

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STATE PARKS, FORESTS & HISTORIC SITES

AGREEMENT

SEASONAL BOAT-LIVERY (WITHOUT FACILITY) LICENSE

THIS AGREEMENT, made this day of , in the year of Two Thousand and Twenty-Four (2024),

BETWEEN THE STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STATE PARKS, FORESTS & HISTORIC SITES
STATE PARK SERVICE
MAIL CODE: 501-04C, P.O. BOX 420
TRENTON, NEW JERSEY 08625-0420

, hereinafter referred to as Licensor or Department,

AND Name
Title and/or Entity Designation
Street Address
Town, NJ Zip Code

, hereinafter referred to as Licensee.

[Note to bidders: “whereas clauses” with background information about the RFP process will be inserted in the Agreement before it is executed.]

NOW, THEREFORE, Department, in consideration of the payments and covenants hereinafter made, does hereby grant to Licensee and Licensee hereby agrees to operate a license at:

Penn State Forest and Wharton State Forest in Atlantic and Burlington Counties, New Jersey

THAT, IN ACCORDANCE with the provisions of N.J.S.A. 13:1L-6, Licensor does hereby grant to Licensee and Licensee does hereby accept a non-exclusive revocable license to enter upon, for the purposes herein provided: ALL that certain land and improvements thereon comprising part of Penn State Forest and Wharton State Forest designated as the Area (“Area”). The licensed premises, hereinafter referred to as the Department-Designated Delivery/Pick Up Sites, are delineated and identified more particularly on the License Map attached to and made a part of this License as Exhibits A through G.

This License shall be personal to Licensee and shall not be assignable. This License shall extend only to those activities undertaken by authorized employees, volunteers, and agents of Licensee (collectively and severally included in "Licensee").

Licensee hereby covenants and agrees to and with Department as follows:

1. SCOPE OF LICENSE

- A. Licensee shall, under a License Agreement (“License Agreement” or “Agreement”), be granted the non-exclusive, non-assignable, revocable right to rent and deliver boats and related equipment for recreational purposes, including, to conduct guided and/or self-guided boat-based educational tours on an hourly and/or daily basis at Penn State Forest and Wharton State Forest (hereinafter referred to as the “License Operation”). The License Operation shall be limited to the structure(s) or area(s) provided by the Department of Environmental Protection (“Department”) for the purposes set forth in this Agreement and specifically depicted in Exhibits A and B (hereinafter referred to as the “Department-Designated

Delivery/Pick Up Sites”). The License shall extend only to those activities undertaken by authorized employees, volunteers, and agents of Licensee (collectively and severally included in "Licensee”).

- B. Licensee shall, as part of the License Operation, rent boats and related equipment from an off-site administration facility for the sole purposes of conducting guided and/or self-guided boat-based educational tours to promote the recreational, natural and historic resources at Penn State Forest and Wharton State Forest. Boats shall include, but not be limited to, canoes and kayaks. Motorized boats of any kind are not permitted for rental as part of the License Operation by Licensee. Inner tubes or other inflatables are not permitted for rental as part of the License Operation by Licensee. Licensee shall be prohibited from conducting transactions pertaining to the License Operation in Penn State Forest and Wharton State Forest, including on or about the Department-Designated Delivery/Pick Up Sites. All transactions pertaining to the License Operation covered by this Agreement must be conducted from Licensee’s off-site administration facility. Transactions shall include, but not be limited to, the rental of boats and related equipment, receipt of payment, reservations and scheduling of tours, rentals and deliveries.
- C. Licensee shall, as part of the License Operation, deliver and pick up, for purposes of this Agreement, customers, boats and related equipment at the Department-Designated Delivery/Pick Up Sites depicted in Exhibits A and B. Licensee shall only use the existing roads depicted in Exhibits A and B for the delivery and pick up of customers, boats and related equipment. Licensee shall ensure that all boats, related equipment, and customers of the License Operation are delivered from Licensee’s off-site administration facility to the Department-Designated Delivery/Pick Up Sites and returned at the conclusion of the scheduled reservation/tour(s). Licensee shall prominently post a notice at Licensee’s administration facility and advise all patrons and employees of the License Operation that they are required to meet and park all vehicles at Licensee’s administration facility.
- D. Licensee shall be granted access to utilize the following areas for boat ingress and egress:

Mullica River:

- Jackson Road
- Goshen Pond
- Atsion Family Campground
- Nine (9) Atsion Lake Cabins
- Atsion Lake Boat Launch - Monday through Friday only and excluding the New Jersey observed days for Memorial Day, Juneteenth, Independence Day, and Labor Day. In addition, all seasonal fees apply.
- Mullica River Launch, at Atsion along Route 206 east of spillway
- First Beach on Quaker Bridge Road
- Beaver Pond on Mullica River Road
- Constable Bridge
- Mullica River Landing, at Pleasant Mills along Route 542
- Crowley’s Landing, south of Batsto along Route 542

Batsto River:

- Hampton Furnace
- Quaker Bridge
- Batsto Lake Landing, south side of Batsto Lake (Batsto Village shall not be an approved location)

Wading River:

- Hawkin Bridge
- Godfrey Bridge Day Use Area
- Evans Bridge along Route 563
- Beaver Branch south of Bodine Field (Bodine Field shall not be an approved location)

Oswego River:

- Oswego Lake (Penn State Forest, Administered by Bass River State Forest)
- Harrisville Lake along Route 679

Access to the foregoing shall be limited to the existing roads depicted in Exhibits A and B. In addition, Licensee shall only use the Department-Designated Roads/Accesses depicted in Exhibits C, D, E, F and G to deliver and pick up boats and related equipment at the Atsion Family Campground, Nine (9) Atsion Lake Cabins, Goshen Pond Campground, Hawkin Bridge Campground and Godfrey Bridge Campground. However, as provided in Subparagraph 6(J), Department may institute temporary road closures to address hazardous road conditions and/or operational concerns.

- E. Licensee shall be solely responsible for obtaining the necessary vehicle(s), roof top racks and/or trailer(s) suitable for transporting Licensee's customers, boats and related equipment. All boats and related equipment must be marked and clearly identify the name of Licensee. All vehicle(s) used as part of the License Operation must display a voucher, provided by Department in advance of the Period of Operation of each Term of this Agreement, identifying the name, address and telephone number of Licensee. Licensee shall be solely responsible for obtaining all permits, licenses, and certificates for Licensee's Operation. Licensee shall ensure that all motor vehicle operators possess the appropriate licensing for the weight and class of all vehicles driven. Licensee shall provide information related to all licenses upon request from Department. Licensee shall only use the Department-Designated Delivery/Pick Up Sites for the delivery and pick up of Licensee's customers, boats and related equipment. Licensee shall be solely responsible for any and all damages resulting from the delivery of Licensee's boats and related equipment.
- F. Department reserves the right to limit the issuance of Seasonal Boat-Livery Licenses at Penn State Forest and Wharton State Forest to a maximum of five (5). Only Boat-Livery operations awarded a Seasonal Boat-Livery License at Penn State Forest and Wharton State Forest shall be authorized to deliver boats and related equipment into the Area, including onto the Department-Designated Delivery/Pick Up Sites; however, individual persons or groups of persons may bring boats and recreational equipment rented from other boat-livery operations outside the Area, into the Area, including onto the Department-Designated Delivery/Pick Up Sites. Licensee's operation and this Agreement shall not be construed so as to affect the privileges accorded to the public's use of Penn State Forest and Wharton State Forest, including public use of the Department-Designated Delivery/Pick Up Sites. Licensee's operation and this Agreement shall not be construed so as to affect the privileges accorded to any and all other Seasonal Boat-Livery Licensees' use of the Area, including use of the Department-Designated Delivery/Pick Up Sites. Licensee's operation shall not be construed so as to restrain or prevent individual persons or groups of persons from bringing their own boats and recreational equipment into the Area, including onto the Department-Designated Delivery/Pick Up Sites.
- G. All customers of the License Operation must receive a properly rated and sized Personal Flotation Device (PFD). All customers of the License Operation age twelve (12) and under must wear a PFD. All PFDs must be in serviceable condition with the proper Coast Guard rating, tags, and/or markings and may not exhibit deterioration that could diminish performance. Any damaged PFDs or PFDs without proper valid tags and/or markings must be removed from the Area and may not be used by Licensee or Licensee's customers. Licensee is responsible for ensuring that boats are not overloaded. The proper number of customers in a boat must be based on boat type and the manufacturer's recommended carrying capacity. Licensee is solely responsible for routinely inspecting all boats and related equipment to ensure that they are safe and free of defects. All boats and related equipment determined to be unsafe or damaged must be removed from the Area and may not be used by Licensee or Licensee's customers until properly repaired. Boat repair is not permitted in the Area; any and all repairs must occur off-site. Licensee is solely responsible for the safety of all boats and customers.
- H. Licensee shall use the Department-Designated Delivery/Pick Up Sites solely for the purposes set forth above and is strictly prohibited from selling or permitting the sale or consumption of any alcoholic beverages thereon.

- I. Licensee shall not be permitted to conduct land-based activities at the Area including, but not limited to, nature hikes and/or walks, naturalist events, and vehicle-based tours as part of the License Operation.
- J. Licensee, whose term on the Department-Designated Delivery/Pick Up Sites shall be seasonal in nature, will not, in any way whatsoever, be granted or conveyed any permanent easement, lease, fee, or other interest in the Department-Designated Delivery/Pick Up Sites or the Area.
- K. Department reserves the right to issue one (1) day Special Use Permits for public education programs for the promotion of recreational, natural and historic resources. Department shall coordinate with Licensee to minimize interruption of the License Operation and impacts to the Department-Designated Delivery/Pick Up Sites. Licensee shall not be entitled to compensation for activities approved under a Special Use Permit. The rental and delivery of boats and related equipment occurring in conjunction with activities approved under a Special Use Permit shall not be considered in conflict with Licensee's rights.
- L. The storage of supplies, goods, or equipment is not permitted at the Area, including on or about the Department-Designated Delivery/Pick Up Sites, as depicted in Exhibits A and B.

2. **TERM**

- A. The "Initial Term" of this Agreement shall be from the "Effective Date of the Agreement's Initial Term," as defined in Subparagraph 3(A) through October 31, 2024. Upon expiration of the Initial Term, Licensee may request, in writing, and Department may, in its sole discretion, for cause or convenience, revoke or grant a Renewal of this Agreement, which shall start April 1st and shall end October 31st ("Renewal Term"). Department may grant no more than four (4) subsequent Renewal Terms following the Initial Term of this Agreement. Department reserves the right to suspend Licensee's operations and/or revoke this Agreement for any material breach in accordance with the terms and conditions set forth in Paragraphs 8 and 9. Furthermore, failure on the part of Licensee to submit the Annual Report, as described in Paragraph 12, when due, shall constitute a material breach of this Agreement, subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 8 and 9.
- B. If Licensee requests a renewal of this Agreement, Licensee must submit a request, in writing, to the address set forth in Paragraph 48. Any such request must be received on or before August 15th of the year prior to the year being sought for renewal. Should Licensee fail to submit a written renewal request by August 15th, this Agreement shall expire at the conclusion of this Agreement's current Term. Department shall issue its decision regarding the grant or denial of a renewal request received in accordance with this Paragraph no later than November 15th of the year prior to the year being sought for renewal.

3. **EFFECTIVE DATE**

- A. For the purposes of this Agreement, the Effective Date of the Agreement's Initial Term shall be the date this Agreement is fully executed by Department.
- B. For the purposes of this Agreement, the Effective Date for the commencement of any Renewal Term shall be the date on which the last of the following has occurred:
 - (i) The Renewal Agreement is signed on behalf of Licensee and Department;
 - (ii) Department dates the Renewal Agreement and forwards a copy to Licensee;
 - (iii) The required Certificate(s) of Insurance under this Agreement is or are received by Department;

4. **LICENSE PAYMENT AND INCREASE**

- A. For the Initial Term and any subsequent Renewal Term(s) of this Agreement, Licensee shall pay Department compensation as indicated below:

1. **Annual Fee: One Thousand Dollars (\$1,000.00).** The Annual Fee shall be paid to Department regardless of whether a Final Adjusted Payment is due for any term of this Agreement in accordance with this paragraph.
2. **Final Adjusted Payment:** The minimum Per-Customer Rate for the Initial Term and any subsequent Renewal Term(s) of this Agreement shall be **Two Dollars (\$2.00) per customer**. The Final Adjusted Payment will be based on the following formulas:
 - a. The Total Compensation shall be calculated by multiplying the Per- Customer Rate by the Number of Customers that rented boats and related equipment, or purchased guided and/or self-guided boat-based educational tours or delivery and/or pick up services from the License Operation (Total Compensation = Per- Customer Rate x Number of Customers that rented boats and related equipment, or purchased guided and/or self-guided boat-based educational tours or delivery and/or pick up services from the License Operation). For example, the rental of a two person kayak shall count as two customers if two customers are occupying the kayak.
 - b. The Final Adjusted Payment shall be the difference between the Total Compensation and the Annual Fee (Final Adjusted Payment = Total Compensation - Annual Fee). The Final Adjusted Payment will be due on or before December 1st of each year.

Said Compensation shall be paid in accordance with the License Payment Schedule set forth in Exhibit E as consideration for the license and privilege granted. If the Total Compensation is less than the Annual Fee, the Final Adjusted Payment shall be \$0.00.

- B. All payments shall be submitted by check made payable to “**Treasurer - State of New Jersey**” and be received on or before the scheduled payment date to:

Department of Environmental Protection
Office of Transactions and Public Land Administration
Public Land Administration Section
PO Box 420, Mail Code 401-07
Trenton, New Jersey 08625-0420

- C. If Licensee fails to pay said compensation at such time and in such manner as specified herein and in Exhibit H, such failure shall constitute a material breach of this Agreement subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 8 and 9.
- D. Department may, at its discretion, require Licensee to make all payments for the Initial Term of this Agreement by certified or cashier’s check only.
- E. Any payment not made on or before the first (1st) day of the month shall be considered past due. A late fee of five percent (5%) of the total past due amount shall be assessed on the tenth (10th) day after the payment becomes past due and every thirty (30) days thereafter.
- F. In the event any check for payment is returned to Department, all future payments must be made by certified or cashier’s check only.
- G. The Per-Customer Rate shall be increased by three percent (3%) for each of any Renewal Term(s). The Per-Customer Rate for any Renewal Term(s) will be calculated by the Department and will be rounded to the closest cent.

5. **OPERATION PLAN**

- A. Licensee shall submit to Department, for approval, a written Operation Plan (“Operation Plan”) prior to commencement of the Period of Operation for the Initial Term and any subsequent Renewal Term(s). The Operation Plan shall include the following:

- (i) Proposed schedule including dates, hours, and locations that Licensee will deliver/pick up customers, boats and related equipment;
 - (ii) List of types and prices for all boats and related equipment;
 - (iii) Description of the proposed uniform(s) and name tags to be worn by applicable employees in accordance with Subparagraph 16(B); and
 - (iv) A written list of all vehicles, including license plate number, to be used as part of the License Operation.
- B. Licensee shall not change, modify or deviate from an approved Operation Plan without first obtaining written pre-approval from Department.

6. **HOURS OF OPERATION AND LIMITATIONS**

- A. During the Initial Term and any subsequent Renewal Term(s) of this Agreement, the Licensee shall open and operate from April 1st through October 31st (“Period of Operation”).
- B. Licensee shall operate during specified hours set in accordance with an operating schedule pre-approved in writing by Department, prior to commencement of the Period of Operation for the Initial Term and any subsequent Renewal Term(s) (“Operating Hours”). Licensee shall not be permitted to deliver and/or pick up customers, boats and related equipment on any waterways within the Area including, Atsion Lake, Batsto River, Mullica River, Oswego River, and Wading River, prior to 30 minutes after sunrise and/or after 30 minutes before sunset without Department written pre-approval. **In the event scheduling conflicts occur between multiple bidders, priority shall be given to the highest bidder. In the event multiple bidders submit the same monetary proposal, priority shall be given based on chronological order of the date and time of each bid submission.**
- C. Operating Hours shall be submitted to and approved in writing by Department before any proposed Operating Hours can become effective. Operating Hours shall remain in effect unless otherwise modified and re-approved in writing by Department or Licensee determines the need for any closures in accordance with Subparagraph 6(F). The License Operation must be fully operational and capable of delivering customers, boats and related equipment during the Period of Operation and during scheduled Operating Hours.
- D. Licensee may request written approval from Department to not operate the License Operation during scheduled Operating Hours. All requests to not operate the License Operation during scheduled Operating Hours must be submitted to the Area Superintendent and Department, in writing, at the address set forth in Paragraph 48 at least forty-eight (48) hours in advance of the requested closure. Licensee shall provide written justification for all closure requests. Approval of all closure requests shall be at the sole discretion of the Area Superintendent and will only be considered if requested on a limited basis. Requests for recurring or repeated closures will not be approved by the Area Superintendent and may impact the Department’s decision to renew this Agreement for a requested renewal term. Licensee shall be deemed to not have permission to close the License Operation without written approval from the Area Superintendent. Pursuant to Paragraph 40, payment abatements will not be given for any reason, including for Licensee-requested closures approved by the Area Superintendent.
- E. Failure on the part of Licensee to open for business as scheduled shall be a material breach of this Agreement, subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 8 and 9.
- F. Department shall be the sole authority to determine whether an area of Penn State Forest and Wharton State Forest affecting the License Operation will be closed due to inclement weather or otherwise. Department is not responsible to Licensee for any loss or damage caused by such determination. Absent closure by Department or the Area Superintendent, Licensee shall be responsible for assessing all onsite conditions and any health or safety concerns before undertaking the License Operation. In addition, Licensee shall be solely responsible for determining the need for any additional closures to ensure Licensee’s customers’ safety.

- G. Licensee shall be responsible for adequate staffing and operating the License Operation during the Period of Operation and during scheduled Operating Hours.
- H. Licensee shall be accessible by phone during the Operating Hours, as established pursuant to Subparagraph 6(B), and during Standard Business Hours (9 a.m. to 5 p.m.), at a number to be provided to Department and made publicly available at Licensee's off-site administration facility. Failure on the part of Licensee to be accessible by phone during the scheduled Operating Hours and Standard Business Hours shall be a material breach of this Agreement, subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 8 and 9.
- I. Licensee shall also provide Department with a private phone number where Licensee can be reached at any time.
- J. Department reserves the right to temporarily close one or more of the roads depicted on Exhibits A through G as necessary to address hazardous road conditions or other operational concerns. Except in cases of emergency, Department will give Licensee at least twenty-four (24) hours' notice of any road closure. Department will make all reasonable efforts to reopen the road(s) as soon as practicable. Department shall not be liable for any financial impacts of such temporary road closures on the License Operation.

7. **EXTENSION OF THE SEASON**

Licensee may request to extend the Period of Operation on a daily basis either prior to April 1st and/or after October 31st. All requests shall be submitted to both the Department and the Area Superintendent, in writing, at the addresses set forth in Paragraph 48, at least thirty (30) calendar days in advance of the proposed implementation. Approval of extension requests shall be within Department's sole discretion. Licensee shall not be deemed to have permission to extend the Period of Operation without written approval from Department and the Area Superintendent. Additional compensation to Department for the extended period shall be calculated by Department on a daily basis and must be submitted by check made payable to **"Treasurer – State of New Jersey"** and sent to the address set forth in Subparagraph 4(B). The additional compensation must be received by Department in advance of operation for the extended period.

8. **SUSPENSION OF OPERATIONS**

Licensee shall, at the direction of Department, immediately suspend, delay or interrupt Licensee's operation of all or any part of the Department-Designated Delivery/Pick Up Sites for such period of time as Department may determine to be appropriate to protect the Department-Designated Delivery/Pick Up Sites from damage and/or protect public health, safety, and welfare due to the occurrence of hazardous work conditions, emergency conditions, and/or any other cause including, but not limited to, Licensee's failure to perform any of the covenants, agreements, and conditions contained in this Agreement on its part to be performed. Licensee hereby waives any claim, and Department shall not be liable to any party claiming through Licensee, for damages, payment abatement, or compensation as a result of Department's actions under this Paragraph or this Agreement. Department's suspension of Licensee's operations shall be in addition to any other right or remedy available by law or in equity.

9. **REVOCATION**

- A. Licensee shall exercise direct and personal supervision of the License Operation. Failure to exercise such supervision and/or the existence of any condition at the Area or in the operation of the License Operation which Department determines to be in violation of the terms and conditions of this Agreement shall be considered to be a material breach in which event Department may revoke this Agreement by written notice sent by regular and certified mail return receipt requested. Upon receipt of written notice of revocation for violation, Licensee shall have such period of time as provided therein to cure such violation. If such violation is not cured within the period designated in said notice, revocation shall, in the sole discretion of Department, be effective at the conclusion of the designated period.

- B. Without limiting the scope of Subparagraph A of this Paragraph, this Agreement shall automatically be revoked in the event of Licensee's failure to pay, when due, any compensation or other sums or assessments to be paid by Licensee under this Agreement and the continuation of such failure to pay for a period of five (5) calendar days after Licensee's receipt of written notice thereof from Department.
- C. Department expressly reserves the right to revoke this Agreement without notice in cases of emergency or where there exists or may exist risk to public health, safety, or welfare, as determined by Department in its sole discretion.
- D. Notwithstanding any provision or language to the contrary, Department may revoke this Agreement, in whole or in part, solely for the convenience of the State, by ninety (90) calendar days written notice to Licensee sent by regular and certified mail return receipt requested. Upon receipt of such notice, Licensee may choose for such revocation to become effective immediately, or may instead continue to operate the License Operation in accordance with the terms and conditions of this Agreement for a period not to exceed ninety (90) calendar days after receipt of the notice or until the end of the current License Term, whichever occurs sooner.
- E. Licensee may revoke this Agreement by ninety (90) calendar days written notice to Department sent by regular and certified mail return receipt requested. Upon receipt of such notice, Department may choose for such revocation to become effective immediately. Otherwise, Licensee shall continue to operate the License Operation in accordance with the terms and conditions of this Agreement for a period not to exceed ninety (90) calendar days after receipt of the notice, until the end of the current Agreement Term, or upon selection by Department of a new Licensee, whichever occurs sooner.
- F. If at any time during the Initial Term or any subsequent Renewal Term of this Agreement, Licensee shall make any assignment for the benefit of creditors or be decreed insolvent or bankrupt according to law, or if a receiver shall be appointed for Licensee, then Department may revoke this Agreement immediately by notice served upon the Licensee and the assignee, receiver, trustee or other person in charge, but such revocation shall not release or discharge any payment or obligation then owed by Licensee to Department hereunder.
- G. Revocation of this Agreement by either Department or Licensee, as herein provided, shall not release or discharge any payment obligation or liability owed by one to the other under the terms and conditions of this Agreement as of the date of such revocation.
- H. Any Department-initiated revocation of this Agreement for cause or convenience pursuant to this Paragraph shall be considered sufficient grounds for Department, at its sole discretion, to revoke, upon thirty (30) calendar days written notice to Licensee, any and all other Agreements between Department and Licensee. Any Department-initiated revocation for cause or convenience of another Agreement between Department and Licensee shall be considered sufficient grounds for Department, at its sole discretion, to revoke this Agreement, upon thirty (30) calendar days written notice to Licensee.

10. **ELECTRONIC SUBMISSIONS**

Licensee must have the capacity to send and receive electronic submissions and communications as a pre-condition and continuing requirement of this Agreement. For purposes of this Agreement, "Electronic Submissions" shall only include the transmission of documents by email. Licensee shall comply with the following terms and conditions:

- A. Licensee shall electronically submit all reports, including, but not limited to, Monthly Reports and Annual Reports required under Paragraphs 11 and 12, by email to: PublicLandAdministration@dep.nj.gov. Failure on the part of Licensee to submit reports electronically and in a timely fashion shall be a material breach of this Agreement, subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 8 and 9.
- B. Licensee shall maintain and monitor on a daily basis an active email address, designated for this Agreement and report any change to the email address during any Term of this

Agreement. Failure on the part of Licensee to maintain and monitor the active email address, designated for this Agreement, shall be a material breach of this Agreement, subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 8 and 9.

11. MONTHLY REPORT

- A. A Monthly Report shall be submitted within ten (10) calendar days of the end of each calendar month of the Period of Operation. Each Monthly Report shall be signed, dated, and certified by Licensee, Licensee's Bookkeeper, or Accountant, and contain a Statement of Total Gross Receipts, excluding New Jersey State Sales Tax, derived by Licensee from operation of the License Operation during the previous month. Each Monthly Report shall also include the Number of Customers that rented boats and related equipment, or purchased guided and/or self-guided boat-based educational tours or delivery and/or pick up services from the License Operation during that same month. Each Monthly Report shall be based on the daily "Z" tapes or Point-of-Service (POS) device equivalent for that same month showing each day's sales activity. Failure on the part of Licensee to provide the Monthly Report, when due, shall constitute a material breach of this Agreement subject to Suspension of Operations and/or Termination, in accordance with the terms and conditions set forth in Paragraphs 8 and 9. Licensee shall provide Department with any additional written clarification and/or information necessary to confirm the accuracy of any or all of Licensee's Monthly Reports.
- B. The signed, dated and certified Monthly Report must be submitted, in the Department-approved format, within ten (10) calendar days of the end of each calendar month of the Period of Operation

12. ANNUAL REPORT

- A. Licensee shall submit to Department, no later than December 15th following each Term this Agreement is in effect, an Annual Report for the prior Term. Each Annual Report shall be signed, dated, and certified by Licensee, Licensee's Bookkeeper, or Accountant, and contain the following: Total Gross Receipts less New Jersey State Sales Tax and Total Number of Customers that rented boats and related equipment, or purchased guided and/or self-guided boat-based educational tours or delivery and/or pick up services from the License Operation. Failure on the part of Licensee to submit the Annual Report, when due, shall constitute a material breach of this Agreement and will result in the automatic non-Renewal of this Agreement if any potential Renewal Term(s) remain. Licensee shall provide Department with any additional clarification and/or information necessary to confirm the accuracy of Licensee's Annual Report.
- B. The signed, dated and certified Annual Report must be submitted in the Department-approved format no later than December 15th following each Term this Agreement is in effect.

13. RECORDS AND AUDIT

- A. Licensee shall maintain complete, accurate, and detailed accounting records of all transactions pertaining to the License Operation covered by this Agreement that will enable Licensee to prepare financial statements in accordance with generally accepted accounting principles. Licensee shall make such records available to any authorized representative of Department upon request, as often as it is deemed necessary by Department, to determine the effectiveness of the financial management system and internal procedures that have been established by Licensee, and to ensure compliance with the terms and conditions of this Agreement and that the financial statements and reports present fairly the results of Licensee's operations pursuant to this Agreement. Failure to do so shall be a material breach of this Agreement. Said records shall be maintained and made available to Department and the State of New Jersey for a period of seven (7) years after the revocation or expiration of this Agreement.
- B. All sales shall be recorded by means of cash registers, POS devices, or an Internet-based payment processing system that publicly display the amount of each sale and automatically issue a customer receipt or certify the amount recorded on a sales slip. Said cash registers, POS devices, or Internet-based payment processing system shall, in all cases, have locked-in sales totals and transactions counters that constantly accumulate and that cannot, in either

case, be reset. If sales will be recorded by means of cash registers, such cash registers must have a tape located within the register upon which transaction numbers and sales details are imprinted. Beginning and ending cash register or POS device readings shall be recorded on a daily basis. In the event of technical or electrical failure of the cash register, POS device, or Internet-based payment processing system, Licensee shall record all transactions by hand and issue a sequentially pre-numbered customer receipt in like manner. Failure to have a working cash register, POS device, Internet-based payment processing system, or hand-issued receipt process shall be a material breach of this Agreement subject to immediate Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 8 and 9.

Each cash register or POS device must have the following:

- Dual tape/readable tape or electronic report that records individual sales and total sales
- The ability to generate a receipt (electronic or paper)
- Customer display
- Continuous grand total

In addition, each cash register must have the following:

- Cumulative “Z” counter
- Current printed date on detail tape

Internet-based payment processing systems must have the following:

- The ability to record individual sales and total sales
- The ability to generate an electronic receipt

14. **DAILY RECEIPTS**

Under this Agreement, Licensee shall be required to maintain a daily record of all gross receipts derived from the License Operation. This record shall be available at all times. Licensee shall, upon request by Department, provide a breakdown and accounting of all sales activity for each day. Failure on the part of Licensee to maintain daily receipts shall constitute a material breach of this Agreement subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 8 and 9.

15. **PRICES**

Prices for the rental of boats and related equipment, guided and/or self-guided boat-based educational tours, and delivery and/or pick up services shall be submitted to and approved by Department in writing before any proposed price can become effective. Proposed prices to be charged must be submitted in writing to Department and approved, in writing, by Department prior to commencement of any Period of Operation. All prices shall remain in effect unless otherwise modified and re-approved in writing by Department. All changes in pricing will require the submission of a new price list for the rental of all boats and related equipment, guided and/or self-guided boat-based educational tours, and delivery and/or pick up services (not just those being changed) and a written justification for each item Licensee is requesting Department’s approval to change or modify. No price changes are to take effect without the written pre-approval of Department. All prices shall be properly displayed in prominent places at all times at Licensee’s off-site administration facility. Price signage must be professional in appearance, neat, and made of weather-proof materials.

16. **STAFF**

- A. Licensee shall, at all times during each Term of this Agreement, engage a sufficient number of reliable, competent, and qualified volunteer and/or paid staff to ensure the safety of customers of the License Operation and protection of the Department-Designated Delivery/Pick Up Sites. If Department determines that Licensee has not engaged a sufficient number of reliable, competent and qualified volunteer and/or paid staff to ensure customer

safety and to protect the Department-Designated Delivery/Pick Up Sites, Licensee shall, immediately after receipt of email or written notification from Department, correct the staffing deficiencies described in said notice. Notwithstanding the above, Licensee, not the Department, is solely responsible for the staffing of the License Operation, and under no circumstances shall Department be liable for any injuries or damage arising from the staffing of the License Operation and/or the failure of Department to notify Licensee that the staffing of the License Operation is inadequate. Licensee shall not be entitled to any payment abatement due to any suspension or other action taken by Department under this Paragraph, and Department shall not be liable to Licensee, or any party claiming through Licensee, for any claim, liability, or damages resulting from said action by Department.

- B. All employees of the License Operation must wear uniform apparel and name tags to identify and distinguish them as employees of the License Operation. The type of uniform apparel and identification shall be pre-approved by the Area Superintendent, prior to the start of any Term of this Agreement. Failure on the part of Licensee to comply with the uniform requirement shall be a material breach of this Agreement subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 8 and 9.
- C. Licensee must have radio and/or cell phone communication available for all operators of its vehicles. Each operator shall carry emergency numbers including, but not limited to, 1-877-WARN DEP (1-877-927-6337), Area Superintendent, Area Park Office, State Park Police and Local Emergency Rescue, Police and Fire. In addition, Licensee and/or all operators of its vehicles shall obtain the name of each individual customer of the License Operation, and the email address and telephone number of at least one customer from each party served by the License Operation.

17. EQUIPMENT

- A. Licensee shall be solely responsible for maintaining all equipment installed or located on the Department-Designated Delivery/Pick Up Sites for use by Licensee. Department shall not be responsible for the damage, loss, or maintenance of any equipment installed or used by Licensee. Licensee shall obtain written approval from Department prior to installation of any of Licensee's equipment on the Department-Designated Delivery/Pick Up Sites.
- B. In the event Department determines it is necessary, Licensee shall be required to place a minimum of one (1) Portable Toilet Unit (which must be ADA accessible) within a pre-determined portion of the Area, designated by Department, during each Term of this Agreement. Licensee will be responsible for the cost to clean and maintain the Portable Toilet Unit. However, if more than one Licensee uses the same pre-determined portion of the Area, such cost will be split evenly between the Licensees.
- C. Licensee shall not be authorized to store any supplies, goods or equipment related to the operation of the License Operation at the Area or on or about the Department-Designated Delivery/Pick Up Sites. Department shall not be responsible or liable for any loss or theft of supplies, goods or equipment.
- D. Department shall not be responsible for any damages or loss of goods or services resulting from equipment failure. Licensee shall obtain insurance coverage pursuant to Paragraph 34 for possible losses including, but not limited to, equipment failure, vandalism or weather event.

18. STATE OF REPAIR

The Department-Designated Delivery/Pick Up Sites are provided in "as is" condition.

19. MAINTENANCE OF DEPARTMENT-DESIGNATED DELIVERY/PICK UP SITES

Licensee shall preserve and maintain the Department-Designated Delivery/Pick Up Sites in good and clean condition, reasonable wear and tear excepted. Licensee is solely responsible for the maintenance and cleanliness of the Department-Designated Delivery/Pick Up Sites.

20. AVAILABILITY OF FUNDS FOR FUTURE MAINTENANCE AND/OR REPAIRS

Licensee expressly acknowledges that the Department-Designated Delivery/Pick Up Sites are provided “as is,” and any obligation of Department to repair or maintain the Department-Designated Delivery/Pick Up Sites is contingent upon the availability of appropriated funds and receipt of revenues from which such repair or maintenance can be funded. Department shall have no obligation for such repair or maintenance unless and until such funds are appropriated each fiscal year to Department by the State Legislature and made available through receipt of revenues.

21. ON-SITE INSPECTION

Licensee shall make all equipment used as part of the License Operation available upon request for inspection, at the Area, at any time by any authorized representative of Department to ensure compliance with the terms and conditions of this Agreement.

22. COMPLIANCE AND PERFORMANCE EVALUATION

Two (2) Mandatory Compliance and Performance Evaluation Meetings shall be conducted during each Term of this Agreement. Additional meetings may be scheduled at the discretion of Department to ensure Licensee’s effectiveness and compliance. The meetings shall review all aspects of the License Operation, to ensure that quality public services are being provided on a continuing basis in accordance with the Bid Specifications and this Agreement, that operational problems/concerns are addressed on a timely basis, and that all terms and conditions are clearly understood. The meetings shall be held on site with Department-designated State Park Service staff representative(s) and the Licensee. A report form shall be utilized to document the meeting, and to identify any deficiencies and the corrective action required. A copy of the completed report form shall be provided to the Licensee. The Mandatory Compliance and Performance Evaluation Meetings shall be held as follows:

- Meeting #1 - Prior to commencement of the Period of Operation.
- Meeting #2 - Within ten (10) calendar days after the last approved day of the Period of Operation.

23. GARBAGE DISPOSAL, RECYCLING, AND BIODEGRADABLE MATERIALS

- A. Licensee shall be responsible for maintaining the cleanliness of the Department-Designated Delivery/Pick Up Sites. Licensee shall remove all garbage and trash, generated by the License Operation, from the Area on a daily basis. Licensee shall properly dispose of all garbage and trash off-site. Disposal costs from any off-site disposal location shall be borne by Licensee. It is the responsibility of Licensee to ensure that all customers of the License Operation are provided with appropriate measures to minimize litter in all waterbodies used as part of the License Operation. Licensee shall provide such additional trash containers as may be required to keep the immediate Department-Designated Delivery/Pick Up Sites clean at all times. The type of trash containers provided by Licensee shall be approved by Department prior to use.
- B. Licensee shall comply with any and all county and local recycling requirements.

24. UTILITIES

No electricity or utilities are provided on or about the Department-Designated Delivery/Pick Up Sites. Licensee is prohibited from using an alternative power source at the Area, including on or about the Department-Designated Delivery/Pick Up Sites.

25. TAXES

- A. All taxes and property tax assessments, if any, arising out of the operation of the License Operation and the use and occupancy of the Department-Designated Delivery/Pick Up Sites shall be the sole responsibility of Licensee and shall be promptly paid by Licensee when due, regardless of whether such tax or assessment is assessed within or outside a Term of this

Agreement. Licensee shall provide to Department copies of all tax or assessment notices received from any government agency, municipality or county. Payment shall remain a continuing obligation of Licensee after any Term of this Agreement and/or the expiration or revocation of this Agreement, and Department is authorized to make a demand for payment and take any and all steps to ensure payment. Licensee shall furnish to Department, within ten (10) calendar days of demand therefor, proof of the payment of any such tax or assessment. Licensee's failure to timely pay any tax or assessment or otherwise comply with this Subparagraph shall constitute a material breach of this Agreement subject to Suspension of Operations and/or Revocation, in accordance with the terms and conditions set forth in Paragraphs 8 and 9.

- B. Licensee and its subcontractor, if any, and each of their affiliates shall, for any and all Term(s) of this Agreement, collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the "Sales and Use Tax Act," P.L.1966, c. 30 (N.J.S.A. 54:32B-1 et. seq.) on all of their sales of tangible personal property delivered into this State. Any questions in this regard can be directed to the Division of Revenue at <https://www.state.nj.us/treasury/revenue/revencode.shtml>.

26. ADVERTISEMENT AND PROMOTION

Prior to the Initial Term and any subsequent Renewal Term(s), Licensee shall submit to Department, all website link(s), including social media page(s) established to promote the License Operation. Licensee shall include on each of its websites, including its social media page(s) that the Area is owned and administered by the State of New Jersey, Department of Environmental Protection, State Parks, Forests & Historic Sites, State Park Service.

27. CONSTRUCTION AND IMPROVEMENTS

Licensee shall not affix, alter, or erect any permanent or temporary equipment, structures, buildings, or additions to the Department-Designated Delivery/Pick Up Sites without first obtaining the prior written approval of Department.

28. REPORT OF INJURY

Any injury that shall occur to Licensee, its officers, servants, agents, employees, contractors, or invitees requiring medical intervention of which Licensee is notified, shall be reported to Department immediately by calling 1-877-WARN DEP (1-877-927-6337) and also reported in writing to the addresses set forth in Paragraph 48 within one (1) calendar day of the incident.

29. NEW JERSEY CONFLICT OF INTEREST LAW

The New Jersey Conflict of Interest Law, N.J.S.A. 52:13D-12 et seq. and Executive Order 189 (1988), prohibit certain actions by persons or entities which provide goods or services to any State Agency. Specifically:

- A. No Licensee shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such Licensee transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer has an interest within the meaning of N.J.S.A. 52:13D-13g.
- B. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any Licensee shall be reported, in writing forthwith by Licensee to the Attorney General and the Executive Commission on Ethical Standards.
- C. No Licensee may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such Licensee to, any State

officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

- D. No Licensee shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
- E. No Licensee shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for Licensee or any other person.
- F. The provisions cited above in Subparagraphs 29(A) through 29(E) shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with Licensee under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate.

30. SOLICITATION

Licensee warrants that no person has been employed directly or indirectly to solicit or secure this Agreement in violation of the provision of Section 10, Chapter 48 of the Laws of 1954, N.J.S.A. 52:34-15, and that the Laws of the State of New Jersey relating to the procurement or performance of this Agreement have not been violated and shall not be violated by any conduct of Licensee, including the paying or giving directly or indirectly of any fee, commission, compensation, gift, gratuity, or consideration of any kind to any State employee, officer, or official.

31. INDEPENDENT PRINCIPAL

Licensee's status shall be that of an independent principal and not as an agent or employee of Department.

32. NOT A LEASE

It is expressly understood and agreed by both Licensors and Licensee that no building, land or equipment included within the description of the Department-Designated Delivery/Pick Up Sites or any other property comprising part of the Area is hereby leased to Licensee. Licensors' control, management and direction over the Department-Designated Delivery/Pick Up Sites or any other property comprising part of the Area are not hereby assigned in any way to Licensee.

33. INDEMNIFICATION

- A. Licensee shall, for itself, its successors, and assigns, assume all risk and liabilities arising out of the management, maintenance, and operation of the License Operation and covenants to defend, protect, indemnify, and save harmless Department and each and every of its officers, agents, servants, employees, successors, and assignees and hereby releases Department and each and every of its officers, agents, servants, employees, successors, and assignees from and against any and all such liabilities, losses, damages, costs, expenses (including all attorneys' fees and expenses), causes of action, suits, claims, demands, or judgments of any nature arising from the following:
 - (i) any injury to, or the death of, any person caused in whole or in part by any negligent act or omission of Licensee, or anyone directly or indirectly

employed by [it], *regardless of whether it is caused in part by the Department*, or its officers, agents, servants, employees, successors, and assignees;

- (ii) any injury to, or the death of, any person in, on, or about, or any damage to property which occurs in, on, or about the Department-Designated Delivery/Pick Up Sites or upon any sidewalk, walkway, or patio within the Department-Designated Delivery/Pick Up Sites or in any manner growing out of or connected with the use, non-use, condition, or occupancy of the Department-Designated Delivery/Pick Up Sites, or the construction or repair of any improvements of the Department-Designated Delivery/Pick Up Sites;
 - (iii) any act, error, or omission of Licensee, its officers, agents, servants, employees, contractors, invitees, and anyone claiming by or through Licensee in the performance of this Agreement;
 - (iv) violation of any term or condition of this Agreement by Licensee, its officers, agents, servants, employees, contractors, invitees, and anyone claiming by or through Licensee in the performance of this Agreement; and
 - (v) violation by Licensee, its officers, agents, servants, employees, contractors, invitees, and anyone claiming by or through Licensee in the performance of this Agreement of any contracts and agreements of record concerning the Department-Designated Delivery/Pick Up Sites and restrictions of record or any law, ordinance, or regulation affecting the Department-Designated Delivery/Pick Up Sites or any part thereof or the ownership, occupancy, or use thereof.
- B. Department shall, as soon as practicable after a claim has been made against it, give written notice thereof to Licensee, along with full and complete particulars of the claim. If suit is brought against Department or any of its officers, agents, servants, and/or employees, Department shall expeditiously forward or have forwarded to Licensee every demand, complaint, notice, summons, pleading, or other document received by or then in the possession of Department or its representatives.
- C. It is expressly agreed and understood that any approval by Department of Licensee's operation of the Department-Designated Delivery/Pick Up Sites shall not operate to limit the obligations of Licensee assumed pursuant to this Agreement.
- D. Licensee's liability pursuant to this Paragraph shall continue after the revocation or expiration of this Agreement with respect to any liability, loss, cost, expense (including all attorneys' fees and expenses), damage, cause of action, suit, claim, demand, or judgment resulting from actions or inactions occurring prior to such revocation or expiration.
- E. Licensee's indemnification obligations are not limited by, but are in addition to, the insurance obligations contained in this Agreement.

34. **INSURANCE**

- A. Licensee shall, at its sole cost and expense, obtain and maintain at all times during each Term of this Agreement, insurance of the types and in the amounts hereinafter provided:
- (i) Commercial General Liability Insurance as broad as that provided by the standard basic, unamended, and unendorsed occurrence coverage forms currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage. Limits of liability shall be maintained at the level of One Million (\$1,000,000) Dollars per occurrence for bodily injury and property damage and a Two Million (\$2,000,000) Dollars annual aggregate. This can be accomplished with a combination of Commercial General Liability and Commercial Umbrella policies; and

- (ii) Worker's Compensation Insurance applicable to the Laws of the State of New Jersey and Employer's Liability Insurance with limits of not less than One Million (\$1,000,000) Dollars Bodily Injury By Accident (Each Accident) and One Million (\$1,000,000) Dollars Bodily Injury By Disease (Each Employee) with an aggregate limit of One Million (\$1,000,000) Dollars Bodily Injury By Disease (Policy Limit); and
 - (iii) Comprehensive Automobile Liability Insurance, which shall be written to cover any automobile or trailer used by Licensee. Limits of liability to cover bodily injury and property damage shall not be less than One Million (\$1,000,000) Dollars per person or per accident. Coverage must include hired and non-owned vehicles. A MCS-90 certificate shall be filed with the State of New Jersey if hazardous materials or waste will be transported during operation of the License Operation; and
 - (iv) Such other insurance and in such amounts as may from time to time be reasonably required by Department.
- B. All insurance coverage required to be maintained by Licensee in accordance with this Agreement shall be issued by an insurance company with an A- VIII or better rating by A.M. Best & Company authorized and approved to do business in New Jersey. All policies except for Worker's Compensation shall name the State of New Jersey Department of Environmental Protection as an additional insured and include the blanket additional insured endorsement or its equivalent. The certificate(s) of insurance shall identify the License Number assigned to this Agreement and the location(s) of the Department-Designated Delivery/Pick Up Sites in the Description of Operations box and shall list the State of New Jersey; Department of Environmental Protection; Office of Transactions and Public Land Administration; Public Land Administration Section; P.O. Box 420, Mail Code: 401-07; Trenton, New Jersey 08625-0420 in the Certificate Holder box.
- C. When Licensee returns this Agreement or any subsequent Renewal Agreement, signed by Licensee, to Department for signature, Licensee shall provide Department with all current and valid certificate(s) of insurance evidencing that Licensee has obtained all insurance coverage in accordance with this Agreement. Failure to provide a certificate(s) of insurance at the time of Licensee's return of this Agreement or any subsequent Renewal Agreement shall result in the non-execution of this Agreement or subsequent Renewal Agreement by Department, as applicable. Licensee also shall provide Department with a valid certificate(s) of renewal of the insurance within thirty (30) calendar days of the expiration of the policies so that Department is continuously in possession of current documentation that Licensee has obtained and is maintaining, in full force and effect, all insurance required under this Agreement. Licensee also shall, upon request, provide Department with copies of each policy required under this Agreement, certified by the agency or underwriter to be true copies of the policies provided by Licensee.
- D. Licensee expressly understands and agrees that any insurance protection required by this Agreement shall in no way limit Licensee's indemnification obligations assumed in this Agreement and shall not be construed to relieve Licensee from liability in excess of such insurance coverage, nor shall it preclude Department from taking such other actions as are available to it under any provision of this Agreement and as otherwise provided for at law or in equity.
- E. In the event that: (i) Licensee fails or refuses to renew any of its insurance policies or to provide Department with timely certificate(s) of insurance showing that Licensee is maintaining insurance coverage in full force and effect to the extent required by this Agreement, or (ii) any policy is canceled, terminated, or modified so that the insurance does not meet the requirements of this Agreement, Department shall consider Licensee to be in material breach of this Agreement, subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 8 and 9.
- F. The limits of insurance policies described in this Paragraph shall be reviewed by Department and Licensee from time to time. Licensee shall increase the limits of said policies to meet changed circumstances including, but not limited to, changes in the relevant U.S. Bureau of

Labor Statistics Consumer Price Index and changes indicated by the course of plaintiffs' verdicts in personal injury actions.

35. COMPLIANCE WITH LAWS, LICENSES, PERMITS, AND INSURANCE POLICIES

- A. For each Term of this Agreement, Licensee shall obtain, pay for, maintain, and comply with all licenses, permits, certifications, authorizations, approvals, or any other documents required by all applicable government agencies having jurisdiction over the Department-Designated Delivery/Pick Up Sites or the conduct of Licensee's operations thereon. Licensee shall provide Department with written evidence that such applicable licenses, permits, authorizations, or other required documents have been obtained prior to commencement of the activity or operation covered by the license, permit, authorization, or other documentation. No operation shall begin until Licensee has provided such written evidence to Department.
- B. Licensee shall, at its sole cost and expense, comply with all duly promulgated and applicable federal and State statutes, laws, rules, ordinances, regulations, and orders affecting the conduct of the License Operation described in this Agreement.
- C. Licensee shall comply with the requirements of all insurance policies required by this Agreement.
- D. If Licensee:
 - (i) receives a notice of failure to comply with the insurance required by this Agreement;
 - (ii) is issued a summons or any notice of violation of any license, permit, certification, authorization, approval, or any similar instruments required by any governmental authority having jurisdiction necessary to maintain and operate the License Operation in accordance with the provisions of this Agreement; or
 - (iii) is issued a summons for violation of any duly promulgated and applicable federal, State, county, municipal, and other governmental statutes, laws, rules, ordinances, regulations, or orders affecting the License Operation or any part thereof,

Licensee shall immediately forward a copy of the notice of non-compliance, summons, or notice of violation to Department, and Licensee shall have such amount of time to correct said violation as is prescribed in the notice or summons. If such violation is not cured within the prescribed period or any extension thereof, it shall be deemed a material breach of this Agreement, and Department may suspend Licensee's operation of all or the affected portion of the Department-Designated Delivery/Pick Up Sites in accordance with the terms and conditions set forth in Paragraph 8, and/or revoke this Agreement in accordance with the terms and conditions set forth in Paragraph 9.

- E. Licensee shall indemnify Department against all liabilities, claims, losses, damages, costs, expenses (including all attorneys' fees and expenses), causes of action, suits, demands, judgments, or payments of any kind arising from Licensee's failure or omission to comply with any such insurance policy, license, permit, certification, authorization, approval, or any applicable federal or State statute, law, rule, ordinance, regulation, or order.

36. SERVICE PERFORMANCE WITHIN U.S.

Licensee agrees, in accordance with Executive Order 129 (2004) and N.J.S.A. 52:34-13.2 (P.L. 2005, c. 92), that all services performed under this Agreement or any subcontract awarded under this Agreement shall be performed within the United States. In the event that any services performed under this Agreement or any subcontract awarded under this Agreement will not be performed within the United States, Licensee shall send Department a letter that states with specificity the reasons why the services cannot be so performed. Any such letter shall require review and approval pursuant to N.J.S.A. 52:34-14.2 prior to

execution of this Agreement or the delivery of the services which will not be performed within the United States. Unless previously approved by Department, a shift to performance of services outside the United States during any Term of this Agreement shall be deemed a material breach, subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 8 and 9.

37. PUBLIC USE

Licensee's operation and this Agreement shall not be construed so as to affect the privileges accorded to the public's use of the Area, including Atsion Lake, Batsto River, Mullica River, Oswego River, Wading River and the Department-Designated Delivery/Pick Up Sites, or to restrain or prevent individual persons or groups of persons from bringing their own boats and recreational equipment, or boats and recreational equipment rented from other boat-livery operations outside the Area, into the Area, including onto Atsion Lake, Batsto River, Mullica River, Oswego River, Wading River and the Department-Designated Delivery/Pick Up Sites.

38. NO DISCRIMINATION

- A. Licensee shall comply with all provisions of the Americans with Disabilities Act (ADA), P.L. 101-336, in accordance with 42 U.S.C. 12101, et seq.
- B. Licensee shall not discriminate, and shall abide by all anti-discrimination laws, including Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d-2000d-4; the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4; the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq.; and all rules and regulations promulgated pursuant thereto.
- C. Specifically, Licensee shall not unlawfully discriminate: 1) against any person, employee, or applicant for employment, or 2) in allowing access to and use of the Department-Designated Delivery/Pick Up Sites.

39. AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT REQUIREMENTS

- A. Pursuant to N.J.A.C. 17:27-3.5, Licensee agrees that:
 - (i) Licensee or its subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Licensee will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that all employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or revocation; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Licensee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the public agency compliance officer setting forth provisions of this nondiscrimination clause;
 - (ii) Licensee or its subcontractor, where applicable, shall, in all solicitations or advertisements for employees placed by or on behalf of Licensee, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;
 - (iii) Licensee or its subcontractor, where applicable, shall send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of Licensee's

commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment; and

- (iv) Licensee or its subcontractor, where applicable, agrees to comply with all regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time, and codified at N.J.A.C. 17:27-1.1 et seq.

B. Further, pursuant to N.J.A.C. 17:27-3.7, Licensee agrees that:

- (i) Licensee and its subcontractor, if any, agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.
- (ii) Licensee and its subcontractor, if any, agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.
- (iii) Licensee and its subcontractor, if any, agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.
- (iv) In conforming with the targeted employment goals, Licensee and its subcontractor, if any, agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

40. PAYMENT ABATEMENT

Licensee acknowledges that the Area is subject to unscheduled closures for reasons of public health, public welfare, public safety, weather, and government closures. Licensee further acknowledges that payment abatements will not be given if Licensee is unable to operate the Department-Designated Delivery/Pick Up Sites and/or launch boats and related equipment onto Atsion Lake, Batsto River, Mullica River, Oswego River, and Wading River for any reason.

41. FINAL DECISION

Licensee covenants that the decision of the Commissioner of Department, relative to the bidding process and/or award of this Agreement, as well as the performance of the terms and conditions of this Agreement, shall be final and conclusive.

42. CORPORATION

- A. For any Licensee that presents itself or represents itself as a corporation operating or doing business in the State of New Jersey, all papers of incorporation, including authorized agents for receipt of legal documents, shall be provided to Department, along with renewals, changes, or any other documents that in any way affect the current or future status of Licensee as a legal corporation.

- B. Licensee shall adopt the required corporate or partnership resolution, as applicable, authorizing the execution of this Agreement by Licensee. Licensee shall submit a copy of said resolution to Department prior to execution of this Agreement by Department.
- C. Prior to the Effective Date of this Agreement, Licensee shall provide the Department with a completed Ownership Disclosure Form pursuant to N.J.S.A. 52:25-24.2.

43. SUBCONTRACTING

Licensee shall be prohibited from subcontracting any part or all of this Agreement.

44. ASSIGNMENT OF AGREEMENT OR SALE OF INTERESTS

The License is personal to Licensee. Licensee shall not assign this Agreement or sell controlling interest in the License. Any attempt to assign or sell controlling interest shall be a material breach of this Agreement, subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 8 and 9.

45. PAY TO PLAY RESTRICTIONS AND CONTRIBUTION DISCLOSURE

- A. In order to safeguard the integrity of State government procurement by imposing restrictions to insulate the negotiation and award of State contracts from political contributions that pose the risk of improper influence, purchase of access, or the appearance thereof, the Legislature has enacted P.L. 2005, c. 51 (codified at N.J.S.A. 19:44A-20.13 to -20.25) (Chapter 51) on March 22, 2005, effective retroactive to October 15, 2004, superseding the terms of Executive Order 134 (2004). In addition, on September 24, 2008, Executive Order 117 was issued and made effective on November 15, 2008 (EO 117) which set forth additional limitations on the ability of executive branch agencies to contract with business entities that have made or solicited certain contributions.

Chapter 51 and EO 117 restrict business entities which agree to certain contracts or agreements with the State from making or soliciting certain contributions. Compliance with Chapter 51 and EO 117 is a material term and condition of the Bid Specifications and Agreement, and binding upon the parties thereto upon the entry of all applicable contracts.

Thus, pursuant to the requirements of Chapter 51 and EO 117, it shall be a material breach of the terms of this Agreement, subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 8 and 9, for Licensee to do any of the following during any Term of this Agreement:

- (i) make or solicit a contribution in violation of Chapter 51 or EO 117;
- (ii) knowingly conceal or misrepresent a contribution given or received;
- (iii) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
- (iv) make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or of Lieutenant Governor, or to any State, county, or municipal party committee, or any legislative leadership committee;
- (v) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by Licensee itself, would subject Licensee to the restrictions of Chapter 51 or EO 117;
- (v) fund contributions made by third parties, including consultants, attorneys, family members, and employees;
- (vii) engage in any exchange or contributions to circumvent the intent of Chapter 51 or EO 117; or

- (viii) directly or indirectly, through or by any other person or means, do any act which would subject Licensee to the restrictions of Chapter 51 or EO 117. It is Licensee's continuing obligation to report any contributions it makes during any and all Term(s) of this Agreement.

- B. Licensee is required, on a continuing basis, to report any contributions and solicitations Licensee makes during any Term of this Agreement at the time any such contribution or solicitation is made. Failure to do so is a breach of this Agreement, subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 8 and 9.
- C. Licensee shall file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC) pursuant to N.J.S.A. 19:44A-20.27 (P.L. 2005, c. 271, section 2) if Licensee receives contracts in excess of Fifty Thousand (\$50,000.00) dollars from public entities in a calendar year. It is Licensee's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us.

46. **NEW JERSEY BUSINESS REGISTRATION**

Licensee must maintain a valid New Jersey business registration during each Term of this Agreement. Failure to maintain a valid New Jersey business registration during each Term of this Agreement is a material breach of this Agreement, subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 8 and 9.

47. **ENTIRE AGREEMENT**

- A. This Agreement represents the entire agreement between Department and Licensee, and all negotiations, oral agreements, and understandings are merged herein. This Agreement may be amended, supplemented, changed, modified, or altered only upon mutual agreement of Department and Licensee, and an amendment, in writing, executed by the Assistant Commissioner of State Parks, Forests & Historic Sites.
- B. This Agreement shall be construed as if it were drafted by both Parties hereto, and both Parties waive all statutory and common law presumptions which would serve to have the document construed in favor of, or against, any Party as the drafter hereof. This Agreement contains the entire understanding of the Parties hereto and represents full and final settlement of and resolution of the matter set forth herein. There are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

48. **SUBMISSIONS, APPROVALS, AND NOTICES**

Department and Licensee agree that all submissions, approvals, and notices which may be required under this Agreement shall be sent by email. Additional copies of submissions, approvals, and notices may also be sent by regular and/or certified mail return receipt requested and addressed as follows:

To Department:

Department of Environmental Protection
Office of Transactions and Public Land Administration
Public Land Administration Section
PO Box 420, Mail Code 401-07
Trenton, New Jersey 08625-0420
Email: PublicLandAdministration@dep.nj.gov

Copy to Area Superintendent:

Wharton State Forest
31 Batsto Road
Hammonton, New Jersey 08037
Email: Robert.Auermuller@dep.nj.gov

To Licensee:

Name
Title and/or Entity Designation
Street Address
Town, NJ Zip Code
Email:

Either Department or Licensee may, at any time, change such address(es) by emailing or mailing, to the address(es) of the other, above, a notice of the change at least ten (10) calendar days prior to the effective date of such change.

49. **RECEIPT OF WRITTEN NOTICE**

Department and Licensee agree that any written notice submitted pursuant to this Agreement is considered received five (5) calendar days after mailing.

50. **WAIVER OF TRIAL**

It is mutually agreed between Department and Licensee that they hereby waive trial by jury in any action, proceeding, or counterclaim brought by either against the other on any matters whatsoever arising out of or in any way connected with this Agreement or the relationship of Department and Licensee, Licensee's use or occupancy of the Licensed Premises, and/or any claim of injury or damage thereto or arising therefrom.

51. **WAIVER**

Failure by Department to complain of any act or omission on the part of the other, no matter how long same may continue, shall not be deemed a waiver by Department of any of its rights hereunder. No waiver by Department at any time, express or implied, of breach of any provision of this Agreement shall be deemed a waiver of breach of any other provision or a consent to any subsequent breach of the same or any other provision. The consent to or approval of any action on any one occasion by Department shall not be deemed a consent to or approval of any other action on the same or any subsequent occasion. Any and all rights and remedies that Department may have under this Agreement or by operation of law, either at law or in equity, by reason of a breach by the other, shall be distinct, separate, and cumulative and shall not be deemed inconsistent with any other right or remedy, and any two (2) or more or all of such rights and remedies may be exercised at the same time. Acceptance by Department of any of the benefits of this Agreement with knowledge of any breach thereof by the other shall not be deemed a waiver by the entity receiving the benefit of any rights or remedies to which it is entitled hereunder or by law. Licensee expressly acknowledges that any waiver on the part of Department may only be effectuated in writing through the Office of the Assistant Commissioner for Natural and Historic Resources.

52. **SUPERSEDES**

This Agreement supersedes and cancels all prior licenses and agreements covering the Licensed Premises; however, any and all continuing obligations arising under prior agreements shall survive.

53. **SUCCESSION AND BINDING AGREEMENT**

Except as otherwise set forth herein, all of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the successors and assignees of Department and Licensee and binding on a Trustee in bankruptcy.

54. **HEADINGS**

The article, paragraph, and subparagraph headings throughout this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

55. GOVERNING LAW

This Agreement shall be governed by and interpreted in accordance with the Laws of the State of New Jersey.

56. SEVERABILITY

In case any term or provision of this contract shall be held invalid, illegal, or unenforceable, in whole or in part, neither the validity of any remaining part nor the validity of any other term or provision shall in any way be affected by such holding.

57. CLAIMS

All claims asserted against Department by Licensee shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1.1, et seq. and/or the New Jersey Contractual Liability Act, N.J.S.A., 59:13-1, et seq.

58. ASSIGNMENT OF ANTITRUST CLAIM(S)

- A. Licensee recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and as consideration for executing this Agreement, Licensee, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns, and transfers to the State of New Jersey, for itself and on behalf of its political subdivisions and public agencies, all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired by the State of New Jersey or any of its political subdivisions or public agencies pursuant to this Agreement.
- B. In connection with this assignment, the following are the express obligations of Licensee:
 - (i) It shall take no action that will in any way diminish the value of the rights conveyed or assigned hereunder.
 - (ii) It shall advise the Attorney General of New Jersey in advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action, and immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
 - (iii) It shall notify the defendants in any antitrust suit of the within assignment at the earliest practicable opportunity after Licensee has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice shall be sent to the Attorney General of New Jersey.
 - (iv) It is understood and agreed that in the event any payment under any such claim or cause of action is made to Licensee, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

59. PREFERENCE FOR WOOD, PAPER PRODUCTS DERIVED FROM SUSTAINABLY-MANAGED FORESTS OR PROCUREMENT SYSTEMS

Pursuant to N.J.S.A. 52:32-45, any bid that calls for the use of wood or paper products derived from sustainably managed forests or procurement systems shall receive preference, whenever possible, where relevant. Accordingly, Department shall give such preference when entering into or renewing this Agreement, whenever possible, where relevant.

60. MACBRIDE PRINCIPLES AND IRANIAN INVESTMENTS

- A. Licensee certifies pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.
- B. In addition, Licensee certifies that neither the Licensee nor any of the Licensee's parents, subsidiaries, or affiliates is listed on the N.J. Department of the Treasury's list of entities determined to be engaged in prohibited activities in Iran pursuant to N.J.S.A. 52:32-55.

61. PREVAILING WAGE ACT

Without limiting the scope of any other provision of this Agreement, Licensee agrees to comply with the New Jersey Prevailing Wage Act, P.L. 1963, Chapter 150 as codified in N.J.S.A. 34:11-56.25, et seq. Licensee also agrees to comply with 42 U.S.C. § 9604 (g)(1). If any conflict exists between the New Jersey Prevailing Wage Law and § 9604 (g)(1), the Licensee must comply with the federal requirements.

62. HAZARDOUS SUBSTANCES

At no time during this Agreement shall Licensee store, upon the License Operation, hazardous substances as that term may be defined by the New Jersey Department of Environmental Protection (see N.J.S.A. 58:10-23.11(b)) or by the federal Environmental Protection Agency pursuant to section 311 of the "Federal Water Pollution Act, amendments of 1972" (33 U.S.C. 1321; see also 40 C.F.R. 302.3) and the list of toxic pollutants designated by Congress or the Environmental Protection Agency pursuant to section 307 of that Act (33 U.S.C. 1317; see also 40 C.F.R. 401.15).

63. BANKRUPTCY

In the event Licensee enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Licensee agrees to furnish written notification of the bankruptcy to Department with a copy to the Attorney General's Office. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and the name(s), addresses, and telephone numbers of the attorney or firm handling the bankruptcy. The obligation to report entering into any such proceedings remains in effect until final payment is made under this Agreement. The Department shall have the right to revoke this Agreement immediately upon receipt of a notice of bankruptcy by providing written notice to Licensee.

64. AUTHORITY

By the signatures below, the parties hereto execute this Agreement and confirm that they are mutually bound by and fully authorized and empowered to enter into and bind their organization by all provisions contained herein.

65. LIST OF EXHIBITS

- Exhibit A: Department-Designated Delivery/Pick Up Sites (Mullica and Batsto River)
- Exhibit B: Department-Designated Delivery/Pick Up Sites (Wading and Oswego River)
- Exhibit C: Atsion Family Campground and Related Department-Designated Roads/Accesses
- Exhibit D: Nine (9) Atsion Lake Cabins and Related Department-Designated Roads/Accesses
- Exhibit E: Goshen Pond Campground and Related Department-Designated Roads/Accesses

- Exhibit F: Hawkin Bridge Campground and Related Department-Designated Roads/Accesses
- Exhibit G: Godfrey Bridge Campground and Related Department-Designated Roads/Accesses
- Exhibit H: License Payment Schedule

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