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IN THE SUPERIOR COURT OF GWINNETT COUNTY ORIGINAL

STATE OF GEORGIA

DAVID GOLDFARB

18 A11009-2

CIVIL ACTION NUMBER:

PLAINTIFF

VS.

DIGITAL INSURANCE LLC f/k/a

DIGITAL INSURANCE, INC. and d/b/a

ONEDIGTAL HEALTH AND BENEFITS

DEFENDANT

SUMMONS

TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned and required to file with the Clerk of said court and serve upon the Plaintiff's attorney, whose name and address is:

Michael J. Ernst
Stokes Carmichael & Ernst LLP
2018 Powers Ferry RD, Suite 700
Atlanta, GA 30339

an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This 28th **day of** December, **20** 18.

Richard T. Alexander, Jr.,
Clerk of Superior Court

By Ashley Russell
Deputy Clerk

INSTRUCTIONS: Attach addendum sheet for additional parties if needed, make notation on this sheet if addendum sheet is used.

SC-1 Rev. 2011

ORIGINAL

SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

DAVID GOLDFARB,	§	
	§	
Plaintiff,	§	**18 A11009-2**
	§	**Civil Action No.** _____
v.	§	
	§	
DIGITAL INSURANCE LLC, f/k/a	§	
DIGITAL INSURANCE, INC., and d/b/a	§	
ONEDIGITAL HEALTH AND BENEFITS,	§	
	§	
Defendant.	§	

FILED IN OFFICE
CLERK SUPERIOR COURT
GWINNETT COUNTY, GA
2018 DEC 28 PM 3:20
RICHARD ALEXANDER, CLERK

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff David Goldfarb ("Goldfarb" or "Plaintiff") files Plaintiff's Original Complaint (the "Complaint") against Defendant Digital Insurance LLC, f/k/a Digital Insurance, Inc., and d/b/a OneDigital Health and Benefits ("OneDigital" or "Defendant").

I. THE PARTIES

1. Plaintiff David Goldfarb is a Texas resident, who lives in Dallas, Texas and works at OneDigital's office in Richardson, Texas.

2. Defendant was founded in 2000 under the name Digital Insurance, Inc, as a Delaware corporation registered to do business in Georgia with its principal place of business 200 Galleria Parkway, Suite 1950, Atlanta, Georgia 30339. On May 17, 2017, Digital Insurance, Inc. filed a certificate of withdrawal with the Georgia Secretary of State. The same day, Digital Insurance LLC was registered to do business in Georgia at the same address. Upon information and belief, Digital Insurance, Inc. was succeeded by Digital Insurance, LLC, a Delaware limited liability company registered to do business in Georgia, which now does business under the trade

name OneDigital Health and Benefits. Defendant may be served through its registered agent CT Corporation System, 289 S. Culver Street, Lawrenceville, Georgia 30046.

II. JURISDICTION AND VENUE

3. This court has jurisdiction over this action because the claims and causes of action arise out of an agreement that is governed by Georgia law and provides that the courts in the State of Georgia shall have exclusive jurisdiction over any disputes arising under the agreement. Additionally, Defendant maintains its registered agent and office in Gwinnett County, Georgia. Moreover, Defendant transacts business in this state including, upon information and belief, in Gwinnett County, Georgia.

4. Venue is proper in this Court because Defendant maintains its registered agent and office in Gwinnett County, Georgia.

III. FACTUAL BACKGROUND

5. Goldfarb has 17 years of experience as an insurance agent and broker. In September 2004, Goldfarb founded DSG Benefits Group, LLC ("DSG") in Dallas, Texas and operated that business successfully until 2012.

6. OneDigital has been in the insurance agency and brokerage business since 2000, and has grown significantly during that time.

7. In 2011, OneDigital approached Goldfarb regarding a potential acquisition of DSG. At the time, OneDigital had been pursuing a number of acquisition targets similar to DSG and was aggressively growing its national footprint. To assist in that effort, OneDigital was actively contemplating a restructuring and/or recapitalization involving Fidelity National Financial ("Fidelity").

8. On July 1, 2012, Goldfarb, DSG and OneDigital executed an Asset Purchase Agreement ("APA") whereby OneDigital acquired the vast majority of DSG's business, including specifically designated client relationships and ongoing contracts. A copy of the Asset Purchase Agreement is attached as Exhibit A.

9. The APA contains three specific provisions relevant to this lawsuit. First, recognizing that OneDigital was "in the process of contemplating a restructure and/or recapitalization," Section 1.4 of the APA provided that Goldfarb would be permitted to participate in the equity (the "Equity Rights"). Specifically, Section 1.4 states:

> As of the Closing, Purchaser is in the process of contemplating a restructure and/or recapitalization ("Recap"). If such Recap occurs at any time during the Earn-out Period (as defined below) and Purchaser makes equity available to its key employees, new employees, principal and/or acquisition targets, the Purchaser agrees to also make such equity available to other acquisition targets . . .

10. The Equity Rights were a highly negotiated portion of the APA because OneDigital was actively contemplating a Recap event with Fidelity.

11. Second, the APA contained a robust Earn-Out provision (the "Earn-Out") that provided for additional payments to Goldfarb over the next four years to be calculated based on the expected total annual revenue. Section 2.1 of the APA outlines the Earn-Out provision in detail and describes the method for calculating the Earn-Out in each of the four years following the execution of the APA.

12. Section 2.1.1 provides a method for verifying OneDigital's Earn-Out calculations and expressly requires OneDigital to provide information to Goldfarb regarding how the Earn-Out was calculated, along with documents sufficient to permit Goldfarb to verify the calculations. OneDigital is also required to "cooperate fully and promptly" with Goldfarb in

assessing the Earn-Out payments. Section 2.1.1(b) permits Goldfarb to give OneDigital notice of any good faith disagreement with the calculations and requires the parties to attempt in good faith to resolve any dispute.

13. Section 2.1.1(c) provides that, in the event a resolution cannot be reached between Goldfarb and OneDigital regarding an Earn-Out calculation, that "the parties shall submit such disagreement to an independent CPA firm to be mutually agreed upon. . ."

14. Third, the APA contained a customer non-solicitation provision (the "Non-Solicit") that purported to prevent Goldfarb from soliciting or contacting customers/contracts purchased by OneDigital as part of the APA. Section 6.1 of the APA provided that the Non-Solicit remained in effect until two years after Goldfarb's receipt of the final Earn-Out payment. In addition, Section 2.1.2 provided that, in the event of a default on the Earn-Out, Goldfarb would be "relieved of the non-solicitation obligations in Section 6.1. . ."

15. In addition to the APA, on July 1, 2012, OneDigital and Goldfarb signed an Employment Agreement, which was made effective as of July 1, 2012. A copy of the Employment Agreement is attached hereto as Exhibit B. The Employment Agreement provided that for a period of four years, Goldfarb would be employed by OneDigital.

16. Sections 3.B, 3.C and 3.D of the Employment Agreement prevented Goldfarb from soliciting OneDigital's customers, prospective customers and employees during his employment and for a period of two years after Goldfarb's employment ended. As with the Non-Solicit in the APA, Section 2.1.2 of the APA provides that Goldfarb would be relieved of the non-solicitation provisions in the Employment Agreement in the event of a default on the Earn-Out.

17. The Employment Agreement provided that Goldfarb could resign for "Good Reason," at any time and defined "good reason" as including a circumstance where OneDigital "materially reduces [Goldfarb's] duties, responsibilities and/or compensation structure" or where One Digital "commits a material breach of the Agreement." According to Section 3.F.(ix) of the Employment Agreement, the non-solicitation provisions in Sections 3.B, 3.C, and 3.D cease to apply in the event Goldfarb resigns for "good reason."

18. The Employment Agreement was amended, effective as of June 1, 2017. The amendment provided that Goldfarb would continue as the Managing Principal of Sales for OneDigital's Dallas office and would be "primarily focused on managing [OneDigital's] sales and marketing operations in the Dallas, Texas office. . ." The amendment also addressed some changes to Goldfarb's compensation structure, but did not otherwise alter the Employment Agreement. A copy of the First Amendment to Employment Agreement is attached as Exhibit C.

19. Section 2.E. of the First Amendment provides that Goldfarb shall be paid, among other compensation, a profit-based payment equal to ten percent of the earnings attributable to the Dallas office, payable on a bi-weekly basis.

20. Relatively quickly after the APA and Employment Agreement went into effect, One Digital began breaching various provisions of agreements.

21. On December 31, 2012, OneDigital closed the contemplated restructuring/recapitalization with Fidelity. Upon information and belief, OneDigital made equity available to other key employees, new employees, principals and/or acquisition targets. OneDigital did not, however, comply with the Equity Rights provision in Section 1.4 of the APA and did not offer Goldfarb the ability to purchase equity as required. Had Goldfarb been

APA that has caused Plaintiff damage for which he now sues. Defendant's breaches include, but are not limited to, the following:

a. A failure, in violation of Section 1.4 of the APA, to make the Equity Rights available to Goldfarb;

b. A failure to comply with Section 2.1.1 of the APA in connection with the payment of the Earn-Out;

c. A failure to comply with Section 2.1.1 of the APA by failing to provide sufficient documents and information to Goldfarb in order to permit Goldfarb to verify the Earn-Out payments;

d. A failure to comply with Section 2.1.1 of the APA by failing to properly submit disputes regarding the Earn-Out to an independent accountant; and

e. A failure to comply with Section 6.6 of the APA, which restricts OneDigital's ability to merge with or establish any other office in Dallas prior to the payment of the fourth anniversary Earn-Out.

COUNT TWO – BREACH OF CONTRACT -- EMPLOYMENT AGREEMENT

29. Plaintiff incorporates the preceding paragraphs as if they are fully set forth herein.

30. The Employment Agreement is a valid, enforceable contract granting certain rights to, and imposing certain obligations and limitations on the parties. Defendant's actions constitute a breach of the Employment Agreement and First Amendment thereto that has caused Plaintiff damage for which he now sues. Defendant's breaches include, but are not limited to, intentionally curtailing and materially reducing Goldfarb's duties, responsibilities and/or compensation in violation of the terms of the Employment Agreement and/or First Amendment thereto.

COUNT THREE – DECLARATORY RELIEF

31. Plaintiff incorporates the preceding paragraphs as if they are fully set forth herein.

32. There exists a real and present controversy between the parties. Plaintiff requests that the Court declare the rights, status, and other legal relations between the parties. All parties who have or claim any interest that would be affected by the declaration are parties to this lawsuit.

33. Specifically, Plaintiff asks the Court to declare that:

a. Goldfarb was entitled, pursuant to the terms of Section 1.4 of the APA, to have been offered an equity interest when OneDigital restructured and/or recapitalized in December 2012;

b. Goldfarb is entitled to invoke the provisions of Section 2.1.1(c) of the APA in order to obtain an independent accounting in connection with the calculation of the Earn-Out;

c. The non-solicitation provision in Section 6.1 of the APA was rendered null and void and were released in accordance with Section 2.1.2 of the APA based on OneDigital's defaults in connection with Earn-Out payments;

d. Because Goldfarb is entitled to resign for "Good Reason" in light of OneDigital's material breaches of the Employment Agreement, the non-solicitation provisions of the Employment Agreement are null and void;

e. The non-solicitation provisions in Sections 3.B, 3.C and 3.D of the APA were rendered null and void and were released in accordance with Section 2.1.2 of the APA based on OneDigital's defaults in connection with Earn-Out payments;

COUNT FOUR – SPECIFIC PERFORMANCE AND ACCOUNTING

34. Plaintiff incorporates the preceding paragraphs as if they are fully set forth herein.

35. Section 2.1.1(c) requires an independent accounting in connection with disputes regarding the calculation and/or verification of the Earn-Out. Plaintiff requests that the Court enter an order requiring Defendant to comply with this portion of the APA.

36. Plaintiff is entitled to an accounting to ensure that Defendant has complied with the contracts between the parties.

WHEREFORE, Plaintiff respectfully requests that Defendant be cited to appear and answer and that the court award Plaintiff judgment for:

a. damages against Defendant as partial relief for their wrongful actions;

b. attorneys' fees, court costs, and pre- and post-judgment interest;

c. an order requiring specific performance of the provisions in the APA requiring an independent accounting;

d. an order requiring that Defendant submit to a full accounting, to ensure that Defendant has fully complied with all its contractual obligations to Plaintiff; and

e. all other relief to which Plaintiff is entitled, legal or equitable, general or special.

Respectfully submitted,

Beth Bivans Petronio by Michael Ernst w/ express permission

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ATTORNEYS FOR PLAINTIFF

EXHIBIT A

ASSET PURCHASE AGREEMENT

This **ASSET PURCHASE AGREEMENT** (this "Agreement") is made and entered into as of July 1, 2012 by and among Digital Insurance, Inc., a Delaware corporation, ("Purchaser"), DSG Benefits Group, LLC, a Texas Limited liability company ("Seller"), and David Goldfarb ("Stockholder").

WITNESSETH:

WHEREAS, Seller operates an insurance agency business and desires to sell to Purchaser all of Seller's rights with respect to, and interest in, certain customer insurance and group benefits accounts (referred to herein as the Purchased Business, as more particularly defined below), subject to the terms and conditions hereof;

WHEREAS, Purchaser operates an insurance agency business and desires to acquire the Purchased Business from Seller, subject to the terms and conditions hereof;

WHEREAS, Stockholder is the sole member of Seller and will benefit financially from the transaction contemplated hereby;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Purchaser and Seller, intending to be legally bound, hereby agree as follows:

ARTICLE ONE
PURCHASED BUSINESS; NO ASSUMPTION OF LIABILITIES

1.1 **Selected Definitions.** For purposes of this Agreement, the following terms shall have the following meanings:

"CAGR" stands for compound annual growth rate, and it means for the applicable period, an amount (expressed as a percentage rounded to the nearest fifth decimal place) equal to:

$$\left(\frac{\text{Latest Anniversary Run Rate}}{\text{Closing Run Rate}}\right)^{\left(\frac{1}{\text{\# of years}}\right)} - 1$$

The CAGR shall be calculated using the below definitions and in a manner consistent with the example scenarios set forth in Section 2.1(e) herein.

"Latest Anniversary Run Rate" means, as applicable, the First Anniversary Run Rate, the Second Anniversary Run Rate, the Third Anniversary Run Rate or the Fourth Anniversary Run Rate, and

"# of years" means the number of years over which CAGR is being calculated.

"Run Rate" means, for the specified period commencing on a particular date, the expected total annual revenue of Purchaser for the immediately following twelve months from all sources related to the Purchased Business (net of any third party revenue share obligations), including bonuses, overrides and any other revenue. The Run Rate for commission and fee revenue for the specified period will include and be equal to the historical annualized revenue of all Purchased Accounts included in the Purchased Business at Closing, with adjustments being made for increases/decreases to such Purchased Accounts, plus projected commission and fee revenue sold from any new accounts sold after Closing and attributed to the Purchased Business, which shall include all business sold by and attributed to personnel and office(s) under the supervision of, and/or reporting to, Stockholder ("New Accounts"). The run rate for bonus and override revenue will include and be equal to the actual amount of such revenue attributable to the Purchased Accounts and New Accounts and received by Purchaser during the immediately preceding twelve months. Notwithstanding the foregoing, any revenue from accounts that are acquired by Company through recruitment of a new employee with existing business or by acquisition shall not be included in Run Rate ("Excluded Accounts"). Any new employees, whether or not they bring Excluded Accounts with them upon hire, and that are under the supervision of Stockholder shall be designated as "New Producers". Any new accounts that are sold by New Producers on behalf of Purchaser after their employment start date shall be considered New Accounts. Any terminated accounts as of a date will be valued at zero in calculating the Run Rate.

"Purchased Accounts" means those certain customer insurance accounts of Seller designated in Exhibit A attached hereto, incorporated herein, and made a part hereof by reference.

"Purchased Business" means the assets that comprise the insurance agency business of Seller including the following but excluding the "Excluded Assets" (as defined below in the definition of "Excluded Assets"):

a) all rights with respect to the Purchased Accounts, including without limitation, the right to be designated as broker of record with respect to said Purchased Accounts, the right to receive all commission and other revenue payable with respect to said Purchased Accounts for the periods following the Closing Date, the right to solicit and service said Purchased Accounts for any types of insurance business, and the right to renew the insurance business of any such Purchased Accounts;

b) copies of business records, relating operating data and business files of and exclusive to the insurance agency business of Seller which are in Seller's possession on the Closing Date;

c) all rights of Seller in and with respect to the agreements set forth on Schedule 1.1(c) (the "Assumed Contracts"), all of which shall be assigned by Seller to Purchaser at Closing and assumed by Purchaser;

d) the office and computer equipment, office furniture and fixtures pertaining to or utilized in the insurance agency business of Seller as specifically set forth on Schedule 1.1(d);

e) any deferred revenue related to the Purchased Accounts received by Seller on or before June 30, 2012, but to be earned in periods starting on July 1, 2012, or thereafter.

"Excluded Assets" means the following assets that shall be retained by Seller and shall not be sold, assigned or transfer to Buyer:

a) all cash and accounts receivable, including commissions and fee revenue earned and due to Seller through and including June 30, 2012 but paid on July 1, 2012 or thereafter;

b) all Tax Returns of Seller;

c) all retirement, employee benefit or other employee welfare plans and assets;

d) automobiles, as well as art pieces displayed at Seller's business location;

e) all personnel files and medical records relating to the employees of Seller;

f) all office, computer equipment, software, intellectual property, office furniture and fixtures pertaining to or utilized in the insurance agency business of Seller, and not specifically set forth and listed on Schedule 1.1(d) hereto;

g) all books and records of Seller relating solely to internal corporate matters and any other books and records not related solely to any Purchased Account or the business or operations of the insurance agency business conducted by Seller;

h) any claims, rights and interest of Seller in and to any (i) refunds of Taxes or fees of any nature whatsoever or (ii) deposits or utility deposits, which, in each case, relate solely to the period on or prior to the Closing Date;

i) the consideration received or to be received by Seller hereunder;

j) the rights of Seller under this Agreement;

k) all personal items/property and other assets not used exclusively by Seller in furtherance of its insurance agency business;

l) All business and accounts related to property and casualty related insurance coverages secured by Seller.

Further, Purchaser and Seller acknowledge and agree that Seller has prepaid certain expenses for future periods, including but not limited to, purchasing Dallas Mavericks tickets for

the 2012-2013 season. Purchaser and Seller agree to work together to reimburse and/or account for such prepaid items in a fair and reasonable manner.

1.2 **Agreement to Sell and Purchase.** Subject to the terms and conditions hereof, and subject to the representations and warranties made herein, on the Closing Date (as hereinafter defined), Seller shall sell, assign, transfer, grant, bargain, deliver and convey to Purchaser, free and clear of any lien, security interest, encumbrance, claim, charge or restriction except those specifically set forth on Schedule 1.2 herein (each an "Encumbrance"), Seller's entire right, title and interest in and to the Purchased Business. On the Closing Date, Stockholder shall assign and quitclaim to Purchaser any and all rights that Stockholder may have with respect to the Purchased Business.

1.3 **Liabilities Not Assumed**. Purchaser expressly assumes all liabilities and obligations accruing after the Closing Date related to Purchaser's servicing and operation of the Purchased Business after the Closing Date, as well as liabilities related to the Assumed Contracts (collectively, the "Assumed Liabilities"). The Assumed Contracts are listed on Schedule 1.1(c), along with the known Assumed Liabilities. Purchaser will not assume any, and Seller will retain and be responsible for all, Encumbrances, liabilities, and obligations of Seller and Stockholder including, without limitation, all errors and omissions liabilities accruing with respect to the Purchased Business on or prior to the Closing Date (the Encumbrances, liabilities and obligations retained by Seller shall be referred to as the "Excluded Liabilities").

1.4 **Equity in Purchaser**. As of the Closing, Purchaser is in the process of contemplating a restructure and/or recapitalization ("Recap"). If such Recap occurs at any time during the Earn-out Period (as defined below) and Purchaser makes equity available to its key employees, new employees, principals and/or acquisition targets, then Purchaser agrees to also make such equity available to Seller and/or Stockholder under the same terms as Purchaser will be making available to other acquisition targets in the following timeframes and amounts: (a) Seller and/or Stockholder may purchase for cash up to $472,500 of equity at the closing of the Recap at the same valuation/offering price as the other investors in the Recap; (b) Seller and/or Stockholder may elect to receive equity in lieu of up to 30% of the Earn-out Payments (as defined below) at the then current valuation of Purchaser as of the respective Earn-out Payment anniversary dates set forth below. Any such election to receive equity in lieu of Earn-out Payments shall be made within five (5) business days following the calculation of, and mutual agreement upon, the respective Earn-out Payment (the "Option Period"), but prior to the actual payment of the applicable Earn-out Payment, and the 30% limitation shall apply to each Earn-out Payment separately with no carryover from previously unutilized amounts. Purchaser agrees to provide Seller with the Option Period, prior to making actual payment of the applicable Earn-out Payment to Seller, unless waived in writing by Seller.

ARTICLE TWO
PURCHASE PRICE

2.1 **Purchase Price and Payment of Purchase Price**. The purchase price for the Purchased Business will be paid in installments as follows. Purchaser shall pay to Seller a total initial

payment of one million five hundred seventy five thousand dollars ($1,575,000) (the "Total Initial Payment") at Closing. The Run Rate of the Purchased Accounts at the time of Closing is represented by Seller to be $1,575,000, which shall also be referred to as the "Closing Run Rate", comprised of the revenue from the accounts listed on Exhibit A.

Seller will also be entitled to contingent earn-out payments (each, an "Earn-out Payment") over the 4-year period after Closing ("Earn-out Period") which will be based on net growth of the revenue of the Purchased Business and any New Accounts, as more fully described below. Seller and Purchaser intend and agree that the Earn-out Payments are intended to qualify as purchase price proceeds received by Seller as part of a contingent payment sale for the Purchased Business and Purchased Accounts as contemplated by IRS Reg. 15a.453-1, and such proceeds shall not be considered 1099 payments.

(a) *First Anniversary Earn-out Payment.* Within thirty (30) days after the first anniversary of the Closing Date, Purchaser will calculate, in accordance with this Agreement, the Run Rate measured as of such first anniversary date on July 1, 2013 ("First Anniversary Run Rate") and the first year CAGR ("Year One Growth Rate") based on comparing the First Anniversary Run Rate to the Closing Run Rate and deliver such calculations to the Seller. If the Year One Growth Rate is negative, then Seller shall not be entitled to any Earn-out Payment as of the end of the first year from the date of Closing, but in such instance if the First Anniversary Run Rate is at least $1,475,000 then Seller shall be entitled to receive a First Anniversary Baseline Payment equal to $125,000 less 1.25 times the difference between 1,575,000 and the First Anniversary Run Rate., . If the Year One Growth Rate is zero or positive, then Purchaser shall pay to Seller (a) a First Anniversary Baseline Payment of $125,000, plus (b) an amount equal to the product of twenty-five percent (25%), multiplied by $81,250 for each 1.00000% of the achieved Year One Growth Rate up to a maximum Year One Growth Rate of 10% ("First Anniversary Earn-out Payment"). As an example of the calculation contemplated by the foregoing clause (b) (and comparable clause (b)'s in Sections 2.1(b), 2.1(c) and 2.1(d)), Seller shall receive credit for fractional percentages such that, for the avoidance of doubt, if the achieved Year One Growth Rate were 2.5000%, then the amount of the payment due to Seller in accordance with the foregoing clause (b) would equal $50,781.25 (25%*$81,250*2.5000). As a result, the entire payment to Seller pursuant to this Section 2.1(a) would equal $175,781.25 ($125,000 + $50,781.25). Subject to Section 2.1.1, the First Anniversary Baseline Payment and the First Anniversary Earn-out Payment shall be due and payable within forty-five (45) days of the first anniversary of the Closing Date.

(b) *Second Anniversary Earn-out Payment.* Within thirty (30) days after the second anniversary of the Closing Date, Purchaser will calculate, in accordance with this Agreement, the Run Rate measured as of such second anniversary date on July 1, 2014 ("Second Anniversary Run Rate") and the first two years CAGR based on comparing the Second Anniversary Run Rate to the Closing Run Rate ("Two Year Compound Annual Growth Rate") and deliver such calculations to the Seller. If the Two Year Compound Annual Growth Rate is negative, then Seller shall not be entitled to any Earn-out Payment as of the end of the second year from the date of Closing, but in such instance if the Second Anniversary Run Rate is at least $1,475,000 then Seller shall be entitled to receive a Second Anniversary Baseline Payment equal to $125,000 less 1.25 times the difference between 1,575,000 and the Second Anniversary Run Rate.. If the Two Year Compound Annual Growth Rate is zero or positive, then Purchaser shall

pay to Seller (a) a Second Anniversary Baseline Payment of $125,000, plus (b) an amount equal to the product of fifty percent (50%), multiplied by $81,250 for each 1.00000% of the achieved Two Year Compound Annual Growth Rate up to a maximum Two Year Compound Annual Growth Rate of 10%; less any First Anniversary Earn-out Payment paid by Purchaser ("Second Anniversary Earn-out Payment"). If the calculation of the Second Anniversary Earn-out Payment yields a negative number, then no amount shall be payable by Purchaser to Seller pursuant to this Section 2.1(b). Subject to Section 2.1.1, the Second Anniversary Baseline Payment and the Second Anniversary Earn-out Payment shall be due and payable withinforty-five (45) days of the second anniversary of the Closing Date.

(c) *Third Anniversary Earn-out Payment.* Within thirty (30) days after the third anniversary of the Closing Date, Purchaser will calculate, in accordance with this Agreement, the Run Rate measured as of such third anniversary date on July 1, 2015 ("Third Anniversary Run Rate") and the first three years CAGR based on comparing the Third Anniversary Run Rate to the Closing Run Rate ("Three Year Compound Annual Growth Rate") and deliver such calculations to the Seller. If the Three Year Compound Annual Growth Rate is negative, then Seller shall not be entitled to any Earn-out Payment as of the end of the third year from the date of Closing, but in such instance if the Third Anniversary Run Rate is at least $1,475,000 then Seller shall be entitled to receive a Third Anniversary Baseline Payment equal to $125,000 less 1.25 times the difference between 1,575,000 and the Third Anniversary Run Rate.. If the Three Year Compound Annual Growth Rate is zero or positive, then Purchaser shall pay to Seller (a) a Third Anniversary Baseline Payment of $125,000, plus (b) an amount equal to the product of seventy five percent (75%), multiplied by $81,250 for each 1.00000% of the achieved Three Year Compound Annual Growth Rate up to a maximum Three Year Compound Annual Growth Rate of 10%; less any First Anniversary Earn-out Payment and Second Anniversary Earn-out Payment paid by Purchaser ("Third Anniversary Earn-out Payment"). If the calculation of the Third Anniversary Earn-out Payment yields a negative number, then no amount shall be payable by Purchaser to Seller pursuant to this Section 2.1(c). Subject to Section 2.1.1, the Third Anniversary Baseline Payment and the Third Anniversary Earn-out Payment shall be due and payable within forty-five (45) days of the third anniversary of the Closing Date.

(d) *Fourth Anniversary Earn-out Payment.* Within thirty (30) days after the fourth anniversary of the Closing Date, Purchaser will calculate, in accordance with this Agreement, the Run Rate measured as of such fourth anniversary date July 1, 2016 ("Fourth Anniversary Run Rate") and the first four years CAGR based on comparing the Fourth Anniversary Run Rate to the Closing Run Rate ("Four Year Compound Annual Growth Rate") and deliver such calculations to the Seller. If the Four Year Compound Annual Growth Rate is negative, then Seller shall not be entitled to any Earn-out Payment as of the end of the fourth year from the date of Closing. If the Four Year Compound Annual Growth Rate is zero or positive, then Purchaser shall pay to Seller an amount equal to $81,250 for each 1.00000% of the achieved Four Year Compound Annual Growth Rate up to a maximum Four Year Compound Annual Growth Rate of 20%; less any First Anniversary Earn-out Payment, Second Anniversary Payment and Third Anniversary Earn-out Payment paid by Purchaser ("Fourth Anniversary Earn-out Payment"). If the calculation of the Fourth Anniversary Earn-out Payment yields a negative number, then no amount shall be payable by Purchaser to Seller pursuant to this Section

2.1(d). Subject to Section 2.1.1, the Fourth Anniversary Earn-out Payment shall be due and payable within forty-five (45) days of the fourth anniversary of the Closing Date.

(e) By way of illustration, the following chart provides examples of the earn-out payments based on different example scenarios during the Earn-out Period, it being understood and mutually agreed that the CAGR shall be calculated and carried out to 5 decimal places:

Earnout dollars per 1% increase in CAGR	81,250				
Example Scenario	1	2	3	4	5
Starting Run Rate	1,575,000	1,575,000	1,575,000	1,575,000	1,575,000
Net Book Change - Year 1	0%	5%	10%	20%	0%
Net Book Change - Year 2	0%	5%	10%	20%	10%
Net Book Change - Year 3	0%	5%	10%	20%	-3%
Net Book Change - Year 4	0%	5%	10%	20%	15%
First Anniverasary Run Rate	1,575,000	1,653,750	1,732,500	1,890,000	1,575,000
Second Anniverasary Run Rate	1,575,000	1,736,438	1,905,750	2,268,000	1,732,500
Third Anniverasary Run Rate	1,575,000	1,823,259	2,096,325	2,721,600	1,680,525
Fourth Anniverasary Run Rate	1,575,000	1,914,422	2,305,958	3,265,920	1,932,604
Compound Annual Growth - One Year	0.00000%	5.00000%	10.00000%	20.00000%	0.00000%
Compound Annual Growth - Two Years	0.00000%	5.00000%	10.00000%	20.00000%	4.88088%
Compound Annual Growth - Three Years	0.00000%	5.00000%	10.00000%	20.00000%	2.18523%
Compound Annual Growth - Four Years	0.00000%	5.00000%	10.00000%	20.00000%	5.24842%
First Anniversary Baseline Payment	125,000	125,000	125,000	125,000	125,000
Second Anniversary Baseline Payment	125,000	125,000	125,000	125,000	125,000
Third Anniversary Baseline Payment	125,000	125,000	125,000	125,000	125,000
	375,000	375,000	375,000	375,000	375,000
First Anniversary Payment	-	101,563	203,125	203,125	-
Second Anniversary Payment	-	101,563	203,125	203,125	198,286
Third Anniversary Payment	-	101,563	203,125	203,125	-
Fourth Anniversary Payment	-	101,563	203,125	1,015,625	228,148
Total Growth Ean-out Payments	-	406,250	812,500	1,625,000	426,434
Total Earn-out Payments	375,000	781,250	1,187,500	2,000,000	801,434
Total Closing Payment	1,575,000	1,575,000	1,575,000	1,575,000	1,575,000
Total All Payments	1,950,000	2,356,250	2,762,500	3,575,000	2,376,434

2.1.1 (a) The Seller will have thirty (30) days from the date of Seller's receipt of each of the First, Second, Third and Fourth Anniversary Run Rate calculations to review and

approve such calculations. In order to assist Seller in auditing and verifying these calculations, Purchaser shall provide Seller with a copy of Purchaser's summary of historical revenue for the applicable accounts and, upon request of Seller, the underlying insurance carrier commission statements and any other documentation/information reasonably requested by Seller to help support/verify the calculations. Further, along with the Seller's receipt of each respective Earn-out Payment, Purchaser shall provide Seller with a detailed report showing how the respective Earn-out Payment was calculated, including showing what portion includes revenue attributed to (a) the Purchased Accounts, (b) increases or decreases from the Purchased Accounts and (c) the New Accounts. Further during such thirty (30) day period, Purchaser shall afford the Seller and its representatives, agents, and consultants, if any, reasonable access to, and the opportunity to review and audit, upon reasonable prior notice and during normal business hours, the supporting schedules, analyses, work papers and other underlying books, records, documents (whether in hardcopy, electronic or other form) supporting Purchaser's calculations and operations of the Purchaser, as reasonably required or appropriate to enable the Seller to verify the Purchaser's calculations. The Purchaser agrees to cooperate fully and promptly with Seller and its representatives in any such review, including providing answers to questions asked by Seller and its representatives, and Purchaser shall promptly make available to Seller and its representatives any records under its direct or indirect control that are reasonably requested by the Seller in connection with the exercise by the Seller of these audit rights. If the Seller (i) agrees with the Purchaser's calculations set forth in a particular Anniversary Run Rate calculation (in which case the Seller shall promptly so advise the Purchaser), (ii) fails to deliver a timely Notice of Disagreement in accordance with Section 2.1.1(b), or (iii) fails to take any action in respect to the respective anniversary Run Rate calculation in question during the applicable thirty (30) day period set forth above, the respective anniversary Run Rate calculation in question and the Earn-out Payment related thereto, as determined by the Purchaser, will be deemed final, due and payable to the Seller. In the event the Seller disagrees with the Earn-out Statement, the parties shall proceed according to Sections 2.1.1 (b) and (c) below.

(b) If the Seller in good faith disagrees with the Purchaser's determination of a particular Anniversary Run Rate calculation, the Seller will provide to the Purchaser in writing a notice specifying in reasonable detail the basis for the disagreement (a "Notice of Disagreement") within thirty (30) days after Seller's receipt of the respective anniversary Run Rate calculation in question. Thereafter, the parties will attempt in good faith to resolve and finally determine any disagreements they may have regarding the Anniversary Run Rate calculation in question.

(c) If the parties are unable to resolve the disagreement within thirty (30) days after the Seller's delivery of the Notice of Disagreement to Purchaser, the parties shall submit such disagreement to an independent CPA firm to be mutually agreed upon by Purchaser and Seller (the "Independent Accountant") to resolve the disputed items and make a determination with respect thereto. Purchaser and Seller shall each immediately enter into a customary engagement letter with the Independent Accountant in which the scope of the Independent Accountant's engagement is specified in reasonable detail that is consistent with this Agreement and shall instruct the Independent Accountant that a written determination of the Independent Accountant with respect to the disputed items shall be completed and distributed to Purchaser and Seller within thirty (30) days following the engagement of the Independent Accountant (such time period to be extended by the Independent Accountant only

as long as necessary to answer any additional questions, but not extended by more than five (5) additional business days). The parties shall promptly deliver to the Independent Accountant all information reasonably requested by the Independent Accountant to resolve such disputed items and shall use commercially reasonable efforts to provide assistance in order that a final determination can be made, and written notice thereof given to the parties, within the thirty (30) day time frame above referenced. The Independent Accountant shall only resolve each disputed item within the range for such disputed item defined by the amount of such disputed item in the respective anniversary Run Rate calculation of Purchaser and the amount of such disputed item in the Seller's Notice of Disagreement. The determination by the Independent Accountant will be final, binding and conclusive upon the parties hereto and the amount of the applicable Earn-out Payment, as finally determined pursuant to this Section 2.1.1(c), remaining to be paid by the Purchaser to the Seller pursuant to this Section 2.1, will be paid within five (5) days of the Independent Accountant's determination. The fees and expenses of the Independent Accountant in connection with its determination pursuant to this Section 2.1.1 shall be borne by the Purchaser and the Seller as follows:

(A) if the amount of the applicable Earn-out Payment, as determined by the Independent Accountant, is equal to or less than the amount calculated by Purchaser, the Seller shall be responsible for all of the fees and expenses of the Independent Accountant; and

(B) if the amount of the applicable Earn-out Payment, as determined by the Independent Accountant, is more than the amount calculated by the Purchaser, the Purchaser shall be responsible for all of the fees and expenses of the Independent Accountant.

(d) Once an Earn-out Payment has been made to Seller pursuant to Section 2.1, it shall not be subject to refund or adjustment. When dealing with Earn-out Payments, the parties agree that any termination or other event that affects an account shall be accounted for not by a refund or adjustment in a previously paid Earn-out Payment, but shall be accounted for as part of the calculations used for any remaining Earn-out Payments, and if no other Earn-out Payments are or become payable, then no refund or adjustment shall be required of Seller.

2.1.2 *Release of Non-Solicitation Upon Payment Default.* If Purchaser fails to make any payment due to Seller pursuant to Section 2.1 (after exercise of the audit rights set forth in Section 2.1.1), then Seller shall provide Purchaser with written notice of payment default. After receipt of such written notice, Purchaser shall have 30 days to cure the payment default. If Purchaser does not cure a valid payment default within 30 days of Purchaser's receipt of written notice from Seller, then Seller shall be relieved of the non-solicitation obligations in Section 6.1 of this Agreement, as well as the non-solicitation obligations set forth in Section 3.B., C. and D of Stockholder's Employment Agreement (as defined in Section 3.2.1 herein). In addition to the foregoing and to any other remedies available at law or in equity to Seller, Seller shall be entitled to offset any unpaid Earn-out Payments due from Purchaser pursuant to this Section 2.1 from any monies due from Seller to Purchaser hereunder. Further, Purchaser shall be liable for, and Seller shall be entitled to recover, all unpaid amounts due to Seller pursuant to Section 2.1 and also any and all costs and expenses incurred by Seller to enforce its rights hereunder, including without limitation, Seller's attorney's fees, court costs, and other legal expenses.

2.1.3 Notwithstanding the foregoing, if Seller materially breaches any of its obligations under Section 6.1 or Section 6.2 of this Agreement or Stockholder materially breaches its obligations under Section 3.B., C. and/or D. of the Employment Agreement, then Purchaser shall be relieved of its obligation to pay to Seller any Earn-out Payments that become due after such breach for so long as Seller fails to cure such breach and thereafter (following Seller's and/or Stockholder's cure of such breach) shall resume payments to Purchaser. In addition to the foregoing and to any other remedies available to Purchaser, Purchaser shall be entitled to offset any unpaid commissions due from Seller pursuant to Section 6.2(b) from any monies due from Purchaser to Seller hereunder. Further, Seller shall be liable for, and Purchaser may recover any and all costs reasonably incurred by Purchaser to enforce its rights hereunder, including without limitation, Purchaser's attorney's fees, court costs, and other legal expenses.

2.1.4 If Stockholder (a) dies, (b) is disabled, (c) is terminated without cause, or (d) resigns with good reason (as all such terms are determined and defined pursuant to the provisions in the Employment Agreement) prior to qualifying for and/or receipt any applicable Fourth Anniversary Earn-out Payment, Purchaser covenants and agrees to continue the operations that reported to and/or were managed by Stockholder until the Earn-out Period expires, in order that the annual Earn-out Payments shall continue to be calculated and paid pursuant to the terms herein, such covenant and agreement to survive the Closing as necessary to accomplish the purposes and intentions of this Section 2.1.4.

ARTICLE THREE
CLOSING; DELIVERIES

3.1 **Closing.** The closing of the transactions contemplated hereby (the "Closing") shall take place on July 1, 2012 (the "Closing Date"), and is conditioned upon each party's respective satisfaction or waiver of the conditions precedent set forth in Articles Seven and Eight of this Agreement. Notwithstanding the actual time of delivery, the deliveries of the parties hereto are deemed made simultaneously on the Closing Date.

3.2 **Deliveries.**

3.2.1 Deliveries by Seller. At the Closing, Seller and Stockholder shall deliver or cause to be delivered to Purchaser, in form and substance reasonably satisfactory to Purchaser and its counsel, the following:

(a) Bill of Sale. A bill of sale duly executed by Seller and Stockholder regarding the Purchased Business in substantially the form of Exhibit B attached hereto and made a part hereof (the "Bill of Sale") which shall be sufficient to vest title to the Purchased Business in Purchaser free and clear of any Encumbrance, except as otherwise provided herein;

(b) Assignment and Assumption Agreement. An assignment and assumption agreement duly executed by Seller and Stockholder regarding the Assumed Liabilities in substantially the form of Exhibit C attached hereto (the "Assignment and Assumption Agreement");

(c) Employment Agreement. At the time of Closing, Stockholder shall execute and deliver to Purchaser an employment agreement with Purchaser in substantially the

form of Exhibit D attached hereto (the "Employment Agreement") pursuant to which the Stockholder will become an employee of Purchaser;

(d) Releases. Seller shall deliver a valid release of all Encumbrances, except those specifically set forth on Schedule 1.2 relating to the Purchased Business;

(e) Consent. Seller shall provide a Consent of the Board of Managers authorizing this Agreement (and the transactions contemplated herein); and

(f) Other. At Closing, Seller shall deliver a duly executed counterpart to an IRS Form 8594 that allocates the purchase price in a manner mutually agreed upon by Seller and Purchaser, an agreed form of which is attached hereto as Exhibit E. Seller shall also deliver such other reasonable evidence of performance of all covenants and satisfaction of all conditions required of Seller by this Agreement, at or prior to the Closing, as Purchaser or its counsel may reasonably require.

3.2.2 Deliveries by Purchaser. At the Closing, Purchaser shall deliver or cause to be delivered to Seller, in form and substance reasonably satisfactory to Seller and its counsel, the following:

(a) Purchase Price. The Total Initial Payment, by wire transfer of immediately available funds, to an account designated by Seller;

(b) Assignment and Assumption Agreement. The Assignment and Assumption Agreement duly executed by Purchaser;

(c) Employment Agreements. The Employment Agreement duly executed by Purchaser; and

(d) Consent. Purchaser shall provide a Consent of the Board of Directors authorizing this Agreement (and the transactions contemplated herein), as well as the Employment Agreement; and

(e) Other. At Closing, Purchaser shall deliver an IRS Form 8594 that allocates the purchase price in a manner mutually agreed upon by Seller and Purchaser. Purchaser shall also deliver such other reasonable evidence of performance of all covenants and satisfaction of all conditions required of Purchaser by this Agreement, at or prior to the Closing, as Seller or its counsel may reasonably require.

3.3 Indemnification by Seller. Seller and Stockholder jointly and severally agree to indemnify, defend and hold harmless the Purchaser and its respective employees, officers, directors, shareholders, agents, affiliates, successors and permitted assigns (collectively, the "Digital Indemnified Parties") from and against any and all losses, claims, demands, damages, liabilities, deficiencies, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements and amounts paid in settlement of any claim, act or suit) of every kind, nature and description (collectively, "Claims") suffered by any Digital Indemnified Party based upon, arising out of or otherwise from (a) any Excluded Liability (including any act or omission of Seller or Stockholder occurring prior to the Closing Date with regard to the Purchased

Business), and (b) any breach of any covenant, representation, warranty or other agreement of Seller contained in this Agreement.

3.4 **Indemnification by Purchaser.** Purchaser agrees to indemnify, defend and hold harmless the Seller and Stockholder and, as applicable, their respective employees, officers, directors, shareholders, agents, affiliates, successors and permitted assigns (collectively, the "Seller Indemnified Parties") from and against any and all losses, claims, demands, damages, liabilities, deficiencies, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements and amounts paid in settlement of any claim, act or suit) of every kind, nature and description (collectively, "Claims") suffered by any of the Seller Indemnified Parties based upon, arising out of or otherwise from (a) any Assumed Liability (including any obligation or liability arising from Purchaser's operation of the Purchased Business and/or its own business or the business of its affiliates on or after the Closing Date or otherwise) and (b)any breach of any covenant, representation, warranty or other agreement of Purchaser contained in this Agreement.

3.5 **Survival.** All representations and warranties of the parties contained herein, or in any exhibit or schedule, or in any certificate delivered in connection with the Closing, shall survive the Closing (even if a party knew or should have known of the breach of a representation and warranty as of the Closing) and continue in full force and effect until 5:00 p.m., Dallas, Texas time, on the first anniversary of the Closing Date. Seller and the Stockholder shall not be entitled to recover any Claims suffered by any of Seller Indemnified Parties for any breach of any representation or warranty of Purchaser unless and until the aggregate amount of Claims exceeds $15,000 (the "Deductible") and, at and after such time, Purchaser shall be required to pay Seller Indemnified Parties the entire amount of all Claims in excess of the Deductible. Purchaser shall not be entitled to recover any Claims suffered by any Digital Indemnified Parties for any breach of any representation or warranty of Seller or Stockholder unless and until the aggregate amount of Claims exceeds the Deductible and, at and after such time, Seller and Stockholder shall be required to pay Digital Indemnified Parties the entire amount of all Claims in excess of the Deductible.

ARTICLE FOUR
REPRESENTATIONS AND WARRANTIES OF SELLER AND STOCKHOLDER

Seller and Stockholder hereby jointly and severally make the following representations and warranties to Purchaser, each of which is true and correct on the Closing Date, and each of which shall be unaffected by any investigation heretofore or hereafter made by Purchaser, and each of which shall survive the Closing and the transactions contemplated hereby as and to the extent provided in Section 3.5 herein:

4.1 **Corporate Power.** Seller and Stockholder each have all requisite power to execute and deliver the Agreement and all other documents and instruments to be executed by Seller and Stockholder in accordance with the terms of this Agreement and each has all requisite power to carry out and perform its obligations under the terms of this Agreement.

4.2 **Authorization for Agreement.** The execution, delivery and performance of this Agreement by Seller and the consummation of the transactions contemplated hereby, have been duly authorized by all necessary actions and proceedings required by the governing documents of Seller, prior to the Closing, and this Agreement is, and any documents or instruments to be executed and delivered by Seller and Stockholder pursuant hereto will be, legal, valid and binding obligations of Seller and Stockholder enforceable in accordance with their terms, except as enforceability hereof or thereof may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally and limitations on the availability of equitable remedies.

4.3 **Organization and Standing.** Seller is duly organized, validly existing and in good standing under the laws of its state of organization and has all requisite power and authority to own its property and operate its business as and where it is now being conducted and as it is proposed to be conducted. Seller is duly qualified to transact business and is in good standing in each jurisdiction in which the failure to so qualify would have a material adverse effect on the Purchased Business. Seller has complete and unrestricted power and authority to sell, assign, transfer, convey and deliver all the Purchased Business to be sold to Purchaser under this Agreement. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, requires the consent or approval of or the giving of notice to, any registration, filing or recording with, or the taking of any other action by Seller or Stockholder in respect of any federal, state or local governmental authority or any third party.

4.4 **Title to Purchased Business; No Violation.**

(a) At the Closing and effective as of the Closing Date, Seller will transfer to Purchaser, good and merchantable title to all of the Purchased Business free and clear of all Encumbrances of any nature whatsoever, and subject to no restrictions with respect to transferability. There are no agreements or arrangements between any Seller and any third party which have any adverse effect upon any of Seller's title to or other rights respecting the Purchased Business, including the right to transfer the same as contemplated by this Agreement. Set forth in Schedule 1.2 is a description of the Encumbrances that shall continue to exist at Closing against Purchased Business, and all other Encumbrances of any kind against the Purchased Business shall be released by Seller and Stockholder at or before the Closing.

(b) To the best of Seller's and Stockholder's knowledge, the utilization of the Purchased Business in the manner currently so done by Seller does not (i) violate any license or agreement with any third party, or (ii) infringe in any material respect upon, or otherwise conflict in any material respect with, the rights of any person, nor has such a violation or an infringement been alleged or noticed to Seller, and to the best of Seller's and Stockholder's knowledge, there is no valid basis for any such allegation.

4.5 **No Violation.** The execution, delivery, performance, and compliance with this Agreement will not result in any violation of, be in conflict with, constitute a default or give rise to a right of termination, cancellation or acceleration under , or otherwise result in the creation of any mortgage, pledge, lien, encumbrance or charge under any provision of (a) any judgment, decree or order or any material agreement, contract, understanding, indenture or other instrument to which Seller or Stockholder are a party; or (b) any statute, rule or governmental regulation applicable to Seller, in any case where such violation, conflict, default, right of termination,

cancellation or acceleration would have a material adverse effect on Seller's and Stockholder's ability to consummate the transactions contemplated by this Agreement. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated, hereby requires the consent or approval of or the giving of notice to, any registration, filing or recording with, or the taking of any other action by Seller or Stockholder in respect of any federal, state or local governmental authority or any third party.

4.6 **Purchased Accounts**. Exhibit A contains a complete and correct list of all the Purchased Accounts to be transferred by Seller to Purchaser in accordance with this Agreement, although Seller acknowledges that such list may not be completely current as of Closing, but the Purchased Accounts shall include all business accounts of Seller and the rights thereto consistent with this Agreement, and Purchaser acknowledges agrees with such minor discrepancies. Seller has delivered or made available to Purchaser complete and correct copies (hard copies and electronic copies) of all material files relating to the Purchased Accounts. All of the Purchased Accounts are in full force and effect in all material respects in accordance with their terms and neither Seller nor Stockholder are aware of any fact, issue or circumstance which would materially impact any of the Purchased Accounts, nor has Seller or Stockholder waived any rights under any of the Purchased Accounts.

ARTICLE FIVE
REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser does hereby make the following representations and warranties to Seller, each of which is true and correct on the date hereof and will be true and correct on the Closing Date, and each of which shall be unaffected by any investigation heretofore or hereafter made by Seller and each of which shall survive the Closing and the transactions contemplated hereby as and to the extent provided in Section 3.5 herein:

5.1 **Corporate Power.** Purchaser has all requisite corporate power to execute and deliver the Agreement and all other documents and instruments to be executed by Purchaser in accordance with the terms of this Agreement and has all requisite corporate power to carry out and perform its obligations under the terms of this Agreement.

5.2 **Authorization for Agreement.** The execution, delivery and performance of this Agreement by Purchaser and the consummation of the transactions contemplated hereby have been duly authorized by all necessary actions and proceedings prior to the Closing, and this Agreement is, and any documents or instruments to be executed and delivered by Purchaser pursuant hereto will be, legal, valid and binding obligations of Purchaser enforceable in accordance with their terms, except as enforceability hereof or thereof may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally and limitations on the availability of equitable remedies.

5.3 **Organization and Standing**. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to own its property and operate its business as and where it is now being

conducted and as it is proposed to be conducted. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, requires the consent or approval of or the giving of notice to, any registration, filing or recording with, or the taking of any other action by Purchaser in respect of any federal, state or local governmental authority or any third party.

5.4 **No Violation.** The execution, delivery, performance, and compliance with this Agreement will not result in any violation of, be in conflict with, constitute a default or give rise to a right of termination, cancellation or acceleration under, or otherwise result in the creation of any mortgage, pledge, lien, encumbrance, or charge under any provision of (a) Purchaser's Articles of Incorporation and Bylaws; (b) any judgment, decree or order or any material agreement, contract, understanding, indenture or other instrument to which Purchaser is a party; or (c) any statute, rule or governmental regulation applicable to Purchaser, in any case where such violation, conflict, default, right of termination, cancellation or acceleration would have a material adverse effect on Purchaser's ability to consummate the transactions contemplated by this Agreement. Further, there are no state and/or federal tax liens or any other encumbrances of any kind upon Purchaser that would prevent Purchaser from fully performing hereunder.

ARTICLE SIX
POST-CLOSING COVENANTS

6.1 **Customer Non-Solicitation.** Seller and Stockholder jointly and severally agree that during the period from the Closing Date to the date that is two (2) years after Seller's receipt of its final Earn-out Payment (the "Restricted Period"), neither Seller nor Stockholder shall, on Seller's or Stockholder's own behalf or on behalf of any other person, firm, partnership, association, corporation or business organization, entity or enterprise (except for the benefit of Purchaser), (i) solicit, contact, call upon, communicate with or attempt to communicate with any of the representatives of any of Purchased Accounts and/or New Accounts for the purpose of selling or brokering insurance products to such accounts, or (ii) agree to become an insurance agent or insurance broker or co-broker for the brokering of insurance products to any of the Purchased Accounts and/or New Accounts. Notwithstanding the foregoing, Further, as long as Stockholder remains employed by Purchaser, Seller and/or Stockholder shall provide reasonable assistance to Purchaser for purposes of Purchaser's retention of the Purchased Accounts and New Accounts. Notwithstanding the foregoing, since Purchaser is not buying as part of the Purchased Business the property and casualty accounts secured by Seller, both Seller and Stockholder may continue to do business with individuals and companies with whom it provides property and casualty coverages, as well as work with other third persons and parties in the property and casualty fields.

6.2 **Account Transition by Seller and Stockholder.** Seller and Stockholder shall cooperate with Purchaser in transitioning the Purchased Business to Purchaser. In connection therewith, Seller and Stockholder agree to:

(a) cooperate with Purchaser in expeditiously transitioning "broker of record" status for the Purchased Accounts to Purchaser as of Closing or soon as reasonably practicable following Closing;

(b) pay to Purchaser all revenue on the Purchased Business received by Seller or Stockholder either before or after the Closing Date that relate to commissions and fee revenue earned and due to Purchaser for periods on or after July 1, 2012, as well as all bonuses and overrides received by Seller or Stockholder after the Closing Date regardless of earned period, accompanied by a detailed report indicating the applicable payer, account, amount and other pertinent information with respect to such revenue;

(c) provide to Purchaser a complete Client Data Spreadsheet ("CDSS") including client contact information and policy details for all Purchased Accounts.

(d) provide Purchaser with copies of all hardcopy client files for the Purchased Business; and

(e) complete personal introductions of Purchaser to customers as reasonably requested by Purchaser.

6.3 Account Transition by Purchaser. In connection with the transition of the Purchased Business, Purchaser agrees to:

(a) pay to Seller all commissions and fee revenue , received by Purchaser that were earned by Seller on or before June 30, 2012, accompanied by a detailed report indicating the applicable payer, account, amount and other pertinent information with respect to such revenue.

6.4 Operating Expenses; Budgets. Post-closing, Purchaser shall be responsible for and shall manage the Purchased Business, including the employment of applicable customer service personnel. In this regard, for as long as Seller is receiving Earn-out Payments and/or Stockholder is employed by Purchaser, Stockholder shall work closely with Purchaser and cooperate in establishing a budget for the operating expenses of managing the Purchased Business, with the initial budget to be discussed and agreed upon prior to Closing. Purchasers and Stockholder shall cooperate in good faith to establish the details of the annual budget for Operating Expenses and to manage the actual Operating Expenses within the established budgeted guidelines. As part of the budgeting process and the operation of the Purchased Business post-Closing, Purchaser agrees to work closely with Seller to establish and/or continue existing vendor relationships. The Purchaser agrees to make offers of employment to all of the employees listed and identified on Schedule 6.4(a) attached hereto, with employment terms being substantially the same as those that they had in place with Seller, except as otherwise mutually agreed by Purchaser and Seller.

6.5 Further Assurances. Seller and Stockholder each agree that, at any time after the Closing Date, upon the request of Purchaser, it will do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all such further acknowledgments, assignments, bills of sale, transfers, conveyances, instruments, consents and assurances as may reasonably be required to confirm the sale and assignment of the Purchased Business to Purchaser, its successors and assigns, free and clear of all Encumbrances, and to put Purchaser in possession of the Purchased Assets. Likewise, Purchaser agrees that, at any time after the Closing Date, upon the request of either Seller or Stockholder, it will do, execute, acknowledge

and deliver, or will cause to be done, executed, acknowledged and delivered, all such further acknowledgments, agreements, instruments, consents and assurances as may reasonably be required to confirm the transactions contemplated herein. The obligations set forth in this Section shall survive the Closing.

6.6 **Restrictions Upon Purchaser's Business.** Purchaser represents and warrants that neither Purchaser nor any affiliated or related entity shall purchase or merge with a business/company similar to Seller, or otherwise establish another office or authorize an employee or contractor to do business, within the four (4) county Dallas/Ft Worth Metroplex (Dallas County, Collin County, Tarrant County, Denton County) prior to Purchaser's payment of the Fourth Anniversary Earn-Out Payment without Seller's prior written approval.

ARTICLE SEVEN
MISCELLANEOUS PROVISIONS

7.1 **Relationship of the Parties.** It is understood and agreed that each of the parties hereto is an independent contractor, and that neither party is, or shall be considered to be, by virtue of this Agreement, an agent or representative of the other party for any purpose.

7.2 **Time of the Essence.** Time is of the essence of this Agreement.

7.3 **Binding Effect.** This Agreement, including all of the schedules and exhibits hereto, which are incorporated herein by reference, shall be binding upon and inure to the benefit of each party and its respective successors and permitted assigns. Neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned (whether by operation of law or otherwise) without the prior written consent of the other parties hereto.

7.4 **Waiver; Modification; Amendment.** No term or provision hereof will be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing duly signed on behalf of the party against whom the waiver is asserted. No consent by either party to, or waiver of, a breach by either party, whether express or implied, will constitute a consent to, waiver of, or excuse of any other different, or subsequent, breach by either party. This Agreement, including the schedules and exhibits attached hereto may not be modified or amended except by an instrument in writing duly signed by or on behalf of each of the parties hereto.

7.5 **Force Majeure.** Each of the parties hereto shall exert diligence in performing its obligations under this Agreement, but neither shall be liable in any manner whatsoever for failure to perform or delay in performing such obligations, if and to the extent and for so long as such failure or delay in performance or breach is due to natural disasters, strikes or labor disputes, natural forces, or other acts of God or cause reasonably beyond the control of such party. Any party desiring to invoke this Section 11.5 shall notify the other in writing of such desire and shall use reasonable efforts and due diligence to resume performance of its obligations. Notwithstanding the foregoing, the provisions of this Section shall not serve to excuse or delay Purchaser's calculation and/or timely payment of the Total Initial Payment, any Earn-out Payment or any other sum owed hereunder.

7.6 **Severability.** If any part of this Agreement is found invalid or unenforceable, that part will be amended to the extent necessary to be valid or enforceable while substantially preserving its intent, and the remainder of this Agreement will remain in full force and effect.

7.7 **No Interpretation Against Drafter.** The terms and provisions of this Agreement shall not be construed against the drafter or drafters hereof. All parties hereto agree that the language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any of the parties hereto. The parties also agree that the headings used in this Agreement are for convenience only and shall not constitute a part of this Agreement.

7.8 **Governing Law.** This Agreement shall be governed and enforced in accordance with the substantive laws of the State of Georgia, without regard to any such laws or regulations that may direct the application of the law of any other jurisdiction, and the State and Federal courts of the State of Georgia shall have exclusive jurisdiction over any disputes arising hereunder.

7.9 **Entire Agreement.** This Agreement, together with the schedules and exhibits attached hereto, constitutes the entire agreement between the parties relating to this subject matter and supersedes all prior representations, discussions, negotiations, and agreements with respect thereto, whether written or oral.

7.10 **Survival.** Except as otherwise specifically provided herein, the covenants and agreements set forth in this Agreement shall survive the Closing Date and the consummation of the transactions contemplated by this Agreement. The representations and warranties survive only as specifically set forth herein.

7.11 **Counterparts.** This Agreement may be executed in several counterparts, each of which when fully executed shall be an original, and all such counterparts taken together shall be deemed to constitute one and the same agreement. Delivery of any signature page via telecopy or other electronic facsimile transmission shall be deemed equivalent to physical delivery of the original signature page. Any signature page to this Agreement that requires a witness or attestation may be witnessed or attested to upon a telecopy or other electronic facsimile transmission of any original signature page. Any signature page of any counterpart hereof, whether bearing an original signature or an electronic facsimile transmission of a signature, may be appended to any other counterpart hereof to form a completely executed counterpart hereof.

7.12 **Terms Generally.** Whenever the context requires, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation." All references to "party" and "parties" shall be deemed references to the parties to this Agreement unless the context shall otherwise require. The terms "this Agreement", "hereof", "hereunder", and similar expressions refer to this Agreement as a whole and not to any particular Section or other portion hereof and include any agreement supplemental hereto. All references to Sections, paragraphs, schedules and exhibits shall be deemed references to Sections of, paragraphs of, and schedules and exhibits to, this Agreement unless the context shall otherwise require. When the context requires, the term "or" is used in its inclusive sense ("and/or").

7.13 **Expenses and Attorneys' Fees.** Except as otherwise expressly provided herein, all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement such costs and the transactions contemplated hereby shall be paid by the party incurring expenses, whether or not the Closing shall have occurred. In any action or proceeding instituted by a party hereto arising in whole or in part under, related to, based on, or in connection with, this Agreement or the subject matter hereof, the prevailing party shall be entitled to receive from the losing party reasonable attorneys' fees, costs and expenses incurred in connection therewith, including any appeals therefrom.

7.14 **Remedies Cumulative; Specific Performance.** All remedies afforded to the parties under this Agreement, applicable law or otherwise, shall be cumulative and not alternative. Each of the parties agrees that in the event of any breach or threatened breach by a party of any provision of this Agreement, the other party shall be entitled, in addition to any other rights or remedies it may have, to a decree or order of specific performance or mandamus to enforce the observance and performance of such provision and an injunction restraining such breach or threatened breach.

7.15 **Notices.** All notices, requests, demand and other communications hereunder shall be in written, email or electronic facsimile form and shall be deemed delivered (i) on the date of delivery when delivered by hand, (ii) on the date of transmission when sent by email to the email address set forth below (or the email address otherwise updated between the parties) during normal business hours with written confirmation of receipt, (iii) on the date of transmission when sent by facsimile transmission during normal business hours with written confirmation of receipt, (iv) one day after dispatch when sent by overnight courier maintaining records of receipt, or (v) three days after dispatch when sent by certified mail, postage prepaid, return receipt requested, provided, that, in any such case, such communication is addressed as follows:

If to Purchaser: Digital Insurance, Inc.
400 Galleria Parkway, Suite 300
Atlanta, GA 30339
Attn: Adam Bruckman, President/CEO

Email: abruckman@digitalinsurance.com

If to Seller or Stockholder:	DSG Benefits Group, LLC 7616 LBJ Freeway, Suite 630 Dallas, TX 75251 Attn: President Email: dgoldfarb@dsgbenefits.com
	Copy to: Basinger, Leggett, Clemons, Bowling, Shore & Crouch, PLLC 5700 Granite Parkway, Suite 950 Plano, TX 75024 Attn: Steve H. Clemons Email: sclemons@blcblaw.com

or to such other address as any party may provide to the other in writing.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives, effective as of the date first above written.

PURCHASER:
Digital Insurance, Inc.,
a Delaware corporation

By: _____
Name: ~~Adam Bruckman~~ Charles M. Risley
Title: ~~President & CEO~~ CFO

SELLER:
DSG Benefits Group, LLC, a Texas limited liability company

By: _____
Name: David Goldfarb
Title: President

STOCKHOLDER:

_____
David Goldfarb, individually

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives, effective as of the date first above written.

PURCHASER:
Digital Insurance, Inc.,
a Delaware corporation

By:_____
Name: Adam Bruckman
Title: President & CEO

SELLER:
DSG Benefits Group, LLC, a Texas limited liability company

By:_____
Name: David Goldfarb
Title: President

STOCKHOLDER:

_____
David Goldfarb, individually

EXHIBIT B

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "Agreement") is made as of the 1st day of July, 2012 ("Effective Date"), by and between DIGITAL INSURANCE, INC. a Delaware corporation (the "Company"), and David Goldfarb ("Employee").

In consideration of the mutual premises and covenants set forth herein, the Company hereby agrees to employ the Employee to devote all of his business working time to Company and the Employee hereby accepts employment with the Company upon the terms and conditions hereinafter set forth. Further, this Agreement is entered into concurrently with that certain Asset Purchase Agreement by and between Company (as purchaser) and DSG Benefits Group, LLC and Employee (collectively, as Seller) dated as of this same Effective Date (the "APA"), such being incorporated herein, and made a part hereof, by reference.

1. Scope of Services. During Employee's employment with the Company, Company will employ Employee as Managing Principal reporting to the Executive Vice President of Sales and Marketing, or any other executive designated by the Company from time to time. Employee shall be in charge or managing Company's operations in the Dallas, Texas, area and shall perform such duties and have such responsibilities and authority as are customary to such position as well as such other duties as are within his capabilities and reasonably required of him by the Company, from time to time, but specifically including those job duties and responsibilities set forth on Exhibit "A" attached hereto and made a part hereof for all purposes. Employee shall (i) devote all necessary working time required of Employee's position, (ii) devote Employee's best efforts, skill, and energies to promote and advance the business and/or interests of the Company, and (iii) fully perform Employee's obligations under this Agreement. During Employee's employment, Employee shall not render services to any other entity, regardless of whether Employee receives compensation, without the prior written consent of the Company. Employee may, however, (A) engage in community, professional, charitable, and educational activities, (B) manage Employee's personal investments, and (C) serve on boards or committees, provided that any such activities do not conflict or interfere with the performance of Employee's obligations under this Agreement or conflict with the interests of the Company.

2. Compensation.

A. Base Salary. During the Initial Term of this Agreement, Employee shall receive an annual base salary ("Base Salary") of $275,000. After the Initial Term, the Base Salary shall be adjusted to $200,000 or as otherwise mutually agreed upon by Company and Employee. The Base Salary shall be paid to Employee in accordance with the normal payroll procedures of the Company and subject to required withholdings under applicable tax laws.

B. Revenue Share on New Accounts. During Employee's employment with the Company (and in addition to his Base Salary), Employee shall receive commissions equal to forty percent (40%) of the actual revenue received by Company net of any third party split obligations ("Net Revenue") from any policies, products or other services related to new customers sold by Employee on Company's behalf ("Sold New Accounts"). Employee shall also receive commissions equal to the difference between 40% of the actual Net Revenue received by Company for any new accounts sold by a salesperson employed by Company and managed by Employee ("Managed New Ac-

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counts") and the percent commission paid to the salesperson employee. Notwithstanding the foregoing, any revenue from accounts that are acquired by Company through recruitment of a new employee with existing business or by acquisition ("Excluded Accounts") shall not considered Managed New Accounts and shall not be eligible for compensation to Employee. Any employees that bring Excluded Accounts with them upon hire that are under the supervision of Employee shall be designated as "New Producers". Any new accounts that are sold by New Producers on behalf of Company after their employment start date shall be considered Managed New Accounts. Both during the Initial Term and thereafter, as the Managing Principal/manager of the Company office/operations that Employee oversees, Employee shall have the right to approve any and all employees that he supervises and/or that report to him, as well as the percent commission paid to such employees, subject to the approval of Company, such approval not to be unreasonably withheld.

Further, consistent with the APA, the Company agrees that it shall not place any new salesperson or competitive company within the four (4) county Dallas/Ft. Worth Metroplex (i.e., Dallas County, Collin County, Denton County and Tarrant County) (the "Restricted Area") during the Initial Term without the prior, written approval of Employee, except with regard to employees engaged in managing outsourced contracts thru Digital Insurance enterprise business. After the Initial Term and the Company's payment of its fourth and final earn-out payment due under the APA, the Company may place new salespersons and/or competitive companies within the Restricted Area without Employee's prior, written approval, but Employee shall not be required to supervise such new personnel or companies without Employee's prior written approval of terms and conditions associated therewith.

C. Bonus For Referrals. If Employee identifies and refers to Company (i) a new employee or employees (or contractors) with existing accounts ("New Hire"), or (ii) an acquisition opportunity for an agency, entity or company with existing accounts ("New Business"), then Company (or the respective affiliate) agrees to pay Employee a bonus equal to two percent (2%) of the annual Net Revenue of the existing accounts (the "Referral Bonus"). The Referral Bonus shall be a one-time bonus, due and payable within thirty (30) days from the first day of service of the New Hire or upon the closing date of the consummation of the transaction with the New Business. The Referral Bonus shall be equal to the annualized Net Revenue of the existing accounts of the New Hire and/or New Business, as such Net Revenue is included and referenced in the respective employment agreement for the New Hire and/or the respective purchase agreement for the New Business. Absent such Net Revenue being included and referenced in the respective employment and/or purchase agreement, the annualized Net Revenue shall be equal to the prior twelve (12) months Net Revenue, measured as of the commencement of employment and/or closing of the purchase.

D. Revenue Share Terms and Conditions. Employee will not be entitled to commissions unless and until the Company has actually received payment of the revenue on which such commissions are based (the "Conditions"). Commissions will be paid to Employee by the twenty fifth (25) day of the month following the month in which all of the Conditions have been satisfied. All payments of commissions due to Employee will be subject to applicable withholdings, and include a statement that breaks out the payment by policy, product and/or service provided, with line item detail including policyholder, carrier, policy number, premium billing month, gross revenue, and Employee's commission based on such revenue. Further, Employee shall have access to and be provided with any applicable Company commissions statements on an as-needed basis, in order to help Employee audit and track his compensation and commissions. At any time within twelve (12)

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months following Employee's receipt of a commission payment and the supporting documentation, Employee may notify Company of any commission calculation discrepancies that he believes to exist, and Company and Employee shall work together to attempt to reconcile the alleged discrepancy. If Company and Employee are unable to reconcile the alleged discrepancy, they shall appoint a mutually agreed third party to reconcile said alleged discrepancy, whose decision shall be binding. The costs of the third party shall be paid for by the party who did not succeed in his/its position regarding the alleged discrepancy.

E. Employee Benefits and Expenses. During Employee's employment with the Company, Employee will be eligible to participate in any group insurance, hospitalization, medical health and accident, dental, disability, life, 401K and other employee benefit programs and benefits, of the Company now existing, or hereafter established which are generally provided by Company to all other employees within the Employee's classification, subject to all of the terms and conditions of the applicable benefits plans from time to time ("Employee Benefits"), but with Employee receiving credit for his service with his previous employer, DSG Benefits Group, LLC, a Texas limited liability company ("DSG"). During Employee's employment with the Company, the Employee shall be entitled to take vacation days and sick leave in accordance with the Company's policy applicable to all other employees' within the Employee's classification. The Company shall also promptly reimburse (i.e., within ten (10) business days) the Employee for all reasonable expenses, including without limitation, travel and entertainment expenses, incurred by Employee in the performance of his duties and responsibilities to the Company, in accordance with the policies and procedures of the Company. All expenses related to Employee's travel related to and attendance at Company meetings shall be covered by the Company. Employee will maintain records and written receipts as required by the Company policy and reasonably requested by the Company to substantiate such expenses.

3. Restrictive Covenants. Employee acknowledges and agrees that the restrictions contained in this Section below are reasonable and necessary to protect the legitimate business interests of the Company, and they will not impair or infringe upon Employee's right to work or earn a living when Employee's employment with the Company ends, and (a) Employee will (i) serve the Company as a Key Employee; and/or (ii) customarily and regularly solicit Customers and/or Prospective Customers for the Company; and/or (iii) customarily and regularly engage in making sales or obtaining orders or contracts for products or services to be provided or performed by others in the Company; and/or (iv) (A) have a primary duty of managing a department or subdivision of the Company, (B) customarily and regularly direct the work of two or more other employees, and (C) have the authority to hire or fire other employees; and/or (b) Employee's position is a position of trust and responsibility with access to (i) Confidential Information, (ii) Trade Secrets, (iii) information concerning employees of the Company, (iv) information concerning Customers of the Company, and/or (v) information concerning Prospective Customers of the Company.

A. Trade Secrets and Confidential Information. Employee represents and warrants that: (i) Employee is not subject to any legal or contractual duty or agreement that would prevent or prohibit Employee from performing Employee's duties for the Company or complying with this Agreement, and (ii) Employee is not in breach of any legal or contractual duty or agreement, including any agreement concerning trade secrets or confidential information, owned by any other person or entity.

Employee shall not: (i) both during and after Employee's employment with the Company, use, disclose, reverse engineer, divulge, sell, exchange, furnish, give away, or transfer in any way the Trade Secrets or the Confidential Information for any purpose other than the Company's Business, except as authorized in writing by the Company; (ii) during Employee's employment with the Company, use, disclose, reverse engineer, divulge, sell, exchange, furnish, give away, or transfer in any way (a) any confidential information or trade secrets of any former employer or third party, or (b) any works of authorship developed in whole or in part by Employee during any former employment or for any other party, unless authorized in writing by the former employer or third party; or (iii) upon the termination of Employee's employment for any reason, (a) retain Trade Secrets or Confidential Information, including any copies existing in any form (including electronic form) which are in Employee's possession or control, or (b) destroy, delete, or alter the Trade Secrets or Confidential Information without the Company's prior written consent.

The obligations under this Agreement shall: (i) with regard to the Trade Secrets, remain in effect as long as the information constitutes a trade secret under applicable law; and (ii) with regard to the Confidential Information, remain in effect for so long as such information constitutes Confidential Information as defined in this Agreement.

The confidentiality, property, and proprietary rights protections available in this Agreement are in addition to, and not exclusive of, any and all other rights to which the Company is entitled under federal and state law, including, but not limited to, rights provided under copyright laws, trade secret and confidential information laws, and laws concerning fiduciary duties.

B. Non-Solicitation of Customers. During the Restricted Period, Employee shall not, directly or indirectly, solicit any Customer of the Company for the purpose of selling or providing any products or services competitive with the Business. The restrictions set forth in this subsection apply only to Customers with whom Employee had Material Contact during Employee's employment with the Company.

C. Non-Solicitation of Prospective Customers. During the Restricted Period, Employee shall not, directly or indirectly, solicit any Prospective Customer of the Company for the purpose of selling or providing any products or services competitive with the Business. The restrictions set forth in this subsection apply only to Prospective Customers with whom Employee had Material Contact during Employee's employment with the Company.

D. Non-Recruit of Company Employees. During the Restricted Period, Employee shall not, directly or indirectly, solicit, recruit, or induce any Company Employee to (i) terminate his or her employment relationship with the Company, or (ii) work for any other person or entity engaged in the Business. The restrictions set forth in this subsection shall apply only to Company Employees (a) with whom Employee had Material Interaction, or (b) Employee, directly or indirectly, supervised.

E. Post-Employment Disclosure. During the Restricted Period, Employee shall provide a copy of this Agreement to persons and/or entities for which Employee works or consults as an owner, partner, joint venturer, employee or independent contractor. During the Restricted Period, Employee authorizes the Company to provide a copy of this Agreement to persons and/or entities

which Employee works or consults as an owner, partner, joint venturer, employee or independent contractor.

F. Definitions. For purposes of this Section 3, capitalized terms are defined as follows:

(i) "Business" means (a) those activities, products, and services that are the same as or similar to the activities conducted and products and services offered and/or provided by the Company within two years prior to termination of Employee's employment with the Company, and (b) the business of marketing, selling, and/or brokering (1) individual life and health insurance, and (2) group employee benefits, health insurance, and investment products. Notwithstanding the foregoing, "Business" shall not mean or include any products or services not provided by Company, and specifically (and not in limitation), "Business" shall not include any property and/or casualty products.

(ii) "Company Employee" means any person who (i) is employed by the Company at the time Employee's employment with the Company ends, or (ii) was employed by the Company during the last year of Employee's employment with the Company (or during Employee's employment if employed less than a year). Provided however, "Company Employee" shall not include any person who (i) has been terminated from employment by the Company due to a reduction in force or for reasons other than cause; or (ii) has been separated from employment with the Company for more than twelve (12) months prior to any solicitation or offer of employment by Employee

(iii) "Confidential Information" means (1) information of the Company, to the extent not considered a Trade Secret under applicable law, that (a) relates to the business of the Company, (b) was disclosed to Employee or of which Employee became aware of as a consequence of Employee's relationship with the Company, (c) possesses an element of value to the Company, and (d) is not generally known to the Company's competitors, and (2) information of any third party provided to the Company which the Company is obligated to treat as confidential, including, but not limited to, information provided to the Company by its licensors, suppliers, or customers. Confidential Information includes, but is not limited to, (i) methods of operation, (ii) price lists, (iii) financial information and projections, (iv) personnel data, (v) future business plans, (vi) the composition, description, schematic or design of products, future products or equipment of the Company or any third party, (vii) the Work Product, (viii) advertising or marketing plans, and (ix) information regarding independent contractors, employees, clients, licensors, suppliers, Customers, Prospective Customers, or any third party, including, but not limited to, the names of Customers and Prospective Customers, Customer and Prospective Customer lists compiled by the Company, and Customer and Prospective Customer information compiled by the Company. Confidential Information shall not include any information that (x) is or becomes generally available to the public other than as a result of an unauthorized disclosure, (y) has been independently developed and disclosed by others without violating this Agreement or the legal rights of any party, or (z) otherwise enters the public domain through lawful means.

(iv) "Customer" means any person or entity to which the Company has sold its products or services within the past twenty-four (24) months.

(v) "Key Employee" means that, by reason of the Company's investment of time, training, money, trust, exposure to the public, or exposure to Customers, vendors, or other business relationships during the course of Employee's employment with the Company, Employee will gain a high level of notoriety, fame, reputation, or public persona as the Company's representative or spokesperson, or will gain a high level of influence or credibility with the Company's Customers, vendors, or other business relationships, or will be intimately involved in the planning for or direction of the business of the Company or a defined unit of the business of the Company. Such term also means that Employee will possess selective or specialized skills, learning, or abilities or customer contacts or customer information by reason of having worked for the Company.

(vi) "Material Contact" means contact within the twenty-four (24) month period preceding the date of Employee's termination from employment with the Company, between Employee and a Customer or Prospective Customer: (1) with whom or which Employee dealt on behalf of the Company; (2) whose dealings with the Company were coordinated or supervised by Employee; (3) about whom Employee obtained Confidential Information in the ordinary course of business as a result of Employee's association with the Company; or (4) who receives products or services authorized by the Company, the sale or provision of which results or resulted in compensation, commissions, or earnings for Employee.

(vii) "Material Interaction" means any interaction with a Company Employee which relates or related, directly or indirectly, to the performance of Employee's duties or the Company Employee's duties for the Company.

(viii) "Prospective Customer" means any person or entity to which the Company has actively solicited to purchase the Company's products or services within the past twelve (12) months.

(ix) "Restricted Period" means the time period during Employee's employment with the Company, and for two (2) years after Employee's employment with the Company ends, unless Employee is terminated without cause during the Initial Term of Employee's employment or Employee resigns at any time for Good Reason, in which instances, the provisions contained in Sections 3.B, C and D shall not apply to Employee.

(x) "Trade Secrets" means information of the Company, and its licensors, suppliers, clients, and customers, without regard to form, including, but not limited to, technical or non-technical data, a formula, a pattern, a compilation, a program, a device, a method, a technique, a drawing, a process, financial data, financial plans, product plans, a list of actual customers, clients, licensors, or suppliers, or a list of potential customers, clients, licensors, or suppliers which is not commonly known by or available to the public and which information (i) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

4. Duty of Loyalty. While Employee is performing services for the Company, Employee shall devote substantially all of Employee's business time, energy and skill to the business of the Company and to the promotion of the Company's interests as may be required for the fulfillment of Employee's obligations. Therefore, while Employee is performing services for the Company, Em-

ployee shall not: (a) engage in, or otherwise have an interest in, directly or indirectly, any other business or activity that would conflict with or materially and adversely affect Employee's obligations to the Company; (b) become associated with or affiliated with any other business or entity which is in the same business, or essentially the same business, as the Company Business; (c) prepare or otherwise make arrangements to compete with the Company; (d) solicit, call upon, or initiate communication or contact with any vendor or Customer of the Company for or on behalf of any other business; (e) engage in active hiring efforts, solicit or induce any person who is an employee of the Company, to leave or cease his or her employment with the Company; or (f) render to others any service of any kind for compensation or engage in any activity which conflicts or interferes with the performance of Employee's obligations for the Company. Notwithstanding the foregoing and throughout the term of this Agreement, it shall not be a violation of the Employee's Duty of Loyalty for the Employee, either on a volunteer or paid basis, to: (i) serve on industry trade, civic or chartable boards or committees; (ii) serve as an athletic coach, athletic director, athletic advisory committee member or manager, student or athletic advisor or counselor; (iii) deliver lectures or fulfill speaking engagements; (iv) manage personal investments (which shall include (A) investments by the Employee of his personal assets in any business which does not compete directly or indirectly with the Company, in such form or manner as will not require any services on the part of the Employee in the operation of such business and (B) the purchase by the Employee of a total of up to 1% of the regularly traded securities of any entity, whether or not it competes with the Company, as long as, in the reasonable judgment of the Company's Executive Vice President and Chief Marketing Officer, such activities do not and will not interfere with the performance of Employee's duties and responsibilities as an employee of the Company, or (v) otherwise engage in any activity competitive with the Company or that otherwise interferes with Employee's performance of his duties and responsibilities owed to the Company. Employee will not be required to remit to the Company any stipends, expenses or compensation received from the activities described in subsections (i), (ii) and (iii) immediately above. Notwithstanding the foregoing, as well as the provisions of Section 1 herein, Employee may develop and pursue selling property and casualty products and coverages, as long as such does not interfere with the performance of Employee's duties and responsibilities as an employee of the Company, as set forth and/or contemplated herein.

5. Injunctive Relief. Employee agrees that if Employee breaches any portion of Sections 3 and 4 of this Agreement: (i) the Company would suffer irreparable harm; (ii) it would be difficult to determine damages, and money damages alone would be an inadequate remedy for the injuries suffered by the Company; and (iii) if the Company seeks injunctive relief to enforce this Agreement, Employee shall waive and shall not (a) assert any defense that the Company has an adequate remedy at law with respect to the breach, or (b) require that the Company submit proof of the economic damages relating to any Trade Secret or Confidential Information. Nothing contained in this Agreement shall limit the Company's right to any other remedies at law or in equity.

6. Independent Enforcement. Each of the covenants set forth in Sections 3 and 4 of this Agreement shall be construed as an agreement independent of (i) each of the other covenants set forth in Sections 3 and 4, (ii) any other agreements, or (iii) any other provision in this Agreement, and the existence of any claim or cause of action by Employee against the Company, whether predicated on this Agreement or otherwise, regardless of who was at fault and regardless of any claims that either Employee may have against the Company, or the Company may have against Employee, shall not constitute a defense to the enforcement by the Company of any of the covenants set forth in Sections 3 and 4 of this Agreement. The Company shall not be barred from enforcing any of the

covenants set forth in Sections 3 and 4 by reason of any breach of (i) any other part of this Agreement, or (ii) any other agreement with Employee. Notwithstanding the foregoing, if (a) the Company is in material breach of its obligations under Section 2 herein and any such alleged breach is not cured within 30 days after receipt by Company of written notice detailing the alleged breach, (b) the Company terminates Employee's employment Without Cause during the Initial Term of Employee's employment, and/or (c) Employee resigns at any time for Good Reason, then in such instances, the provisions contained in Sections 3.B, C and D shall not apply to Employee or be otherwise enforceable.

7. Severability. It is the desire and intent of the parties that the provisions of this Agreement shall be enforced to the fullest extent permissible. Accordingly, if any particular paragraph(s), subparagraph(s) or portion(s) of this Agreement shall be adjudicated to be invalid or unenforceable as written, such paragraph(s), subparagraph(s) or portion(s) shall be modified to the extent necessary to be valid or enforceable. Such modification shall not affect the remaining provisions of this Agreement. To the extent any paragraph(s), subparagraph(s) or portion(s) of this Agreement found invalid or unenforceable cannot be modified to be made valid or enforceable, then the Agreement shall be construed as if that paragraph(s), subparagraph(s) or portion(s) was deleted, and all remaining terms and provisions shall be enforceable in law or equity in accordance with their terms. In any action brought to enforce this Agreement, the prevailing party shall be awarded reasonable attorneys' fees and costs and expenses incurred therein.

8. Withholdings. The Company shall be entitled to withhold from any amounts payable under this Agreement any foreign, federal, state, provincial and local withholding, other employment taxes or charges that the Company is required to withhold.

9. Notices. All notices, requests, consents, and other communications under this Agreement shall be in writing and shall be deemed to have been delivered on the date personally delivered or on the date deposited in a receptacle maintained by the United States Postal Service for such purpose, postage prepaid by certified mail return receipt requested, or by express mail addressed to the address indicated under the signature block for that party provided below. Either party may designate a different address by providing written notice of a new address to the other party.

10. Assignment. This Agreement and the rights and obligations of the Company hereunder shall inure to the benefit of, shall be binding upon and shall be enforceable by the Company and may not be assigned by the Company other than to an acquirer of all or substantially all assets of, or of a controlling equity interest in, the Company, without the prior written consent of the Employee. This Agreement and the rights and obligations of Employee hereunder may not be assigned by Employee without the prior written consent of the Company.

11. Waiver. The waiver by any party hereto any breach of any provision this Agreement shall not be effective unless in writing, and no such waiver shall operate or be construed as a waiver of the same type of breach or any other breach on a subsequent occasion. The failure of a party at any time to require performance by the other party of any provision expressed herein shall in no way affect the party's right to thereafter enforce such provision.

12. Term. This Agreement shall commence on the Effective Date and shall continue in full force and effect for a period of four (4) years from the Effective Date, unless earlier terminated as

provided for below (the "Initial Term"). Upon expiration of the Initial Term, this Agreement will automatically renew on an at-will basis, meaning that Employee may terminate Employee's employment with the Company at any time and for any reason whatsoever simply by notifying the Company, and the Company may terminate Employee's employment at any time with or without cause or advance notice; provided, however, that the restrictive covenants set forth in Section 3 above and all of Employee's post-termination obligations contained in this Agreement shall survive termination of this Agreement, unless (a) the Company terminates Employee's employment without cause during the Initial Term, and/or (b) Employee otherwise resigns at any time for Good Reason.

13. Termination. Notwithstanding Section 12 above, this Agreement may be terminated as a result of any of the following events:

A. Intentionally Blank;

B. Mutual written agreement between Employee and the Company at any time;

C. Employee's death;

D. Employee's disability which renders Employee unable to perform the essential functions of Employee's job even with reasonable accommodation for a continuous period of ninety (90) days or for a total period of one hundred twenty (120) days within a twelve (12) month period, whether or not such days are consecutive, as determined by a physician mutually agreed to by the Company and Employee;

E. By the Company "For Cause." "For Cause" shall mean a termination by the Company because of any one of the following events:

(i) Employee's breach of this Agreement, which Employee fails to reasonably cure within thirty (30) days from receipt of written notice from the Company detailing the nature of the alleged breach and the proposed steps to cure it;

(ii) Employee's breach of his fiduciary duty to the Company, or material breach of Section 3 or 4 of this Agreement;

(iii) Failure by Employee to materially perform the duties of Employee as required hereunder, but only if Employee fails to reasonably cure such failure within thirty (30) days from receipt of written notice from the Company detailing the nature of the alleged failure and the proposed steps to cure it;

(iv) Any act or omission by Employee which materially injures the Company, or the business reputation of the Company;

(v) Employee's conviction of, or entry of a plea of guilty or no contest to, (a) a felony, or (b) a crime involving moral turpitude; or

(vi) Employee's dishonesty with respect to a material matter, fraud, or gross negligence relating to his duties under this Agreement or the Company's Business;

F. Employee's resignation without Good Reason (as defined below);

G. Employee's resignation for Good Reason. For purposes of this Agreement, "Good Reason" shall exist if: (i) the Company, without Employee's prior, written consent, (a) materially reduces Employee's duties, responsibilities and/or compensation structure, (b) commits a material breach of this Agreement, (c) materially changes the geographic location at which Employee must perform services for the Company, or (d) violates the provisions of Section 6.6 of the APA, (ii) Employee provides written notice to the Company of any such action within thirty (30) days of the date on which such action first occurs and provides the Company with thirty (30) days to remedy such action (the "Cure Period"); (iii) the Company fails to remedy such action within the Cure Period, and (iv) Employee resigns within thirty (30) days of the expiration of the Cure Period. Good Reason shall not include any isolated, insubstantial, or inadvertent action that (a) is not taken in bad faith, and (b) is remedied by the Company within the Cure Period; or

H. By the Company "Without Cause". "Without Cause" shall mean any termination of employment by the Company which is not defined in subsections (B), (E) and/or (F) above.

14. Company's Post-Termination Obligations.

A. If this Agreement terminates at any time for any of the reasons set forth in Sections 13(E) or 13(F) above, then the Company will pay Employee all accrued but unpaid compensation through the termination date in accordance with the terms and conditions of Section 2 above. The Company shall have no other obligations to Employee including under any provision of this Agreement, Company policy, or otherwise. Employee shall continue to be bound by Section 3 and all other post-termination obligations to which Employee is subject, including, but not limited to, the post-termination obligations contained in this Agreement. .

B. Except as otherwise mutually agreed by the parties in writing, if this Agreement terminates at any time for any of the reasons set forth in Section 13(B), (C), (D), (G) or (H) above, then the Company shall pay Employee (a) all accrued but unpaid compensation in accordance with the terms and conditions of Section 2(A) (i.e., the Base Salary) as if Employee remained employed by the Company) through a period ending the latter of (i) the expiration of the Initial Term, or (ii) six (6) months following Employee's last day of employment (prorated for less than a full pay period), and (b) a revenue share of ten percent (10%) on Sold New Accounts and five percent (5%) on Managed New Accounts, all of which must have been active as of the date of employment termination in accordance with the commission payment terms set forth in Section 2(B) hereinabove for as long as Company maintains such accounts but up to a maximum period of five (5) years after termination of employment (the "Payout Period"), provided Employee has complied with the conditions set forth in subsections (i) and (ii) below. With regard to the continuing payment based upon the Managed New Accounts, such shall be included in the payment calculations only to the extent that such Managed New Accounts were associated with the employees that commenced employment under the supervision of Employee within thirty (30) days from the Effective Date hereof.

Employee acknowledges that the Company may provide him with life insurance coverage at Company's expense, as part of his employment benefits package. Employee agrees that to the extent that the Company provides and pays the premiums for such life insurance coverage, that in the event of Employee's death, the benefits payable under such Company provided life insurance cov-

erage shall be counted as a credit against any and all sums due and payable to Employee pursuant to this Section 14(B)(b) hereinabove, with any additional sums due pursuant to Section 14(B)(b) hereinabove through the end of the Payout Period being paid in accordance with the provisions herein. Except as set forth in this subsection, the Company shall have no other obligations to Employee, including under any provision of this Agreement, Company policy or otherwise. The Company's obligation to provide the payments set forth in this subsection shall be conditioned upon the following:

(i) Employee's execution and non-revocation of a standard Separation & Release Agreement in a form mutually agreeable to both parties, which includes, but is not limited to, a mutual release by the parties from any and all liability and claims of any kind (except from the post-employment obligations under Sections 3, 4 and 5 of this Agreement); and

(ii) Employee's compliance with the restrictive covenants (Section 3) and all of Employee's post-termination obligations to the Company, including, but not limited to, the obligations contained in this Agreement.

If Employee does not execute, comply with, and refrain from revoking an effective Separation & Release Agreement as set forth above, the Company shall not be obligated to provide any payments or benefits to Employee under this subsection or this Agreement. The Company's obligation to provide Employee with the separation payments set forth above in this subsection shall terminate immediately upon any breach by Employee of any post-termination obligations to which Employee is subject, but only after Employee is provided with written notice of any alleged breach and fails to cure said breach within thirty (30) days from receipt thereof.

15. Return of Materials. Upon the termination of Employee's employment for any reason or upon the Company's request at any time, Employee shall immediately return to the Company all of the Company's property, including, but not limited to, mobile phones, personal digital assistants (PDA), keys, passcards, credit cards, confidential or proprietary lists (including, but not limited to, customer, supplier, licensor, and client lists), rolodexes, tapes, laptop computer, software, computer files, marketing and sales materials, and any other property, record, document, or piece of equipment belonging to the Company. Employee shall not (i) retain any copies of the Company's property, including any copies existing in electronic form, which are in Employee's possession, custody or control; or (ii) destroy, delete, or alter any Company property, including, but not limited to, any files stored electronically, without the Company's prior written consent. The obligations contained in this subsection shall also apply to any property which belongs to a third party, including, but not limited to, (i) any entity which is affiliated or related to the Company; or (ii) the Company's customers, licensors, or suppliers.

16. Set-Off. If Employee has any outstanding obligations to the Company upon the termination of Employee's employment for any reason, Employee hereby authorizes the Company to deduct any amounts owed to the Company from any amounts that would otherwise be due to Employee, including, but not limited to, under Section 14(B) above, except to the extent such amounts constitute "deferred compensation" under Internal Revenue Code Section 409A. Nothing in this subsection shall limit the Company's right to pursue means other than or in addition to deduction to recover the full amount of any outstanding obligations to the Company. Notwithstanding the foregoing, the Company shall not deduct any such amount allegedly owed by Employee until and unless

the Company provides Employee with written notice of such alleged deduction(s) and Employee has at least ten (10) business days to respond to and confirm said deduction(s).

17. Non-Disparagement. During Employee's employment and following the termination of Employee's employment with the Company for any reason, neither party shall make any disparaging or defamatory statements, whether written or oral, regarding the other party; provided, however, that nothing in this subsection shall prohibit either party from making truthful oral or written statements in response to (i) an official request by a government agency, (ii) a court order, or (iii) a legally enforceable subpoena.

18. Governing Law, Jurisdiction, and Venue. This Agreement has been entered into under and shall be governed by the laws of the State of Georgia. If Georgia' conflict of law rules would apply another state's laws, the Parties agree that Georgia law shall still govern. Any and all claims arising out of or relating to this Agreement shall be brought exclusively in a state or federal court of competent jurisdiction in Georgia. The Parties consent to the personal jurisdiction of the state and/or federal courts located in Georgia. The Parties waive (a) any objection to jurisdiction or venue, or (b) any defense claiming lack of jurisdiction or improper venue, in any action brought in such courts.

19. Entire Agreement. This Agreement constitutes the sole and entire Agreement between the parties with respect to all matters contained herein. No provisions hereof can be changed orally, and, no change, modification, alteration, amendment or attempted waiver of any provision hereof will be binding unless in writing and signed by the parties hereto or as may be order by any court of competent jurisdiction or arbitrator, if applicable.

[Signature page follows]

IN WITNESS WHEREOF, the Company has executed and delivered by and through its duly authorized officer, and Employee has executed and delivered, this Employment Agreement effective as of the date first written above.

EMPLOYEE:

_____
David Goldfarb

Address: _____

_____

COMPANY:

DIGITAL INSURANCE, INC.

By: _____

Print Name: Charles M. Rixtad

Title: CFO

Address: 400 Galleria Pkwy, Ste 300
Atlanta, GA 30339

5265885

_____
Employee's Initials
DA-3252757 v1

IN WITNESS WHEREOF, the Company has executed and delivered by and through its duly authorized officer, and Employee has executed and delivered, this Employment Agreement effective as of the date first written above.

EMPLOYEE:

David Goldfarb

Address: 3815 West Beverly Drive

Dallas, Texas 75209

COMPANY:

DIGITAL INSURANCE, INC.

By: _____

Print Name: _____

Title: _____

Address: _____

_____

Exhibit "A"
Job Duties and Responsibilities

- Day-to-day leadership of the local agency operations;
- Overall office P&L responsibility;
- Responsibility for management of office staff;
- Retention of existing accounts;
- Grow book of business through organic sales;
- Serve in an advisory capacity for clients and staff;
- Monitor sales team pipeline and productivity to ensure goals are met;
- Act as mentor to staff to assist in resolving client issues and development of solutions;
- Work with corporate finance on annual budget and forecasts;
- Communicate with staff regarding outcomes and deliverables;
- Analyze performance outcomes and recommend solutions for continual improvement;
- Attend National DBA sales meetings
- Collaborate with other DBA principals as applicable

EXHIBIT C

FIRST AMENDMENT TO EMPLOYMENT AGREEMENT

THIS FIRST AMENDMENT TO EMPLOYMENT AGREEMENT ("Amendment") amends in certain respects the Employment Agreement ("Agreement"), effective as of July 1, 2012 by and between Digital Insurance, Inc., a Delaware Corporation (the "Company"), and David Goldfarb ("Employee").

The parties agree that effective June 1, 2017 (the "Effective Date"), that Sections 1, 2, 4 and 19 of the Agreement are hereby amended and restated as indicated below. Except as otherwise indicated herein, the Agreement remains in full force and effect. Nothing herein shall be construed to retroactively revise any rights or obligations between the Company and Employee related to the Agreement as it was in effect prior to January 1, 2017. Except as otherwise expressly stated herein, this Amendment is intended only to apply to the parties' relationship going forward as of the Effective Date.

1. Scope of Services: During Employee's employment with the Company, Company will employ Employee as Managing Principal of Sales reporting to the Chief Operating Officer, or any other executive designated by the Company from time to time. Employee shall be primarily focused on managing Company's sales and marketing operations in the Dallas, Texas office, and shall perform such duties and have such responsibilities and authority as are customary to such position as well as such other duties as are within his capabilities and reasonably required of him by the Company from time to time, but specifically including those job duties and responsibilities as set forth on "Exhibit A" attached hereto and made a part hereof for all purposes. Employee will work in partnership with the Managing Principal of Client Services to execute on overall revenue and EBITDA plan results. The Managing Principal of Client Services will have primary responsibility for managing office operations and client service teams/deliverables. Employee shall (i) devote all necessary working time required of Employee's position, (ii) devote Employee's best efforts, skill, and energies to promote and advance the business and/or interests of the Company, and (iii) fully perform Employee's obligation under this Agreement.

2. Compensation:

A. Revenue Share on Existing Customers. During Employee's employment with the Company, Employee shall receive commissions equal to twenty-five percent (25%) of the actual revenue received by Company net of any third party split obligations ("Net Revenue") from any policies, products or other services related to the existing customers listed on the attached Exhibit B (the "Existing Customers"). Notwithstanding the foregoing, any new lines of coverage sold to Existing Customer shall be treated the same as a Sold New Account (i.e. 40% first year/25% renewal years) for compensation purposes.

B. Revenue Share on New Sold Accounts. Beginning on June 1, 2017, Employee shall receive commissions equal to forty percent (40%) first year/twenty five percent (25%) renewal years of the Net Revenue from any policies, products or other services related to new customers sold by Employee on Company's behalf ("Sold New Accounts"). In the preceeding sentence, "first year" refers to the first year of insurance coverage for applicable new customer and "renewal years" refers to any time periods beyond the first year of coverage (such timeframes are unique to each Sold New Account).

C. Revenue Share Terms and Conditions. Employee will not be entitled to the payments referenced in paragraphs 2(A) and 2(B) above (the "Revenue Share Payments") unless and until Company has actually received payment of the revenue on which the Revenue Share Payments are based (the "Conditions"). Revenue Share Payments will be paid to Employee by the twenty fifth (25th) day of the month following the month in which the Conditions have been satisfied. All Revenue Share Payments due to Employee will be

DS DG

Executive's Initials

4. Duty of Loyalty. While Employee is performing services for the Company, Employee shall devote substantially all of Employee's business time, energy and skill to the business of the Company and to the promotion of the Company's interests as may be required for the fulfillment of Employee's obligations. Therefore, while Employee is performing services for the Company and except as otherwise provided herein, Employee shall not: (a) engage in, or otherwise have an interest in, directly or indirectly, any other business or activity that would conflict with or materially and adversely affect Employee's obligations to the Company; (b) become associated with or affiliated with any other business or entity which is in the same business, or essentially the same business, as the Company Business; (c) prepare or otherwise make arrangements to compete with the Company; (d) solicit, call upon, or initiate communication or contact with any vendor of Customer of the Company for or on behalf of any other business; (e) engage in active hiring efforts, solicit or induce any person who is an employee of the Company, to leave or cease his or her employment with the Company; or (f) render to others any service of any king for compensation or engage in any activity which conflicts or interferes with the performance of Employee's obligations for the Company. Notwithstanding the foregoing and throughout the term of this Agreement, it shall not be a violation of the Employee's Duty of Loyalty for the Employee, either on a volunteer or paid basis to: (i) engage in business opportunities on an individual basis, for Employee's sole benefit, related to the sale of policies, coverages, and products that are not currently sold by the Company, including property and casualty products, individual life insurance, disability insurance, long-term care insurance, and other similar products; (ii) serve on industry trade, civic or charitable boards or committees; (iii) serve as an athletic coach, athletic director, athletic advisory committee member or manager, student or athletic advisor or counselor; (iv) deliver lectures or fulfill speaking engagement; or (v) manage personal investments (which shall include (A) investments by the Employee of his personal assets in any business which does not compete directly or indirectly with the Company, in such form or manner as will not require any services on the part of the Employee in the operation of such business and (B) the purchase by the Employee of a total of up to 1% of the regularly traded securities of any entity, whether or not it competes with the Company, as long as, in the reasonable judgment of the Company's Chief Operating Officer, such activities do not and will not interfere with the performance of Employee's duties and responsibility as an employee of the Company). Employee shall not be required to remit to the Company any compensation or payments received from the activities described in subsections (i) through (v) herein.

19. Entire Agreement. The Agreement and this Amendment constitute the sole and entire Agreement between the parties with respect to all matters contained herein. No provisions of the Agreement or this Amendment can be changed orally, and no change, modification, alternation, amendment or attempted waiver of any provision hereof will be binding unless in writing and signed by the parties hereto.

DS
DG

Executive's Initials

IN WITNESS WHEREOF, the Company has executed and delivered by and through its duly authorized officer, and Executive has executed and delivered, this Agreement to be effective as of the Effective Date.

EXECUTIVE:

DocuSigned by:
David Goldfarb
0B1D10EAABE0455...
David Goldfarb

COMPANY:

DIGITAL INSURANCE, INC.

By: _____

Name: _____

Title: _____

DG
Executive's Initials

EXHIBIT A

JOB DUTIES AND RESPONSIBILITIES

The Managing Principal of Sales works collaboratively and in partnership with the Managing Principal of Client Services to manage the strategic direction and profitable growth of the Dallas office and its operations. The MP of Sales has primary responsibility for leading the office's sales efforts and team to meet or exceed established sales goals and objectives. The MP works both independently and with local and corporate leadership teams to develop the strategic sales plan and initiatives that promote a culture of growth through leadership, collaboration and accountability.

The MP of Sales also works with the MP of Client Services to co-manage the office's Profit and Loss (P/L) statement and ensure annual revenue and margin goals are met or exceeded. Together they are responsible for strategically growing the office through organic growth and mergers & acquisitions. Revenue generation, business acumen, team building, and general leadership skills are critical to success.

- Collaborate with local and national leadership teams to develop growth plans and set annual sales goals for office and individual team members
- Communicate sales goals, progress and updates to team members
- Actively coach and mentor team members to develop sales behaviors and skills
- Analyze sales performance outcomes and recommend solutions for continual improvement

- Establish and maintain regular meeting routines to coach, develop and serve as overall leader and mentor for sales staff

The MP of Sales works collaboratively and in partnership with the MP of Client Services to:

- Leverage the company's national and local resources to drive greater operational and sales efficiencies
- Oversee and drive growth of BUMs through cross-sale opportunities and alternative product offerings
- Identify and efficiently resolves employee relations, operational and sales issues
- Build and foster a positive workplace culture
- Champion programs and initiatives undertaken by the company
- Carry positive messages and create a compelling vision for the office/company's future
- Ensure office and individual sales goals are met or exceeded
- Ensure revenue goals are met or exceeded
- Collaborate with COO and corporate leadership teams to develop annual goals and co-manages P/L accordingly
- Identify and facilitate local partnership and acquisition opportunities

DS
DG

Executive's Initials

General Civil and Domestic Relations Case Filing Information Form

☒ Superior or ☐ State Court of Gwinnett County

FILED IN OFFICE
CLERK SUPERIOR COURT
GWINNETT COUNTY, GA

2018 DEC 28 PM 3:21

RICHARD ALEXANDER, CLERK

For Clerk Use Only

Date Filed _____ **Case Number** A11009-2
MM-DD-YYYY

Plaintiff(s)					Defendant(s)				
GOLDFARB	DAVID				DIGITAL INSURANCE LLC f/k/a				
Last	First	Middle I.	Suffix	Prefix	Last	First	Middle I.	Suffix	Prefix
					DIGITAL INSURANCE, INC. and d/b/a				
Last	First	Middle I.	Suffix	Prefix	Last	First	Middle I.	Suffix	Prefix
					ONEDIGITAL HEALTH AND BENEFITS				
Last	First	Middle I.	Suffix	Prefix	Last	First	Middle I.	Suffix	Prefix
Last	First	Middle I.	Suffix	Prefix	Last	First	Middle I.	Suffix	Prefix

Plaintiff's Attorney Michael J. Ernst **Bar Number** 249959 **Self-Represented** ☐

Check One Case Type in One Box

General Civil Cases
- ☐ Automobile Tort
- ☐ Civil Appeal
- ☑ Contract
- ☐ Garnishment
- ☐ General Tort
- ☐ Habeas Corpus
- ☐ Injunction/Mandamus/Other Writ
- ☐ Landlord/Tenant
- ☐ Medical Malpractice Tort
- ☐ Product Liability Tort
- ☐ Real Property
- ☐ Restraining Petition
- ☐ Other General Civil

Domestic Relations Cases
- ☐ Adoption
- ☐ Dissolution/Divorce/Separate Maintenance
- ☐ Family Violence Petition
- ☐ Paternity/Legitimation
- ☐ Support – IV-D
- ☐ Support – Private (non-IV-D)
- ☐ Other Domestic Relations

Post-Judgment – Check One Case Type
- ☐ Contempt
  - ☐ Non-payment of child support, medical support, or alimony
- ☐ Modification
- ☐ Other/Administrative

☐ Check if the action is related to another action(s) pending or previously pending in this court involving some or all of the same parties, subject matter, or factual issues. If so, provide a case number for each.

_____ Case Number _____ Case Number

☐ I hereby certify that the documents in this filing, including attachments and exhibits, satisfy the requirements for redaction of personal or confidential information in O.C.G.A. § 9-11-7.1.

☐ Is an interpreter needed in this case? If so, provide the language(s) required. _____ Language(s) Required

☐ Do you or your client need any disability accommodations? If so, please describe the accommodation request.

_____

_____

Civil Action No. 18-A-11009-2

Filing Date: 12/28/18

SUPERIOR Court ☐

GEORGIA, GWINNETT COUNTY

Attorney or Plaintiff's Name & Address

STOKES CARMICHAEL & ERNST LLP

2018 POWERS FERRY RD SUITE 700

ATLANTA, GA 30339 PH: (404) 352-1465
MJE/ccg SCE FILE NO. 18-01837

DAVID GOLDFARB

Plaintiff

VS.

DIGITAL INSURANCE, LLC f/k/a

DIGITAL INSURANCE, INC. and d/b/a

ONEDIGITAL HEALTH AND BENEFITS

Defendant

Name and Address of Party to be Served:

CT CORPORATION SYSTEM

289 S. CULVER STREET

LAWRENCEVILLE, GA 30046

SERVE: COMPLAINT AND SUMMONS

Garnishee

FILED IN OFFICE
CLERK SUPERIOR COURT
GWINNETT COUNTY, GA
2018 DEC 31 PM 1:32
TIFFANY CLARK

SHERIFF'S ENTRY OF SERVICE

FILED IN OFFICE
CLERK SUPERIOR COURT
GWINNETT COUNTY, GA
2019 JAN -2 PM 1:32
RICHARD ALEXANDER, CLERK

PERSONAL

☐ I have this day served ..... personally with a copy of the within action and summons.

NOTORIOUS

I have this day served ..... by leaving a copy of the action and summons at his most notorious place of abode in this County.

☐ Delivered same into hands of ..... described as follows: age, about ..... years; weight, about ..... pounds; height, about ..... feet and ..... inches, domicilied at the residence of defendant.

CORPORATION

Served Digital Insurance LLC a corporation

☒ by leaving a copy of the within action and summons with Linda Banks in charge of the office and place of doing business of said Corporation in this County.

TACK & MAIL

☐ I have this day served the above affidavit and summons on the defendant(s)/Party by posting a copy of the same to the door of the premises designated in said affidavit and on the same day of such posting by depositing a true copy of the same in the United States Mail, First Class in an envelope properly addressed to the defendant(s)/Party at the address shown in said summons, with adequate postage affixed thereon containing notice to the defendant(s)/Party to answer said summons at the place stated in the summons.

NON EST

☐ Diligent search made and ..... not to be found in the jurisdiction of this Court.

The defendant/Party is required to appear before the Court for a hearing on the ..... day of ..... 20 ..... at the hour and place stated in the summons .....

This 2 day of Jan, 20 19.

Jim Casey SO300
DEPUTY

GWINNETT COUNTY, GEORGIA

WHITE: Clerk CANARY: Plaintiff PINK: Defendant

890116

Civil Action No. 18-A11009-2

Filing Date: 12-28-18

Superior Court ✓

GEORGIA, GWINNETT COUNTY

Attorney or Plaintiff's Name & Address

STOKES CARMICHAEL & ERNST LLP

2018 POWERS FERRY RD SUITE 700

ATLANTA, GA 30339 PH: (404) 352-1465 x441

DAVID GOLDFARB

Plaintiff

VS.

DIGITAL INSURANCE LLC f/k/a DIGITAL INSURANCE, INC. and d/b/a ONEDIGITAL HEALTH AND BENEFITS

E-FILED IN OFFICE - JM
CLERK OF SUPERIOR COURT
GWINNETT COUNTY, GEORGIA
18-A-11009-2
1/15/2019 2:00 PM
CLERK OF SUPERIOR COURT

Defendant

Garnishee

Name and Address of Party to be Served:

Person in Charge
Digital Insurance LLC
200 Galleria Parkway
suite 1950
Atlanta, GA 30339

SHERIFF'S ENTRY OF SERVICE

PERSONAL ☐ I have this day served ..... personally with a copy of the within action and summons.

NOTORIOUS ☐ I have this day served ..... by leaving a copy of the action and summons at his most notorious place of abode in this County.

Delivered same into hands of ..... described as follows

age, about ..... years; weight, about ..... pounds; height, about ..... feet and ..... inches, domiciled at the residence of defendant.

CORPORATION ✓ Served DIGITAL INSURANCE LLC a corporation by leaving a copy of the within action and summons with KIRSTEN GOODWIN in charge of the office and place of doing business of said Corporation in this County.

TACK & MAIL ☐ I have this day served the above affidavit and summons on the defendant(s)/Party by posting a copy of the same to the door of the premises designated in said affidavit and on the same day of such posting by depositing a true copy of the same in the United States Mail, First Class in an envelope properly addressed to the defendant(s)/Party at the address shown in said summons, with adequate postage affixed thereon containing notice to the defendant(s)/Party to answer said summons at the place stated in the summons.

NON EST ☐ Diligent search made and ..... not to be found in the jurisdiction of this Court.

The defendant/Party is required to appear before the Court for a hearing on the ..... day of ..... 20 ..... at the hour and place stated in the summons

This 7 day of JAN, 20 19

JKL 95077
DEPUTY

COBB COUNTY, GEORGIA

WHITE: Clerk CANARY: Plaintiff PINK: Defendant

IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

DAVID GOLDFARB,

Plaintiff,

v.

DIGITAL INSURANCE LLC, f/k/a DIGITAL INSURANCE, INC., and d/b/a ONEDIGITAL HEALTH AND BENEFITS,

Defendant.

CIVIL ACTION NO.: 18A11009-2

NOTICE OF APPEARANCE

COMES NOW the undersigned, Meredith W. Caiafa of Morris, Manning & Martin, LLP, and notifies the Court that she is entering an appearance as counsel on behalf of Defendant Digital Insurance LLC. Counsel requests that notice of all court appearances, motions, pleadings and filings be served on the undersigned.

Respectfully submitted this 17th day of January, 2019.

MORRIS MANNING & MARTIN, LLP

/s/ Meredith W. Caiafa

Meredith W. Caiafa
Georgia Bar No. 551409
1600 Atlanta Financial Center
3343 Peachtree Road, NE
Atlanta, Georgia 30326
(404) 233-7000 (telephone)
(404) 365-9532 (facsimile)
mcaiafa@mmmlaw.com
Attorney for Defendant Digital Insurance LLC

IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

DAVID GOLDFARB, Plaintiff, v. DIGITAL INSURANCE LLC, f/k/a DIGITAL INSURANCE, INC., and d/b/a ONEDIGITAL HEALTH AND BENEFITS, Defendant.	CIVIL ACTION NO.: 18A11009-2

CERTIFICATE OF SERVICE

I hereby certify that I have caused service of the foregoing **NOTICE OF APPEARANCE** via U.S. Mail with proper postage paid I hereby certify that I have caused service of the foregoing NOTICE OF APPEARANCE via U.S. Mail with proper postage paid and via the Odyssey eFileGA which will automatically send e-mail notification of said filing to the following attorneys of record:

Beth Bivans Petronio
K&L Gates LLP
1717 Main Street, Suite 2800
Dallas, Texas 75228

Michael J. Ernst
Stokes Carmichael & Ernst LLP
2018 Powers Ferry Rd., Suite 700
Atlanta, Georgia 30339

By: */s/ Meredith W. Caiafa*
Meredith W. Caiafa, Ga. Bar No. 551409

IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

DAVID GOLDFARB,

Plaintiff,

v.

DIGITAL INSURANCE LLC, f/k/a DIGITAL INSURANCE, INC., and d/b/a ONEDIGITAL HEALTH AND BENEFITS,

Defendant.

CIVIL ACTION NO.: 18A11009-2

NOTICE OF APPEARANCE

COMES NOW the undersigned, Lawrence H. Kunin of Morris, Manning & Martin, LLP, and notifies the Court that he is entering an appearance as counsel on behalf of Defendant Digital Insurance LLC. Counsel requests that notice of all court appearances, motions, pleadings and filings be served on the undersigned.

Respectfully submitted this 17th day of January, 2019.

MORRIS MANNING & MARTIN, LLP

/s/ Lawrence H. Kunin

Lawrence H. Kunin
Georgia Bar No. 430333
1600 Atlanta Financial Center
3343 Peachtree Road, NE
Atlanta, Georgia 30326
(404) 233-7000 (telephone)
(404) 365-9532 (facsimile)
lkunin@mmmlaw.com
Attorney for Defendant Digital Insurance LLC

IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

DAVID GOLDFARB,

Plaintiff,

v.

DIGITAL INSURANCE LLC, f/k/a DIGITAL INSURANCE, INC., and d/b/a ONEDIGITAL HEALTH AND BENEFITS,

Defendant.

CIVIL ACTION NO.: 18A11009-2

NOTICE OF APPEARANCE

COMES NOW the undersigned, Lawrence H. Kunin of Morris, Manning & Martin, LLP, and notifies the Court that he is entering an appearance as counsel on behalf of Defendant Digital Insurance LLC. Counsel requests that notice of all court appearances, motions, pleadings and filings be served on the undersigned.

Respectfully submitted this 17th day of January, 2019.

MORRIS MANNING & MARTIN, LLP

/s/ Lawrence H. Kunin

Lawrence H. Kunin
Georgia Bar No. 430333
1600 Atlanta Financial Center
3343 Peachtree Road, NE
Atlanta, Georgia 30326
(404) 233-7000 (telephone)
(404) 365-9532 (facsimile)
lkunin@mmmlaw.com
Attorney for Defendant Digital Insurance LLC

IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

DAVID GOLDFARB, Plaintiff, v. DIGITAL INSURANCE LLC, f/k/a DIGITAL INSURANCE, INC., and d/b/a ONEDIGITAL HEALTH AND BENEFITS, Defendant.	CIVIL ACTION NO.: 18A11009-2

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I hereby certify that I have caused service of the foregoing **NOTICE OF APPEARANCE** via U.S. Mail with proper postage paid and via the Odyssey eFileGA which will automatically send e-mail notification of said filing to the following attorneys of record:

Beth Bivans Petronio
K&L Gates LLP
1717 Main Street, Suite 2800
Dallas, Texas 75228

Michael J. Ernst
Stokes Carmichael & Ernst LLP
2018 Powers Ferry Rd., Suite 700
Atlanta, Georgia 30339

By: */s/ Lawrence H. Kunin*
Lawrence H. Kunin
Ga. Bar No. 430333

IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

DAVID GOLDFARB, Plaintiff, v. DIGITAL INSURANCE LLC, f/k/a DIGITAL INSURANCE, INC., and d/b/a ONEDIGITAL HEALTH AND BENEFITS, Defendant.	CIVIL ACTION NO.: 18A11009-2

ANSWER

NOW COMES Defendant Digital Insurance LLC ("Digital") and, pursuant to O.C.G.A. § 9-11-12, files this Answer to Plaintiff David Goldfarb's ("Plaintiff") Complaint ("Complaint").[1]

FIRST DEFENSE

The Complaint should be dismissed, in whole or in part, because it fails to state a claim upon which relief may be granted.

SECOND DEFENSE

The Complaint should be dismissed because it is not well grounded in fact nor warranted by law.

THIRD DEFENSE

The Complaint should be dismissed based on the doctrine of unclean hands by reason of Plaintiff's conduct and actions.

[1] Out of abundance of caution, Digital is filing this Answer contemporaneously with its Motion to Dismiss and Memorandum of Law in Support.

FOURTH DEFENSE

Plaintiff's claims are barred in whole or in part, because Plaintiff ratified, acquiesced to, consented to, authorized, or confirmed some or all of the alleged conduct of Digital including, but not limited to, by failing to timely object to any alleged breaches of the APA, failing to comply with the provisions of the APA regarding an independent accounting of the Earn-Out payments, failing to propose any alternative calculations to the Earn-Out payment, and failing to comply with the required provisions of the Employment Agreement to resign for Good Reason.

FIFTH DEFENSE

The Complaint should be dismissed because Digital, at all times, complied with applicable laws, duties, and obligations, acted reasonably and in good faith, and exercised due care and diligence toward Plaintiff.

SIXTH DEFENSE

Plaintiff's claims are barred because Plaintiff has received full payment of all amounts due from Digital.

SEVENTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel and/or waiver.

EIGHTH DEFENSE

Digital reserves the right to amend or add any additional affirmative defenses or counterclaims that may become known during the course of discovery.

NINTH DEFENSE

Plaintiff's claim for a declaratory judgment should be dismissed, in whole or in part, because it is duplicative of Plaintiff's breach of contract claim, and because Plaintiff fails to allege facts or circumstances that would entitle him to a declaratory judgment.

TENTH DEFENSE

Plaintiff's claim for specific performance and accounting should be dismissed because it is an equitable remedy and there exists an adequate remedy at law (to the extent any remedy is warranted, which Digital denies).

ELEVENTH DEFENSE

Plaintiff's claim for specific performance and accounting is unnecessary and should be dismissed because discovery regarding Plaintiff's breach of contract claim would provide the relief Plaintiff seeks.

TWELFTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by the statute of limitations, statute of repose, or are otherwise untimely.

THIRTEENTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

FOURTEENTH DEFENSE

Subject to the above-stated defenses, Digital answers the specific allegations in the Complaint:

I. THE PARTIES

1. **Plaintiff David Goldfarb is a Texas resident, who lives in Dallas, Texas and works at OneDigital's office in Richardson, Texas.**

Response: Digital lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of the Complaint with respect to Plaintiff's current residence, and therefore such allegations are denied. Digital denies all remaining allegations of Paragraph 1 of the Complaint.

2. **Defendant was founded in 2000 under the name Digital Insurance, Inc., as a Delaware corporation registered to do business in Georgia with its principal place of business 200 Galleria Parkway, Suite 1950, Atlanta, Georgia 30339. On May 17, 2017, Digital Insurance, Inc. filed a certificate of withdrawal with the Georgia Secretary of State. The same day, Digital Insurance LLC was registered to do business in Georgia at the same address. Upon information and belief, Digital Insurance, Inc. was succeeded by Digital Insurance, LLC, a Delaware limited liability company registered to do business in Georgia, which now does business under the trade name OneDigital Health and Benefits. Defendant may be served through its registered agent CT Corporation System, 289 S. Culver Street, Lawrenceville, Georgia 30046.**

Response: Digital admits that Digital Insurance, Inc. was founded in 2000, was a Delaware corporation registered to do business in Georgia, filed a certificate of withdrawal with the Georgia Secretary of State on May 17, 2017, and converted to Digital Insurance LLC. Digital admits further that it was registered to do business in Georgia on May 17, 2017, that its address is 200 Galleria Parkway, Ste. 1950, Atlanta, Georgia 30339, that it is a Delaware limited liability company registered to do business in Georgia, that its registered agent is CT Corporation System, located at 298 S. Culver Street, Lawrenceville, Georgia 30046, and that it utilizes the trademark OneDigital for marketing purposes, but denies that it committed any act or omitted to perform any act giving rise to a legitimate cause of action against it. Except as expressly admitted above. Digital denies all other allegations in Paragraph 2 of the Complaint.

II. JURISDICTION AND VENUE

3. **This court has jurisdiction over this action because the claims and causes of action arise out of an agreement that is governed by Georgia law and provides that the courts in the State of Georgia shall have exclusive jurisdiction over any disputes**

arising under the agreement. Additionally, Defendant maintains its registered agent and office in Gwinnett County, Georgia. Moreover, Defendant transacts business in this state including, upon information and belief, in Gwinnett County, Georgia.

Response: Paragraph 3 of the Complaint constitutes a purported conclusion of law to which no response is required. To the extent any response may be required, Digital admits that its registered agent is located in Gwinnett County, Georgia, and that it transacts business in the State of Georgia, but denies that it committed any act or omitted to perform any act giving rise to a legitimate cause of action against it.

4. **Venue is proper in this Court because Defendant maintains its registered agent and office in Gwinnett County, Georgia.**

Response: Paragraph 4 of the Complaint constitutes a purported conclusion of law to which no response is required. Digital denies that it committed any act or omitted to perform any act giving rise to a legitimate cause of action against it.

III. FACTUAL BACKGROUND

5. **Goldfarb has 17 years of experience as an insurance agent and broker. In September 2004, Goldfarb founded DSG Benefits Group, LLC ("DSG") in Dallas, Texas and operated that business successfully until 2012.**

Response: Digital lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 of the Complaint, and therefore such allegations are denied.

6. **OneDigital has been in the insurance agency and brokerage business since 2000, and has grown significantly during that time.**

Response: Admitted.

7. **In 2011, OneDigital approached Goldfarb regarding a potential acquisition of DSG. At the time, OneDigital had been pursuing a number of acquisition targets similar to DSG and was aggressively growing its national footprint. To assist in that effort, OneDigital was actively contemplating a restructuring and/or recapitalization involving Fidelity National Financial ("Fidelity").**

Response: Digital admits that it approached Plaintiff regarding a potential acquisition of DSG in 2011, that it had pursued other acquisition targets, and that it was growing its national footprint. Except as expressly admitted above, Digital denies all other allegations in Paragraph 7 of the Complaint.

8. **On July 1, 2012, Goldfarb, DSG and OneDigital executed an Asset Purchase Agreement ("APA") whereby OneDigital acquired the vast majority of DSG's business, including specifically designated client, relationships and ongoing contracts. A copy of the Asset Purchase Agreement is attached as Exhibit A.**

Response: Digital admits that Plaintiff, DSG, and Digital executed an Asset Purchase Agreement effective July 1, 2012 (the "APA"). Digital states that the APA speaks for itself, denies any characterization or description inconsistent with such document, and denies that the document attached as Exhibit A is a true, accurate, and complete copy of the APA. Digital denies all other allegations in Paragraph 8 of the Complaint.

9. **The APA contains three specific provisions relevant to this lawsuit. First, recognizing that OneDigital was "in the process of contemplating a restructure and/or recapitalization," Section 1.4 of the APA provided that Goldfarb would be permitted to participate in the equity (the "Equity Rights"). Specifically, Section 1.4 states:**

> As of the Closing, Purchaser is in the process of contemplating a restructure and/or recapitalization ("Recap"). If such Recap occurs at any time during the Earn-out Period (as defined below) and Purchaser makes equity available to its key employees, new employees, principal and/or acquisition targets, the Purchaser agrees to also make such equity available to other acquisition targets.. .

Response: Digital states that the APA speaks for itself, denies any characterization or description inconsistent with such document, and denies that the document attached as Exhibit A is a true, accurate, and complete copy of the APA. Digital further denies that the language in Paragraph 9 is an accurate quotation of the APA, and denies all other allegations in Paragraph 9 of the Complaint.

10. **The Equity Rights were a highly negotiated portion of the APA because OneDigital was actively contemplating a Recap event with Fidelity.**

Response: Digital admits that Section 1.4 of the APA was negotiated. Except as expressly admitted above, Digital denies all other allegations in Paragraph 10 of the Complaint.

11. **Second, the APA contained a robust Earn-Out provision (the "Earn-Out") that provided for additional payments to Goldfarb over the next four years to be calculated based on the expected total annual revenue. Section 2.1 of the APA outlines the Earn-Out provision in detail and describes the method for calculating the Earn-Out in each of the four years following the execution of the APA.**

Response: Digital states that the APA speaks for itself, denies any characterization or description inconsistent with such document, and denies that the document attached as Exhibit A is a true, accurate, and complete copy of the APA. Digital denies all other allegations in Paragraph 11 of the Complaint.

12. **Section 2.1.1 provides a method for verifying OneDigital's Earn-Out calculations and expressly requires OneDigital to provide information to Goldfarb regarding how the Earn-Out was calculated, along with documents sufficient to permit Goldfarb to verify the calculations. OneDigital is also required to "cooperate fully and promptly" with Goldfarb in assessing the Earn-Out payments. Section 2.1.1(b) permits Goldfarb to give OneDigital notice of any good faith disagreement with the calculations and requires the parties to attempt in good faith to resolve any dispute.**

Response: Digital states that the APA speaks for itself, denies any characterization or description inconsistent with such document, and denies that the document attached as Exhibit A is a true, accurate, and complete copy of the APA. Digital denies all other allegations in Paragraph 12 of the Complaint.

13. **Section 2.1.1(c) provides that, in the event a resolution cannot be reached between Goldfarb and OneDigital regarding an Earn-Out calculation, that "the parties shall submit such disagreement to an independent CPA firm to be mutually agreed upon..."**

Response: Digital states that the APA speaks for itself, denies any characterization or description inconsistent with such document, and denies that the document attached as Exhibit A

is a true, accurate, and complete copy of the APA. Digital denies all other allegations in Paragraph 13 of the Complaint.

14. **Third, the APA contained a customer non-solicitation provision (the "Non- Solicit') that purported to prevent Goldfarb from soliciting or contacting customers/contracts purchased by OneDigital as part of the APA. Section 6.1 of the APA provided that the Non-Solicit remained in effect until two years after Goldfarb's receipt of the final Earn-Out payment. In addition. Section 2.1.2 provided that, in the event of a default on the Earn-Out, Goldfarb would be "relieved of the non-solicitation obligations in Section 6.1..."**

Response: Digital states that the APA speaks for itself, denies any characterization or description inconsistent with such document, and denies that the document attached as Exhibit A is a true, accurate, and complete copy of the APA. Digital denies all other allegations in Paragraph 14 of the Complaint.

15. **In addition to the APA, on July 1, 2012, OneDigital and Goldfarb signed an Employment Agreement, which was made effective as of July 1, 2012. A copy of the Employment Agreement is attached hereto as Exhibit B. The Employment Agreement provided that for a period of four years, Goldfarb would be employed by OneDigital.**

Response: Digital admits that Plaintiff and Digital signed an employment agreement effective July 1, 2012 (the "Original Employment Agreement"). Digital states that the Original Employment Agreement speaks for itself, and denies any characterization or description inconsistent with such document. Digital denies all other allegations in Paragraph 15 of the Complaint.

16. **Sections 3.B, 3.C and 3.D of the Employment Agreement prevented Goldfarb from soliciting OneDigital's customers, prospective customers and employees during his employment and for a period of two years after Goldfarb's employment ended. As with the Non-Solicit in the APA, Section 2.1.2 of the APA provides that Goldfarb would be relieved of the non-solicitation provisions in the Employment Agreement in the event of a default on the Earn-Out.**

Response: Digital states that the Original Employment Agreement and APA speak for themselves, and denies any characterization or description inconsistent with such documents. Digital denies all other allegations in Paragraph 16 of the Complaint.

17. **The Employment Agreement provided that Goldfarb could resign for "Good Reason," at any time and defined "good reason" as including a circumstance where OneDigital "materially reduces [Goldfarb's] duties, responsibilities and/or compensation structure" or where One Digital "commits a material breach of the Agreement." According to Section 3.F.(ix) of the Employment Agreement, the non-solicitation provisions in Sections 3.B, 3.C, and 3.D cease to apply in the event Goldfarb resigns for "good reason."**

Response: Digital states that the Original Employment Agreement speaks for itself, and denies any characterization or description inconsistent with such document. Digital denies all other allegations in Paragraph 17 of the Complaint.

18. **The Employment Agreement was amended, effective as of June 1, 2017. The amendment provided that Goldfarb would continue as the Managing Principal of Sales for OneDigital's Dallas office and would be "primarily focused on managing [OneDigital's] sales and marketing operations in the Dallas, Texas office. . ." The amendment also addressed some changes to Goldfarb's compensation structure, but did not otherwise alter the Employment Agreement. A copy of the First Amendment to Employment Agreement is attached as Exhibit C.**

Response: Digital admits that Plaintiff and Digital signed an amended employment agreement effective June 1, 2017 (the "Amended Employment Agreement"). Digital states that the Amended Employment Agreement speaks for itself, and denies any characterization or description inconsistent with such document. Digital denies all other allegations in Paragraph 18 of the Complaint.

19. **Section 2.E. of the First Amendment provides that Goldfarb shall be paid, among other compensation, a profit-based payment equal to ten percent of the earnings attributable to the Dallas office, payable on a bi-weekly basis.**

Response: Digital states that the Amended Employment Agreement speaks for itself, and denies any characterization or description inconsistent with such document. Digital denies all other allegations in Paragraph 19 of the Complaint.

20. Relatively quickly after the APA and Employment Agreement went into effect, One Digital began breaching various provisions of agreements.

Response: Denied.

21. On December 31, 2012, OneDigital closed the contemplated restructuring/ recapitalization with Fidelity. Upon information and belief, OneDigital made equity available to other key employees, new employees, principals and/or acquisition targets. OneDigital did not, however, comply with the Equity Rights provision in Section 1.4 of the APA and did not offer Goldfarb the ability to purchase equity as required. Had Goldfarb been permitted to participate, he would have done so at the maximum equity level and would have received a significant return on this investment when other equity participants were paid.

Response: Digital admits only that effective December 31, 2012, Fidelity acquired Digital Insurance Holdings, Inc. by merger. Digital lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the final sentence of Paragraph 21 of the Complaint, and therefore such allegations are denied. Digital denies all other allegations of Paragraph 21 of the Complaint.

22. In addition, beginning with the first anniversary Earn-Out payment in 2013, OneDigital consistently underestimated or miscalculated the expected total annual revenue attributable to the DSG/Goldfarb business. OneDigital's calculations contained numerous errors and discrepancies in OneDigital's favor. In connection with these Earn-Out payments, Goldfarb was consistently required to invoke the provisions of the APA that permitted him to review additional documents in an effort to verily OneDigital's calculations. Although OneDigital made some documenttation available and answered some of Goldfarb's questions, OneDigital routinely failed to provide all necessary information to Goldfarb to permit him to fully verify the amounts paid.

Response: Denied.

23. In connection with the fourth anniversary Earn-Out payment in 2016, Goldfarb continued to have questions and concerns regarding the discrepancies,

underestimations and/or miscalculations in the Earn-Out. OneDigital made a partial payment on that Earn-Out, but Goldfarb continued to have questions about the total. Goldfarb requested additional information, but received only a portion of what was necessary in order to fully verify the calculations. As a result, in May 2017, Goldfarb invoked Section 2.1.1(c), which requires the parties to submit disputes to an independent accountant. Thereafter, Goldfarb repeatedly requested that OneDigital comply with Section 2.1.1(c). For over 18 months, OneDigital ignored Goldfarb's request, stalling any actual resolution of the disputed issues. Still, as of the date of this filing, and despite numerous requests from Goldfarb, the disputed fourth year Earn-Out has not been submitted to an accountant for resolution.

Response: Digital admits only that the fourth Earn-Out payment has not been submitted to an accountant for resolution, but denies that Plaintiff complied with the requirements of the APA for doing so. Digital lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23 of the Complaint to the extent they relate to Plaintiff's thoughts or motivations, and therefore such allegations are denied. Digital denies all other allegations of Paragraph 23 of the Complaint.

24. **In addition, following the execution of the APA and Employment Agreement, OneDigital underwent a series of restructurings and acquisitions. During that time, OneDigital has, without Goldfarb's consent, gradually and continually minimized his duties, responsibilities and compensation with OneDigital. As of April 3, 2018, OneDigital consummated another acquisition in the Dallas market. As part of that acquisition, Goldfarb's duties and responsibilities were significantly curtailed and confined to a producer/consultant role, with other individuals given primary management responsibility over the Dallas office. In addition, OneDigital has significantly curtailed resources and employees in the Dallas office in a manner that negatively impacts Goldfarb's ability to perform his duties and responsibilities.**

Response: Digital admits only that it has participated in acquisitions following the execution of the APA and Original Employment Agreement, including an acquisition in Richardson, Texas. Digital denies all other allegations of Paragraph 24 of the Complaint.

25. **In approximately September 2018, OneDigital stopped paying Goldfarb the profit-based payment required by the First Amendment to the Employment Agreement. Although OneDigital ultimately made a payment to allegedly account for the past-due amounts, OneDigital has not provided a full accounting to Goldfarb regarding the calculation of the profit-based payment.**

Response: Digital admits only that due to proposed changes in Plaintiff's compensation which would have converted the profit-based payment to a commission structure, which the parties were actively discussing in approximately September 2018, Digital temporarily stopped paying the profit-based payments as such. Digital further admits that it ultimately paid Plaintiff all past-due amounts. Digital denies all other allegations of Paragraph 25 of the Complaint.

26. OneDigital's actions since the APA and Employment Agreement were executed have negatively impacted and damaged Goldfarb's compensation, his duties and responsibilities, his Earn-Out payments, and his Equity Rights. As a result, Goldfarb has suffered damages in amounts to be proven at trial.

Response: Denied.

IV. CAUSES OF ACTION

Count One - Breach of Contract – APA

27. Plaintiff incorporates the preceding paragraphs as if they are fully set forth herein.

Response: Digital incorporates its responses to the preceding paragraphs as if they are fully set forth herein.

28. The APA is a valid, enforceable contract granting certain rights to, and imposing certain obligations and limitations on the parties. Defendant's actions constitute a breach of the APA that has caused Plaintiff damage for which he now sues. Defendant's breaches include, but are not limited to, the following:

a. A failure, in violation of Section a. 1.4 of the APA, to make the Equity Rights available to Goldfarb;

b. A failure to comply with Section 2.1.1 of the APA in connection with the payment of the Earn-Out;

c. A failure to comply with Section 2.1.1 of the APA by failing to provide sufficient documents and information to Goldfarb in order to permit Goldfarb to verify the Earn-Out payments;

d. A failure to comply with Section 2.1.1 of the APA by failing to properly submit disputes regarding the Earn-Out to an independent accountant; and

e. A failure to comply with Section 6.6 of the APA, which restricts OneDigital's ability to merge with or establish any other office in Dallas prior to the payment of the fourth anniversary Earn-Out.

Response: Digital states that the APA speaks for itself, denies any characterization or description inconsistent with such document, and denies that the document attached as Exhibit A is a true, accurate, and complete copy of the APA. Digital denies all other allegations in Paragraph 28 of the Complaint.

Count Two - Breach of Contract - Employment Agreement

29. Plaintiff incorporates the preceding paragraphs as if they are fully set forth herein.

Response: Digital incorporates its responses to the preceding paragraphs as if they are fully set forth herein.

30. The Employment Agreement is a valid, enforceable contract granting certain rights to, and imposing certain obligations and limitations on the parties. Defendant's actions constitute a breach of the Employment Agreement and First Amendment thereto that has caused Plaintiff damage for which he now sues. Defendant's breaches include, but are not limited to, intentionally curtailing and materially reducing Goldfarb's duties, responsibilities and/or compensation in violation of the terms of the Employment Agreement and/or First Amendment thereto.

Response: Digital states that the Original Employment Agreement speaks for itself, and denies any characterization or description inconsistent with such document. Digital denies all other allegations in Paragraph 30 of the Complaint.

Count Three - Declaratory relief

31. Plaintiff incorporates the preceding paragraphs as if they are fully set forth herein.

Response: Digital incorporates its responses to the preceding paragraphs as if they are fully set forth herein.

32. There exists a real and present controversy between the parties. Plaintiff requests that the Court declare the rights, status, and other legal relations between the parties. All parties who have or claim any interest that would be affected by the declaration are parties to this lawsuit.

Response: Paragraph 32 of the Complaint constitutes a purported conclusion of law to which no response is required. To the extent any response may be required, Digital denies the allegations of Paragraph 32 of the Complaint.

33. Specifically, Plaintiff asks the Court to declare that:

a. **Goldfarb was entitled, pursuant to the terms of Section 1.4 of the APA, to have been offered an equity interest when OneDigital restructured and/or recapitalized in December 2012;**
b. **Goldfarb is entitled to invoke the provisions of Section 2.1.1(c) of the APA in order to obtain an independent accounting in connection with the calculation of the Earn-Out;**
c. **The non-solicitation provision in Section 6.1 of the APA was rendered null and void and were released in accordance with Section 2.1.2 of the APA based on OneDigital's defaults in connection with Earn-Out payments;**
d. **Because Goldfarb is entitled to resign for "Good Reason" in light of OneDigital's material breaches of the Employment Agreement, the nonsolicitation provisions of the Employment Agreement are null and void;**
e. **The non-solicitation provisions in Sections 3.B, 3.C and 3.D of the APA were rendered null and void and were released in accordance with Section 2.1.2 of the APA based on OneDigital's defaults in connection with Earn-Out payments;**

Response: Paragraph 33 of the Complaint constitutes purported conclusions of law to which no response is required. To the extent any response may be required, Digital denies the allegations of Paragraph 33 of the Complaint, and denies that Plaintiff is entitled to any of the relief requested therein.

Count Four - Specific Performance and Accounting

34. Plaintiff incorporates the preceding paragraphs as if they are fully set forth herein.

Response: Digital incorporates its responses to the preceding paragraphs as if they are fully set forth herein.

35. Section 2.1.1(c) requires an independent accounting in connection with disputes regarding the calculation and/or verification of the Earn-Out. Plaintiff requests that

the Court enter an order requiring Defendant to comply with this portion of the APA.

Response: Digital states that the APA speaks for itself, and denies any characterization or description inconsistent with such document. Digital denies all other allegations in Paragraph 35 of the Complaint, and denies that Plaintiff is entitled to any of the relief requested therein..

36. Plaintiff is entitled to an accounting to ensure that Defendant has complied with the contracts between the parties.

Response: Denied.

WHEREFORE, Plaintiff respectfully requests that Defendant be cited to appear and answer and that the court award Plaintiff judgment for:

a. **damages against Defendant as partial relief for their wrongful actions;**
b. **attorneys' fees, court costs, and pre- and post-judgment interest;**
c. **an order requiring specific performance of the provisions in the APA requiring an independent accounting;**
d. **an order requiring that Defendant submit to a full accounting, to ensure that Defendant has fully complied with all its contractual obligations to Plaintiff; and**
e. **all other relief to which Plaintiff is entitled, legal or equitable, general or special.**

Response: Digital denies that Plaintiff is entitled to any judgment or any of the relief set forth in the "WHEREFORE" clause of the Complaint, including subparagraphs (a) through (e).

Except as expressly admitted above, all allegations in the Complaint are denied.\

PRAYER FOR RELIEF

WHEREFORE, Digital, having fully answered Plaintiff's Complaint, prays that the Court dismiss with prejudice Plaintiff's Complaint and award Digital its attorneys' fees, costs, and expenses incurred in this action, which it shall be contractually entitled to receive pursuant to

Section 7.13 of the APA and Section 7 of the Original Employment Agreement, and grant such other and further relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED, this 1st day of February, 2019.

MORRIS, MANNING & MARTIN, LLP

/s/ Meredith W. Caiafa

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IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

DAVID GOLDFARB, Plaintiff, v. DIGITAL INSURANCE LLC, f/k/a DIGITAL INSURANCE, INC., and d/b/a ONEDIGITAL HEALTH AND BENEFITS, Defendant.	CIVIL ACTION NO.: 18A11009-2

CERTIFICATE OF SERVICE

I hereby certify that I have caused service of the foregoing **ANSWER** upon all parties to this action by electronically filing with the Clerk of Court using Odyssey, which will send notification by e-mail of such filing to:

Beth Bivans Petronio
K&L Gates LLP
1717 Main Street, Suite 2800
Dallas, Texas 75228

Michael J. Ernst
Stokes Carmichael & Ernst LLP
2018 Powers Ferry Rd., Suite 700
Atlanta, Georgia 30339

This 1st day of February, 2019.

/s/ Meredith W. Caiafa
Meredith W. Caiafa
Georgia Bar Number 551409

IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

DAVID GOLDFARB,

Plaintiff,

v.

DIGITAL INSURANCE LLC, f/k/a DIGITAL INSURANCE, INC., and d/b/a ONEDIGITAL HEALTH AND BENEFITS,

Defendant.

CIVIL ACTION NO.: 18A11009-2

MOTION TO DISMISS

NOW COMES Digital Insurance LLC ("Digital") and, pursuant to O.C.G.A. § 9-11-12(b)(6), files this Motion to Dismiss Counts III and IV of Plaintiff's Complaint on the grounds that the allegations contained therein fail to state a claim upon which relief may be granted.[1] As explained in detail Digital's Memorandum of Law filed contemporaneously with this motion, which is incorporated herein by reference, Counts III and IV are simply dressed-up breach of contract claims. Plaintiff fails to allege facts sufficient to state a claim for a declaratory judgment and requests impermissible advisory opinions, and also fails to demonstrate any entitlement to specific performance and accounting (which he will obtain through discovery regarding his breach of contract claims).

Wherefore, Digital moves for the following relief:

1. That the Court dismiss Counts III and IV in their entirety and with prejudice;
2. All other relief this Court deems proper.

[1] Pursuant to O.C.G.A. § 9-11-12(j), this Motion automatically stays all discovery in this action for ninety days, or until this Court rules on this Motion.

Respectfully submitted this 1st day of February, 2019.

MORRIS, MANNING & MARTIN, LLP

/s/ Meredith W. Caiafa
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IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

DAVID GOLDFARB, Plaintiff, v. DIGITAL INSURANCE LLC, f/k/a DIGITAL INSURANCE, INC., and d/b/a ONEDIGITAL HEALTH AND BENEFITS, Defendant.	CIVIL ACTION NO.: 18A11009-2

CERTIFICATE OF SERVICE

This is to certify that the undersigned has served the foregoing **MOTION TO DISMISS** upon all parties to this action by electronically filing with the Clerk of Court using Odyssey, which will send notification by e-mail of such filing to:

Beth Bivans Petronio
K&L Gates LLP
1717 Main Street, Suite 2800
Dallas, Texas 75228

Michael J. Ernst
Stokes Carmichael & Ernst LLP
2018 Powers Ferry Rd., Suite 700
Atlanta, Georgia 30339

This 1st day of February, 2019.

/s/ Meredith W. Caiafa
Meredith W. Caiafa
Georgia Bar Number 551409

IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

DAVID GOLDFARB, Plaintiff, v. DIGITAL INSURANCE LLC, f/k/a DIGITAL INSURANCE, INC., and d/b/a ONEDIGITAL HEALTH AND BENEFITS, Defendant.	CIVIL ACTION NO.: 18A11009-2

MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO DISMISS

NOW COMES Digital Insurance LLC ("Digital") and, pursuant to O.C.G.A. § 9-11-12(b)(6), files this Memorandum of Law in Support of its Motion to Dismiss.

I. INTRODUCTION

This matter should be a simple breach of contract dispute over whether Plaintiff David Goldfarb ("Goldfarb") received all compensation to which he was entitled during his employment by Digital. Instead, Goldfarb includes impermissible and redundant claims to overcomplicate a straightforward issue. As explained in detail below, two of Goldfarb's claims against Digital should be dismissed because Goldfarb has repackaged his claims for monetary damages as claims for a declaratory judgment and for equitable relief in the form of specific performance and accounting, or has requested that the Court provide impermissible and irrelevant advisory opinions. For these reasons, as more fully set forth below, Defendant respectfully requests that the Court dismiss with prejudice Counts III and VI of the Complaint.

II. STATEMENT OF FACTS

A. The Asset Purchase Agreement

Digital is a limited liability company organized under Delaware law. (Compl. ¶ 2.) Goldfarb is a resident of the state of Texas. (Compl. ¶ 1.) Effective July 1, 2012, Digital and Goldfarb executed an Asset Purchase Agreement (the "APA"), whereby Digital acquired the majority of the assets of Goldfarb's company, DSG Benefits Group, LLC ("DSG"). (Compl. ¶¶ 5, 8.) The APA states, in relevant part:

> **Equity in Purchaser**. As of the Closing, Purchaser is in the process of contemplating a restructure and/or recapitalization ("Recap"). If such Recap occurs at any time during the Earn-out Period (as defined below) and Purchaser makes equity available to its key employees, new employees, principals and/or acquisition targets, then Purchaser agrees to also make such equity available to Seller and/or Stockholder under the same terms as Purchaser will be making available to other acquisition targets in the following timeframes and amounts: (a) Seller and/or Stockholder may purchase for cash up to $472,500 of equity at the closing of the Recap at the same valuation/offering price as the other investors in the Recap; (b) Seller and/or Stockholder may elect to receive equity in lieu of up to 30% of the Earn-out Payments (as defined below) at the then current valuation of Purchaser as of the respective Earn-out Payment anniversary dates set forth below. . . .

(Compl., Exh. A, § 1.4.)

In addition, the Complaint alleges that the APA contains an Earn-Out provision (the "Earn-Out") that provided for additional payments to Goldfarb over the next four years to be calculated based on the expected total annual revenue. (Compl. ¶ 11.) Section 2.1 of the APA outlines the Earn-Out provision and describes the method for calculating the Earn-Out in each of the four years following the execution of the APA. (*Id.*) If Digital failed to make any Earn-Out payments due, the APA provides the following consequence:

> If Purchaser fails to make any payment due to Seller pursuant to Section 2.1 (after exercise of the audit rights set forth in Section 2.1.1), then Seller shall provide Purchaser with written notice of payment default. After receipt of such written notice, Purchaser shall have 30 days to cure the payment default. If Purchaser

> does not cure a valid payment default within 30 days of Purchaser's receipt of written notice from Seller, then Seller shall be relieved of the non-solicitation obligations in Section 6.1 of this Agreement, as well as the non-solicitation obligations set forth in Section 3.B., C. and D of Stockholder's Employment Agreement (as defined in Section 3.2.1 herein).

(Compl., Exh. A, § 2.1.2.)

B. The Employment Agreement

Digital and Goldfarb also executed an Employment Agreement, effective July 1, 2012. (Compl. ¶ 15.) Sections 3(B), 3(C), and 3(D) of the Employment Agreement prevent Goldfarb from soliciting Digital's customers, prospective customers, and employees during his employment and for a period of two years after Goldfarb's employment ended. (Compl. ¶ 16.) In addition, the Employment Agreement provides that Goldfarb could resign for "Good Reason." (Compl. ¶ 17.) Specifically, the Employment Agreement states:

> "Good Reason" shall exist if (i) the Company, without Employee's prior, written consent, (a) materially reduces Employee's duties, responsibilities and/or compensation structure, (b) commits a material breach of this Agreement, (c) materially changes the geographic location at which Employee must perform services for the Company, or (d) violates the provisions of Section 6.6 of the APA, (ii) Employee provides written notice to the Company of any such action within thirty (30) days of the date on which such action first occurs and provides the Company with thirty (30) days to remedy such action (the "Cure Period"); (iii) the Company fails to remedy such action within the Cure Period, and (iv) Employee resigns within thirty (30) days of the expiration of the Cure Period. Good Reason shall not include any isolated, insubstantial, or inadvertent action that (a) is not taken in bad faith, and (b) is remedied by the Company within the Cure Period[.]

(Compl., Exh. B, § 13(G).) Notably, Goldfarb has not alleged that he has in fact resigned, whether for Good Reason or otherwise, or that he has complied with the requirements of the Employment Agreement in order to effectuate a termination for Good Reason.

C. Goldfarb's Purported Claims

Goldfarb alleges four counts. In Count I, he purports to state a claim for breach of the APA, alleging (among other things) that Digital breached the APA by failing to "make the

Equity Rights available" to Goldfarb, failing to comply with respect to the payment and documentation of the Earn-Out, and failing to properly submit disputes regarding the Earn-Out to an independent accountant. (Compl. ¶ 28.) In Count II, Goldfarb purports to state a claim for breach of the Employment Agreement, alleging that Digital's breaches included "intentionally curtailing and materially reducing Goldfarb's duties, responsibilities, and/or compensation . . . ." (Compl. ¶ 30.) Then, in Count III, he asks the Court to issue a declaratory judgment with respect to facts he previously alleged as breaches of the APA and Employment Agreement, and for facts that have not occurred. (Compl. ¶¶ 31-33.) In Count IV, Goldfarb asks the Court to order equitable relief (specific performance and accounting) regarding the alleged breaches of the APA, both of which, by their nature, are a necessary part of discovery for Counts I and II. (Compl. ¶¶ 34-36.) Finally, in his prayer for relief, Goldfarb seeks "damages against Defendant as partial relief for their [sic] wrongful actions" along with, among other things, specific performance and accounting.

III. ARGUMENT

The Court should dismiss any complaint or portion thereof that fails as a matter of law to state a claim upon which relief can be granted. O.C.G.A. § 9-11-12(b)(6). "A motion to dismiss may be properly granted when the complaint establishes that the plaintiff is not entitled to relief under any facts that could be proved." *Bradshaw v. City of Atlanta*, 275 Ga. App. 609, 609 (2005); *see also Ne. Ga. Cancer Care, LLC v. Blue Cross & Blue Shield of Ga., Inc.*, 297 Ga. App. 28, 29 (2009) (affirming grant of motion to dismiss claims, including declaratory judgment claim, because plaintiff was not entitled to relief under any facts that could be proven in support of its claims).

A. Goldfarb Fails to State a Claim for Declaratory Judgment

The purpose of Georgia's Declaratory Judgment Act "is to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations[.]" O.C.G.A. § 9-4-1. Georgia courts hold that, when a petition seeks a declaratory judgment, "[a]lleging some future conduct of the petitioner about which it is uncertain is an 'essential ingredient,' the absence of which will result in dismissal of the petition." *Empire Fire & Marine Ins. Co. v. Metro Courier Corp.*, 234 Ga. App. 670, 671 (1998).

Here, Goldfarb seeks a declaratory judgment as to the rights and duties of the parties with respect to the APA and Employment Agreement, and has simultaneously sued for breach of those very same agreements. (Compl. ¶¶ 27-30.) Goldfarb does not allege any future conduct or action that he may take or intends to take, which, if taken without this Court's direction, might cause him harm. Without this "essential ingredient," Count III must be dismissed. *See Empire Fire*, 234 Ga. App. at 507; *Pinnacle Benning LLC v. Clark Realty Capital*, LLC, 314 Ga. App. 609, 613 (2012) (a party seeking declaratory judgment "must show facts or circumstances whereby it is in a position of uncertainty or insecurity because of a dispute and of having to take some future action which is properly incident to its alleged right, and which future action without direction from the court might reasonably jeopardize its interest.").

To the extent that Goldfarb's request for declaratory relief includes even an inference of any future action, it is only with respect to his request that the Court issue an advisory opinion that he is entitled to resign his employment for Good Reason. (Compl. ¶ 33(d).) However, Goldfarb does not allege that he has resigned or intends to resign for Good Reason. Rather, he is essentially asking the court to determine in advance whether, if he resigns, which is not alleged, such a resignation would be for Good Reason. Goldfarb does not even allege that he is unsure of his rights to resign – he simply wants the Court to agree in advance as to the reasons, should he

decide to do so. Such a declaration would be nothing more than an impermissible advisory opinion. *Pinnacle*, LLC, 314 Ga. App. at 613 ("a declaratory judgment may not be merely advisory in nature . . . .").

In addition, the Complaint alleges that Digital failed to "comply with the Equity Rights provision in Section 1.4 of the APA," that Goldfarb "invoked Section 2.1.1(c)" of the APA, that Digital breached the Earn-Out provisions of the APA, and that Digital breached the Employment Agreement. (Compl. ¶¶ 21-26.) These allegations form the basis of Goldfarb's breach of contract claims seeking damages in Counts I and II. Thus, Goldfarb is seeking a judgment for damages as to events he alleges already occurred, and his claim for a declaratory judgment is therefore not appropriate. *See Baker v. City of Marietta*, 271 Ga. 210, 214 (1999) ("Where the rights of the parties have already accrued and the party seeking the declaratory judgment does not risk taking future undirected action, a declaratory judgment would be 'advisory.'"). *See also Braddy v. Morgan Oil Co.*, 183 Ga. App. 157, 158–59 (1987) ("It has long been held that an action for a declaratory judgment does not lie where a simple action for breach of contract will give full and complete relief."); *City of Summerville v. Sellers*, 82 Ga. App. 361, 361 (1950) (holding that petition for declaratory relief should be denied when a breach of contract action would provide full and complete relief and petition lacked "an alleged necessity for an adjudication to guide and protect the petitioner from uncertainty and insecurity with respect to future conduct").

Accordingly, Count III should be dismissed.

B. Goldfarb's Claims for Equitable Relief Should Be Dismissed Because Goldfarb Alleges an Adequate Remedy at Law

Similarly, Goldfarb's claims for equitable relief are nothing more than dressed-up breach of contract claims, or at least relief that will be part of the breach of contract discovery process. Specifically, in Count IV, Goldfarb requests that the Court "enter an order requiring Defendant

to comply with [Section 2.1.1(c)] of the APA." (Compl. ¶ 35.) In other words, Goldfarb appears to be seeking an injunction requiring Digital to determine Goldfarb's damages for his breach of contract claim. However, "[e]quitable relief is improper if the complainant has a remedy at law which is adequate." *Besser v. Rule*, 270 Ga. 473, 474 (1999). Here, Goldfarb has pleaded that he has an adequate remedy at law – monetary damages due to the alleged breaches of contract. Because Goldfarb has alleged he may recover money damages for Digital's purported breaches of the APA and Employment Agreement, his claim for equitable relief must be dismissed. *See Besser*, 270 Ga. at 474 ("availability of money damages affords [the plaintiff] an adequate and complete remedy, precluding the entry of injunctive relief").

Moreover, the "accounting" Goldfarb seeks will occur through the discovery process related to Goldfarb's breach of contract claims, further rendering Count IV superfluous and unnecessary. *See Gifford v. Jackson*, 223 Ga. 155, 225–26 (1967) (valid breach of contract action and availability of discovery preclude resort to use of equitable accounting to determine potential damages); *Ins. Ctr., Inc. v. Hamilton*, 218 Ga. 597, 601 (1963) (mere necessity of accounting to determine damages for breach of contract insufficient to warrant equitable accounting); *Guarantee Ins. Co. v. Merchants Employer Benefits, Inc.*, No. 5:07-CV-307 (CAR), 2010 WL 3937325, at *12 (M.D. Ga. Sept. 30, 2010) ("Because accounting is an equitable remedy, a party seeking an accounting must demonstrate that it has no adequate remedy at law. In this case, Guarantee has an adequate remedy at law in the form of its breach of contract action, with the availability of extensive discovery."). Accordingly, Count IV should also be dismissed.

IV. CONCLUSION

For all the foregoing reasons, the Court should dismiss with prejudice Counts III and IV of the Complaint.

Respectfully submitted this 1st day of February, 2019.

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IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

DAVID GOLDFARB, Plaintiff, v. DIGITAL INSURANCE LLC, f/k/a DIGITAL INSURANCE, INC., and d/b/a ONEDIGITAL HEALTH AND BENEFITS, Defendant.	CIVIL ACTION NO.: 18A11009-2

CERTIFICATE OF SERVICE

This is to certify that the undersigned has served the foregoing **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS** upon all parties to this action by electronically filing with the Clerk of Court using Odyssey, which will send notification by e-mail of such filing to:

Beth Bivans Petronio
K&L Gates LLP
1717 Main Street, Suite 2800
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Michael J. Ernst
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This 1st day of February, 2019.

/s/ Meredith W. Caiafa
Meredith W. Caiafa
Georgia Bar Number 551409

IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

DAVID GOLDFARB VS. DIGITAL INSURANCE LLC DIGITAL INSURANCE INC ONEDIGITAL HEALTH AND BENEFITS	CIVIL ACTION File No: 18-A-11009-2

DEFENDANT'S MOTION TO DISMISS

The above styled matter is scheduled for **March 19, 2019**, at **1:30 pm** before the **Honorable Valeria E Head,** by designation for the Honorable Tracie H. Cason at the Gwinnett Justice and Administration Center, 75 Langley Drive, Lawrenceville, GA in **Courtroom 1D.**

Let a copy of this order be mailed to all parties or their counsel of record.

SO ORDERED this 7th day of February, 2019.

Judge TRACIE H CASON
Superior Court of Gwinnett County

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