

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (PSA) is made and between DYOPATH, LLC ("DYOPATH"), a Delaware limited liability company, having a place of business at 13430 Northwest Freeway, Suite 1000, Houston, TX 77040 and the Client. This Professional Services Agreement and the relevant Statement of Work(s) make up the Professional Services agreement between DYOPATH and Client and are referred to collectively as the "Agreement". This Professional Services Agreement shall apply to additional Statements of Work that may be entered into in writing by and between DYOPATH and Client from time to time. DYOPATH and Client may be referred to individually as the Party or collectively as the Parties.

In consideration of the rights granted herein and for other good and valuable consideration, the parties hereto agree as follows:

### 1 DEFINITIONS AND TERMS

1.1 "**Confidential Information**" shall mean any written, electronic, or oral information furnished or disclosed by Disclosing Party to Receiving Party during the term of this Agreement. Confidential Information shall include, but is not limited to: financial information, business strategies; proprietary methods and data; trade secrets; client and supplier lists and information; pricing and business data; technical information; inventions (whether patentable or not); data tables; computer program narratives; flow charts; source and object codes; computer software; computer documentation; software listings; copyrights; patents and patentable developments; operating procedures; business plans and models; prospects; employee information; pricing and other confidential and/or proprietary matters of any nature and regardless of the format in which it is presented, maintained, or transmitted. If Confidential Information is disclosed in writing, it must be clearly labeled with appropriate legend. Orally or visually disclosed information shall be considered proprietary information only if it is identified as proprietary at the time of disclosure and, within fifteen (15) business days of the disclosure, the Disclosing Party confirms in writing, delivered to the Receiving Party, the proprietary nature of such information. The writing shall be sufficiently specific to enable the Receiving Party to identify the information considered to be proprietary by the Disclosing Party. Notwithstanding the foregoing, Confidential Information shall not include information that: (i) becomes available to the public after disclosure by the Disclosing Party, other than by a breach of this Agreement by Receiving Party; (ii) was available to the public at the time the Disclosing Party discloses its Confidential Information to Receiving Party; (iii) was already known to the Receiving Party, as evidenced by sufficient written documentation, prior to the time the Disclosing Party discloses the Confidential Information to Receiving Party; (iv) is or has become available to Receiving Party without restriction from another source that does not violate any obligation to Disclosing Party; (v) is independently developed by Receiving Party by persons having no access to Disclosing Party's Confidential Information, as evidenced by written documentation; (vi) is disclosed two (2) years after

termination of this Agreement; or (vii) is disclosed pursuant to the provisions of a court order.

**"Intellectual Property Rights"**: neither party shall acquire, directly or by implication, any rights in any Intellectual Property of the other party owned, controlled, acquired, developed, authored, conceived, or reduced to practice prior to the Effective Date of this PSA, including but not limited to, inventions described and claimed in applications for U.S. Letters Patent filed prior to the Effective Date of this PSA, except as expressly provided herein or in any resulting agreement between the parties. If the parties jointly make or conceive any invention or jointly create any mask work or copyrightable material (hereinafter singularly and collectively "Joint IP"), then such Joint IP shall be owned jointly by the parties unless one of the parties elects not to participate in such joint ownership; provided that any improvement or modification of any pre-existing Intellectual Property of a party shall not be considered jointly made or conceived and any such modification shall remain the property of the party owning the Intellectual Property. Except as may otherwise be expressly provided elsewhere herein or in any resulting agreement, each owning party shall be free to use, practice and license non-exclusively such Joint IP without in any way accounting to the other owning party, except that each owning party agrees to use reasonable efforts to maintain such Joint IP as confidential and proprietary in the same manner it treats its own Intellectual Property of similar character except to the extent that the parties otherwise mutually agree in connection with seeking to obtain statutory protection such as patent protection. Procedures for seeking and maintaining statutory protection such as patents, mask work registrations, or copyrights for Joint IP shall be mutually agreed in good faith by the owning parties; provided that neither party shall unreasonably withhold its agreement to seek such protection. Any party which does not bear its proportionate share of expenses in securing and maintaining statutory protection for Joint IP in any particular country or countries shall surrender its joint ownership under any resulting patents, mask work registrations and copyright registrations in such country or countries.

1.2 **"Intellectual Capital"**: The parties acknowledge that both parties may have pre-existing professional knowledge,



know how, materials, methods, and/or techniques, developed by, and/or in its possession, including those which may have been copyrighted and/or patented by such party or constitute a trade secret, prior to the Effective Date of this PSA (such party's "Intellectual Capital") which may be accessed, modified, or enhanced in the provision of Services hereunder.

The parties agree that, except as specifically provided in this PSA or any agreement, the other party will not acquire title or interest to any of the other party's Intellectual Capital. Nothing in this clause shall be construed or interpreted as imposing any restriction on DYOPATH's or Client's disclosure or use of any general learning, skills, or know-how, commonly referred to as "general expertise," acquired by such party and their personnel in connection with the Services provided under this PSA, if such disclosure or use would be regarded by a person of ordinary skill in the relevant technology as not constituting a disclosure or use of the other party's confidential information.

1.3 "Statement of Work (SOW)" means an Exhibit to this PSA (Exhibit A) agreed to between DYOPATH and a Client for the provision of Products and/or Services. The SOW will specify among other items: Name of Client, location of assignment, description of the Products or Services to be performed, the period of performance, and the applicable product price or hourly rates / fixed price.

1.4 "Deliverables" shall mean anything developed by DYOPATH and delivered to Client pursuant to a Statement of Work, including but not limited to Bill of Materials (BOM), specifications, designs, processes, techniques, concepts, improvements, discoveries, ideas, inventions, and related documentation.

## 2 SCOPE OF THE SERVICES

2.1 DYOPATH shall have no obligations towards Client with respect to any Products or Services unless parties have executed a valid Statement of Work. DYOPATH may provide the Product or Services under a Statement of Work on a fixed price or time and material basis.

## 3 FIXED PRICE SERVICES

3.1 This Section 3 shall apply solely to Services provided on a fixed price milestone payment basis, as set out in the relevant Statement of Work.

3.2 DYOPATH will invoice Client for Services in accordance with the payment schedule as set out in the project plan that is an integral part of the Statement of Work. A project plan shall be a document as agreed between and signed off by both parties which describe amongst others the content and details of the project, the milestones, and the relevant acceptance criteria, if applicable.

## 4 TIME AND MATERIAL SERVICES

4.1 This Section 4 shall apply solely to Services provided on a time and material basis as set out in the relevant Statement of Work.

4.2 DYOPATH will invoice Client for Services in accordance with the time and material rates as agreed by DYOPATH and Client.

## 5.0 TRAVEL

5.1 DYOPATH may be required to travel to Client locations to render support. Client will reimburse DYOPATH for all reasonable, allocable, and pre-approved travel expenses and transportation allowances for any DYOPATH personnel or subcontractors traveling in connection with the performance of the SOW in accordance with Internal Revenue Regulations or Federal Travel Regulations, if applicable. Allowable expenses will include: hotel (based on per diem), transportation (economy airfare, taxi, shuttle to and from airports, bus, POV, etc.), M&IE (meals and incidentals based on per diem), and miscellaneous expenses as appropriate (taxes, gratuities as appropriate and business expenses of the SOW). For current Per Diem rates: <http://www.gsa.gov/portal/category/100120>

## 6.0 PROVISION OF THE SERVICES

6.1 DYOPATH shall perform the Services in a professional manner, consistent with generally accepted industry standards. No other warranty is given or implied.

6.2 Each party understands and agrees that it is at all times and shall remain an independent contractor in the performance of its duties under this Agreement and neither party shall be considered an agent, employee, partner, or legal representative of the other party for any purpose whatsoever.

6.3 Services will be performed at the premises of Client during normal business hours. Normal business hours are 8AM to 5PM CST. Client is allowed to change the location where DYOPATH performs Services. DYOPATH will, when performing Services at Client's premises, respect all internal rules and regulations in force at Client from time to time.

6.4 Client may request changes to the specifications of Services in a Statement of Work; provided, however, that any changes shall be documented in a change order request (Exhibit B) and are subject to the prior written approval of DYOPATH and may result in an increase in fees due and payable under the applicable Statement of Work.

6.5 If a representative of DYOPATH assigned to provide the Services is not acceptable in the reasonable opinion of the Client, DYOPATH shall use commercially reasonable efforts to replace said representative with a representative of same qualifications. DYOPATH may, at its sole discretion, replace one or more representatives assigned to perform the Services with other representatives having similar qualifications.



## **7.0 PROPRIETARY RIGHTS; LICENSE GRANT**

- 7.1 Upon payment for the Products or Services in accordance with the applicable Statement of Work, DYOPATH shall grant Client a perpetual, non-exclusive, non-assignable, royalty free license to use the Deliverables for Client's internal business operations. Client shall not sell, disclose, or otherwise make the Deliverables available to any third party or otherwise exploit same without the prior written consent of DYOPATH.

Except for the limited rights and licenses expressly granted hereunder, no other license is granted in nor is any other use permitted of the Deliverables.

## **8.0 PRICING**

- 8.1 All amounts as set out in a Statement of Work are exclusive of any sales, use, other taxes, or regulatory fees imposed by applicable law that DYOPATH must pay based on the Services ordered by Client, except for taxes based on DYOPATH's income. Client agrees to pay or reimburse DYOPATH for all such relevant taxes or fees promptly upon receipt of an invoice therefore.
- 8.2 If the Client reasonably disputes any portion of a DYOPATH invoice, the Client must pay the undisputed portion of the invoice in accordance with the terms and conditions of this PSA and SOW and submit a written claim to the DYOPATH Program Manager, with a copy to [ar@DYOPATH.com](mailto:ar@DYOPATH.com), for the disputed amount. All claims must be submitted to DYONYX within twenty (20) business days from the receipt of the invoice. The Client waives the right to dispute any charges not disputed within the time frame set forth above. In the event that the dispute is resolved against the Client in accordance with the procedures hereunder, Client shall pay such amounts plus interest at the rate referenced below.
- 8.3 All invoices are due upon receipt and become past due thirty (30) days from the receipt of Invoice. Past due amounts bear interest at a rate of 18% per annum simple interest (prorated on a daily basis) or the highest rate allowed by law, whichever is less. In the event of a late payment, DYOPATH may suspend Services hereunder. In the event DYOPATH is unable to deliver Service as a result of Force Majeure, the Client shall not be obligated to pay DYOPATH for the affected Service for so long as DYOPATH is unable to deliver such Service when using its reasonable commercial efforts.

## **9.0 CLIENT OBLIGATIONS AND PROJECT ASSUMPTIONS**

- 9.1 Client acknowledges that the timely provision of, and access to, certain data, equipment, and other information as set out in this Section 9 is essential to the performance of the Services as set forth in a Statement of Work. DYOPATH will not be responsible for any deficiency in performing Services, if such a deficiency results from Client's failure to provide such cooperation. DYOPATH's

ability to perform the Services and to meet any estimate / milestone related to the Services depends upon Client's fulfillment of the following obligations and on any project assumption as may be detailed in the Statement of Work:

9.1.1 Client shall provide, in a timely manner and at no charge to DYOPATH, technical data, documentation, and other relevant complete and accurate information and data, resources, assistance, and cooperation reasonably required by DYOPATH for the performance of the Services. Client will be responsible for the content, accuracy, completeness, and consistency of all such data, materials, and information supplied by it.

9.1.2 Client shall provide, in a timely manner and at no charge to DYOPATH, office accommodation, facilities, and equipment (such as copiers, fax machines and modems) and suitably configured computer products as DYOPATH may reasonably require for the performance of the Services, if required. Client agrees that certain Services may be provided via remote access, requiring the establishment of a secure link via the Internet, and Client agrees that it will assist DYOPATH in establishing such a remote connection, if required. In the event that it is not possible to establish a remote connection, parties will work together to find a workable solution taking into account all relevant circumstances. DYOPATH will in no event be responsible for the inability to establish a remote connection or for any replacement solution therefore.

## **10 CONFIDENTIALITY**

- 10.1 Each Party (the "Receiving Party") acknowledges that, in the course of this Agreement, it may obtain Confidential Information of the other Party (the "Disclosing Party"). The Receiving Party shall keep in confidence all Confidential Information and shall not use Confidential Information except in furtherance of this Agreement.

## **11 WARRANTY**

- 11.1 DYOPATH warrants to Client that all Deliverables provided under a Statement of Work will perform in substantial accordance with the specifications in the applicable Statement of Work for a period of one year from the date of delivery to Client. As Client's sole and exclusive remedy for breach of the foregoing warranty, DYOPATH shall, as soon as commercially practicable, at its sole option, (i) replace the non-conforming Deliverable at its sole cost and expense, with a Deliverable conforming to the specifications in the applicable Statement of Work; (ii) repair or modify the Deliverable at its sole cost and expense so as to make it conforming to the specifications in the applicable Statement of Work; or (iii) if neither (i) nor (ii) are reasonably feasible, as determined by DYOPATH in its discretion, refund the fees paid by Client for the Deliverable and terminate the applicable Statement of Work and/or this Agreement.



11.2 EXCEPT AS SPECIFICALLY STATED IN THIS SECTION 11, THE SERVICES AND DELIVERABLES ARE PROVIDED "AS IS" AND WITHOUT WARRANTY BY DYOPATH AND/OR ANY OF ITS CONTRACTORS OF ANY KIND. DYOPATH MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, REGARDING OR RELATING TO ANY MATERIALS OR SERVICES FURNISHED OR PROVIDED TO CLIENT UNDER THIS AGREEMENT. DYOPATH DOES NOT WARRANT THAT ANY SERVICE PROVIDED HEREUNDER WILL BE ERROR FREE, WILL PERFORM IN AN UNINTERRUPTED MANNER, IS FREE FROM MINOR DEFECTS OR ERRORS WHICH DO NOT MATERIALLY AFFECT PERFORMANCE OF THE SERVICE OR CONTAINS APPLICATIONS THAT ARE DESIGNED TO MEET CLIENT'S BUSINESS REQUIREMENTS. TO THE GREATEST EXTENT ALLOWED BY LAW, DYOPATH SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS, EXCEPT TO THE EXTENT THAT ANY WARRANTIES IMPLIED BY LAW CANNOT BE VALIDLY WAIVED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY ANY PERSON SHALL CREATE A WARRANTY IN ANY WAY WHATSOEVER RELATING TO DYOPATH AND/OR ANY OF ITS CONTRACTORS.

## 12 INDEMNIFICATION

12.1 Each party (as the "Indemnifying Party") shall to the extent not otherwise covered by a policy of insurance indemnify, defend, and hold harmless the other party (as the "Indemnified Party"), their affiliates, officers, directors, employees, agents, and other representatives from and against any and all claims, demands, losses, liabilities, damages, expenses (including reasonable attorney fees) and causes of action (hereinafter "Claims") for Claims caused by or resulting from the sole fault, negligent or reckless acts or omissions of the Indemnifying Party, its officers, employees, agents, contractors, licensees or invitees. Any Claims that are the result of negligence or willful misconduct of Parties, their officers, directors, employees, agents, contractors, licensees or invitees shall be apportioned on a comparative fault basis, and each Party shall indemnify the other Party for any liabilities and damages assessed against them in excess of their percentage of liability. This provision shall survive the termination of this Agreement.

## 13 INFRINGEMENT

13.1 If one party ("Indemnitee") promptly notifies the other party ("Indemnitor") in writing of a third party claim against Indemnitee that any material provided to Indemnitee by Indemnitor hereunder infringes a United States patent in existence as of the date of this Agreement, a copyright or a trade secret of any third party, Indemnitor will defend such claim and control the legal proceedings of such claim at its expense and will pay any costs or damages that may be finally awarded against Indemnitee provided that

Indemnitee promptly notifies Indemnitor in writing of the claim, cooperates with Indemnitor, and allows Indemnitor sole authority to control the defense and settlement of such claim. Indemnitor will not indemnify Indemnitee, however, if the claim of infringement is caused by (1) Indemnitee's misuse or modification of such material; (2) Indemnitee's failure to use corrections made available by Indemnitor; (3) Indemnitee's unauthorized distribution, marketing or use for the benefit of third parties of such material or (4) information, direction, specification or materials provided by Indemnitee or any third party. If any such material is, or in Indemnitor's opinion is likely to be, held to be infringing, Indemnitor shall at its expense and option either (a) procure the right for Indemnitee to continue using it, (b) replace it with a non-infringing equivalent, (c) modify it to make it non-infringing or (d) direct the return of the such material. The foregoing remedies constitute Indemnitee's sole and exclusive remedies and Indemnitor's entire liability with respect to infringement.

## 14 RECIPROCAL NON-SOLICITATION

14.1 During the term of this Agreement, neither Party nor any of its affiliates will, directly or indirectly, for their own account or for or on behalf of any other person or entity, whether as an officer, director, employee, partner, principal, joint venture, consultant, investor, shareholder, independent contractor or otherwise, hire or employ, or attempt to hire or employ, in any fashion (whether as an employee, independent contractor or otherwise), any employee or independent contractor of the other Party, or solicit or induce any of Party's employees, consultants, Clients, vendors, suppliers, or independent contractors to terminate their relationship with Party.

## 15 LIMITATION OF LIABILITY

15.1 NEITHER PARTY WILL BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, AND THE LIKE) ARISING OUT OF THIS AGREEMENT, EVEN IF PARTY AND/OR ITS AGENTS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT AS APPLIED IN A PARTICULAR CIRCUMSTANCE ANY DISCLAIMER OR LIMITATION ON DAMAGES OR LIABILITY SET FORTH HEREIN IS WHOLLY PROHIBITED BY APPLICABLE LAW, THEN PARTIES SHALL BE ENTITLED TO THE MAXIMUM DISCLAIMERS AND/OR LIMITATIONS ON DAMAGES AND LIABILITY AVAILABLE AT LAW OR IN EQUITY BY SUCH APPLICABLE LAW IN SUCH PARTICULAR CIRCUMSTANCE. IN NO EVENT SHALL DYOPATH'S LIABILITY TO CLIENT OR ANY PERSON EXCEED THE TOTAL FEES PAID BY CLIENT FOR THE SERVICE GIVING RISE TO THE CLAIM.





## **16 TERM AND TERMINATION**

- 16.1 This Professional Services Agreement will commence on the Effective Date thereof and will remain in force until one (1) year, unless earlier terminated in accordance with Section 16. Termination, without cause, of this Professional Services Agreement will not affect any Statements of Work that were already signed before such termination. These Statements of Work will be executed in accordance with and will remain subject to the terms of this Professional Services Agreement.
- 16.2 A Statement of Work will commence on the latest date of signing of such document and will remain in effect until all of the Services have been completed, unless earlier terminated in accordance with Section 16.3 or 16.4 hereunder.
- 16.3 Either Party may terminate a Statement of Work without cause upon thirty (30) days' prior written notice to other Party. In the event that Client terminates a Statement of Work pursuant to this subsection, Client shall be obligated to pay DYOPATH all amounts owed through the effective date of termination and reimbursement for all costs that DYOPATH is not able to otherwise mitigate.
- 16.4 Each party may terminate this Agreement, in whole or in part, without liability if: (i) the other party breaches a material term of this Agreement and fails to cure such breach within ten (10) business days after the party has been given written notice of such breach or (ii) if the other party terminates its business activities or becomes insolvent, is unable to pay its debts as they mature, makes an assignment for the benefit of creditors, or becomes subject to direct control of a trustee, receiver, or similar authority.
- 16.5 Termination will not affect either party's obligations regarding Confidential Information, payments, limitation of liability, non-solicitation, license rights and restrictions and/or applicable law, and other clauses that by their content or nature are intended to survive. These provisions will survive termination of this Agreement.

## **17 DISPUTES**

- 17.1 DYOPATH and Client agree to enter into Negotiation to resolve any dispute. Both parties agree to negotiate in good faith to reach a mutually agreeable settlement within thirty (30) business days.
- 17.2 Where negotiations are unresolved by management, all disputes, controversies or differences arising in connection with the validity, execution, performance, breach, non-renewal or termination of this Agreement, shall be finally settled in an arbitration proceeding in Houston, Texas under the Rules of the American Arbitration Association by three arbitrators in accordance with the Commercial Arbitration Rules then in effect of the American Arbitration Association. Selection of the arbitrators shall be as follows: each party shall appoint one arbitrator within twenty (20) days after the parties have agreed to go to arbitration, and those two arbitrators shall appoint a third arbitrator who

shall act as chairman, within a twenty (20) day period thereafter. If the parties fail to appoint the chairman within said period, the parties will apply to the American Arbitration Association for appointment of the third arbitrator. The parties agree to be bound by the findings of the arbitration. Notwithstanding the foregoing, the courts shall have jurisdiction over injunctive or provisional relief pending arbitration. The arbitrators shall not be empowered to award punitive damages to any party. Each party is responsible for expenses of the arbitration, including reasonable attorneys' fees and other costs and expenses incurred in connection with the prosecution or defense of such arbitration.

- 17.3 No claim, suit, or action, regardless of form, arising from or relating to either parties' acts or omissions in the performance of this Agreement may be brought or asserted more than one (1) year after the cause of action has accrued.

## **18 INSURANCE**

- 18.1 Client is responsible for the repair, maintenance, and all insurance against loss of Client's equipment. DYOPATH shall not be liable for any loss or impairment to the services provided hereunder or damages to any equipment due to a malfunction or defect in Client's equipment; save and except where any such damages result from the gross negligence or willful acts or omissions of DYOPATH.
- 18.2 DYOPATH shall at all times during the term of this Agreement carry and maintain at its sole cost and expense the following insurance coverage with not less than the amounts enumerated below:
- a) Commercial General Liability: combined single limit bodily injury, personal injury, and property damage with a limit of not less than \$2,000,000 each occurrence;
  - b) Workers' Compensation Insurance: (or maintenance of a legally permitted and governmentally approved program of self-insurance) covering DYOPATH's employees pursuant to applicable state workers' compensation laws for work related injuries suffered by employees of DYOPATH;
  - c) Automobile Liability Insurance: including all owned, leased, hired, and non-owned autos, combined single limit bodily injury and property damage, with limits of not less than \$1,000,000 each occurrence;
  - d) E & O Liability / Professional Liability: with limits of not less than \$5,000,000 each occurrence, General Aggregate \$5,000,000;
  - e) Excess/Umbrella Liability: with limits of not less than \$10,000,000 each occurrence, General Aggregate \$10,000,000.
- 18.3 Each policy of insurance referenced in Section 18.2 shall: (i) provide Client no less than thirty (30) days advance written notice of the expiration, termination, cancellation, or modification of such policy and (ii) name Client as an additional insured.



18.4 On or before the commencement of services or conveyance of Client Service(s) under this Agreement, DYOPATH shall provide Client a certificate of insurance evidencing the coverage is in full force and effect as required by Section 18.

## **19 GENERAL PROVISIONS**

19.1 In the event of any inconsistencies between the terms of the Professional Services Agreement and any terms set out in a Statement of Work, the terms of the Statement of Work shall prevail.

19.2 If any provision in this Agreement is found to be invalid, unlawful, or unenforceable to any extent, the parties will in good faith agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, the invalid provision will be severed from the remaining provisions, which will continue to be valid and enforceable to the fullest extent permitted by applicable law.

19.3 This Agreement shall be subject to and governed under the laws of the State of Texas. The parties agree that venue for purposes of any and all lawsuits, causes of action, arbitrations, or other disputes shall be in Harris County, Texas.

19.4 This Agreement supersedes all prior agreements, arrangements and understandings between the parties and constitutes the entire Agreement between the parties. No addition to or modification of any provision of this Agreement shall be binding unless made by a written instrument signed by a duly authorized representative of each party. The headings and clauses of this Agreement appear for ease of reference only and shall not affect the interpretation or effect of this Agreement. It is expressly agreed that the terms of this Agreement and any Statement of Work shall supersede the terms in any purchase order of Client and no terms in such purchase order shall apply to the Services and Deliverables, regardless of any failure of DYOPATH to object to such terms.

19.5 Nothing in this Agreement shall be deemed to create a partnership or the relationship of principal and agent or employer and employee between the parties.

19.6 This Agreement may not be assigned by either party without the written consent of the other party, except that either party may assign its rights and obligations under this Agreement to the successor in interest or title to all or substantially all of that part of the business to which this Agreement relates.

19.7 Neither party shall be liable under this Agreement if its performance is prevented or delayed for circumstances beyond its control, including but not limited to acts of God, global or natural disasters, flood or other catastrophe, lightning or fire, strikes or other labor disputes or industrial action, act or omission of government or other competent authority including any law, order, or regulations, terrorism, war, riot, or civil commotion, national emergency, unavailability of supply or power outage, acts or omissions of suppliers, or other events beyond the reasonable control of a Party.

19.8 All Notices, requests, demands, and other communications under this Agreement must be in writing and will be deemed duly given unless otherwise expressly indicated to the contrary in this Agreement: (1) when personally delivered; (2) upon receipt of a telephone facsimile transmission with a confirmed telephonic transmission answer back; (3) three (3) days after having been deposited in the United States mail, certified or registered, return receipt requested, postage prepaid; (4) when delivered via electronic commerce (FAR 4.5) (e.g. e-Mail), or (5) one (1) business day after having been dispatched by a nationally recognized overnight courier service, addressed to addresses provided in the Statement of Work or proposal.

## **EXHIBIT A-1**

### **STATEMENT OF WORK PROVIDED UNDER A SEPARATE COVER**



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