

**BID SPECIFICATIONS****RIVER TUBE (WITHOUT FACILITY) LICENSE**

**Delaware and Raritan Canal State Park, Kingwood Township, Hunterdon County, New Jersey**

**1. SCOPE OF LICENSE**

- A. Licensee shall, under a License Agreement (“Agreement”), be granted the exclusive, revocable right to conduct a commercial operation to rent tubes, and deliver and pick up customers within the Delaware and Raritan Canal State Park (“Park”) between the months of May and October (“License Operation”). Licensee shall be granted, as part of the License Operation, use of a portion of Block 14 Lot 27 in Kingwood Township, Hunterdon County for customer and employee parking, river tube rental operations, storage and the onsite administration under the authorized License Operation, as provided by Department for purposes of the License and specifically designated in Exhibit A (hereinafter referred to as the “Licensed Premises”). Licensee shall be authorized to utilize two (2) Department-designated areas within the Park for the delivery of customers into and pick up out of the Delaware River (“River”) for recreational floating down the Delaware River as part of the License Operation, utilizing the stairs, paths, structure(s) and/or area(s) provided by Department for purposes under the License and specifically designated in Exhibit A (hereinafter referred to as the “Department-Designated Delivery and Department-Designated Pick Up Sites”). Licensee shall not be permitted for any reason to embark or disembark customers or public tubers on or adjacent to State Route 29 or in any areas not designated by Department. The License Operation shall be conducted in accordance with the terms set forth herein.
- B. While Licensee shall have the sole right to operate a tubing operation within the Park, the public shall be authorized to river tube with their own tubes from two (2) Department-Designated Access Points set forth in Subparagraph 1(L). On or before Year 2 of the Initial Term of the Agreement, Licensee may, as part of the License Operation, provide a transportation service to the public to transport members of the public from the Access Point near the Department-Designated Pick Up Site back to their cars that are parked in Department-Designated and owned Parking Lots after tubing has concluded (“Public Jitney Service”). Licensee shall be able to charge a service fee, pre-approved by Department in writing prior to the start of the Public Jitney Service (“Service Fee”). The Service Fee shall remain in effect unless otherwise modified and re-approved in writing by Department. A bidder shall submit a proposed operation plan for the Public Jitney Service and proposed Service Fee as part of their Bid Submission. Licensee shall be authorized to enter all Department-Designated and owned parking lots to drop public tubers at their cars after they are finished tubing. The Department notes that it also intends to construct additional public parking for the sole benefit and use of the public for which Licensee shall have the right to enter to transport public tubers back to their parked cars. Licensee shall not be permitted to disembark public tubers on or adjacent to State Route 29 or in any areas not designated by Department for public parking. Licensee may request, in writing, Department-written approval to transport members of the public and their rafts, canoes and kayaks from the Access Point near the Department-

Designated Pick Up Site back to their cars that are parked in Department-Designated and owned Parking Lots after their rafting, canoeing or kayaking trip has concluded. In the event Licensee does not provide the Public Jitney Service satisfactory to the Department on or before the end of Year 2 of the Initial Term of the Agreement, Department reserves the right to issue a Request for Proposal for a public transportation service to pick-up and deliver members of the public to various areas within the Delaware and Raritan Canal State Park pursuant to Subparagraph 1(X).

- C. The Licensed Premises shall consist of approximately thirty to forty (30-40) parking spaces for the sole use of customers of the License Operation and an area with an electric meter and connection for river tube rental operations, including storage of tubes and the onsite administration of the License Operation. The Licensed Premises shall also include a separate area for employee parking, as set forth in Exhibit B. The License Operation shall be within the Park and Licensee shall utilize the Licensed Premises solely for the purposes set forth in this Bid Specification and the Agreement. The Department notes that the Department has future plans to construct additional parking at this location. Licensee may, at its sole cost and expense, request Department-written approval to construct improvements, including additional parking within the Licensed Premises (“Work”). If Licensee elects to construct improvements, including additional parking, with prior written approval of Department, Licensee shall upon completion of the Work, be entitled to an abatement of fees commensurate with the documented costs for all work completed and determined satisfactory by Department. In the event that the License Agreement is revoked for failure to comply with the terms and conditions of the License Agreement pursuant to Paragraph 10 or in the event of any Licensee-initiated revocation, Department shall not remit payment to Licensee for any amounts abated and owed to Licensee prior to revocation of the Agreement. Licensee shall, prior to the commencement of any Work, obtain from all governmental authorities having jurisdiction over the Licensed Premises and the Work to be performed, all permits, licenses, and approvals required for construction of the proposed Work. Licensee shall be responsible to obtain and pay for all necessary permits for all Work at the Licensed Premises and shall pay Prevailing Wage for all Work. Licensee’s contractor must comply with the New Jersey Uniform Construction Code and all applicable codes for this Work.
- D. Licensee shall access the Licensed Premises through the gate located just off of State Route 29, as identified in Exhibit B. Licensee shall utilize the gate solely for the purposes set forth in this Bid Specifications and the Agreement. For each Period of Operation of the Agreement, Licensee shall, at its sole cost and expense, be responsible for providing its own lock that is capable of locking the gate as a linked chain to still allow access by Department staff or other lease, license or concession holders. Licensee shall provide Department with the combination to the lock upon request.
- E. Licensee may request, in writing, approval to install temporary structures, shipping containers, mobile retail units or trailers (“Mobile Units”) for License Operations including storage of equipment, tubes and to conduct transactions pertaining to the License Operation, within a portion of the Licensed Premises, subject to prior written approval from Department. Licensee shall submit to Department, for written pre-approval, a written description, including but not limited to, the size and color of the proposed Mobile Units. Licensee shall not purchase and/or

install the proposed temporary structures, shipping containers, mobile retail units or trailers without Department-written pre-approval. The installation of any temporary structures, shipping containers, mobile retail units or trailers without Department written pre-approval and/or the installation of any temporary structures, shipping containers, mobile retail units or trailers that does not conform to requirements set forth in this Paragraph shall be a material breach of the Agreement, subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 9 and 10. Licensee shall not be authorized to store the Mobile Units on the Licensed Premises outside any Period of Operation of the Agreement, unless otherwise pre-approved in writing by Department. Licensee shall, at its sole cost and expense, be responsible for the security of the Mobile Units and all supplies, goods and equipment. Department shall not be responsible or liable for any loss or theft of the Mobile Units, supplies, goods or equipment.

- F. All bidders must demonstrate a minimum of one (1) year of relevant experience and shall provide a detailed description of their current or anticipated operation and annual revenue as part of their bid proposal.
- G. Licensee shall, as part of the License Operation, rent river tubes (“tubes”) from the Licensed Premises for the sole purposes of recreational floating down the Delaware River from the two (2) Department-Designated locations within the Park. Licensee shall not be authorized to rent river tubes and deliver and pick up customers from any off-site administration facility for tubing within the Park. All transactions pertaining to the License Operation covered by the Agreement must be solely conducted within and upon the Licensed Premises. Transactions shall include, but not be limited to, the rental of river tubes, receipt of payment, reservations and scheduling of rentals, customer parking and deliveries. The overnight storage of the Mobile Units, supplies, goods, or equipment is only permitted at the Licensed Premises, as designated in Exhibit B. Licensee shall not be authorized to store any supplies, goods or equipment related to the operation of the License outside any Period of Operation set forth in Subparagraph 6(A), unless otherwise approved in writing by Department.
- H. Licensee shall, as part of the License Operation, deliver river tubes and customers to the Department-Designated Delivery Site set forth in Exhibit C. A maximum of one (1) unloading area for a maximum of two (2) of Licensee’s vehicles is provided and **shall be used solely for temporary delivery and unloading of river tubes and customers for River ingress**. Licensee shall be authorized to temporarily store river tubes at the Department-Designated Delivery Site during the Core Business Hours set forth in Subparagraph 6(B) for a predetermined period of time as identified and approved in Licensee’s Operation Plan, in the area and manner approved in writing by Department. Department reserves the right to suspend any temporary river tube storage at the Department-Designated Delivery Site. The overnight storage of river tubes is explicitly prohibited and Licensee shall be responsible for removing all river tubes from the Department-Designated Delivery Site on a daily basis. Licensee shall not be authorized to park any vehicles at the Department-Designated Delivery Site or on or about any other part of the Park without Department-written approval. Licensee shall not be authorized to drop off and unload river tubes and customers outside of the Department-Designated Delivery Site or on or about any other part of the Park at any time. Further, Licensee shall not be authorized to use the Department-Designated Delivery Site to

pick up river tubes and customers from River egress at any time. Failure on the part of Licensee to comply with the requirements set forth in this Paragraph shall be a material breach of the Agreement, subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 9 and 10.

- I. Licensee shall, as part of the License Operation, pick up river tubes, customers and public river tubers at the Department-Designated Pick Up Site set forth in Exhibit D. A maximum of one (1) loading area for a maximum of three (3) of Licensee's vehicles is provided and **shall be used solely for temporary pick up and loading of river tubes, customers and public river tubers from River egress**. Licensee shall be authorized to temporarily store river tubes on the Department-Designated Pick Up Site during the Core Business Hours set forth in Subparagraph 6(B) for a predetermined period of time as identified and approved in Licensee's Operation Plan, in the area and manner approved in writing by Department. Department reserves the right to suspend any temporary river tube storage at the Department-Designated Pick Up Site. The overnight storage of river tubes is explicitly prohibited and Licensee shall be responsible for removing all river tubes from the Department-Designated Pick Up Site on a daily basis. Licensee shall not be authorized to park any vehicles at the Department-Designated Pick Up Site or on or about any other part of the Park without Department-written approval. Licensee shall not be authorized to pick up and load river tubes, customers and public river tubers outside of the Department-Designated Pick Up Site or on or about any other part of the Park at any time. Further, Licensee shall not be authorized to use the Department-Designated Pick Up Site to drop off river tubes, customers and public river tubers at any time for River ingress. Failure on the part of Licensee to comply with the requirements set forth in this Paragraph shall be a material breach of the Agreement, subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 9 and 10.
- J. Licensee shall only use the existing Department-approved roads set forth in Exhibit A for the delivery and pick up of river tubes and customers. Licensee shall ensure that all river tubes and customers of the License Operation are delivered from the Licensed Premises to the Department-Designated Delivery Site set forth in Exhibit C, picked up at the Department-Designated Pick Up Site set forth in Exhibit D, and returned to the Licensed Premises at the conclusion of the scheduled reservation/float. Licensee shall prominently post a notice at Licensee's administration facility and advise all customers and employees of the License Operation that they are required to meet and park all vehicles in designated and marked parking spots in the customer and employee parking lots at the Licensed Premises. Licensee and all customers and employees of the License Operation shall be strictly prohibited from parking on the grass at the Park. Licensee shall be solely responsible for ensuring that all customers and employees of the License Operation are parked in designated and marked parking spots in the customer and employee parking lots and do not park on the grass.
- K. Licensee shall, at all times during the Core Business Hours set forth in Subparagraph 6(B) and at its sole cost and expense, provide a sufficient number of staff to oversee the Licensed Premises, Department-Designated Delivery and Department-Designated Pick Up Sites to ensure the areas remain free of traffic, overcrowding and unauthorized vehicles. Department shall not be responsible for regulating traffic at the Licensed Premises or the Department-

Designated Delivery and Department-Designated Pick Up Sites. Licensee shall, at its sole cost and expense and with the prior written approval of Department, install temporary signage, parking barriers and/or cones to prevent unauthorized vehicles from accessing or parking in the Licensed Premises at any time during the Period of Operation or Department-Designated Delivery and Department-Designated Pick Up Sites during the Core Business Hours set forth in Subparagraph 6(B).

- L. Licensee shall, as part of the License Operation, deliver river tubes and customers into the River. Access to and from the River at the Department-Designated Delivery and Department-Designated Pick Up Sites shall be strictly limited to the marked Department-approved internal path systems and the temporary stairs (“Stairs”) permitted and installed by Department and set forth in Exhibits C and D (“Access Points”), unless otherwise modified pursuant to Subparagraph 1(Y). The Stairs require permits and the Department shall be responsible for obtaining all necessary permits and for installation of the Stairs. Licensee shall ensure all customers of the License Operation use the Access Points set forth in Exhibits C and D for River ingress or egress. Licensee shall ensure that customers of the License Operation shall not congregate on the Feeder Canal Trail or Access Points set forth in Exhibits C and D. Licensee shall, at its sole cost and expense, provide a sufficient number of staff to oversee the Access Points to ensure all customers of the License Operation use the Department-approved internal path systems and Stairs for River ingress or egress. Failure on the part of Licensee to comply with the requirements set forth in this Paragraph shall be a material breach of the Agreement, subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 9 and 10.
  
- M. Licensee shall be solely responsible for obtaining the necessary vehicles, roof top racks and/or trailer(s) suitable for transporting Licensee’s customers, public river tubers and tubes. Licensee shall be authorized to operate passenger carrying motor vehicle(s) with a maximum seating capacity of 15 passengers, including the driver. Licensee shall be prohibited, during the License Operation, from operating any motor vehicle(s) with a seating capacity of more than 15 passengers, including the driver, without Department-written approval. All requests to operate motor vehicle(s) with a seating capacity of more than 15 passengers, including the driver, shall be submitted to Department, in writing, along with written justification for the request. Department reserves the right, in its sole discretion to reject any request. All vehicle(s) used as part of the License Operation must be owned and operated by Licensee and 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 Licensee’s Operation. Licensee shall be solely responsible for ensuring that all motor vehicle operators possess the appropriate licensing for the weight and class of all vehicles driven. Licensee shall provide a photograph of each vehicle and the year of manufacturer, make, model and registration number for all vehicles that will be used during the License Operation. Licensee shall provide Department with an updated list each time a vehicle is removed or added to the License Operation. Licensee shall provide information related to all licenses upon request from Department. Licensee shall be solely responsible for any and all damages resulting from the delivery of Licensee’s tubes. Failure on the part of Licensee to comply with the requirements set forth in this Paragraph shall

constitute a material breach of the Agreement, subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 9 and 10.

- N. As set forth more fully in Paragraph 37, Licensee shall have use of the Park solely for the purposes of conducting the License Operation only. Licensee's operation and the Agreement shall not be construed so as to affect the privileges accorded to the general public's use of the Park, except for activities conducted under Subparagraph 1(K), or to restrain or prevent individual persons or groups of persons from bringing their own food, beverages, and recreational equipment, including but not limited to river tubes, into the Park. Further, Licensee's operation shall not impede or restrict the public from recreating along the towpath in other ways including, but not limited to, hiking and biking and shall not be construed so as to restrain or prevent public, non-commercial tubing activities within the Park. Licensee's operation shall not impede or restrict other lease, license or concession holders' access to their leased, licensed or concession premises within the Park.
- O. Licensee shall provide an adequate amount of tubes to meet the public demand for floating along the approximate four and eight tenths (4.8) mile stretch on the Delaware River adjacent to the Delaware and Raritan Canal State Park, between the Department-Designated Delivery and Department-Designated Pick Up Sites. All tubes must have at minimum two (2) independent air chambers and clearly identify the name of Licensee. All License customers must receive and wear a properly rated and sized Personal Flotation Device (PFD). It is the responsibility of Licensee to ensure compliance with the wearing of PFDs. All PFDs must be in serviceable condition with the proper Coast Guard rating and tags and may not exhibit deterioration that could diminish performance. Any damaged PFDs or PFDs without proper valid tags must be removed from the Park and may not be used by Licensee or Licensee's customers. Licensee also shall provide any other equipment and devices as may be required by the U.S. Coast Guard and Department. Licensee is responsible for ensuring that rented river tubes are not overloaded. The proper number of customers on a river tube must be based on river tube type, volume, and the manufacturer's recommended weight capacity. Licensee is solely responsible for routinely inspecting all river tubes to ensure that they are safe and free of defects. All river tubes determined to be unsafe or damaged must be removed from the Park and may not be used by Licensee or Licensee's customers. Licensee shall not be permitted to repair river tubes and place them back in service. Licensee is solely responsible for the safety of all river tubes and customers.
- P. Licensee must provide the necessary personnel to respond to all emergency situations involving rented river tubes and customers of the License Operation during the Core Business Hours set forth in Subparagraph 6(B) and while river tubes are in use on the River. Licensee must have a minimum of two (2) emergency patrol vessels ("Vessel"), ***one (1) shall be positioned*** along the approximate four and eight tenths (4.8) mile route set forth in Exhibit A to ensure the health and safety of License customers, when the License is in operation. The Vessels must have a shallow draft that will enable them to access all areas of the River. Licensee shall provide a photograph of each Vessel that will be used for this purpose. In addition, Licensee shall provide the manufacturer, model and registration for all Vessels that will be used during the License Operation. Each staff person operating the Vessel shall be United States Coast Guard Qualified Pilot or possess a certificate in watercraft safety. Each

Vessel shall be manned, equipped and operated at all times in accordance with the United States Coast Guard rules and regulations

- Q. For the first (1<sup>st</sup>) year of the Initial Term, Licensee shall be authorized to launch the emergency patrol vessels at the Kingwood Boat Launch set forth in Exhibit A, during the Period of Operation and during the Core Business Hours set forth in Subparagraphs 6(A) and 6(B). All of Licensee's emergency patrol vessels must display a License Operation permit issued by Department. Licensee shall identify all emergency patrol vessels and obtain from Department License Operation permits for each vessel before utilizing the Kingwood Boat Launch. The Department issued emergency patrol vessel permits are provided solely for the License Operation in accordance with the Agreement. Licensee is strictly prohibited from delivering, picking up and/or launching river tubes, customers, and/or any other apparatuses, except for the emergency patrol vessels, at the Kingwood Boat Launch. Further, the Kingwood Boat Launch is not for commercial use therefore Licensee is strictly prohibited from launching the emergency patrol vessels at the Kingwood Boat Launch for any other purposes not approved under the Agreement. Failure on the part of Licensee to comply with the requirements set forth in this Paragraph shall constitute a material breach of the Agreement, subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 9 and 10. The location to launch the emergency patrol vessels for subsequent years of the Initial Term and the Renewal Term, if any, shall be determined at the time of such year or renewal.
- R. Licensee must maintain a physical staff presence at the Licensed Premises, on the River, at each Department-Designated Delivery and Department-Designated Pick Up Site and at the Access Points during the Core Business Hours set forth in Subparagraph 6(B) and while river tubes are in use on the River. Licensee must maintain a minimum total of three (3) employees that are American Red Cross certified in the proper administration of Cardiopulmonary Resuscitation ("CPR"), First Aid, and Lifeguarding, at the Licensed Premises, Department-Designated Delivery and Department-Designated Pick Up Sites, Access Points and/or on the emergency patrol vessel(s), during the Core Business Hours set forth in Subparagraph 6(B) and while river tubes are in use on the River. Failure on the part of Licensee to maintain a staff presence and a minimum total of three (3) employees that are certified in the proper administration of CPR, First Aid, and Lifeguarding, at the Licensed Premises, Department-Designated Delivery and Department-Designated Pick Up Sites, Access Points and/or on the River, during the Core Business Hours set forth in Subparagraph 6(B) and while river tubes are in use on the River shall constitute a material breach of the Agreement, subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 9 and 10.
- S. During each Period of Operation, Licensee shall be required to place a minimum of one (1) Portable Toilet Unit (which must be handicap accessible) on or about the Licensed Premises and each Department-Designated Delivery and Department-Designated Pick Up Site and within a pre-determined portion of the Park, designated by Department, during each Period of Operation of the License Agreement. Licensee shall be authorized to install a lock on each Portable Toilet Unit ("Unit") to ensure the Units remain exclusive to the customers of the License Operation. Department shall not be responsible for the damage or maintenance of

Licensee's Units. Licensee will be responsible for the daily cost to clean and maintain each Unit. The Portable Toilet Units shall be installed within the pre-determined portions of the Park prior to the start of each Period of Operation.

- T. Unless otherwise approved by Department, Licensee's Operation within the Park shall be strictly limited to the rental of river tubes. Licensee may request Department-written approval for the non-exclusive right to rent related equipment including, but not limited to, boats, rafts, canoes and kayaks. Motorized boats of any kind are not permitted for rental as part of the License Operation by Licensee. If approved in writing by Department, Licensee may rent related equipment from the Licensed Premises and shall comply with all of the terms and conditions of the Agreement. Licensee shall submit to Department, for approval, a written operation plan, including a list of items and prices for all related equipment. Licensee shall not rent any related equipment until Department approves the proposed operation plan and items and prices in writing. Failure on the part of Licensee to obtain written pre-approval of the types and pricing of related equipment shall be a material breach of the Agreement, subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 9 and 10.
- U. Licensee shall use the Licensed Premises, Department-Designated Delivery and Department-Designated Pick Up Sites and Access Points 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. The smoking of tobacco products, vaping and/or use of electronic smoking devices by Licensee, Licensee's employees or customers is also strictly prohibited at the Park. Licensee shall be solely responsible for monitoring and informing all customers that alcohol and smoking is strictly prohibited at the Park. As a condition of river tube rental, Licensee shall be permitted to request customers open bags and coolers to observe the contents and ensure compliance with the State alcohol policy. Any customer refusing to comply with the Licensee's inspection request may be denied service. Further, Licensee shall display signage at the Licensed Premises and in all vehicles transporting customers that will inform the customers of the State law prohibiting alcohol and smoking at the Park. In addition, Licensee shall be prohibited from selling or permitting the sale of food, beverages and novelties at the Park. Failure to comply with the requirements set forth in this Paragraph shall constitute a material breach of the Agreement subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 9 and 10.
- V. Licensee's status shall be that of a licensee under the terms of the Agreement. Licensee, whose term on the Licensed Premises, Department-Designated Delivery and Department-Designated Pick Up Sites and Access Points shall be commercial and 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, Department-Designated Delivery and Department-Designated Pick Up Sites and Access Points.
- W. Department reserves the right to issue 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 Licensed



Premises, Department-Designated Delivery and Department-Designated Pick Up Sites and Access Points. Licensee shall not be entitled to compensation for activities approved under a Special Use Permit.

- X. In the event Licensee does not provide the Public Jitney Service satisfactory to Department on or before the end of Year 2 of the Initial Term of the Agreement, Department reserves the right to issue a Request for Proposal for a public transportation service to pick-up and deliver members of the public to various areas within the Delaware and Raritan Canal State Park. This transportation service shall not be deemed by Department to conflict with this Bid Specifications or the License Agreement and the promotion of 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 Licensed Premises, Department-Designated Delivery and Department-Designated Pick Up Sites and Access Points. Licensee shall not be entitled to compensation.
- Y. **Department reserves the right, in its sole discretion, to revise the description of the Licensed Premises, Department-Designated Delivery and Department-Designated Pick Up Sites set forth in Subparagraphs 1(H) and 1(I) and/or Access Points set forth in Subparagraph 1(L) to accommodate changing operational needs of the License Operation. This shall include, but not be limited to, adding additional parking, Department-Designated Delivery and Department-Designated Pick Up Sites and/or Access Points on or about the Park.**

## 2. **ADVISORY UNSCHEDULED CLOSURES & PAYMENT ABATEMENTS**

All Bidders are hereby advised that the State Park Service facilities are subject to unscheduled closures for reasons of health, public welfare, public safety, and government closures. These closures may result from inclement weather, water quality, staffing, or emergencies. **Payment abatements will not be given for any reason.**

## 3. **TERM**

- A. The “Initial Term” of the Agreement shall commence on May 15, 2021 (“Effective Date”). The Initial Term of the Agreement shall begin on the Effective Date, continuing for a period of five (5) years from the Effective Date until the expiration of the Agreement (“Expiration Date”), unless the Agreement shall end sooner pursuant to any of the terms, covenants, or conditions herein provided or pursuant to law. The term “year” shall mean a period of twelve consecutive months (“year”) beginning on January 1<sup>st</sup> and ending on December 31<sup>st</sup>, except with respect to the “first (1<sup>st</sup>) year” of the Initial Term of the Agreement, which shall commence on the Effective Date and shall expire on December 31, 2021. Upon expiration of the Initial Term, Licensee may request, in writing, and Department may, in its sole discretion, grant a Renewal of the Agreement, for an additional period of five (5) years (“Renewal Term”). Department reserves the right to suspend Licensee’s operations and/or revoke the Agreement in accordance with the terms and conditions set forth in Paragraphs 9 and 10. Furthermore, failure on the part of Licensee to submit Monthly Reports or the Annual Report, as described in Paragraphs 12 and 13, when due, shall constitute a material

breach of the Agreement, subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 9 and 10.

- B. If Licensee wishes to renew the Agreement, it must submit a request, in writing, to the address set forth in Subparagraph 5(B). Any such request must be received no less than twelve (12) months prior to the Expiration Date of the Initial Term of the Agreement. Should Licensee fail to submit a written renewal request no less than twelve (12) months prior to the Expiration Date of the Initial Term, the Agreement may be revoked at the conclusion of the Agreement's current Term, in accordance with the terms and conditions set forth in Paragraph 10. Should the Department deny a renewal request, the Agreement shall be revoked at the conclusion of the Agreement's current Term, in accordance with the terms and conditions set forth in Paragraph 10.

#### 4. **EFFECTIVE DATE**

- A. For the purposes of the Agreement, the Effective Date of the Agreement's Initial Term shall be May 15, 2021.
- B. For the purposes of the Agreement, the Effective Date for the commencement of the Renewal Term, if any, shall be January 1, 2026, unless the Agreement shall end sooner pursuant to any of the terms, covenants, or conditions herein provided or pursuant to law. Licensee shall not be authorized to operate the License until 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 the Agreement is or are received by Department;
  - (iv) Department has approved, in writing, the proposed prices for the rental of river tubes and Public Jitney Service, if applicable; and
  - (v) Mandatory Compliance and Performance Evaluation Meeting #1 has been completed, as described in Paragraph 18.

#### 5. **LICENSE PAYMENT AND INCREASE**

- A. Licensee shall pay Department compensation as indicated below:
1. **Minimum Annual Fee:** The amount submitted by bidder equal to or greater than the minimum **Five Thousand (\$5,000.00) Dollars.**
  2. **Final Adjusted Payment:** The per-person rate for the first (1<sup>st</sup>) and second (2<sup>nd</sup>) year of the Initial Term shall be One (\$1.00) Dollar per person. The per-person rate for the remaining years of the Initial Term and subsequent

Renewal Term, if any, shall be Two (\$2.00) Dollars per person. Final Adjust Payment will be based on the following formulas:

(a.) Per-Person Rate multiplied by the Number of Persons renting River Tubes equals the Total Compensation (Per-Person Rate x Number of Persons Renting Tubes = Total Compensation).

(b.) The Final Adjusted Payment shall be the difference between the Total Compensation and the Minimum Annual Fee (Total Compensation less the Minimum Annual Fee = Final Adjusted Payment). Final Adjust Payment will be due on or before December 1<sup>st</sup> 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.

- 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  
Natural and Historic Resources  
Office of Leases & Concessions  
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 E, such failure shall constitute a material breach of the Agreement subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 9 and 10.
- D. Department may, at its discretion, require Licensee to make all payments for the Initial Term of the Agreement by certified or cashier’s check only.
- E. All late payments shall be assessed a monthly penalty of five (5%) percent of the total amount due. A late payment shall be any payment received after the first (1st) calendar day of each month.
- 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. Beginning on the third (3<sup>rd</sup>) year of the Initial Term of the Agreement, if any, the Annual Fee shall be increased by three (3%) percent continuing annually for each of any remaining years of the Initial Term and Renewal Term. The Annual Fee for any following years of the Initial Term and Renewal Term, if any, will be calculated by Department and shall be rounded up to the closest dollar.

## 6. HOURS OF OPERATION AND LIMITATIONS

- A. During the Initial Term and Renewal Term of the Agreement, if any, Licensee shall open and operate on the third (3<sup>rd</sup>) Saturday in May through the second (2<sup>nd</sup>) Sunday in October (“Period of Operation”).
- B. Licensee shall be open for business Sunday through Saturday during the Period of Operation for the Initial Term and Renewal Term, if any. Licensee shall operate during the Period of Operation between the “Core Business Hours” of 9:00 a.m. through 7:00 p.m. Licensee shall not be authorized to deliver river tubes and customers into the River before 9 a.m. and/or after 4 p.m. All river tubes and customers shall be picked up from the Department-Designated Pick Up Site no later than 7 p.m. Licensee must be prepped, fully operational, and capable of renting river tubes during the Period of Operation and between the Core Business Hours.
- C. Department shall be the sole authority to determine whether an area of Delaware and Raritan Canal 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. Licensee shall not operate the License Operation when the Delaware River is predicted to flood by the National Oceanic and Atmospheric Administration (NOAA). Licensee shall not operate the License Operation when the “Stage” on the NOAA hydrograph at Riegelsville set forth at <https://waterwatch.usgs.gov/index.php?m=real&r=nj&w=map> exceeds nine (9) feet. Licensee shall be solely responsible for monitoring, on a daily basis, the NOAA hydrograph at Riegelsville. Further, Licensee shall not operate the License Operation when one (1) or both sets of Stairs are not installed in the River for any reason. Absent closure by Department, the Park Superintendent or Park Superintendent Designee, 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 customer safety.
- D. Licensee shall be responsible for adequate staffing and operating the License Operation during the Period of Operation and during the Core Business Hours. Failure on the part of Licensee to open the License Operation during the Period of Operation and during the Core Business Hours shall be a material breach of the Agreement, subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 9 and 10.
- E. Licensee shall be accessible by phone during the Core Business Hours, as established pursuant to Subparagraph 6(B), at a number to be provided to Department and made publicly available at the Licensed Premises and in any advertisement of the License Operation. Failure on the part of Licensee to be accessible by phone during the Core Business Hours shall be a material breach of the Agreement, subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 9 and 10.
- F. Licensee shall also provide Department with a private number where Licensee can be reached at any time.

7. **ALTERNATE HOURS OF OPERATION**

Licensee may request authorization to extend the hours of operation, by opening before 9:00 a.m. and/or closing after 7:00 p.m. Further, Licensee may request authorization to deliver customers and river tubes into the River before 9 a.m. and/or after 4 p.m. No License Operation shall take place before sunrise or after sunset. All requests to extend hours of operation must be made in writing to the Park Superintendent or Park Superintendent Designee at the address set forth in Paragraph 47 ten (10) calendar days in advance of the proposed effective date. Licensee shall not implement the alternate hours of operation without written authorization from the Park Superintendent or Park Superintendent Designee.

**8. EXTENSION OF THE SEASON**

Licensee shall not be authorized to extend the Period of Operation for the Initial Term or Renewal Term for any reason.

**9. 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 Licensed Premises, Department-Designated Delivery and Department-Designated Pick Up Sites, Access Points and the Kingwood Boat Launch for such period of time as Department may determine to be appropriate to protect the Licensed Premises, Department-Designated Delivery and Department-Designated Pick Up Sites, Access Points, Kingwood Boat Launch 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 the Agreement on its part to be performed. Failure on the part of Licensee to make any payments when due, pursuant to Paragraph 5, shall result in immediate suspension of the License Operation. 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 the Agreement. Department's suspension of Licensee's operations shall be in addition to any other right or remedy available by law or in equity.

**10. REVOCAION**

- A. Licensee shall exercise direct and personal supervision of the License Operation and operation of the Licensed Premises, Department-Designated Delivery and Department-Designated Pick Up Sites and Access Points designated by Department in Exhibit A. Failure to exercise such supervision and/or the existence of any condition at the Park or in the operation of the License which Department determines to be in violation of the terms and conditions of the Agreement shall be considered to be a material breach in which event Department may revoke the 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, the 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 the 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 the 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. Licensee's conduct, or its officers, servants, agents, employees, contractors, and invitees shall be guided by the New Jersey State Policy Prohibiting Discrimination in the Workplace. Department expressly reserves the right to revoke the Agreement without notice in the event that Licensee's conduct or its officers, servants, agents, employees, contractors, or invitees implicates the New Jersey State Policy Prohibiting Discrimination in the Workplace.
- E. Notwithstanding any provision or language to the contrary, Department may revoke the 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 the Agreement for a period not to exceed ninety (90) calendar days after receipt of the notice or until the end of the current Agreement Term, whichever occurs sooner.
- F. Licensee may revoke the 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 the 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.
- G. If at any time during the Initial Term or Renewal Term of the 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 the 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.
- H. Revocation of the Agreement by either Department or Licensee, as herein provided, shall not release or discharge any payment obligation or liability owed by Licensee to Department under the terms and conditions of the Agreement as of the date of such revocation.
- I. Upon the expiration or revocation of the Agreement, Department may at once re-enter and remove any and all persons occupying the Licensed Premises, Department-Designated

Delivery and Department-Designated Pick Up Sites and Access Points. If Licensee fails to remove any property lawfully belonging to and removable by Licensee upon the expiration or revocation of the 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.

- J. Any Department-initiated revocation of the 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 the Agreement, upon thirty (30) calendar days written notice to Licensee.

## 11. **ELECTRONIC SUBMISSIONS**

Licensee must have the capacity to send and receive electronic submissions and communications as a pre-condition and continuing requirement of the Agreement. For purposes of the 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 as described in Paragraphs 12 and 13, 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 the Agreement, subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 9 and 10.
- B. Licensee shall maintain and monitor on a daily basis an active email address, designated for the Agreement and report any change to the email address during any Term of the Agreement. Failure on the part of Licensee to maintain and monitor the active email address, designated for the Agreement, shall be a material breach of the Agreement, subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 9 and 10.

## 12. **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 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 public tubers transported, customers and river tube rentals made on a daily and monthly basis during that same month. Failure on the part of Licensee to provide the Monthly Report, when due, shall constitute a material breach of the Agreement

subject to Suspension of Operations and/or Revocation, in accordance with the terms and conditions set forth in Paragraphs 9 and 10. 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.

### **13. ANNUAL REPORT**

- A. Licensee shall submit to Department, no later than December 1<sup>st</sup> following each Period of Operation the Agreement is in effect, an Annual Financial Statement ("Annual Report") for the prior Period of Operation. Each Annual Report shall be signed, dated, and certified by Licensee, Licensee's Bookkeeper, or Accountant, and contain the following: Total Number of River Tube Rentals, Total Number of Customers, Total Number of Public Tubers Transported, Total Gross Revenue, New Jersey State Sales Tax, Operating Expenses, and Net Profit from State Park License Operations. Failure on the part of Licensee to submit the Annual Report, when due, shall constitute a material breach of the Agreement subject to Suspension of Operations and/or Revocation, in accordance with the terms and conditions set forth in Paragraphs 9 and 10. 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 1<sup>st</sup> following each Period of Operation the Agreement is in effect.

### **14. RECORDS AND AUDIT**

- A. Licensee shall maintain complete, accurate, and detailed accounting records of all transactions pertaining to the License Operation covered by the 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 the Agreement and that the financial statements and reports present fairly the results of Licensee's operations pursuant to the Agreement. Failure to do so shall be a material breach of the 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 the Agreement.
- B. Licensee shall utilize a cash register as part of the License Operation. Licensee may request Department approval to also or alternatively utilize a Point of Service (POS) device. If approved in writing by Department, Licensee may then utilize a POS device as part of the License Operation. Any use of a POS device as part of the License Operation without the



required prior Department-written approval shall be a material breach of the Agreement, subject to Suspension of Operations and/or Revocation in accordance with the Terms and Conditions set forth in Paragraphs 9 and 10.

- C. All sales shall be recorded by means of cash registers or Department-approved 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 Department-approved 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 Department-approved POS device readings shall be recorded on a daily basis. In the event of technical or electrical failure of the cash register or Department-approved 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 Department-approved POS device shall be a material breach of the Agreement subject to immediate Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 9 and 10.

Each cash register or Department-approved 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

## 15. DAILY RECEIPTS

- A. Under the 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 the Agreement subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 9 and 10.
- B. All cash, credit and debit payments received by Licensee shall be deposited into a single bank account maintained at a bank located within the State of New Jersey and maintained solely for the subject License Operation, through which all financial transactions (including, but not limited to, deposits, withdrawals, and purchases) must pass.

## 16. PRICES

All prices, including but not limited to, discounts and promotional offers etc., for the rental of river tubes shall be submitted to and approved by Department in writing before any proposed price can become effective. **All prices, discounts and promotional offers shall not be combined with any other activity not approved under the Agreement.** Discounts or promotional offers of any kind shall not in any way alter the requirement for Licensee to remit the per person rate set forth in Paragraph 5. 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 river tubes (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 the Licensed Premises. Price signage must be professional in appearance, neat, and made of weather-proof materials.

## 17. 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 the Agreement. Licensee shall engage a sufficient number of reliable, competent, and qualified staff of legal age for operation and management of the Licensed Premises and each Department-Designated Delivery and Department-Designated Pick Up Site and the Access Points. 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 9; (2) obtain the service of reliable, competent, and qualified staff of legal age to operate the License Operation for Licensee for the remainder of the then current Period of Operation; or (3) revoke the Agreement in accordance with the terms and conditions set forth in Paragraph 10. Licensee shall compensate any staff obtained by Department for the remainder of the then current Period of Operation and shall reimburse Department for all costs incurred by Department in obtaining appropriate staff. 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. Licensee must maintain a minimum total of three (3) employees that are American Red Cross certified in the proper administration of CPR, First Aid, and Lifeguarding, at the Licensed Premises, Department-Designated Delivery and Department-Designated Pick Up Sites, Access Points and/or on the emergency patrol vessel(s) during the Core Business Hours set forth in Subparagraph 6(B) and while river tubes are in use on the River. Licensee shall not commence any operations and/or shall immediately suspend the License Operation if a

minimum of three (3) employees certified in CPR, First Aid, and Lifeguarding, are not physically present at the Licensed Premises, Department-Designated Delivery and Department-Designated Pick Up Sites, Access Points and/or on the emergency patrol vessel(s) during the License Operation until such time that the condition is corrected. Prior to commencement of each Period of Operation for the Initial Term and Renewal Term, Licensee shall submit to Department, documentation demonstrating that a minimum of three (3) employees of the License Operation are Red Cross certified in the proper administration of CPR, First Aid, and Lifeguarding and will be present at the Licensed Premises, Department-Designated Delivery and Department-Designated Pick Up Sites, Access Points and/or on the emergency patrol vessel(s) during the Core Business Hours set forth in Subparagraph 6(B) and while river tubes are in use on the River. Failure on the part of Licensee to submit the required documentation and maintain the required staff presence at the Licensed Premises, Department-Designated Delivery and Department-Designated Pick Up Sites, Access Points and/or on the River during the Core Business Hours set forth in Subparagraph 6(B) and while river tubes are in use on the River shall constitute a material breach of the Agreement, subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 9 and 10.

- C. Licensee must submit documentation to the Department demonstrating that that a minimum of two (2) employees are United States Coast Guard Qualified Pilots or possess a certificate in watercraft safety. Each person operating the vessel shall be United States Coast Guard Qualified Pilot or possess a certificate in watercraft safety.
- D. All employees of the License Operation must wear uniform shirts and name tags to identify and distinguish them as License employees. The type of uniform shirts and identification shall be pre-approved by the Park Superintendent or Park Superintendent Designee, prior to the start of any Period of Operation of the Agreement. Failure on the part of Licensee to comply with the uniform requirement shall be a material breach of the Agreement subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 9 and 10.
- E. Licensee must have radio and/or cell phone communication available for all operators of its vehicles and Vessels. Each operator shall carry emergency numbers including, but not limited to, 1-877-WARN DEP (1-877-927-6337), Park Superintendent, Park Office, State Park Police and Local Emergency Rescue, Police and Fire. In addition, Licensee and/or all operators of its vehicles and busses shall obtain the name and telephone number of each customer of the License Operation.

## **18. COMPLIANCE AND PERFORMANCE EVALUATION**

Two (2) Mandatory Compliance and Performance Evaluation Meetings shall be conducted during each Period of Operation of the 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 the 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 a representative from the Office of Leases and Concessions, the Park Superintendent and a management/supervisory representative of Licensee's firm. 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 management/supervisory representative of Licensee's firm and shall be attached to and made a part of the Agreement. The Mandatory Compliance and Performance Evaluation Meetings shall be held as follows:

- Meeting #1 - Prior to commencement of the Period of Operation or the third (3<sup>rd</sup>) Saturday in May, whichever comes first.
- Meeting #2 - Within ten (10) calendar days after the second (2<sup>nd</sup>) Sunday in October.

## 19. **EQUIPMENT**

- A. Licensee shall be solely responsible for maintaining all Licensee-owned supplies, goods and equipment and all equipment installed or located on the Licensed Premises, Department-Designated Delivery and Department-Designated Pick Up Sites for use by Licensee and customers of the License Operation. Department shall not be responsible for the damage, loss, or maintenance of any equipment. Licensee shall obtain written approval from Department prior to installation of any of Licensee's equipment on the Licensed Premises, Department-Designated Delivery and Department-Designated Pick Up Sites and/or Access Points.
- B. Stairs shall be provided by Department, as set forth in Exhibits C and D for River ingress and egress. The Stairs require permits and the Department shall be responsible for obtaining all necessary permits and for installation of the Stairs. Department shall be solely responsible for removing the Stairs to a safe location, when the Delaware River is predicted to flood by the National Oceanic and Atmospheric Administration (NOAA). Department shall not re-install the Stairs until the Department determines it is deemed safe and/or the "Stage" on the NOAA hydrograph at Riegelsville set forth at <https://waterwatch.usgs.gov/index.php?m=real&r=nj&w=map> reaches nine (9) feet or below. Licensee shall be prohibited from operating the License when one (1) or both sets of the Stairs are not installed in the River for any reason. Department shall not be liable for any loss of revenues or damages resulting from the full or partial closure of the Department-Designated Delivery and Department-Designated Pick Up Sites, Access Points, Kingwood Boat Launch, Licensed Premises or any other part of the Park. 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.
- C. Licensee must provide the necessary personnel to respond to all emergency situations involving rented river tubes and customers of the License Operation during the Core Business Hours set forth in Subparagraph 6(B) and while river tubes are in use on the River. Licensee must have a minimum of two (2) emergency patrol vessels ("Vessel"), one (1) shall be positioned along the approximate four and eight tenths (4.8) mile route set forth in Exhibit A to ensure the health and safety of License customers, when the License is in operation. The

Vessels must have a shallow draft that will enable them to access all areas of the River. Licensee shall provide a photograph of each Vessel that will be used for this purpose. In addition, Licensee shall provide the manufacturer, model and registration for all Vessels that will be used during the License Operation. Each staff person operating the Vessel shall be United States Coast Guard Qualified Pilot or possess a certificate in watercraft safety. Each Vessel shall be manned, equipped and operated at all times in accordance with the United States Coast Guard rules and regulations. Failure on the part of Licensee to operate the Vessel in accordance with the terms and conditions set forth in this Paragraph shall be a material breach of the Agreement, subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 9 and 10.

- D. During each Period of Operation, Licensee shall be required to place a minimum of one (1) Portable Toilet Unit (which must be handicap accessible) on or about the Licensed Premises and each Department-Designated Delivery and Department-Designated Pick Up Site and within a pre-determined portion of the Park, designated by Department, during each Period of Operation of the License Agreement. Licensee shall be authorized to install a lock on each Portable Toilet Unit (“Unit”) to ensure the Units remain exclusive to the customers of the License Operation. Department shall not be responsible for the damage or maintenance of Licensee’s Units. Licensee will be responsible for the daily cost to clean and maintain each Unit. The Portable Toilet Units shall be installed prior to the start of each Period of Operation.
- E. Licensee shall be authorized to temporarily store river tubes at the Department-Designated Delivery and Department-Designated Pick Up Sites during the Core Business Hours set forth in Subparagraph 6(B) for a predetermined period of time as identified and approved in Licensee’s Operation Plan, and in the area and manner approved in writing by Department. Department reserves the right to suspend any temporary river tube storage at the Department-Designated Delivery and Department-Designated Pick Up Sites. The overnight storage of river tubes is explicitly prohibited and Licensee shall be responsible for removing all river tubes, supplies, goods, and equipment from the Department-Designated Delivery and Department-Designated Pick Up Sites on a daily basis. The overnight storage of the Mobile Unit, supplies, goods, or equipment is only permitted at the Licensed Premises, as designated in Exhibit A. Licensee shall not be authorized to store the Mobile Unit or any supplies, goods or equipment related to the operation of the License outside any Period of Operation set forth in Subparagraph 6(A), unless otherwise approved in writing by Department. Department shall not be responsible or liable for any loss or theft of supplies, goods or equipment.
- F. 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.

## **20. REPAIRS**

The Licensed Premises, Department-Designated Delivery and Department-Designated Pick Up Sites and Access Points shall be provided in “as is” condition. Licensee shall, at its sole

cost and expense, be responsible for making repairs to all Licensee-owned supplies, goods and equipment.

**21. MAINTENANCE OF LICENSED PREMISES AND DEPARTMENT-DESIGNATED DELIVERY AND DEPARTMENT-DESIGNATED PICK UP SITES**

- A. Licensee shall preserve and maintain the Licensed Premises, Department-Designated Delivery and Department-Designated Pick Up Sites and portable toilet unit(s) in good and clean condition, reasonable wear and tear excepted. Licensee is solely responsible for the maintenance and cleanliness of the Licensed Premises, Department-Designated Delivery and Department-Designated Pick Up Sites and portable toilet unit(s). In addition, Licensee shall be solely responsible for the collection and removal of all garbage and trash, generated by the License Operation, from the Licensed Premises, Department-Designated Delivery and Department-Designated Pick Up Sites, portable toilet unit(s) and Access Points on a daily basis.
- B. Department shall, subject to the availability of funds pursuant to Paragraph 22 and the availability of State Park Service staffing, routinely maintain the Access Points, including but not limited to installing, removing and maintaining the stairs, filling holes, repairing washouts, replacing mulch, removing fallen branches and debris on the Department-approved internal paths and trimming overhanging or encroaching vegetation to ensure unobstructed safe access to the designated points of River ingress and egress.
- C. Licensee shall, at its sole cost and expense, maintain the parking lots at the Licensed Premises and routinely fill ruts, potholes and rake stone. Department shall, subject to the availability of funds pursuant to Paragraph 22 and the availability of State Park Service staffing, be responsible for all extraordinary damage to the parking lots at the Licensed Premises.
- D. Extraordinary damage to the Department-Designated Delivery and Department-Designated Pick Up Sites and Access Points resulting from natural disaster or flooding shall be the responsibility of the Department to the extent that funding and resources are available to undertake the necessary repairs. Licensee shall, at its sole cost and expense, be responsible for any extraordinary damage caused by Licensee, its officers, servants, agents, employees, contractors, customers or invitees to the Department-Designated Delivery and Department-Designated Pick Up Sites, Access Points, Licensed Premises or Park.
- E. Upon the expiration of each Period of Operation or revocation of the Agreement, Licensee shall deliver up peaceable possession of the Licensed Premises, Department-Designated Delivery and Department-Designated Pick Up Sites to Department in as good and clean condition as the areas were made available at the commencement of each Period of Operation, reasonable wear and tear excepted. In the event that Licensee does not deliver up possession as herein provided, Department may restore the Licensed Premises, Department-Designated Delivery and Department-Designated Pick Up Sites 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.

**22. AVAILABILITY OF FUNDS**

Licensee expressly acknowledges that the Licensed Premises, Department-Designated Delivery and Department-Designated Pick Up Sites and Access Points are provided “as is,” and any obligation of Department to repair or maintain the Licensed Premises, Department-Designated Delivery and Department-Designated Pick Up Sites and Access Points is contingent upon the availability of appropriated funds. 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 to Department.

**23. INSPECTION**

Licensee shall make the Licensed Premises, Department-Designated Delivery and Department-Designated Pick Up Sites and Access Points available for inspection at any time by any authorized representative of Department to assure compliance with the terms and conditions of the Agreement.

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

- A. Licensee shall be responsible for maintaining the cleanliness of the Licensed Premises, Department-Designated Delivery and Department-Designated Pick Up Sites and Access Points. Licensee shall remove all garbage and trash, generated by the License Operation, from the Park 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 waterbodies used as part of the License Operation. Licensee shall provide such additional trash containers as may be required to keep the immediate Licensed Premises and Department-Designated Delivery and Department-Designated 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.

**25. UTILITIES**

Licensee shall be responsible for the payment of any and all utility charges related to the License Operation for each Term of the Agreement. Electricity is provided on the Licensed Premises for the License Operation. Licensee shall be solely responsible for the transfer of such utility meter(s) to an account in its name.

**26. 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, Department-Designated Delivery and Department-Designated Pick Up Sites and Access Points 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 the 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 the Agreement and/or the expiration or revocation of the 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 the Agreement subject to Suspension of Operations and/or Revocation, in accordance with the terms and conditions set forth in Paragraphs 9 and 10.

- B. Licensee, and each of their affiliates shall, for any and all Term(s) of the 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>.

## **27. ADVERTISEMENT AND PROMOTION**

- A. Licensee shall not advertise in any manner or form on or about the Licensed Premises, Department-Designated Delivery and Department-Designated Pick Up Sites or any other part of the Park, except by means of such signs or forms of advertising as first shall be approved, in writing, by Department.
- B. Licensee shall, in all promotion and advertisement of the License Operation and/or any scheduled event(s) at or pertaining to the License Operation, include that the Park is administered by the State of New Jersey, Department of Environmental Protection, Division of Parks and Forestry, State Park Service.
- C. Prior to the implementation of any and all promotion and advertisement of the License Operation and/or any scheduled event(s) at or pertaining to the License Operation, Licensee shall submit, and obtain Department's written approval of, all such promotion(s) and advertisement(s).

## **28. CONSTRUCTION AND IMPROVEMENTS**

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

## **29. 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.

**30. 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 30(A) through 30(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.

**31. SOLICITATION**

Licensee shall warrant that no person has been employed directly or indirectly to solicit or secure the 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 the 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.

**32. INDEPENDENT PRINCIPAL**

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

**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, Department-Designated Delivery and Department-Designated Pick Up Sites, Access Points and Kingwood Boat Launch or upon any sidewalk, walkway, or patio within the Licensed Premises, Department-Designated Delivery and Department-Designated Pick Up Sites, Access Points and Kingwood Boat Launch, the Delaware River or in any manner growing out of or connected with the use, non-use, condition, or occupancy of the Licensed Premises,

Department-Designated Delivery and Department-Designated Pick Up Sites, Access Points and Kingwood Boat Launch, or the construction or repair of any improvements of the Licensed Premises, Department-Designated Delivery and Department-Designated Pick Up Sites, Access Points and Kingwood Boat Launch;

- (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 the Agreement;
  - (iv) violation of any term or condition of the Agreement by Licensee, its officers, agents, servants, employees, contractors, invitees, and anyone claiming by or through Licensee in the performance of the Agreement; and
  - (v) violation by Licensee, its officers, agents, servants, employees, contractors, invitees, and anyone claiming by or through Licensee in the performance of the Agreement of any contracts and agreements of record concerning the Licensed Premises, Department-Designated Delivery and Department-Designated Pick Up Sites, Access Points and Kingwood Boat Launch and restrictions of record or any law, ordinance, or regulation affecting the Licensed Premises, Department-Designated Delivery and Department-Designated Pick Up Sites, Access Points and Kingwood Boat Launch 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, Department-Designated Delivery and Department-Designated Pick Up Sites, Access Points and Kingwood Boat Launch shall not operate to limit the obligations of Licensee assumed pursuant to the Agreement.
- D. Licensee's liability pursuant to this Paragraph shall continue after the revocation or expiration of the 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 the Agreement.

### 34. INSURANCE

- A. Licensee shall, at its sole cost and expense, obtain and maintain at all times during each Term of the 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) Property insurance to cover loss or damage on a "Special Causes of Loss" form of coverage against fire, water, wind, storm, loss, theft, and damage on any structures on the Department-Designated Delivery and Department-Designated Pick Up Sites and Access Points, and all fixtures, equipment, and other property attached thereto and/or physically incorporated therein and the contents owned by Licensee and located in or on the Department-Designated Delivery and Department-Designated Pick Up Sites and Access Points. Said insurance shall be in an amount not less than the full value of such structures, fixtures, equipment, property, and contents. The value of said structures, fixtures, equipment, property, and contents shall be determined by Licensee using whatever procedures Licensee considers appropriate. Said policy shall be written so as to provide that the insurer waives all right of subrogation against Department in connection with any loss or damage covered by the policy; and
  - (iii) 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
  - (iv) 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
  - (v) 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 the 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 the Agreement and the location(s) of the Licensed Premises, Department-Designated Delivery and Department-Designated Pick Up Sites, Access Points and Kingwood Boat Launch in the Description of Operations box and shall list the State of New Jersey, Department of Environmental Protection, Natural and Historic Resources, Office of Leases & Concessions, P.O. Box 420, Mail Code: 501-04C, Trenton, New Jersey 08625-0420 in the Certificate Holder box.
- C. When Licensee returns the 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 the Agreement. Failure to provide a certificate(s) of insurance at the time of Licensee's return of the Agreement or any subsequent Renewal Agreement shall result in the non-execution of the 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 the Agreement. Licensee also shall, upon request, provide Department with copies of each policy required under the 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 the Agreement shall in no way limit Licensee's indemnification obligations assumed in the 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 the 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 the Agreement, or (ii) any policy is canceled, terminated, or modified so that the insurance does not meet the requirements of the Agreement, Department shall consider Licensee to be in material breach of the Agreement, subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 9 and 10.
- 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 the 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, Department-Designated Delivery and Department-Designated Pick Up Sites, Access Points and Kingwood Boat Launch 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 the 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 the Agreement.
- D. If Licensee:
- (i) receives a notice of failure to comply with the insurance required by the 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 the 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 the Agreement, and Department may suspend Licensee's operation of all or the affected portion of the Licensed Premises, Department-Designated Delivery and Department-Designated Pick

Up Sites, Access Points and Kingwood Boat Launch in accordance with the terms and conditions set forth in Paragraph 9, and/or revoke the Agreement in accordance with the terms and conditions set forth in Paragraph 10.

- 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 the Agreement shall be performed within the United States. In the event that all services performed under the 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 the 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 the 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 9 and 10.

**37. PUBLIC USE**

Licensee shall have use of the Park solely for the purposes of conducting the License Operation only. Licensee's operation and the Agreement shall not be construed so as to affect the privileges accorded to the general public's use of the Park, except for activities conducted under Subparagraph 1(K), or to restrain or prevent individual persons or groups of persons from bringing their own food, beverages, and recreational equipment, including but not limited to river tubes, into the Park. Further, Licensee's operation shall not impede or restrict the public from recreating along the towpath in other ways including, but not limited to, hiking and biking and shall not be construed so as to restrain or prevent public, non-commercial tubing activities within the Park. Licensee's operation shall not impede or restrict other lease, license or concession holders' access to their leased, licensed or concession premises within the Park. Failure on the part of Licensee to comply with the requirements set forth in this Paragraph shall be a material breach of the Agreement, subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 9 and 10.

**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, Department-Designated Delivery and Department-Designated Pick Up Sites and Access Points.

### **39. AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT REQUIREMENTS**

- A. Pursuant to N.J.A.C. 17:27-3.5, Licensee agrees that:
  - (i) Licensee 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 termination; 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 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 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 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 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 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 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 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 Park is subject to unscheduled closures for reasons of health, public welfare, public safety, and government closures. These closures may result from inclement weather, water quality, staffing, or emergencies. Payment abatements will not be given if Licensee is unable to operate at the Park 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 the Agreement, as well as the performance of the terms and conditions of the 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 the Agreement by Licensee. Licensee shall submit a copy of said resolution to Department prior to execution of the Agreement by Department.
- C. Prior to the Effective Date of the 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 License Agreement.

**44. ASSIGNMENT OF AGREEMENT OR SALE OF INTERESTS**

The License Agreement is personal to Licensee. Licensee shall not assign the Agreement or sell controlling interest in the License.

**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 the Agreement, subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 9 and 10, for Licensee to do any of the following during any Term of the 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;
- (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 the Agreement.

B. Licensee shall submit the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions Form, certifying that no contributions prohibited by Chapter 51 have been solicited or made by Licensee and reporting all contributions Licensee made during the preceding four years to any political organization organized under 26 U.S.C. § 527 of the Internal Revenue Code that also meets the definition of a "continuing political committee" within the meaning of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7. The required Certification and Disclosure Form can be found in the Prequalification Application, which Licensee is required to complete, and submit, with any bid. The Prequalification Application is available at: [http://www.njparksandforests.org/parks/business\\_ops/current\\_leases.htm](http://www.njparksandforests.org/parks/business_ops/current_leases.htm). If Licensee has a currently valid Two-Year Certification and Disclosure Form, it may be submitted instead of a new form.

The State Treasurer or his designee shall review the Disclosures submitted by Licensee pursuant to this Subparagraph, as well as any other pertinent information concerning the contributions or reports thereof by Licensee prior to award or during the term of the Agreement. If the State Treasurer determines that any contribution or action by Licensee violated Chapter 51 and EO 117, the State Treasurer shall disqualify Licensee from award of the Agreement. If the State Treasurer or his designee determines that any contribution or action constitutes a breach of the Agreement that poses a conflict of interest pursuant to Chapter 51 or EO 117, the State Treasurer shall disqualify Licensee from award of the Agreement.

- C. Licensee shall submit the Chapter 271 Vendor Certification and Political Contribution Disclosure Form, disclosing its political contributions within the immediately preceding twelve (12) month period. The required Certification and Disclosure Form can be found in the Prequalification Application, which Licensee is required to complete, and submit, with any bid. The Prequalification Application is available at: [http://www.njparksandforests.org/parks/business\\_ops/current\\_leases.htm](http://www.njparksandforests.org/parks/business_ops/current_leases.htm).

No prospective Licensee will be precluded from being retained by virtue of the information provided in the Chapter 271 Vendor Certification and Political Contribution Disclosure Form, provided the form is fully and accurately completed.

- D. Licensee is required, on a continuing basis, to report any contributions and solicitations Licensee makes during any Term of the Agreement at the time any such contribution or solicitation is made. Failure to do so is a breach of the Agreement, subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 9 and 10.
- E. 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. NEW JERSEY BUSINESS REGISTRATION**

Licensee must submit with any bid a copy of a valid New Jersey Business Registration for itself. If Licensee is not already registered with the New Jersey Division of Revenue, registration can be completed online at the Division of Revenue Website: <http://www.state.nj.us/treasury/revenue/busregcert.shtml>.

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

Department and Licensee agree that all submissions, approvals, and notices which may be required under the 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 Natural and Historic Resources Office of Leases & Concessions PO Box 420, Mail Code: 501-04C Trenton, New Jersey 08625-0420 <b>Fax:</b> (609) 984-0836 <b>Email:</b> <a href="mailto:OfficeofLeases@dep.nj.gov">OfficeofLeases@dep.nj.gov</a>
----------------	--

Copy to Park Superintendent:

Delaware & Raritan Canal State Park  
 145 Mapleton Road  
 Princeton, New Jersey 08540  
 Fax: (609) 924-6507  
**Email: TBD**

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 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.

**48. RECEIPT OF WRITTEN NOTICE**

Department and Licensee agree that the receipt of a written notice is considered five (5) calendar days after the date on the said written notice.

**49. NOT A LEASE**

It is expressly understood and agreed by both Department 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. Department'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.

**50. PREQUALIFICATION APPLICATION**

Licensee shall submit a completed Prequalification Application along with any bid. The Prequalification Application is available at:  
[http://www.njparksandforests.org/parks/business\\_ops/current\\_leases.htm](http://www.njparksandforests.org/parks/business_ops/current_leases.htm).

**51. LICENSE BID EVALUATION & SELECTION PROCESS**

Department shall review and evaluate all bids in accordance with the procedures and upon the criteria outlined in the License Bid Evaluation & Selection Process, available at:  
[http://www.njparksandforests.org/parks/business\\_ops/current\\_leases.htm](http://www.njparksandforests.org/parks/business_ops/current_leases.htm).

**52. 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 the Agreement, whenever possible, where relevant.

**53. NEGOTIATION AND BEST AND FINAL OFFER (BAFO)**

Department reserves the right to enter into negotiations with and/or invite submission of a Best and Final Offer (BAFO) from one bidder or multiple bidders in accordance with the procedures as outlined in the License Bid Evaluation & Selection Process.

**54. REJECTION OF PROPOSAL**

Department reserves the right to reject, in its sole discretion, any or all bids at any point in the License Bid Evaluation & Selection Process. In addition, any entity, including any individual, corporation, partnership, sole proprietorship, affiliate or other entity related thereto, that is: (a) listed as debarred by the State of New Jersey; (b) was a party to a prior agreement with the Department that was terminated or not renewed due to breach, non-performance, failure to make required payments due thereunder or otherwise for cause; or (c) owes the Department compensation of any type from a prior agreement shall be considered non-responsive to this solicitation. The Licensee shall not employ, or subcontract or assign the License Operation to, any individual, corporation, partnership, sole proprietorship, affiliate or other entity related to a disqualified entity.

**55. CONTRACT AMOUNT**

Compensation amount(s), when stated in this Bid Specifications, shall not be construed as either the maximum or minimum amount which Department shall be obligated to accept as the result of this Bid Specifications or any Agreement entered into as a result of this Bid Specifications.

**56. DEFAULT OR REFUSAL TO ENTER CONTRACT**

In the event of default of the successful bidder or his/her refusal to enter into a contract with Department, Department reserves the right to accept any other qualified bidder.

**57. CHANGES TO TERMS AND CONDITIONS**

All bidders must comply with all requirements set forth in this Bid Specification. Bids that do not comply with this Bid Specifications shall be determined non-responsive. A bidder may propose additional services directly related to the License Operation and Public Jitney Service that will enhance the License Operation, Public Jitney Service and public recreation at the Park for Department consideration and inclusion in the License Agreement. If a bidder does so, the bidder must clearly describe the bidder's additional services in writing in the bid proposal. Any proposed additional services and conditions by a bidder will be a factor in the determination of an award. Bidders must be aware, however,

that there are certain terms and conditions that are required by law (e.g., Pay to Play, Affirmative Action, Business Registration, Prevailing Wage), and are, therefore, a mandatory component of this Bid Specification and the License Agreement.

#### 58. LIST OF EXHIBITS

- Exhibit A: Overview of Department-Designated Delivery Site and Department-Designated Pick Up Site, Access Points and Licensed Premises
- Exhibit B: Licensed Premises
- Exhibit C: Department-Designated Delivery Site and Access Point
- Exhibit D: Department-Designated Pick Up Site and Access Point
- Exhibit E: License Payment Schedule

#### 59. QUESTIONS AND INQUIRIES

The Department will accept questions and inquiries regarding this Bid Specifications from all potential bidders. Questions may be directed only to the Department and must be submitted by email to: [OfficeofLeases@dep.nj.gov](mailto:OfficeofLeases@dep.nj.gov).

The cut-off date for the submission of questions shall be **March 15, 2021**. It is requested that bidders with long, complex, or multiple-part questions submit them as far in advance as possible. Questions must be directly tied to the Bid Specifications. Questions should follow the organization of the Bid Specifications and be asked in consecutive order, from beginning to end. Each question should begin by referencing the page number and the paragraph number of the Bid Specifications to which it relates.

Brief *procedural* inquiries may be accepted over the telephone by the Office of Leases and Concessions. The Office of Leases and Concessions will not answer any inquiries that require interpretation of the Bid Specifications. However, oral explanations or instructions given over the phone shall not be binding upon the State. **Bidders shall not contact the Division of Parks and Forestry, or any other branch of the Department directly, in person or by telephone, concerning this Bid Specifications.**

All responses to written questions will be posted at [http://www.njparksandforests.org/parks/business\\_ops/current\\_leases.htm](http://www.njparksandforests.org/parks/business_ops/current_leases.htm) on or before **March 22, 2021**.

#### 60. PROPOSAL DELIVERY AND IDENTIFICATION

In order to be considered, a proposal responding to this Bid Specifications must arrive at the Office of Leases and Concessions no later than **noon on March 29, 2021**. All bidders submitting proposals are advised to allow adequate delivery time to ensure punctual delivery of proposals by the date and time set forth herein. Late proposals shall be ineligible for consideration. The exterior of the Bid Proposal package envelope must be labeled with the Name of the State Park/Forest and Opportunity, the Bid Proposal package

Due Date, and the name of the individual or corporation submitting the proposal. The proposal shall be submitted to the following address:

Department of Environmental Protection  
Natural & Historic Resources  
Office of Leases & Concessions  
Attn: George A. Chidley, Manager  
Mail Code 501-04C  
P.O. Box 420  
Trenton, New Jersey 08625-0420