

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT ("Agreement") is entered into as of August 26, 2013 ("Effective Date") and will end on August 26, 2014, by and between Technology Partnership Group, Inc., an Indiana corporation, with its principal office located at 9860 Westpoint Drive, Suite 700, Indianapolis, Indiana 46256 ("TechPG") and the State of Delaware, Department of Natural Resources and Environmental Control, with its principal office located at 5 East Reed Street, Suite 200, Dover, Delaware 19901 ("DNREC").

WHEREAS, DNREC desires to obtain certain services to facilitate project management and loan servicing for the Delaware Water Pollution Control Revolving Fund, and Delaware Safe Drinking Water Revolving Fund; and

WHEREAS, TechPG desires to provide such services to DNREC on the terms set forth below;

WHEREAS, DNREC and TechPG 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, DNREC and TechPG agree as follows:

1. Services.

1.1 TechPG shall perform for DNREC 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) DNREC's request for proposals, attached hereto as Appendix A; and (c) TechPG's response to the request for proposals, attached hereto as Appendix B. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.

1.3 DNREC 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 TechPG shall be furnished without the written authorization of DNREC. When DNREC desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify TechPG, who shall then submit to DNREC 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 TechPG for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1.4 TechPG will not be required to make changes to its scope of work that result in TechPG's 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 August 26, 2013 through August 26, 2014.

2.2 DNREC will pay TechPG for the performance of services described in Appendix C, Statement of Work and for the software license described in Appendix D, License Agreement for EnABLE. The fee will be paid in accordance with the payment schedule attached hereto as part of Appendix E.

2.3 DNREC's obligation to pay TechPG for the performance of services described in Appendix C, Statement of Work, and the product license granted in Appendix D, License Agreement for EnABLE, will not exceed the fixed fee amount of \$ 247,600. It is expressly understood that the work defined in the appendices to this Agreement must be completed by TechPG and it shall be TechPG's responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed fee. DNREC's total liability for all charges for products and services that may become due under this Agreement is limited to the total maximum expenditure(s) authorized in DNREC's purchase order(s) to TechPG.

2.4 TechPG shall submit periodic invoices to DNREC for services defined in the attached Appendixes in sufficient detail as to support the services provided during the period. DNREC agrees to pay those invoices within thirty (30) days of receipt. In the event DNREC disputes a portion of an invoice, DNREC agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide TechPG a detailed statement of DNREC's position on the disputed portion of the invoice within thirty (30) days of receipt. DNREC'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 TechPG 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 TechPG:

Technology Partnership Group, Inc.
9860 Westpoint Drive, Suite 700
Indianapolis, Indiana 46256

2.5 TechPG shall be reimbursed for reasonable expenses incurred by TechPG 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 DNREC 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 DNREC shall subtract from any payment made to TechPG all damages, costs and expenses caused by TechPG's negligence, resulting from or arising out of errors or omissions in TechPG's work products, which have not been previously paid to TechPG.

2.8 Invoices shall be submitted to:

Delaware Department of Natural Resources and
Environmental Control
Office of the Secretary, Financial Assistance Branch
5 East Reed Street, Suite 200
Dover, DE. 19901-7334
Attn: Terry L. Deputy

3. Responsibilities of TechPG.

3.1 TechPG shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by TechPG, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, TechPG shall follow practices consistent with generally accepted professional and technical standards. TechPG 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, TechPG shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform with DTI standards. TechPG shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to DNREC caused by TechPG's failure to ensure compliance with DTI standards.

3.2 It shall be the duty of TechPG 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. TechPG will not produce a work product that violates or infringes on any copyright or patent rights. TechPG shall, without additional compensation, correct or revise any errors or omissions in its work products.

3.3 Permitted or required approval by DNREC of any products or services furnished by TechPG shall not in any way relieve TechPG of responsibility for the professional and technical accuracy and adequacy of its work. DNREC's review, approval, acceptance, or payment for any of TechPG's 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 TechPG shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to DNREC caused by TechPG's performance or failure to perform under this Agreement.

3.4 TechPG 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 TechPG's associates and employees under the personal supervision of the Project Manager. The positions anticipated include:

<u>Project Team</u>	<u>Title</u>	<u>% of Project Involvement</u>
Terri Eakins	Project Manager	33%
Jack Eakins	Technical Manager/System Architect	33%
Stefan Ludlow	Lead Configuration Analyst	75%

3.5 Designation of persons for each position is subject to review and approval by DNREC. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, TechPG will notify DNREC 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 DNREC. If TechPG fails to make a required replacement within 30 days, DNREC may terminate this Agreement for default. Upon receipt of written notice from DNREC that an employee of TechPG is unsuitable to DNREC for good cause, TechPG shall remove such employee from the performance of services and substitute in his/her place a suitable employee.

3.6 TechPG shall furnish to DNREC's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.

3.7 TechPG agrees that its officers and employees will cooperate with DNREC in the performance of services under this Agreement and will be available for consultation with DNREC at such reasonable times with advance notice as to not conflict with their other responsibilities.

3.8 TechPG 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 DNREC or any other political subdivision of DNREC.

3.9 TechPG will not use DNREC's name, either express or implied, in any of its advertising or sales materials without DNREC's express written consent.

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

4. Time Schedule.

4.1 A project schedule is included in Appendix C.

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

4.3 In the event that TechPG 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 DNREC, 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, DNREC shall suspend the payments scheduled as set forth in Appendix E.

5. State Responsibilities.

5.1 In connection with TechPG's provision of the Services, DNREC shall perform those tasks and fulfill those responsibilities specified in the appropriate Appendices.

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

5.3 The services performed by TechPG under this Agreement shall be subject to review for compliance with the terms of this Agreement by DNREC's designated representatives. DNREC representatives may delegate any or all responsibilities under the Agreement to appropriate staff members, and shall so inform TechPG by written notice before the effective date of each such delegation.

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

5.5 DNREC shall, without charge, furnish to or make available for examination or use by TechPG as it may request, appropriate data to perform the services specified in this Agreement, 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.

TechPG shall return any original data provided by DNREC.

5.6 DNREC shall assist TechPG 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 TechPG will not be responsible for accuracy of information or data supplied by DNREC or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.

5.8 DNREC agrees not to use TechPG's name, either express or implied, in any of its advertising or sales materials. TechPG 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 "Work Product" means (i) any idea, design, concept, technique, invention, discovery or improvement conceived or reduced to practice by TechPG prior to the date of this Agreement or the date of any Related Agreement or during the course of performing any Related Agreement, without the direct involvement or input of DNREC, regardless of patentability, including patents, patent applications, trade secrets, and know-how; (ii) any works of authorship created by TechPG prior to the date of this Agreement or the date of any Related Agreement, or during the course of performing any Related Agreement, without the direct involvement or input of DNREC, including, but not limited to, all computer programs (including source code and object code), applications, rules engines, methods, artifacts, rules, databases, metadata, documentation, methodologies, and other materials, whether in tangible or electronic form, regardless of copyrightability, but including copyright and moral rights recognized by law; (iii) any idea, design, concept, technique, invention, discovery or improvement conceived or reduced to practice by TechPG prior to the date of this Agreement or the date of any Related Agreement or during the course of performing any Related Agreement, with or without the involvement or input of DNREC, regardless of patentability, including patents, patent applications, trade secrets, and know-how, that relates to generalized knowledge of the lending or computer technology industries, including knowledge relating to the origination, acquisition, servicing, and sale of loans and general-purpose computer programs, routines and utilities; and (iv) any works of authorship created by TechPG prior to the date of this Agreement or the date of any Related Agreement or during the course of performing any Related Agreement, with or without the involvement or input of DNREC, including, but not limited to, any software programs (including source code and object code), applications, rules engines, methods, artifacts, rules, databases, metadata, documentation, methodologies, and other materials, whether in tangible or electronic form, regardless of copyrightability, but including copyright and moral rights recognized by law, that relate to generalized knowledge of the lending and computer technology industries, including general knowledge relating to the origination, acquisition, servicing, and sale of loans and general-purpose computer programs, routines and utilities.

6.2 DNREC acknowledges that all right, title and interest in and to all Work Product, all derivatives of the Work Product, all copies of the Work Product, and all intellectual property rights therein, including, but not limited to, all copyright, patent, trade secret, and trademark rights associated therewith, shall be and at all times remain the sole and exclusive property of TechPG. DNREC hereby irrevocably assigns, transfers and conveys to TechPG without further consideration all of its right, title and interest in and to such Work

Product. DNREC acknowledges that TechPG and the assigns of TechPG shall have the right to obtain and hold in their own name such Work Product. DNREC shall execute any documents or take any other actions as may reasonably be necessary, or as TechPG may reasonably request, to perfect TechPG's ownership of any such Work Product.

6.3 Upon payment by DNREC of all fees associated with a particular Work Product, TechPG will grant to DNREC a limited, non-exclusive, non-transferable, perpetual, royalty-free right (except as provided hereunder) and license to use (reproduce, distribute, modify) without the right to sublicense, the Work Product solely for its own internal purposes in the ordinary course of its business.

6.4 TechPG acknowledges that all right, title and interest in and to the following items, all copies thereof, and all intellectual property rights therein, including, but not limited to, all copyright, patent, trade secret, and trademark rights associated therewith, shall be and at all times remain the sole and exclusive property of DNREC. TechPG hereby irrevocably assigns, transfers and conveys to DNREC without further consideration all of its right, title and interest in and to such items. TechPG acknowledges that DNREC and the assigns of DNREC shall have the right to obtain and hold in their own name such items. TechPG shall execute any documents or take any other actions as may reasonably be necessary, or as DNREC may reasonably request, to perfect DNREC's ownership of any such items: (i) all ideas, designs, concepts, techniques, inventions, discoveries or improvements conceived or reduced to practice by DNREC prior to the date of this Agreement; and (ii) all works of authorship created by DNREC prior to the date of this Agreement, including, but not limited to, any software programs (including source code and object code), applications, rules engines, methods, artifacts, rules, databases, metadata, documentation, methodologies, and other materials, whether in tangible or electronic form, regardless of copyrightability, but including copyright and moral rights recognized by law, except for any and all such items which relate to general knowledge of the lending or computer technology industries, including general knowledge relating to the origination, acquisition, servicing, and sale of loans and general-purpose computer programs, routines and utilities.

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 TechPG warrants its products for 90 days and warrants that its services will be performed in a good and workmanlike manner. TechPG 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 TechPG for DNREC in connection with the provision of the Services, TechPG shall pass through or assign to DNREC the rights TechPG 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.

8.3 EXCEPT FOR THE WARRANTIES SET FORTH IN THIS SECTIONS 8.1 AND 8.2 ABOVE, THE PARTIES HEREBY DISCLAIM ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND

ANY IMPLIED WARRANTIES ARISING OUT OF COURSE OF PERFORMANCE OR USAGE OF TRADE. TECHPG EXPRESSLY DOES NOT WARRANT THAT ITS PRODUCTS OR SERVICES WILL FULFILL ANY OF DNREC'S SPECIFIC NEEDS THAT ARE NOT SPECIFICALLY IDENTIFIED IN A RELATED AGREEMENT. DNREC ACKNOWLEDGES THAT ITS USE OF PRODUCTS OR SERVICES PROVIDED BY TECHPG MAY BE ALTERED OR INTERRUPTED AS A RESULT OF CAUSES BEYOND THE CONTROL OF TECHPG AND TECHPG SHALL NOT BE LIABLE FOR ANY SUCH CAUSES.

8.4 IN NO EVENT SHALL TECHPG BE LIABLE TO DNREC FOR ANY DAMAGES ARISING FROM LOSS OF DATA OR DOCUMENTATION. DNREC bears the entire responsibility for protecting and backing up its data and documentation.

8.5 The rights, licenses, representations and warranties made and granted by TechPG hereunder are solely for DNREC's benefit. No other party shall have any right to make any claim under this Agreement, and no other party shall be deemed a beneficiary of this Agreement.

8.6 DNREC will be responsible for providing all: (i) computer hardware including servers, routers and client desktop computers; (ii) operating system and network software, including Internet, network, operating system, and database software required to operate the work product; and (iii) all operational staff necessary to operate the system and perform all maintenance to the DNREC technical environment. This DNREC responsibility includes establishing network security and firewall protection necessary to protect DNREC's data and application software from unauthorized access.

9. Indemnification; Limitation of Liability.

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

9.3 DNREC agrees that TechPG's total liability to DNREC 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 TechPG negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate, exceed fees paid to TechPG.

In no event shall TechPG 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 TechPG has been advised of the likelihood of such damages.

10. Employees.

10.1 TechPG has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by TechPG in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor DNREC'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 TechPG 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, TechPG shall be, and is, an independent contractor, and is not an agent or employee of DNREC and shall furnish such services in its own manner and method except as required by this Agreement. TechPG shall be solely responsible for, and shall indemnify, defend and save DNREC 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 TechPG acknowledges that TechPG and any subcontractors, agents or employees employed by TechPG shall not, under any circumstances, be considered employees of DNREC, and that they shall not be entitled to any of the benefits or rights afforded employees of DNREC, 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. DNREC will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of DNREC or any of its officers, employees or other agents.

11.3 TechPG shall be responsible for providing liability insurance for its personnel.

11.4 As an independent contractor, TechPG has no authority to bind or commit DNREC. 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 DNREC may suspend performance by TechPG under this Agreement for such period of time as DNREC, at its sole discretion, may prescribe by providing written notice to TechPG at least 30 working days prior to the date on which DNREC wishes to suspend. Upon such suspension, DNREC shall pay TechPG its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. TechPG shall not perform further work under this Agreement after the effective date of suspension until receipt of written notice from DNREC to resume performance.

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

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 DNREC for its convenience, but only after TechPG is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with DNREC prior to termination.

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

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

13.5 In the event of termination of this Agreement by TechPG, TechPG may: (i) declare all undisputed amounts owed to TechPG up through the time of termination to be immediately due and payable; (ii)

require that DNREC cease any further use of the software, services and materials provided by TechPG; and (iii) cease performance of all of TechPG's obligations hereunder without liability to DNREC.

13.6 Provided that the software license described in Appendix D, License Agreement for EnABLE, is in full force and effect and has been paid in full, the termination of this Agreement by either party will not revoke the licensing privileges granted to DNREC under Appendix D.

13.7 The rights and remedies of DNREC and TechPG provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

13.8 Gratuities.

13.8.1 DNREC may, by written notice to TechPG, terminate this Agreement if it is found after notice and hearing by DNREC that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by TechPG or any agent or representative of TechPG to any officer or employee of DNREC 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.

13.8.2 In the event this Agreement is terminated as provided in 13.6.1 hereof, DNREC shall be entitled to pursue the same remedies against TechPG it could pursue in the event of a breach of this Agreement by TechPG.

13.8.3 The rights and remedies of DNREC 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 TechPG to assign or otherwise transfer any interest in this Agreement without the prior written consent of DNREC shall be void. Such consent shall not be unreasonably withheld.

15.2 Services specified by this Agreement shall not be subcontracted by TechPG without prior written approval of DNREC.

15.3 Approval by DNREC of TechPG's request to subcontract or acceptance of or payment for subcontracted work by DNREC shall not in any way relieve TechPG 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 TechPG shall be and remain liable for all damages to DNREC caused by negligent performance or non-performance of work under this Agreement by TechPG, its subcontractor or its sub-subcontractor.

15.5 The compensation due shall not be affected by DNREC's approval of the TechPG'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 DNREC 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 DNREC's obligations under it shall be extinguished at the end of the fiscal year in which DNREC 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.

TechPG 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 DNREC and TechPG 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 TechPG may not order any product requiring a purchase order prior to DNREC'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, TechPG shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. TechPG 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 TechPG 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. TechPG 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 TechPG acknowledges that DNREC has an obligation to ensure that public funds are not used to subsidize private discrimination. TechPG 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, DNREC may declare TechPG in breach of the Agreement, terminate the Agreement, and designate TechPG as non-responsible.

20.6 TechPG 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, DNREC 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.

20.8 TechPG 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 DNREC may inspect or audit TechPG's performance and records pertaining to this Agreement at the TechPG business office during normal business hours.

21. Insurance.

21.1 TechPG 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. TechPG 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:

Delaware Department of Natural Resources and Environmental Control

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, TechPG hereby grants, conveys, sells, assigns, and transfers to DNREC 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. TechPG consents to jurisdiction venue in the State of Delaware.

24. 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 DNREC:
Delaware Department of Natural Resources and Environmental Control
Office of the Secretary, Financial Assistance Branch
5 East Reed Street, Suite 200
Dover, DE 19901-7334
Attn: Terry L. Deputy

TO TECHPG:
Technology Partnership Group, Inc.
9860 Westpoint Drive, Suite 700
Indianapolis, Indiana 46256
Attn: Terri Eakins

[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.

Original on File

Witness

Date:

8/27/13

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL

Original on File

Name: Collin P. O'Mara

Title: Secretary, DNREC

Date:

8/27/13

Original on File

Witness

Date:

8/22/2013

TECHNOLOGY PARTNERSHIP GROUP, INC.

Original on File

Name: Terri L. Eakins

Title: President and CEO

Date:

8/22/2013