

# **AGREEMENT FOR SERVICES**

#347-PHD1203

## **DIGITAL INNOVATION, INC.**

### **License and Support**

*for*

### **Collector Trauma Registry Software Program**

## **Amendment I**

**THIS Amendment to that AGREEMENT** made and entered into on January 20, 2004 by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and Digital Innovation, Inc., a Corporation formed under the laws of the state of Maryland, whose principal place of business is 134 Industry Lane, Suite 3, Forest Hill, Maryland 21050 (hereinafter referred to as "Consultant");

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

**WHEREAS**, County previously contracted and received software, licensing, installation and training for a proprietary trauma registry software program (hereinafter referred to as "Program") necessary to manage trauma patient information used by the Emergency Medical Services Agency of El Dorado County; and

**WHEREAS**, County desires to continue licensing, upgrades, and telephone support of said Program; and

**WHEREAS**, Consultant has represented to County that it is specially trained, experienced, expert and competent to perform the special services required hereunder, and County has determined to rely upon such representations; and

**WHEREAS**, it is the intent of the parties hereto that such services be in conformity with all applicable federal, state and local laws; and

**WHEREAS**, County and Consultant desire to extend the term of the existing agreement for an additional year;

**NOW, THEREFORE**, County and Consultant mutually agree to the following:

**ARTICLE II, Term** shall be replaced by the following:

**ARTICLE II**

**Term:** This Agreement shall be effective February 17, 2004 and shall continue in effect until February 16, 2007 unless otherwise canceled by either party in accordance with Article IX of this Agreement.

**ARTICLE III, Compensation for Services** shall be replaced by the following:

**ARTICLE III**

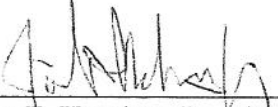
**Compensation for Services:** County shall pay Consultant total of \$4,500 per year in advance upon approved invoice. Payment shall be within 30 days of receipt and approval of invoice from Consultant by the El Dorado County EMS Agency. This Agreement shall not exceed a total of \$13,500 for the three year term.

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The parties do hereby agree that all other provisions of the Agreement are to remain in full force and effect and that this Agreement remains subject to early termination by County as set forth in the original document.

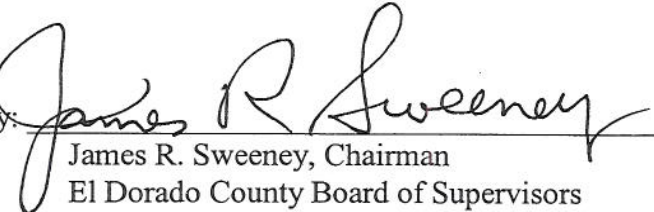
IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first below written.

**CONSULTANT**

By:   
John F. Kutcher, Jr., Ph.D., President  
Digital Innovation, Inc.

Date: 2/6/06

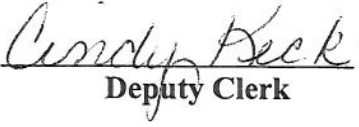
**COUNTY OF EL DORADO**

By:   
James R. Sweeney, Chairman  
El Dorado County Board of Supervisors

Date: 3-14-06

**ATTEST:**

Cindy Keck, Clerk

By:  Date 3-14-06  
Deputy Clerk



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## **DIGITAL INNOVATION, INC.**

### **License and Support**

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### **Collector Trauma Registry Software Program**

**THIS AGREEMENT** by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and Digital Innovation, Inc., a Corporation formed under the laws of the state of Maryland, whose principal place of business is 134 Industry Lane, Suite 3, Forest Hill, Maryland 21050 (hereinafter referred to as "Consultant");

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

**WHEREAS**, County previously contracted and received software, licensing, installation and training for a proprietary trauma registry software program (hereinafter referred to as "Program") necessary to manage trauma patient information used by the Emergency Medical Services Agency of El Dorado County; and

**WHEREAS**, ongoing licensing, upgrades, and telephone support of said Program is desired by County; and

**WHEREAS**, Consultant has represented to County that it is specially trained, experienced, expert and competent to perform the special services required hereunder, and County has determined to rely upon such representations; and

**WHEREAS**, it is the intent of the parties hereto that such services be in conformity with all applicable federal, state and local laws; and

**WHEREAS**, County has determined that the provision of such services provided by Consultant are in the public's best interest, are more economically and feasibly performed by outside independent contractors as well as authorized by El Dorado County Charter, Section 210 (b) (6) and/or Government Code 31000;

**NOW, THEREFORE**, County and Consultant mutually agree as follows:



## ARTICLE I

**Scope of Services:** Consultant has a background in developing and maintaining general-purpose and trauma-specific software products and modules in connection with operating a commercial trauma registry business; and a background in providing software engineering services and custom application development and maintenance services. Consultant is willing to provide products and services to County based on this background, which County desires to have Consultant provide. County desires and Consultant agrees to provide maintenance and improvement of the software program identified as *CVW - COLLECTOR, Standard Windows Version*, which was licensed and installed in 1999 by Tri-Analytics, Inc., a Maryland corporation, at three (3) County sites (hereinafter referred to as the "Locations"):

The El Dorado County EMS Agency, in Placerville, CA  
Marshall Hospital, in Placerville, CA  
Barton Memorial Hospital, in South Lake Tahoe, CA

**MAINTENANCE AND SUPPORT:** While the maintenance and support services of this Agreement ("Maintenance Services") are in effect and the account is in good standing, the Consultant agrees to provide the services described under this provision to the Locations. The cost will entitle the Locations to telephone consultation with the Consultant's product support staff during the Consultant's regular business hours regarding installation and software functions of the Collector Trauma Registry system. In addition, the Locations will receive general Collector Trauma Registry system enhancements and maintenance releases. System enhancements could include, for example, additional security and network capabilities, graphic interfaces, querying and report writing enhancements, database diagnostics, etc. In addition, the cost also supports portions of the Consultant's ongoing internal software maintenance activities, including maintaining custom code and the compatibility of that code with product enhancements, and project management activities of the Consultant to support on-going system changes and enhancements.

Entitlements to product support and software upgrades are renewed with the payment of each yearly maintenance and support fee, on the anniversary date of the initial maintenance and support fee. The maintenance fee will not increase during the first three years, after which time it may increase based on the CPI.

**LICENSING:** The Software Products represent licensed works of the Consultant and its suppliers and are provided for use to the County under the following software licensing terms. County shall not make any reproductions, copies, or electronic transmittals of any portion of the Software Products, including but not limited to any program files, configuration files, system files, instruction manuals, screen captures, user's manuals, on-line help files, or any other materials, without the prior written consent of the Consultant; except that County, solely for its internal archival or backup purposes, may make network system backups of the installed system, and a single backup copy of the installation disks provided by the Consultant. County shall install the Software Products only on a single local area network, i.e., at one physical location at each site. County may not distribute, rent, sub-license, relicense, resell, or lease the Software Products, including translating, decompiling, disassembling, or creating derivative works. County may not reverse-engineer any part of the Software Products. County shall not remove or alter any copyright notices or other proprietary notices of the Consultant or its suppliers contained in any part of the Software Products. The



provisions of this section shall survive the termination of this Agreement. County recognizes that it only has license to use the Software Products at the Locations. Additionally, any "non-Location" facility that desires to use the Software Products would be required to purchase an additional license.

**WARRANTY:** While the Maintenance Services of this Agreement are in effect, the Consultant warrants to the County that all Software Products and maintenance updates provided by the Consultant to County under this Agreement will perform substantially in accordance with their written materials and other documentation provided by the Consultant to County. To the maximum extent permitted by applicable law, the Consultant disclaims all other warranties either express or implied, including but not limited to implied warranties of merchantability and fitness for a particular purpose, with respect to any services performed or any goods including but not limited to Software Products.

**CONFIDENTIALITY:** County and the Consultant each recognize that each has and will have information including, but not limited to data and products (collectively "Information") which are valuable, special and unique assets of their respective organizations. County and the Consultant agree that neither party will at any time or in any manner, either directly or indirectly, divulge, disclose, or communicate in any manner any Information of the other party, to any third party, without the prior written consent of the other party. Both County and the Consultant will protect the Information of the other party and treat it as strictly confidential.

**HIPAA:** As a condition of performing the described services for the County of El Dorado, the contractor shall execute the "Business Associate" agreement attached hereto as "Exhibit A"

## **ARTICLE II**

**Term:** This Agreement shall be effective February 17, 2004 and shall continue in effect until February 16, 2006 unless otherwise canceled by either party in accordance with Article IX of this Agreement.

## **ARTICLE III**

**Compensation for Services:** County shall pay Consultant<sup>a</sup> total of \$4,500 per year in advance upon approved invoice. Payment shall be within 30 days of receipt and approval of invoice from Consultant by the El Dorado County EMS Agency. This Agreement shall not exceed a total of \$9,000 for the two year term.

## **ARTICLE IV**

**Changes to Agreement:** This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

## **ARTICLE V**

**Consultant to County:** It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further agreed that in all matters pertaining to this Agreement, Consultant shall act as Consultant only to County and shall not act as Consultant to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Consultant's responsibilities to County during term hereof.

## **ARTICLE VI**

**Assignment and Delegation:** Consultant is engaged by County for their unique qualifications and skills as well as those of their personnel. Consultant shall not subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

## **ARTICLE VII**

**Independent Consultant/Liability:** Consultant is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. Consultant exclusively assumes responsibility for acts of its employees, associates, and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Consultant shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Consultant or its employees.

## **ARTICLE VIII**

**Fiscal Considerations:** The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, El Dorado County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County and Locations released from any further liability hereunder (except noting the Licensing section which outlives the termination of the Agreement).

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

## **ARTICLE IX**

### **Default, Termination, and Cancellation:**

- A. Default: Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not



cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended in the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date in which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired.

- B. Bankruptcy: This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.
- C. Ceasing Performance: County may terminate this Agreement in the event Consultant ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: County may terminate this Agreement in whole or in part seven (7) calendar days upon written notice by County for any reason. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to Consultant, and for such other services, which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, Consultant shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.
- E. In the event of termination for default on the part of the Consultant, County reserves the right to take over and complete the work by contract or by any other means.

#### **ARTICLE X**

**Notice to Parties:** All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested.

Notices to County shall be in duplicate and addressed as follows:

EL DORADO COUNTY PUBLIC HEALTH DEPARTMENT  
931 SPRING STREET  
PLACERVILLE, CA 95667  
ATTN: GAYLE ERBE-HAMLIN, DIRECTOR

or to such other location as the County directs.

Notices to Consultant shall be addressed as follows:

DIGITAL INNOVATION, INC.  
134 INDUSTRY LANE, SUITE 3  
FOREST HILL, MD 21050  
ATTN: JOHN F. KUTCHER, JR., Ph.D., PRESIDENT

or to such other location as the Consultant directs.

#### **ARTICLE XI**

**Indemnity:** To the fullest extent of the law, Consultant shall defend, indemnify, and hold the County harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorneys fees and costs incurred, brought for, or on account of, injuries to or death of any person, which are claimed to or in any way arise out of or are connected with the Consultant as a result of the Consultant's negligence which may include services, operations, or performance hereunder. Consultant will not have responsibility to defend, indemnify or hold the County harmless for any and all claims which result from the sole, or active negligence of the County, its officers and employees, or as expressly provided by statute. This duty of Consultant to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

#### **ARTICLE XII**

**Insurance:** Consultant shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Manager and documentation evidencing that Consultant maintains insurance that meets the following requirements:

- A. Full Worker's Compensation and Employers' Liability Insurance covering all employees of Consultant as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$500,000 is required in the event motor vehicles are used by the Consultant in the performance of the Agreement.
- D. Consultant shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.
- E. The insurance will be issued by an insurance company acceptable to the Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- F. Consultant agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Consultant agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than



one (1) year. New certificates of insurance are subject to the approval of the Risk Management Division and Consultant agrees that no work or services shall be performed prior to the giving of such approval. In the event the Consultant fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

G. The certificate of insurance must include the following provisions stating that:

1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County, and;
2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all liability policies except worker's compensation and professional liability insurance policies.

H. The Consultant's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it.

I. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees, and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

J. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.

K. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.

L. Consultant's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.

M. In the event Consultant cannot provide an occurrence policy, Consultant shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.

N. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with the Risk Management Division, as essential for protection of the County. Consultant may at its option terminate this Agreement if the insurance requirements required by the County requires additional premiums that the Consultant is not willing to accept.



### **ARTICLE XIII**

**Interest of Public Official:** No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Consultant under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

### **ARTICLE XIV**

**Interest of Consultant:** Consultant covenants that Consultant presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Consultant further covenants that in the performance of this Agreement no person having any such interest shall be employed by Consultant.

### **ARTICLE XV**

**California Residency (Form 590):** All independent Consultants providing services to the County must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certifying that they have a permanent place of business in California. The Consultant will be required to submit a Form 590 prior to execution of an Agreement or County shall withhold seven (7) percent of each payment made to the Consultant during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

### **ARTICLE XVI**

**Taxpayer Identification / Form W9:** All individuals/sole proprietors, corporations, partnerships, associations, organizations or public entities providing services to the County shall provide a fully executed Department of the Treasury Internal Revenue Service Form W-9, "Request for Taxpayer Identification Number and Certification".

### **ARTICLE XVII**

**Venue:** Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California. Consultant waives any removal rights it might have under Code of Civil Procedure Section 394.

### **ARTICLE XVIII**

**Administrator:** The County Officer or employee with responsibility for administering this Agreement is Gayle Erbe-Hamlin, Director of Public Health, or successor.

### **ARTICLE XIX**

**Authorized Signatures:** The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

**ARTICLE XX**

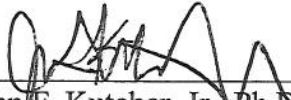
**Partial Invalidity:** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

**ARTICLE XXI**

**Entire Agreement:** This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

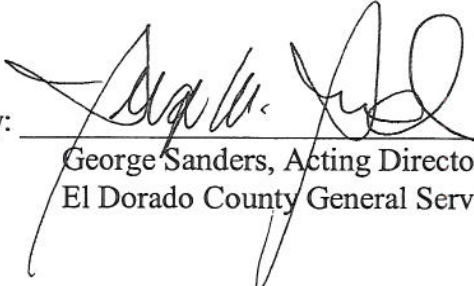
**IN WITNESS WHEREOF,** the parties hereto have executed this Agreement the day and year first below written.

**CONSULTANT**

By:   
John F. Kutcher, Jr., Ph.D., President  
Digital Innovation, Inc.

Date: 1/22/04

**COUNTY OF EL DORADO**

By:   
George Sanders, Acting Director  
El Dorado County General Services Department

Date: 1/29/04



## EXHIBIT A

### HIPAA Business Associate Agreement Between the County of El Dorado and Digital Innovation, Inc.

This HIPAA Business Associate Agreement entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and Digital Innovation, Inc. (hereinafter referred to as "Contractor") supplements and is made part of the Digital Innovation, Inc., El Dorado County Collector Trauma Registry Software License and Support Agreement ("Underlying Agreement") as of the date of approval by the parties (the "Effective Date").

### RECITALS

WHEREAS, County and Contractor entered into the Underlying Agreement pursuant to which Contractor provides services to County, and in conjunction with the provision of such services, certain Protected Health Information ("PHI") may be made available to Contractor for the purposes of carrying out its obligations under the Underlying Agreement; and,

WHEREAS, the provisions of the Health Insurance Portability and Accountability Act, Pub. L. No. 104-161 of 1996 ("HIPAA"), more specifically the regulations found at Title 45, CFR, Parts 160 and 164 (the "Privacy Rule"), as may be amended from time to time, which are applicable to the protection of any disclosure of PHI pursuant to the Underlying Agreement; and,

WHEREAS, County is a Covered Entity, as defined in the Privacy Rule; and,

WHEREAS, Contractor, when a recipient of PHI from County, is a Business Associate as defined in the Privacy Rule; and,

WHEREAS, the parties agree that any disclosure or use of PHI be in compliance with the Privacy Rule or other applicable law;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. Definitions. Unless otherwise provided in this Amendment, capitalized terms shall have the same meanings as set forth in the Privacy Rule, as may be amended from time to time.
2. Scope of Use and Disclosure by Contractor of County Disclosed PHI.
  - A. Contractor shall be permitted to use PHI disclosed to it by the County:
    - (1) on behalf of the County, or to provide services to the County for the purposes contained herein, if such use or disclosure would not violate the Privacy Rule if done by the County, or the minimum necessary policies and procedures of the County.



- (2) as necessary to perform any and all of its obligations under the Underlying Agreement.
- B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Amendment or Required by Law, Contractor may:
- (1) use the PHI in its possession for its proper management and administration and to fulfill any legal obligations.
  - (2) disclose the PHI in its possession to a third party for the purpose of Contractor's proper management and administration or to fulfill any legal responsibilities of Contractor. Contractor may disclose PHI as necessary for Contractor's operations only if:
    - (a) The disclosure is Required by Law; or
    - (b) Contractor obtains written assurances from any person or organization to which Contractor will disclose such PHI that the person or organization will:
      - (i) hold such PHI in confidence and use or further disclose it only for the purpose of which Contractor disclosed it to the third party, or as Required by Law; and,
      - (ii) the third party will notify Contractor of any instances of which it becomes aware in which the confidentiality of the information has been breached.
  - (3) aggregate the PHI and/or aggregate the PHI with that of other data for the purpose of providing County with data analyses related to the Underlying Agreement, or any other purpose, financial or otherwise, as requested by County.
  - (4) not disclose PHI disclosed to Contractor by County not authorized by the Underlying Agreement or this Amendment without patient authorization or de-identification of the PHI as authorized in writing by County.
  - (5) de-identify any and all PHI of County received by Contractor under this Amendment provided that the de-identification conforms to the requirements of the Privacy Rule and does not preclude timely payment and/or claims processing and receipt.
- C. Contractor agrees that it will neither use nor disclose PHI it receives from County, or from another business associate of County, except as permitted or required by this Amendment, or as Required by Law, or as otherwise permitted by law.

3. Obligations of Contractor. In connection with its use of PHI disclosed by County to Contractor, Contractor agrees to:
- A. Use or disclose PHI only as permitted or required by this Amendment or as Required by Law.
  - B. Use reasonable and appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Amendment.
  - C. To the extent practicable, mitigate any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of this Amendment.
  - D. Report to County any use or disclosure of PHI not provided for by this Amendment of which Contractor becomes aware.
  - E. Require sub-contractors or agents to whom Contractor provides PHI to agree to the same restrictions and conditions that apply to Contractor pursuant to this Amendment.
  - F. Use appropriate administrative, technical and physical safeguards to prevent inappropriate use or disclosure of PHI created or received for or from the County.
  - G. Obtain and maintain knowledge of the applicable laws and regulations related to HIPAA, as may be amended from time to time.
4. PHI Access, Amendment and Disclosure Accounting. Contractor agrees to:
- A. Provide access, at the request of County, within five (5) days, to PHI in a Designated Record Set, to the County, or to an Individual as directed by the County.
  - B. To make any amendment(s) to PHI in a Designated Record Set that the County directs or agrees to at the request of County or an Individual within sixty (60) days of the request of County.
  - C. To assist the County in meeting its disclosure accounting under HIPAA:
    - (1) Contractor agrees to document such disclosures of PHI and information related to such disclosures as would be required for the County to respond to a request by an Individual for an accounting of disclosures of PHI.
    - (2) Contractor agrees to provide to County or an Individual, within sixty (60) days, information collected in accordance with this section to permit the County to respond to a request by an Individual for an accounting of disclosures of PHI.
    - (3) Contractor shall have available for the County the information



required by this section for the six (6) years preceding the County's request for information (except the Contractor need have no information for disclosures occurring before April 14, 2003).

- D. Make available to the County, or to the Secretary of Health and Human Services, Contractor's internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining Contractor's compliance with the Privacy Rule, subject to any applicable legal restrictions.
- E. Within thirty (30) days of receiving a written request from County, make available any and all information necessary for County to make an accounting of disclosures of County PHI by Contractor.
- F. Within thirty (30) days of receiving a written request from County, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in Contractor's possession constitutes a Designated Record Set.
- G. Not make any disclosure of PHI that County would be prohibited from making.

5. Obligations of County.

- A. County agrees that it will make its best effort to promptly notify Contractor in writing of any restrictions on the use and disclosure of PHI agreed to by County that may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Amendment.
- B. County agrees that it will make its best effort to promptly notify Contractor in writing of any changes in, or revocation of, permission by any Individual to use or disclose PHI, if such changes or revocation may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Amendment.
- C. County agrees that it will make its best effort to promptly notify Contractor in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect Contractor's use of disclosure of PHI.
- D. County shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by County, except as may be expressly permitted by the Privacy Rule.
- E. County will obtain any authorizations necessary for the use or disclosure of PHI, so that Contractor can perform its obligations under this Amendment and/or the Underlying Agreement.



6. Term and Termination. This Amendment shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement, as provided therein.
7. Amendment to Indemnity.

Contractor shall indemnify and hold harmless all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability whatsoever, based or asserted upon any services of Contractor, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Amendment, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever including fines, penalties or any other costs and resulting from any reason whatsoever arising from the performance of Contractor, its officers, agents, employees, subcontractors, agents or representatives from this Amendment. Contractor shall defend, at its sole expense, all costs and fees including but not limited to attorney fees, cost of investigation, defense and settlements or awards all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives in any claim or action based upon such alleged acts or omissions.

With respect to any action or claim subject to indemnification herein by Contractor, Contractor shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Contractor's indemnification to County as set forth herein. Contractor's obligation to defend, indemnify and hold harmless County shall be subject to County having given Contractor written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at Contractor's expense, for the defense or settlement thereof. Contractor's obligation hereunder shall be satisfied when Contractor has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.

The specified insurance limits required in the Underlying Agreement of this Amendment shall in no way limit or circumscribe Contractor's obligations to indemnify and hold harmless the County herein from third party claims arising from the issues of this Amendment.

In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve the Contractor from indemnifying the County to the fullest extent allowed by law.

In the event there is a conflict between this indemnification clause and an

indemnification clause contained in the Underlying Agreement of this Amendment, this indemnification shall only apply to the subject issues included within this Amendment.

8. Amendment. The parties agree to take such action as is necessary to amend this Amendment from time to time as is necessary for County to comply with the Privacy Rule and HIPAA generally.
9. Survival. The respective rights and obligations of this Amendment shall survive the termination or expiration of this Amendment.
10. Regulatory References. A reference in this Amendment to a section in the Privacy Rule means the section as in effect or as amended.
11. Conflicts. Any ambiguity in this Amendment and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule and HIPAA generally.
12. Except as herein amended, all other parts and sections of this Agreement with Digital Innovation , Inc., shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as set forth below:

CONTRACTOR

By: \_\_\_\_\_

**John F. Kutcher, Jr., Ph.D., President**  
Digital Innovation, Inc.

Date: \_\_\_\_\_

1/20/09

COUNTY OF EL DORADO

By: \_\_\_\_\_

**George W. Sanders, Acting Director**  
El Dorado County General Services Dept.

Date: \_\_\_\_\_

1/19/09