

**MANAGED SERVICE AGREEMENT**

This Managed Service Agreement (“Agreement”) is entered into as of the last date of signature to an Attachment A to this Agreement (the “Effective Date”) by and between DYOPATH, LLC (“DYOPATH”), a Delaware limited liability company with its principal place of business at 1801 S. Meyers Rd, Suite 10, Oakbrook Terrace, IL 60181, and the party which has executed an Attachment A subject to the terms and conditions of this Agreement (“Client”). DYOPATH and Client may be collectively referred to herein as the “Parties” and each may be referred to individually as a “Party.”

**SECTION 1 DEFINITIONS**

- 1.1 **Affiliates:** With respect to any Party, any other Person that directly or indirectly through one or more intermediary’s controls, is controlled by, or is under common control with such Party.
- 1.2 **Agreement:** This Agreement and the Attachments hereto, that are hereafter executed and delivered by Client and accepted by DYOPATH and all schedules, supplements, amendments, agenda, proposals or exhibits expressly incorporated therein, in each case as amended or modified from time to time in accordance with the terms hereof.
- 1.3 **Attachments:**  
Attachment A: A statement of work which shall set forth the Services, applicable fees, Service Term, and any other information as may be required by DYOPATH.  
Attachment B: A service level agreement, which identifies the service performance levels that will be provided, and the metrics or performance indicators by which such service performance levels are measured. DYOPATH’s service level agreement may be found at <https://dyopath.com/resources/legal/SLA> or upon request attached hereto.
- 1.4 **Client Equipment:** Any equipment owned or leased by Client (other than equipment, if any, leased by Client from DYOPATH), to which Client provides access to DYOPATH for the provision of the Services.
- 1.5 **Client Data:** All data and other information contained on Client Equipment and all data and other information delivered by Client to DYOPATH for storage and/or processing at or on the Facilities.
- 1.6 **Client Premises:** The location or locations occupied by Client or its end users to which a Service is delivered or for which a Service is provided.
- 1.7 **Confidential Information:** any written, electronic, or oral information furnished or disclosed by a Party (the “Disclosing Party”) to the other Party (the “Receiving Party”) during the term of this Agreement that is identified as or would be understood by a reasonable person to be, confidential or proprietary. Confidential Information shall include, but is not limited to: financial information; employee information; business strategies; proprietary methods and data; trade secrets; client 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; and other confidential and/or proprietary matters of any nature and regardless of the format in which it is presented, maintained or transmitted. 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 after two (2) years from expiration of the Agreement (unless such information is required to be kept confidential by law); or (vii) is disclosed pursuant to the provisions of a court order.

- 1.8 Deliverable: Any new materials and any modifications or enhancements to such materials directly prepared specifically for Client and specifically identified by the Parties as intended to constitute a Deliverable on the applicable Attachment A.
- 1.9 Destructive Elements. Any materials, equipment or data (a) intentionally designed to disrupt, disable, harm or otherwise impede in any manner the operation of any materials, equipment or Client Data (e.g., "viruses" or "worms"), (b) that would disable any materials, equipment or Client Data, or impair in any way their operation (e.g., "time bombs", "time locks" or "drop dead" devices) or (c) which contains any other harmful, malicious or hidden procedures, routines or mechanisms which would cause any materials, equipment or Client Data, to cease functioning or to damage or corrupt storage media, communications, or otherwise interfere with Client's operations.
- 1.10 Facilities: Property and other personal property, owned, leased, or operated by DYOPATH, including buildings and other real property used by DYOPATH to deliver Service.
- 1.11 Intellectual Property: Any and all completed or in-progress patentable or non-patentable inventions, original works of authorship, discoveries, ideas, technology, computer programs, application programming interfaces, formulas, algorithms, systems (and all source code and object code related to any of the foregoing), techniques, know-how, data, writings, compositions, content, literary properties, documents, designs, illustrations, processes, procedures, protocols, service marks, trade secrets, copyrights, patents, and all other items, materials or works (and all improvements, modifications, enhancements, derivatives and intellectual property rights related to any of the foregoing) of each Party. For the avoidance of doubt, Deliverables shall be the Intellectual Property of DYOPATH.
- 1.12 Person: Any natural person, sole proprietorship, partnership, joint venture, corporation, trust, limited liability company, or other entity.
- 1.13 Personal Information: Any Social Security Numbers, driver's license numbers, or state-issued identification card numbers, financial account numbers, credit, or debit card numbers, with or without any required security code, access code, personal information number or password, that would permit access to the person's financial account and any other information of a personal nature the confidentiality of which is protected by federal or applicable state law.
- 1.14 Service(s): Any service (including the availability and use of Facilities) offered by DYOPATH and identified in any Attachment A, which may include supplying hosting, monitoring, outsourcing, equipment leasing, depot imaging and logistic services or data communications and related products or services.
- 1.15 Service Commencement Date: The Service Commencement Date is the date that any Service is fully operational.
- 1.16 Service Term: Subject to Section 4 of this Agreement (Termination), the duration of time (measured starting on the Service Commencement Date) for which DYOPATH shall provide the Services set forth in Attachment A to Client. The Service Term shall automatically renew for a like term, under the same terms and conditions contained in this Agreement, at DYOPATH's then current prices and rates, unless either Party terminates the Agreement as permitted herein, or unless Client provides a sixty day (60) written Notice to DYOPATH of non-renewal.
- 1.17 Usage Based Services: Prices billed for a service or item based on Client's consumption or usage, rather than a fixed price for a specified service, item, or period of time.

## **SECTION 2 DELIVERY OF SERVICES**

- 2.1 Acceptance by DYOPATH: Upon execution by both Parties of this Agreement, including Attachment A, DYOPATH will provide notice of the tentative Service Commencement Date for the requested Service(s). DYOPATH will initiate delivery of the ordered Service(s) upon Client's compliance with the terms established for delivery of

- the Service(s), Client's provision of all required information as set forth in an onboarding due diligence form (if applicable), and any required pre-payments ("Onboarding"). DYOPATH shall use its reasonable efforts to comply with said Service Commencement Date; provided however, should Client not perform such Onboarding obligations, DYOPATH may, in its sole discretion, begin billing the established monthly recurring costs set forth in the Attachment A. DYOPATH shall not be liable if said Service Commencement Date is not met, except where any such failure to meet the Service Commencement Date results from the gross negligence, or the willful acts or omissions of DYOPATH.
- 2.2 Due Diligence: If applicable to the Services outlined in Attachment A, DYOPATH may perform discovery on all Client systems and infrastructure to ensure thorough understanding of Client's entire network and established connections to outside entities. The functions necessary to complete the scope of the due diligence will be as mutually agreed upon by the Parties. Client will ensure that all of its software and hardware is current and supported by the manufacturer.
- 2.3 DYOPATH Facilities: Except as otherwise agreed in writing by DYOPATH, DYOPATH owns and shall own all rights, title, and interest to all Facilities (but not Client Data and Client Equipment). DYOPATH will provide and maintain the Facilities in good working order subject to the terms of this Agreement. Client shall not, and shall not permit others, to rearrange, disconnect, remove, attempt to repair, or otherwise tamper with or access (except to the extent authorized under this Agreement) any Facilities, without the prior written consent of DYOPATH, which consent may be withheld by DYOPATH in its sole discretion. Client shall not take any action that may result in the imposition of any lien or impediment on the Facilities. In no event will DYOPATH be liable to Client or any other Person or entity for interruption of Service or for any other loss, expense, cost, or damage caused or related to improper use or maintenance of the Facilities by Client or third parties provided access to the Facilities by Client in violation of these terms. Client shall indemnify and reimburse DYOPATH for any direct or indirect damages, losses, or claims (including reasonable attorney's fees) incurred as a result of the improper use, access, or maintenance of the Facilities by Client or third parties provided access to the Facilities by Client.
- 2.4 Transition Services: As applicable to the Services outlined in an Attachment A, DYOPATH may perform all services, functions, and responsibilities necessary to accomplish the transition of operations and functions comprising the scope of any transition plan agreed upon by the Parties.
- 2.4.1 Transition-In Services. DYOPATH shall perform services to facilitate Client's transition of service providers to DYOPATH in accordance with a transition plan. Such services shall be delivered upon completion of due diligence, shall be performed in such a manner as not to unreasonably disrupt or cause any unnecessary adverse impact to Client's business or operations, except to the extent that DYOPATH has provided Client with reasonable advance notice of such impact and Client has agreed in writing that such impact is acceptable.
- 2.4.2 Transition-Out Services. Upon termination of this Agreement or any Attachment A, Client may request that DYOPATH provide transition services to a new Client IT provider. In such event, Client and DYOPATH shall mutually agree upon a transition plan setting forth DYOPATH's obligations with respect to such transition services. DYOPATH will invoice fees associated with any transition services on a time and materials basis. Such fees shall be set forth on a mutually agreed-upon transition plan.
- 2.5 Services outside the Scope of the Agreement: Prior written agreement of the Parties is required for any performance of Services by DYOPATH outside the scope of the applicable Attachment A. DYOPATH will issue a modification to the applicable Attachment A to incorporate changes to the scope of Services and related fee changes.
- 2.6 Modifications: The Parties hereto may modify this Agreement to include additional or revised Attachment A hereto upon written agreement signed by both Parties. For the avoidance of doubt, installation, testing, and rollout of new systems and applications, or the discontinuation or retirement of any system or application, will require a modification to the applicable Attachment A and a new pricing schedule will be provided to reflect the change in scope of Services.

## **SECTION 3 BILLING AND PAYMENT**

- 3.1 Except as otherwise set forth in the Agreement, DYOPATH shall deliver and/or perform the Service(s) for the duration of the Service Term and Client shall pay all charges for delivery and/or performance thereof as set forth herein and in Attachment A.
- 3.2 **Commencement of Billing:** With the exception of orders for hardware and software as set forth in Section 3.2(b) below, DYOPATH will notify Client upon installation and testing, if applicable, of the Services ordered in any Attachment A. Client will have five (5) business days to provide written notification via email, to the DYOPATH Program Manager and/or Sales Representative set forth in the applicable Attachment A, detailing Service(s) that are not installed and functioning in accordance with the applicable Attachment A. Following the delivery to DYOPATH Program Manager of such notification, DYOPATH will work with Client to resolve the outstanding issues.
- a) DYOPATH shall commence billing upon installation of the Services regardless of whether Client has procured services from third-party vendors (i.e., equipment suppliers, software developers, telecommunication carriers, etc.) required to operate the Service and regardless of whether Client is otherwise prepared to accept delivery of ordered Service. In addition, DYOPATH reserves the right to commence billing starting sixty (60) days from execution of the applicable Attachment A.
  - b) For hardware and software orders, DYOPATH shall invoice Client upon Client's written approval of such hardware and software orders.
- 3.3 **Usage Based Services.** DYOPATH will invoice Client for Usage Based Services based on Client's usage at the rates set forth in the applicable Attachment A. If Client has elected a month-to-month Service Term, it may increase or decrease the Usage Based Services by any amount. If Client has committed to a longer Service Term (any number of months above a month-to-month contract), it can increase usage by any amount and can reduce usage by an amount equal to 10% of the most recent billed usage quantities. Client may only make the foregoing reduction in usage one time per Service Term.
- 3.4 **Pre-Payment:** Subject to the terms of the applicable Attachment A, prior to installation of Services, Client shall pay the sum of the total Non-Recurring Charges ("NRC(s)") specified in the applicable Attachment A. DYOPATH shall deliver an initial invoice to Client on the fifth (5<sup>th</sup>) business day following the Effective Date for payment of all NRCs. Client shall pay the invoice for any NRCs in accordance with the payment terms of this Agreement.
- 3.5 **Invoicing:** Monthly Recurring Charges ("MRC(s)") will be invoiced on the 1<sup>st</sup> day of each month for that same month of service. DYOPATH will bill Usage Based Services in arrears as determined by DYOPATH's monitoring systems or as otherwise provided by the Attachment A. For partial months of Service, except for Usage Based Services, MRCs shall be prorated based on a calendar month unless otherwise agreed.
- a) **Payment of Invoices:** Client will pay any amounts due within thirty (30) days of Client receipt of an invoice. Any past due amounts under any invoice shall bear interest at the rate of one and one-half percent (1.5%) per month (or, if lower, the maximum rate lawfully chargeable) from the date due through the date that such past due amounts and such accrued interest are paid in full. In the event of a late payment, DYOPATH may suspend Services hereunder as provided in Section 4. In the event DYOPATH is unable to deliver Service as a result of a Force Majeure event, Client shall not be obligated to pay DYOPATH for the affected Service for so long as DYOPATH is unable to deliver such Service.
  - b) **Travel:** DYOPATH may be required to travel to Client's location to render Services. Client will reimburse DYOPATH for all pre-approved reasonable, allowable, allocable, and pre-approved travel expenses and transportation allowances for any DYOPATH personnel or subcontractors traveling in connection with the performance of its obligations. Travel expenses will be billed at a cost plus 5% administration fee.
- 3.6 **Third Party Fees:** DYOPATH shall have the right to recover from Client the amount of any fees or charges from third party vendors engaged by DYOPATH to provide the Services as set forth in the Attachment A. Such fees

or charges shall be invoiced to Client in the form of a surcharge included on Client's current invoice at the then-current rates charged by such third-party vendors.

- 3.7 **Taxes:** Client shall pay all federal, state, local taxes, universal fund fees, or similar surcharges or fees related to the Services. Client shall provide DYOPATH any and all documentation substantiating a claim for exemption from taxes or fees prior to the date that Services are first provided under the Agreement. To the extent such documentation is held invalid for any reason, Client shall reimburse DYOPATH for any tax or fee liability including without limitation related interest and penalties arising from such invalid documentation.
- 3.8 **Regulatory and Legal Changes:** In the event of any change in applicable law, regulation, decision, rule, or order that increases the costs or other terms of delivery of Services, DYOPATH may increase the fees charged to Client, provided, however, that any such increase in cost to DYOPATH will be a pass-through expense that will be charged to Client and same shall reflect the pro-rata portion of such increase attributable to Services to Client relative to all DYOPATH's clients.
- 3.9 **Disputed Invoices:** If Client disputes any portion of a DYOPATH invoice, Client must pay the undisputed portion of the invoice in accordance with the terms and conditions of this Agreement and the applicable Attachment A and submit a written claim with associated reasons to DYOPATH's accounts receivable department with a copy to [ar@DYOPATH.com](mailto:ar@DYOPATH.com), for the disputed amount. All claims must be submitted to DYOPATH within twenty (20) business days from the invoice date for those Services. 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 Client in accordance with the procedures hereunder, Client shall pay such amounts plus interest at the rate referenced above.
- 3.10 **Termination Charges:** In the event that, prior to the end of the Service Term, Client terminates the Agreement or any Attachment A pursuant to Section 4.2 below, Client shall pay termination charges in accordance with Section 4 of this Agreement.
- 3.11 **Fraudulent Use of Client Related Services by Client Personnel:** Client is responsible for all charges incurred for Services by Client personnel, even if incurred as the result of fraudulent or unauthorized use of Services by such personnel.
- 3.12 **Current Market Conditions:** Fees shall be set forth in the applicable Attachment A and are subject to change annually based on current market conditions. DYOPATH shall increase fees by 5% and will provide Client with thirty (30) days' prior written notice of any change to the fees.

## **SECTION 4 TERM; TERMINATION**

- 4.1 **Term:** The Agreement shall commence upon the Effective Date and shall remain in effect until terminated as set forth herein.
- 4.2 **Termination for Convenience:** Either Party may terminate the Agreement or any Attachment A upon ninety (90) days' prior written notice to the other Party. Upon such notification, DYOPATH shall issue a final monthly invoice to Client no later than thirty (30) days prior to termination of the Agreement or Attachment A and shall be due upon receipt by Client. Upon the effective date of termination, any remaining MRCs, NRCs, third party, or time and materials, etc. charges will be invoiced and due upon receipt.

In the event that, prior to the end of the Service Term, Client terminates the Agreement or any Attachment A pursuant to this Section 4.2, Client shall pay a termination charge equal to:

**Termination Charge:** 75% of the Remaining Contract Balance\*

- \* The "Remaining Contract Balance" shall be defined as a total of the MRCs, and any other unpaid fees multiplied by the number of months remaining in the applicable Service Term.

## 4.3 Termination for Default:

- 4.3.1 Either Party may, upon thirty (30) days' prior written notice terminate the Agreement, and in the case of Client, without incurring a termination charge, for default by the other Party in any of the following circumstances:
- a) The other Party admits in writing its inability to pay its debts as they come due.
  - b) The other Party admits in writing its inability to perform its duties under this Agreement.
  - c) The other Party seeks protection from its creditors under the bankruptcy laws, if a trustee or receiver is appointed over its assets, or if an involuntary petition in bankruptcy is filed but not removed within sixty (60) days.
  - d) The other Party materially breaches a provision of the contract and fails to cure such breach within ten (10) business days of receipt of written notice from the terminating Party demanding such cure.
  - e) The other Party violates any law, rule, regulation or policy of any governmental authority related to Services.
  - f) The other Party makes a material misrepresentation in connection with the Agreement or the delivery of Services and such misrepresentation is not cured within ten (10) business days of the non-terminating Party becoming aware of such misrepresentation; or
  - g) A court or other governmental authority prohibits DYOPATH from furnishing any Service under the Agreement.
- 4.3.2 DYOPATH may terminate the Agreement prior to the end of the Service Term as outlined on the applicable Attachment A, without liability, by notifying Client of its election to terminate pursuant to this Section 4.3.2 and the effective date of such termination if invoice amounts, not including amounts being disputed under Section 3.9, have not been paid for more than sixty (60) days past invoice receipt date and remain unpaid as of the date on which such termination notice is delivered.

- 4.4 Effect of Termination. After receipt of a notice of termination, DYOPATH shall immediately stop work as specified in such notice and place no further orders for materials, services, or facilities. DYOPATH shall not retain any Client Data beyond the effective date of termination of the Agreement, except as permitted in this Agreement. All Client Equipment will be released upon payment in full of final invoice(s). Client agrees that it is responsible for all monthly recurring costs for any term remaining on any dedicated services or equipment procured by DYOPATH from a third party for the sole benefit of Client (e.g., MPLS or Internet circuit).

## **SECTION 5 LIABILITY, WARRANTIES, DISCLAIMERS**

- 5.1 Service Interruptions and Delivery: DYOPATH provides specific remedies regarding installation of Services and availability of Services. In the event of a failure to deliver the Services, Client's sole remedies shall be as set forth in this Section 5 and in Section 4. Client acknowledges that DYOPATH is relying on said limitation of remedies set forth in this Section 5 and Section 4 in agreeing to provide Services to Client.
- 5.2 Limitation on Damages: Notwithstanding any other provision hereof, neither Party shall be liable for any punitive, exemplary, special, indirect, incidental, or consequential damages arising out of or relating to this Agreement, regardless of the legal theory under which such damages are sought, and even if the Parties have been advised of the possibility of such damages or loss.
- 5.3 Limitation of Liability: Client agrees that the sole remedies for the breach of any of the warranties contained in the Agreement shall be limited to the remedies expressly stated in this Agreement. THE TOTAL LIABILITY, IF ANY, OF DYOPATH (INCLUDING, AS APPLICABLE, ITS SUBSIDIARIES, PARENT AND SUBSIDIARIES OF ITS PARENT, ITS LICENSORS, EMPLOYEES, OFFICERS, DIRECTORS, MANAGERS, EQUITYHOLDERS, LENDERS AND AGENTS AND AFFILIATES THEREOF) IN THE AGGREGATE OVER THE TERM OF THIS AGREEMENT FOR ALL CLAIMS, CAUSES OF ACTION, LOSSES OR LIABILITY WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE ARISING UNDER OR IN ANY WAY RELATED TO THIS AGREEMENT AND/OR THE SERVICES PROVIDED HEREUNDER (COLLECTIVELY, "CLAIMS"), SHALL BE LIMITED TO THE LESSER OF: (A) CLIENT'S DIRECT DAMAGES, ACTUALLY INCURRED, OR (B) THE TOTAL FEES PAID BY CLIENT TO DYOPATH IN THE MOST RECENT SIX (6) MONTH PERIOD PRIOR TO THE DATE OF THE CLAIM.

- 5.4 **LIMITED WARRANTY:** With respect to each Service provided under the Agreement, DYOPATH warrants to Client that, for a period of ninety (90) calendar days after the date of delivery of such Service to Client ("Client Service Warranty Period"), such Service will substantially conform to any applicable functional specifications for such Service that are described in the applicable Attachment A or modification thereto. If any Service does not perform as expressly warranted in this Section 5.4, Client will notify DYOPATH in writing and DYOPATH will, at its sole option and expense: (a) reperform, replace or modify such Service with a Service that performs as expressly warranted in this Section 5.4 or (b) if DYOPATH determines that the foregoing is not commercially reasonable, refund to Client the prices paid by Client associated with such Service under the Agreement. The foregoing limited warranty does not cover repair or replacement of or refunds for Services, if the nonconformity to such limited warranty is caused, in whole or in part, by: (i) alteration, modification, or correction made by a party other than by DYOPATH or a third party engaged by DYOPATH; (ii) software, hardware, or interfacing not provided by DYOPATH or a third party engaged by DYOPATH or specified in the applicable Attachment A; (iii) abuse, misuse, or improper installation of the Services by a party other than by DYOPATH or a third party engaged by DYOPATH; or (iv) any change to Client's computing environment that would affect the specific Service. THE FOREGOING PROVISIONS OF THIS SECTION 5.4 STATES THE ENTIRE LIABILITY AND OBLIGATIONS OF DYOPATH, AND THE EXCLUSIVE REMEDY OF CLIENT, WITH RESPECT TO ANY BREACH OF THE LIMITED WARRANTY IN THIS SECTION 5.4.
- 5.5 **Disclaimer:** EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN SECTION 5.4 and 5.6, DYOPATH DOES NOT MAKE ANY OTHER REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER ORAL OR WRITTEN, WHETHER EXPRESS, IMPLIED, OR ARISING BY STATUTE, CUSTOM, COURSE OF DEALING OR TRADE USAGE, WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT, IN CONNECTION WITH THIS AGREEMENT. DYOPATH SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. DYOPATH DOES NOT WARRANT THAT NY SERVICES PROVIDED UNDER THIS AGREEMENT WILL MEET CLIENT'S REQUIREMENTS, THAT THE OPERATION OF THE SERVICE(S) WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT DEFECTS IN THE SERVICE(S) WILL BE CORRECTED.
- 5.6 DYOPATH represents and warrants that:
- a) DYOPATH is duly licensed, authorized, and qualified to do business and is in good standing in every jurisdiction in which a license, authorization, or qualification is required for the ownership or leasing of its assets or the transaction of business of the character transacted by it, except where the failure to be so licensed, authorized or qualified would not have a material adverse effect on DYOPATH's ability to fulfill its obligations under or otherwise perform the Agreement;
  - b) There is no outstanding litigation, arbitrated matter, or other dispute to which DYOPATH is a party which, if decided unfavorably to DYOPATH, and there are no outstanding judgments against DYOPATH, would have a material adverse effect on DYOPATH's ability to fulfill its obligations under or otherwise perform the Agreement;
  - c) DYOPATH is capable of providing, and possesses the resources, capacity, expertise, and ability necessary to provide, the Services in accordance with the Agreement and the Services shall be rendered with promptness and diligence and be executed in a professional manner;
  - d) Without limiting DYOPATH's obligations under the Agreement, DYOPATH shall make commercially reasonable efforts to ensure that no Destructive Elements are coded or introduced into the Services or Deliverables by DYOPATH or DYOPATH's agents and shall use commercially reasonable efforts to prevent from being coded or introduced into the Services, or Deliverables by any third party. If DYOPATH becomes aware that a Destructive Element has been introduced into the Services, or Deliverables, DYOPATH shall make reasonable efforts to mitigate the effects of the Destructive Element and, if the Destructive Element causes a loss of operational efficiency or loss of data, make reasonable efforts to mitigate and restore such losses. With respect to any Destructive Elements that may be part of Services, or Deliverables, DYOPATH shall not, nor permit any other third party to, invoke such Destructive Elements at any time, without Client's consent.
  - e) All personnel screening practices, results, and related records are confidential and proprietary to DYOPATH and shall not be disclosed to Client or any third party except as required by applicable law. DYOPATH may, in its discretion and subject to applicable law, provide general confirmation that

personnel assigned to perform Services have completed the screening procedures applicable to their role; however, DYOPATH shall have no obligation to disclose any screening records, reports, findings, or detailed results.

- 5.7 Security Procedures: Client agrees that its employees, agents, contractors, or representatives shall not knowingly attempt, in any way, to circumvent or otherwise interfere with any security precautions, procedural controls, or any of DYOPATH's policies relating to the Services provided hereunder. Client acknowledges and agrees that any such actions may cause a disruption in the provision of Service, and that DYOPATH shall have no liability for any such disruption. Any disruption of Services which results from the violation of this Section shall be excluded from DYOPATH's obligations under Attachment B and Client will have no right to any remedy under the Attachment B or otherwise with respect to such disruption; except where any such disruption of Services result from the gross negligence or willful acts or omissions of DYOPATH or a third party engaged by DYOPATH.
- 5.7.1 DYOPATH will conduct routine scheduled maintenance of its data center and data center services, as are reasonably required to maintain the Facilities and Service. In the event a mission critical maintenance situation arises, DYOPATH may be required to perform emergency maintenance at any time. During these scheduled and emergency maintenance periods, Client Equipment may be unable to transmit and receive data, and Client may be unable to access the Client Equipment. Client agrees to cooperate with DYOPATH during the scheduled and emergency maintenance periods. Unscheduled maintenance will not constitute an event of default by DYOPATH.
- 5.7.2 At times, actions or inactions caused by third parties ("Third Party Actions") (e.g., denial of service attacks) can produce situations in which Client's connections to the Internet (or portions thereof) or other portions of Client's Service may be impaired or disrupted. DYOPATH cannot guarantee that such situations will not occur and, accordingly, DYOPATH disclaims any and all liability resulting from or related to such events (other than as set forth in this Agreement). In the event that Client's use of the Services, interaction with the internet, or use of third parties is causing harm to or threatens to cause harm to the network or operations of DYOPATH, or the operations of other DYOPATH clients, DYOPATH shall have the right to suspend upon 5 business days' written notice without liability Client's Services which may be the cause of the disruption or which may be adversely impacted by such conditions. DYOPATH shall restore Service at such time, as it reasonably deems, that there is no further harm or threat of harm to the DYOPATH network or its operations or the operations of other DYOPATH clients.
- 5.7.3 Client acknowledges and agrees that certain Services provided under this Agreement may be delivered through third-party vendors and are resold by DYOPATH on an "as-is" basis. DYOPATH does not own, control, or warrant the performance, security, or availability of such third-party services, which shall be subject to additional terms provided by the applicable vendor.
- 5.7.4 Client acknowledges and agrees that if Client requests DYOPATH to perform Services that are not in scope under an Attachment A, DYOPATH may, in its sole discretion and without liability to Client, either (a) decline to perform such additional Services, or (b) require the completion of a new or revised Attachment A to reflect the increased scope of Services, which may require additional fees or obligations of Client.
- 5.7.5 Client must use reasonable security precautions in its use of the Services, including encrypting any Personal Information transmitted via, or stored on, the Services and accepts all risks related thereof. Client releases DYOPATH for all related liability arising from its failure to meet the foregoing requirements with respect to its use of the Services. Client must install malware/endpoint protection on all computing and storage devices, and if not, Client accepts all responsibility of potential security vulnerabilities. DYOPATH shall not be liable if Client does not use reasonable security precautions to secure Personal Information. DYOPATH shall not be liable if it stores Personal Information on the Services. Client must immediately notify DYOPATH of any unauthorized use of Client account or any other breach of security involving the Services and cooperate in the investigation thereof.

5.7.6 Pending Deployment of Products and Tools. Certain products purchased through DYOPATH may require Client cooperation, scheduling, access credentials, device availability, approvals, or other dependencies to be fully installed, configured, and activated. Until deployment is completed, affected devices may not receive the intended protections and may remain exposed to cybersecurity risks. DYOPATH shall not be liable for any breach, malware event, ransomware attack, unauthorized access, data loss, or other security incident affecting devices for which deployment has been delayed or not completed due to Client action, inaction, self-installation decisions, failure to provide timely cooperation, or other circumstances outside DYOPATH's reasonable control.

## **SECTION 6 CONFIDENTIAL INFORMATION, PROPRIETARY RIGHTS, PUBLICITY, AND DATA PROTECTION**

- 6.1 **Confidentiality:** All Confidential Information in whatever form shall remain the property of Disclosing Party. Nothing contained in this Agreement shall be construed to grant Receiving Party any license or other Intellectual Property rights in the Confidential Information, other than the limited right to use such Confidential Information for purposes stated in this Agreement.
- 6.2 **Limitation on Disclosure:** Receiving Party shall not disclose Confidential Information or permit it to be disclosed to anyone except those employees, agents or other representatives ("Representatives") who have a need to know the Confidential Information by virtue of being actually engaged in discussions, assessments, or activities in connection with this Agreement, and who have been notified of the confidential nature of the Confidential Information and have agreed to be bound maintain the confidentiality of such Confidential Information in accordance with the terms and conditions of this Agreement. Receiving Party shall be responsible for any breach of this Agreement by any of its Representatives. Receiving Party shall obtain Disclosing Party's permission in writing prior to disclosing Confidential Information to any person or party other than its permitted Representatives. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information or portions thereof in the event the Receiving Party or its Representatives become legally compelled (by any legal or similar process) to disclose any of the Confidential Information. The Receiving Party shall give prompt, prior written notice of such requirement to the Disclosing Party so that the Disclosing Party may seek a protective order or other appropriate remedy. In the event such protective order or other remedy is not sought or obtained, and Receiving Party is compelled to disclose or else face a charge of contempt of court or suffer other censure or penalty, Receiving Party may disclose only such Confidential Information which is subject to such legal compulsion, only to the party required by law, and only upon using reasonable efforts to obtain written assurances that confidential treatment will be accorded such Confidential Information.
- 6.3 **Publicity:** Neither Party hereto shall have the right to use the other Party's or its Affiliates' trademarks, service marks or trade names or to otherwise refer to the other Party in any marketing, promotional, or advertising materials or activities.
- 6.4 **Intellectual Property:** All Intellectual Property of a Party is and will remain the exclusive property of such Party. Neither Party will have rights or interests in the other Party's Intellectual Property except as expressly provided for in this Agreement.
- 6.5 **Deliverables:** During the term of this Agreement, DYOPATH grants to Client a revocable, non-exclusive, non-assignable, limited right to use the Services and any Deliverables and the associated Documentation, solely for use by Client for the internal business purposes of Client.
- 6.6 **Data Protection:**
- 6.6.1 As between DYOPATH and Client, all Client Data is and shall remain the property of Client. Without the prior approval of Client, to be given or withheld in its sole discretion, Client Data shall not be (i) used by DYOPATH other than as required to provide the Services, (ii) disclosed, sold, assigned, leased, licensed, or otherwise provided or made available in any manner to third parties by or through DYOPATH, or (iii) commercially or otherwise used or exploited in any form (including any derivative,

individualized, anonymized, or aggregated form) by or on behalf of DYOPATH. Further, Client Data shall be the Confidential Information of Client.

- 6.6.2 To the extent Client Data includes Personal Information, DYOPATH shall maintain the confidentiality and security of such Personal Information as required by law.
- 6.6.3 DYOPATH will comply, and will cause its personnel to comply, with the terms of DYOPATH's Privacy Policy to the extent related to the Services provided by DYOPATH. Additionally, DYOPATH shall establish, implement, maintain, and comply with a comprehensive written information security program that includes administrative, technical and physical safeguards against the disclosure, access, destruction, loss, damage and alteration of Client Data in the possession or control of DYOPATH that shall be no less rigorous than the most stringent of (i) DYOPATH's then current data security requirements for data of a similar nature, or (ii) any higher data security requirements required by law. Without limiting the immediately preceding sentence, DYOPATH shall use commercially reasonable efforts, including through systems security measures, to guard against the unauthorized disclosure, access, destruction, loss, damage and alteration of Client Data.
- 6.7 Destruction and Return of Confidential Information: Upon termination of this Agreement or upon the request of the Disclosing Party, Receiving Party shall destroy or return to Disclosing Party any Confidential Information in physical or electronic form in its possession; provided that Receiving Party may maintain an archived file copy of a document or other item containing Confidential Information residing in its automatic backup systems, provided that all such copies shall remain subject to the obligations hereunder regarding confidentiality and use of Confidential Information for so long as they are retained.

## **SECTION 7 INSURANCE**

- 7.1 Client is responsible for the repair and maintenance (except to the extent Services include repair and maintenance services) and insurance against loss of Client Equipment, including, as applicable, Client Furnished Equipment. DYOPATH shall not be liable for any loss of or impairment to the Services provided hereunder or damages to any Client Equipment due to a malfunction or defect in any Client Equipment; save and except where any such loss or impairment to the Services or damages result from the gross negligence or willful acts or omissions of DYOPATH.
- 7.2 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 \$1,000,000 each occurrence, General Aggregate \$2,000,000
  - 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 (including DYOPATH employees working at Client's offices);
  - 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; and
  - e) Excess/Umbrella Liability: with limits of not less than \$6,000,000 each occurrence, General Aggregate \$6,000,000.
- 7.3 Certificate of Insurance: Upon request by Client, DYOPATH shall provide Client with a certificate of insurance evidencing the coverage as outlined in Section 7.

- 7.4 Client Obligations: Without limiting any of DYOPATH's obligations under this Section 7, Client shall procure and maintain Cyber Security Liability and Privacy Liability insurance coverage, with coverage for expenses associated with data breach, cyber-crime, cyber-security and the investigation, remediation, notification costs, credit monitoring, call center expenses, public relations expenses, fines, judgments, and legal costs (including defense costs) related thereto in amounts reasonable and appropriate for the size and nature of Client's business.

## **SECTION 8 GENERAL TERMS**

- 8.1 Force Majeure: Neither Party hereto shall be liable, nor shall any remedy be extended, for any failure of performance or equipment due to causes beyond such Party's reasonable control including but not limited to acts of God, fire, acts or omissions of suppliers, flood or other catastrophe, any law, order, or regulations or request of any governmental entity, national emergency, terrorist activities, insurrections, riots, work stoppages or disruptive labor activities, global or natural disasters, plague, epidemic, pandemic, outbreaks of infectious disease, or other events beyond the reasonable control of a Party ("Force Majeure").
- 8.2 Assignment: Neither Party shall assign its rights and obligations under this Agreement without the express prior written consent of the other Party; provided that Parties may assign their rights and obligations under this Agreement and any attachments hereto, to an Affiliate without the consent of other Party and provided further, DYOPATH may assign its rights and obligations under this Agreement and any attachments hereto, in the event of a merger, reorganization, or to a purchaser of substantially all of its assets without the consent of Client. DYOPATH will not unreasonably withhold its consent to a proposed assignment provided that the assignee of Client agrees in writing to fully accept all the terms and conditions contained herein. Client shall remain liable for the payment of all charges due under each Attachment A until a fully executed assignment is received from Client. Once all terms and conditions have been accepted by assignee and a fully executed assignment is received by DYOPATH, Client will be released from all payment obligations hereunder.
- 8.3 Notices: All notices, request, demands, and other communications under this Agreement must be in writing and shall be provided via (i) personal delivery; (ii) certified U.S. mail; (iii) nationally recognized overnight courier; (iv) when delivered via electronic commerce (e.g., e-Mail), to the Parties or their permitted assigns at the addresses listed herein, or such other address as may be designated in writing by the Parties from time to time.
- 8.4 Indemnification for Intellectual Property Infringement: DYOPATH, subject to the limitations of liability contained herein, will defend and indemnify Client against a third party claim that any DYOPATH-owned Services infringe a United States patent, copyright, trademark, trade secret or other United States intellectual property rights of a third party, provided that: (i) Client gives DYOPATH prompt written notice of any such claim of which it has knowledge; (ii) DYOPATH is given full control over the defense of such claim and all related settlement negotiations; and, (iii) Client provides DYOPATH with the assistance, information and authority necessary to perform DYOPATH's obligations under this Section 8.4. Reasonable out-of-pocket expenses incurred by Client in providing such assistance will be reimbursed by DYOPATH. If any such claim of infringement has occurred or in DYOPATH's opinion is likely to occur, then DYOPATH may, at its option and expense: (i) use commercially reasonable efforts to procure for Client the right to use the infringing Services; (ii) replace or modify the infringing portion of the Services so that it is no longer subject to any infringement claim, or, (iii) if the foregoing, in DYOPATH's reasonable determination, is not practicable, DYOPATH shall so notify Client of such determination and Client shall have the right to immediately terminate this Agreement. DYOPATH shall have no obligation under this Section 8.4 to indemnify or defend Client against a lawsuit or claim of infringement to the extent any such claim or lawsuit results from: (i) other material which is combined with or incorporated into the Services; (ii) any substantial changes or alterations to the information provided as part of the Services by Client; (iii) any misuse or unauthorized use of the Services which, but for Client's misuse or unauthorized use of the Services, such claim would not have occurred; or, (iv) required compliance by DYOPATH with design documentation or specifications originating with, specified by or furnished by or on behalf of Client. THE FOREGOING PROVISIONS STATE THE ENTIRE LIABILITY OF DYOPATH AND THE SOLE AND EXCLUSIVE REMEDY OF CLIENT WITH RESPECT TO ANY PROCEEDINGS, CLAIMS, DEMANDS, LOSS, DAMAGE OR

## EXPENSES INCURRED BY CLIENT RELATING TO THE INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS RESULTING FROM THE SERVICES AND THIS AGREEMENT.

- 8.5 Application of Tariffs: DYOPATH may elect or be required to file with the appropriate regulatory agency tariffs respecting the delivery of certain Service. In the event that such tariffs are filed respecting Service ordered by Client, then (to the extent such provisions are not inconsistent with the terms of an Attachment A) the terms set forth in the applicable tariff shall govern DYOPATH's delivery of, and Client's consumption or use of, such Service.
- 8.6 No Waiver: No failure by either Party to enforce any rights hereunder shall constitute a waiver of such right(s).
- 8.7 Contractors: Client acknowledges that certain installation, technical support, and consulting services may be provided by an unaffiliated third-party contractor ("Contractor") to DYOPATH. Client hereby authorizes DYOPATH to provide Contractor with access to Client's location, equipment, and contact information necessary to provide such Services; provided that DYOPATH shall be liable for any damages caused by Contractor. All Contractors who have access to that information are required to sign a DYOPATH Confidentiality Agreement.
- 8.8 Disputes: DYOPATH and Client agree to negotiate and resolve any dispute in good faith to reach a mutually agreeable settlement within thirty (30) business days. 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 the Agreement, shall be finally settled in Chicago, Illinois in an arbitration proceeding under the Rules of the American Arbitration Association by three arbitrators in accordance with the Commercial Arbitration Rules then in effect. 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.

No claim, suit, or action, regardless of form, arising from or relating to either Party's acts or omissions in the performance of the Agreement may be brought or asserted more than one (1) year after the cause of action has accrued; provided that claims, suits, or actions arising from or relating to either Party's gross negligence or reckless, willful, or intentional acts or omissions shall be excluded from this one year limitation.

- 8.9 Independent Contractor Relationship: Each Party is an independent contractor and as such will not have any authority to bind or commit the other. Nothing herein shall be deemed or construed to create a joint venture, partnership, or agency relationship between the Parties for any purpose.
- 8.10 Non-Solicitation: Unless agreed to in writing between the Parties, during the term of this Agreement and for one (1) year following termination or expiration of this Agreement, neither Party nor any of its affiliates will, directly or indirectly, for their own account or on behalf of any other person or entity, (a) 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 of one Party who has worked with the other Party in relation to the provision of Services under this Agreement, overseen employees in relation to the provision of Services under this Agreement, or about whom the other Party has received Confidential Information, (b) solicit or induce any of Party's employees, consultants, clients, vendors, suppliers, or independent contractors to terminate their relationship with Party, or (c) in the case of Client, engage an independent contractor of DYOPATH in a capacity that limits such independent contractor's ability to provide Services to or on behalf of DYOPATH, or which allows Client to limit or circumvent its business relationship with DYOPATH. The prohibition against solicitation in this Section does not apply to a general solicitation for application for employment made

through advertising (for example, in newspapers, trade magazines, or web sites) not involving a direct solicitation of a specific Person.

Client acknowledges that it would be difficult to ascertain the losses and replacement costs sustained by a breach of this non-solicitation provision and, that in the event of a breach by Client, DYOPATH may require Client to pay DYOPATH, as liquidated damages, an amount equal to the annual billable rate for DYOPATH's employees and contractors (the "Billable Rate"). The "Billable Rate" shall be calculated by multiplying DYOPATH's standard hourly billable rate charged to its clients for its employees and independent contractors. The Client acknowledges and agrees that the amount of these liquidated damages is reasonable and that this provision may be enforced in a court of competent jurisdiction in the State of Illinois. Payment of these liquidated damages shall be made within fifteen (15) days of hire of said employee or independent contractor.

- 8.11 Entire Agreement: This Agreement and the attached and incorporated exhibits, if any, contain the entire Agreement of the Parties and there are no representations, inducements, promises, agreements, arrangements, or undertakings, oral or written, between the Parties to this Agreement other than those set forth in this Agreement and duly executed in writing. In the event of a conflict between the terms of the Agreement and any Attachment A, the terms of this Agreement will control.
- 8.12 DYOPATH may amend or modify the terms of this Agreement at any time. Your continued access or use of the Services after the terms of this Agreement are revised constitutes your express consent to the modified Agreement. UNLESS OTHERWISE STATED IN THE AMENDED VERSION OF THIS AGREEMENT, ANY CHANGES TO THIS AGREEMENT WILL APPLY IMMEDIATELY UPON POSTING TO THE DYOPATH WEBSITE. Although we are not obligated to provide you with notice of any changes, any changes to this Agreement will not apply retroactively to events that occurred prior to such changes. Notwithstanding the foregoing, no amendment, change, or extension to this Agreement is valid or binding, unless approved in writing by DYOPATH.
- 8.13 State Law and Venue Determination: This Agreement shall be subject to and governed under the laws of the State of Illinois. The Parties agree that venue for purposes of any and all lawsuits, causes of action, arbitrations, or other disputes shall be in Cook County, Illinois.
- 8.14 Severability: If any provision of this Agreement is or becomes void or unenforceable by force or operation of law, all other provisions shall remain valid and enforceable.
- 8.15 Survival: The provisions of Articles 5.2, 5.3, 5.4, 5.5, 6, 8.4, 8.6, and 8.10 shall survive termination hereof for any reason. The rights and obligations under this Agreement shall survive any merger or sale of either Party and shall be binding upon the successors and permitted assigns of each Party.

**END OF AGREEMENT**