

**CONSULTING AGREEMENT BETWEEN  
THE DELAWARE DEPARTMENT OF INSURANCE  
AND INTERCONTINENTAL FINANCE GROUP LTD.**

THIS AGREEMENT, by and between the Department of Insurance (the “DOI”) of the State of Delaware (“Delaware”) and Intercontinental Finance Group LTD (“IFG”) to provide services as Delaware Assistant 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, IFG is currently engaged in the business of providing consulting services regarding the captive insurance industry; and

WHEREAS, in response to a properly published Request For Proposal, IFG submitted a proposal on August 12, 2015 (the “Proposal”), a copy of which is attached hereto as Exhibit 1 and incorporated herein by reference;

WHEREAS, as detailed in the Proposal, IFG, Mark A. Murowany currently serves as Delaware Assistant Captive Director and has done so since 2014. Mr. Murowany’s experience in the insurance industry both as a licensed insurance agent and most recently in the captive insurance industry provide sufficient qualifications for the position as Delaware Assistant Captive Director. Accordingly, IFG, and Mr. Murowany in particular, has the necessary depth, experience and expertise to provide the services requested herein;

WHEREAS, the DOI desires to retain IFG 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 IFG (collectively, the “Parties”) agree as follows:

## 1. Statement of Work

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

- 1.1 Assess, modify or create recommendations, after consultation with DOI Controller and Chief of Staff in an effort to maintain internal controls on monies received from Delaware domiciled captives;
- 1.2 In consultation with the Controller, reconcile captive fees, captive taxes collected, monies owed. Submit no less than quarterly, a summary report to the Captive Director and Chief of Staff;
- 1.3 Review captive operational/administrative policies and procedures, and information about captive insurers and managers and prepare reports as well as when necessary recommend modifications to the Captive Director and Chief of Staff.
- 1.4 Review captive manager applications utilizing Delaware adopted measurements in advance of final review and authorization of the Captive Director.
- 1.5 Ensure all captive manager contact information is current along with mandated coverages and accreditations and review captive manager information and approval procedures for the purpose of recommending regulatory changes to the captive manager approval process;
- 1.6 Review laws and regulations applicable to the Captive Bureau’s operation within the Department of Insurance and make recommendations for new legislation through the Captive Director;
- 1.7 Monitor federal legislation regarding captive insurance and provide reports to the Captive Director;
- 1.8 Develop marketing plan on a monthly basis and submit written plan to Commissioner through the Captive Director;
- 1.9 Complete and submit a written weekly report of activities completed along with upcoming weekly activities planned. This report is to be submitted to Captive Director with a copy to the Insurance Commissioner, Deputy Insurance Commissioner and Chief of Staff;
- 1.10 Work with regional business entities to promote and educate those entities on the advantages of the Captive Insurance program;
- 1.11 Coordinate marketing, education and legislative initiatives with the Delaware Captive Insurance Association and Department of Insurance;
- 1.12 In consultation with the Captive Director, Communications Director, and Chief of Staff, interface with other state and local agencies such as but not limited to: Secretary of State, Delaware Economic Development Office, Delaware Business

- Community, City of Wilmington promoting collaborative initiatives to promote the captive program;
- 1.13 Act as captive legislative liaison at the direction of the Captive Director through the Deputy Commissioner;
  - 1.14 Support goals and mission of Delaware of both the Department of Insurance Captive Program and Delaware Department of Insurance based on dictates of Captive Director, Insurance Commissioner, Deputy Insurance Commissioner or Chief of Staff including the recommended allocation of resources to support goals and mission associated with the goal and mission.
  - 1.15 Represent and speak on behalf of the Commissioner's captive insurance program. This includes representing the captive program with organizations such as the New Castle County Chamber of Commerce and Delaware State Chamber of Commerce. Communicate the positive economic impact the captive program has for Delaware. Attend business organization luncheons or events in the capacity as the Commissioner's representative. Submit in advance to the Captive Director and Chief of Staff a schedule of attending such meetings and luncheons as well as any speaking engagements;
  - 1.16 Develop an annual agent CE seminar in coordination with the DCIA, Delaware Association of Insurance Agents and Brokers, or other similar organizations about captives;
  - 1.17 Develop an annual continuing legal education seminar in coordination with the DCIA, Delaware State Bar Association, or similar organizations about captives;
  - 1.18 Under the direction of Communications Director and Chief of Staff, schedule meetings with Delaware media editorial boards to discuss the success of the captive insurance program;
  - 1.19 Interact as often as possible with local media and communications, through the Communication Director to include but not be limited to regional written publications and or websites promulgating the captive insurance success story include overall activity in weekly report; and
  - 1.20 Attend captive seminars or training events as deemed necessary by the Captive Director and approved by the Chief of Staff. All costs associated with these seminars and/or training are to be paid for by the Captive Insurance Assistant Director.

## **2. Payment for Services and Expenses**

- 2.1 The term of this Agreement shall be 18 months from October 19, 2015 through April 19, 2017, unless earlier terminated with one option to renew for another 18 months at the sole discretion of the DOI.
- 2.2 Delaware will pay IFG for the performance of the Services described in the Statement of Work above.

- 2.3 Delaware shall be obligated to pay IFG \$69,568 per year which consists of \$35.72 per hour and 37.5 hours per week (the "Contract Amount"). IFG shall not be compensated for hours not worked. IFG shall pay all expenses related to this contract except that travel expenses will be reimbursed up to a maximum of \$8,000 annually provided that such expenses are pre-approved by both the Director of the Captive Bureau and the DOI Chief of Staff in that order.
- 2.4 IFG 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 IFG a detailed statement of Delaware's position regarding the disputed portion of the invoice within thirty (30) days of receipt. IFG 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](mailto: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 IFG 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 IFG 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 IFG of Consultant Tools shall not extend to or include all or any part of the DOI’s proprietary data or DOI Confidential Information. To the extent that IFG 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 IFG, 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. IFG recognizes that deliverables it delivers to the DOI may be public records subject to disclosure to third parties, however, IFG does not intend to benefit and assumes no duty or liability to any third parties who receive IFG's deliverables and may include disclaimer language on its deliverables so stating. IFG 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 IFG 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, IFG 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 IFG 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 IFG; (ii) enters the public domain through no breach of this provision subsequent to the time of the DOI’s communication thereof to IFG; (iii) was in IFG’s possession free of any obligation of confidentiality at the time of the DOI’s communication thereof to IFG; (iv) is developed by IFG without reference to the information of the DOI; or (v) is required by law or regulation to be disclosed.

#### **5. Warranty**

- 5.1 IFG warrants that its Services will be performed in accordance with applicable professional standards.
- 5.2 IFG 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 IFG 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 IFG, its agents or employees during the performance of Services hereunder, or (B) IFG'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 IFG shall have been notified promptly in writing by Delaware of any notice of such claim.
- 6.2 If the DOI promptly notifies IFG 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, IFG 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. IFG 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 IFG'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 IFG's negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate exceed the amount of IFG's professional liability insurance.
- 6.4 IFG's obligations to indemnify Delaware as set forth in this Section shall survive the completion or termination of this Agreement.

## **7 Employees**

- 7.1 IFG 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 IFG 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, IFG 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. IFG 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 IFG acknowledges that IFG and any subcontractors, agents or employees employed by IFG 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, IFG 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 IFG is given:
- (a) not less than 30 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 IFG 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 IFG at the time of termination may be adjusted to the extent of any additional costs occasioned to Delaware by reason of IFG'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 IFG shall cease conducting business, Delaware shall have the right to make an unsolicited offer of employment to any employees of IFG assigned to the performance of the Agreement.

9.4 If after termination for failure of IFG to fulfill contractual obligations it is determined that IFG 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 IFG 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 IFG, 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 IFG or any agent or representative of IFG 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 IFG it could pursue in the event of a breach of this Agreement by IFG.
- 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 IFG 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 IFG's request to subcontract or acceptance of or payment for subcontracted work by the DOI shall not in any way relieve IFG 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 IFG shall be and remain liable for all damage to Delaware caused by negligent performance or non-performance of work under this Agreement by IFG 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 IFG'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. Non-Appropriation of Funds**

- 13.1 Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated, the DOI may immediately terminate this Agreement and absent such action this Agreement shall be terminated as to any obligation of the DOI requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds, effective upon receipt by IFG of written notice of termination.
- 13.2 Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and the DOI's obligations under it shall be extinguished at the end of the fiscal year in which Delaware fails to appropriate monies for the ensuing

fiscal year sufficient for the payment of all amounts which will then become due, provided that the DOI has provided written notice to IFG of such termination.

#### **14. State of Delaware Business License**

IFG 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.

#### **15. Complete Agreement**

- 15.1 This Agreement shall constitute the entire agreement between the DOI and IFG 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.
- 15.2 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.

#### **16. Miscellaneous Provisions**

- 16.1 In performance of this Agreement, IFG shall comply with all applicable federal, state and local laws, ordinance, codes and regulations. IFG shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.
- 16.2 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.
- 16.3 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.
- 16.4 IFG 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. IFG further conveys, to its knowledge and ability, that in the performance of the Services no person having any such interest shall be employed.

- 16.5 IFG acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. IFG 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 IFG in breach of the Agreement, terminate the Agreement and designate IFG as non-responsible.
- 16.6 IFG 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.
- 16.7 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.
- 16.8 IFG 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 IFG's performance and records pertaining to this Agreement at IFG's office at a mutually agreeable time during normal business hours.
- 16.9 IFG shall not use Delaware's name, either express or implied, in any of its advertising or sales materials without Delaware's express written consent.
- 16.10 The rights and remedies of the DOI provided for in this Agreement are in addition to any other rights and remedies provided by law.

## **17. Insurance**

- 17.1 IFG 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.

17.2 IFG 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.

17.3 In no event shall Delaware be named as an additional insured on any policy required under this Agreement.

## **18. Assignment of Antitrust Claims**

As consideration for the award and execution of this Agreement by Delaware, IFG 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.

## **19. 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. IFG consents to jurisdiction and venue in the State of Delaware.

## **20. 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 IFG:

Mark A. Murowany  
2300 West 17<sup>th</sup> Street  
Wilmington, Delaware 19806

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:

Date:

**INTERCONTINENTAL FINANCE  
GOUP LTD.**

Witness

Mark A. Murowany

Date:

Date: