

PROFESSIONAL SERVICES AGREEMENT

This Agreement ("Agreement") is entered into as of January 1, 2012 ("Effective Date") and will end on June 30, 2013 with two extensions for a period of one year each, by and between the State of Delaware, Department of State, Division of Corporations ("Delaware"), and Delaware Captive Insurance Association, a Delaware corporation, with offices at 1105 N. Market Street, Wilmington, DE 19801-1216 ("DCIA").

WHEREAS, Delaware desires to obtain certain services to promote the appeal of Delaware as a domicile for captive insurance companies to license and locate their operations;

WHEREAS, DCIA desires to provide such services to Delaware on the terms set forth below; and

WHEREAS, Delaware and DCIA 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 DCIA agree as follows:

1. Services.

1.1 DCIA shall perform for Delaware the services (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) DCIA's 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 to be performed, subject to the DCIA's consent, which is not to be unreasonably withheld. No services for which additional compensation may be charged by DCIA 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 DCIA, which 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 DCIA for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1.4 DCIA will not be required to make changes to its scope of work that result in DCIA'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 initial term of this Agreement shall be from January 1, 2012 through June 30, 2013 with two one-year extensions available.

2.2 Delaware will pay DCIA for the performance of services described in Appendix B, Statement of Work. The fee will be paid in accordance with the payment schedule attached hereto as part of Appendix B.

2.3 Subject to Section 2.4, Delaware's obligation to pay DCIA for the performance of services described in Appendix B, Statement of Work will not exceed the fixed fee amount of \$177,500.00 during the initial term of this Agreement, ending on June 30, 2013. Delaware reserves the right to change this amount during the extension periods as necessary to satisfy work requirements. It is expressly understood that the work defined in the Appendices to this Agreement must be completed by DCIA, and it shall be DCIA's 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 DCIA.

2.4 DCIA shall submit invoices to Delaware in sufficient detail to support the Services provided for each phase of the work as outlined in Appendix B. Delaware agrees to pay those invoices within thirty (30) calendar 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 DCIA 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 DCIA to charge a service charge on the overdue portion at no more than 1.0% per month or 12% per annum. All payments should be sent to DCIA, 1105 N. Market Street, Wilmington, DE

19801-1216.

2.5 Unless provided otherwise in an Appendix, all expenses incurred in the performance of the Services are to be paid by DCIA. If an Appendix specifically provides for expense reimbursement, DCIA shall be reimbursed only for reasonable expenses incurred by DCIA 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 DCIA all damages, costs and expenses caused by DCIA's negligence, resulting from or arising out of errors or omissions in DCIA's work products, which have not been previously paid to DCIA.

2.8 Invoices shall be submitted to: Office of the Secretary of State, Attn: Christopher Portante, 401 Federal Street, Suite 3, Dover, DE, 19901.

3. Responsibilities of DCIA.

3.1 DCIA shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all Services furnished by DCIA, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified Services, DCIA shall follow practices consistent with generally accepted professional and technical standards. DCIA shall be responsible for ensuring that any information technology ("IT")-related 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 IT-related service, product or deliverable furnished pursuant to this Agreement does not conform with DTI standards, DCIA shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform with DTI standards. DCIA shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by DCIA's failure to ensure compliance with DTI standards.

3.2 It shall be the duty of DCIA to ensure that all products of its efforts are technically sound and in conformance with all pertinent federal, state and local statutes, codes, ordinances, resolutions and other regulations. DCIA will not, to the best of its knowledge, produce a work product that violates or infringes on any copyright or patent rights. DCIA 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 DCIA shall not in any way relieve DCIA of responsibility for the professional and technical accuracy and adequacy of its work. Delaware's review, approval, acceptance, or payment for any of DCIA'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 DCIA shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by DCIA's performance or failure to perform under this Agreement.

3.4 DCIA shall appoint a "Lead Manager" ("Lead Manager") who will manage the performance of Services. All of the Services specified by this Agreement shall be performed by the Lead Manager, or by DCIA's associates, employees, or members under the personal supervision of the Lead Manager.

3.5 Should the Lead Manager need to be diverted off the project for what are now unforeseeable circumstances, DCIA will notify Delaware immediately and work out a transition plan that is acceptable to the parties, as well as agree to an acceptable replacement plan to fill or complete the work assigned to this lead staff position. If DCIA fails to make a required replacement within thirty (30) calendar days, Delaware may terminate this Agreement for default. Upon receipt of written notice from Delaware that a Lead Manager of DCIA is unsuitable to Delaware for good cause, DCIA shall remove such Lead Manager from the performance of services and substitute in his/her place a suitable Lead Manager.

3.6 DCIA agrees that its officers, members, associates 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.

3.7 DCIA has or will retain such persons as it may need to perform the services required by this Agreement. Such persons shall not be employed by Delaware or any other political subdivision of Delaware.

3.8 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 A project schedule is included in Appendix B as the Deliverables Schedule.

4.2 Any delay of services or change in sequence of tasks must be approved in writing by Delaware. "Writing" includes electronic mail.

4.3 In the event that DCIA fails to complete the project or any phase thereof within the time specified in the Agreement, 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 ensure its completion within the time specified in this Agreement or any extensions thereof, Delaware shall suspend the payments scheduled as set forth in Appendix B until such time as DCIA has completed the project, or phase thereof, as the case may be.

5. State Responsibilities.

5.1 In connection with DCIA's provision of the Services under this Agreement, 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 DCIA in the performance of Services under this Agreement and will be available for consultation with DCIA at such reasonable times with advance notice as to not conflict with their other responsibilities.

5.3 The Services performed by DCIA 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 DCIA 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 DCIA. It is understood that Delaware's representatives' review comments do not relieve DCIA 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 DCIA 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;
and
- 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.

DCIA shall return any original data provided by Delaware.

6. Work Product.

6.1 All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by DCIA 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 request. DCIA 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 In no event shall DCIA 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, DCIA 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.

6.3 Notwithstanding anything to the contrary contained herein or in any attachment hereto, any and all intellectual property or other proprietary data owned by DCIA prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of DCIA 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.

DCIA warrants that its services will be performed in a good and workmanlike manner. DCIA 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.

9. Indemnification; Limitation of Liability.

9.1 DCIA shall indemnify and hold harmless Delaware, 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 DCIA, its agents or employees, or (B) DCIA'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) DCIA shall have been notified promptly in writing by Delaware of any notice of such claim; and (ii) DCIA 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 DCIA in writing of a third party claim against Delaware that any Deliverable infringes a copyright or a trade secret of any third party, DCIA will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Delaware. DCIA 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 DCIA; (3) Delaware's use of the Deliverable in combination with any product or information not owned or developed by DCIA; (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 DCIA's opinion is likely to be, held to be infringing, DCIA shall at its expense and option either (a) procure the right for Delaware to continue using it, (b) replace it with a noninfringing equivalent, or (c) modify it to make it noninfringing. The foregoing remedies constitute Delaware's sole and exclusive remedies and DCIA's entire liability with respect to infringement.

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

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

10. Employees.

10.1 DCIA has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by DCIA 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 Safety and Homeland Security, may be required of any employee of DCIA 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, DCIA 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. DCIA 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 DCIA acknowledges that DCIA and any subcontractors, agents or employees employed by DCIA 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 DCIA shall be responsible for providing liability insurance for its personnel.

11.4 As an independent contractor, DCIA 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 DCIA under this Agreement for such period of time as Delaware, at its sole discretion, may prescribe by providing written notice to DCIA at least thirty (30) calendar days prior to the date on which Delaware wishes to suspend. Upon such suspension, Delaware shall pay DCIA its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. DCIA shall not perform further work under this Agreement after the effective date of suspension. DCIA 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 DCIA for any cause other than the error or omission of the DCIA, for an aggregate period in excess of thirty (30) calendar days, DCIA shall be entitled to an equitable adjustment of the compensation payable to DCIA under this Agreement to reimburse DCIA 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 DCIA 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 as set forth in Section 13.1, Delaware will pay DCIA 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;
- b. Any payment due to DCIA at the time of termination may be adjusted to the extent of any additional costs occasioned to Delaware by reason of DCIA's default; and
- 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 DCIA shall cease conducting business, Delaware shall have the right to make an unsolicited offer of employment to any employees of DCIA assigned to the performance of the Agreement, notwithstanding the provisions of Section 10.2.

13.4 If after Delaware's termination for default of DCIA to fulfill contractual obligations it is determined that DCIA 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 DCIA 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 DCIA, 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 DCIA or any agent or representative of DCIA 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 DCIA it could pursue in the event of a breach of this Agreement by DCIA.

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 DCIA 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 DCIA, without prior written approval of Delaware.

15.3 No portion of the grant shall be used for administrative outsourcing.

15.4 Approval by Delaware of DCIA's request to subcontract or acceptance of or payment for subcontracted work by Delaware shall not in any way relieve DCIA of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.

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

15.6 The compensation due shall not be affected by Delaware's approval of the DCIA's request to subcontract.

16. Force Majeure.

Neither party shall be liable for any delays or failures in performance due to an event of "force majeure" (as described below). If a party is rendered unable, completely or partially, by the occurrence of any event of "force majeure" to perform such party's obligations under this Agreement, such party shall give to the other party prompt written notice of the event of "force majeure" with reasonably complete particulars concerning such event; thereupon, the obligations of the party giving such notice, so far as those obligations are affected by the event of "force majeure" shall use all reasonable diligence to resolve, eliminate and terminate the event of "force majeure" as quickly as practicable. The term "force majeure" as used herein shall be defined to mean any act of nature, strike, civil disturbance, lockout or other industrial disturbance, act of the public enemy, war blockage, public riot, earthquake, tornado, hurricane, lightning, fire, public demonstration, storm, flood, explosion, governmental action, governmental delay, restraint or inaction, unavailability of equipment, and any other cause or event, whether of the kind enumerated specifically herein, or otherwise, which is not reasonably within the control of the party claiming such suspension.

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 Delaware 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.

DCIA 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 DCIA 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 DCIA 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, DCIA shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. DCIA 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 DCIA 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. DCIA 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 DCIA acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. DCIA 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 DCIA in breach of the Agreement, terminate the Agreement, and designate DCIA as non-responsible.

20.6 DCIA 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 Agreement 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 the parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.

20.8 DCIA 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 DCIA's performance and records pertaining to this Agreement at DCIA business office during normal business hours.

21. Insurance.

21.1 DCIA 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; **and**
- C. Professional Liability/Miscellaneous Errors and Omissions/Product Liability - \$1,000,000.

21.2 DCIA shall provide forty five (45) calendar 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 Delaware.

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 Agreement by the State, DCIA 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 Delaware pursuant to this Agreement.

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. DCIA consents to jurisdiction and 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 DELAWARE: Office of the Secretary of State
401 Federal Street, Suite 3
Dover, DE 19901

DCIA: Delaware Captive Insurance Association
1105 N. Market Street, Suite 1300
Wilmington, DE 19801

The addresses set forth above may be changed from time to time by a notice sent as aforesaid. If notice is given by personal delivery or overnight delivery in accordance with the provisions of this Section, such notice shall be conclusively deemed given at the time of such delivery provided a receipt is obtained from the recipient. If notice is given by mail in accordance with the provisions of this Section, such notice shall be conclusively deemed given upon receipt and delivery or refusal.

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 OF STATE

Witness Christopher Portante

Date: 4/24/12

Name: Richard J. Geisenberger

Title: Chief Deputy Secretary of State

Date: 4-24-12

DELAWARE CAPTIVE INSURANCE ASSOCIATION

Witness Thomas Strauss

Date: 4/24/12

Name: RICHARD KLUMPP

Title: PRESIDENT

Date: 4.24.12

APPENDIX B
CAPTIVE INSURANCE MARKETING RFP
STATEMENT OF WORK
for the Delaware Captive Insurance Association (DCIA)

Purpose

Having developed the infrastructure necessary to appropriately regulate and service captive insurers, the State of Delaware ("Delaware") now seeks a private sector partner to assist the State in ramping up efforts to market and promote Delaware advantages to businesses around the globe.

Scope of Work

The objective of these marketing efforts is to significantly increase Delaware's presence in this market, increase the percentage of captive insurance service providers that recommend Delaware to their clients, increase the number of high quality captive insurance businesses applying for licenses in Delaware, and ultimately to grow the number of persons employed and sustained by this industry in Delaware.

DCIA will engage in the following activities after Delaware has agreed to the marketing plan set forth by Aloysius Butler & Clark ("AB&C") – the co-recipient of the grant award – in its Phase II Tactical Plan:

- Advertising in Trade Publications
- Website updates

DCIA will also engage in the following activities, and may begin doing so before the completion of Phase II in accordance with "Schedule of Payment" below.

- Production of Annual or Semi-Annual Conferences in Delaware
- Quarterly Roadshows
- Outside Conferences (RIMS, CICA and WCF, plus others)

Schedule of Payment

Delaware will pay DCIA up to \$177,500. Delaware may advance DCIA up to \$40,000 for services delivered prior to completion of the Phase II Tactical Plan due from AB&C. The remaining payment schedule will be included in the Tactical Plan.

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AMENDED PROFESSIONAL SERVICES AGREEMENT

This Agreement ("Agreement") is entered into as of January 1, 2012 ("Effective Date") and will end on June 30, 2013 with two extensions for a period of one year each, by and between the State of Delaware, Department of State, Division of Corporations ("Delaware"), and Aloysius Butler & Clark Associates, Inc. (AB&C), a Delaware corporation, with offices at 819 N. Washington Street, Wilmington, DE, 19801 ("AB&C").

WHEREAS, Delaware desires to obtain certain services to promote the appeal of Delaware as a domicile for captive insurance companies to license and locate their operations; and

WHEREAS, AB&C desires to provide such services to Delaware on the terms set forth below;

WHEREAS, Delaware and AB&C 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 AB&C agree as follows:

1. Services.

1.1 AB&C 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) AB&C's 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 AB&C 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 AB&C, 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 AB&C for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1.4 AB&C will not be required to make changes to its scope of work that result in AB&C'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 January 1, 2012 through June 30, 2013.

2.2 Delaware will pay AB&C for the performance of services described in Appendix B, Statement of Work. The fee will be paid in accordance with the payment schedule attached hereto as part of Appendix B.

2.3 Delaware's obligation to pay AB&C for the performance of services described in Appendix B, Statement of Work will not exceed the fixed fee amount of \$22,500.00 during the first term of this contract, ending on June 30, 2012. Delaware reserves the right to change this amount during the extension periods as necessary to satisfy work requirements. It is expressly understood that the work defined in the appendices to this Agreement must be completed by AB&C, and it shall be AB&C's 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 AB&C.

2.4 AB&C shall submit invoices to Delaware in sufficient detail to support the services provided for each phase of the work as outlined in Appendix B. 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 AB&C 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 AB&C 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 AB&C, 819 N. Washington Street, Wilmington, DE, 19801.

2.5 Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by AB&C. If an Appendix specifically provides for expense reimbursement, AB&C shall be reimbursed only for reasonable expenses incurred by AB&C 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 AB&C all damages, costs and expenses caused by AB&C's negligence, resulting from or arising out of errors or omissions in AB&C's work products, which have not been previously paid to AB&C.

2.8 Invoices shall be submitted to: Office of the Secretary of State, Attn: Christopher Portante, 401 Federal Street, Suite 3, Dover, DE, 19901.

3. Responsibilities of AB&C.

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

3.2 It shall be the duty of the AB&C 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. AB&C will not produce a work product that violates or infringes on any copyright or patent rights. AB&C 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 AB&C shall not in any way relieve AB&C of responsibility for the professional and technical accuracy and adequacy of its work. Delaware's review,

Amended Professional Services Agreement 4

approval, acceptance, or payment for any of AB&C'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 AB&C shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by AB&C's performance or failure to perform under this Agreement.

3.4 AB&C 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 AB&C's associates and employees under the personal supervision of the Project Manager.

3.5 Should the staff need to be diverted off the project for what are now unforeseeable circumstances, AB&C 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 AB&C 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 AB&C is unsuitable to Delaware for good cause, AB&C shall remove such employee from the performance of services and substitute in his/her place a suitable employee.

3.6 AB&C 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.

3.7 AB&C 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.

3.8 AB&C will not use Delaware's name, either express or implied, in any of its advertising or sales materials without Delaware's express written consent.

3.9 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 A project schedule is included in Appendix B as the Deliverables Schedule.

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 AB&C 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 Appendix B.

5. State Responsibilities.

5.1 In connection with AB&C's 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 AB&C in the performance of services under this Agreement and will be available for consultation with AB&C at such reasonable times with advance notice as to not conflict with their other responsibilities.

5.3 The services performed by AB&C 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 AB&C 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 AB&C. It is understood that Delaware's representatives' review comments do not relieve AB&C 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 AB&C 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.

AB&C shall return any original data provided by Delaware.

5.6 Delaware shall assist AB&C 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 AB&C 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 AB&C's name, either express or implied, in any of its advertising or sales materials. AB&C 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 AB&C 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. AB&C 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 AB&C 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 AB&C retains title, whether individually by AB&C 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 AB&C 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, AB&C 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 AB&C prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of AB&C 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 AB&C warrants that its services will be performed in a good and workmanlike manner. AB&C 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 AB&C for Delaware in connection with the provision of the Services, AB&C shall pass through or assign to Delaware the rights AB&C 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 AB&C 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 AB&C, its agents or employees, or (B) AB&C'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) AB&C shall have been notified

promptly in writing by Delaware of any notice of such claim; and (ii) AB&C 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 AB&C in writing of a third party claim against Delaware that any Deliverable infringes a copyright or a trade secret of any third party, AB&C will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Delaware. AB&C 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 AB&C; (3) Delaware's use of the Deliverable in combination with any product or information not owned or developed by AB&C; (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 AB&C's opinion is likely to be, held to be infringing, AB&C 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 AB&C's entire liability with respect to infringement.

9.3 Delaware agrees that AB&C'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 AB&C negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate, exceed fees paid to AB&C.

In no event shall AB&C 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 AB&C has been advised of the likelihood of such damages.

10. Employees.

10.1 AB&C has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by AB&C 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 Safety and Homeland Security, may be required of any employee of AB&C 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, AB&C 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. AB&C 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 AB&C acknowledges that AB&C and any subcontractors, agents or employees employed by AB&C 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 AB&C shall be responsible for providing liability insurance for its personnel.

11.4 As an independent contractor, AB&C 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 AB&C under this Agreement for such period of time as Delaware, at its sole discretion, may prescribe by providing

written notice to AB&C at least 30 working days prior to the date on which Delaware wishes to suspend. Upon such suspension, Delaware shall pay AB&C its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. AB&C shall not perform further work under this Agreement after the effective date of suspension. AB&C 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 AB&C for any cause other than the error or omission of the AB&C, for an aggregate period in excess of 30 days, AB&C shall be entitled to an equitable adjustment of the compensation payable to AB&C under this Agreement to reimburse AB&C 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 AB&C 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 AB&C 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 AB&C at the time of termination may be adjusted to the extent of any additional costs occasioned to

Delaware by reason of AB&C's 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 AB&C shall cease conducting business, Delaware shall have the right to make an unsolicited offer of employment to any employees of AB&C assigned to the performance of the Agreement, notwithstanding the provisions of Section 10.2.

13.4 If after termination for failure of AB&C to fulfill contractual obligations it is determined that AB&C 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 AB&C 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 AB&C, 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 AB&C or any agent or representative of AB&C 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 AB&C it could pursue in the event of a breach of this Agreement by AB&C.

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 AB&C 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 AB&C, without prior written approval of Delaware.

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

15.5 The compensation due shall not be affected by Delaware's approval of the AB&C'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.

AB&C 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 AB&C 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 AB&C 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, AB&C shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. AB&C 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 AB&C 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. AB&C 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 AB&C acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. AB&C 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 AB&C in breach of the Agreement, terminate the Agreement, and designate AB&C as non-responsible.

20.6 AB&C 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.

20.8 AB&C 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 AB&C's performance and records

pertaining to this Agreement at the AB&C business office during normal business hours.

21. Insurance.

21.1 AB&C 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. AB&C 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.

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, AB&C 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. AB&C 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 DELAWARE: Office of the Secretary of State
401 Federal Street, Suite 3
Dover, DE 19901

TO AB&C: Aloysius Butler & Clark Associates, Inc.
819 N. Washington Street
Wilmington, DE 19801

SIGNATURE PAGE TO FOLLOW

Amended Professional Services Agreement 17

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 STATE

Name: Richard J. Gaisenberger
Title: Chief Deputy Secretary of State
Date: 4/19/12

Witness
Date: 4/19/12

ALOYISIUS BUTLER & CLARK ASSOCIATES, INC.

Name: _____
Title: MANAGING PARTNER / D.O. of
Date: April 19, 2012 MARKETING

Witness
Date: _____

APPENDIX B
CAPTIVE INSURANCE MARKETING RFP
STATEMENT OF WORK
for Aloysius, Butler & Clark

Purpose

Having developed the infrastructure necessary to appropriately regulate and service captive insurers, the State of Delaware ("Delaware") now seeks a private sector partner to assist the State in ramping up efforts to market and promote Delaware advantages to businesses around the globe.

Scope of Work

The objective of these marketing efforts is to significantly increase Delaware's presence in this market, increase the percentage of captive insurance service providers that recommend Delaware to their clients, increase the number of high quality captive insurance businesses applying for licenses in Delaware, and ultimately to grow the number of persons employed and sustained by this industry in Delaware.

(Phase I) Via a streamlined branding process, Aloysius, Butler & Clark ("AB&C") will conduct a series of strategic research steps to learn more about the captive insurance industry; Delaware's competitive distinctions; its audience; and its competition. AB&C will use the information gleaned from this process to develop brand identity, archetype, and overall foundation for the captive insurance brand in Delaware. This will include messaging and creative concepts.

Phase I deliverables will include new brand positioning and messaging; brand archetype; competitive analysis; and creative concepts.

(Phase 2) Collaboratively, AB&C will develop a series of marketing, advertising and public relations tactical recommendations that will enable Delaware to speak directly to and reach each of the target audiences identified in Phase I.

Deliverables Schedule

Phase I: Discovery and Brand Identity – March 31, 2012

Phase II: Tactical Plan – May 15, 2012

Schedule of Payment

The State of Delaware will pay AB&C for work performed at the completion of each phase.

Phase I: \$19,500

Phase II: \$3,000