

Version 1.4

Pg. 1 of 3

This Product & Service Purchase Agreement ("Agreement") is by and between the legal entities that have executed this Agreement ("DYOPATH" and "Client"). This Agreement covers Products and Services for use only in the United States in the ordinary course of Client's business, and not for the purpose of resale by Client.

The parties agree that the terms and conditions of this Agreement will govern the Client's purchase and/or license of equipment, software, and associated wire and cable, ("Products") and installation, maintenance and other related services ("Services") described in this Agreement ("Order"). No other terms and conditions will apply to Client's Order, nor control over this Agreement. If Client submits its Order on Client's own Purchase Order form ("PO"), then the terms and conditions on Client's PO are expressly excluded. If applicable, this Agreement also consists of one or more of the following documents that are provided under cover.

- **Schedule A** - Order Summary Form
- **Schedule C** - Scope of Work

1. CONTRACT PERIOD This Agreement shall be effective from the date of execution by authorized representatives of both parties and shall remain in effect until terminated as set forth in this Agreement.

2. ORDERS A. DYOPATH's acceptance of Client's Order is subject to credit approval and to Client's remittance of the initial payment as set forth on the Order Summary Form (Schedule A) and/or the Scope of Work (Schedule C).

B. Subsequent Orders, excluding Change Orders, with a purchase price or license fee of less than \$10,000 for additions or modifications to the Products and Services acquired hereunder ("Add Ons") may be purchased by Client via telephone, fax, U.S. mail, or email under this Agreement. The price of Add Ons will be DYOPATH's then current price.

C. When applicable, the parties will mutually agree upon a Scope of Work (Schedule C) that describes the responsibilities of each party with respect to installation or other Services to be provided. The Scope of Work shall be made part of the applicable Order when signed by both parties. Client's failure to perform its responsibilities on the dates specified in the Scope of Work may result in a delay of the Order, or may result in an increase in the prices stated on the applicable Order Summary Form or Scope of Work.

3. IMPLEMENTATION A. The "Delivery Date" is the date DYOPATH delivers the Products to the Client's location. The "In-Service Date" is the date that Products are substantially in operation in accordance with the manufacturer's standard specifications and any additional documentation accompanying the Product (collectively referred to as "Specifications") and are available for use by the Client.

B. Any mutually agreed upon changes made to the Order before the Delivery or In-Service Date shall be documented on a Change Order form ("Change Order"). The Change Order form shall state the applicable adjustments to the cost of the Order, including any applicable shipping charges or cancellation charges.

C. If Client requests a delay in the Delivery Date or In-Service Date, DYOPATH at its option may (1) delay the Delivery Date or In-Service Date subject to any increase in the prices and charges on the Order; (2) deliver the Products and invoice Client for the purchase price or license fee plus any applicable charges for Services performed, in which case installation will be rescheduled at a mutually agreeable time; or (3) cancel the Order and bill Client for cancellation charges as set forth in Section 11.

D. DYOPATH may, at its option, perform a site survey to identify Client's specific installation requirements. If the site survey cannot be performed before DYOPATH's acceptance of the Order, it will be scheduled by mutual agreement of the parties. Upon completion of the site survey, DYOPATH will identify and communicate to Client any additional charges that may apply as a result of the site survey on a Change Order. If Client does not agree to such additional charges, client may cancel the Order without liability for cancellation charges.

4. WARRANTIES AND EXCLUSIONS A. Third party Products purchased from DYOPATH will be subject to the third party manufacturer's warranty terms and conditions. If a Product does not operate in accordance with the Specifications during the manufacturer's warranty period, Client will promptly notify the manufacturer for repair or replacement services.

B. If Client has ordered post-warranty service, during manufacturer's warranty and post-warranty service periods, manufacturer is responsible for damage (excluding loss or corruption of data records) to Client's voice Products from power surges as long as Client has installed to the Products' electrical protection which complies with the National Electrical Code, any applicable local standards, and any DYOPATH-specified site requirements.

A pending or active post-warranty service agreement is a prerequisite for this power surge coverage.

C. Except as warranted in 4.A above, DYOPATH warrants that Services will be performed in a workmanlike manner in accordance with the

provisions of this Agreement and any applicable industry standards and government regulations. If DYOPATH fails to perform the Services as warranted, and Client reports such failure within 30 days of the performance of the Service, DYOPATH will re-perform such Services. D. For Products receiving warranty and post warranty service directly from the manufacturer, DYOPATH will supply Client with the contact information for registration and service requests during the warranty period. If a Product does not operate in accordance with the Specifications during the manufacturer's warranty period, Client will call the manufacturers' Technical Assistance Center ("TAC") and the manufacturer will perform all required warranty work in accordance with the terms of its warranty.

EXCEPT AS STATED IN SUBSECTIONS 4A AND 4B ABOVE, DYOPATH, RELATED COMPANIES, SUBSIDIARIES AND THEIR AFFILIATES, SUBCONTRACTORS AND SUPPLIERS, MAKE NO WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

E. The warranties provided in this Section 4 are limited to the normal and usual use and operation of the Products by Client in accordance with the manufacturer's standard operating instructions. Warranties do not cover and specifically exclude all claims resulting from the following: (1) abuse or misuse of Products; (2) Client's failure to follow the manufacturer's installation, operation or maintenance instructions; (3) environmental and force majeure conditions listed in Section 13; (4) failure of network carriers or transmission errors experienced over Internet or other facilities; (5) attachment of equipment to Products except through standard interfaces; or (6) actions of non-DYOPATH personnel including loading of software onto Products or any other modification to Products except as approved in writing by DYOPATH.

F. DYOPATH does not warrant uninterrupted or error free operation of the Products. In addition, although Products are designed to be reasonably secure, DYOPATH makes no express or implied warranty that Products are immune from or prevent fraudulent intrusion, unauthorized use or disclosure or loss of proprietary information. Certain features if purchased, such as Password Reset, Conference Mailbox, Skip Password and Monitor Mailbox, when enabled, could be improperly used in violation of privacy laws. By ordering Products with these features or separately ordering such features, Client assumes all responsibility for assuring their proper and lawful use.

G. DYOPATH shall have no liability for the delay in or failure to perform any Services to the extent that such failure or delay results from the following: (1) delay by Client, any agent or representative of Client; (2) Client's failure to provide environmental conditions, access to the location where the work is to be performed, including without limitation remote access to Products, entrance to buildings, rooms, or sites; network facilities, or any information or other resources which may be set forth in a Scope of Work for installation Services; (3) Client's failure to make payments when they are due; (4) Force majeure conditions as set forth in Section 13.

H. The decision to acquire or use hardware, software (in any form), networks, supplies, facilities or services from parties other than DYOPATH ("Third Party Products") is Client's, even if DYOPATH helps Client identify, evaluate or select them. EXCEPT AS SPECIFICALLY AGREED TO IN WRITING, DYOPATH IS NOT RESPONSIBLE FOR, AND EXPRESSLY DISCLAIMS LIABILITY FOR, PERFORMANCE OR QUALITY OF THIRD PARTY PRODUCTS OR THEIR SUPPLIERS, AND THEIR FAILURE TO MEET CLIENT'S EXPECTATIONS WILL NOT AFFECT CLIENT'S OBLIGATIONS TO DYOPATH.

5. CLIENT'S RESPONSIBILITIES A. In addition to Client's responsibilities set forth elsewhere in this Agreement, Client is responsible for notifying DYOPATH of the presence of any hazardous material (e.g., asbestos) on Client's premises prior to the commencement of any Services. Client is also responsible for removal of any such hazardous material or correction of any other hazardous condition that affects DYOPATH's performance of Services. Services will be delayed without any penalty to DYOPATH until Client removes or corrects any hazardous condition. Client also agrees to notify DYOPATH prior to moving a Product under warranty.

B. If the Product supports Telephony over Transmission Control Protocol/Internet Protocol (TCP/IP) facilities; Client may experience certain compromises in performance, reliability and security, even when the Product performs as warranted. These compromises may become more acute if Purchaser fails to follow DYOPATH's recommendations for configuration, operation and use of the Product. CLIENT ACKNOWLEDGES THAT IT IS AWARE OF THESE RISKS AND THAT IT HAS DETERMINED THEY ARE ACCEPTABLE FOR ITS APPLICATION OF THE PRODUCT. CLIENT ALSO ACKNOWLEDGES THAT, UNLESS EXPRESSLY PROVIDED IN ANOTHER AGREEMENT, CLIENT IS SOLELY RESPONSIBLE FOR (1) ENSURING THAT ITS NETWORKS AND



1.866.609.PATH



solutions@dyopath.com



13430 Northwest FWY
Suite 1000
Houston, TX 77040

Product & Service Purchase Agreement Terms & Conditions

Version 1.4

Pg. 2 of 3

SYSTEMS ARE ADEQUATELY SECURED AGAINST UNAUTHORIZED INTRUSION, AND (2) BACKING UP ITS DATA AND FILES.

6. PRICE AND PAYMENT A. Client agrees to make the initial payment for Products and Services indicated on the Order Summary Form.

B. Client agrees to reimburse DYOPATH's attorneys' fees and related costs associated with collecting delinquent payments. Late fees or attorneys fees shall not apply to balances in dispute resolved in the Client's favor.

C. Unless Client provides DYOPATH with a tax exemption certificate, Client is solely responsible for paying all legally required taxes, including without limitation any sales, excise or other taxes and fees which may be levied upon the sale, transfer of ownership, license, installation or use of the Products, except for any income tax assessed upon DYOPATH. Client will pay all shipping, handling, rigging and other destination charges relating to the shipment and delivery of the Products to the location specified on the applicable Order.

D. If Client is delinquent with payments for more than sixty (60) days, Client shall allow DYOPATH to enter upon the premises peaceably with or without legal process where the System is located and repossess the System; and/or cause any Software, Hardware, or Support to terminate by disconnecting service.

7. TITLE/RISK OF LOSS Risk of loss for Products shall pass to Client on the Delivery Date. Client will acquire good and free title to Products purchased upon full payment of charges invoiced, except that title to software will remain with the manufacturer of the software.

8. SECURITY INTEREST In the event that title shall be deemed to have passed, DYOPATH reserves the right to file a security interest in the Products until the purchase price and any installation charges are paid in full. You agree to execute and deliver all documents reasonably requested by DYOPATH to protect and maintain DYOPATH's security interests. You appoint DYOPATH as your agent to sign and file a financing statement to perfect DYOPATH's security interest.

9. SOFTWARE LICENSE Client shall receive the right to use software provided under this Agreement pursuant to the Manufacturer's Software License Agreement or to any shrink-wrapped licenses.

10. EXCLUSIVE REMEDIES AND LIMITATIONS OF LIABILITY A. THE ENTIRE LIABILITY OF DYOPATH, RELATED COMPANIES, SUBSIDIARIES, AFFILIATES AND SUBCONTRACTORS, (AND THE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUBCONTRACTORS AND SUPPLIERS OF ALL OF THEM) AND CLIENT'S EXCLUSIVE REMEDIES FOR ANY DAMAGES CAUSED BY ANY PRODUCT DEFECT OR FAILURE, OR ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE OF ANY SERVICE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, SHALL BE: (1) FOR FAILURE OF PRODUCTS DURING THE WARRANTY PERIOD, THE REMEDIES STATED IN SECTION 4; (2) FOR DAMAGES TO REAL OR TANGIBLE PERSONAL PROPERTY OR FOR BODILY INJURY OR DEATH TO ANY PERSON FOR WHICH DYOPATH'S SOLE NEGLIGENCE WAS THE PROXIMATE CAUSE, CLIENT SHALL HAVE THE RIGHT TO PROVEN DAMAGES TO PROPERTY OR PERSON; (3) FOR DYOPATH'S FAILURE TO PERFORM ANY OTHER MATERIAL TERM OR CONDITION OF THIS AGREEMENT AND SUCH FAILURE CONTINUES FOR THIRTY (30) DAYS AFTER DYOPATH'S RECEIPT OF WRITTEN NOTICE FROM CLIENT, CLIENT'S SOLE REMEDY SHALL BE TO CANCEL THIS AGREEMENT WITHOUT INCURRING CANCELLATION CHARGES OR CHARGES FOR PRODUCTS AND SERVICES NOT YET PROVIDED; (4) FOR CLAIMS OTHER THAN SET FORTH ABOVE, DYOPATH'S LIABILITY SHALL BE LIMITED TO PROVEN DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED THE PURCHASE PRICE/LICENSE FEE OF THE PRODUCT OR SERVICE GIVING RISE TO THE CLAIM.

B. EXCEPT TO THE EXTENT PROVIDED IN 10.A. (2) ABOVE, DYOPATH SHALL NOT BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO: LOST PROFITS, SAVINGS OR REVENUES OF ANY KIND, LOST, CORRUPTED, MISDIRECTED OR MISAPPROPRIATED DATA OR MESSAGES; AND CHARGES FOR COMMON CARRIER TELECOMMUNICATION SERVICES OR FACILITIES ACCESSED THROUGH OR CONNECTED TO PRODUCTS ("TOLL FRAUD"). DYOPATH SHALL NOT BE LIABLE FOR THE TYPES OF DAMAGES STATED ABOVE WHETHER OR NOT DYOPATH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS PARAGRAPH SHALL SURVIVE THE FAILURE OF ANY EXCLUSIVE REMEDY.

11. CANCELLATION/TERMINATION A. (i) If Client cancels all or any portion of an Order for Products prior to the Delivery Date, Client shall pay DYOPATH a cancellation fee of twenty-five percent (25%) of the purchase price/license fee for the canceled Products. (ii) If Client cancels all or any portion of an Order for Products that are unopened and still in their original package after the Delivery Date but prior to the In-service Date, Client shall return the canceled Products and pay a restocking fee of, the greater of, twenty five percent (25%) of the purchase price for such Products or twenty five dollars (\$25), plus all incurred shipping charges. (iii) If Client cancels all or any portion of an Order for Products after the Product container is opened or installation has begun, Client shall pay DYOPATH a cancellation fee equal to one hundred percent (100%) of the purchase price/license fee for the cancelled Products plus the cost of any service performed up to the date of cancellation, and all incurred shipping charges (however, upon making this payment, DYOPATH shall remove its Security Interest, Client shall have title free and clear, and the return of the Product is not required).

B. If either party fails to perform any material term or condition of this Agreement and such failure continues for thirty (30) days after receipt of written notice, such failure shall constitute a breach of this Agreement and the non-breaching party may terminate this Agreement and exercise any available rights subject to the provisions and limitations set forth in Section 10 or elsewhere in this Agreement.

12. SETTLEMENT OF DISPUTES Any controversy or claim whether based on contract, tort, strict liability, fraud, misrepresentation, or any other legal theory, related directly or indirectly to this Agreement ("Dispute") shall be resolved solely in accordance with the terms of this Section 12. If a Dispute arises, the parties will attempt to resolve the Dispute through good faith negotiation within forty-five (45) days of notification of the Dispute. If the Dispute cannot be settled through good faith negotiation, parties will submit the Dispute to non-binding mediation conducted by the American Arbitration Association ("AAA") or any other mutually acceptable alternate Dispute resolution organization. Each party shall bear its own expenses but those related to the compensation of the mediator shall be borne equally. The parties, their representatives, other participants and the mediator (and arbitrator, if any) shall hold the existence, content and result of mediation in confidence. If the Dispute is not resolved through mediation, claims may be brought in a state or federal court of competent jurisdiction. Any Dispute Client has against DYOPATH with respect to this Agreement must be brought within one (1) year after the discovery of damage or injury. To the extent not prohibited by law, the parties hereby knowingly, voluntarily and intentionally waive any right to trial by jury that either party may have in any action or proceeding, in law or in equity, in connection with this Agreement.

13. FORCE MAJEURE DYOPATH shall have no liability for delays, failure in performance, or damages due to: fire, explosion, power failures, pest damage, lightning or power surges (except as provided in 4.B), strikes, or labor disputes, water, acts of God, the elements, war, civil disturbances, acts of civil or military authorities or the public enemy, manufacturer caused equipment or part shortages, transportation facilities, fuel or energy shortages, performance or availability of communications services or network facilities, unauthorized use of the Products, or other causes beyond DYOPATH's control whether or not similar to the foregoing.

14. ASSIGNMENT Neither Client nor DYOPATH may assign all or part of this Agreement without the express written consent of the other at least thirty (30) days prior to the assignment. This consent may not be unreasonably withheld. DYOPATH may also assign DYOPATH's right to receive payment under this Agreement. Client acknowledges that DYOPATH's consent to any assignment by Client does not waive assignee's obligation to pay any applicable license fees to the manufacturer for associated software.

15. SUBCONTRACTING DYOPATH may subcontract all or part of the Services to be performed under this Agreement, but will retain responsibility for the work to the extent of the warranties provided in Section 4.

16. NON-SOLICITATION - Neither party shall solicit for employment any personnel of the other party who has performed work for or received Services from the other party under this Agreement during or within twelve (12) months of the performance of such Services.

17. GENERAL A. Any supplement, modification or waiver of this Agreement must be in writing and signed by an authorized representative of both Client and DYOPATH.

**Product & Service Purchase Agreement
Terms & Conditions**

Version 1.4

Pg. 3 of 3

B. If either Client or DYOPATH fails to enforce any particular right or remedy available under this Agreement, that failure will not be considered to be a waiver of any other right or remedy available under this Agreement.

C. This Agreement is for the sole benefit of the parties and there are no intended third party beneficiaries of this Agreement.

D. If any provision of this Agreement is found to be illegal or unenforceable, that finding will not affect the validity of the remaining provisions of this Agreement, and a valid provision that most closely approximates the economic effect and intent of the illegal or unenforceable provision will be substituted for it.

E. All notices and other communications pertaining to this Agreement must be in writing, and will be considered to have been given on the date of receipt if personally delivered, or

on the fifth business day after mailing if sent by certified mail, return receipt requested, postage prepaid at the addresses identified on the Schedule A.

F. The substantive and procedural laws of the State of Illinois, without regard to any otherwise applicable choice or conflict of laws provisions, will govern this Agreement.

G. THIS AGREEMENT, INCLUDING ALL SUPPLEMENTS EXECUTED BY THE PARTIES AND ATTACHED HERETO OR REFERENCING THIS AGREEMENT, IS THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE PRODUCTS AND SERVICES PROVIDED HEREUNDER AND SUPERSEDES ALL PRIOR AGREEMENTS, PROPOSALS, COMMUNICATIONS BETWEEN THE PARTIES AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL.