

## TAX CREDIT PURCHASE AGREEMENT

This Tax Credit Purchase Agreement, dated as of \_\_\_\_\_, 2012 (this “Agreement”), is entered into by \_\_\_\_\_, Inc., a \_\_\_\_\_ corporation (the “Purchaser”), and the Department of Business and Economic Development, a principal department of the State of Maryland (“DBED”).

### RECITALS

A. The InvestMaryland Program (the “Program”), enacted as Title 6, Subtitle 5 of the Economic Development Article, Annotated Code of Maryland (the “Act”), provides for the sale of up to \$100,000,000 in insurance premium tax credits (“Tax Credits”) to qualifying insurance companies. Proceeds of the sale will be invested in qualifying Maryland companies as defined in the Act.

B. DBED is the administrator of the Program under the Act.

### AGREEMENT

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### **ARTICLE I DEFINITIONS**

All terms previously defined are incorporated in this Agreement by reference. Capitalized terms used in this Agreement have the meanings defined below:

“Allocation Amount” means the total amount of Tax Credits allocated to a Purchaser.

“Allocation Date” means the date on which tax credits are allocated to a Purchaser under section 6-513 of the Act.

“Claim” means any action or other claim for liability, loss, expense, or other cost, including fees, costs and expenses of attorneys, consultants, contractors, and experts.

“Designated Capital” means the amount of money that a Purchaser invests under the program.

“Enterprise Fund” means the Enterprise Fund under Title 5, Subtitle 6 of the Economic Development Article, Annotated Code of Maryland.

“Governmental Authority” means the United States, the State, or any of their political subdivisions, agencies, or instrumentalities, including any local authority having jurisdiction over any aspect of the Program.

“Insurance Premium Tax Liability” means:

(1) any liability incurred by an insurance company under Title 6, Subtitle 1 of the Insurance Article as of October 1, 2011; or

(2) if the liability imposed under Title 6, Subtitle 1 of the Insurance Article is eliminated or reduced, any other tax liability that has been imposed by the State on the insurance company as of October 1, 2011, not to exceed the amount of the liability eliminated or reduced.

“Laws” means any current or future federal, state and local laws, regulations, decisions, interpretations, orders, or decrees of any court or other Governmental Authority having jurisdiction.

“Program” means the InvestMaryland program under the Act.

“Purchaser” means:

- (1) an insurance company that:
  - (i) is authorized to do business in the State,
  - (ii) has insurance premium tax liability, and
  - (iii) contributes Designated Capital to purchase an allocation of premium tax credits under the Program, or
- (2) a holding company that:
  - (i) has at least one insurance company subsidiary authorized to do business in the State, and
  - (ii) is contributing Designated Capital on behalf of one or more of these subsidiaries.

“Tax Credit” means a credit against insurance premium tax liability offered to a Purchaser under the Program.

## **ARTICLE II PURCHASE AND SALE OF TAX CREDITS**

Section 2.01. Purchase and Sale. Pursuant to the Act, an auction of Tax Credits (the “Auction”) was held on \_\_\_\_\_, 2012. The Purchaser submitted a bid of \$\_\_\_\_\_ in Designated Capital as payment for Tax Credits in the amount of \$\_\_\_\_\_. This bid was accepted by DBED.

Section 2.02. Payment in Installments. As provided under the Act, the Designated Capital will be payable into the Enterprise Fund in three equal annual installments due June 1, 2012, June 1, 2013, and June 1, 2014.

Section 2.03. Tax Credit Certificates. A separate Tax Credit Certificate in the form attached as Exhibit A to this Agreement will be issued to the Purchaser at the time each installment of the Designated Capital is received by DBED. The amount of each Tax Credit Certificate issued pursuant to this Agreement will be \$\_\_\_\_\_.

**ARTICLE III  
REPRESENTATIONS, WARRANTIES, AND COVENANTS  
OF THE PURCHASER**

Section 3.01. Representations and Warranties of the Purchaser. As of the date of this Agreement and as of each date that DBED issues a Tax Credit Certificate to the Purchaser, the Purchaser represents and warrants to DBED the following:

- (a) Organization. The Purchaser:
- (i) is a corporation duly organized, validly existing, and in good standing under the laws of the State of \_\_\_\_\_;
  - (ii) has the power to own its property and to carry on its business as now being conducted;
  - (iii) is duly qualified to do business and is in good standing in the State and in each jurisdiction in which the character of its properties or the transaction of its business makes qualification necessary;
  - (iv) has delivered a complete copy of its articles of incorporation and by-laws, together with all amendments, to DBED; and
  - (v) meets the definition of a “Purchaser” as defined in this Agreement.
- (b) Authorization. The Borrower has the full corporate power and authority to execute and deliver this Agreement, to purchase the Tax Credits as contemplated by this Agreement, and to comply with all of the other terms and conditions set forth in this Agreement, which has been duly authorized by all necessary corporate action of the Purchaser. No approval of any other person, public authority, or regulatory body is required as a condition to the validity of the Purchaser’s obligations under this Agreement, or, if required, the approval has been obtained.
- (c) Validity of this Agreement. This Agreement has been properly executed by the Purchaser and:
- (i) will not violate any Laws or any provision of the Purchaser’s articles of incorporation or by-laws;
  - (ii) will not violate any provision, or result in a breach, of any document or agreement binding on the Purchaser or affecting its property; and
  - (iii) will constitute the valid and legally binding obligation of the Purchaser, fully enforceable against the Purchaser in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium, usury, or other laws of general application relating to the enforcement of creditors’ rights and the rules or laws governing specific performance, injunctive relief, or other equitable remedies.

(d) Legal Actions. There is no (1) claim pending or, to the best of the Purchaser's knowledge, threatened in any court or before any governmental agency, or (2) investigation by or before any Governmental Authority, that:

(i) questions the validity or enforceability of this Agreement or any action taken or to be taken under this Agreement; or

(ii) is likely to result in any material adverse change in the authority, assets, liabilities, or financial condition of the Purchaser that would materially impair the Purchaser's ability to perform any of its obligations under this Agreement.

(e) Taxes. The Purchaser has paid all taxes imposed upon it and its properties prior to the date when any interest or penalty would accrue for nonpayment, except for those taxes being contested in good faith and by appropriate proceedings by the Purchaser.

(f) Accuracy of Statements. All information contained in any financial statement, report, or other document given by the Purchaser or by any other person in connection with the purchase of Tax Credits is true and accurate in all respects, and the Purchaser and each other person has not omitted to state any material fact or any fact necessary to make the information not misleading.

(g) Compliance With Laws. The Purchaser has complied with all Laws.

Section 3.02. Borrower's Covenants. The Purchaser covenants as follows:

(a) Payment of Designated Capital. The Purchaser shall promptly pay the Designated Capital for the Tax Credits as provided in the Act and in Article II of this Agreement.

(b) Financial Information. The Purchaser will furnish DBED with any financial information reasonably requested by DBED.

(c) Good Standing. The Purchaser will maintain its existence as a \_\_\_\_\_ corporation and its good standing and qualification to do business in the State.

(d) Books and Records. The Purchaser will keep any books, records, and other documents that may be required under the procedures now or hereafter applicable to the InvestMaryland Program and as may be reasonably necessary to disclose fully the Purchaser's compliance with this Agreement. All books, records and other documents shall be maintained at the offices of the Purchaser for inspection, copying, audit, and examination at all reasonable times by any duly authorized representative of DBED. All books, records and other documents shall be maintained until three years after the payment in full of the Designated Capital under this Agreement.

(e) Taxes. The Purchaser shall promptly pay all Taxes imposed on the Purchaser and its properties prior to the date when any interest or penalty would accrue for non-payment, except for those Taxes being contested in good faith by appropriate proceedings by the Purchaser.

(f) Indemnification. The Purchaser releases the State and DBED from, and agrees to protect, indemnify and save each of them harmless against, any claims and expenses incurred by, or asserted against, any of them related to the purchase of the Tax Credits as contemplated under this Agreement. All money expended by the State or DBED as a result of such claims and expenses, together with interest at a

rate equal to 10% per annum from the date of payment, shall constitute an indebtedness of the Purchaser, payable by the Purchaser immediately on demand by the State or DBED. This Section 3.02(i) shall survive termination of this Agreement.

- (g) Compliance With Laws. The Purchaser will comply with all Laws.

#### **ARTICLE IV DEFAULTS AND REMEDIES**

Section 4.01. Defaults. The following events shall constitute a default under this Agreement:

- (a) the Purchaser fails to pay to DBED any installment of the Designated Capital as required by the Act and Article II of this Agreement;
- (b) the Purchaser sells or otherwise disposes of any of the Tax Credits other than as permitted under Article V of this Agreement.

Section 4.02. Remedies.

- (a) Upon the occurrence of any Default, DBED may:
- (i) require the immediate payment of the entire unpaid amount of Designated Capital that the Purchaser agreed to contribute in accordance with Article II of this Agreement;
  - (ii) assess against the Purchaser a penalty equal to 10% of the amount of the Designated Capital that is not paid as of the due date, payable within 30 days after demand by DBED;
  - (iii) declare the sale or disposition of any Tax Credits other than as permitted under Article V of this Agreement to be null and void;
  - (iv) suspend or terminate the Purchaser's authority to receive any additional Tax Credits under this Agreement; or
  - (v) at any time proceed to protect and enforce all rights and remedies available to DBED under this Agreement or by Law, by any other proceedings, whether for specific performance of any agreement contained in this Agreement, damages, or other relief.
- (b) All remedies provided for in this Agreement or by law are cumulative and in addition to any other rights and remedies available to DBED. The exercise of any right or remedy by DBED shall not constitute a cure or waiver of any default by the Purchaser or invalidate any act done pursuant to any notice of default, and shall not prejudice DBED in the exercise of those rights.
- (c) The failure of DBED to insist upon performance of any term of this Agreement shall not constitute a waiver of any term of this Agreement. No act of DBED shall be construed as an election to proceed under any one provision in this Agreement to the exclusion of any other provision.
- (d) If DBED suspends or terminates this Agreement, the rights and remedies available to DBED shall survive the suspension or termination.

Section 4.03. Setoff. DBED may set off against and apply any funds of the Purchaser on deposit with, or under the control of, the State to the payment of any penalty assessed under Section 4.02(a)(i), without notice and without resort to any judicial proceeding.

Section 4.04. Reallocation of Designated Capital; Waiver of Penalty.

(a) If a Purchaser defaults on a payment of Designated Capital, DBED may in its sole discretion attempt to reallocate the defaulted Designated Capital among the other Purchasers.

(b) If the reallocation of Designated Capital results in the contribution by another Purchaser or Purchasers of the amount of Designated Capital not paid by the defaulting Purchaser, then DBED may but shall not be required to, in its sole discretion, waive the penalty provided under section 4.02(a)(i).

(c) The parties agree to execute and deliver any amendments to this Agreement and any other documents required by DBED in order to reflect any reallocation under this Section.

Section 4.05. Transfer of Tax Credits by Defaulting Purchaser.

(a) On 30 days advance written notice to DBED, a Purchaser that fails to make a payment of Designated Capital within the time specified in this Agreement may avoid the imposition of the penalty provided under section 4.02(a)(i) by transferring the allocation of Tax Credits to a new or existing Purchaser within 30 days after the due date of the defaulted installment in accordance with Article V of this Agreement.

(b) Any transferee of an allocation of Tax Credits by a defaulting Purchaser shall:

(i) assume all of the obligations of the defaulting Purchaser by executing this Agreement and any additional or confirmatory documents required by DBED, and

(ii) make the required payment of Designated Capital within 30 days after the date of the transfer.

**ARTICLE V  
TRANSFER OF TAX CREDITS**

Section 5.01. Transfers Permitted. On 30 days advance written notice to DBED, Tax Credits allocated to a Purchaser under this Agreement may be transferred without further restriction to any other entity that:

(a) meets the definition of “Purchaser” under this Agreement, and

(b) is in good standing with the Maryland Insurance Administration.

Section 5.02. Transferee Bound by this Agreement. Any transferee of Tax Credits under this Agreement shall become a party to this Agreement by executing any confirmatory documents required by DBED and shall assume all of the transferor’s obligations under this Agreement.

**ARTICLE VI  
MISCELLANEOUS**

Section 6.01. Waivers and Amendments. Any provision of this Agreement may be amended, waived or modified only with the written consent of the Purchaser or a permitted transferee or assignee and DBED.

Section 6.02. Governing Law, Venue. This Agreement and all actions related to this Agreement shall be governed by the laws of the State of Maryland, without regard to conflicts of law principles. The parties agree that venue for any action to enforce this Agreement shall be in any Maryland state court.

Section 6.03. Entire Agreement. This Agreement, together with Exhibit A, constitutes the entire agreement between the parties with regard to the Tax Credits.

Section 6.04. Notices, etc. All notices and other communications required or permitted under this Agreement shall be in writing and shall be sent via overnight courier service or mailed by certified or registered mail, postage prepaid, return receipt requested, addressed (a) if to DBED, to the Department of Business and Economic Development, 401 East Pratt Street, 17<sup>th</sup> Floor, Baltimore, Maryland 21202, attention \_\_\_\_\_, or at any other address or number that DBED has furnished to the Purchaser in writing, or (b) if to the Purchaser, at \_\_\_\_\_, attention \_\_\_\_\_, \_\_\_\_\_, or at any other address or number that the Purchaser has furnished to DBED in writing.

Section 6.05. Validity. If any provision of this Agreement is judicially determined to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement shall not be affected.

Section 6.06. Term of Agreement. This Agreement shall terminate as of the date on which the Purchaser has claimed or transferred all of its allocation of Tax Credits.

Section 6.07. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute one document. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or by email of a scanned copy shall be effective as delivery of an original executed counterpart of this Agreement.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed and delivered by their duly authorized officers as of the date and year first written above.

**[Purchaser]**

**Department of Business and  
Economic Development**

By: \_\_\_\_\_  
Name  
Title

By: \_\_\_\_\_  
Christian S. Johansson  
Secretary

InvestMaryland Program  
Tax Credit Purchase Agreement  
[Name of Purchaser]  
DMP draft January 9, 2012

**EXHIBIT A**  
**FORM OF TAX CREDIT CERTIFICATE**