

PROFESSIONAL SERVICES AGREEMENT

This Agreement ("Agreement") is entered into as of February 11, 2013 ("Effective Date") and will end on February 11, 2014, by and between the State of Delaware, Department of Natural Resources and Environmental Control, Division of Watershed Stewardship, ("Delaware"), and KCI Technologies, Inc., a Delaware corporation, with offices at 1352 Marrows Road, Newark, DE 19711, KCI Technologies, Inc.

WHEREAS, Delaware desires to obtain certain services to Develop Watershed plans as described in Exhibit A; and

WHEREAS, KCI Technologies, Inc. desires to provide such services to Delaware on the terms set forth below;

WHEREAS, Delaware and KCI Technologies, Inc. represent and warrant that each party has full right, power and authority to enter into and perform under this Agreement;

FOR AND IN CONSIDERATION OF the premises and mutual agreements herein, Delaware and KCI Technologies, Inc. agree as follows:

1. Services.

1.1 KCI Technologies, Inc. shall perform for Delaware the services specified in the Appendices to this Agreement, attached hereto and made a part hereof.

1.2 Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); (b) Delaware's request for proposals, attached hereto as Appendix A; and (c) KCI Technologies, Inc. response to the request for proposals, attached hereto as Exhibit A. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.

1.3 Delaware may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by KCI Technologies, Inc. shall be furnished without the written authorization of Delaware. When Delaware desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify KCI Technologies, Inc., who shall then submit to Delaware a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by KCI Technologies, Inc. for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1.4 KCI Technologies, Inc. will not be required to make changes to its scope of work that result in KCI Technologies, Inc. costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

2. Payment for Services and Expenses.

2.1 The term of the initial contract shall be from February 11, 2013 through February 11, 2014.

2.2 Delaware will pay KCI Technologies, Inc. for the performance of services described in Exhibit A, Statement of Work. The fee will be paid in accordance with the payment schedule attached hereto as part of Exhibit A.

2.3 Delaware's obligation to pay KCI Technologies, Inc. for the performance of services described in Exhibit A, Statement of Work will not exceed the fixed fee amount of \$ 60,000. It is expressly understood that the work defined in the appendices to this Agreement must be completed by KCI Technologies, Inc. and it shall be KCI Technologies, Inc. responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed fee. Delaware's total liability for all charges for services that may become due under this Agreement is limited to the total maximum expenditure(s) authorized in Delaware's purchase order(s) to KCI Technologies, Inc..

2.4 KCI Technologies, Inc. shall submit monthly invoices to Delaware in sufficient detail to support the services provided during the previous month. Delaware agrees to pay those invoices within thirty (30) days of receipt. In the event 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 KCI Technologies, Inc. a detailed statement of Delaware's position on the disputed portion of the invoice within thirty (30) days of receipt. Delaware's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt shall entitle KCI Technologies, Inc. to charge interest on the overdue portion at no more than 1.0% per month or 12% per annum. All payments should be sent to KCI Technologies, Inc., 1352 Marrows Road, Suite 100, Newark, DE 19711.

2.5 Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by KCI Technologies, Inc.. If an Appendix specifically provides for expense reimbursement, KCI Technologies, Inc. shall be reimbursed only for reasonable expenses incurred by KCI Technologies, Inc. in the performance of the services, including, but not necessarily limited to, travel and

lodging expenses, communications charges, and computer time and supplies.

2.6 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.

2.7 Delaware shall subtract from any payment made to KCI Technologies, Inc. all damages, costs and expenses caused by KCI Technologies, Inc. negligence, resulting from or arising out of errors or omissions in KCI Technologies, Inc. work products, which have not been previously paid to KCI Technologies, Inc. .

2.8 Invoices shall be submitted to:

DNREC, Division of Watershed Stewardship
Attn: Sharon Webb
5 E. Reed Street
Dover, DE 19901

3. Responsibilities of KCI Technologies, Inc.

3.1 KCI Technologies, Inc. shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by KCI Technologies, Inc., its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, KCI Technologies, Inc. shall follow practices consistent with generally accepted professional and technical standards. KCI Technologies, Inc. shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by the Department of Technology and Information ("DTI") published at <http://dti.delaware.gov/>, and as modified from time to time by DTI during the term of this Agreement. If any service, product or deliverable furnished pursuant to this Agreement does not conform with DTI standards, KCI Technologies, Inc. shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform with DTI standards. KCI Technologies, Inc. shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by KCI Technologies, Inc. failure to ensure compliance with DTI standards.

3.2 It shall be the duty of the KCI Technologies, Inc. to assure that all products of its effort are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. KCI Technologies, Inc. will not produce a work product that violates or infringes on any copyright or patent rights. KCI Technologies, Inc. shall, without additional compensation, correct or revise any errors or omissions in its work products.

3.3 Permitted or required approval by Delaware of any products or services furnished by KCI Technologies, Inc. shall not in any way relieve KCI Technologies, Inc. of responsibility for the professional and technical accuracy and adequacy of its work. Delaware's review, approval, acceptance, or payment for any of KCI Technologies, Inc. services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and KCI Technologies, Inc. shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by KCI Technologies, Inc. performance or failure to perform under this Agreement.

3.4 KCI Technologies, Inc. shall appoint a Project Manager who will manage the performance of services. All of the services specified by this Agreement shall be performed by the Project Manager, or by KCI Technologies, Inc. associates and employees under the personal supervision of the Project Manager. The positions anticipated include:

Project- Developing Watershed Plans for the Sub-watersheds of the Chesapeake Bay and Broadkill River Watersheds.

Team- Bruce Thompson, KCI Technologies, Inc.

Title- Project Manager

Project Involvement- 100%

3.5 Designation of persons for each position is subject to review and approval by Delaware. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, KCI Technologies, Inc. will notify Delaware immediately and work out a transition plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill or complete the work assigned to this project staff position. Replacement staff persons are subject to review and approval by Delaware. If KCI Technologies, Inc. fails to make a required replacement within 30 days, Delaware may terminate this Agreement for default. Upon receipt of written notice from Delaware that an employee of KCI Technologies, Inc. is unsuitable to Delaware for good cause, KCI Technologies, Inc. shall remove such employee from the performance of services and substitute in his/her place a suitable employee.

3.6 KCI Technologies, Inc. shall furnish to Delaware's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.

3.7 KCI Technologies, Inc. agrees that its officers and employees will cooperate with Delaware in the performance of services under this Agreement and will be

available for consultation with Delaware at such reasonable times with advance notice as to not conflict with their other responsibilities.

3.8 KCI Technologies, Inc. has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by Delaware or any other political subdivision of Delaware.

3.9 KCI Technologies, Inc. will not use Delaware's name, either express or implied, in any of its advertising or sales materials without Delaware's express written consent.

3.10 The rights and remedies of Delaware provided for in this Agreement are in addition to any other rights and remedies provided by law.

4. Time Schedule.

4.1 The project will be completed one year from the date of the established Purchase Order.

4.2 Any delay of services or change in sequence of tasks must be approved in writing by Delaware.

4.3 In the event that KCI Technologies, Inc. fails to complete the project or any phase thereof within the time specified in the Contract, or with such additional time as may be granted in writing by Delaware, or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this Agreement or any extensions thereof, Delaware shall suspend the payments scheduled as set forth in Exhibit A.

5. State Responsibilities.

5.1 In connection with KCI Technologies, Inc. provision of the Services, Delaware shall perform those tasks and fulfill those responsibilities specified in the appropriate Appendices.

5.2 Delaware agrees that its officers and employees will cooperate with KCI Technologies, Inc. in the performance of services under this Agreement and will be available for consultation with KCI Technologies, Inc. at such reasonable times with advance notice as to not conflict with their other responsibilities.

5.3 The services performed by KCI Technologies, Inc. under this Agreement shall be subject to review for compliance with the terms of this Agreement by Delaware's designated representatives. Delaware representatives may delegate any or all responsibilities under the Agreement to appropriate staff members, and

shall so inform KCI Technologies, Inc. by written notice before the effective date of each such delegation.

5.4 The review comments of Delaware's designated representatives may be reported in writing as needed to KCI Technologies, Inc. It is understood that Delaware's representatives' review comments do not relieve KCI Technologies, Inc. from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.

5.5 Delaware shall, without charge, furnish to or make available for examination or use by KCI Technologies, Inc. as it may request, any data which Delaware has available, including as examples only and not as a limitation:

- a. Copies of reports, surveys, records, and other pertinent documents;
- b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other document, and information related to the services specified by this Agreement.

KCI Technologies, Inc. shall return any original data provided by Delaware.

5.6 Delaware shall assist KCI Technologies, Inc in obtaining data on documents from public officers or agencies and from private citizens and business firms whenever such material is necessary for the completion of the services specified by this Agreement.

5.7 KCI Technologies, Inc. will not be responsible for accuracy of information or data supplied by Delaware or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.

5.8 Delaware agrees not to use KCI Technologies, Inc. name, either express or implied, in any of its advertising or sales materials. KCI Technologies, Inc. reserves the right to reuse the nonproprietary data and the analysis of industry-related information in its continuing analysis of the industries covered.

6. Work Product.

6.1 All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by KCI Technologies, Inc. for Delaware relating to the services to be performed hereunder shall become the property of Delaware and shall be delivered to Delaware's designated representative upon completion or termination of this Agreement, whichever comes first. KCI Technologies, Inc. shall not be liable for damages, claims, and losses arising out of any reuse of any work products on any other project conducted by Delaware. Delaware shall have the right to reproduce all

documentation supplied pursuant to this Agreement.

6.2 KCI Technologies, Inc. retains all title and interest to the data it furnished and/or generated pursuant to this Agreement. Retention of such title and interest does not conflict with Delaware's rights to the materials, information and documents developed in performing the project. Upon final payment, Delaware shall have a perpetual, nontransferable, non-exclusive paid-up right and license to use, copy, modify and prepare derivative works of all materials in which KCI Technologies, Inc. retains title, whether individually by KCI Technologies, Inc. or jointly with Delaware. Any and all source code developed in connection with the services provided will be provided to Delaware, and the aforementioned right and license shall apply to source code. The parties will cooperate with each other and execute such other documents as may be reasonably deemed necessary to achieve the objectives of this Section.

6.3 In no event shall KCI Technologies, Inc. be precluded from developing for itself, or for others, materials that are competitive with the Deliverables, irrespective of their similarity to the Deliverables. In addition, KCI Technologies, Inc. shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its consulting practice that are used in the course of providing the services.

6.4 Notwithstanding anything to the contrary contained herein or in any attachment hereto, any and all intellectual property or other proprietary data owned by KCI Technologies, Inc. prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of KCI Technologies, Inc. even if such Preexisting Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. Delaware's rights under this section shall not apply to any Preexisting Information or any component thereof regardless of form or media.

7. Confidential Information.

To the extent permissible under 29 *Del. C.* § 10001, et seq., the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement.

8. Warranty.

8.1 KCI Technologies, Inc. warrants that its services will be performed in a good and workmanlike manner. KCI Technologies, Inc. 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.

8.2 Third-party products within the scope of this Agreement are warranted solely under the terms and conditions of the licenses or other agreements by which such products are governed. With respect to all third-party products and services purchased by KCI Technologies, Inc. for Delaware in connection with the provision of the Services, KCI Technologies, Inc. shall pass through or assign to Delaware the rights KCI Technologies, Inc. obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable.

9. Indemnification; Limitation of Liability.

9.1 KCI Technologies, Inc. shall indemnify and hold harmless the State, 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 negligence or other wrongful conduct of the KCI Technologies, Inc., its agents or employees, or (B) KCI Technologies, Inc. breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that (i) KCI Technologies, Inc. shall have been notified promptly in writing by Delaware of any notice of such claim; and (ii) KCI Technologies, Inc. shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

9.2 If Delaware promptly notifies KCI Technologies, Inc. in writing of a third party claim against Delaware that any Deliverable infringes a copyright or a trade secret of any third party, KCI Technologies, Inc.. will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Delaware. KCI Technologies, Inc., INC. will not indemnify Delaware, however, if the claim of infringement is caused by (1) Delaware's misuse or modification of the Deliverable; (2) Delaware's failure to use corrections or enhancements made available by KCI Technologies, Inc. (3) Delaware's use of the Deliverable in combination with any product or information not owned or developed by KCI Technologies, Inc.; (4) Delaware's distribution, marketing or use for the benefit of third parties of the Deliverable or (5) information, direction, specification or materials provided by Client or any third party. If any Deliverable is, or in KCI Technologies, Inc.'s opinion is likely to be, held to be infringing KCI Technologies, Inc.. shall at its expense and option either (a) procure the right for Delaware to continue using it, (b) replace it with a noninfringing equivalent, (c) modify it to make it noninfringing. The foregoing remedies constitute Delaware's sole and exclusive remedies and KCI Technologies, Inc.'s. entire liability with respect to infringement.

9.3 Delaware agrees that KCI Technologies, Inc.'s. total liability to Delaware

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 KCI Technologies, Inc.'s negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate, exceed fees paid to KCI Technologies, Inc..

In no event shall KCI Technologies, Inc. be liable for special, indirect, incidental, economic, consequential or punitive damages, including but not limited to lost revenue, lost profits, replacement goods, loss of technology rights or services, loss of data, or interruption or loss of use of software or any portion thereof regardless of the legal theory under which such damages are sought, and even if KCI Technologies, Inc. has been advised of the likelihood of such damages.

10. Employees.

10.1 KCI Technologies, Inc. has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by KCI Technologies, Inc. in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor Delaware's request for specific individuals.

10.2 Except as the other party expressly authorizes in writing in advance, neither party 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, employee or independent contractor and with which a party comes into direct contact in the course of the services.

10.3 Possession of a Security Clearance, as issued by the Delaware Department of Public Safety, may be required of any employee of KCI Technologies, Inc. who will be assigned to this project.

11. Independent Contractor.

11.1 It is understood that in the performance of the services herein provided for, KCI Technologies, Inc. shall be, and is, an independent contractor, and is not an agent or employee of Delaware and shall furnish such services in its own manner and method except as required by this Agreement KCI Technologies, Inc. shall be solely responsible for, and shall indemnify, defend and save Delaware 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.

11.2 KCI Technologies, Inc. acknowledges that KCI Technologies, Inc. and any subcontractors, agents or employees employed by KCI Technologies, Inc. shall not, under any circumstances, be considered employees of Delaware, 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. Delaware will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of Delaware or any of its officers, employees or other agents.

11.3 KCI Technologies, Inc. shall be responsible for providing liability insurance for its personnel.

11.4 As an independent contractor, KCI Technologies, Inc. has no authority to bind or commit Delaware. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose.

12. Suspension.

12.1 Delaware may suspend performance by KCI Technologies, Inc. under this Agreement for such period of time as Delaware, at its sole discretion, may prescribe by providing written notice to KCI Technologies, Inc. at least 30 working days prior to the date on which Delaware wishes to suspend. Upon such suspension, Delaware shall pay KCI Technologies, Inc. its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. KCI Technologies, Inc. shall not perform further work under this Agreement after the effective date of suspension. KCI Technologies, Inc. shall not perform further work under this Agreement after the effective date of suspension until receipt of written notice from Delaware to resume performance.

12.2 In the event Delaware suspends performance by KCI Technologies, Inc. for any cause other than the error or omission of the KCI Technologies, Inc., for an aggregate period in excess of 30 days, KCI Technologies, Inc. shall be entitled to an equitable adjustment of the compensation payable to KCI Technologies, Inc.. under this Agreement to reimburse KCI Technologies, Inc.. for additional costs occasioned as a result of such suspension of performance by Delaware based on appropriated funds and approval by Delaware.

13. Termination.

13.1 This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating 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 terminating party prior to termination.

13.2 This Agreement may be terminated in whole or in part by Delaware for its convenience, but only after KCI Technologies, Inc. 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.

13.3 If termination for default is effected by Delaware, Delaware will pay KCI Technologies, Inc, Inc. that portion of the compensation which has been earned 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 KCI Technologies, Inc. at the time of termination may be adjusted to the extent of any additional costs occasioned to Delaware by reason of KCI Technologies, Inc. default.
- c. Upon termination for default, Delaware may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event KCI Technologies, Inc. shall cease conducting business, Delaware shall have the right to make an unsolicited offer of employment to any employees of KCI Technologies, Inc. assigned to the performance of the Agreement, notwithstanding the provisions of Section 10.2.

13.4 If after termination for failure of KCI Technologies, Inc. to fulfill contractual obligations it is determined that KCI Technologies, Inc. has not so failed, the termination shall be deemed to have been effected for the convenience of Delaware.

13.5 The rights and remedies of Delaware and KCI Technologies, Inc. provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

13.6 Gratuities.

13.6.1 Delaware may, by written notice to KCI Technologies, Inc., terminate this Agreement if it is found after notice and hearing by Delaware that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by KCI Technologies, Inc. or any agent or representative of KCI Technologies, Inc. to any officer or employee of Delaware with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.

13.6.2 In the event this Agreement is terminated as provided in 13.6.1 hereof, Delaware shall be entitled to pursue the same remedies against KCI Technologies, Inc. it could pursue in the event of a breach of this Agreement by KCI Technologies, Inc.

13.6.3 The rights and remedies of Delaware provided in Section 13.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

14. 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 permissible extent the intent and agreements of the parties herein set forth.

15. Assignment; Subcontracts.

15.1 Any attempt by KCI Technologies, Inc. to assign or otherwise transfer any interest in this Agreement without the prior written consent of Delaware shall be void. Such consent shall not be unreasonably withheld.

15.2 Services specified by this Agreement shall not be subcontracted by KCI Technologies, Inc., without prior written approval of Delaware.

15.3 Approval by Delaware of KCI Technologies, Inc.'s request to subcontract or acceptance of or payment for subcontracted work by Delaware shall not in any way relieve KCI Technologies, Inc. of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all

applicable provisions of this Agreement.

15.4 KCI Technologies, Inc. shall be and remain liable for all damages to Delaware caused by negligent performance or non-performance of work under this Agreement by KCI Technologies, Inc. , its subcontractor or its sub-subcontractor.

15.5 The compensation due shall not be affected by Delaware's approval of the KCI Technologies, Inc.'s request to subcontract.

16. Force Majeure.

Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.

17. Non-Appropriation of Funds.

17.1 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 Delaware may immediately terminate this Agreement, and absent such action this Agreement shall be terminated as to any obligation of the State 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.

17.2 Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and Delaware'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.

18. State of Delaware Business License.

KCI Technologies, Inc. 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.

19. Complete Agreement.

19.1 This agreement and its Appendices shall constitute the entire agreement between Delaware and KCI Technologies, Inc. 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.

19.2 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 hereto 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.

19.3 KCI Technologies, Inc. may not order any product requiring a purchase order prior to Delaware's issuance of such order. Each Appendix, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

20. Miscellaneous Provisions.

20.1 In performance of this Agreement, KCI Technologies, Inc. shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. KCI Technologies, Inc. shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.

20.2 Neither this Agreement nor any appendix may 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.

20.3 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.

20.4 KCI Technologies, Inc. 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 services required to be performed under this Agreement. KCI Technologies, Inc. further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.

20.5 KCI Technologies, Inc. acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. KCI Technologies, Inc. recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability,

national origin, age, or any other protected status, Delaware may declare KCI Technologies, Inc. in breach of the Agreement, terminate the Agreement, and designate KCI Technologies, Inc. as non-responsible.

20.6 KCI Technologies, Inc. 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, Delaware shall have the right to annul this contract without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

20.7 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.

20. KCI Technologies, Inc. shall maintain all public records, as defined by 29 *Del. C.* § 502(7), relating to this Agreement and its deliverables 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 Delaware may inspect or audit KCI Technologies, Inc.'s performance and records pertaining to this Agreement at the KCI Technologies, Inc. business office during normal business hours.

21. Insurance.

21.1 KCI Technologies, Inc. shall maintain the following insurance during the term 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. Medical/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 per occurrence, or
- E. Product Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence, **and**
- F. If required to transport state employees, 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.

21.2. KCI Technologies, Inc. shall provide forty-five (45) days written notice of cancellation or material change of any policies.

21.3. Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State. The certificate holder is as follows:

21.4. In no event shall the State of Delaware be named as an additional insured on any policy required under this agreement.

22. Assignment of Antitrust Claims.

As consideration for the award and execution of this contract by the State, KCI Technologies, Inc. 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 goods or services purchased or acquired by the State pursuant to this contract.

23. 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. KCI Technologies, Inc. consents to jurisdiction venue in the State of Delaware.

24. EPA Funding. [FOR USE WITH EPA FUNDED PROGRAMS ONLY]

A. General:

- 1) CONTRACTOR shall comply with all applicable State and Federal laws and regulations. If applicable State and Federal laws and regulations conflict with the provisions of paragraph 24, then applicable laws and regulations supersede the provisions of paragraph 24. The provisions of paragraph 24 shall apply to the work to be performed under this Contract and such provisions shall supersede any conflicting provisions of this Contract.

- 2) This Contract is funded by a grant from the EPA. Neither the United States nor any of its departments, agencies, or employees is a party to this Contract.
 - 3) The rights and remedies of DEPARTMENT provided for in these clauses are in addition to any other rights and remedies provided by law or under this Contract.
- B. Remedies: Except as may be otherwise provided in this Contract all claims, counterclaims, disputes and other matters in question between DEPARTMENT and CONTRACTOR arising out of or relating to this Contract or the breach thereof will be decided by arbitration if the parties hereto mutually agree, or in a court of competent jurisdiction within the State of Delaware.
 - C. Audit; Access to Records: CONTRACTOR shall maintain books, records, documents and other evidence directly pertinent to performance on EPA grant work under this Contract in accordance with generally accepted accounting principles and practices. CONTRACTOR shall also maintain the financial information and data used by CONTRACTOR in the preparation or support of the cost submission, and a copy of the cost summary submitted to DEPARTMENT. The United State's Department of Labor, DEPARTMENT (and the State of Delaware) or any of their duly authorized representatives shall have access to such books, records, documents and other evidence for the purpose of inspection, audit and copying. CONTRACTOR will provide proper facilities for such access and inspection.
 - D. Subcontracts: Any subcontractors and outside associates or consultants required by CONTRACTOR in connection with the services covered by this Contract will be limited to such individuals or firms as were specifically identified and agreed to in writing during negotiations, or as are specifically authorized in writing by DEPARTMENT during the performance of this Contract. Any substitutions in or additions to such subcontractors, associates, or consultants will be subject to the prior written approval of DEPARTMENT.
 - E. Equal Employment Opportunity: CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin.
 - F. Utilization of Small and Minority Business: CONTRACTOR agrees that qualified small business and minority business enterprises shall have the maximum practicable opportunity to participate in the performance of EPA grant-assisted contracts and subcontracts.
 - G. Covenant Against Contingent Fees: CONTRACTOR warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty, DEPARTMENT shall have the right to annul this Contract without liability or in its discretion to deduct from the contract price or consideration, or

otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

H. Gratuities:

- 1) If it is found, after notice and hearing, by DEPARTMENT that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by CONTRACTOR, or any agent of DEPARTMENT or of EPA with a view toward securing a Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of this Contract, DEPARTMENT may, by written notice to CONTRACTOR, terminate the right of CONTRACTOR to proceed under this Contract and/or may pursue such other rights and remedies provided by law or under this agreement; provided that the existence of the facts upon which DEPARTMENT makes such findings shall be in issue and may be reviewed in proceedings pursuant to the Remedies clause of this Contract.
 - 2) In the event this Contract is terminated as provided in paragraph (13.1) hereof, DEPARTMENT shall be entitled (i) to pursue the same remedies against CONTRACTOR, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by DEPARTMENT), which shall be not less than three nor more than ten times the costs incurred by CONTRACTOR in providing any such gratuities to any such officer or employee.
- I. Patents: If this Contract involves research, developmental, experimental, or demonstration work and any discovery or invention arises or is developed in the course of or under this Contract, such invention or discovery shall be subject to the reporting and rights provisions of Subpart D of 40 C.F.R. Part 30, in effect on the date of execution of this Contract including the Appendix of said Part 30. In such case, CONTRACTOR shall report the discovery or invention to EPA directly or through DEPARTMENT and shall otherwise comply with DEPARTMENT'S responsibilities in accordance with Subpart D of 40 C.F.R. Part 30. CONTRACTOR hereby agrees that the disposition of rights to inventions made under this Contract shall be in accordance with the terms and conditions of aforementioned Appendix. CONTRACTOR shall include provisions appropriate to effectuate the purposes of this condition in all subcontracts involving research, developmental, experimental, or demonstration work.

25. 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:

TO KCI TECHNOLOGIES, INC. :

SIGNATURE PAGE TO FOLLOW

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 NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**

Witness

Name: _____

Title: _____

Date: _____

Date:

KCI TECHNOLOGIES, INC.

Witness

Name: _____

Title: _____

Date: _____

Date: