserve the status quo.

h. Relationship of Parties. The relationship of the parties is that of independent contractors. Nothing contained herein or done pursuant to these Terms and Conditions shall create any other type of relationship between the parties, including without limitation that of employer/employee, partners, joint venturers or affiliates of any kind.

- i. Unforeseen Circumstances. Sidepath shall not be responsible for any failure to perform or delay in performing any of its obligations hereunder where and to the extent that such failure or delay results from causes outside the reasonable control of Sidepath.

**PLACEMENT OF ANY ORDER FOR PRODUCTS OR SERVICES FROM SIDEPATH CONSTITUTES CUSTOMER'S ACKNOWLEDGMENT THAT IT HAS READ, UNDERSTANDS AND AGREES TO BE BOUND BY THESE TERMS AND CONDITIONS (EXCEPT TO THE EXTENT ANY ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS HAVE BEEN EXPRESSLY AGREED TO IN WRITING BY SIDEPATH AND CUSTOMER).**