

**CONSULTING AGREEMENT BETWEEN
THE DELAWARE DEPARTMENT OF INSURANCE
AND ZACK STAMP CONSULTING, LLC**

THIS AGREEMENT, by and between the Department of Insurance (the “DOI”) of the State of Delaware (“Delaware”) and Zack Stamp Consulting, LLC. (“ZSC”) to provide services as Delaware Captive Director;

WHEREAS, the DOI, by and through the Delaware Insurance Commissioner, is authorized and empowered, pursuant to 18 *Del. C.* §307(b), to contract for and procure independent consulting services; and

WHEREAS, ZSC is engaged in the business of providing consulting services regarding the captive insurance industry; and

WHEREAS, in response to a properly published Request For Proposal, ZSC submitted a proposal on June 15, 2015 (the “Proposal”), a copy of which is attached hereto as Exhibit 1 and incorporated herein by reference;

WHEREAS, as detailed in the Proposal, ZSC, by and through Steve Kinion, currently serves as Delaware Captive Director and has done so since 2009. Mr. Kinion’s 20 years of insurance experience includes multiple positions ranging from regulator, lawyer, lobbyist and member of various boards of directors. Accordingly, ZSC, and Mr. Kinion in particular, has the necessary depth, experience and expertise to provide the services requested herein;

WHEREAS, the DOI desires to retain ZSC to render services to the DOI on the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the promises, mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby

acknowledged, Delaware, on behalf of the DOI and ZSC (collectively, the “Parties”) agree as follows:

1. Statement of Work

ZSC shall provide the following services (the “Services”) to the DOI:

- 1.1 Directing, staffing and managing the Bureau of Captive and Financial Insurance Products Division of the DOI.
- 1.2 Overseeing and managing the licensing and regulation of Delaware domestic captive insurance companies on behalf of the DOI pursuant to 18 *Del.C.* Chapter 69 and other applicable provisions of the Delaware Code.
- 1.3 Planning, directing and coordinating policy activities of the Captive Bureau at the highest level of management with the assistance of the DOI’s executive staff and other appropriate DOI staff members.
- 1.4 Timely advising the Commissioner of all matters relating to regulating Captive insurance companies in Delaware, including, without limitation, reviewing and drafting appropriate legislation, identifying and addressing any company solvency concerns, and continuing accreditation of the DOI with the NAIC.
- 1.5 Representing the DOI with captive insurance industry associations, at captive insurance industry functions and with the National Association of Insurance Commissioners (NAIC).
- 1.6 In their performances of the Services, ZSC and particularly Mr. Kinion are deemed as an authorized representative per 18 Del. C. § 309.

2. Payment for Services and Expenses

- 2.1 The term of this Agreement shall be from September 1, 2015 through October 1, 2016, with two options to extend for (i) an additional 6 months to April 1, 2017; and (ii) for an additional 12 months to April 1, 2018 unless earlier terminated.
- 2.2 Delaware will pay ZSC for the performance of the Services described in the Statement of Work above.
- 2.3 Delaware shall be obligated to pay ZSC a monthly fee of \$19,650 (the “Contract Amount”). ZSC shall pay all expenses related to this contract.
- 2.4 ZSC shall submit monthly invoices to the DOI in sufficient detail to support the Services provided during the previous month during the term of this Agreement. The DOI agrees to pay those invoices within thirty (30) days of receipt. If

Delaware disputes a portion of an invoice, Delaware agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide ZSC a detailed statement of Delaware's position regarding the disputed portion of the invoice within thirty (30) days of receipt. ZSC may charge the DOI a fee of up to twelve percent (12%) per annum for any undisputed invoice unpaid for 60 days.

2.5 Delaware is a sovereign entity and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency which may become due and payable as a consequence of this Agreement.

2.6 Invoices shall be submitted to:

DOI-Accounting@state.de.us.

With a copy to:

Jenifer Vaughn, Controller
Delaware Department of Insurance
841 Silver Lake Boulevard
Dover, DE 19904

3. Work Product

3.1 Except as otherwise set forth herein, all deliverables developed, prepared, completed or acquired by ZSC for the DOI relating to the Services shall become the property of the DOI and shall be delivered to the DOI's designated representative from time to time as requested by the DOI, but in any event no later than either the completion or termination of this Agreement.

3.2 ZSC shall retain all rights, title and interest (including, without limitation, all copyrights, patents, service marks, trademarks, trade secret and other intellectual property rights) in and to all technical or internal designs, methods, ideas, concepts, know-how, techniques, generic documents and templates that have been previously developed by Consultant or developed during the course of the provision of the Services provided such generic documents or templates do not contain any DOI Confidential Information or proprietary data ("Consultant Tools"). Rights and ownership by ZSC shall not extend to or include all or any part of the DOI's proprietary data or DOI Confidential Information. To the extent that ZSC may include in the deliverables any Consultant Tools, Consultant agrees that the DOI shall be deemed to have a fully paid up license to make copies of the Consultant Tools as part of its use of the deliverables for its internal business purposes and provided that such Consultant Tools cannot be modified or distributed outside the DOI without the written permission of ZSC, except as otherwise permitted herein. For the sake of clarity, this clause shall not apply to deliverables designed specifically for DOI.

- 3.3 The deliverables are prepared solely for the use and benefit of the DOI in accordance with its statutory and regulatory requirements. ZSC recognizes that deliverables it delivers to the DOI may be public records subject to disclosure to third parties, however, ZSC does not intend to benefit and assumes no duty or liability to any third parties who receive ZSC's deliverables and may include disclaimer language on its deliverables so stating. ZSC shall not be liable for damages, claims and losses arising out of any reuse of any deliverables on any other project conducted by the DOI. The DOI shall have the right to reproduce all documentation supplied pursuant to this Agreement without the express written permission of ZSC if required by applicable law, including but not limited to the Delaware Freedom of Information Act) or authorized representatives of other Delaware state agencies.

4. Confidential Information

To the extent permissible under 29 *Del. C.* §10001, et seq., (the "Delaware Freedom of Information Act") and 18 *Del. C.* §6920, ZSC shall preserve in confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of the Services under this Agreement. The confidentiality obligations of ZSC set forth above shall not apply to any information of the DOI which: (i) was in the public domain at the time of the DOI's communication thereof to ZSC; (ii) enters the public domain through no breach of this provision subsequent to the time of the DOI's communication thereof to ZSC; (iii) was in ZSC's possession free of any obligation of confidentiality at the time of the DOI's communication thereof to ZSC; (iv) is developed by ZSC without reference to the information of the DOI; or (v) is required by law or regulation to be disclosed.

5. Warranty

- 5.1 ZSC warrants that its Services will be performed in accordance with applicable professional standards.
- 5.2 ZSC agrees to re-perform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed.

6. Indemnification; Limitation of Liability

- 6.1 ZSC shall indemnify and hold harmless the DOI, its agents and employees from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (A) the grossly negligence or intentionally wrongful conduct of ZSC, its agents or employees during the performance of Services hereunder, or (B) ZSC's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that ZSC shall have been notified promptly in writing by Delaware of any notice of such claim.

- 6.2 If the DOI promptly notifies ZSC in writing of a third party claim against the DOI and/or Delaware that any of the Services or deliverable infringes a copyright or a trade secret of any third party, ZSC will defend such claim at its expense and will pay any costs or damages that may be finally awarded against the DOI and/or Delaware. ZSC will not indemnify Delaware, however, if the claim of infringement is caused by the DOI and/or Delaware's misuse or modification of the Services or deliverable.
- 6.3 Delaware agrees that ZSC's total liability to the DOI for any and all damages whatsoever arising out of or in any way related to this Agreement from any cause, including, but not limited to contract liability or ZSC's negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate exceed the amount of ZSC's professional liability insurance.
- 6.4 ZSC's obligations to indemnify Delaware as set forth in this Section shall survive the completion or termination of this Agreement.
- 6.5 In their performance of the Services, ZSC and Mr. Kinion in particular are deemed as an authorized representative per 18 *Del. C.* §309(a) and 18 *Del. C.* §330.

7 Employees

- 7.1 ZSC shall not have the right to subcontract without the prior written consent of the DOI which can be withheld in its sole discretion.
- 7.2 Except as the other party expressly authorizes in writing in advance, neither ZSC nor the DOI shall solicit, offer work to, employ or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the Services or during the twelve (12) months thereafter. For purposes of this Section 10.2, "Personnel" includes any individual or company a party employs as a partner, member, employee or independent contractor and with which a party comes into direct contact in the course of the Services. The provisions of this section 10.2 do not restrict the right of either party to solicit or recruit generally in the media and do not prohibit either party from hiring Personnel of the other who answers any advertisement or who otherwise voluntarily applies for hire without having been initially personally solicited or recruited by the hiring party.

8. Independent Contractor

- 8.1 It is understood that in the performance of the Services, ZSC shall be, and is, an independent contractor, and is not an agent or employee of the DOI and shall furnish such Services in its own manner and method except as required by this Agreement. ZSC shall be solely responsible for, and shall indemnify, defend and hold the DOI harmless from all matters relating to the payment of its employees,

including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions and regulations of any nature whatsoever.

- 8.2 ZSC acknowledges that ZSC and any subcontractors, agents or employees employed by ZSC shall not, under any circumstances be considered employees of the DOI and that they shall not be entitled to any of the benefits or rights afforded employees of Delaware, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. The DOI will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of the DOI or any of its officers, employees or other agents.
- 8.3 As an independent contractor, ZSC has no authority to bind or commit the DOI. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the Parties for any purpose.

9. Termination

- 9.1 This Agreement may be terminated in whole or in part by either party if there is substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the termination party; but only after the other party is given:
- (a) not less than 30 calendar days written notice of intent to terminate; and
 - (b) an opportunity for consultation with the termination party prior to termination.
- 9.2 This Agreement may be terminated in whole or in part by the DOI for its convenience, but only after ZSC is given:
- (a) not less than 60 calendar days written notice of intent to terminate; and
 - (b) an opportunity for consultation with Delaware prior to termination.
- 9.3 Upon termination of the Agreement by the DOI, whether for fault or convenience, the DOI will pay ZSC that portion of the compensation which has been earned for Services performed as of the effective date of termination but:
- (a) No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and
 - (b) Any payment due to ZSC at the time of termination may be adjusted to the extent of any additional costs occasioned to Delaware by reason of ZSC's default.
 - (c) Upon termination for default, the DOI may take over the work and prosecute the same to completion by agreement with another party

or otherwise. If ZSC shall cease conducting business, Delaware shall have the right to make an unsolicited offer of employment to any employees of ZSC assigned to the performance of the Agreement.

- 9.4 If after termination for failure of ZSC to fulfill contractual obligations it is determined that ZSC has not so failed, the termination shall be deemed to have been effected for the convenience of the DOI.
- 9.5 The rights and remedies of the DOI and ZSC provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.
- 9.6 Gratuities.
- a. The DOI may, by written notice to ZSC, terminate this Agreement if it is found after notice and hearing by the DOI that gratuities (in the form of entertainment, gifts or otherwise) were offered or given by ZSC or any agent or representative of ZSC to any officer or employee of the DOI with a view towards securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determination with respect to the performance of this Agreement.
 - b. If this Agreement is terminated, the DOI shall be entitled to pursue the same remedies against ZSC it could pursue in the event of a breach of this Agreement by ZSC.
 - c. The rights and remedies of the DOI provided in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

10. Severability

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest extent the intent and agreements of the parties herein set forth.

11. Assignment; Subcontracts

- 11.1 Any attempt by a party to assign or otherwise transfer its rights in this Agreement without the prior written consent of the other party shall be void. Such consent shall not be unreasonably withheld.

- 11.2 Services specified by this Agreement shall not be subcontracted by ZSC without prior written approval of the DOI. Delaware shall have the exclusive authority to approve or disapprove subcontractors and sub-subcontractors in its sole discretion.
- 11.3 Approval by the DOI of ZSC's request to subcontract or acceptance of or payment for subcontracted work by the DOI shall not in any way relieve ZSC of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.
- 11.4 ZSC shall be and remain liable for all damage to Delaware caused by negligent performance or non-performance of work under this Agreement by ZSC or any sub-subcontractor in accordance with this terms of this Agreement.
- 11.5 The compensation due shall not be affected by Delaware's approval of ZSC's request to subcontract.

12. Force Majeure

Occurrence of force majeure does not fully remove liability of Parties for obligations under this Agreement. It merely suspends the Parties' or Party's obligation to perform for the duration of the delay.

13 State of Delaware Business License

ZSC and all subcontractors represent that they are properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2301.

14. Complete Agreement

- 14.1 This Agreement shall constitute the entire agreement between the DOI and ZSC with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this Agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement as described in the Proposal.
- 14.2 If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the Parties consent and agree that such scope may be judicially modified accordingly and that the whole

of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.

15 Miscellaneous Provisions

- 15.1 In performance of this Agreement, ZSC shall comply with all applicable federal, state and local laws, ordinance, codes and regulations. ZSC shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.
- 15.2 This Agreement may not be modified or amended except by the mutual written agreement of the Parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the Party against which it is sought to be enforced.
- 15.3 The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that Party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.
- 15.4 ZSC covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the Services required to be performed under this Agreement. ZSC further covenants, to its knowledge and ability, that in the performance of the Services no person having any such interest shall be employed.
- 15.5 ZSC acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. ZSC recognizes that if it refuses to hire or do business with an individual or company due to reasons or race, color, gender, ethnicity, disability, national origin, age, or any other protected status, the DOI may declare ZSC in breach of the Agreement, terminate the Agreement and designate ZSC as non-responsible.
- 15.6 ZSC warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission or a percentage, brokerage or contingent fee. For breach or violation of this warranty, the DOI shall have the right to annul this Agreement without liability or at its discretion deduce from the contract or price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
- 15.7 This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.

- 15.8 ZSC shall maintain all public records, as defined by 29 *Del. C.* § 502(7), relating to this Agreement and the Services for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of the DOI may inspect or audit ZSC's performance and records pertaining to this Agreement at ZSC's office at a mutually agreeable time during normal business hours.
- 15.9 ZSC shall not use Delaware's name, either express or implied, in any of its advertising or sales materials without Delaware's express written consent.
- 15.10 The rights and remedies of the DOI provided for in this Agreement are in addition to any other rights and remedies provided by law.

16. Insurance

- 16.1 ZSC shall maintain the following insurance during the term of this Agreement and provide certificates of insurance within ten (10) days of execution of this Agreement:
- a. Worker's Compensation and Employer's Liability insurance in accordance with applicable law; and
 - b. Comprehensive General Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence, and
 - c. Professional Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence; or
 - d. Miscellaneous Errors and Omissions - \$1,000,000.00 per person/\$3,000,000.00 per occurrence; or
 - e. Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others.
- 16.2 ZSC shall provide forty-five (45) days written notice of cancellation or material change of any insurance policies after they have been submitted to the DOI pursuant to this Agreement.
- 16.3 In no event shall Delaware be named as an additional insured on any policy required under this Agreement.

17. Assignment of Antitrust Claims

As consideration for the award and execution of this Agreement by Delaware, ZSC hereby grants, conveys, sells, assigns and transfers to Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire

under the antitrust laws of the United States and the State of Delaware, relating to the particular deliverables or Services purchased or acquired by the DOI pursuant to this Agreement.

18. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, except where Federal law has precedence. ZSC consents to jurisdiction and venue in the State of Delaware.

19. Notices

Any and all notices required by the provisions of this Agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested. All notices shall be sent to the following addresses:

TO DELAWARE:

The Honorable Karen Weldin Stewart, CIR-ML
Delaware Department of Insurance
841 Silver Lake Boulevard
Dover, DE 19904

With a copy to:

Jenifer Vaughn, Controller
Delaware Department of Insurance
841 Silver Lake Boulevard
Dover, DE 19904

TO ZSC:

Steve Kinion
601 West Monroe Street
Springfield, IL 62704

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

**STATE OF DELAWARE
DEPARTMENT OF INSURANCE**

Witness



Karen Weldin Stewart, CIR-ML
Delaware Insurance Commissioner

Date: August 28, 2015

Date: August 28, 2015

ZACK STAMP CONSULTING, INC.

Witness [Signature]

Steve Kinion [Signature]

Date: August 28, 2015

Date: August 28, 2015