

PRODUCT AND PROFESSIONAL SERVICES AGREEMENT

This Product and Professional Service Agreement is made and entered into as of the last date of signature to the applicable Attachment A to this Agreement ("Effective Date"), by and between DYOPATH, LLC ("DYOPATH"), a Delaware limited liability company, having a 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"). This Agreement shall apply to any additional Attachment A (as defined herein) that may be entered into in writing by and between DYOPATH and Client from time to time which references this Agreement. 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 **"Agreement"** shall mean this Product and Professional Services Agreement and any Attachment A hereto.
- 1.2 **"Confidential Information"** shall mean 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, 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. 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 (unless such information is required to be kept confidential by law); or (vii) is disclosed pursuant to the provisions of a court order.
- 1.3 **"Intellectual Property"** shall mean 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.
- 1.4 **"Attachment A"** means the attachment to this Agreement agreed to between DYOPATH and Client for the provision of Products and/or Services, which shall include, as applicable, location of performance of Services, description of the Products to be provided or Services to be performed, the period of performance, and the applicable fees for such Products and/or Services. Additional Attachment A may be entered into in writing by and between DYOPATH and Client from time to time which references this Agreement.
- 1.5 **"Deliverables"** shall mean 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. Deliverables do not include Products, as defined herein.
- 1.6 **"Services"** shall mean any professional services performed by DYOPATH for Client and set forth more specifically in an Attachment A.
- 1.7 **"Products"** shall mean any equipment, software, licensing, and associated wire and cable provided by DYOPATH to Client and set forth more specifically in an Attachment A.
- 1.8 **"Delivery Date"** shall mean the date DYOPATH delivers the Products to the Client's location as set forth in Attachment A.
- 1.9 **"In-Service Date"** shall mean the date that Products are substantially in operation in accordance with the Specifications and are available for use by the Client.

- 1.10 **“Specifications”** shall mean a Product manufacturer’s standard specifications and any additional documentation accompanying the Product (collectively referred to as “Specifications”).

2 PRODUCTS

- 2.1 DYOPATH will initiate delivery of the ordered Product(s), upon Client’s compliance with the terms established for delivery of the Product(s) and Client’s provision of all required information and any required pre-payments as set forth on the applicable Attachment A. DYOPATH shall use its reasonable efforts to comply with said delivery date; provided however, DYOPATH shall not be liable if said delivery date is not met, except where any such failure to meet the delivery date results from the gross negligence, or the willful acts or omissions of DYOPATH.
- 2.2 Credit Approval and Deposits. If applicable, Client will provide DYOPATH with information as requested, including but not limited to credit information and references from vendors. DYOPATH’s delivery of Products is subject to DYOPATH’s review and approval of such information. DYOPATH may require Client to pay a deposit before delivery of any Products.
- 2.3 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 set forth in Attachment A; (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 herein.
- 2.4 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 an 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 modified Attachment A. If Client does not agree to such additional charges, Client may cancel the order without liability for cancellation charges.
- 2.5 To the extent the Product utilizes internet connectivity, Client may experience certain compromises in performance, reliability, and security, even when the Product performs as warranted. CLIENT ACKNOWLEDGES THAT IT IS AWARE OF THESE RISKS AND THAT IT HAS DETERMINED SUCH RISKS ARE ACCEPTABLE FOR ITS USE OF THE PRODUCT. CLIENT ALSO ACKNOWLEDGES THAT CLIENT IS SOLELY RESPONSIBLE FOR (1) ENSURING THAT ITS NETWORKS AND SYSTEMS ARE ADEQUATELY SECURED AGAINST UNAUTHORIZED INTRUSION, AND (2) BACKING UP ITS DATA AND FILES.

3 SERVICES

- 3.1 Upon execution by both Parties of this Agreement, including an Attachment A, DYOPATH will provide a tentative date for the commencement of its performance of the requested Service(s). DYOPATH will initiate performance of the ordered Service(s), upon Client’s compliance with the terms established for delivery of the Service(s) and Client’s provision of all required information and any required pre-payments. DYOPATH shall use its reasonable efforts to comply with said delivery date; provided however, DYOPATH shall not be liable if said delivery date is not met, except where any such failure to meet the delivery date results from the gross negligence, or the willful acts or omissions of DYOPATH.
- 3.2 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.
- 3.3 Client may request changes to the timing or scope of Services in an Attachment A, including without limitation the expedited provision of certain Services; provided, however, that any changes shall be documented in a modification to the applicable Attachment A and are subject to the prior written approval of DYOPATH and may result in an increase in fees due and payable under the applicable Attachment A.
- 3.4 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 similar qualifications. DYOPATH may, at its sole discretion, replace one or more representatives assigned to perform the Services with other representatives having similar qualifications.
- 3.5 Client acknowledges that the timely provision of, and access to, certain data, equipment, and other information as set out in this Section 3 is essential to the performance of the Services as set forth in an Attachment A. 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 Attachment A:

- (A) 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

("Information") reasonably required by DYOPATH for the performance of the Services. Client will be responsible for the content, accuracy, completeness, and consistency of all such Information.

(B) Client shall provide, in a timely manner and at no charge to DYOPATH, facility, network or system access ("Access") 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 considering all relevant circumstances. DYOPATH will in no event be responsible for the inability to establish a remote connection or for any replacement solution, therefore.

(C) 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.

If Client does not meet all the requirements and obligations as set forth in Section 3, of more than thirty (30) days from the execution of the Attachment A, DYOPATH reserves the right to place the project on hold. If the project is placed on hold, DYOPATH will suspend performance of services and release assigned DYOPATH project resources. Client must provide DYOPATH with a minimum of ten (10) days' notice to re-start a project on hold and re-assign a project team. If a project has been placed on hold, the parties agree to review the Attachment A prior to restarting the project to ensure the obligations are still applicable. If deliverables must be repeated, or obligations require additional resource time due to the elapsed time the project was placed on hold, additional charges will apply and will be presented to the Client via an executable change order to the Attachment A.

If a project has not started or a project timeline has not been mutually agreed to within six (6) months from the Attachment A execution date, or if a project has been placed on hold for a period of six (6) months or more and the parties have not defined a mutually agreeable date to re-start the project, DYOPATH will invoice for all remaining professional services fees and close the project. Once the project is closed, a new Attachment A will be required to resume any professional services related to this project.

4 PROPRIETARY RIGHTS; LICENSE GRANT

- 4.1 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.
- 4.2 Deliverables: Upon payment for the Services in accordance with this Agreement, during the term of this Agreement, DYOPATH grants to Client a revocable, non-exclusive, non-assignable, limited right to use the Deliverables, solely for use by Client for the internal business purposes of Client.
- 4.3 Products:
- (A) 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.
 - (B) 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 license terms.
 - (C) SECURITY INTEREST: In the event that title to any Product 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. Client agrees to execute and deliver all documents reasonably requested by DYOPATH to protect and maintain DYOPATH's security interests. Client agrees to appoint DYOPATH as Client's agent to sign and file a financing statement to perfect DYOPATH's security interest.

5 PRICING

- 5.1 All amounts as set out in an Attachment A are exclusive of any sales, use, other taxes, or regulatory fees imposed by applicable law that DYOPATH must pay based on the Products or 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 including such taxes or fees.

- 5.2 **FIXED PRICE SERVICES.** For Services provided on a fixed-price milestone basis, 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 Attachment A.
- 5.3 **TIME AND MATERIAL SERVICES.** For Services provided on a time and materials basis, DYOPATH will invoice Client for Services in accordance with the time and material rates set forth in the applicable Attachment A.
- 5.4 **PRODUCTS.** DYOPATH shall invoice Client for Products as set forth in the applicable Attachment A.
- 5.5 **TRAVEL.** DYOPATH may be required to travel to Client’s location to render Services. Client will reimburse DYOPATH for all 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 to provide the Services.
- 5.6 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 Agreement and Attachment A and submit a written claim to the DYOPATH Program Manager, with a copy to ar@DYOPATH.com, for the disputed amount. All claims must be submitted to DYOPATH 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.
- 5.7 All invoices are due upon receipt and become past due thirty (30) days from the receipt of 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 performance of Services hereunder. In the event DYOPATH is unable to deliver Products or Services as a result of Force Majeure event, the Client shall not be obligated to pay DYOPATH for the affected Product or Service for so long as DYOPATH is unable to perform such Services or deliver such Products when using its reasonable commercial efforts. If Client is delinquent with payments for Products for more than sixty (60) days, Client shall allow DYOPATH to enter upon the premises peaceably with or without legal process where the Product is located and repossess the Product; and/or cause any software or hardware to terminate by disconnecting service.
- 6 CONFIDENTIALITY.** 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. 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.
- 7 WARRANTY**
- 7.1 **SERVICES.**
- (A). DYOPATH warrants to Client that all Services will be provided in a professional and workmanlike manner consistent with industry standards. 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) reperform the non-conforming Services at its sole cost and expense; or (ii) if reperformance is not reasonably feasible, as determined by DYOPATH in its discretion, refund the fees paid by Client for the Services.
- (B). EXCEPT AS SPECIFICALLY STATED IN THIS SECTION 7.1, 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, OR WILL 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.

7.2 PRODUCTS.

(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). For Products for which Client will receive 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 shall be responsible for performance of all required warranty work in accordance with the terms of its warranty.

(C). The warranties provided in this Section 7.2 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) Force Majeure Events (as defined herein); (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.

(D). EXCEPT AS STATED IN SUBSECTIONS 7.2(A) AND 7.2(B) ABOVE, DYOPATH, RELATED COMPANIES, SUBSIDIARIES AND THEIR AFFILIATES, SUBCONTRACTORS AND SUPPLIERS, MAKE NO WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE PRODUCTS AND SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. DYOPATH does not warrant uninterrupted or error free operation of the Products. In addition, 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. Client assumes all responsibility for assuring proper and lawful use of the Products.

(E). The decision to acquire or use hardware, software (in any form), networks, supplies, facilities, or services from parties other than DYOPATH is Client's, even if DYOPATH helps Client identify, evaluate, or select such Products. 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.

8 INFRINGEMENT INDEMNIFICATION. DYOPATH, subject to the limitations of liability contained herein, will defend and indemnify Client against a third party claim that any Services or Deliverables 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. 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 or Deliverables; (ii) replace or modify the infringing portion of the Services or Deliverables 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 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 or Deliverables; (ii) any substantial changes or alterations to the information provided as part of the Services or Deliverables by Client; (iii) any misuse or unauthorized use of the Services or Deliverables which, but for Client's misuse or unauthorized use of the Services or Deliverables, 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 OR DELIVERABLES AND THIS AGREEMENT.

- 9 RECIPROCAL NON-SOLICITATION.** Unless agreed to in writing between the Parties, during the term 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, 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. 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.
- 10 LIMITATIONS OF LIABILITY.** NEITHER PARTY WILL BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, CONSEQUENTIAL, OR SPECIAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, CORRUPTED, MISDIRECTED OR MISAPPROPRIATED DATA OR MESSAGES; CHARGES FOR COMMON CARRIER TELECOMMUNICATION SERVICES OR FACILITIES ACCESSED THROUGH OR CONNECTED TO PRODUCTS ("TOLL FRAUD") 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 UNDER THIS AGREEMENT EXCEED THE TOTAL FEES PAID BY CLIENT FOR THE PRODUCT OR SERVICE GIVING RISE TO THE CLAIM.
- 11 TERM AND TERMINATION**
- 11.1** This Product and Professional Services Agreement will commence on the Effective Date thereof and will remain in force until all Attachments A entered into under this Agreement are terminated, unless earlier terminated in accordance with Section 11. Termination, without cause, of this Product and Professional Services Agreement will not affect any Attachment A that were already signed before such termination. These Attachment A will be executed in accordance with and will remain subject to the terms of this Product and Professional Services Agreement.
- 11.2** An Attachment A 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 11.3 or 11.4 hereunder.
- 11.3** Either Party may terminate an Attachment A without cause upon thirty (30) days' prior written notice to other Party. In the event that Client terminates an Attachment A pursuant to this subsection, Client shall be obligated to pay DYOPATH the following:
- A. For Services, all amounts owed through the effective date of termination and reimbursement for all costs that DYOPATH is not able to otherwise mitigate.
- B. For Products,
- (i) If Client cancels all or any portion of an Attachment A for Products prior to the Delivery Date, Client shall pay DYOPATH a cancellation fee of twenty-five percent (25%) of the purchase price fee for the canceled Products. (ii) If Client cancels all or any portion of an Attachment A 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 or license fee (including but not limited to all fees for third-party software licenses) for the cancelled Products, plus the cost of any related 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).
- 11.4** 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.

- 11.5 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.

12 DISPUTES

- 12.1 DYOPATH and Client agree to negotiate in good faith to reach a mutually agreeable settlement within thirty (30) business days to resolve any dispute between the Parties.
- 12.2 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 Chicago, Illinois 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.
- 12.3 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.

13 INSURANCE

- 13.1 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.
- 13.2 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;
 - 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 \$6,000,000 each occurrence, General Aggregate \$6,000,000.

14 GENERAL PROVISIONS

- 14.1 In the event of any inconsistencies between the terms of the Agreement and any terms set out in an Attachment A, the terms of the Attachment A shall prevail with respect to any terms relating to fees for Products and Services, and invoicing terms. In all other respects, in the event of a conflict, this Agreement shall prevail.
- 14.2 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.
- 14.3 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.
- 14.4 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. DYOPATH may amend or modify the terms of this Agreement at any time. Your continued access or use of the Products and 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 DYOPATH is 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. 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 Attachment A shall supersede the terms in any purchase order of Client and no terms in such purchase order shall apply to the Products, Services and Deliverables, regardless of any failure of DYOPATH to object to such terms.

- 14.5 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.
- 14.6 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. DYOPATH may subcontract the performance of its obligations hereunder, provided that DYOPATH shall remain responsible for the performance of any such subcontractors.
- 14.7 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 (each, a "Force Majeure" event).
- 14.8 No Waiver: No failure by either Party to enforce any rights hereunder shall constitute a waiver of such right(s).
- 14.9 Client may use the Products and Services only in the United States in the ordinary course of Client's business, and not for the purpose of resale by Client.
- 14.10 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) (2) three days after having been deposited in the United States mail, certified or registered, return receipt requested, postage prepaid; (3) when delivered via electronic commerce (e.g. e-Mail), or (4) one business day after having been dispatched by a nationally recognized overnight courier service, addressed to the parties or their permitted assigns. All notices shall be delivered to the Party's addresses provided herein.

End of Agreement