

STATE OF NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF PARKS AND FORESTRY

LICENSE AGREEMENT

GUIDED ROCK CLIMBING (WITHOUT FACILITY) LICENSE

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, in the year of Two Thousand and Twenty Two (2022),

**BETWEEN THE STATE OF NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF PARKS AND FORESTRY  
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.

**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:

**Allamuchy Mountain State Park**

**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 the Allamuchy Mountain State Park designated as the Area (“Area”). The Licensed Premises are delineated and identified more particularly on the License Map attached to and made a part of this License as Exhibit A. Licensor reserves the right to revise the description of the Licensed Premises based on Licensor's sole determination.

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 this License Agreement (“License Agreement” or “Agreement”), be granted the non-exclusive, revocable right to conduct guided rock climbs on an hourly and/or daily basis at Allamuchy Mountain State Park (hereinafter referred to as the “License Operation”). Licensee’s operation shall be limited to the area(s) provided by the Department of Environmental Protection (“Department”) for purposes of the License and designated in Exhibits A and B as Department-Designated Public Parking Areas, Department-Designated Access Trails, and Department-Designated Rock Climbing Areas (hereinafter referred to as the “Licensed Premises”). The License shall be personal to Licensee and shall not be assignable. The License shall extend only to those activities undertaken by authorized employees, volunteers, and agents of Licensee (collectively and severally included in "Licensee").

- B. Guided rock climbs, for the purposes of this Agreement, shall include roped climbing techniques during which the participant is secured to a rope for safety purposes, and bouldering, performed with a crash pad for safety purposes. Climbing techniques such as free climbing are prohibited. Guided rock climbs shall be led by no less than two (2) instructors for every scheduled reservation. All instructors shall possess valid First Aid and Cardiopulmonary Resuscitation (“CPR”) Certifications. At least one instructor for each guided rock climb shall possess a valid Wilderness First Aid certification. All employees of the License Operation must possess a valid rock climbing instructor certification. Group size for each scheduled reservation shall be limited to no more than fifteen (15) participants. Failure on the part of Licensee to maintain a staff presence of no less than two (2) instructors for every scheduled reservation, to ensure that all instructors possess valid First Aid and CPR Certifications, to ensure that at least one instructor possesses a valid Wilderness First Aid Certification, or to ensure that all employees of the license operation possess a valid rock climbing instructor certification during scheduled rock climbs at the Licensed Premises 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.
- C. Licensee shall, as part of the License Operation, supply rock climbing equipment from an off-site administration facility for the sole purpose of conducting guided rock climbs at Allamuchy Mountain State Park. Rock climbing equipment shall include, but not be limited to, harnesses, helmets, shoes, ropes, belay devices, and carabiners. Licensee shall be prohibited from conducting transactions pertaining to the License Operation in Allamuchy Mountain State Park, including on or about the Licensed Premises. 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 rock climbing equipment, receipt of payment, reservations and scheduling of guided rock climbs and rentals.
- D. Licensee may, as part of the License Operation, transport customers, for purposes of this Agreement, to and from the Area. Licensee shall not transport individuals to the Area unless they are participating in a guided climb or are accompanying a minor participating in a guided climb. Licensee and its customers shall use only the existing Department-Designated Public Parking Areas set forth below and in Exhibits A and B for parking associated with scheduled reservations and for the transfer of rental equipment to customers participating in guided rock climbs. Licensee and its customers shall be prohibited from parking outside of the Department-Designated Public Parking Areas set forth below and in Exhibits A and B for the License Operation, including on any grass or otherwise vegetated areas adjacent to the Department-Designated Public Parking Areas. Licensee and its customers are advised that the Preferred Parking Area is the primary parking Area for the License Operation. Licensee and its customers shall only use the Overflow Parking Area(s) identified below and in Exhibits A and B, if the Preferred Parking Area is full. Licensee and its customers shall only park vehicles at the Waterloo Road Pull-Off Public Parking Lots if the vehicle can be parked such that no part of the vehicle extends into the Waterloo Road or shoulder when parked perpendicular to said road. Licensee and its customers shall only park vehicles perpendicular to Waterloo Road when parking at the Waterloo Road Pull-Off Public Parking Lots. Licensee shall ensure that all supplies, goods, and equipment are removed from the Area at the conclusion of the scheduled reservation(s).

Licensee shall be granted access to utilize the following areas, as designated in Exhibits A and B, for parking and for access to and from the Department-Designated Rock Climbing Areas:

**Preferred Parking Area**

**Overflow Parking Areas:**

- (i) Waterloo Road Pull-Off Public Parking Lot #1**
- (ii) Waterloo Road Pull-Off Public Parking Lot #2**
- (iii) Waterloo Village Public Parking Lot**

**Ingress and Egress:**

### Department-Designated Access Trails

Licensee shall, at its sole cost and expense, be responsible for any damage caused by Licensee or its customers to the Licensed Premises or Area. Failure to comply with the requirements set forth in this Paragraph 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. Department does not guarantee availability of parking spaces at the Department-Designated Public Parking Areas set forth in Exhibit A. These parking areas are open to the public on a first come, first served basis and can not be reserved. Department reserves the right to remove Waterloo Road Pull-Off Public Parking Lots #1 and #2 from this Agreement.

- E. Licensee shall, as part of the License Operation, use only the Department-Designated Access Trails set forth in Exhibit A, for the purposes of guiding customers and transporting equipment by foot to and from the Department-Designated Rock Climbing Areas set forth in Exhibit A. Vehicles of any kind shall not be permitted on the Department-Designated Access Trails. Licensee shall ensure that all equipment and customers of the License Operation are guided safely from the Department-Designated Public Parking Areas to the Department-Designated Rock Climbing Areas and returned to the Department-Designated Public Parking Areas at the conclusion of the scheduled reservation(s). Pursuant to Paragraph 19, Licensee shall be responsible for the maintenance and cleanliness of the Department-Designated Access Trails and Department-Designated Rock Climbing Areas during the Term of this Agreement. Licensee shall ensure that all employees and customers of the License Operation are instructed to follow proper trail etiquette.
- F. All Licensee equipment, to the extent practicable, must be marked and clearly identify the name of Licensee. All vehicles used as part of the License Operation must display a voucher, pre-approved by Department in writing, identifying the name, address and telephone number of Licensee. Licensee shall be solely responsible for obtaining all permits, licenses, and certificates for the Licensee's Operation. Licensee shall ensure that all motor vehicle operators possess the appropriate licensing for the weight, class, and occupancy of all vehicles driven. Licensee shall provide information related to all licenses upon request from Department. Licensee shall only use the Department-Designated Public Parking Areas for parking related to the License Operation and for the transfer of rental equipment to customers participating in guided rock climbs.
- G. Department reserves the right to limit the issuance of Guided Rock Climbing Licenses at Allamuchy Mountain State Park to a maximum of two (2). Only one (1) License Operation may operate at a Department-Designated Rock Climbing Area at a time. In accordance with Paragraph 6, Licensee shall indicate the preferred and alternate Department-Designated Rock Climbing Areas for each proposed guided rock climb. In the event that multiple Licensees propose to operate within the same Department-Designated Rock Climbing Area at the same time, priority will be given to the highest bidder. Only Guided Rock Climbing operations awarded a Guided Rock Climbing License at Allamuchy Mountain State Park shall be authorized to offer guided rock climbs and associated equipment rentals within the Licensed Premises, however, individual persons or groups of persons may bring rock climbing and recreational equipment rented from other rock climbing equipment rental operations outside the Area, into the Licensed Premises, including onto the Department-Designated Public Parking Areas, Department-Designated Access Trails, and Department-Designated Rock Climbing Areas. Licensee's operation and this Agreement shall not be construed so as to affect the privileges accorded to the public's use of Allamuchy Mountain State Park, including public use of the Department-Designated Public Parking Areas, Department-Designated Access Trails, and Department-Designated Rock Climbing Areas. Licensee's operation and this Agreement shall not be construed so as to affect the privileges accorded to any and all other Guided Rock Climbing Licensees' use of the Licensed Premises, including the Department-Designated Public Parking Areas, Department-Designated Access Trails, and Department-Designated Rock Climbing Areas. Licensee's operation shall not be construed so as to restrain or prevent individual persons or groups of persons from bringing rock climbing and recreational equipment into the Licensed Premises, including onto the Department-Designated Public

Parking Areas, Department-Designated Access Trails, and Department-Designated Rock Climbing Areas.

- H. Licensee shall ensure that all employees and customers of the License Operation are in possession of a properly rated and sized rock climbing harness and rock climbing helmet. Licensee shall ensure that all employees and customers wear the said harness and helmet at all times while rock climbs are taking place in the Licensed Premises. All harnesses, helmets, ropes, and other rock climbing equipment must be in serviceable condition with the proper rating and safety label, and may not exhibit deterioration that could diminish performance. Any damaged harnesses, helmets, ropes, and other rock climbing equipment or harnesses, helmets, ropes, and other rock climbing equipment without proper valid safety labels must be removed from the Licensed Premises and may not be used by Licensee or Licensee's customers. Licensee is responsible for educating the customer on proper use of equipment and for ensuring that equipment is used properly. Licensee is solely responsible for routinely inspecting all rock climbing equipment to ensure that they are safe and free of defects. All rock climbing equipment determined to be unsafe or damaged must be removed from the Licensed Premises and may not be used by Licensee or Licensee's customers until properly repaired. Equipment repair is not permitted in the Licensed Premises; any and all repairs must occur off-site. Licensee is solely responsible for the safety of all customers.
- I. Licensee shall use the Licensed Premises solely for the purposes set forth above and is strictly prohibited from selling, transporting, or permitting the sale or consumption of any alcoholic beverages thereon. In addition, the smoking of tobacco products, vaping, and/or use of electronic smoking devices by Licensee, Licensee's employees or customers is strictly prohibited at the Licensed Premises. Licensee shall be solely responsible for monitoring and informing all customers that alcohol and smoking are strictly prohibited at the Licensed Premises. Licensee may request customers open bags and coolers to ensure there is no alcohol. Any customer refusing to comply with Licensee's request to inspect may be denied service. Failure to comply with the requirements set forth in this Paragraph 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.
- J. Licensee, whose term on the Licensed Premises 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 Licensed Premises.
- K. Department reserves the right to issue one (1) day Special Use Permits for high angle rescue training. Department shall coordinate with Licensee to minimize interruption of the License Operation and impacts to the Licensed Premises. Licensee shall not be entitled to compensation for disruptions to the License Operation caused by activities approved under a Special Use Permit.
- L. The storage of supplies, goods, or equipment is not permitted at the Licensed Premises, including on or about the Department-Designated Public Parking Areas, Department-Designated Access Trails, and Department-Designated Rock Climbing Areas, as designated in Exhibit A, and all supplies, goods, and equipment shall be removed from the Area at the conclusion of the scheduled reservation(s).

## 2. **TERM**

- A. The "Initial Term" of this Agreement shall be from the "Effective Date of this Agreement's Initial Term," as defined in Subparagraph 3(A), through November 30<sup>th</sup>, 2022. In accordance with subparagraph B below, Licensee may request, in writing, and Department may, in its sole discretion, for cause or convenience, grant a Renewal of this Agreement, which shall start April 1<sup>st</sup> and shall end November 30<sup>th</sup> ("Renewal Term") of the following calendar year. Department may grant no more than three (3) 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. Any Licensee seeking renewal of this Agreement must submit a request, in writing, to the address set forth in Paragraph 47 Any such request must be received on or before July 1<sup>st</sup> of the year prior to the year being sought for renewal. Should Licensee fail to submit a written renewal request by July 1<sup>st</sup>, this Agreement shall expire at the conclusion of this Agreement's current Term, in accordance with the terms and conditions set forth in Paragraph 9.

### 3. **EFFECTIVE DATE**

- A. For the purposes of this Agreement, the Effective Date of this 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 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;
  - (iv) Department has approved, in writing, the proposed Operation Plan.

### 4. **LICENSE PAYMENT AND INCREASE**

- A. For the Initial Term and any subsequent Renewal Term(s) of this Agreement, Licensee shall pay Department a minimum annual Term Fee of One Thousand Two Hundred (\$1,200.00) Dollars in accordance with the Payment Schedule set forth in Exhibit C as consideration for the License and privilege granted.
- 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  
 Legal, Regulatory, and Legislative Affairs  
 Office of Transactions and Public Land Administration  
 State Land Management Support  
 PO Box 420, Mail Code: 501-04C  
 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 C, 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 License payment not made on or before the dates provided in Exhibit C shall be considered past due. All past due amounts shall be assessed a monthly penalty of five percent (5%) of the total amount due calculated on the tenth (10<sup>th</sup>) day of each month after the due date and shall increase 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 total License Payment shall be increased by three percent (3%) for each of any Renewal Term(s), except that after the first(1<sup>st</sup>) Renewal Term, if any, Department may increase the total License Payment pursuant to a Compensation Analysis performed in accordance with Paragraph 5. The total License Payment for any Renewal Term will be calculated by Department and shall be rounded up to the closest dollar.

## 5. COMPENSATION ANALYSIS

After expiration of the first (1<sup>st</sup>) Renewal Term of this Agreement, if any, a Compensation Analysis may be performed by Department. At such time, based on the reported Total Gross Revenue, performance of the License Operation, and/or Department's existing rates for similarly-performing operations, Department may choose to increase the License Payment for the following Renewal Term(s), if any.

## 6. 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 preferred and alternate Department-Designated Rock Climbing Areas, as designated in Exhibits A and B, that Licensee will offer guided rock climbs and associated rock climbing equipment rentals;
  - (ii) List of types and prices for all guided rock climbs and associated rock climbing equipment rentals;
  - (iii) List of employee names and their certifications as required by Subparagraph 16(A); and
  - (iv) Description of the proposed uniform(s) and name tags to be worn by applicable employees in accordance with Subparagraph 16(B); and
  - (v) A list of all vehicles, including license plate number, to be used as part of the License Operation;
  - (vi) A safety plan for the License Operation; and
  - (vii) A description of Licensee's process for monitoring weather in advance of and during scheduled guided rock climbs.
- B. Licensee shall not change, modify or deviate from said approved Operation Plan without first obtaining written pre-approval from Department.

## 7. HOURS OF OPERATION AND LIMITATIONS

- A. During the Initial Term of this Agreement, the Licensee shall open and operate from as soon as practicable after the Effective Date of this Agreement's Initial Term through November 30<sup>th</sup> ("Period of Operation"). During any subsequent Renewal Term(s) of this Agreement, the Licensee shall open and operate from April 1<sup>st</sup> through November 30<sup>th</sup> ("Period of Operation").
- B. Licensee shall operate during specified hours and days 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 begin guided rock climbs or provide associated rock climbing equipment rentals within the Licensed Premises prior to 8 a.m. and/or after 4 p.m. 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 7(D). The License Operation must be fully operational and capable of offering guided rock climbs and associated rock climbing equipment rentals during the Period of Operation and during scheduled Operating Hours.
- D. The Area Superintendent shall be the sole authority to determine whether an area of Allamuchy Mountain State Park 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. Licensee shall monitor weather forecasts, at a minimum, the day before and the day of scheduled rock climbs. Licensee shall not operate when ice or snow are present within the Licensed Premises. In addition, Licensee shall be solely responsible for determining the need for any additional closures for any reason, including to ensure Licensee's customer safety.
- E. Licensee shall be responsible for adequate staffing and operating the License Operation during the Period of Operation and during scheduled Operating Hours.
- F. Licensee shall be accessible by phone during the Operating Hours, as established pursuant to Subparagraph 7(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.
- G. Licensee shall also provide Department with a private number where Licensee can be reached at any time.

## 8. **SUSPENSION OF OPERATIONS**

Licensee shall, at the direction of Department, immediately suspend, delay or interrupt Licensee's operation on all or any part of the Licensed Premises for such period of time as Department may determine to be appropriate to protect the Licensed Premises, and/or 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. **REVOCAION**

- 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 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 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 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. If Licensee fails to remove any property lawfully belonging to and removable by Licensee upon the expiration or revocation of this Agreement, Department may appropriate same to its own use without allowing any compensation therefor, or may remove same at the expense of Licensee. In the event that Licensee removes any personal property, Licensee hereby covenants to pay any and all damages which may be caused to the property of Department by this removal.
- I. 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 any and all other License Agreements between Department and Licensee. Any Department-initiated revocation for cause or convenience of another License 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, the Annual Report as described in Paragraph 12, by email to: [OfficeofLeases@dep.nj.gov](mailto:OfficeofLeases@dep.nj.gov). Failure on the part of Licensee to submit reports electronically 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 electronically submit all requests to change or modify pre-approved Operating Hours as described in Subparagraph 7(B), to the Area Superintendent and the Office of State Land Management Support by email to: [Blanca.Chevrestt@dep.nj.gov](mailto:Blanca.Chevrestt@dep.nj.gov) and [OfficeofLeases@dep.nj.gov](mailto:OfficeofLeases@dep.nj.gov). Failure on the part of Licensee to submit all requests to change or modify Operating Hours electronically 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 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. Licensee must submit a Monthly Report (“Monthly Report”) to Department 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 the License Operation during the previous 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 and the number of guided tours and related equipment rentals made on a daily and monthly basis during that same month. Failure on the part of the 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 15<sup>th</sup> following each Period of Operation this Agreement is in effect, an Annual Financial Statement (“Annual Report”) for the prior Period of Operation. Each Annual Report shall be prepared, signed, dated, and certified by a Certified Public Accountant (CPA) licensed to practice accounting in the State of New Jersey with a CPA’s highest level of assurance and verification and substantiation procedures consistent with generally accepted accounting principles. Each Annual Report shall contain the following: Total Number of Customers Served, Total Gross Revenue, New Jersey State Sales Tax, Operating Expenses, and Net Profit 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, subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 8 and 9. 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 15<sup>th</sup> following each Period of Operation 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 or POS devices 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 or POS devices shall, in all cases, have locked-in sales totals and transactions counters that constantly accumulate and that cannot, in either case, be reset. In addition, 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 or POS device, 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 or POS device 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, total sales, and can generate a receipt (customer must be offered a paper or electronic receipt upon request)
- Customer Display
- Continuous grand total

Each cash register must have the following:

- Cumulative "Z" counter
- Current printed date on detail tape

#### **14. DAILY RECEIPTS**

- A. 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.
- B. All cash, credit and debit payments received by Licensee shall be deposited into a bank with a physical presence in the State of New Jersey.

#### **15. PRICES**

Prices for guided rock climbs and associated rock climbing equipment rentals 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 guided rock climbs and associated rock climbing equipment rentals (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 or website. Price signage must be professional in appearance, neat, and made of weather-proof materials.

**16. STAFF**

- A. Licensee shall engage a sufficient number of reliable, competent, and qualified staff of legal age to operate the License within the terms and conditions of this Agreement. All employees of the License Operation must possess a valid rock climbing instructor certification, and valid First Aid and CPR Certifications. In addition, at least one instructor for each guided climb shall possess a valid Wilderness First Aid certification. If Department determines that Licensee has not provided a sufficient number of reliable, competent, and qualified staff of legal age for the operation of the License, Licensee shall, immediately upon receipt of email or written notification from Department, correct the staffing deficiencies described in said notice. If the deficiencies described in said notice are not corrected by Licensee immediately upon receipt of email or written notification, Department reserves the right to do the following: (1) suspend the License Operation, pending correction of the deficiencies, in accordance with the terms and conditions set forth in Paragraph 8; or (2) revoke this Agreement in accordance with the terms and conditions set forth in Paragraph 9. 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.

**17. EQUIPMENT**

- A. Licensee shall be solely responsible for maintaining all equipment installed or located on the Licensed Premises 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 Licensed Premises.
- B. Licensee shall not be authorized to store any supplies, goods or equipment related to the License Operation at the Area or on or about the Licensed Premises. Department shall not be responsible or liable for any loss or theft of supplies, goods or equipment.
- C. 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. REPAIR**

The Department-Designated Public Parking Areas, Department-Designated Access Trails, and Department-Designated Rock Climbing Areas shall be provided in "as is" condition.

**19. MAINTENANCE OF THE LICENSED PREMISES**

- A. Licensee shall preserve and maintain the Licensed Premises in good and clean condition, reasonable wear and tear excepted. Licensee is solely responsible for the maintenance and cleanliness of the Licensed Premises. Maintenance shall include, but not be limited to removal of trash, debris, fallen tree limbs, and other obstructions. The use of power tools, including chainsaws, is prohibited within the Area. The removal of live or standing dead trees or vegetation is prohibited within the Area. Licensee must report any downed trees or

tree limbs that impede use of the Licensed Premises to the Department. Licensee shall not make improvements to the Department-Designated Access Trails, including, but not limited to, grading, installation of stairs, switchbacks, stepping stones, or drainage features, without written approval from the Department.

- B. Upon the expiration of each Term or termination of this Agreement, Licensee shall deliver up peaceable possession of the Licensed Premises to Department in as good and clean condition as the Licensed Premises were made available at the commencement of each Term, reasonable wear and tear excepted. In the event that Licensee does not deliver up possession as herein provided, Department may restore the Licensed Premises to such condition, and the cost thereof shall be paid by Licensee to Department within ten (10) calendar days of Department's written demand for payment.

**20. AVAILABILITY OF FUNDS**

Licensee expressly acknowledges that the Licensed Premises are provided "as is," and any obligation of Department to repair or maintain the Licensed Premises 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. 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, ensuring 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 and shall be attached to and made a part of this Agreement. 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.

**22. 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 assure compliance with the terms and conditions of this Agreement.

**23. GARBAGE DISPOSAL, RECYCLING, AND BIODEGRADABLE MATERIALS**

- A. Licensee shall be responsible for maintaining the cleanliness of the Licensed Premises. 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 this latter 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 areas used as part of the License Operation. Licensee shall provide such additional trash containers as may be required to keep the Licensed Premises 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 Licensed Premises. Licensee shall be prohibited from using an alternative power source at the Area, including on or about the Licensed Premises.

**25. TAXES**

- A. All taxes and property tax assessments, if any, arising out of the operation of the License and the use and occupancy of the Licensed Premises 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/revgencode.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 website, including social media page(s), that the Area is administered by the State of New Jersey, Department of Environmental Protection, Division of Parks and Forestry, 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 Licensed Premises 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 47 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 shall warrant 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 Licensor and Licensee that no building, land or equipment included within the description of the Licensed Premises or any other property comprising part of the Area is hereby leased to Licensee. Licensor's control, management and direction over the Licensed Premises 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 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 Licensed Premises or upon any sidewalk, walkway, or patio within the Licensed Premises or in any manner growing out of or connected with the use, non-use, condition, or occupancy of the Licensed Premises, or the construction or repair of any improvements of the Licensed Premises;
  - (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 Licensed Premises and restrictions of record or any law, ordinance, or regulation affecting the Licensed Premises 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 Licensed Premises 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 Two Million (\$2,000,000) Dollars per occurrence for bodily injury and property damage and a Four Million (\$4,000,000) 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; 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 Licensed Premises in the Description of Operations box and shall list the State of New Jersey, Department of Environmental Protection, Legal, Regulatory, and Legislative Affairs, Office of Transactions and Public Land Administration; State Land Management Support; Mail Code: 501-04C, P.O. Box 420; 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 agency having jurisdiction over the Licensed Premises 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; **specifically, but not limited to, an Act concerning smoking at public beaches and parks and amending and supplementing PL 2005 c. 383 (P.L. 2018 c. 64).**
- 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 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 Licensed Premises 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 all services performed under this Agreement or any subcontract awarded under this Agreement shall 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 the Licensed Premises, or to restrain or prevent individual persons or groups of persons from bringing their own rock climbing and recreational equipment, or rock climbing and recreational equipment rented from other rock climbing equipment rental operations outside the Area, into the Area, including onto the Licensed Premises.

**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 Licensed Premises.

**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 health, public welfare, public safety, weather, and government closures. Information pertaining to park closures can be found at the Area's website and social media pages. Licensee further acknowledges that payment abatements will not be given if Licensee is unable to operate the License Operation for any reason.**

#### 41. FINAL DECISION

Licensee covenants that the decision of the Commissioner of Department, relative to 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 this 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;

- (vi) 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](http://www.elec.state.nj.us).

#### **46. ENTIRE AGREEMENT**

A. This License 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 either the Assistant Commissioner, Natural and Historic Resources or the Director of the Division of Parks and Forestry.

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.

#### **47. SUBMISSIONS, APPROVALS, AND NOTICES**

Department and Licensee agree that all submissions, approvals, and notices which may be required under this Agreement shall be forwarded by email or fax, regular and certified mail return receipt requested and addressed as follows:

To Department:	Department of Environmental Protection Legal, Regulatory, and Legislative Affairs Office of Transactions and Public Land Administration State Land Management Support Attn: Adria Wentzel, Manager Mail Code: 501-04C, PO Box 420 Trenton, New Jersey 08625-0420 <b>Email:</b> <a href="mailto:OfficeofLeases@dep.nj.gov">OfficeofLeases@dep.nj.gov</a>
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Copy to Area Superintendent:	Allamuchy Mountain State Park c/o Stephens State Park
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explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this License Agreement.

**54. GOVERNING LAW**

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

**55. 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.

**56. 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.

**57. 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.

**58. 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.

**59. 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.

**60. 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.

**61. 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).

**62. 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.

**63. LIST OF EXHIBITS**

- Exhibit A: Map of Licensed Premises
- Exhibit B: Map of Department-Designated Rock Climbing Areas
- Exhibit C: License Payment Schedule

**64. AUTHORITY**

By the signatures below, the parties hereto execute this License 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.



**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement the day and year first above written.

**STATE OF NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

By: \_\_\_\_\_

Craig Dorsett, Interim Assistant Commissioner  
Natural and Historic Resources

Date: \_\_\_\_\_

**LICENSEE**

By: \_\_\_\_\_

Witness

By: \_\_\_\_\_

\_\_\_\_\_, Licensee

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**THIS LICENSE AGREEMENT HAS BEEN  
REVIEWED AND APPROVED AS TO  
FORM BY:**

**MATTHEW J. PLATKIN  
ACTING ATTORNEY GENERAL OF NEW JERSEY**

By: \_\_\_\_\_

Deputy Attorney General

Date: \_\_\_\_\_