

BID SPECIFICATIONS

SEASONAL GUIDED OUTFITTER EXPERIENCE (WITHOUT FACILITY) LICENSE

Spruce Run Recreation Area (“Area”) in Hunterdon County, New Jersey

1. SCOPE OF LICENSE

- A. Licensee shall, under a License Agreement (“License Agreement” or “Agreement”), be granted the non-exclusive, revocable right to conduct Guided Outfitter Experiences on an hourly and/or daily basis (hereinafter referred to as the “License Operation”) at Spruce Run Recreation Area. Licensee’s operation shall be limited to the structure(s) or area(s) provided by the Department of Environmental Protection (“Department”) for purposes of the Agreement and specifically designated in Exhibit A (hereinafter referred to as the “Licensed Premises”). The License shall be personal to Licensee and shall not be assignable.
- B. Licensee shall be granted, as part of the License Operation, the non-exclusive use of the two (2) Cartop Boat Launches, the Access Routes, the Public Parking Lot and the Spruce Run Reservoir, as shown in Exhibit A.
- C. Guided Outfitter Experiences, for the purposes of this Agreement, shall include lessons, clinics or tours on vessels within the Spruce Run Reservoir to promote the recreational, natural and historic resources at Spruce Run Recreation Area. Vessels shall be limited to non-motorized personal watercraft (“Vessels”). Motorized boats of any kind are not permitted as part of the License Operation by Licensee. Guided Outfitter Experiences shall be led by a minimum of one (1) guide for every twenty (20) participants. Failure on the part of Licensee to maintain a staff presence of a minimum of one (1) guide for every twenty (20) participants shall constitute a material breach of this agreement, subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 10 and 11.
- D. Licensee shall be prohibited from conducting transactions pertaining to the License Operation in the Area, including on or about the Licensed Premises. All transactions pertaining to the License Operation covered by the Agreement must be conducted from Licensee’s off-site administration facility or website. Transactions shall include, but not be limited to, scheduling reservations for Guided Outfitter Experiences and associated Vessels and receipt of payment.
- E. Licensee shall, as part of the License Operation, deliver and pickup, for purposes of the Agreement, Vessels and related equipment at the Public Parking Lot set forth in Exhibit A. All of Licensee’s customers are required to meet and park all vehicles in the Public Parking Lot as set forth in Exhibit A. Licensee shall only use the Access Routes set forth in Exhibit A for the delivery and pickup of Vessels and related equipment. Licensee shall ensure that all Vessels and related equipment for the License Operation are delivered from Licensee’s off-site administration facility to the Public Parking Lot and returned at the conclusion of the scheduled reservation/tour(s).
- F. Licensee and its customers shall adhere to all posted speed limit signs posted along the Access Routes. All of Licensee’s vehicles must remain on the Access Routes and shall avoid driving into the water or down riverbanks toward the water. Licensee shall, at its sole cost and expense, be responsible for any damage caused by Licensee or its customers to the Licensed Premises or Area. Failure to comply with the requirements set forth in this Paragraph shall constitute a material breach of the Agreement subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 10 and 11.
- G. Licensee shall be permitted to have one (1) non-transferable voucher pre-approved by the Department in writing, identifying the name, address and telephone number of Licensee in order to enter the Area at no cost during the License Operation. Licensee must display the voucher on their vehicle dashboard while at the Area.

- H. Department does not guarantee admission to the Area for any activities associated with the License Operation. All customers of the License Operation are subject to all appropriate entry fees to access the Area for the License Operation.
- I. Except as provided in G above, each Licensee vehicle and each Licensee customer vehicle shall pay the Area parking fee upon entry between Memorial Day weekend until Labor Day each year. The parking fee is established in N.J.A.C. 7:2 and as such is subject to change. The current parking fee is as follows:
 - a. Monday through Friday, 8 am to 5 pm, \$5 per New Jersey resident vehicle; \$10 per non-New Jersey resident vehicle;
 - b. Saturdays, Sundays and Holidays, 7 am to 5 pm, \$10 per New Jersey resident vehicle and \$20 per non-New Jersey resident vehicle; and
 - c. Bus Parking Fee, Monday through Friday, 10 am to 3 pm, \$65 per New Jersey Group Bus, and \$120 per non-New Jersey Group Bus. The group's address determines which fee is appropriate.
- J. Licensee shall complete the Bus Reservation for its customers and receive permission from the Department prior to seeking admission of a bus to the Area. The Department accepts a limited number of busses weekdays between Memorial Day and Labor Day during the hours of 10 am and 3 pm. No busses are permitted in the Area on weekends.
- K. Licensee shall be solely responsible for obtaining the necessary vehicle(s), roof top racks and/or trailer(s) suitable for transporting Licensee's Vessels and related equipment. All Vessels must be marked and clearly identify the name of Licensee.
- L. Licensee shall be solely responsible for obtaining all permits, licenses, and certificates for Licensee's Operation. Licensee shall only use the Public Parking Lot for parking for the License Operation and the delivery and pick up of Licensee's Vessels and related equipment. Licensee shall be solely responsible for any and all damages resulting from the delivery of Licensee's Vessels and related equipment.
- M. Department reserves the right to limit the issuance of Seasonal Guided Outfitter Experience Licenses at Spruce Run Recreation Area to a maximum of four (4). Only operators awarded a Guided Outfitter Experience License at Spruce Run Recreation Area shall be authorized to offer Guided Outfitter Experiences within the Licensed Premise, however individual persons or groups of persons may bring vessels and recreational equipment rented from other canoe/kayak/paddleboard operations outside the Area, into the Area, including onto the Licensed Premises. Licensee's operation and the Agreement shall not be construed so as to affect the privileges accorded to the public's use of the Area, including public use of the Licensed Premises. Licensee's operation and the Agreement shall not be construed so as to affect the privileges accorded to any and all other Seasonal Guided Outfitter Experience Licensees' use of the Area, including use of the Licensed Premises. Licensee's operation and the Agreement shall not be construed so as to affect the privileges accorded to the Boat-Livery Concessionaire's use of the Area, including use of Spruce Run Reservoir. The Boat-Livery Concession Operation occurring in conjunction with activities approved under the Agreement shall not be considered in conflict with Licensee's rights. Licensee's operation shall not be construed so as to restrain or prevent individual persons or groups of persons from bringing their own vessels and recreational equipment into the Area, including onto the Licensed Premises.
- N. All customers of the License Operation must receive a properly rated and sized Personal Flotation Device (PFD). All customers of the License Operation twelve (12) and under must wear a PFD. 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 Area and may not be used by Licensee or Licensee's customers. Licensee is responsible for ensuring that Vessels are not overloaded. The proper number of customers in a vessel must be based on vessel type and the manufacturer's recommended carrying capacity. Licensee is solely responsible for routinely inspecting all Vessels and related equipment to ensure that they are safe and free of defects. All Vessels and related equipment determined to be unsafe or damaged must be removed from the Area and may not be used by Licensee or Licensee's customers.

until properly repaired. Vessel repair is not permitted in the Area; any and all repairs must occur off-site. Licensee is solely responsible for the safety of all Vessels and customers.

- O. Licensee shall use the Licensed Premises solely for the purposes set forth above and is strictly prohibited from selling, transporting or permitting the sale or consumption of any alcoholic beverages thereon. In addition, the smoking of tobacco products, vaping and/or use of electronic smoking devices by Licensee, Licensee's employees or customers is strictly prohibited at the Area. Licensee shall be solely responsible for monitoring and informing all customers that alcohol and smoking is strictly prohibited at the Area. Licensee may request customers open bags and coolers to ensure there is no alcohol. Any customer refusing to comply with Licensee's request to inspect may be denied service. Licensee shall inform all customers of the License Operation the State law prohibiting alcohol and smoking at the Area. 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 10 and 11.
- P. Licensee, whose term on the Licensed Premises shall be seasonal in nature, will not, in any way whatsoever, be granted or conveyed any permanent easement, lease, fee, or other interest in the Licensed Premise.
- Q. Department reserves the right to issue one (1) day Special Use Permits for Guided Outfitter Experiences 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. Licensee shall not be entitled to compensation for activities approved under a Special Use Permit. The Guided Outfitter Experiences occurring in conjunction with activities approved under a Special Use Permit shall not be considered in conflict with Licensee's rights.
- R. Licensee shall be responsible for monitoring water levels and assessing all onsite conditions and any health or safety concerns before conducting the License Operation on the Licensed Premises or Spruce Run Reservoir.
- S. Licensee shall monitor daily weather forecasts and cancel for inclement weather or ensure that on-water activities cease, and all equipment and participants are cleared from the water and Vessels if inclement weather is encountered.
- T. Licensee shall require all Vessels to utilize a white navigational light from sunset to sunrise with a 360-degree visibility.
- U. Licensee shall monitor the presence and severity of any harmful algal bloom (HAB) by visiting the Bureau of Freshwater & Biological Monitoring website at <https://www.state.nj.us/dep/wms/bfbm/cyanoHABevents.html>. Licensee shall not operate when HAB Alert Level is "Warning" or "Danger".
- V. Licensee shall be responsible for establishing a telephone, web-based reservation system and website. The system shall be capable of making electronic reservations for all guided outfitter experiences. All guided outfitter experiences and transactions shall be conducted through the web-based reservation system. Licensee shall include the website information in all published materials and advertisements of the License Operation.

2. **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 harmful algal bloom (HAB), inclement weather, water quality, staffing, emergencies, or other causes. In accordance with Paragraph 41, payment abatements will not be given for any reason. Bidders are cautioned to review the information provided below related to closures before submitting a bid to provide concession services.

3. **TERM**

- A. The “Initial Term” of the Agreement shall be from the “Effective Date of the Agreement’s Initial Term,” as defined in Subparagraph 4(A), through October 31, 2022. In accordance with subparagraph B below, Licensee may request, in writing, and Department may, in its sole discretion, for cause or convenience, grant a Renewal of the Agreement, which shall start April 1st and shall end October 31st (“Renewal Term”). Department may grant no more than four (4) Renewal Terms following the Initial Term of the Agreement. Department reserves the right to suspend Licensee’s operations and/or revoke the Agreement for any material breach in accordance with the terms and conditions set forth in Paragraphs 10 and 11. Furthermore, failure on the part of Licensee to submit the Annual Report, as described in Paragraph 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 10 and 11.
- B. If Licensee wishes to renew the Agreement, it must submit a request, in writing, to the address set forth in Subparagraph 5(B) and Paragraph 48. Any such request must be received on or before August 15th of the year prior to the year being sought for renewal. Should Licensee fail to submit a written renewal request by August 15th, 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 11.

4. **EFFECTIVE DATE**

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

5. **LICENSE PAYMENT AND INCREASE**

- A. For the Initial Term of the Agreement, Licensee shall pay Department a minimum annual Term Fee of One Thousand Fifty (\$1,050.00) Dollars in accordance with the Payment Schedule set forth in Exhibit B as consideration for the License and privilege granted. For subsequent Renewal Terms, if any, Licensee shall pay Department in accordance with the License Payment Schedule set forth in Exhibit B.
- B. All payments shall be submitted by check made payable to **“Treasurer - State of New Jersey”** and be received on or before the scheduled payment date to:

Department of Environmental Protection
 Legal, Regulatory, and Legislative Affairs
 Office of Transactions and Public Lands Administration
 Public Land Administration Section
 P.O. Box 420, Mail Code 401-07
 Trenton, New Jersey 08625-0420
- C. If Licensee fails to pay said compensation at such time and in such manner as specified herein and in Exhibit B, 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 10 and 11.

- 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. Any License payment not made on or before the dates provided in Exhibit B shall be considered past due. All past due amounts shall be assessed a monthly penalty of five percent (5%) of the total amount due calculated on the tenth (10th) day of each month after the due date and shall increase every thirty (30) days thereafter.
- F. In the event any check for payment is returned to Department, all future payments must be made by certified or cashier's check only.
- G. The total License Payment shall be increased by three percent (3%) for each of any Renewal Term(s), except that after the first (1st) Renewal Term, if any, Department may increase the total License Payment pursuant to a Compensation Analysis performed in accordance with Paragraph 6. The total License Payment for any Renewal Term will be calculated by Department and shall be rounded up to the closest dollar.

6. **COMPENSATION ANALYSIS**

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

7. **OPERATION PLAN**

- A. Licensee shall submit to Department, for approval, a written Operation Plan ("Operation Plan") prior to commencement of the Period of Operation for the Initial Term and any subsequent Renewal Term(s). The Operation Plan shall include the following:
 - (i) Proposed schedule including dates and hours that Licensee will offer Guided Outfitter Experiences;
 - (ii) List of types and prices for all Guided Outfitter Experiences and related Vessel and equipment;
 - (iii) Description of the proposed uniform(s) and name tags to be worn by applicable employees in accordance with Subparagraph 17(B); and
- B. Licensee shall not change, modify or deviate from said approved Operation Plan without first obtaining written pre-approval from Department.

8. **HOURS OF OPERATION AND LIMITATIONS**

- A. During the Initial Term of the Agreement, Licensee shall open and operate from as soon as practicable after the Effective Date of the Agreement's Initial Term through October 31st ("Period of Operation"). During any subsequent Renewal Term(s) of the Agreement, the Licensee shall open and operate from April 1st through October 31st ("Period of Operation").
- B. Licensee shall operate during specified hours set in accordance with an operating schedule pre-approved in writing by Department, prior to commencement of the Period of Operation for the Initial Term and any subsequent Renewal Term(s) ("Operating Hours"). Licensee shall not be permitted to launch Vessels on the Spruce Run Reservoir and offer Guided Outfitter Experiences at the Area, on Holiday weekends without Department written pre-approval. **In the event scheduling conflicts occur between multiple bidders, priority shall be given to the highest bidder.**
- C. Operating Hours shall be submitted to and approved in writing by Department before any proposed Operating Hours can become effective. Operating Hours shall remain in effect unless otherwise modified and re-approved in writing by Department or Licensee determines the need for any closures in accordance with Subparagraph 8(D). The License

Operation must be fully operational and capable of conducting Guided Outfitter Experiences during the Period of Operation and during scheduled Operating Hours.

- D. The Area Superintendent shall be the sole authority to determine whether an area of Spruce Run Recreation Area affecting the License Operation will be closed due to inclement weather or otherwise. Department is not responsible to Licensee for any loss or damage caused by such determination. Absent closure by Department or the Area Superintendent, Licensee shall be responsible for assessing all onsite conditions and any health or safety concerns before undertaking the License Operation. In addition, Licensee shall be solely responsible for determining the need for any additional closures for any reason, including to ensure Licensee's customer safety.
- E. Licensee shall be responsible for adequate staffing and operating the License Operation during the Period of Operation and during scheduled Operating Hours.
- F. Licensee shall be accessible by phone during the Operating Hours, as established pursuant to Subparagraph 8(B), and during Standard Business Hours (9 a.m. to 5 p.m.), at a number to be provided to Department and made publicly available at Licensee's off-site administration facility or website. Failure on the part of Licensee to be accessible by phone during the scheduled Operating Hours and Standard Business Hours shall be a material breach of the Agreement, subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 10 and 11.
- G. Licensee shall also provide Department with a private number where Licensee can be reached at any time.

9. **EXTENSION OF THE SEASON**

Licensee may request to extend the Period of Operation either prior to April 1st and/or after October 31st. All requests shall be submitted to both the Public Land Administration Section and the Area Superintendent, in writing, at the addresses set forth in Subparagraph 5(B) and Paragraph 48, respectively, fifteen (15) calendar days in advance of the proposed implementation. Approval of this request shall be within Department's sole discretion. Licensee shall be deemed to not have permission to extend the Period of Operation without written approval from the Area Superintendent. Additional compensation to Department for the extended period shall be calculated by Department on a monthly basis or prorated by day and must be submitted by check made payable to "Treasurer – State of New Jersey" and sent to the address set forth in Subparagraph 5(B). The additional compensation must be received by Department in advance in operation for the extended period.

10. **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 for such period of time as Department may determine to be appropriate to protect the Licensed Premises and/or public health, safety, and welfare due to the occurrence of hazardous work conditions, emergency conditions, and/or any other cause including, but not limited to, Licensee's failure to perform any of the covenants, agreements, and conditions contained in the Agreement on its part to be performed. Licensee hereby waives any claim, and Department shall not be liable to any party claiming through Licensee, for damages, payment abatement, or compensation as a result of Department's actions under this Paragraph or 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.

11. **REVOCATION**

- A. Licensee shall exercise direct and personal supervision of the License Operation. Failure to exercise such supervision and/or the existence of any condition at the Area or in the operation of the License Operation which Department determines to be in violation of the terms and conditions of the Agreement shall be considered to be a material breach in which event Department may revoke the License 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 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. 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 Operation 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 License Term, whichever occurs sooner.
- E. 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 Operation 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 Year, or upon selection by Department of a new Licensee, whichever occurs sooner.
- F. If at any time during the Initial Term or any subsequent Renewal Term of 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.
- G. Revocation of the Agreement by either Department or Licensee, as herein provided, shall not release or discharge any payment obligation or liability owed by one to the other under the terms and conditions of the Agreement as of the date of such revocation.
- H. If Licensee fails to remove any property lawfully belonging to and removable by Licensee upon the expiration or revocation of 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
- I. 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 any and all other License Agreements between Department and Licensee. Any Department-initiated revocation for cause or convenience of another License Agreement between Department and Licensee shall be considered sufficient grounds for Department, at its sole discretion, to revoke the Agreement, upon thirty (30) calendar days written notice to Licensee.

12. 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, the Annual Report as described in Paragraph 13, by email to: 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 10 and 11.
- B. Licensee shall electronically submit all requests to change or modify pre-approved Operating Hours as described in Subparagraph 8(B), to the Area Superintendent and the Public Land Administration Section by email to: Lauren.Rojewski@dep.nj.gov and OfficeofLeases@dep.nj.gov. Failure on the part of Licensee submit all requests to change or modify Operating Hours 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 10 and 11.
- C. 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 10 and 11.

13. ANNUAL REPORT

- A. Licensee shall submit to Department, no later than December 15th 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 Customers Served, Total Gross Receipts less New Jersey State Sales Tax, Operating Expenses, and Net Profit from the License Operation. Failure on the part of Licensee to submit the Annual Report, when due, shall constitute a material breach of the Agreement, subject to Suspension of Operations and/ or Revocation of the terms and conditions set forth in Paragraphs 10 and 11. Licensee shall provide Department with any additional clarification and/or information necessary to confirm the accuracy of Licensee’s Annual Report.
- B. The signed, dated and certified Annual Report must be submitted in the Department-approved format no later than December 15th following each 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. All sales shall be recorded by means of cash registers or POS devices that publicly display the amount of each sale and automatically issue a customer receipt or certify the amount recorded on a sales slip. Said cash registers or POS devices shall, in all cases, have locked-in sales totals and transactions counters that constantly accumulate and that cannot, in either case, be reset. In addition, such cash registers must have a tape located within the register

upon which transaction numbers and sales details are imprinted. Beginning and ending cash register or POS device readings shall be recorded on a daily basis. In the event of technical or electrical failure of the cash register or POS device, Licensee shall record all transactions by hand and issue a sequentially pre-numbered customer receipt in like manner. Failure to have a working cash register or POS device shall be a material breach of the License Agreement subject to immediate Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 10 and 11.

Each cash register or POS device must have the following:

- Dual Tape/Readable Tape 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 10 and 11.
- 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 Guided Outfitter Experience, through which all financial transactions (including, but not limited to, deposits, withdrawals, and purchases) must pass.

16. PRICES

Prices for the Guided Outfitter Experiences and associated Vessels and equipment shall be submitted to and approved by Department in writing before any proposed price can become effective. Proposed prices to be charged must be submitted in writing to Department and approved, in writing, by Department prior to commencement of any Period of Operation. All prices shall remain in effect unless otherwise modified and re-approved in writing by Department. All changes in pricing will require the submission of a new price list for the Guided Outfitter Experiences and associated Vessels and equipment (not just those being changed) and a written justification for each item Licensee is requesting Department’s approval to change or modify. No price changes are to take effect without the written pre-approval of Department. All prices shall be properly displayed in prominent places at all times at Licensee’s off-site administration facility or on Licensee’s website. 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 Operation within the terms and conditions of the Agreement. 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 10; or (2) revoke the Agreement in accordance with the terms and conditions

set forth in Paragraph 11. Licensee shall not be entitled to any payment abatement due to any suspension or other action taken by Department under this Paragraph, and Department shall not be liable to Licensee, or any party claiming through Licensee, for any claim, liability, or damages resulting from said action by Department.

- B. All employees of the License Operation must wear uniform apparel and name tags to identify and distinguish them as employees of the License Operation. The type of uniform apparel and identification shall be pre-approved by the Area Superintendent, prior to the start of any Term of 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 10 and 11.
- C. Licensee must have radio and/or cell phone communication available for all employees during the License Operation. Licensee and its employees shall carry emergency numbers including, but not limited to, 1-877-WARN DEP (1-877-927-6337), Area Superintendent, Area Park Office, State Park Police and Local Emergency Rescue, Police and Fire.

18. EQUIPMENT

- A. Licensee shall be solely responsible for maintaining all equipment installed or located on the Licensed Premises for use by Licensee. Department shall not be responsible for the damage, loss, or maintenance of any equipment installed or used by Licensee. Licensee shall obtain written approval from Department prior to installation of any of Licensee's equipment on the Licensed Premises.
- B. The storage of supplies, goods, or equipment is not permitted on the Licensed Premises. Licensee shall remove any supplies, goods or equipment at the end of each day. Department shall not be responsible or liable for any loss or theft of supplies, goods or equipment.
- C. Department shall not be responsible for any damages or loss of goods or services resulting from equipment failure. Licensee shall obtain insurance coverage pursuant to Paragraph 35 for possible losses including, but not limited to, equipment failure, vandalism or weather event.

19. REPAIR

The Licensed Premises shall be provided in "as is" condition. Any obligation of Department, if any, to repair or maintain the Licensed Premises is contingent upon the availability of funds, as specified in Paragraph 21. Licensee shall be responsible, at its sole cost and expense, to make all necessary repairs to the Vessels and all Licensee-owned supplies, goods, and equipment.

20. MAINTENANCE OF THE LICENSED PREMISES

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

21. AVAILABILITY OF FUNDS

Licensee expressly acknowledges that the Licensed Premises is provided "as is," and any obligation of Department to repair or maintain the Licensed Premises is contingent upon the availability of appropriated funds and receipt of revenues from which such repair or

maintenance can be funded. Department shall have no obligation for such repair or maintenance unless and until such funds are appropriated each fiscal year to Department by the State Legislature and made available through receipt of revenues.

22. INSPECTION

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

23. COMPLIANCE AND PERFORMANCE EVALUATION

Two (2) Mandatory Compliance and Performance Evaluation Meetings shall be conducted during each Term 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 Department-designated State Park Service staff representative(s) and the Licensee. A report form shall be utilized to document the meeting, and to identify any deficiencies and the corrective action required. A copy of the completed report form shall be provided to the Licensee and shall be attached to and made a part of the Agreement. The Mandatory Compliance and Performance Evaluation Meetings shall be held as follows:

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

24. GARBAGE DISPOSAL, RECYCLING, AND BIODEGRADABLE MATERIALS

- A. Licensee shall, at its sole cost and expense, be responsible for maintaining the cleanliness of the Licensed Premises. Licensee shall remove all garbage and trash, generated by the License Operation, from the Area on a daily basis. Licensee shall properly dispose of all garbage and trash off-site. Disposal costs from this latter location shall be borne by Licensee. It is the responsibility of Licensee to ensure that all customers of the License Operation are provided with appropriate measures to minimize litter in all 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 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

No electricity or utilities are provided on or about the Licensed Premises. Licensee shall be prohibited from using an alternative power source at the Area, including on or about the Licensed Premises.

26. TAXES

- A. All taxes and property tax assessments, if any, arising out of the operation of the License Operation and the use and occupancy of the Licensed Premises shall be the sole responsibility of Licensee and shall be promptly paid by Licensee when due, regardless of whether such tax or assessment is assessed within or outside a Term of 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 10 and 11.

- 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

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

28. CONSTRUCTION AND IMPROVEMENTS

Licensee shall not affix, alter, or erect any permanent or temporary equipment, structures, buildings, or additions to the Licensed Premises without first obtaining the prior written approval of Department.

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 48 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. NOT A LEASE

It is expressly understood and agreed by both Licensor and Licensee that no building, land or equipment included within the description of the Licensed Premises or any other property comprising part of the Area is hereby leased to Licensee. Licensor's control, management and direction over the Licensed Premises or any other property comprising part of the Area are not hereby assigned in any way to Licensee.

34. INDEMNIFICATION

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

Department, or its officers, agents, servants, employees, successors, and assignees;

- (ii) any injury to, or the death of, any person in, on, or about, or any damage to property which occurs in, on, or about the Licensed Premises or upon any sidewalk, walkway, or patio within the Licensed Premises or in any manner growing out of or connected with the use, non-use, condition, or occupancy of the Licensed Premises, or the construction or repair of any improvements of the Licensed Premises;
 - (iii) any act, error, or omission of Licensee, its officers, agents, servants, employees, contractors, invitees, and anyone claiming by or through Licensee in the performance of 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 License 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 License Agreement of any contracts and agreements of record concerning the Licensed Premises and restrictions of record or any law, ordinance, or regulation affecting the Licensed Premises or any part thereof or the ownership, occupancy, or use thereof.
- B. Department shall, as soon as practicable after a claim has been made against it, give written notice thereof to Licensee, along with full and complete particulars of the claim. If suit is brought against Department or any of its officers, agents, servants, and/or employees, Department shall expeditiously forward or have forwarded to Licensee every demand, complaint, notice, summons, pleading, or other document received by or then in the possession of Department or its representatives.
- C. It is expressly agreed and understood that any approval by Department of Licensee's operation of the Licensed Premises shall not operate to limit the obligations of Licensee assumed pursuant to 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.

35. 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 One Million (\$1,000,000) Dollars per occurrence for bodily injury and property damage and a Two Million (\$2,000,000) Dollars annual aggregate. This can be accomplished with a combination of Commercial General Liability and Commercial Umbrella policies; and
 - (ii) 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 Licensed Premises 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 Licensed Premises. 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 License Agreement shall be issued by an insurance company with an A- VIII or better rating by A.M. Best & Company and that is 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 Agreement Number assigned to the Agreement and the location(s) of the Licensed Premises in the Description of Operations box and shall list the State of New Jersey, Department of Environmental Protection, Office of Transactions & Public Land Administration, Public Land Administration Section, P.O. Box 420, Mail Code: 401-07, Trenton, New Jersey 08625-0420 in the Certificate Holder box.
- C. When Licensee returns 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 10 and 11.
- 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.

36. 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 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, all United States Coast Guard regulations now or hereafter in effect, as well as 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 in accordance with the terms and conditions set forth in Paragraph 10, and/or revoke the Agreement in accordance with the terms and conditions set forth in Paragraph 11.

- 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.

37. 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 or any subcontract awarded 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 10 and 11.

38. PUBLIC USE

Licensee's operation and the License Agreement shall not be construed so as to affect the privileges accorded to the public's use of the Area, including the Licensed Premises.

39. 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.

40. 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.

41. **PAYMENT ABATEMENT**

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

42. **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.

43. **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.

44. SUBCONTRACTING

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

45. ASSIGNMENT OF AGREEMENT OR SALE OF INTERESTS

The License is personal to Licensee. Licensee shall not assign the Agreement or sell controlling interest in the License. Any attempt to assign or sell controlling interest 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 10 and 11.

46. 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 10 and 11, 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 is required, on a continuing basis, to report any contributions and solicitations Licensee makes during any Term of the License 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 10 and 11.
- C. Licensee shall file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC) pursuant to N.J.S.A. 19:44A-20.27 (P.L. 2005, c. 271, section 2) if Licensee receives contracts in excess of Fifty Thousand (\$50,000.00) dollars from public entities in a calendar year. It is Licensee's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us.

47. 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>.

48. 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
 Legal, Regulatory, and Legislative Affairs
 Office of Transactions and Public Land Administration
 Public Land Administration Section
 P.O. Box 420, Mail Code: 401-07
 Trenton, New Jersey 08625-0420
 Fax: (609) 984-0836
 Email: OfficeofLeases@dep.nj.gov

Copy to Area Superintendent: Spruce Run Recreation Area
 68 Van Syckels Rd.,
 Clinton, New Jersey 08809
 Fax: (908) 638-8572
 Email: Lauren.Rojewski@dep.nj.gov

To Licensee: [INSERT CONTACT]
 [INSERT LICENSE OPERATOR]
 [INSERT STREET ADDRESS]
 [INSERT TOWN, STATE, ZIP]
 [INSERT 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.

49. RECEIPT OF WRITTEN NOTICE

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

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_concession.htm.

51. 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_concession.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 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. LIST OF EXHIBITS

Exhibit A: Licensed Premises
Exhibit B: License Payment Schedule

58. 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.

The cut-off date for the submission of questions shall be **May 25, 2022**. 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 Public Land Administration Section. The Public Land Administration Section 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 Spruce Run Recreation Area, State Parks, Forests and Historic Sites, 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_concession.htm by **May 30, 2022**.

59. **PROPOSAL DELIVERY AND IDENTIFICATION**

In order to be considered, a proposal responding to this Bid Specifications must arrive at the Public Land Administration Section no later than **noon on June 7, 2022**. 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 License 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
 Legal, Regulatory, and Legislative Affairs
 Office of Transactions and Public Land Administration
 Public Land Administration Section
 Attn: Adria Wentzel, Manager
 P.O. Box 420, Mail Code 401-07
 Trenton, New Jersey 08625-0420