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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 8-K**

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **June 21, 2016**

**DigiPath, Inc.**

(Exact name of registrant as specified in charter)

**Nevada**

(State or other Jurisdiction of Incorporation or Organization)

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**000-54239**

(Commission  
File Number)

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**27-3601979**

(IRS Employer  
Identification No.)

**6450 Cameron Street, Suite 113**

**Las Vegas, NV 89118**

(Address of Principal Executive Offices and zip code)

**(702) 527-2060**

(Registrant's telephone  
number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12(b) under the Exchange Act (17 CFR 240.14a-12(b))
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 3.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

Amended and Restated 2012 Stock Incentive Plan

On June 21, 2016, the Board of Directors (the “Board”) of DigiPath, Inc. (the “Company”) amended and restated the Company’s 2012 Stock Incentive Plan (the “Stock Plan”). The amendments to the Stock Plan, among other things, (i) increase the total number of shares of Common Stock which may be subject to awards issued under the Stock Plan from 3,000,000 to 11,500,000, and (ii) generally update and clarify the terms of the Stock Plan. Below is a brief summary of the terms of the Stock Plan, as amended.

The Stock Plan provides for the granting to the Company’s employees, officers, directors, consultants and advisors of stock options (non-statutory and incentive), restricted stock awards, stock appreciation rights (“SARs”), restricted stock units (“RSUs”) and other performance stock awards. The purpose of the Stock Plan is to secure for the Company and its stockholders the benefits arising from capital stock ownership by eligible participants who are expected to contribute to the Company’s future growth and success. Unless sooner terminated in accordance with its terms, the Stock Plan will terminate on March 5, 2022.

The Stock Plan is administered by the Board, which may delegate any or all of its powers under the plan to a committee it appoints. Subject to the terms of the Stock Plan, the Board (or such committee) has the authority to determine the individuals to whom, and the time or times at which, awards are made, the size of each award, and the other terms and conditions of each award (which need not be identical across participants). The Board also has the authority, subject to the express provisions of the Stock Plan, to construe the respective agreements under the plan, proscribe, amend and rescind rules and regulations relating to the plan, accelerate or extend the dates options may be exercised or accelerate the vesting of other stock awards, and make all other determinations which are in the Board’s judgment necessary or desirable for the administration of the plan. The Board’s construction and interpretation of the terms and provisions of the Stock Plan are final and conclusive.

The Board may at any time, and from time to time, modify or amend the Stock Plan in any respect, provided that no such modification or amendment may adversely affect the rights of a participant under an existing stock award that has been previously granted. The Board may at any time suspend or terminate the Stock Plan, provided that any such suspension or termination shall not adversely affect the rights of a participant under any stock award previously granted while the Stock Plan is in effect except with the consent of the participant.

The foregoing is a summary of the Stock Plan, does not purport to be complete, and is subject to and qualified in its entirety by reference to the text of the Stock Plan and related forms of option agreements, which have been filed as exhibits to this Current Report on Form 8-K.

Appointment of Joseph J. Bianco as Chief Executive Officer

On June 21, 2016, the Board appointed Joseph J. Bianco, one of our directors, to serve as the Company’s Chief Executive Officer. As described further below, Todd Denkin, the Company’s Chief Executive Officer prior to such appointment, now serves as the Company’s President and Chief Operating Officer, and as the President of DigiPath’s wholly-owned subsidiaries, DigiPath Labs Inc. and TNM News Corp.

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Mr. Bianco, 65, has been a director of the Company since October 2015 and serves as its Chairman. Mr. Bianco has been the Chief Executive Officer of Whyte Lyon & Company, Inc. since 1984. Mr. Bianco also currently serves as Chairman and CEO of Oak Tree Education. He is also a Director and Chairman of SkinScience Labs, Inc. and of XTOL. He is also Chairman of Evergreen Review, Inc., a not-for-profit revival of a literary magazine prominent in the 1960's and 1970's. Mr. Bianco graduated from Yale Law School where he was an editor of the Law Journal. He began his career teaching law, joining the faculty of Cardozo law school where he became Associate Dean. He authored two books, "The Law of Corporations" (Foundation Press, University Casebook Series), with Yale Prof. Jan Deutsch, and "The Law of Unmarried Couples" (Dell), as well as several scholarly articles. During this period he also consulted to numerous corporations and investment banks, principally on tax matters.

In connection with his appointment as Chief Executive Officer, Mr. Bianco entered into an Employment Agreement with the Company dated June 21, 2016 (the "Bianco Employment Agreement"). Pursuant to the Bianco Employment Agreement:

- The term of Mr. Bianco's employment is for a period of three years commencing June 21, 2016.
- Mr. Bianco will be paid a base salary of \$96,000 per annum and receive a car allowance of \$1,250 per month.
- In the event of the termination of Mr. Bianco's employment by the Company other than for Cause, or by Mr. Bianco for Good Reason (as such terms are defined in the Bianco Employment Agreement), Mr. Bianco will be entitled to aggregate severance payments equal to 6-months' of his base salary.
- Mr. Bianco was awarded a stock option to purchase 4,750,000 shares of the Company's common stock at an exercise price of \$0.20 per share. The option vests immediately as to one-half of the shares, one year from the grant date as to one-quarter of the shares, and two years following the grant date as to the remaining one-quarter of the shares.
- The letter agreement between Mr. Bianco's affiliate and the Company pursuant to which Mr. Bianco had provided consulting services to the Company has been terminated.

The foregoing is a summary of the terms of the Bianco Employment Agreement, does not purport to be complete, and is subject to and qualified in its entirety by reference to the text of such agreement, which has been filed as an exhibit to this Current Report on Form 8-K.

#### Todd Denkin Amended and Restated Employment Agreement

In connection with Mr. Bianco's appointment as the Company's Chief Executive Officer, on June 21, 2016, the Company entered into an Amended and Restated Employment Agreement with Todd Denkin (the "Denkin Employment Agreement"), pursuant to which Mr. Denkin will continue to serve as the Company's President, and in addition as its Chief Operating Officer, and as the President of DigiPath's wholly-owned subsidiaries, Digipath Labs Inc. and TNM News Corp. In addition, pursuant to the Denkin Employment Agreement:

- The term of Mr. Denkin's employment has been extended for a period of three years from June 21, 2016.
  - Mr. Denkin will continue to be paid a base salary of \$192,000 per annum, and will receive a car allowance of \$750 per month.
  - In the event of the termination of Mr. Denkin's employment by the Company other than for Cause, or by Mr. Denkin for Good Reason (as such terms are defined in the Denkin Employment Agreement), Mr. Denkin will be entitled to aggregate severance payments equal to 8-months' of his base salary.
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- Mr. Denkin was awarded a stock option to purchase 2,500,000 shares of the Company's common stock at an exercise price of \$0.20 per share. The option vests immediately as to one-half of the shares, one year from the grant date as to one-quarter of the shares, and two years following the grant date as to the remaining one-quarter of the shares.

The foregoing is a summary of the terms of the Denkin Employment Agreement, does not purport to be complete, and is subject to and qualified in its entirety by reference to the text of such agreement, which has been filed as an exhibit to this Current Report on Form 8-K.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits.

Exhibit 10.1 DigiPath, Inc. Amended and Restated 2012 Stock Incentive Plan

Exhibit 10.2 Form of Stock Option Grant Notice for grants under the Amended and Restated 2012 Stock Incentive Plan

Exhibit 10.3 Form of Option Agreement for grants under the Amended and Restated 2012 Stock Incentive Plan

Exhibit 10.4 Employment Agreement between DigiPath, Inc. and Joseph J. Bianco, dated as of June 21, 2016

Exhibit 10.5 Amended and Restated Employment Agreement between DigiPath, Inc. and Todd Denkin, dated as of June 21, 2016

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**DigiPath, Inc.**

Date: June 27, 2016

By: */s/ Todd Denkin*

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Todd Denkin  
President and Chief Operating Officer

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## EXHIBIT INDEX

No.	Description
Exhibit 10.1	DigiPath, Inc. Amended and Restated 2012 Stock Incentive Plan
Exhibit 10.2	Form of Stock Option Grant Notice for grants under the Amended and Restated 2012 Stock Incentive Plan
Exhibit 10.3	Form of Option Agreement for grants under the Amended and Restated 2012 Stock Incentive Plan
Exhibit 10.4	Employment Agreement between DigiPath, Inc. and Joseph J. Bianco, dated as of June 21, 2016
Exhibit 10.5	Amended and Restated Employment Agreement between DigiPath, Inc. and Todd Denkin, dated as of June 21, 2016

**DIGIPATH, INC.**

**AMENDED AND RESTATED  
2012 STOCK INCENTIVE PLAN**

**INITIALLY ADOPTED: MARCH 5, 2012**

**AMENDED AND RESTATED: JUNE 21, 2016**

**1. GENERAL.**

**(a) Eligible Award Recipients.** The persons eligible to receive Awards are Employees, Directors and Consultants.

**(b) Available Awards.** The Plan provides for the grant of the following Awards: (i) Incentive Stock Options, (ii) Nonstatutory Stock Options, (iii) Stock Appreciation Rights (iv) Restricted Stock Awards, (v) Restricted Stock Unit Awards, (vi) Performance Stock Awards, (vii) Performance Cash Awards, and (viii) Other Stock Awards.

**(c) Purpose.** The Company, by means of the Plan, seeks to secure and retain the services of the group of persons eligible to receive Awards as set forth in Section 1(a), to provide incentives for such persons to exert maximum efforts for the success of the Company and any Affiliate and to provide a means by which such eligible recipients may be given an opportunity to benefit from increases in value of the Common Stock through the granting of Awards.

**2. ADMINISTRATION.**

**(a) Administration by Board.** The Board shall administer the Plan unless and until the Board delegates administration of the Plan to a Committee or Committees, as provided in Section 2(c).

**(b) Powers of Board.** The Board shall have the power, subject to, and within the limitations of, the express provisions of the Plan:

**(i)** To determine from time to time (A) which of the persons eligible under the Plan shall be granted Awards; (B) when and how each Award shall be granted; (C) what type or combination of types of Award shall be granted; (D) the provisions of each Award granted (which need not be identical), including the time or times when a person shall be permitted to receive cash or Common Stock pursuant to a Stock Award; (E) the number of shares of Common Stock with respect to which a Stock Award shall be granted to each such person; and (F) the Fair Market Value applicable to a Stock Award.

**(ii)** To construe and interpret the Plan and Awards granted under it, and to establish, amend and revoke rules and regulations for its administration. The Board, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan or in any Stock Award Agreement or in the written terms of a Performance Cash Award, in a manner and to the extent it shall deem necessary or expedient to make the Plan or Award fully effective.

**(iii)** To settle all controversies regarding the Plan and Awards granted under it.

(iv) To accelerate the time at which an Award may first be exercised or the time during which an Award or any part thereof will vest in accordance with the Plan, notwithstanding the provisions in the Award stating the time at which it may first be exercised or the time during which it will vest.

(v) To suspend or terminate the Plan at any time. Suspension or termination of the Plan shall not impair rights and obligations under any Award granted while the Plan is in effect except with the written consent of the affected Participant.

(vi) To amend the Plan in any respect the Board deems necessary or advisable, including, without limitation, by adopting amendments relating to Incentive Stock Options and certain nonqualified deferred compensation under Section 409A of the Code and/or to bring the Plan or Awards granted under the Plan into compliance therewith, subject to the limitations, if any, of applicable law. However, except as provided in Section 9(a) relating to Capitalization Adjustments, to the extent required by applicable law or listing requirements, stockholder approval shall be required for any amendment of the Plan that either (A) materially increases the number of shares of Common Stock available for issuance under the Plan, (B) materially expands the class of individuals eligible to receive Awards under the Plan, (C) materially increases the benefits accruing to Participants under the Plan or materially reduces the price at which shares of Common Stock may be issued or purchased under the Plan, (D) materially extends the term of the Plan, or (E) expands the types of Awards available for issuance under the Plan. Except as provided above, rights under any Award granted before amendment of the Plan shall not be impaired by any amendment of the Plan unless (1) the Company requests the consent of the affected Participant, and (2) such Participant consents in writing.

(vii) To submit any amendment to the Plan for stockholder approval, including, but not limited to, amendments to the Plan intended to satisfy the requirements of (A) Section 162(m) of the Code regarding the exclusion of performance-based compensation from the limit on corporate deductibility of compensation paid to Covered Employees, (B) Section 422 of the Code regarding “incentive stock options” or (C) Rule 16b-3.

(viii) To approve forms of Award Agreements for use under the Plan and to amend the terms of any one or more Awards, including, but not limited to, amendments to provide terms more favorable to the Participant than previously provided in the Award Agreement, subject to any specified limits in the Plan that are not subject to Board discretion; *provided however*, that except with respect to amendments that disqualify or impair the status of an Incentive Stock Option, a Participant’s rights under any Award shall not be impaired by any such amendment unless (A) the Company requests the consent of the affected Participant, and (B) such Participant consents in writing. Notwithstanding the foregoing, subject to the limitations of applicable law, if any, the Board may amend the terms of any one or more Awards without the affected Participant’s consent if necessary to maintain the qualified status of the Award as an Incentive Stock Option or to bring the Award into compliance with Section 409A of the Code.

(ix) Generally, to exercise such powers and to perform such acts as the Board deems necessary or expedient to promote the best interests of the Company and that are not in conflict with the provisions of the Plan or Awards.

(x) To adopt such procedures and sub-plans as are necessary or appropriate to permit participation in the Plan by Employees, Directors or Consultants who are foreign nationals or employed outside the United States.



**(c) Delegation to Committee.**

**(i) General.** The Board may delegate some or all of the administration of the Plan to a Committee or Committees. If administration of the Plan is delegated to a Committee, the Committee shall have, in connection with the administration of the Plan, the powers theretofore possessed by the Board that have been delegated to the Committee, including the power to delegate to a subcommittee of the Committee any of the administrative powers the Committee is authorized to exercise (and references in this Plan to the Board shall thereafter be to the Committee or subcommittee), subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may be adopted from time to time by the Board. The Board may retain the authority to concurrently administer the Plan with the Committee and may, at any time, revert in the Board some or all of the powers previously delegated.

**(ii) Section 162(m) and Rule 16b-3 Compliance.** The Committee may consist solely of two or more Outside Directors, in accordance with Section 162(m) of the Code, or solely of two or more Non-Employee Directors, in accordance with Rule 16b-3.

**(d) Effect of Board's Decision.** All determinations, interpretations and constructions made by the Board in good faith shall not be subject to review by any person and shall be final, binding and conclusive on all persons.

**(e) Cancellation and Re-Grant of Stock Awards .** Neither the Board nor any Committee shall have the authority to: (i) reduce the exercise price of any outstanding Options or Stock Appreciation Rights under the Plan, or (ii) cancel any outstanding Options or Stock Appreciation Rights that have an exercise price or strike price greater than the current Fair Market Value of the Common Stock in exchange for cash or other Stock Awards under the Plan, unless the stockholders of the Company have approved such an action within twelve (12) months prior to such an event. Notwithstanding the foregoing, the Board or Committee shall have the authority, without the approval of the Company's stockholders, to cancel outstanding Options or Stock Appreciation Rights that have an exercise price or strike price greater than the current Fair Market Value of the Common Stock in exchange only for a nominal cash payment of consideration as necessary to effect a cancellation of the Award, provided that such cancellation is not treated as a repricing under United States generally accepted accounting principles.

**3. SHARES SUBJECT TO THE PLAN.**

**(a) Share Reserve.** Subject to Section 9(a) relating to Capitalization Adjustments, the aggregate number of shares of Common Stock that may be issued pursuant to Stock Awards from and after the Effective Date shall not exceed Eleven Million Five Hundred Thousand (11,500,000) shares.

**(b) Reversion of Shares to the Share Reserve.** If any shares of common stock issued pursuant to a Stock Award are forfeited back to the Company because of the failure to meet a contingency or condition required to vest such shares in the Participant, then the shares that are forfeited shall revert to and again become available for issuance under the Plan. Any shares reacquired by the Company pursuant to Section 8(g) or as consideration for the exercise of an Option shall again become available for issuance under the Plan.

**(c) Incentive Stock Option Limit.** Notwithstanding anything to the contrary in this Section 3 and, subject to the provisions of Section 9(a) relating to Capitalization Adjustments, the aggregate maximum number of shares of Common Stock that may be issued pursuant to the exercise of Incentive Stock Options shall be Eleven Million Five Hundred Thousand (11,500,000) shares of Common Stock.

**(d) Source of Shares.** The stock issuable under the Plan shall be shares of authorized but unissued or reacquired Common Stock, including shares repurchased by the Company on the open market or otherwise.

#### 4. ELIGIBILITY.

**(a) Eligibility for Specific Stock Awards .** Incentive Stock Options may be granted only to employees of the Company or a “parent corporation” or “subsidiary corporation” thereof (as such terms are defined in Sections 424(e) and (f) of the Code). Stock Awards other than Incentive Stock Options may be granted to Employees, Directors and Consultants; *provided, however* , Nonstatutory Stock Options and SARs may not be granted to Employees, Directors and Consultants who are providing Continuous Service only to any “parent” of the Company, as such term is defined in Rule 405, unless the stock underlying such Stock Awards is treated as “service recipient stock” under Section 409A of the Code because the Stock Awards are granted pursuant to a corporate transaction (such as a spin off transaction) or unless such Stock Awards comply with the distribution requirements of Section 409A of the Code.

**(b) Ten Percent Stockholders.** A Ten Percent Stockholder shall not be granted an Incentive Stock Option unless the exercise price of such Option is at least one hundred ten percent (110%) of the Fair Market Value on the date of grant and the Option is not exercisable after the expiration of five (5) years from the date of grant.

**(c) Section 162(m) Limitation on Annual Grants .** Subject to the provisions of Section 9(a) relating to Capitalization Adjustments, at such time as the Company may be subject to the applicable provisions of Section 162(m) of the Code, no Participant shall be eligible to be granted during any calendar year Options, Stock Appreciation Rights and Other Stock Awards whose value is determined by reference to an increase over an exercise or strike price of at least one hundred percent (100%) of the Fair Market Value on the date the Stock Award is granted covering more than Eight Million Five Hundred Thousand (8,500,000) shares of Common Stock.

#### 5. PROVISIONS RELATING TO OPTIONS AND STOCK APPRECIATION RIGHTS.

Each Option or SAR shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. All Options shall be separately designated Incentive Stock Options or Nonstatutory Stock Options at the time of grant, and, if certificates are issued, a separate certificate or certificates shall be issued for shares of Common Stock purchased on exercise of each type of Option. If an Option is not specifically designated as an Incentive Stock Option, then the Option shall be a Nonstatutory Stock Option. The provisions of separate Options or SARs need not be identical; *provided, however* , that each Option Agreement or Stock Appreciation Right Agreement shall conform to (through incorporation of provisions hereof by reference in the applicable Award Agreement or otherwise) the substance of each of the following provisions:

**(a) Term.** Subject to the provisions of Section 4(b) regarding Ten Percent Stockholders, no Option or SAR shall be exercisable after the expiration of ten (10) years from the date of its grant or such shorter period specified in the Award Agreement.

**(b) Exercise Price.** Subject to the provisions of Section 4(b) regarding Ten Percent Stockholders, the exercise price (or strike price) of each Option or SAR shall be not less than one hundred percent (100%) of the Fair Market Value of the Common Stock subject to the Option or SAR on the date the Option or SAR is granted. Notwithstanding the foregoing, an Option or SAR may be granted with an exercise price (or strike price) lower than one hundred percent (100%) of the Fair Market Value of the Common Stock subject to the Option or SAR if such Option or SAR is granted pursuant to an assumption of or substitution for another option or stock appreciation right pursuant to a Corporate Transaction and in a manner consistent with the provisions of Sections 409A and, if applicable, 424(a) of the Code. Each SAR will be denominated in shares of Common Stock equivalents.

**(c) Purchase Price for Options.** The purchase price of Common Stock acquired pursuant to the exercise of an Option shall be paid, to the extent permitted by applicable law and as determined by the Board in its sole discretion, by any combination of the methods of payment set forth below. The Board shall have the authority to grant Options that do not permit all of the following methods of payment (or otherwise restrict the ability to use certain methods) and to grant Options that require the consent of the Company to utilize a particular method of payment. The permitted methods of payment are as follows:

(i) by cash, check, bank draft or money order payable to the Company;

(ii) pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of the stock subject to the Option, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds;

(iii) by delivery to the Company (either by actual delivery or attestation) of shares of Common Stock;

(iv) by a “net exercise” arrangement pursuant to which the Company will reduce the number of shares of Common Stock issuable upon exercise by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price; *provided, however*, that the Company shall accept a cash or other payment from the Participant to the extent of any remaining balance of the aggregate exercise price not satisfied by such reduction in the number of whole shares to be issued; *provided, further*, that shares of Common Stock will no longer be subject to an Option and will not be exercisable thereafter to the extent that (A) shares issuable upon exercise are reduced to pay the exercise price pursuant to the “net exercise,” (B) shares are delivered to the Participant as a result of such exercise, and (C) shares are withheld to satisfy tax withholding obligations; or

(v) in any other form of legal consideration that may be acceptable to the Board.

**(d) Exercise and Payment of a SAR.** To exercise any outstanding Stock Appreciation Right, the Participant must provide written notice of exercise to the Company in compliance with the provisions of the Stock Appreciation Right Agreement evidencing such Stock Appreciation Right. The appreciation distribution payable on the exercise of a Stock Appreciation Right will be not greater than an amount equal to the excess of (A) the aggregate Fair Market Value (on the date of the exercise of the Stock Appreciation Right) of a number of shares of Common Stock equal to the number of Common Stock equivalents in which the Participant is vested under such Stock Appreciation Right, and with respect to which the Participant is exercising the Stock Appreciation Right on such date, over (B) the strike price that will be determined by the Board at the time of grant of the Stock Appreciation Right. The appreciation distribution in respect to a Stock Appreciation Right may be paid in Common Stock, in cash, in any combination of the two or in any other form of consideration, as determined by the Board and contained in the Stock Appreciation Right Agreement evidencing such Stock Appreciation Right.

**(e) Transferability of Options and SARs.** The Board may, in its sole discretion, impose such limitations on the transferability of Options and SARs as the Board shall determine. In the absence of such a determination by the Board to the contrary, the following restrictions on the transferability of Options and SARs shall apply:

**(i) Restrictions on Transfer.** An Option or SAR shall not be transferable except by will or by the laws of descent and distribution and shall be exercisable during the lifetime of the Participant only by the Participant; *provided, however*, that the Board may, in its sole discretion, permit transfer of the Option or SAR in a manner that is not prohibited by applicable tax and securities laws upon the Participant's request. Except as explicitly provided herein, neither an Option nor a SAR may be transferred for consideration.

**(ii) Domestic Relations Orders.** Notwithstanding the foregoing, an Option or SAR may be transferred pursuant to a domestic relations order; *provided, however*, that if an Option is an Incentive Stock Option, such Option may be deemed to be a Nonstatutory Stock Option as a result of such transfer.

**(iii) Beneficiary Designation.** Notwithstanding the foregoing, the Participant may, by delivering written notice to the Company, in a form provided by or otherwise satisfactory to the Company and any broker designated by the Company to effect Option exercises, designate a third party who, in the event of the death of the Participant, shall thereafter be entitled to exercise the Option or SAR and receive the Common Stock or other consideration resulting from such exercise. In the absence of such a designation, the executor or administrator of the Participant's estate shall be entitled to exercise the Option or SAR and receive the Common Stock or other consideration resulting from such exercise.

**(f) Vesting Generally.** The total number of shares of Common Stock subject to an Option or SAR may vest and therefore become exercisable in periodic installments that may or may not be equal. The Option or SAR may be subject to such other terms and conditions on the time or times when it may or may not be exercised (which may be based on the satisfaction of Performance Goals or other criteria) as the Board may deem appropriate. The vesting provisions of individual Options or SARs may vary. The provisions of this Section 5(f) are subject to any Option or SAR provisions governing the minimum number of shares of Common Stock as to which an Option or SAR may be exercised.

**(g) Termination of Continuous Service.** Except as otherwise provided in the applicable Award Agreement or other agreement between the Participant and the Company, if a Participant's Continuous Service terminates (other than for Cause or upon the Participant's death or Disability), the Participant may exercise his or her Option or SAR (to the extent that the Participant was entitled to exercise such Award as of the date of termination of Continuous Service) but only within such period of time ending on the earlier of (i) the date three (3) months following the termination of the Participant's Continuous Service (or such longer or shorter period specified in the applicable Award Agreement), or (ii) the expiration of the term of the Option or SAR as set forth in the Award Agreement. If, after termination of Continuous Service, the Participant does not exercise his or her Option or SAR within the time specified herein or in the Award Agreement (as applicable), the Option or SAR shall terminate.

**(h) Extension of Termination Date.** If the exercise of an Option or SAR following the termination of the Participant's Continuous Service (other than for Cause or upon the Participant's death or Disability) would be prohibited at any time solely because the issuance of shares of Common Stock would violate the registration requirements under the Securities Act, then the Option or SAR shall terminate on the earlier of (i) the expiration of a total period of three (3) months (that need not be consecutive) after the termination of the Participant's Continuous Service during which the exercise of the Option or SAR would not be in violation of such registration requirements, or (ii) the expiration of the term of the Option or SAR as set forth in the applicable Award Agreement. In addition, unless otherwise provided in a Participant's Award Agreement, if the sale of any Common Stock received upon exercise of an Option or SAR following the termination of the Participant's Continuous Service (other than for Cause) would violate the Company's insider trading policy, then the Option or SAR shall terminate on the earlier of (i) the expiration of a period equal to the applicable post-termination exercise period after the termination of the Participant's Continuous Service during which the exercise of the Option or SAR would not be in violation of the Company's insider trading policy, or (ii) the expiration of the term of the Option or SAR as set forth in the applicable Award Agreement.

**(i) Disability of Participant.** Except as otherwise provided in the applicable Award Agreement or other agreement between the Participant and the Company, if a Participant's Continuous Service terminates as a result of the Participant's Disability, the Participant may exercise his or her Option or SAR (to the extent that the Participant was entitled to exercise such Option or SAR as of the date of termination of Continuous Service), but only within such period of time ending on the earlier of (i) the date twelve (12) months following such termination of Continuous Service (or such longer or shorter period specified in the Award Agreement), or (ii) the expiration of the term of the Option or SAR as set forth in the Award Agreement. If, after termination of Continuous Service, the Participant does not exercise his or her Option or SAR within the time specified herein or in the Award Agreement (as applicable), the Option or SAR (as applicable) shall terminate.

**(j) Death of Participant.** Except as otherwise provided in the applicable Award Agreement or other agreement between the Participant and the Company, if (i) a Participant's Continuous Service terminates as a result of the Participant's death, or (ii) the Participant dies within the period (if any) specified in the Award Agreement after the termination of the Participant's Continuous Service for a reason other than death, then the Option or SAR may be exercised (to the extent the Participant was entitled to exercise such Option or SAR as of the date of death) by the Participant's estate, by a person who acquired the right to exercise the Option or SAR by bequest or inheritance or by a person designated to exercise the Option or SAR upon the Participant's death, but only within the period ending on the earlier of (i) the date eighteen (18) months following the date of death (or such longer or shorter period specified in the Award Agreement), or (ii) the expiration of the term of such Option or SAR as set forth in the Award Agreement. If, after the Participant's death, the Option or SAR is not exercised within the time specified herein or in the Award Agreement (as applicable), the Option or SAR shall terminate.

**(k) Termination for Cause.** Except as explicitly provided otherwise in a Participant's Award Agreement, if a Participant's Continuous Service is terminated for Cause, the Option or SAR shall terminate upon the date on which the event giving rise to the termination occurred, and the Participant shall be prohibited from exercising his or her Option or SAR from and after the time of such termination of Continuous Service.

**(l) Non-Exempt Employees .** No Option or SAR granted to an Employee who is a non-exempt employee for purposes of the Fair Labor Standards Act of 1938, as amended, shall be first exercisable for any shares of Common Stock until at least six months following the date of grant of the Option or SAR. Notwithstanding the foregoing, consistent with the provisions of the Worker Economic Opportunity Act, (i) in the event of the Participant's death or Disability, (ii) upon a Corporate Transaction in which such Option or SAR is not assumed, continued, or substituted, (iii) upon a Change in Control, or (iv) upon the Participant's retirement (as such term may be defined in the Participant's Award Agreement or in another applicable agreement or in accordance with the Company's then current employment policies and guidelines), any such vested Options and SARs may be exercised earlier than six months following the date of grant. The foregoing provision is intended to operate so that any income derived by a non-exempt employee in connection with the exercise or vesting of an Option or SAR will be exempt from his or her regular rate of pay.

## 6. PROVISIONS OF STOCK AWARDS OTHER THAN OPTIONS AND SARs.

**(a) Restricted Stock Awards.** Each Restricted Stock Award Agreement shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. To the extent consistent with the Company's Bylaws, at the Board's election, shares of Common Stock may be (x) held in book entry form subject to the Company's instructions until any restrictions relating to the Restricted Stock Award lapse; or (y) evidenced by a certificate, which certificate shall be held in such form and manner as determined by the Board. The terms and conditions of Restricted Stock Award Agreements may change from time to time, and the terms and conditions of separate Restricted Stock Award Agreements need not be identical; *provided, however*, that each Restricted Stock Award Agreement shall conform to (through incorporation of the provisions hereof by reference in the agreement or otherwise) the substance of each of the following provisions:

**(i) Consideration.** A Restricted Stock Award may be awarded in consideration for (A) cash, check, bank draft or money order payable to the Company, (B) past services to the Company or an Affiliate, or (C) any other form of legal consideration (including future services) that may be acceptable to the Board, in its sole discretion, and permissible under applicable law.

**(ii) Vesting.** Shares of Common Stock awarded under the Restricted Stock Award Agreement may be subject to forfeiture to the Company in accordance with a vesting schedule to be determined by the Board.

**(iii) Termination of Participant's Continuous Service.** If a Participant's Continuous Service terminates, the Company may receive through a forfeiture condition or a repurchase right any or all of the shares of Common Stock held by the Participant that have not vested as of the date of termination of Continuous Service under the terms of the Restricted Stock Award Agreement.

**(iv) Transferability.** Rights to acquire shares of Common Stock under the Restricted Stock Award Agreement shall be transferable by the Participant only upon such terms and conditions as are set forth in the Restricted Stock Award Agreement, as the Board shall determine in its sole discretion, so long as Common Stock awarded under the Restricted Stock Award Agreement remains subject to the terms of the Restricted Stock Award Agreement.

**(v) Dividends.** A Restricted Stock Award Agreement may provide that any dividends paid on Restricted Stock will be subject to the same vesting and forfeiture restrictions as apply to the shares subject to the Restricted Stock Award to which they relate.

**(b) Restricted Stock Unit Awards.** Each Restricted Stock Unit Award Agreement shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. The terms and conditions of Restricted Stock Unit Award Agreements may change from time to time, and the terms and conditions of separate Restricted Stock Unit Award Agreements need not be identical; *provided, however*, that each Restricted Stock Unit Award Agreement shall conform to (through incorporation of the provisions hereof by reference in the Agreement or otherwise) the substance of each of the following provisions:

**(i) Consideration.** At the time of grant of a Restricted Stock Unit Award, the Board will determine the consideration, if any, to be paid by the Participant upon delivery of each share of Common Stock subject to the Restricted Stock Unit Award. The consideration to be paid (if any) by the Participant for each share of Common Stock subject to a Restricted Stock Unit Award may be paid in any form of legal consideration that may be acceptable to the Board, in its sole discretion, and permissible under applicable law.

**(ii) Vesting.** At the time of the grant of a Restricted Stock Unit Award, the Board may impose such restrictions on or conditions to the vesting of the Restricted Stock Unit Award as it, in its sole discretion, deems appropriate.

**(iii) Payment** . A Restricted Stock Unit Award may be settled by the delivery of shares of Common Stock, their cash equivalent, any combination thereof or in any other form of consideration, as determined by the Board and contained in the Restricted Stock Unit Award Agreement.

**(iv) Additional Restrictions.** At the time of the grant of a Restricted Stock Unit Award, the Board, as it deems appropriate, may impose such restrictions or conditions that delay the delivery of the shares of Common Stock (or their cash equivalent) subject to a Restricted Stock Unit Award to a time after the vesting of such Restricted Stock Unit Award.

**(v) Dividend Equivalents.** Dividend equivalents may be credited in respect of shares of Common Stock covered by a Restricted Stock Unit Award, as determined by the Board and contained in the Restricted Stock Unit Award Agreement. At the sole discretion of the Board, such dividend equivalents may be converted into additional shares of Common Stock covered by the Restricted Stock Unit Award in such manner as determined by the Board. Any additional shares covered by the Restricted Stock Unit Award credited by reason of such dividend equivalents will be subject to all of the same terms and conditions of the underlying Restricted Stock Unit Award Agreement to which they relate.

**(vi) Termination of Participant's Continuous Service.** Except as otherwise provided in the applicable Restricted Stock Unit Award Agreement, such portion of the Restricted Stock Unit Award that has not vested will be forfeited upon the Participant's termination of Continuous Service.

**(c) Performance Awards .**

**(i) Performance Stock Awards** . A Performance Stock Award is a Stock Award that may vest or may be exercised contingent upon the attainment during a Performance Period of certain Performance Goals. A Performance Stock Award may, but need not, require the completion of a specified period of Continuous Service. The length of any Performance Period, the Performance Goals to be achieved during the Performance Period, and the measure of whether and to what degree such Performance Goals have been attained shall be conclusively determined by the Committee, in its sole discretion. The Board may provide for or, subject to such terms and conditions as the Board may specify, may permit a Participant to elect for, the payment of any Performance Stock Award to be deferred to a specified date or event. In addition, to the extent permitted by applicable law and the applicable Award Agreement, the Board may determine that cash may be used in payment of Performance Stock Awards.

**(ii) Performance Cash Awards** . A Performance Cash Award is a cash award that may be paid contingent upon the attainment during a Performance Period of certain Performance Goals. A Performance Cash Award may also require the completion of a specified period of Continuous Service. At the time of grant of a Performance Cash Award, the length of any Performance Period, the Performance Goals to be achieved during the Performance Period, and the measure of whether and to what degree such Performance Goals have been attained shall be conclusively determined by the Committee, in its sole discretion. The Board may provide for or, subject to such terms and conditions as the Board may specify, may permit a Participant to elect for, the payment of any Performance Cash Award to be deferred to a specified date or event. The Committee may specify the form of payment of Performance Cash Awards, which may be cash or other property, or may provide for a Participant to have the option for his or her Performance Cash Award, or such portion thereof as the Board may specify, to be paid in whole or in part in cash or other property.

**(iii) Section 162(m) Compliance** . Unless otherwise permitted in compliance with the requirements of Section 162(m) of the Code with respect to an Award intended to qualify as “performance-based compensation” thereunder, the Committee shall establish the Performance Goals applicable to, and the formula for calculating the amount payable under, the Award no later than the earlier of (a) the date ninety (90) days after the commencement of the applicable Performance Period, or (b) the date on which twenty-five (25%) of the Performance Period has elapsed, and in any event at a time when the achievement of the applicable Performance Goals remains substantially uncertain. Prior to the payment of any compensation under an Award intended to qualify as “performance-based compensation” under Section 162(m) of the Code, the Committee shall certify the extent to which any Performance Goals and any other material terms under such Award have been satisfied (other than in cases where such relate solely to the increase in the value of the Common Stock). Notwithstanding satisfaction of any completion of any Performance Goals, to the extent specified at the time of grant of an Award to “covered employees” within the meaning of Section 162(m) of the Code, the number of Shares, Options, cash or other benefits granted, issued, retainable and/or vested under an Award on account of satisfaction of such Performance Goals may be reduced by the Committee on the basis of such further considerations as the Committee, in its sole discretion, shall determine.

**(d) Other Stock Awards** . Other forms of Stock Awards valued in whole or in part by reference to, or otherwise based on, Common Stock, including the appreciation in value thereof (e.g., options or stock rights with an exercise price or strike price less than 100% of the Fair Market Value of the Common Stock at the time of grant) may be granted either alone or in addition to Stock Awards provided for under Section 5 and the preceding provisions of this Section 6. Subject to the provisions of the Plan, the Board shall have sole and complete authority to determine the persons to whom and the time or times at which such Other Stock Awards will be granted, the number of shares of Common Stock (or the cash equivalent thereof) to be granted pursuant to such Other Stock Awards and all other terms and conditions of such Other Stock Awards.

## 7. COVENANTS OF THE COMPANY.

**(a) Availability of Shares.** During the terms of the Stock Awards, the Company shall keep available at all times the number of shares of Common Stock reasonably required to satisfy such Stock Awards.

**(b) Securities Law Compliance.** The Company shall seek to obtain from each regulatory commission or agency having jurisdiction over the Plan such authority as may be required to grant Stock Awards and to issue and sell shares of Common Stock upon exercise of the Stock Awards; *provided, however* , that this undertaking shall not require the Company to register under the Securities Act the Plan, any Stock Award or any Common Stock issued or issuable pursuant to any such Stock Award. If, after reasonable efforts, the Company is unable to obtain from any such regulatory commission or agency the authority that counsel for the Company deems necessary for the lawful issuance and sale of Common Stock under the Plan, the Company shall be relieved from any liability for failure to issue and sell Common Stock upon exercise of such Stock Awards unless and until such authority is obtained. A Participant shall not be eligible for the grant of a Stock Award or the subsequent issuance of Common Stock pursuant to the Stock Award if such grant or issuance would be in violation of any applicable securities law.

**(c) No Obligation to Notify or Minimize Taxes.** The Company shall have no duty or obligation to any Participant to advise such holder as to the time or manner of exercising such Stock Award. Furthermore, the Company shall have no duty or obligation to warn or otherwise advise such holder of a pending termination or expiration of a Stock Award or a possible period in which the Stock Award may not be exercised. The Company has no duty or obligation to minimize the tax consequences of a Stock Award to the holder of such Stock Award.



## 8. MISCELLANEOUS.

**(a) Use of Proceeds from Sales of Common Stock.** Proceeds from the sale of shares of Common Stock pursuant to Stock Awards shall constitute general funds of the Company.

**(b) Corporate Action Constituting Grant of Stock Awards.** Corporate action constituting a grant by the Company of a Stock Award to any Participant shall be deemed completed as of the date of such corporate action, unless otherwise determined by the Board, regardless of when the instrument, certificate, or letter evidencing the Stock Award is communicated to, or actually received or accepted by, the Participant.

**(c) Stockholder Rights.** No Participant shall be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Common Stock subject to such Stock Award unless and until (i) such Participant has satisfied all requirements for exercise of the Stock Award pursuant to its terms, if applicable, and (ii) the issuance of the Common Stock subject to such Stock Award has been entered into the books and records of the Company.

**(d) No Employment or Other Service Rights.** Nothing in the Plan, any Stock Award Agreement or any other instrument executed thereunder or in connection with any Award granted pursuant thereto shall confer upon any Participant any right to continue to serve the Company or an Affiliate in the capacity in effect at the time the Stock Award was granted or shall affect the right of the Company or an Affiliate to terminate (i) the employment of an Employee with or without notice and with or without cause, (ii) the service of a Consultant pursuant to the terms of such Consultant's agreement with the Company or an Affiliate, or (iii) the service of a Director pursuant to the Bylaws of the Company or an Affiliate, and any applicable provisions of the corporate law of the state in which the Company or the Affiliate is incorporated, as the case may be.

**(e) Incentive Stock Option \$100,000 Limitation.** To the extent that the aggregate Fair Market Value (determined at the time of grant) of Common Stock with respect to which Incentive Stock Options are exercisable for the first time by any Optionholder during any calendar year (under all plans of the Company and any Affiliates) exceeds one hundred thousand dollars (\$100,000), the Options or portions thereof that exceed such limit (according to the order in which they were granted) shall be treated as Nonstatutory Stock Options, notwithstanding any contrary provision of the applicable Option Agreement(s).

**(f) Investment Assurances.** The Company may require a Participant, as a condition of exercising or acquiring Common Stock under any Stock Award, (i) to give written assurances satisfactory to the Company as to the Participant's knowledge and experience in financial and business matters and/or to employ a purchaser representative reasonably satisfactory to the Company who is knowledgeable and experienced in financial and business matters and that he or she is capable of evaluating, alone or together with the purchaser representative, the merits and risks of exercising the Stock Award; and (ii) to give written assurances satisfactory to the Company stating that the Participant is acquiring Common Stock subject to the Stock Award for the Participant's own account and not with any present intention of selling or otherwise distributing the Common Stock. The foregoing requirements, and any assurances given pursuant to such requirements, shall be inoperative if (A) the issuance of the shares upon the exercise or acquisition of Common Stock under the Stock Award has been registered under a then currently effective registration statement under the Securities Act, or (B) as to any particular requirement, a determination is made by counsel for the Company that such requirement need not be met in the circumstances under the then applicable securities laws. The Company may, upon advice of counsel to the Company, place legends on stock certificates issued under the Plan as such counsel deems necessary or appropriate in order to comply with applicable securities laws, including, but not limited to, legends restricting the transfer of the Common Stock.

**(g) Withholding Obligations.** Unless prohibited by the terms of a Stock Award Agreement, the Company may, in its sole discretion, satisfy any federal, state or local tax withholding obligation relating to an Award by any of the following means or by a combination of such means: (i) causing the Participant to tender a cash payment; (ii) withholding shares of Common Stock from the shares of Common Stock issued or otherwise issuable to the Participant in connection with the Award; *provided, however*, that no shares of Common Stock are withheld with a value exceeding the minimum amount of tax required to be withheld by law (or such lesser amount as may be necessary to avoid classification of the Stock Award as a liability for financial accounting purposes); (iii) withholding cash from an Award settled in cash; (iv) withholding payment from any amounts otherwise payable to the Participant; or (v) by such other method as may be set forth in the Award Agreement.

**(h) Electronic Delivery .** Any reference herein to a “written” agreement or document shall include any agreement or document delivered electronically or posted on the Company’s intranet.

**(i) Deferrals.** To the extent permitted by applicable law, the Board, in its sole discretion, may determine that the delivery of Common Stock or the payment of cash, upon the exercise, vesting or settlement of all or a portion of any Award may be deferred and may establish programs and procedures for deferral elections to be made by Participants. Deferrals by Participants will be made in accordance with Section 409A of the Code. Consistent with Section 409A of the Code, the Board may provide for distributions while a Participant is still an employee or otherwise providing services to the Company. The Board is authorized to make deferrals of Awards and determine when, and in what annual percentages, Participants may receive payments, including lump sum payments, following the Participant’s termination of Continuous Service, and implement such other terms and conditions consistent with the provisions of the Plan and in accordance with applicable law.

**(j) Compliance with Section 409A.** To the extent that the Board determines that any Award granted hereunder is subject to Section 409A of the Code, the Award Agreement evidencing such Award shall incorporate the terms and conditions necessary to avoid the consequences specified in Section 409A(a)(1) of the Code. To the extent applicable, the Plan and Award Agreements shall be interpreted in accordance with Section 409A of the Code. Notwithstanding anything to the contrary in this Plan (and unless the Award Agreement specifically provides otherwise), if the Shares are publicly traded and a Participant holding an Award that constitutes “deferred compensation” under Section 409A of the Code is a “specified employee” for purposes of Section 409A of the Code, no distribution or payment of any amount shall be made upon a “separation from service” before a date that is six (6) months following the date of such Participant’s “separation from service” (as defined in Section 409A of the Code without regard to alternative definitions thereunder) or, if earlier, the date of the Participant’s death.

#### **9. ADJUSTMENTS UPON CHANGES IN COMMON STOCK; OTHER CORPORATE EVENTS.**

**(a) Capitalization Adjustments .** In the event of a Capitalization Adjustment, the Board shall appropriately and proportionately adjust: (i) the class(es) and maximum number of securities subject to the Plan pursuant to Section 3(a), (ii) the class(es) and maximum number of securities that may be issued pursuant to the exercise of Incentive Stock Options pursuant to Section 3(c), (iii) the class(es) and maximum number of securities that may be awarded to any person pursuant to Sections 4(c) and 6(c)(i) , and (iv) the class(es) and number of securities and price per share of stock subject to outstanding Stock Awards. The Board shall make such adjustments, and its determination shall be final, binding and conclusive.

**(b) Dissolution or Liquidation** . Except as otherwise provided in the Stock Award Agreement, in the event of a dissolution or liquidation of the Company, all outstanding Stock Awards (other than Stock Awards consisting of vested and outstanding shares of Common Stock not subject to a forfeiture condition or the Company's right of repurchase) shall terminate immediately prior to the completion of such dissolution or liquidation, and the shares of Common Stock subject to the Company's repurchase rights or subject to a forfeiture condition may be repurchased or reacquired by the Company notwithstanding the fact that the holder of such Stock Award is providing Continuous Service, *provided, however* , that the Board may, in its sole discretion, cause some or all Stock Awards to become fully vested, exercisable and/or no longer subject to repurchase or forfeiture (to the extent such Stock Awards have not previously expired or terminated) before the dissolution or liquidation is completed but contingent on its completion.

**(c) Corporate Transaction.** The following provisions shall apply to Stock Awards in the event of a Corporate Transaction unless otherwise provided in the instrument evidencing the Stock Award or any other written agreement between the Company or any Affiliate and the holder of the Stock Award or unless otherwise expressly provided by the Board at the time of grant of a Stock Award. In the event of a Corporate Transaction, then, notwithstanding any other provision of the Plan, the Board shall take one or more of the following actions with respect to Stock Awards, contingent upon the closing or completion of the Corporate Transaction:

**(i)** arrange for the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company) to assume or continue the Stock Award or to substitute a similar stock award for the Stock Award (including, but not limited to, an award to acquire the same consideration paid to the stockholders of the Company pursuant to the Corporate Transaction);

**(ii)** arrange for the assignment of any reacquisition or repurchase rights held by the Company in respect of Common Stock issued pursuant to the Stock Award to the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company);

**(iii)** accelerate the vesting of the Stock Award (and, if applicable, the time at which the Stock Award may be exercised) to a date prior to the effective time of such Corporate Transaction as the Board shall determine (or, if the Board shall not determine such a date, to the date that is five (5) days prior to the effective date of the Corporate Transaction), with such Stock Award terminating if not exercised (if applicable) at or prior to the effective time of the Corporate Transaction;

**(iv)** arrange for the lapse of any reacquisition or repurchase rights held by the Company with respect to the Stock Award;

**(v)** cancel or arrange for the cancellation of the Stock Award, to the extent not vested or not exercised prior to the effective time of the Corporate Transaction, in exchange for such cash consideration, if any, as the Board, in its sole discretion, may consider appropriate; and

**(vi)** make a payment, in such form as may be determined by the Board equal to the excess, if any, of (A) the value of the property the Participant would have received upon the exercise of the Stock Award, over (B) any exercise price payable by such holder in connection with such exercise.

The Board need not take the same action or actions with respect to all Stock Awards or portions thereof or with respect to all Participants.

**(d) Change in Control.** A Stock Award may be subject to additional acceleration of vesting and exercisability upon or after a Change in Control as may be provided in the Stock Award Agreement for such Stock Award or as may be provided in any other written agreement between the Company or any Affiliate and the Participant, but in the absence of such provision, no such acceleration shall occur.

#### 10. TERMINATION OR SUSPENSION OF THE PLAN.

(a) **Plan Term.** The Board may suspend or terminate the Plan at any time. Unless terminated sooner by the Board, the Plan shall automatically terminate on the day before the tenth (10th) anniversary of the earlier of (i) the date the Plan is adopted by the Board, or (ii) the date the Plan is approved by the stockholders of the Company. No Awards may be granted under the Plan while the Plan is suspended or after it is terminated.

(b) **No Impairment of Rights.** Suspension or termination of the Plan shall not impair rights and obligations under any Award granted while the Plan is in effect except with the written consent of the affected Participant.

#### 11. EFFECTIVE DATE OF PLAN.

This Plan became effective on the Effective Date.

#### 12. CHOICE OF LAW.

The law of the State of Nevada shall govern all questions concerning the construction, validity and interpretation of this Plan, without regard to that state's conflict of laws rules.

#### 13. DEFINITIONS. As used in the Plan, the following definitions shall apply to the capitalized terms indicated below:

(a) "**Affiliate**" means, at the time of determination, any "parent" or "subsidiary" of the Company as such terms are defined in Rule 405 of the Securities Act. The Board shall have the authority to determine the time or times at which "parent" or "subsidiary" status is determined within the foregoing definition.

(b) "**Award**" means a Stock Award or a Performance Cash Award.

(c) "**Award Agreement**" means a written agreement between the Company and a Participant evidencing the terms and conditions of an Award.

(d) "**Board**" means the Board of Directors of the Company.

(e) "**Capitalization Adjustment**" means any change that is made in, or other events that occur with respect to, the Common Stock subject to the Plan or subject to any Stock Award after the Effective Date without the receipt of consideration by the Company through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, large nonrecurring cash dividend, stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or any similar equity restructuring transaction, as that term is used in Statement of Financial Accounting Standards No. 123 (revised). Notwithstanding the foregoing, the conversion of any convertible securities of the Company shall not be treated as a Capitalization Adjustment.

(f) “**Cause**” shall have the meaning ascribed to such term in any written agreement between the Participant and the Company defining such term and, in the absence of such agreement, such term shall mean, with respect to a Participant, the occurrence of any of the following events that has a material negative impact on the business or reputation of the Company: (i) such Participant’s attempted commission of, or participation in, a fraud or act of dishonesty against the Company; (ii) such Participant’s intentional, material violation of any contract or agreement between the Participant and the Company or of any statutory duty owed to the Company; (iii) such Participant’s unauthorized use or disclosure of the Company’s confidential information or trade secrets; or (iv) such Participant’s gross misconduct. The determination that a termination of the Participant’s Continuous Service is either for Cause or without Cause shall be made by the Company, in its sole discretion. Any determination by the Company that the Continuous Service of a Participant was terminated with or without Cause for the purposes of outstanding Awards held by such Participant shall have no effect upon any determination of the rights or obligations of the Company or such Participant for any other purpose.

(g) “**Change in Control**” means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) any Exchange Act Person becomes the Owner, directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the combined voting power of the Company’s then outstanding securities other than by virtue of a merger, consolidation or similar transaction. Notwithstanding the foregoing, a Change in Control shall not be deemed to occur (A) on account of the acquisition of securities of the Company directly from the Company, (B) on account of the acquisition of securities of the Company by an investor, any affiliate thereof or any other Exchange Act Person that acquires the Company’s securities in a transaction or series of related transactions the primary purpose of which is to obtain financing for the Company through the issuance of equity securities, or (C) solely because the level of Ownership held by any Exchange Act Person (the “*Subject Person*”) exceeds the designated percentage threshold of the outstanding voting securities as a result of a repurchase or other acquisition of voting securities by the Company reducing the number of shares outstanding, provided that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of voting securities by the Company, and after such share acquisition, the Subject Person becomes the Owner of any additional voting securities that, assuming the repurchase or other acquisition had not occurred, increases the percentage of the then outstanding voting securities Owned by the Subject Person over the designated percentage threshold, then a Change in Control shall be deemed to occur;

(ii) there is consummated a merger, consolidation or similar transaction involving (directly or indirectly) the Company and, immediately after the consummation of such merger, consolidation or similar transaction, the stockholders of the Company immediately prior thereto do not Own, directly or indirectly, either (A) outstanding voting securities representing more than fifty percent (50%) of the combined outstanding voting power of the surviving Entity in such merger, consolidation or similar transaction or (B) more than fifty percent (50%) of the combined outstanding voting power of the parent of the surviving Entity in such merger, consolidation or similar transaction, in each case in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such transaction;

(iii) there is consummated a sale, lease, exclusive license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries, other than a sale, lease, license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries to an Entity, more than fifty percent (50%) of the combined voting power of the voting securities of which are Owned by stockholders of the Company in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such sale, lease, license or other disposition; or

(iv) individuals who, on the date the Plan is adopted by the Board, are members of the Board (the “**Incumbent Board**”) cease for any reason to constitute at least a majority of the members of the Board; *provided, however*, that if the appointment or election (or nomination for election) of any new Board member was approved or recommended by a majority vote of the members of the Incumbent Board then still in office, such new member shall, for purposes of this Plan, be considered as a member of the Incumbent Board.

Notwithstanding the foregoing or any other provision of this Plan, (A) the term Change in Control shall not include a sale of assets, merger or other transaction effected exclusively for the purpose of changing the domicile of the Company, and (B) the definition of Change in Control (or any analogous term) in an individual written agreement between the Company or any Affiliate and the Participant shall supersede the foregoing definition with respect to Awards subject to such agreement; *provided, however*, that if no definition of Change in Control or any analogous term is set forth in such an individual written agreement, the foregoing definition shall apply.

(h) “**Code**” means the Internal Revenue Code of 1986, as amended, including any applicable regulations and guidance thereunder.

(i) “**Committee**” means a committee of one or more Directors to whom authority has been delegated by the Board in accordance with Section 2(c).

(j) “**Common Stock**” means the common stock of the Company.

(k) “**Company**” means DigiPath, Inc., a Nevada corporation.

(l) “**Consultant**” means any person, including an advisor, who is (i) engaged by the Company or an Affiliate to render consulting or advisory services and is compensated for such services, or (ii) serving as a member of the board of directors of an Affiliate and is compensated for such services. However, service solely as a Director, or payment of a fee for such service, shall not cause a Director to be considered a “Consultant” for purposes of the Plan. Notwithstanding the foregoing, a person is treated as a Consultant under this Plan only if a Form S-8 Registration Statement under the Securities Act is available to register either the offer or the sale of the Company’s securities to such person.

(m) “**Continuous Service**” means that the Participant’s service with the Company or an Affiliate, whether as an Employee, Director or Consultant, is not interrupted or terminated. A change in the capacity in which the Participant renders service to the Company or an Affiliate as an Employee, Consultant or Director or a change in the entity for which the Participant renders such service, provided that there is no interruption or termination of the Participant’s service with the Company or an Affiliate, shall not terminate a Participant’s Continuous Service; *provided, however*, if the Entity for which a Participant is rendering services ceases to qualify as an Affiliate, as determined by the Board, in its sole discretion, such Participant’s Continuous Service shall be considered to have terminated on the date such Entity ceases to qualify as an Affiliate. To the extent permitted by law, the Board or the chief executive officer of the Company, in that party’s sole discretion, may determine whether Continuous Service shall be considered interrupted in the case of (i) any leave of absence approved by the Board or Chief Executive Officer, including sick leave, military leave or any other personal leave, or (ii) transfers between the Company, an Affiliate, or their successors. Notwithstanding the foregoing, a leave of absence shall be treated as Continuous Service for purposes of vesting in a Stock Award only to such extent as may be provided in the Company’s leave of absence policy, in the written terms of any leave of absence agreement or policy applicable to the Participant, or as otherwise required by law.

(n) “ **Corporate Transaction** ” means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) the consummation of a sale or other disposition of all or substantially all, as determined by the Board, in its sole discretion, of the consolidated assets of the Company and its Subsidiaries;

(ii) the consummation of a sale or other disposition of at least ninety percent (90%) of the outstanding securities of the Company;

(iii) the consummation of a merger, consolidation or similar transaction following which the Company is not the surviving corporation; or

(iv) the consummation of a merger, consolidation or similar transaction following which the Company is the surviving corporation but the shares of Common Stock outstanding immediately preceding the merger, consolidation or similar transaction are converted or exchanged by virtue of the merger, consolidation or similar transaction into other property, whether in the form of securities, cash or otherwise.

(o) “ **Covered Employee** ” shall have the meaning provided in Section 162(m)(3) of the Code.

(p) “ **Director** ” means a member of the Board.

(q) “ **Disability** ” means, with respect to a Participant, the inability of such Participant to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months, as provided in Sections 22(e)(3) and 409A(a)(2)(c)(i) of the Code, and shall be determined by the Board on the basis of such medical evidence as the Board deems warranted under the circumstances.

(r) “ **Effective Date** ” means the original effective date of the Plan, being March 5, 2012.

(s) “ **Employee** ” means any person employed by the Company or an Affiliate. However, service solely as a Director, or payment of a fee for such services, shall not cause a Director to be considered an “Employee” for purposes of the Plan.

(t) “ **Entity** ” means a corporation, partnership, limited liability company or other entity.

(u) “ **Exchange Act** ” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(v) “ **Exchange Act Person** ” means any natural person, Entity or “group” (within the meaning of Section 13(d) or 14(d) of the Exchange Act), except that “Exchange Act Person” shall not include (i) the Company or any Subsidiary of the Company, (ii) any employee benefit plan of the Company or any Subsidiary of the Company or any trustee or other fiduciary holding securities under an employee benefit plan of the Company or any Subsidiary of the Company, (iii) an underwriter temporarily holding securities pursuant to a registered public offering of such securities, (iv) an Entity Owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their Ownership of stock of the Company; or (v) any natural person, Entity or “group” (within the meaning of Section 13(d) or 14(d) of the Exchange Act) that, as of the Effective Date, is the Owner, directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the combined voting power of the Company’s then outstanding securities.

(w) “ **Fair Market Value** ” means, as of any date, the value of the Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or traded on any established market, the Fair Market Value of a share of Common Stock shall be the closing sales price for such stock as quoted on such exchange or market (or the exchange or market with the greatest volume of trading in the Common Stock) on the date of determination, as reported in a source the Board deems reliable.

(ii) Unless otherwise provided by the Board, if there is no closing sales price for the Common Stock on the date of determination, then the Fair Market Value shall be the closing selling price on the last preceding date for which such quotation exists.

(iii) In the absence of such markets for the Common Stock, the Fair Market Value shall be determined by the Board in good faith and in a manner that complies with Sections 409A and 422 of the Code.

(x) “ **Incentive Stock Option** ” means an option granted pursuant to Section 5 of the Plan that is intended to be, and qualifies as, an “incentive stock option” within the meaning of Section 422 of the Code.

(y) “ **Non-Employee Director** ” means a Director who either (i) is not a current employee or officer of the Company or an Affiliate, does not receive compensation, either directly or indirectly, from the Company or an Affiliate for services rendered as a consultant or in any capacity other than as a Director (except for an amount as to which disclosure would not be required under Item 404(a) of Regulation S-K promulgated pursuant to the Securities Act (“ **Regulation S-K** ”)), does not possess an interest in any other transaction for which disclosure would be required under Item 404(a) of Regulation S-K, and is not engaged in a business relationship for which disclosure would be required pursuant to Item 404(b) of Regulation S-K; or (ii) is otherwise considered a “non-employee director” for purposes of Rule 16b-3.

(z) “ **Nonstatutory Stock Option** ” means any option granted pursuant to Section 5 of the Plan that does not qualify as an Incentive Stock Option.

(aa) “ **Officer** ” means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act.

(bb) “ **Option** ” means an Incentive Stock Option or a Nonstatutory Stock Option to purchase shares of Common Stock granted pursuant to the Plan.

(cc) “ **Option Agreement** ” means a written agreement between the Company and an Optionholder evidencing the terms and conditions of an Option grant. Each Option Agreement shall be subject to the terms and conditions of the Plan.

(dd) “ **Optionholder** ” means a person to whom an Option is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Option.

(ee) “ **Other Stock Award** ” means an award based in whole or in part by reference to the Common Stock which is granted pursuant to the terms and conditions of Section 6(d).



(ff) “ **Other Stock Award Agreement** ” means a written agreement between the Company and a holder of an Other Stock Award evidencing the terms and conditions of an Other Stock Award grant. Each Other Stock Award Agreement shall be subject to the terms and conditions of the Plan.

(gg) “ **Outside Director** ” means a Director who either (i) is not a current employee of the Company or an “affiliated corporation” (within the meaning of Treasury Regulations promulgated under Section 162(m) of the Code), is not a former employee of the Company or an “affiliated corporation” who receives compensation for prior services (other than benefits under a tax-qualified retirement plan) during the taxable year, has not been an officer of the Company or an “affiliated corporation,” and does not receive remuneration from the Company or an “affiliated corporation,” either directly or indirectly, in any capacity other than as a Director, or (ii) is otherwise considered an “outside director” for purposes of Section 162(m) of the Code.

(hh) “ **Own,** ” “ **Owned,** ” “ **Owner,** ” “ **Ownership** ” A person or Entity shall be deemed to “Own,” to have “Owned,” to be the “Owner” of, or to have acquired “Ownership” of securities if such person or Entity, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power, which includes the power to vote or to direct the voting, with respect to such securities.

(ii) “ **Participant** ” means a person to whom an Award is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Stock Award.

(jj) “ **Performance Cash Award** ” means an award of cash granted pursuant to the terms and conditions of Section 6(c)(ii).

(kk) “ **Performance Criteria** ” means the one or more criteria that the Board shall select for purposes of establishing the Performance Goals for a Performance Period. The Performance Criteria that shall be used to establish such Performance Goals may be based on any one of, or combination of, the following as determined by the Board: (i) earnings (including earnings per share and net earnings); (ii) earnings before interest, taxes and depreciation; (iii) earnings before interest, taxes, depreciation and amortization; (iv) total stockholder return; (v) return on equity or average stockholder’s equity; (vi) return on assets, investment, or capital employed; (vii) stock price; (viii) margin (including gross margin); (ix) income (before or after taxes); (x) operating income; (xi) operating income after taxes; (xii) pre-tax profit; (xiii) operating cash flow; (xiv) sales or revenue targets; (xv) increases in revenue or product revenue; (xvi) expenses and cost reduction goals; (xvii) improvement in or attainment of working capital levels; (xviii) economic value added (or an equivalent metric); (xix) market share; (xx) cash flow; (xxi) cash flow per share; (xxii) share price performance; (xxiii) debt reduction; (xxiv) implementation or completion of projects or processes; (xxv) customer satisfaction; (xxvi) stockholders’ equity; (xxvii) capital expenditures; (xxviii) debt levels; (xxix) operating profit or net operating profit; (xxx) workforce diversity; (xxxi) growth of net income or operating income; (xxxii) billings; and (xxxiii) to the extent that an Award is not intended to comply with Section 162(m) of the Code, other measures of performance selected by the Board.

(ll) “ **Performance Goals** ” means, for a Performance Period, the one or more goals established by the Board for the Performance Period based upon the Performance Criteria. Performance Goals may be based on a Company-wide basis, with respect to one or more business units, divisions, Affiliates, or business segments, and in either absolute terms or relative to the performance of one or more comparable companies or the performance of one or more relevant indices. Unless specified otherwise by the Board (i) in the Award Agreement at the time the Award is granted or (ii) in such other document setting forth the Performance Goals at the time the Performance Goals are established, the Board shall appropriately make adjustments in the method of calculating the attainment of Performance Goals for a Performance Period as follows: (1) to exclude restructuring and/or other nonrecurring charges; (2) to exclude exchange rate effects, as applicable, for non-U.S. dollar denominated Performance Goals; (3) to exclude the effects of changes to generally accepted accounting principles; (4) to exclude the effects of any statutory adjustments to corporate tax rates; and (5) to exclude the effects of any “extraordinary items” as determined under generally accepted accounting principles. In addition, the Board retains the discretion to reduce or eliminate the compensation or economic benefit due upon attainment of Performance Goals and to define the manner of calculating the Performance Criteria it selects to use for such Performance Period. Partial achievement of the specified criteria may result in the payment or vesting corresponding to the degree of achievement as specified in the Stock Award Agreement or the written terms of a Performance Cash Award.

(mm) “ *Performance Period* ” means the period of time selected by the Board over which the attainment of one or more Performance Goals will be measured for the purpose of determining a Participant’s right to and the payment of a Stock Award or a Performance Cash Award. Performance Periods may be of varying and overlapping duration, at the sole discretion of the Board.

(nn) “ *Performance Stock Award* ” means a Stock Award granted under the terms and conditions of Section 6(c)(i).

(oo) “ *Plan* ” means this DigiPath, Inc. Amended and Restated 2012 Stock Incentive Plan.

(pp) “ *Restricted Stock Award* ” means an award of shares of Common Stock which is granted pursuant to the terms and conditions of Section 6(a).

(qq) “ *Restricted Stock Award Agreement* ” means a written agreement between the Company and a holder of a Restricted Stock Award evidencing the terms and conditions of a Restricted Stock Award grant. Each Restricted Stock Award Agreement shall be subject to the terms and conditions of the Plan.

(rr) “ *Restricted Stock Unit Award* ” means a right to receive shares of Common Stock which is granted pursuant to the terms and conditions of Section 6(b).

(ss) “ *Restricted Stock Unit Award Agreement* ” means a written agreement between the Company and a holder of a Restricted Stock Unit Award evidencing the terms and conditions of a Restricted Stock Unit Award grant. Each Restricted Stock Unit Award Agreement shall be subject to the terms and conditions of the Plan.

(tt) “ *Rule 16b-3* ” means Rule 16b-3 promulgated under the Exchange Act or any successor to Rule 16b-3, as in effect from time to time.

(uu) “ *Securities Act* ” means the Securities Act of 1933, as amended.

(vv) “ *Stock Appreciation Right* ” or “ *SAR* ” means a right to receive the appreciation on Common Stock that is granted pursuant to the terms and conditions of Section 5.

(ww) “ *Stock Appreciation Right Agreement* ” means a written agreement between the Company and a holder of a Stock Appreciation Right evidencing the terms and conditions of a Stock Appreciation Right grant. Each Stock Appreciation Right Agreement shall be subject to the terms and conditions of the Plan.

(xx) “ *Stock Award* ” means any right to receive Common Stock granted under the Plan, including an Incentive Stock Option, a Nonstatutory Stock Option, a Restricted Stock Award, a Restricted Stock Unit Award, a Stock Appreciation Right, a Performance Stock Award or any Other Stock Award.

(yy) “ *Stock Award Agreement* ” means a written agreement between the Company and a Participant evidencing the terms and conditions of a Stock Award grant. Each Stock Award Agreement shall be subject to the terms and conditions of the Plan.

(zz) “ *Subsidiary* ” means, with respect to the Company, (i) any corporation of which more than fifty percent (50%) of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, Owned by the Company, and (ii) any partnership, limited liability company or other entity in which the Company has a direct or indirect interest (whether in the form of voting or participation in profits or capital contribution) of more than fifty percent (50%).

(aaa) “ *Ten Percent Stockholder* ” means a person who Owns (or is deemed to Own pursuant to Section 424(d) of the Code) stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or any Affiliate.



ATTACHMENT I  
OPTION AGREEMENT

ATTACHMENT II

AMENDED AND RESTATED 2012 STOCK INCENTIVE PLAN



DIGIPATH, INC.

AMENDED AND RESTATED  
2012 STOCK INCENTIVE PLAN

OPTION AGREEMENT

Pursuant to your Stock Option Grant Notice (“**Grant Notice**”) and this Option Agreement, DigiPath, Inc. (the “**Company**”) has granted you an option under its Amended and Restated 2012 Stock Incentive Plan (the “**Plan**”) to purchase the number of shares of the Company’s Common Stock indicated in your Grant Notice at the exercise price indicated in your Grant Notice. Defined terms not explicitly defined in this Option Agreement but defined in the Plan shall have the same definitions as in the Plan.

The details of your option are as follows:

**1. VESTING.** Subject to the limitations contained herein, your option will vest as provided in your Grant Notice, provided that vesting will cease upon the termination of your Continuous Service.

**2. NUMBER OF SHARES AND EXERCISE PRICE.** The number of shares of Common Stock subject to your option and your exercise price per share referenced in your Grant Notice may be adjusted from time to time for Capitalization Adjustments.

**3. EXERCISE RESTRICTION FOR NON-EXEMPT EMPLOYEES.** In the event that you are an Employee eligible for overtime compensation under the Fair Labor Standards Act of 1938, as amended ( *i.e.* , a “**Non-Exempt Employee** ”), you may not exercise your option until you have completed at least six (6) months of Continuous Service measured from the Date of Grant specified in your Grant Notice, notwithstanding any other provision of your option.

**4. METHOD OF PAYMENT.** Payment of the exercise price is due in full upon exercise of all or any part of your option. You may elect to make payment of the exercise price in cash or by check or in any other manner **permitted by your Grant Notice**, which may include one or more of the following:

(a) Provided that at the time of exercise the Common Stock is publicly traded and quoted regularly in *The Wall Street Journal* , pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of Common Stock, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds.

(b) Provided that at the time of exercise the Common Stock is publicly traded and quoted regularly in *The Wall Street Journal* , by delivery to the Company (either by actual delivery or attestation) of already-owned shares of Common Stock that are owned free and clear of any liens, claims, encumbrances or security interests, and that are valued at Fair Market Value on the date of exercise. Notwithstanding the foregoing, you may not exercise your option by tender to the Company of Common Stock to the extent such tender would violate the provisions of any law, regulation or agreement restricting the redemption of the Company’s stock.



(c) by a “net exercise” arrangement pursuant to which the Company will reduce the number of shares of Common Stock issued upon exercise of your option by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price; provided, however, that the Company shall accept a cash or other payment from you to the extent of any remaining balance of the aggregate exercise price not satisfied by such reduction in the number of whole shares to be issued; provided further, however, that shares of Common Stock will no longer be outstanding under your option and will not be exercisable thereafter to the extent that (1) shares are used to pay the exercise price pursuant to the “net exercise,” (2) shares are delivered to you as a result of such exercise, and (3) shares are withheld to satisfy tax withholding obligations.

**5. WHOLE SHARES.** You may exercise your option only for whole shares of Common Stock.

**6. SECURITIES LAW COMPLIANCE.** Notwithstanding anything to the contrary contained herein, you may not exercise your option unless the shares of Common Stock issuable upon such exercise are then registered under the Securities Act or, if such shares of Common Stock are not then so registered, the Company has determined that such exercise and issuance would be exempt from the registration requirements of the Securities Act. The exercise of your option also must comply with other applicable laws and regulations governing your option, and you may not exercise your option if the Company determines that such exercise would not be in material compliance with such laws and regulations.

**7. TERM.** You may not exercise your option before the commencement or after the expiration of its term. The term of your option commences on the Date of Grant and expires upon the earliest of the following:

(a) immediately upon the termination of your Continuous Service for Cause;

(b) three (3) months after the termination of your Continuous Service for any reason other than your Disability or death, provided that if during any part of such three (3) month period your option is not exercisable solely because of the condition set forth in the section above relating to “Securities Law Compliance,” your option shall not expire until the earlier of the Expiration Date or until it shall have been exercisable for an aggregate period of three (3) months after the termination of your Continuous Service;

(c) twelve (12) months after the termination of your Continuous Service due to your Disability;

(d) eighteen (18) months after your death if you die either during your Continuous Service or within three (3) months after your Continuous Service terminates;

(e) the Expiration Date indicated in your Grant Notice; or

(f) the day before the tenth (10th) anniversary of the Date of Grant.

If your option is an Incentive Stock Option, note that to obtain the federal income tax advantages associated with an Incentive Stock Option, the Code requires that at all times beginning on the date of grant of your option and ending on the day three (3) months before the date of your option's exercise, you must be an employee of the Company or an Affiliate, except in the event of your death or Disability. The Company has provided for extended exercisability of your option under certain circumstances for your benefit but cannot guarantee that your option will necessarily be treated as an Incentive Stock Option if you continue to provide services to the Company or an Affiliate as a Consultant or Director after your employment terminates or if you otherwise exercise your option more than three (3) months after the date your employment with the Company or an Affiliate terminates.

#### **8. EXERCISE.**

(a) You may exercise the vested portion of your option (and the unvested portion of your option if your Grant Notice so permits) during its term by delivering a Notice of Exercise (in a form designated by the Company) together with the exercise price to the Secretary of the Company, or to such other person as the Company may designate, during regular business hours, together with such additional documents as the Company may then require.

(b) By exercising your option you agree that, as a condition to any exercise of your option, the Company may require you to enter into an arrangement providing for the payment by you to the Company of any tax withholding obligation of the Company arising by reason of (1) the exercise of your option, (2) the lapse of any substantial risk of forfeiture to which the shares of Common Stock are subject at the time of exercise, or (3) the disposition of shares of Common Stock acquired upon such exercise.

(c) If your option is an Incentive Stock Option, by exercising your option you agree that you will notify the Company in writing within fifteen (15) days after the date of any disposition of any of the shares of the Common Stock issued upon exercise of your option that occurs within two (2) years after the date of your option grant or within one (1) year after such shares of Common Stock are transferred upon exercise of your option.

#### **9. TRANSFERABILITY.**

(a) If your option is an Incentive Stock Option, your option is generally not transferable, except (1) by will or by the laws of descent and distribution or (2) pursuant to a domestic relations order (provided that such Incentive Stock Option may be deemed to be a Nonstatutory Stock Option as a result of such transfer), and is exercisable during your life only by you. Notwithstanding the foregoing, by delivering written notice to the Company, in a form satisfactory to the Company, you may designate a third party who, in the event of your death, shall thereafter be entitled to exercise your option. In addition, you may transfer your option to a trust if you are considered to be the sole beneficial owner (determined under Section 671 of the Code and applicable state law) while the option is held in the trust, provided that you and the trustee enter into transfer and other agreements required by the Company.

(b) If your option is a Nonstatutory Stock Option, your option is not transferable, except (1) by will or by the laws of descent and distribution, (2) pursuant to a domestic relations order, (3) with the prior written approval of the Company, by instrument to an inter vivos or testamentary trust, in a form accepted by the Company, in which the option is to be passed to beneficiaries upon the death of the trustor (settlor) and (4) with the prior written approval of the Company, by gift, in a form accepted by the Company, to a permitted transferee under Rule 701 of the Securities Act.

**10. OPTION NOT A SERVICE CONTRACT.** Your option is not an employment or service contract, and nothing in your option shall be deemed to create in any way whatsoever any obligation on your part to continue in the employ of the Company or an Affiliate, or of the Company or an Affiliate to continue your employment. In addition, nothing in your option shall obligate the Company or an Affiliate, their respective stockholders, Boards of Directors, Officers or Employees to continue any relationship that you might have as a Director or Consultant for the Company or an Affiliate.

#### **11. CHANGE IN CONTROL .**

(a) If a Change in Control occurs and your Continuous Service with the Company has not terminated as of, or immediately prior to, the effective time of the Change in Control, then, as of the effective time of such Change in Control, the vesting and exercisability of your option shall be accelerated in full .

(b) If any payment or benefit you would receive pursuant to a Change in Control from the Company or otherwise (“ **Payment** ”) would (i) constitute a “parachute payment” within the meaning of Section 280G of the Code, and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the “ **Excise Tax** ”), then such Payment shall be equal to the Reduced Amount. The “Reduced Amount” shall be either (x) the largest portion of the Payment that would result in no portion of the Payment being subject to the Excise Tax or (y) the largest portion, up to and including the total, of the Payment, whichever amount, after taking into account all applicable federal, state and local employment taxes, income taxes, and the Excise Tax (all computed at the highest applicable marginal rate), results in your receipt, on an after-tax basis, of the greater amount of the Payment notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. If a reduction in payments or benefits constituting “parachute payments” is necessary so that the Payment equals the Reduced Amount, reduction shall occur in the following order unless you elect in writing a different order ( *provided, however*, that such election shall be subject to Company approval if made on or after the effective date of the event that triggers the Payment): reduction of cash payments; cancellation of accelerated vesting of Stock Awards; reduction of employee benefits. In the event that acceleration of vesting of Stock Award compensation is to be reduced, such acceleration of vesting shall be cancelled in the reverse order of the date of grant of your Stock Awards ( *i.e.* , earliest granted Stock Award cancelled last) unless you elect in writing a different order for cancellation. The accounting firm engaged by the Company for general audit purposes as of the day prior to the effective date of the Change in Control shall perform the foregoing calculations. If the accounting firm so engaged by the Company is serving as accountant or auditor for the individual, entity or group effecting the Change in Control, the Company shall appoint a nationally recognized accounting firm to make the determinations required hereunder. The Company shall bear all expenses with respect to the determinations by such accounting firm required to be made hereunder. The accounting firm engaged to make the determinations hereunder shall provide its calculations, together with detailed supporting documentation, to you and the Company within fifteen (15) calendar days after the date on which your right to a Payment is triggered (if requested at that time by you or the Company) or such other time as requested by you or the Company. If the accounting firm determines that no Excise Tax is payable with respect to a Payment, either before or after the application of the Reduced Amount, it shall furnish you and the Company with an opinion reasonably acceptable to you that no Excise Tax will be imposed with respect to such Payment. Any good faith determinations of the accounting firm made hereunder shall be final, binding and conclusive upon you and the Company.

## 12. WITHHOLDING OBLIGATIONS.

(a) At the time you exercise your option, in whole or in part, or at any time thereafter as requested by the Company, you hereby authorize withholding from payroll and any other amounts payable to you, and otherwise agree to make adequate provision for (including by means of a “cashless exercise” pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board to the extent permitted by the Company), any sums required to satisfy the federal, state, local and foreign tax withholding obligations of the Company or an Affiliate, if any, which arise in connection with the exercise of your option.

(b) Upon your request and subject to approval by the Company, in its sole discretion, and compliance with any applicable legal conditions or restrictions, the Company may withhold from fully vested shares of Common Stock otherwise issuable to you upon the exercise of your option a number of whole shares of Common Stock having a Fair Market Value, determined by the Company as of the date of exercise, not in excess of the minimum amount of tax required to be withheld by law (or such lower amount as may be necessary to avoid classification of your option as a liability for financial accounting purposes). If the date of determination of any tax withholding obligation is deferred to a date later than the date of exercise of your option, share withholding pursuant to the preceding sentence shall not be permitted unless you make a proper and timely election under Section 83(b) of the Code, covering the aggregate number of shares of Common Stock acquired upon such exercise with respect to which such determination is otherwise deferred, to accelerate the determination of such tax withholding obligation to the date of exercise of your option. Notwithstanding the filing of such election, shares of Common Stock shall be withheld solely from fully vested shares of Common Stock determined as of the date of exercise of your option that are otherwise issuable to you upon such exercise. Any adverse consequences to you arising in connection with such share withholding procedure shall be your sole responsibility.

(c) You may not exercise your option unless the tax withholding obligations of the Company and/or any Affiliate are satisfied. Accordingly, you may not be able to exercise your option when desired even though your option is vested, and the Company shall have no obligation to issue a certificate for such shares of Common Stock or release such shares of Common Stock from any escrow provided for herein unless such obligations are satisfied.

**13. TAX CONSEQUENCES .** You hereby agree that the Company does not have a duty to design or administer the Plan or its other compensation programs in a manner that minimizes your tax liabilities. You shall not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates related to tax liabilities arising from your option or your other compensation. In particular, you acknowledge that this option is exempt from Section 409A of the Code only if the exercise price per share specified in the Grant Notice is at least equal to the “fair market value” per share of the Common Stock on the Date of Grant and there is no other impermissible deferral of compensation associated with the option.

**14. NOTICES.** Any notices provided for in your option or the Plan shall be given in writing and shall be deemed effectively given upon receipt or, in the case of notices delivered by mail by the Company to you, five (5) days after deposit in the United States mail, postage prepaid, addressed to you at the last address you provided to the Company.

**15. GOVERNING PLAN DOCUMENT.** Your option is subject to all the provisions of the Plan, the provisions of which are hereby made a part of your option, and is further subject to all interpretations, amendments, rules and regulations, which may from time to time be promulgated and adopted pursuant to the Plan. In the event of any conflict between the provisions of your option and those of the Plan, the provisions of the Plan shall control.

## EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT (this "Agreement"), dated as of June 21, 2016 (the "Effective Date"), by and between DIGIPATH, INC., a Nevada corporation with its principal place of business at 6450 Cameron Street, Suite 113, Las Vegas, Nevada 89118 (the "Company") and JOSEPH J. BIANCO, an individual residing at 508 Sag Harbor Turnpike, Bridgehampton, New York 11937 ("Executive").

### W I T N E S S E T H :

WHEREAS, Executive currently serves as the Company's Chairman of the Board, and provides consultancy services to the Company pursuant to that certain letter agreement, dated November 23, 2015, between the Company and Executive's affiliate, Alliance Advisory Partners LLC (the "Existing Consulting Agreement");

WHEREAS, the Company desires to employ Executive, and Executive desires to be employed by the Company, subject to the terms and conditions set forth below; and

WHEREAS, this Agreement supersedes in its entirety the Existing Consulting Agreement, and the Existing Consulting Agreement shall automatically terminate as of the Effective Date.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements and covenants hereinafter set forth, the parties hereto agree as follows:

1. Employment. The Company hereby employs Executive and Executive hereby accepts employment by the Company for the period and on the terms and conditions set forth in this Agreement.

2. Position, Employment Duties and Responsibilities. Executive shall be employed as the Company's Chief Executive Officer, subject to such reasonable duties and responsibilities granted, and restrictions imposed by the Company's Board of Directors (the "Board"), and subject to the Company's company policies and procedures. Throughout the term of this Agreement, Executive shall devote approximately 20 hours per week to the performance of his duties hereunder.

3. Working Facilities. Executive will be entitled to work out of his home offices in New York.

4. Compensation and Benefits.

4.1 Base Salary. For all of the services rendered by Executive to the Company, the Company shall pay to Executive an initial annual base salary of ninety six thousand dollars (\$96,000), payable in reasonable periodic installments in accordance with the Company's regular payroll practices in effect from time to time. Executive's base salary may be adjusted upward, but not downward, in the discretion of the Board.

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4.2 Bonus. During the term of this Agreement, Executive shall be eligible to receive an annual cash bonus in such amount (if any) as may be approved of by the Board of Directors in its sole discretion.

4.3 Option Grant. On the Effective Date, Executive shall be awarded a stock option (the "Option") to purchase four million seven hundred fifty thousand (4,750,000) shares of the Company's common stock, par value \$.001 per share ("Common Stock"), at an exercise price equal to the closing market price of the Common Stock on the Effective Date. The Option shall be exercisable for a 10-year period commencing on the Effective Date, and shall vest as to (i) one-half of such shares, on the Effective Date, (ii) one-quarter of such shares, on the one-year anniversary of the Effective Date, and (iii) the remaining one-quarter of such shares, on the two-year anniversary of the Effective Date.

4.4 Employee Benefits. Executive shall be entitled to participate in and be provided with health insurance and all other benefit plans and programs offered to and or made available to the Company's employees. In addition, Executive shall be entitled to paid holidays in accordance with the Company's regular policy and ten days of vacation in each calendar year and reasonable absences for illness. Any vacation time not taken during any calendar year of employment shall not be carried into any subsequent calendar year, and the Company shall not be obligated to pay Executive for any vacation time available to but not used by Executive within the prescribed period.

4.5 Car Allowance. The Company will provide the Executive with an automobile allowance in the amount of \$1,250.00 per month.

4.6 Travel, Entertainment and Other Business Expenses. During the period of employment pursuant to this Agreement, Executive will be reimbursed for reasonable expenses incurred for the benefit of the Company in accordance with the general policy of the Company. Those reimbursable expenses shall include properly documented, authorized or otherwise reasonably required, travel, entertainment and other business expenses incurred by Executive, other than those expenses related to or in connection with routine commutation to and from Executive's home, in accordance with the Company's general policy.

4.7 Deductions. All references herein to compensation to be paid to Executive are to the gross amounts thereof which are due hereunder. The Company shall have the right to deduct therefrom all taxes which may be required to be deducted or withheld under any provision of the law (including, without limitation, social security payments, income tax withholding and any other deduction required by law) now in effect or which may become effective at any time during the term of this Agreement.

## 5. Term; Severance.

5.1 Term. This Agreement shall be for a term of three (3) years commencing on the Effective Date, unless sooner terminated as hereinafter provided. The term of this Agreement shall automatically be renewed for successive periods of one year after the initial three-year term unless either the Executive or the Company the Company delivers a written notice of termination to the other party at least 180 days prior to the start of any such renewal period.

5.2 Severance. In the event (a) the Company terminates Executive's employment under this Agreement for any reason other than for "Cause" under Section 7, or (b) Executive terminates his employment under this Agreement for Good Reason (as defined below), Executive shall be entitled to receive (i) aggregate severance payments ("Severance Payments"), equal to 6-months' (the "Severance Period") of Executive's then monthly base salary under Section 4.1, (ii) continued benefits under Sections 4.4 and 4.5 during the Severance Period; and (iii) continued vesting of the Option (if applicable) during the Severance Period. The Severance Payments shall be paid to Executive in periodic installments in accordance with the Company's regular payroll practices, provided Executive is then in compliance with his obligations under Section 8 of this Agreement.

5.3 Good Reason. For the purposes hereof, "Good Reason" shall mean the occurrence of any of the following events without Executive's consent: (i) a reduction in Executive's base salary to an amount below that provided for under Section 4.1, (ii) the termination or material reduction of any material employee benefit or perquisite enjoyed by the Executive (other than in connection with the termination or reduction of such benefit or perquisite to all executives of the Company or as may be required by law), (iii) a material diminution in Employee's authority, duties or responsibilities, or (iv) the failure of the Company to obtain the assumption in writing of its obligation to perform this Agreement by any successor to all or substantially all of the assets of the Company within thirty (30) calendar days after the closing of a merger, consolidation, sale or similar transaction. Notwithstanding the foregoing, following written notice from the Executive of any of the events described in (i) through (iii) above, the Company shall have thirty (30) calendar days in which to cure the alleged conduct. If the Company fails to cure, the Executive's termination shall become effective on the 31st calendar day following such written notice.

6. Termination for Cause. The Company may discharge Executive at any time for Cause. For purposes of this Agreement, "Cause" means (a) conviction of a felony offense involving moral turpitude, (b) commission of fraud or dishonesty which has or could reasonably be expected to have a material adverse effect on the Company's business, or (c) willful misconduct or willful violation of any express direction or any reasonable rule or regulation established by the Board from time to time, after, in each case under this clause (c) which is capable of curing, written notice is provided to Executive and Executive has failed to cure such acts or action after a period of thirty (30) days. In the event that the Company wishes to discharge Executive under clause (c) above, the Company shall notify Executive in writing of the Company's intention to discharge Executive and of the time (which shall be at least 48 hours after such notice) and place when Executive may have a hearing before the Board. Within five (5) business days following such hearing, the Board shall advise Executive of its determination and, if Executive is to be terminated, of the date of Executive's termination. In the event of any termination pursuant to this Section 6, the Company shall have no further obligations or liabilities hereunder after the date of such discharge (other than as set forth in Section 7.1 below).



7. Consequences Upon Termination.

7.1 Payment of Compensation Owed. Upon the termination of Executive's employment and this Agreement for any reason whatsoever, the Company shall promptly pay to Executive all compensation owed to Executive up until the date of termination.

7.2 Return of Property. Upon the termination of Executive's employment and this Agreement for any reason whatsoever, Executive shall promptly return to the Company all Confidential Materials (as defined below) in his possession or within Executive's control, all keys, credit cards, business card files and other property belonging to the Company.

8. Nondisclosure and Non-Compete.

8.1 Definitions. The following words and expressions used in this Agreement shall have the respective meanings hereby assigned to them as follows:

(a) "Customer" means any past or current customer of the Company or any of its subsidiaries and shall also include those prospective customers who are actively being marketed by the Company or any of its subsidiaries during the term of this Agreement.

(b) "Competitor" means any individual, partnership, corporation, association or other business enterprise in any form, other than the Company and its subsidiaries, which at any time during the Restriction Period, either directly or indirectly engages in the business of testing medical cannabis in the Restriction Area, or the business of providing terrestrial or online talk shows and similar programming primarily relating to cannabis news and issues.

(c) "Confidential Information" means all information of the Company and its subsidiaries which is not generally known or available to the public or a Competitor (whether or not in written or tangible form), the knowledge of which could benefit a Competitor, including without limitation, all of the following types of information:

- (i) information pertaining to Customers or Personnel;
- (ii) research, projections, financial information, and cost and pricing information;
- (iii) product or service development plans and marketing strategies; and
- (iv) trade secrets, or other knowledge or processes of or developed by the Company or any of its subsidiaries.

(d) "Confidential Materials" means any and all documents, materials, programs, recordings or any other tangible media (including, without limitation, copies or reproductions of any of the foregoing) in which Confidential Information may be contained.

(e) "Personnel" means any and all employees, contractors, agents, brokers, consultants or other individuals rendering services to the Company or any of its subsidiaries for compensation in any form, whether employed by or independent of the Company or any of its subsidiaries.

(f) “ Restriction Area ” shall mean and refer to North America.

(g) “ Restriction Period ” shall mean and refer to the period of time, commencing on Executive’s date of employment and expiring six months after, for any reason whatsoever, the employment relationship between Executive and the Company or any of its subsidiaries terminates.

#### 8.2 Covenant Not to Compete .

(a) During the Restriction Period, Executive shall not directly or indirectly, own, manage, invest or acquire any economic stake or interest in, or otherwise engage or participate in any manner whatsoever in any Competitor (whether as a proprietor, partner, shareholder, investor, manager, director, officer, employee, venturer, representative, agent, broker, independent contractor, consultant, or other participant). Executive, however, shall not be prohibited from owning a passive investment of less than five percent (5%) of the outstanding shares of capital stock or bonds of a corporation, which stock or bonds are listed on a national securities exchange or are publicly traded in the over-the-counter market.

(b) The parties recognize the possibility that there might be some limited ways, which the parties do not now contemplate, through which Executive might be able to participate in a Competitor, and which pose no risk of harm to the interests of the Company or its subsidiaries. If, prior to beginning any such relationship with a Competitor, Executive makes a full disclosure to the Company of the nature of Executive’s proposed participation, the Company agrees to evaluate whether it or its subsidiaries will suffer any risk of harm to it or their respective interests, and will notify Executive if it has any objection to Executive’s proposed participation.

#### 8.3 Covenant Not to Interfere .

(a) During the Restriction Period, Executive shall not, directly or indirectly, solicit, induce or influence, or attempt to induce or influence, any Customer to terminate a relationship which has been formed or that Executive knows is being formed with the Company or any of its subsidiaries, or to reduce the extent of, discourage the development of, or otherwise harm its relationship with the Company or any of its subsidiaries, including, without limitation, to commence or increase its relationship with any Competitor.

(b) During the Restriction Period, Executive shall not, other than during the term of this Agreement consistent with his duties and obligations under Section 2 hereof, directly or indirectly, recruit, solicit, induce or influence, any Personnel known by Executive to be employed by the Company or any of its subsidiaries to discontinue, reduce the extent of, discourage the development of, or otherwise harm their relationship or commitment to the Company or its subsidiaries, including, without limitation, by employing, seeking to employ or inducing or influencing a Competitor to employ or seek to employ any Personnel of the Company or any of its subsidiaries, or inducing an employee of the Company or any of its subsidiaries to leave employment by the Company or its subsidiary, as the case may be. Any general solicitation to the public that is not directed at the Company and/or any of its subsidiaries shall not constitute a breach of this paragraph, and the restrictions set forth herein shall not apply to any person (i) who initiates contact with Executive or Executive’s then current employer in response to a general solicitation to the public, or (ii) who initiates contact with Executive or Executive’s then current employer in response to any general search conducted by a placement firm which does not expressly target such Personnel.

#### 8.4 Confidential Information .

(a) Duty to Maintain Confidentiality . Executive shall maintain in strict confidence and safeguard all Confidential Information. Executive covenants that Executive will become familiar with and abide by all policies and rules issued by the Company now or in the future dealing with Confidential Information.

(b) Covenant Not to Disclose, Use or Exploit . Executive shall not, directly or indirectly, disclose to anyone or use or otherwise exploit for the benefit of anyone, other than the Company and its subsidiaries, any Confidential Information.

(c) Confidential Materials . All Confidential Materials are and shall remain the exclusive property of the Company. No Confidential Materials may be copied or otherwise reproduced, removed from the premises of the Company, or entrusted to any person or entity (other than the Personnel entitled to such materials by authorization of the Company) without prior written permission from the Company. Notwithstanding the foregoing, Executive may copy Confidential Information and remove such Confidential Information from the Company's premises to Executive's residence, in each case, in the ordinary course of business in the discharge of Executive's duties and obligations under this Agreement.

8.5 Company Property . Any and all writings, improvements, processes, procedures and/or techniques which Executive may make, conceive, discover or develop, either solely or jointly with any other person or persons, at any time during the term of this Agreement, whether during working hours or at any other time and whether at request or upon the suggestion of the Company or any subsidiary thereof, which relate to any business now or hereafter carried on or contemplated by the Company or any subsidiary thereof, including developments or expansions of its present fields of operations, shall be the sole and exclusive property of the Company. Executive shall make full disclosure to the Company of all such writings, improvements, processes, procedures and techniques, and shall do everything necessary or desirable to vest the absolute title thereto in the Company. Executive shall not be entitled to any additional or special compensation or reimbursement regarding any and all such writings, improvements, processes, procedures and techniques.

#### 9. Remedies .

9.1 Equitable Relief . The parties acknowledge that the provisions and restrictions of Section 8 of this Agreement are reasonable and necessary for the protection of the legitimate interests of the Company and Executive. The parties further acknowledge that the provisions and restrictions of Section 8 of this Agreement are unique, and that any breach or threatened breach of any of these provisions or restrictions by Executive will provide the Company with no adequate remedy at law, and the result will be irreparable harm to the Company. Therefore, the parties agree that upon a breach or threatened breach of the provisions or restrictions of Section 8 of this Agreement by Executive, the Company shall be entitled, in addition to any other remedies which may be available to it, to institute and maintain proceedings at law or in equity, to recover damages, obtain specific performance or a temporary or permanent injunction, without the necessity of establishing the likelihood of irreparable injury or proving damages and without being required to post bond or other security.

9.2 Modification of Restrictions: Full Restriction Period . If the Restriction Period, the Restriction Area or the scope of activity restricted in Article 8 should be adjudged unreasonable in any proceeding, then the Restriction Period shall be reduced by such number of months, the Restriction Area shall be reduced by the elimination of such portion thereof or the scope of the restricted activity shall be modified, or any or all of the foregoing, so that such restrictions may be enforced in such area and for such time as is adjudged to be reasonable. If Executive violates any of the restrictions contained in Article 8, the Restriction Period shall not run in favor of Executive from the time of commencement of any such violation until such time as such violation shall be cured by Executive to the reasonable satisfaction of the Company.

10. Consideration for Restrictive Covenants . Executive acknowledges that the execution of this Agreement and compliance with it by the Company shall constitute fair and adequate consideration for Executive's compliance with the restrictive covenants contained in the respective sections of this Agreement.

11. Miscellaneous .

11.1 Governing Law . This Agreement, its interpretation, performance and enforcement, and the rights and remedies of the parties hereto, shall be governed and construed by the laws of the State of Nevada applicable to contracts to be performed wholly within Nevada, without regard to principles of conflicts of laws and without the aid of any canon, custom or rule of law requiring construction against the drafter.

11.2 Waiver . A waiver by any party of any condition or the breach of any term, covenant, representation or warranty contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall not be deemed or construed as a further or continuing waiver of any such condition or the breach of any other term, covenant, representation, or warranty set forth in this Agreement.

11.3 Entire Agreement . This Agreement together with the Option contain the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements (including the Existing Consulting Agreement), and contemporaneous understandings, inducements or conditions, express or implied, written or oral, between the parties with respect to the subject matter hereof. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof. From and after the date hereof, the Existing Consulting Agreement shall be null and void and of no further force and effect, provided that the shares of Common Stock previously issued thereunder to Alliance Advisory Partners LLC shall continue to remain outstanding (but shall not be subject to the claw-back provisions set forth in the Existing Consulting Agreement ).

11.4 Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by courier service, by telecopy or by registered or certified mail (postage prepaid, return receipt requested) to the respective parties at their addresses set forth in the preamble to this Agreement (or at such other address for a party as shall be specified in a notice given in accordance with this Section 11.4).

11.5 Headings. The descriptive headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

11.6 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

11.7 Counterparts. This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

11.8 Amendment or Termination. No agreement shall be effective to change, modify, waive, release, amend or terminate this Agreement, in whole or in part, unless such agreement is in writing, refers expressly to this Agreement and is signed by the party against whom enforcement of the change, modification, waiver, release, amendment or termination is sought.

11.9 Indemnification.

(a) The Company agrees that if the Executive is made a party, or is threatened to be made a party, to any action, suit or proceeding, whether civil, criminal, administrative or investigative (“Proceeding”), by reason of the fact that he is or was a director, officer or employee of the Company or any of its affiliates or is or was serving at the request of the Company as a director, officer, member, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether or not the basis of such Proceeding is the Executive’s alleged action in an official capacity while serving as a director, officer, member, employee or agent, the Executive shall be indemnified and held harmless by the Company to the fullest extent legally permitted or authorized by the Company’s certificate of incorporation or bylaws or resolutions of the Company’s Board of Directors or, if greater, by the laws of the State of Nevada, against all cost, expense, liability and loss (including, without limitation, attorney’s fees, judgments, fines, excise taxes or other liabilities or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by the Executive in connection therewith, and such indemnification shall continue as to the Executive even if he has ceased to be a director, member, employee or agent of the Company or other entity and shall inure to the benefit of the Executive’s heirs, executors and administrators.

(b) Neither the failure of the Company (including its board of directors, independent legal counsel or stockholders) to have made a determination prior to the commencement of any proceeding concerning payment of amounts claimed by the Executive under Section 11.9(a) above that indemnification of the Executive is proper because he has met the applicable standard of conduct, nor a determination by the Company (including its Board of Directors, independent legal counsel or stockholders) that the Executive has not met such applicable standard of conduct, shall create a presumption that the Executive has not met the applicable standard of conduct.

(c) The Company agrees to continue and maintain directors' and officers' liability insurance policy covering the Executive to the extent the Company provides such coverage for its other executive officers and directors, as applicable.

11.10 Code Section 409A.

(a) This Agreement shall be interpreted and administered in a manner so that any amount or benefit payable hereunder shall be paid or provided in a manner that is either exempt from or compliant with the requirements of Section 409A of the Internal Revenue Code of 1986, as amended (the "Code") and applicable Internal Revenue Service guidance and Treasury Regulations issued thereunder (and any applicable transition relief under Section 409A of the Code). Nevertheless, the tax treatment of the benefits provided under the Agreement is not warranted or guaranteed. Neither the Company nor its directors, officers, employees or advisers shall be held liable for any taxes, interest, penalties or other monetary amounts owed by Executive as a result of the application of Section 409A of the Code.

(b) Notwithstanding anything in this Agreement to the contrary, to the extent that any amount or benefit that would constitute non-exempt "deferred compensation" for purposes of Section 409A of the Code ("Non-Exempt Deferred Compensation") would otherwise be payable or distributable hereunder, or a different form of payment of such Non-Exempt Deferred Compensation would be effected, by reason of Executive's termination of employment, such Non-Exempt Deferred Compensation will not be payable or distributable to Executive, and/or such different form of payment will not be effected, by reason of such circumstance unless the circumstances giving rise to such termination of employment meet any description or definition of "separation from service" in Section 409A of the Code and applicable regulations (without giving effect to any elective provisions that may be available under such definition). This provision does not affect the dollar amount or prohibit the *vesting* of any Non-Exempt Deferred Compensation upon a termination of employment. If this provision prevents the payment or distribution of any Non-Exempt Deferred Compensation, or the application of a different form of payment, such payment or distribution shall be made at the time and in the form that would have applied absent the non-409A-conforming event.

(c) Notwithstanding anything in this Agreement to the contrary, if any amount or benefit that would constitute Non-Exempt Deferred Compensation would otherwise be payable or distributable under this Agreement by reason of Executive's separation from service during a period in which he is a Specified Employee (as defined below), then, subject to any permissible acceleration of payment by the Company under Treas. Reg. Section 1.409A-3(j)(4)(ii) (domestic relations order), (j)(4)(iii) (conflicts of interest), or (j)(4)(vi) (payment of employment taxes): (i) the amount of such Non-Exempt Deferred Compensation that would otherwise be payable during the six-month period immediately following Executive's separation from service will be accumulated through and paid or provided on the first day of the seventh month following Executive's separation from service (or, if Executive dies during such period, within 30 days after Executive's death) (in either case, the "Required Delay Period"); and (ii) the normal payment or distribution schedule for any remaining payments or distributions will resume at the end of the Required Delay Period. For purposes of this Agreement, the term "Specified Employee" has the meaning given such term in Code Section 409A and the final regulations thereunder.

(d) Each payment of termination benefits under Section 5.2(a) of this Agreement shall be considered a separate payment, as described in Treas. Reg. Section 1.409A-2(b)(2), for purposes of Section 409A of the Code.

(e) If Executive is entitled to be paid or reimbursed for any taxable expenses under Sections 4.5 or 4.6 hereof, and such payments or reimbursements are includible in Executive's federal gross taxable income, the amount of such expenses reimbursable in any one calendar year shall not affect the amount reimbursable in any other calendar year, and the reimbursement of an eligible expense must be made no later than December 31 of the year after the year in which the expense was incurred. No right of Executive to reimbursement of expenses under Sections 4.5 or 4.6 hereof shall be subject to liquidation or exchange for another benefit.

(f) The Company shall have the sole authority to make any accelerated distribution permissible under Treas. Reg. Section 1.409A-3(j)(4) to Executive of deferred amounts, provided that such distribution meets the requirements of Treas. Reg. Section 1.409A-3(j)(4).

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

DIGIPATH, INC.

By /s/ Todd Denkin

Todd Denkin, President and  
Chief Operating Officer

/s/ Joseph J. Bianco

Joseph J. Bianco

FOR PURPOSES OF SECTION 11.3:

ALLIANCE ADVISORY PARTNERS LLC

By: /s/ Joseph J. Bianco

Joseph J. Bianco

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**AMENDED AND RESTATED EMPLOYMENT AGREEMENT**

AMENDED AND RESTATED EMPLOYMENT AGREEMENT (this “Agreement”), dated as of June 21, 2016 (the “Effective Date”), by and between DIGIPATH, INC., a Nevada corporation with its principal place of business at 6450 Cameron Street, Suite 113, Las Vegas, Nevada 89118 (the “Company”) and TODD DENKIN, an individual residing at 391 Placer Creek Lane, Henderson, Nevada 89014 (“Executive”).

**W I T N E S S E T H :**

WHEREAS, Executive currently serves as the Company’s President pursuant to that certain Employment Agreement between the Company and Executive dated as of April 9, 2014, (as so amended, the “Original Employment Agreement”);

WHEREAS, the Company desires to continue to employ Executive, and Executive desires to continue to be employed by the Company, subject to the terms and conditions set forth below; and

WHEREAS, this Agreement amends, restates and supersedes in its entirety the Original Employment Agreement, and the Original Employment Agreement shall automatically terminate as of the Effective Date.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements and covenants hereinafter set forth, the parties hereto agree as follows:

1. Employment. The Company hereby employs Executive and Executive hereby accepts employment by the Company for the period and on the terms and conditions set forth in this Agreement.

2. Position, Employment Duties and Responsibilities. Executive shall be employed as the Company’s President and Chief Operating Officer, subject to such reasonable duties and responsibilities granted, and restrictions imposed by the Company’s Board of Directors (the “Board”) and Chief Executive Officer, and subject to the Company’s company policies and procedures. During the term of this Agreement, Executive shall also serve as the President of each the Company’s subsidiaries; DigiPath Labs, Inc., TNM News Corp, and GroSciences, Inc. Throughout the term of this Agreement, Executive shall devote his entire working time to the performance of his duties hereunder. Notwithstanding the foregoing, and subject to the prior approval of the Board not to be reasonably withheld, Executive shall be permitted to serve as a member of the board of directors of a limited number of other organizations, to the extent such service would not result in a conflict with Executive’s duties to the Company or interfere with the proper performance of Executive’s duties and responsibilities hereunder.

3. Working Facilities. Executive will work out of offices of the Company located in Las Vegas, Nevada.

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#### 4. Compensation and Benefits.

4.1 Base Salary. For all of the services rendered by Executive to the Company, the Company shall pay to Executive an initial annual base salary of one hundred ninety two thousand dollars (\$192,000), payable in reasonable periodic installments in accordance with the Company's regular payroll practices in effect from time to time. Executive's base salary and performance will be reviewed by the Chief Executive Officer no less frequently than once every six months, and may be adjusted upward, but not downward, in the sole discretion of the Chief Executive Officer based on such review.

4.2 Bonus. During the term of this Agreement, Executive shall be eligible to receive an annual cash bonus in such amount (if any) as may be approved of by the Board of Directors in its sole discretion.

4.3 Option Grant. On the Effective Date, Executive shall be awarded a stock option (the "Option") to purchase two million five hundred thousand (2,500,000) shares of the Company's common stock, par value \$.001 per share ("Common Stock"), at an exercise price equal to the closing market price of the Common Stock on the Effective Date. The Option shall be exercisable for a 10-year period commencing on the Effective Date, and shall vest as to (i) one-half of such shares, on the Effective Date, (ii) one-quarter of such shares, on the one-year anniversary of the Effective Date, and (ii) the remaining one-quarter of such shares, on the two-year anniversary of the Effective Date.

4.4 Employee Benefits. Executive shall be entitled to participate in and be provided with health insurance and all other benefit plans and programs offered to and or made available to the Company's employees. In addition, Executive shall be entitled to paid holidays in accordance with the Company's regular policy and twenty days of vacation in each calendar year and reasonable absences for illness. Any vacation time not taken during any calendar year of employment shall not be carried into any subsequent calendar year, and the Company shall not be obligated to pay Executive for any vacation time available to but not used by Executive within the prescribed period.

4.5 Car Allowance. The Company will provide the Executive with an automobile allowance in the amount of \$750.00 per month.

4.6 Travel, Entertainment and Other Business Expenses. During the period of employment pursuant to this Agreement, Executive will be reimbursed for reasonable expenses incurred for the benefit of the Company in accordance with the general policy of the Company, but no later than 30 days following request therefor. Those reimbursable expenses shall include properly documented, authorized or otherwise reasonably required, travel, entertainment and other business expenses incurred by Executive, other than those expenses related to or in connection with routine commutation to and from Executive's home, in accordance with the Company's general policy.

4.7 Deductions. All references herein to compensation to be paid to Executive are to the gross amounts thereof which are due hereunder. The Company shall have the right to deduct therefrom all taxes which may be required to be deducted or withheld under any provision of the law (including, without limitation, social security payments, income tax withholding and any other deduction required by law) now in effect or which may become effective at any time during the term of this Agreement.

## 5. Term; Severance

5.1 Term. This Agreement shall be for a term of three (3) years commencing on the Effective Date, unless sooner terminated as hereinafter provided. The term of this Agreement shall automatically be renewed for successive periods of one year after the initial three-year term unless either the Executive or the Company the Company delivers a written notice of termination to the other party at least 180 days prior to the start of any such renewal period.

5.2 Severance. In the event (a) the Company terminates Executive's employment under this Agreement for any reason other than for "Cause" under Section 7, or (b) Executive terminates his employment under this Agreement for Good Reason (as defined below), Executive shall be entitled to receive (i) aggregate severance payments ("Severance Payments"), equal to 8-months' (the "Severance Period") of Executive's then monthly base salary under Section 4.1, (ii) continued benefits under Sections 4.4 and 4.5 during the Severance Period; and (iii) continued vesting of the Option (if applicable) during the Severance Period. The Severance Payments shall be paid to Executive in periodic installments in accordance with the Company's regular payroll practices, provided Executive is then in compliance with his obligations under Section 8 of this Agreement.

5.3 Good Reason. For the purposes hereof, "Good Reason" shall mean the occurrence of any of the following events without Executive's consent: (i) a reduction in Executive's base salary to an amount below that provided for under Section 4.1, (ii) the termination or material reduction of any material employee benefit or perquisite enjoyed by the Executive (other than in connection with the termination or reduction of such benefit or perquisite to all executives of the Company or as may be required by law), (iii) the Company relocates its offices outside of the greater Las Vegas metropolitan area requiring Executive to relocate his primary residence in order to perform his duties and responsibilities described herein; (iv) a material diminution in Employee's authority, duties or responsibilities, or (v) the failure of the Company to obtain the assumption in writing of its obligation to perform this Agreement by any successor to all or substantially all of the assets of the Company within thirty (30) calendar days after the closing of a merger, consolidation, sale or similar transaction. Notwithstanding the foregoing, following written notice from the Executive of any of the events described in (i) through (iv) above, the Company shall have thirty (30) calendar days in which to cure the alleged conduct. If the Company fails to cure, the Executive's termination shall become effective on the 31st calendar day following such written notice.

6. Termination for Cause. The Company may discharge Executive at any time for Cause. For purposes of this Agreement, "Cause" means (a) conviction of a felony offense involving moral turpitude, (b) commission of fraud or dishonesty which has or could reasonably be expected to have a material adverse effect on the Company's business, or (c) willful misconduct or willful violation of any express direction or any reasonable rule or regulation established by the Board from time to time, after, in each case under this clause (c) which is capable of curing, written notice is provided to Executive and Executive has failed to cure such acts or action after a period of thirty (30) days. In the event that the Company wishes to discharge Executive under clause (c) above, the Company shall notify Executive in writing of the Company's intention to discharge Executive and of the time (which shall be at least 48 hours after such notice) and place when Executive may have a hearing before the Board. Within five (5) business days following such hearing, the Board shall advise Executive of its determination and, if Executive is to be terminated, of the date of Executive's termination. In the event of any termination pursuant to this Section 6, the Company shall have no further obligations or liabilities hereunder after the date of such discharge (other than as set forth in Section 7.1 below).

7. Consequences Upon Termination.

7.1 Payment of Compensation Owed. Upon the termination of Executive's employment and this Agreement for any reason whatsoever, the Company shall promptly pay to Executive all compensation owed to Executive up until the date of termination.

7.2 Return of Property. Upon the termination of Executive's employment and this Agreement for any reason whatsoever, Executive shall promptly return to the Company all Confidential Materials (as defined below) in his possession or within Executive's control, all keys, credit cards, business card files and other property belonging to the Company.

8. Nondisclosure and Non-Compete.

8.1 Definitions. The following words and expressions used in this Agreement shall have the respective meanings hereby assigned to them as follows:

(a) "Customer" means any past or current customer of the Company or any of its subsidiaries and shall also include those prospective customers who are actively being marketed by the Company or any of its subsidiaries during the term of this Agreement.

(b) "Competitor" means any individual, partnership, corporation, association or other business enterprise in any form, other than the Company and its subsidiaries, which at any time during the Restriction Period, either directly or indirectly engages in the business of testing medical cannabis in the Restriction Area, or the business of providing terrestrial or online talk shows and similar programming primarily relating to cannabis news and issues.

(c) "Confidential Information" means all information of the Company and its subsidiaries which is not generally known or available to the public or a Competitor (whether or not in written or tangible form), the knowledge of which could benefit a Competitor, including without limitation, all of the following types of information:

- (i) information pertaining to Customers or Personnel;
- (ii) research, projections, financial information, and cost and pricing information;
- (iii) product or service development plans and marketing strategies; and
- (iv) trade secrets, or other knowledge or processes of or developed by the Company or any of its subsidiaries.

(d) “ Confidential Materials ” means any and all documents, materials, programs, recordings or any other tangible media (including, without limitation, copies or reproductions of any of the foregoing) in which Confidential Information may be contained.

(e) “ Personnel ” means any and all employees, contractors, agents, brokers, consultants or other individuals rendering services to the Company or any of its subsidiaries for compensation in any form, whether employed by or independent of the Company or any of its subsidiaries.

(f) “ Restriction Area ” shall mean and refer to North America.

(g) “ Restriction Period ” shall mean and refer to the period of time, commencing on Executive’s date of employment and expiring six months after, for any reason whatsoever, the employment relationship between Executive and the Company or any of its subsidiaries terminates.

#### 8.2 Covenant Not to Compete .

(a) During the Restriction Period, Executive shall not directly or indirectly, own, manage, invest or acquire any economic stake or interest in, or otherwise engage or participate in any manner whatsoever in any Competitor (whether as a proprietor, partner, shareholder, investor, manager, director, officer, employee, venturer, representative, agent, broker, independent contractor, consultant, or other participant). Executive, however, shall not be prohibited from owning a passive investment of less than five percent (5%) of the outstanding shares of capital stock or bonds of a corporation, which stock or bonds are listed on a national securities exchange or are publicly traded in the over-the-counter market.

(b) The parties recognize the possibility that there might be some limited ways, which the parties do not now contemplate, through which Executive might be able to participate in a Competitor, and which pose no risk of harm to the interests of the Company or its subsidiaries. If, prior to beginning any such relationship with a Competitor, Executive makes a full disclosure to the Company of the nature of Executive’s proposed participation, the Company agrees to evaluate whether it or its subsidiaries will suffer any risk of harm to it or their respective interests, and will notify Executive if it has any objection to Executive’s proposed participation.

#### 8.3 Covenant Not to Interfere .

(a) During the Restriction Period, Executive shall not, directly or indirectly, solicit, induce or influence, or attempt to induce or influence, any Customer to terminate a relationship which has been formed or that Executive knows is being formed with the Company or any of its subsidiaries, or to reduce the extent of, discourage the development of, or otherwise harm its relationship with the Company or any of its subsidiaries, including, without limitation, to commence or increase its relationship with any Competitor.

(b) During the Restriction Period, Executive shall not, other than during the term of this Agreement consistent with his duties and obligations under Section 2 hereof, directly or indirectly, recruit, solicit, induce or influence, any Personnel known by Executive to be employed by the Company or any of its subsidiaries to discontinue, reduce the extent of, discourage the development of, or otherwise harm their relationship or commitment to the Company or its subsidiaries, including, without limitation, by employing, seeking to employ or inducing or influencing a Competitor to employ or seek to employ any Personnel of the Company or any of its subsidiaries, or inducing an employee of the Company or any of its subsidiaries to leave employment by the Company or its subsidiary, as the case may be. Any general solicitation to the public that is not directed at the Company and/or any of its subsidiaries shall not constitute a breach of this paragraph, and the restrictions set forth herein shall not apply to any person (i) who initiates contact with Executive or Executive's then current employer in response to a general solicitation to the public, or (ii) who initiates contact with Executive or Executive's then current employer in response to any general search conducted by a placement firm which does not expressly target such Personnel.

#### 8.4 Confidential Information .

(a) Duty to Maintain Confidentiality . Executive shall maintain in strict confidence and safeguard all Confidential Information. Executive covenants that Executive will become familiar with and abide by all policies and rules issued by the Company now or in the future dealing with Confidential Information.

(b) Covenant Not to Disclose, Use or Exploit . Executive shall not, directly or indirectly, disclose to anyone or use or otherwise exploit for the benefit of anyone, other than the Company and its subsidiaries, any Confidential Information.

(c) Confidential Materials . All Confidential Materials are and shall remain the exclusive property of the Company. No Confidential Materials may be copied or otherwise reproduced, removed from the premises of the Company, or entrusted to any person or entity (other than the Personnel entitled to such materials by authorization of the Company) without prior written permission from the Company. Notwithstanding the foregoing, Executive may copy Confidential Information and remove such Confidential Information from the Company's premises to Executive's residence, in each case, in the ordinary course of business in the discharge of Executive's duties and obligations under this Agreement.

8.5 Company Property . Any and all writings, improvements, processes, procedures and/or techniques which Executive may make, conceive, discover or develop, either solely or jointly with any other person or persons, at any time during the term of this Agreement, whether during working hours or at any other time and whether at request or upon the suggestion of the Company or any subsidiary thereof, which relate to any business now or hereafter carried on or contemplated by the Company or any subsidiary thereof, including developments or expansions of its present fields of operations, shall be the sole and exclusive property of the Company. Executive shall make full disclosure to the Company of all such writings, improvements, processes, procedures and techniques, and shall do everything necessary or desirable to vest the absolute title thereto in the Company. Executive shall not be entitled to any additional or special compensation or reimbursement regarding any and all such writings, improvements, processes, procedures and techniques.

9. Remedies .

9.1 Equitable Relief. The parties acknowledge that the provisions and restrictions of Section 8 of this Agreement are reasonable and necessary for the protection of the legitimate interests of the Company and Executive. The parties further acknowledge that the provisions and restrictions of Section 8 of this Agreement are unique, and that any breach or threatened breach of any of these provisions or restrictions by Executive will provide the Company with no adequate remedy at law, and the result will be irreparable harm to the Company. Therefore, the parties agree that upon a breach or threatened breach of the provisions or restrictions of Section 8 of this Agreement by Executive, the Company shall be entitled, in addition to any other remedies which may be available to it, to institute and maintain proceedings at law or in equity, to recover damages, obtain specific performance or a temporary or permanent injunction, without the necessity of establishing the likelihood of irreparable injury or proving damages and without being required to post bond or other security.

9.2 Modification of Restrictions; Full Restriction Period . If the Restriction Period, the Restriction Area or the scope of activity restricted in Article 8 should be adjudged unreasonable in any proceeding, then the Restriction Period shall be reduced by such number of months, the Restriction Area shall be reduced by the elimination of such portion thereof or the scope of the restricted activity shall be modified, or any or all of the foregoing, so that such restrictions may be enforced in such area and for such time as is adjudged to be reasonable. If Executive violates any of the restrictions contained in Article 8, the Restriction Period shall not run in favor of Executive from the time of commencement of any such violation until such time as such violation shall be cured by Executive to the reasonable satisfaction of the Company.

10. Consideration for Restrictive Covenants . Executive acknowledges that the execution of this Agreement and compliance with it by the Company shall constitute fair and adequate consideration for Executive's compliance with the restrictive covenants contained in the respective sections of this Agreement.

11. Miscellaneous .

11.1 Governing Law . This Agreement, its interpretation, performance and enforcement, and the rights and remedies of the parties hereto, shall be governed and construed by the laws of the State of Nevada applicable to contracts to be performed wholly within Nevada, without regard to principles of conflicts of laws and without the aid of any canon, custom or rule of law requiring construction against the drafter.

11.2 Waiver . A waiver by any party of any condition or the breach of any term, covenant, representation or warranty contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall not be deemed or construed as a further or continuing waiver of any such condition or the breach of any other term, covenant, representation, or warranty set forth in this Agreement.

11.3 Entire Agreement. This Agreement together with the Option contain the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements (including the Original Employment Agreement), and contemporaneous understandings, inducements or conditions, express or implied, written or oral, between the parties with respect to the subject matter hereof. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof.

11.4 Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by courier service, by telecopy or by registered or certified mail (postage prepaid, return receipt requested) to the respective parties at their addresses set forth in the preamble to this Agreement (or at such other address for a party as shall be specified in a notice given in accordance with this Section 11.4).

11.5 Headings. The descriptive headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

11.6 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

11.7 Counterparts. This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

11.8 Amendment or Termination. No agreement shall be effective to change, modify, waive, release, amend or terminate this Agreement, in whole or in part, unless such agreement is in writing, refers expressly to this Agreement and is signed by the party against whom enforcement of the change, modification, waiver, release, amendment or termination is sought.



#### 11.9 Indemnification.

(a) The Company agrees that if the Executive is made a party, or is threatened to be made a party, to any action, suit or proceeding, whether civil, criminal, administrative or investigative (“Proceeding”), by reason of the fact that he is or was a director, officer or employee of the Company or any of its affiliates or is or was serving at the request of the Company as a director, officer, member, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether or not the basis of such Proceeding is the Executive’s alleged action in an official capacity while serving as a director, officer, member, employee or agent, the Executive shall be indemnified and held harmless by the Company to the fullest extent legally permitted or authorized by the Company’s certificate of incorporation or bylaws or resolutions of the Company’s Board of Directors or, if greater, by the laws of the State of Nevada, against all cost, expense, liability and loss (including, without limitation, attorney’s fees, judgments, fines, excise taxes or other liabilities or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by the Executive in connection therewith, and such indemnification shall continue as to the Executive even if he has ceased to be a director, member, employee or agent of the Company or other entity and shall inure to the benefit of the Executive’s heirs, executors and administrators.

(b) Neither the failure of the Company (including its board of directors, independent legal counsel or stockholders) to have made a determination prior to the commencement of any proceeding concerning payment of amounts claimed by the Executive under Section 11.9(a) above that indemnification of the Executive is proper because he has met the applicable standard of conduct, nor a determination by the Company (including its Board of Directors, independent legal counsel or stockholders) that the Executive has not met such applicable standard of conduct, shall create a presumption that the Executive has not met the applicable standard of conduct.

(c) The Company agrees to continue and maintain directors’ and officers’ liability insurance policy covering the Executive to the extent the Company provides such coverage for its other executive officers and directors, as applicable.

#### 11.10 Code Section 409A.

(a) This Agreement shall be interpreted and administered in a manner so that any amount or benefit payable hereunder shall be paid or provided in a manner that is either exempt from or compliant with the requirements of Section 409A of the Internal Revenue Code of 1986, as amended (the “Code”) and applicable Internal Revenue Service guidance and Treasury Regulations issued thereunder (and any applicable transition relief under Section 409A of the Code). Nevertheless, the tax treatment of the benefits provided under the Agreement is not warranted or guaranteed. Neither the Company nor its directors, officers, employees or advisers shall be held liable for any taxes, interest, penalties or other monetary amounts owed by Executive as a result of the application of Section 409A of the Code.

(b) Notwithstanding anything in this Agreement to the contrary, to the extent that any amount or benefit that would constitute non-exempt “deferred compensation” for purposes of Section 409A of the Code (“Non-Exempt Deferred Compensation”) would otherwise be payable or distributable hereunder, or a different form of payment of such Non-Exempt Deferred Compensation would be effected, by reason of Executive’s termination of employment, such Non-Exempt Deferred Compensation will not be payable or distributable to Executive, and/or such different form of payment will not be effected, by reason of such circumstance unless the circumstances giving rise to such termination of employment meet any description or definition of “separation from service” in Section 409A of the Code and applicable regulations (without giving effect to any elective provisions that may be available under such definition). This provision does not affect the dollar amount or prohibit the *vesting* of any Non-Exempt Deferred Compensation upon a termination of employment. If this provision prevents the payment or distribution of any Non-Exempt Deferred Compensation, or the application of a different form of payment, such payment or distribution shall be made at the time and in the form that would have applied absent the non-409A-conforming event.

(c) Notwithstanding anything in this Agreement to the contrary, if any amount or benefit that would constitute Non-Exempt Deferred Compensation would otherwise be payable or distributable under this Agreement by reason of Executive's separation from service during a period in which he is a Specified Employee (as defined below), then, subject to any permissible acceleration of payment by the Company under Treas. Reg. Section 1.409A-3(j)(4)(ii) (domestic relations order), (j)(4)(iii) (conflicts of interest), or (j)(4)(vi) (payment of employment taxes): (i) the amount of such Non-Exempt Deferred Compensation that would otherwise be payable during the six-month period immediately following Executive's separation from service will be accumulated through and paid or provided on the first day of the seventh month following Executive's separation from service (or, if Executive dies during such period, within 30 days after Executive's death) (in either case, the "Required Delay Period"); and (ii) the normal payment or distribution schedule for any remaining payments or distributions will resume at the end of the Required Delay Period. For purposes of this Agreement, the term "Specified Employee" has the meaning given such term in Code Section 409A and the final regulations thereunder.

(d) Each payment of termination benefits under Section 5.2(a) of this Agreement shall be considered a separate payment, as described in Treas. Reg. Section 1.409A-2(b)(2), for purposes of Section 409A of the Code.

(e) If Executive is entitled to be paid or reimbursed for any taxable expenses under Sections 4.5 or 4.6 hereof, and such payments or reimbursements are includible in Executive's federal gross taxable income, the amount of such expenses reimbursable in any one calendar year shall not affect the amount reimbursable in any other calendar year, and the reimbursement of an eligible expense must be made no later than December 31 of the year after the year in which the expense was incurred. No right of Executive to reimbursement of expenses under Sections 4.5 or 4.6 hereof shall be subject to liquidation or exchange for another benefit.

(f) The Company shall have the sole authority to make any accelerated distribution permissible under Treas. Reg. Section 1.409A-3(j)(4) to Executive of deferred amounts, provided that such distribution meets the requirements of Treas. Reg. Section 1.409A-3(j)(4).

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

DIGIPATH, INC.

By: /s/ Joseph J. Bianco

Joseph J. Bianco, Chief Executive Officer

/s/ Todd Denkin

Todd Denkin

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