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

# CONCESSION AGREEMENT

## FOOD/NOVELTY (WITH FACILITY) CONCESSION

**THIS AGREEMENT**, made this day of , in the year of Two Thousand and Twenty (2020),

**BETWEEN** **THE STATE OF NEW JERSEY**
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**
**DIVISION OF PARKS AND FORESTRY**
**STATE PARK SERVICE**
**MAIL CODE: 501-04C, P.O. BOX 420**
**TRENTON, NEW JERSEY 08625-0420**

, hereinafter referred to as Department,

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

, hereinafter referred to as Concessionaire.

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

**Bass River State Forest ("Area")**

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

## 1. SCOPE OF CONCESSION

A. Concessionaire shall be granted, under this Concession Agreement ("Agreement"), the non-exclusive, revocable right to dispense food, non-alcoholic beverages, and novelties (hereinafter referred to as the "Concession Operation") at Bass River State Forest. Concessionaire's operation shall be limited to the structure(s) or area(s) provided by Department for concession purposes and specifically designated in Exhibit A (hereinafter referred to as the "Concession Premises").

B. Concessionaire shall be authorized, as part of the Concession Operation, to sell food and non-alcoholic beverages. Concessionaire shall be solely responsible for obtaining all necessary State licenses, inspections and approvals before selling food and non-alcoholic beverages. Failure on the part of Concessionaire to obtain and maintain the State licenses, inspections, and approvals for the sale of food and non-alcoholic beverages shall be a material breach of this Agreement, subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10. Concessionaire shall be authorized, as part of the Concession Operation, to prepare food. Concessionaire shall be solely responsible for obtaining all necessary State licenses, inspections and approvals before preparing food. Failure on the part of Concessionaire to obtain and maintain the State Licenses, inspections, and approvals for the preparation of food shall be a material breach of this Agreement, subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10. Concessionaire shall comply with all rules and regulations promulgated by the New Jersey State Department of Health and any other agency of government with oversight over food preparation and service. Failure on the part of Concessionaire to comply with all such rules and regulations shall be a material breach

DRAFT

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

C. Concessionaire shall submit to Department, for approval, a written list of items and prices for all food, non-alcoholic beverages, and novelty items. Concessionaire shall not commence any operations until Department approves the proposed prices in writing. Failure on the part of Concessionaire to obtain Department written pre-approval of the types and pricing of food, non-alcoholic beverages, and novelty items shall be a material breach of this Agreement, subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10. Permissible types of food and non-alcoholic beverages include, but are not limited to, a combination of items in each of the following categories: 1) Hot Food: hot dogs, hamburgers, french fries, chicken nuggets, etc., 2) Cold Food: wraps, salads, gyros, or healthy alternatives, 3) Non-Alcoholic Beverages: soda, juice, water, etc., 4) Desserts: fruit, ice cream, cookies, pretzels, water ice, etc.

D. Concessionaire's operation and this Agreement shall not be construed so as to affect the privileges accorded to the public's use of the Area. Concessionaire's operation shall not be construed so as to restrain or prevent individual persons or groups of persons from bringing their own food and beverages into the Area.

E. Concessionaire must maintain a physical staff presence at the Concession Premises while the Concession is open for business. Failure on the part of Concessionaire to maintain a staff presence at the Concession Premises while the Concession is open for business shall constitute a material breach of this Agreement, subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10.

F. Concessionaire shall use the Concession Premises solely for the purposes set forth above and is strictly prohibited from selling or permitting the sale or consumption of any alcoholic beverages thereon.

G. Concessionaire shall not install, operate, or allow the installation or operation of vending machines on the Concession Premises.

H. Concessionaire's status shall be that of a licensee. Concessionaire, whose term on the Concession 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 Concession Premises.

I. The storage of supplies, goods, or equipment is only permitted at the Concession Premises, as designated in Exhibit A. For the Initial Term of this Agreement, Concessionaire shall not be authorized to store any supplies, goods or equipment related to the operation of the Concession prior to the designated ten (10) day "set-up" period and after the designated ten (10) day "take-down" period set forth in Subparagraph 6(A). For any subsequent Renewal Term(s), Concessionaire shall not be authorized to store any supplies, goods or equipment related to the operation of the Concession outside any Term of this Agreement. **Concessionaire shall remove all supplies, goods, and equipment from the Area within the designated ten (10) day "take-down" period set forth in Subparagraph 6(A).**

## 2. TERM

A. The "Initial Term" of this Agreement shall be from the "Effective Date of the Agreement's Initial Term," as defined in Subparagraph 3(A), below, through September 16, 2021. Upon expiration of the Initial Term, Concessionaire may request, in writing, and Department may, in its sole discretion, for cause or convenience, terminate or grant a Renewal of this Agreement, which shall start ten (10) calendar days prior to the Saturday before Memorial Day and shall end ten (10) calendar days after Labor Day ("Renewal Term"). Department may grant no more than four (4) subsequent Renewal Terms following the Initial Term of this Agreement. Department reserves the right to suspend Concessionaire's operations and/or terminate this Agreement for any material breach in accordance with the terms and conditions set forth in Paragraphs 9 and 10. Furthermore, failure on the part of Concessionaire to submit Monthly Reports or the Annual Report, as described in Paragraphs 12 and 13, when due, shall constitute a material breach of this Agreement,

DRAFT

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

B. If Concessionaire wishes to renew this Agreement, it must submit a request, in writing, to the address set forth in Subparagraph 4(B). Any such request must be received on or before August 15th of the year prior to the year being sought for renewal. Should Concessionaire fail to submit a written renewal request by August 15th, this Agreement shall terminate at the conclusion of this Agreement's current Term, in accordance with the terms and conditions set forth in Paragraph 10. Department shall issue its decision regarding the grant or denial of a renewal request received in accordance with this Paragraph no later than February 1st of the year being sought for renewal.

## 3. EFFECTIVE DATE

A. For the purposes of this Agreement, the Effective Date of the Agreement's Initial Term shall be the date this Agreement is fully executed by Department.

B. For the purposes of this Agreement, the Effective Date for the commencement of any Renewal Term shall be the date on which the last of the following has occurred:

(i) The Renewal Agreement is signed on behalf of Concessionaire and Department;

(ii) Department dates the Renewal Agreement and forwards a copy to Concessionaire;

(iii) The required Certificate(s) of Insurance under this Agreement is or are received by Department;

(iv) Department has approved, in writing, the proposed types and prices of food, non-alcoholic beverages, and novelty items; and

(v) Mandatory Compliance and Performance Evaluation Meeting #1 has been completed, as described in Paragraph 18.

## 4. CONCESSION PAYMENT AND INCREASE

A. In recognition of recent events surrounding Coronavirus (COVID-19), to provide Concessionaire with greater financial flexibility, Concessionaire shall pay Department a Concession Payment of One Hundred and Fifty ($150.00) Dollars for the Period of Operation during the first (1st) calendar year of the Initial Term set forth in Subparagraph 6(A), in accordance with the Concession Payment Schedule set forth in Exhibit B as consideration for the Concession, license and privilege granted herein. The Concession Payment for the Period of Operation during the second (2nd) calendar year of the Initial Term set forth in Subparagraph 6(A), shall be the amount submitted by bidder equal to or greater than the minimum bid amount of Four Thousand Two Hundred ($4,200.00) Dollars and shall be paid in accordance with the Concession Payment Schedule set forth in Exhibit B. For subsequent Renewal Terms, if any, Concessionaire shall pay Department in accordance with the Concession 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
Natural and Historic Resources
Office of Leases & Concessions
PO Box 420, Mail Code: 501-04C
Trenton, New Jersey 08625-0420

C. If Concessionaire 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 this Agreement

DRAFT

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

D. Department may, at its discretion, require Concessionaire to make all payments for the Initial Term of this 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. The total Concession Payment shall be increased by three (3%) percent for each of any Renewal Term(s), except, that after the second (2nd) Renewal Term, if any, Department may increase the total Concession Payment pursuant to a Compensation Analysis performed in accordance with Paragraph 5. For the first (1st) Renewal Term, if any, the Concession Payment shall be as follows: the total Concession Payment from the second (2nd) calendar year of the Initial Term plus three (3%) percent. The total Concession Payment for any Renewal Term will be calculated by Department and shall be rounded up to the closest dollar.

## 5. COMPENSATION ANALYSIS

After the expiration of the second (2nd) Renewal Term of this Agreement, if any, a Compensation Analysis may be performed. At such time, based on the reported Total Gross Revenue, performance of the Concession, and/or Department's existing rates for similarly-performing operations, Department may choose to increase the Concession Payment for the following Renewal Term(s), if any.

## 6. HOURS OF OPERATION AND LIMITATIONS

A. During the Initial Term of this Agreement, the Concession shall open and operate from as soon as practicable after the Effective Date of the Agreement's Initial Term through September 7, 2020 and from May 29, 2021 through September 6, 2021 ("Period of Operation"). During the Initial Term of this Agreement, Concessionaire shall be authorized to enter the Concession Premises for Concession set-up beginning on the Effective Date of the Agreement's Initial Term and shall vacate and remove all Concessionaire-owned possessions, supplies, goods and equipment from the Concession Premises within the ten (10) calendar days after September 7, 2020. In addition, Concessionaire shall be authorized to enter the Concession Premises ten (10) calendar days prior to May 29, 2021 for Concession set-up and shall vacate and remove all Concessionaire-owned possessions, supplies, goods and equipment from the Concession Premises within the ten (10) calendar days after September 6, 2021. Concessionaire shall not be authorized to enter the Concession Premises prior to the Effective Date of the Agreement or the ten (10) day set-up period, or after the ten (10) day take-down period, as described in this Paragraph, without Department written pre-approval. During any subsequent Renewal Term(s) of this Agreement, the Concession shall open and operate from the Saturday before Memorial Day through Labor Day ("Period of Operation"). For any subsequent Renewal Term(s), the ten (10) calendar days prior to the Saturday before Memorial Day and the ten (10) calendar days after Labor Day, which comprise the remainder of any Renewal Term, are solely to allow for Concession set-up and take-down, respectively.

B. The Concession shall be open for business Friday through Sunday, Memorial Day (except with respect to the Period of Operation during the first (1st) calendar year of the Initial Term), Independence Day, and Labor Day ("Approved Days of Operation"), during the Period of Operation for the Initial Term and any subsequent Renewal Term(s). The Concession shall operate during the Approved Days of Operation between the "Core Business Hours" of 11:00 a.m. through 3:00 p.m. The Concession must be prepped, fully operational, and capable of serving patrons not later than 11:00 a.m. each day of the Approved Days of Operation. Department reserves the right to have Concessionaire complete an attendance log at a location determined by Department.

DRAFT

C. Failure on the part of Concessionaire to open for business during the Approved Days of Operation and during the Core Business Hours shall be a material breach of this Agreement, subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10. The Area Superintendent shall be the sole authority to determine whether an area of Bass River State Forest affecting the Concession Operation will be closed due to inclement weather or otherwise. Department is not responsible to Concessionaire for any loss or damage caused by such determination.

D. Concessionaire shall be responsible for adequate staffing and operating the Concession during the Approved Days of Operation and during the Core Business Hours. Failure on the part of Concessionaire to open the Concession during the Approved Days of Operation and during the Core Business Hours shall be a material breach of this Agreement, subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10.

E. Concessionaire shall be accessible by phone during the Core Business Hours at a number to be provided to Department and made publicly available at the Concession Premises and in any advertisement of the Concession Operation. Failure on the part of Concessionaire to be accessible by phone during the Core Business Hours shall be a material breach of this Agreement, subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10.

F. Concessionaire shall also provide Department with a private number where Concessionaire can be reached at any time.

## 7. ALTERNATE HOURS AND DAYS OF OPERATION

A. Concessionaire may request authorization to extend the hours of operation, by opening before 11:00 a.m. and/or closing after 3:00 p.m. All requests to extend hours of operation must be made in writing to the Area Superintendent at the address set forth in Paragraph 48 ten (10) calendar days in advance of the proposed effective date. Concessionaire shall not implement the alternate hours of operation without written authorization from the Area Superintendent.

B. Concessionaire may request authorization to extend the Approved Days of Operation, by opening Monday through Thursday (except for Memorial Day, Independence Day and Labor Day). All requests to extend the day(s) of operation must be made in writing to both the Office of Leases and Concessions and the Area Superintendent at the address set forth in Subparagraph 4(B) and Paragraph 48 ten (10) calendar days in advance of the proposed effective date. Concessionaire shall not implement the additional day(s) of operation without written authorization from the Office of Leases and Concessions and the Area Superintendent.

## 8. EXTENSION OF THE SEASON

Concessionaire may request to extend the Period of Operation either prior to the Saturday before Memorial Day and/or after Labor Day. All requests shall be submitted to both the Office of Leases & Concessions and the Area Superintendent, in writing, at the addresses set forth in Subparagraph 4(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. Concessionaire shall be deemed to not have permission to extend the Period of Operation without written approval from the Office of Leases & Concessions and 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 4(B).** The additional compensation must be received by Department in advance of operation for the extended period.

## 9. SUSPENSION OF OPERATIONS

Concessionaire shall, at the direction of Department, immediately suspend, delay or interrupt Concessionaire's operation of all or any part of the Concession Premises for such period of time as Department may determine to be appropriate to protect the Concession Premises and/or public health, safety, and welfare due to the occurrence of hazardous work conditions,

DRAFT

emergency conditions, and/or any other cause including, but not limited to, Concessionaire's failure to perform any of the covenants, agreements, and conditions contained in this Agreement on its part to be performed. Concessionaire hereby waives any claim, and Department shall not be liable to any party claiming through Concessionaire, for damages, payment abatement, or compensation as a result of Department's actions under this Paragraph or this Agreement. Department's suspension of Concessionaire's operations shall be in addition to any other right or remedy available by law or in equity.

## 10. TERMINATION

A. Concessionaire shall exercise direct and personal supervision of the operation of the Concession Premises designated by Department in Exhibit A. Failure to exercise such supervision and/or the existence of any condition at the Area or in the operation of the Concession which Department determines to be in violation of the terms and conditions of this Agreement shall be considered to be a material breach in which event Department may terminate this Agreement by written notice sent by regular and certified mail return receipt requested. Upon receipt of written notice of termination for violation, Concessionaire 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, termination shall, in the sole discretion of Department, be effective at the conclusion of the designated period.

B. Without limiting the scope of Subparagraph A of this Paragraph, this Agreement shall automatically terminate in the event of Concessionaire's failure to pay, when due, any compensation or other sums or assessments to be paid by Concessionaire under this Agreement and the continuation of such failure to pay for a period of five (5) calendar days after Concessionaire's receipt of written notice thereof from Department. Concessionaire’s failure to provide a utility payment pursuant to Paragraph 25 will result in the non-execution of this Agreement or a Renewal Agreement by Department, as applicable.

C. Department expressly reserves the right to terminate this Agreement without notice in cases of emergency or where there exists or may exist risk to public health, safety, or welfare, as determined by Department in its sole discretion.

D. Notwithstanding any provision or language to the contrary, Department may terminate this Agreement, in whole or in part, solely for the convenience of the State, by ninety (90) calendar days written notice to Concessionaire sent by regular and certified mail return receipt requested. Upon receipt of such notice, Concessionaire may choose for such termination to become effective immediately, or may instead continue to operate the Concession in accordance with the terms and conditions of this Agreement for a period not to exceed ninety (90) calendar days after receipt of the notice or until the end of the current Agreement Term, whichever occurs sooner.

E. Concessionaire may terminate this Agreement by ninety (90) calendar days written notice to Department sent by regular and certified mail return receipt requested. Upon receipt of such notice, Department may choose for such termination to become effective immediately. Otherwise, Concessionaire shall continue to operate the Concession in accordance with the terms and conditions of this Agreement for a period not to exceed ninety (90) calendar days after receipt of the notice, until the end of the current Agreement Term, or upon selection by Department of a new Concessionaire, whichever occurs sooner.

F. If at any time during the Initial Term or any subsequent Renewal Term of this Agreement, Concessionaire 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 Concessionaire, then Department may terminate this Agreement immediately by notice served upon the Concessionaire and the assignee, receiver, trustee or other person in charge, but such termination shall not release or discharge any payment or obligation then owed by Concessionaire to Department hereunder.

G. Termination of this Agreement by either Department or Concessionaire, as herein provided, shall not release or discharge any payment obligation or liability owed by one to the other under the terms and conditions of this Agreement as of the date of such termination.

DRAFT

H. Upon the expiration or termination of this Agreement, Department may at once re-enter and remove any and all persons occupying the Concession Premises. If Concessionaire fails to remove any property lawfully belonging to and removable by Concessionaire upon the expiration or termination of this Agreement, Department may appropriate same to its own use without allowing any compensation therefor, or may remove same at the expense of Concessionaire. In the event that Concessionaire removes any personal property, Concessionaire hereby covenants to pay any and all damages which may be caused to the property of Department by this removal.

I. Any Department-initiated termination of this Agreement for cause or convenience pursuant to this Paragraph shall be considered sufficient grounds for Department, at its sole discretion, to terminate, upon thirty (30) calendar days written notice to Concessionaire, any and all other Concession Agreements between Department and Concessionaire. Any Department-initiated termination for cause or convenience of another Concession Agreement between Department and Concessionaire shall be considered sufficient grounds for Department, at its sole discretion, to terminate this Agreement, upon thirty (30) calendar days written notice to Concessionaire.

## 11. ELECTRONIC SUBMISSIONS

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

A. Concessionaire 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. Failure on the part of Concessionaire to submit reports electronically shall be a material breach of this Agreement, subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10.

B. Concessionaire shall maintain and monitor on a daily basis an active email address, designated for this Agreement and report any change to the email address during any Term of this Agreement. Failure on the part of Concessionaire to maintain and monitor the active email address, designated for this Agreement, shall be a material breach of this Agreement, subject to Suspension of Operations and/or Termination 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 Concessionaire, Concessionaire's Bookkeeper, or Accountant, and contain a Statement of Total Gross Receipts, excluding New Jersey State Sales Tax, derived by Concessionaire from operation of the Concession 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. Failure on the part of Concessionaire to provide the Monthly Report, when due, shall constitute a material breach of this Agreement subject to Suspension of Operations and/or Termination, in accordance with the terms and conditions set forth in Paragraphs 9 and 10. Concessionaire shall provide Department with any additional written clarification and/or information necessary to confirm the accuracy of any or all of Concessionaire'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. Concessionaire shall submit to Department, no later than October 15th following each Period of Operation this Agreement is in effect, an Annual Financial Statement ("Annual Report")

for the prior Period of Operation. Each Annual Report shall be signed, dated, and certified by Concessionaire, Concessionaire's Bookkeeper, or Accountant, and contain the following: Total Gross Revenue, New Jersey State Sales Tax, Operating Expenses, and Net Profit from State Park Concession Operations. Failure on the part of Concessionaire to submit the Annual Report, when due, shall constitute a material breach of this Agreement and will result in Termination or the automatic non-Renewal of this Agreement if any potential Renewal Term(s) remain. Concessionaire shall provide Department with any additional clarification and/or information necessary to confirm the accuracy of Concessionaire's Annual Report.

B. The signed, dated and certified Annual Report must be submitted in the Department-approved format no later than October 15th following each Period of Operation this Agreement is in effect.

## 14. RECORDS AND AUDIT

A. Concessionaire shall maintain complete, accurate, and detailed accounting records of all transactions pertaining to the Concession Operation covered by this Agreement that will enable Concessionaire to prepare financial statements in accordance with generally accepted accounting principles. Concessionaire 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 Concessionaire, and to ensure compliance with the terms and conditions of this Agreement and that the financial statements and reports present fairly the results of Concessionaire's operations pursuant to this Agreement. Failure to do so shall be a material breach of this Agreement. Said records shall be maintained and made available to Department and the State of New Jersey for a period of seven (7) years after the termination or expiration of this Agreement.

B. Concessionaire shall utilize a cash register as part of the Concession Operation. Concessionaire may request Department approval to also or alternatively utilize a Point of Service (POS) device. If approved in writing by Department, Concessionaire may then utilize a POS device as part of the Concession Operation. Any use of a POS device as part of the Concession Operation without the required prior Department-written approval shall be a material breach of this Agreement, subject to Suspension of Operations and/or Termination in accordance with the Terms and Conditions set forth in Paragraphs 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, Concessionaire 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 this Agreement subject to immediate Suspension of Operations and/or Termination 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

DRAFT

## 15. DAILY RECEIPTS

A. Under this Agreement, Concessionaire shall be required to maintain a daily record of all gross receipts derived from the Concession Operation. This record shall be available at all times. Concessionaire shall, upon request by Department, provide a breakdown and accounting of all sales activity for each day. Failure on the part of Concessionaire to maintain daily receipts shall constitute a material breach of this Agreement subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10.

B. All cash, credit and debit payments received by Concessionaire 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 Concession Operation, through which all financial transactions (including, but not limited to, deposits, withdrawals, and purchases) must pass.

## 16. PRICES

Prices for the sale of food, non-alcoholic beverages, and novelty items 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 all items (not just those being changed) and a written justification for each item Concessionaire 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. Price signage must be professional in appearance, neat, and made of weather-proof materials.

## 17. STAFF

A. Concessionaire shall engage a sufficient number of reliable, competent, and qualified staff of legal age to operate the Concession within the terms and conditions of this Agreement. If Department determines that Concessionaire has not provided a sufficient number of reliable, competent, and qualified staff of legal age for the operation of the Concession, Concessionaire 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 Concessionaire immediately upon receipt of email or written notification, Department reserves the right to do the following: (1) suspend the Concession 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 Concession for Concessionaire for the remainder of the then current Period of Operation; or (3) terminate this Agreement in accordance with the terms and conditions set forth in Paragraph 10. Concessionaire 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. Concessionaire 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 Concessionaire, or any party claiming through Concessionaire, for any claim, liability, or damages resulting from said action by Department.

B. All Concession employees must wear uniform apparel and name tags to identify and distinguish them as Concession employees. The type of uniform apparel and identification shall be pre-approved by the Area Superintendent, prior to the start of any Period of Operation of this Agreement. Failure on the part of Concessionaire to comply with the uniform requirement shall be a material breach of this Agreement subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10.

## 18. COMPLIANCE AND PERFORMANCE EVALUATION

DRAFT

Two (2) Mandatory Compliance and Performance Evaluation Meetings shall be conducted during each Period of Operation or Term of this Agreement. Additional meetings may be scheduled at the discretion of Department to ensure Concessionaire's effectiveness and compliance. The meetings shall review all aspects of the Concession Operation, ensuring that quality public services are being provided on a continuing basis in accordance with the Bid Specifications and this Agreement, that operational problems/concerns are addressed on a timely basis, and that all terms and conditions are clearly understood. The meetings shall be held on site with Department-designated State Park Service staff representative(s), the on-site concession manager, and a management/supervisory representative of Concessionaire'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 on-site concession manager or the management/supervisory representative of Concessionaire's firm and shall be attached to and made a part of this Agreement. The Mandatory Compliance and Performance Evaluation Meetings shall be held as follows:

- Meeting #1 - Prior to commencement of the Period of Operation or Memorial Day, whichever comes first.

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

## 19. EQUIPMENT

A. Concessionaire shall be solely responsible for maintaining all State-owned equipment installed on the Concession Premises for use by Concessionaire. Department shall not be responsible for the damage, loss, or maintenance of any equipment installed by Concessionaire. Concessionaire shall obtain written approval from Department prior to installation of any of Concessionaire's equipment on the Concession Premises.

B. The exhaust hood covering the cooking area must be cleaned to a satisfactory level, inspected, and approved by the Area Superintendent prior to the first day of each Period of Operation each Term of this Agreement. If the chute/chimney extending from the hood through the structure to the exterior of the building is determined by a fire inspector to need cleaning, Concessionaire will be solely responsible for obtaining the services of a recognized, professional exhaust hood-cleaning service to clean the hood, and for obtaining fire inspector approval.

C. The storage of supplies, goods, or equipment is only permitted at the Concession Premises, as designated in Exhibit A. For the Initial Term of this Agreement, Concessionaire shall not be authorized to store any supplies, goods or equipment related to the operation of the Concession prior to the designated ten (10) day "set-up" period and after the designated ten (10) day "take-down" period set forth in Subparagraph 6(A). For any subsequent Renewal Term(s), Concessionaire shall not be authorized to store any supplies, goods or equipment related to the operation of the Concession outside any Term of this Agreement. Concessionaire shall remove all supplies, goods, and equipment related to the operation of the Concession from the Area within the designated ten (10) day "take-down" period set forth in Subparagraph 6(A). Department shall not be responsible or liable for any loss or theft of supplies, goods or equipment.

D. Department shall not be responsible for any damages or loss of goods or services resulting from equipment failure. Concessionaire shall obtain insurance coverage pursuant to Paragraph 34 for possible losses including, but not limited to, equipment failure, vandalism or weather event.

## 20. REPAIR

Concessionaire shall, prior to the commencement of the Concession Operation under this Agreement, provide to Department a type-written concession equipment maintenance plan for the State-owned equipment located on the Concession Premises, together with a schedule for preventative maintenance and a report on maintenance completion and equipment condition. Failure to comply with this preventative maintenance schedule shall result in Concessionaire being responsible for all repairs and/or replacement of equipment. The review

DRAFT

and Department inspection of the Concession Premises and its equipment will be conducted during routine inspection of the Concession Premises and as a part of the Mandatory Compliance and Performance Evaluation Meetings.

## 21. MAINTENANCE OF CONCESSION PREMISES

A. Concessionaire shall preserve and maintain the Concession Premises in good and clean condition, reasonable wear and tear excepted. Concessionaire is solely responsible for the maintenance and cleanliness of the Concession Premises.

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

## 22. AVAILABILITY OF FUNDS

Concessionaire expressly acknowledges that the Concession Premises is provided "as is," and any obligation of Department to repair or maintain the Concession 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.

## 23. INSPECTION

Concessionaire shall make the Concession Premises available for inspection at any time by any authorized representative of Department to assure compliance with the terms and conditions of this Agreement.

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

A. Concessionaire shall be responsible for maintaining the cleanliness of the Concession Premises. Concessionaire shall ensure placement of all garbage and trash generated by the Concession Operation in designated containers and that said containers are emptied daily, or as more frequently required by Department, at a location within the Area designated by Department. Disposal costs from this latter location shall be borne by Department. Concessionaire shall provide such additional trash containers as may be required to keep the immediate Concession Premises clean at all times. The type of trash containers provided by Concessionaire shall be approved by Department prior to use.

B. Concessionaire shall comply with any and all county and local recycling requirements.

C. Any wrappings, containers, bowls, plates, cartons, or cups that are not intended for reuse must be composed of biodegradable material. Biodegradable material is defined as follows: MATERIAL CAPABLE OF BEING BROKEN DOWN FROM A COMPLEX MOLECULAR STRUCTURE INTO SIMPLER GASSES AND ORGANIC COMPOUNDS BY LIVING MICROORGANISMS.

D. No glass containers of any kind shall be used to dispense any food and/or beverages.

## 25. UTILITIES

Concessionaire shall be responsible for the payment of any and all utility charges related to the Concession Operation for each Term of this Agreement, except with respect to the Period of Operation during the first (1st) calendar year of the Initial Term of the Agreement. The Area Superintendent shall determine if utility charges for the Concession can be segregated from the Non-Concession portion of the Area. If the utility charges can be segregated,

DRAFT

Concessionaire shall be solely responsible for the transfer of such utility meter(s) to an account in its name. If the utility charges cannot be segregated, a utility payment shall be made by Concessionaire to Department as additional compensation in addition to the Concession Payment under Paragraph 4. Such utility payment shall be made by separate check, made payable to **"Treasurer – State of New Jersey"** upon return of a Concessionaire-signed Agreement, Renewal Agreement or Department-designated date. For the Period of Operation during the second (2nd) calendar year of the Initial Term of this Agreement, such utility payment shall be Two Hundred ($200.00) Dollars. Such utility payment for any Renewal Term(s) of this Agreement shall be determined by Department at the time of such renewal. Concessionaire's failure to provide such payment, if required, shall result in the non-execution of this Agreement or subsequent Renewal Agreement by Department, as applicable.

## 26. TAXES

A. All taxes and property tax assessments, if any, arising out of the operation of the Concession and the use and occupancy of the Concession Premises shall be the sole responsibility of Concessionaire and shall be promptly paid by Concessionaire when due, regardless of whether such tax or assessment is assessed within or outside a Term of this Agreement. Concessionaire 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 Concessionaire after any Term of this Agreement and/or the expiration or termination of this Agreement, and Department is authorized to make a demand for payment and take any and all steps to ensure payment. Concessionaire shall furnish to Department, within ten (10) calendar days of demand therefor, proof of the payment of any such tax or assessment. Concessionaire's failure to timely pay any tax or assessment or otherwise comply with this Subparagraph shall constitute a material breach of this Agreement subject to Suspension of Operations and/or Termination, in accordance with the terms and conditions set forth in Paragraphs 9 and 10.

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

## 27. ADVERTISEMENT AND PROMOTION

A. Concessionaire shall not advertise in any manner or form on or about the Concession Premises or any other part of the Area, except by means of such signs or forms of advertising as first shall be approved, in writing, by Department.

B. Concessionaire shall, in all promotion and advertisement of the Concession and/or any scheduled event(s) at or pertaining to the Concession Operation, include that the Area 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 Concession and/or any scheduled event(s) at or pertaining to the Concession Operation, Concessionaire shall submit, and obtain Department's written approval of, all such promotion(s) and advertisement(s).

## 28. CONSTRUCTION AND IMPROVEMENTS

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

## 29. REPORT OF INJURY

Any injury that shall occur to Concessionaire, its officers, servants, agents, employees, contractors, or invitees requiring medical intervention of which Concessionaire is notified,

DRAFT

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 Concessionaire 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 Concessionaire 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 Concessionaire shall be reported, in writing forthwith by Concessionaire to the Attorney General and the Executive Commission on Ethical Standards.

C. No Concessionaire 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 Concessionaire 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 Concessionaire 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 Concessionaire 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 Concessionaire 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 Concessionaire 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

Concessionaire shall warrant that no person has been employed directly or indirectly to solicit or secure this Agreement in violation of the provision of Section 10, Chapter 48 of the Laws of 1954, N.J.S.A. 52:34-15, and that the Laws of the State of New Jersey relating to the procurement or performance of this Agreement have not been violated and shall not be violated by any conduct of Concessionaire, 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.

DRAFT

## 32. INDEPENDENT PRINCIPAL

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

## 33. INDEMNIFICATION

A. Concessionaire shall, for itself, its successors, and assigns, assume all risk and liabilities arising out of the management, maintenance, and operation of the Concession 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 Concessionaire, 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 Concession Premises or upon any sidewalk, walkway, or patio within the Concession Premises or in any manner growing out of or connected with the use, non-use, condition, or occupancy of the Concession Premises, or the construction or repair of any improvements of the Concession Premises;

(iii) any act, error, or omission of Concessionaire, its officers, agents, servants, employees, contractors, invitees, and anyone claiming by or through Concessionaire in the performance of this Agreement;

(iv) violation of any term or condition of this Agreement by Concessionaire, its officers, agents, servants, employees, contractors, invitees, and anyone claiming by or through Concessionaire in the performance of this Agreement; and

(v) violation by Concessionaire, its officers, agents, servants, employees, contractors, invitees, and anyone claiming by or through Concessionaire in the performance of this Agreement of any contracts and agreements of record concerning the Concession Premises and restrictions of record or any law, ordinance, or regulation affecting the Concession 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 Concessionaire, 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 Concessionaire 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 Concessionaire's operation of the Concession Premises shall not operate to limit the obligations of Concessionaire assumed pursuant to this Agreement.

D. Concessionaire's liability pursuant to this Paragraph shall continue after the termination or expiration of this Agreement with respect to any liability, loss, cost, expense (including all attorneys' fees and expenses), damage, cause of action, suit, claim, demand, or judgment resulting from actions or inactions occurring prior to such termination or expiration.

DRAFT

E. Concessionaire's indemnification obligations are not limited by, but are in addition to, the insurance obligations contained in this Agreement.

**34. INSURANCE**

A. Concessionaire shall, at its sole cost and expense, obtain and maintain at all times during each Term of this Agreement, insurance of the types and in the amounts hereinafter provided:

(i) Commercial General Liability Insurance as broad as that provided by the standard basic, unamended, and unendorsed occurrence coverage forms currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage. Limits of liability shall be maintained at the level of One Million ($1,000,000) Dollars per occurrence for bodily injury and property damage and a Two Million ($2,000,000) Dollars annual aggregate. This can be accomplished with a combination of Commercial General Liability and Commercial Umbrella policies; and

(ii) 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 Concession Premises and all fixtures, equipment, and other property attached thereto and/or physically incorporated therein and the contents owned by Concessionaire and located in or on the Concession 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 Concessionaire using whatever procedures Concessionaire 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 Concessionaire. 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 Concession; 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 Concessionaire in accordance with this Agreement shall be issued by an insurance company with an A- VIII or better rating by A.M. Best & Company authorized and approved to do business in New Jersey. All policies except for Worker's Compensation shall name the State of New Jersey Department of Environmental Protection as an additional insured and include the blanket additional insured endorsement or its equivalent. The certificate(s) of insurance shall identify the Concession Number assigned to this Agreement and the location(s) of the Concession Premises 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 Concessionaire returns this Agreement or any subsequent Renewal Agreement, signed by Concessionaire, to Department for signature, Concessionaire shall provide Department with all current and valid certificate(s) of insurance evidencing that Concessionaire has

DRAFT

obtained all insurance coverage in accordance with this Agreement. Failure to provide a certificate(s) of insurance at the time of Concessionaire's return of this Agreement or any subsequent Renewal Agreement shall result in the non-execution of this Agreement or subsequent Renewal Agreement by Department, as applicable. Concessionaire 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 Concessionaire has obtained and is maintaining, in full force and effect, all insurance required under this Agreement. Concessionaire also shall, upon request, provide Department with copies of each policy required under this Agreement, certified by the agency or underwriter to be true copies of the policies provided by Concessionaire.

D. Concessionaire expressly understands and agrees that any insurance protection required by this Agreement shall in no way limit Concessionaire's indemnification obligations assumed in this Agreement and shall not be construed to relieve Concessionaire from liability in excess of such insurance coverage, nor shall it preclude Department from taking such other actions as are available to it under any provision of this Agreement and as otherwise provided for at law or in equity.

E. In the event that: (i) Concessionaire fails or refuses to renew any of its insurance policies or to provide Department with timely certificate(s) of insurance showing that Concessionaire is maintaining insurance coverage in full force and effect to the extent required by this Agreement, or (ii) any policy is canceled, terminated, or modified so that the insurance does not meet the requirements of this Agreement, Department shall consider Concessionaire to be in material breach of this Agreement, subject to Suspension of Operations and/or Termination 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 Concessionaire from time to time. Concessionaire shall increase the limits of said policies to meet changed circumstances including, but not limited to, changes in the relevant U.S. Bureau of Labor Statistics Consumer Price Index and changes indicated by the course of plaintiffs' verdicts in personal injury actions.

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

A. For each Term of this Agreement, Concessionaire 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 Concession Premises or the conduct of Concessionaire's operations thereon. Concessionaire 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 Concessionaire has provided such written evidence to Department.

B. Concessionaire 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 Concession Operation described in this Agreement; specifically, but not limited to, **an Act concerning smoking at public beaches and parks and amending and supplementing PL 2005 c. 383 (P.L. 2018 c. 64)**; and N.J.A.C. 8:24, Sanitation in Retail Food Establishments and Food and Beverage Vending Machines, of which an unofficial courtesy copy is attached as Exhibit C, and all rules and regulations of the New Jersey Department of Health now or hereafter in effect, as well as those rules and regulations of any other agency with jurisdiction over the preparation and sale of food and beverages.

C. Concessionaire shall comply with the requirements of all insurance policies required by this Agreement.

D. If Concessionaire:

(i) receives a notice of failure to comply with the insurance required by this Agreement;

(ii) is issued a summons or any notice of violation of any license, permit, certification, authorization, approval, or any similar instruments required by any governmental authority having jurisdiction necessary to maintain and operate the Concession in accordance with the provisions of this Agreement; or

(iii) is issued a summons for violation of any duly promulgated and applicable federal, State, county, municipal, and other governmental statutes, laws, rules, ordinances, regulations, or orders affecting the Concession Operation or any part thereof,

Concessionaire shall immediately forward a copy of the notice of non-compliance, summons, or notice of violation to Department, and Concessionaire shall have such amount of time to correct said violation as is prescribed in the notice or summons. If such violation is not cured within the prescribed period or any extension thereof, it shall be deemed a material breach of this Agreement, and Department may suspend Concessionaire's operation of all or the affected portion of the Concession Premises in accordance with the terms and conditions set forth in Paragraph 9, and/or terminate this Agreement in accordance with the terms and conditions set forth in Paragraph 10.

E. Concessionaire 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 Concessionaire'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.

Concessionaire agrees, in accordance with Executive Order 129 (2004) and N.J.S.A. 52:34-13.2 (P.L. 2005, c. 92), that all services performed under this Agreement or any subcontract awarded under this Agreement shall be performed within the United States. In the event that all services performed under this Agreement or any subcontract awarded under this Agreement shall not be performed within the United States, Concessionaire shall send Department a letter that states with specificity the reasons why the services cannot be so performed. Any such letter shall require review and approval pursuant to N.J.S.A. 52:34-14.2 prior to execution of this Agreement or the delivery of the services which will not be performed within the United States. Unless previously approved by Department, a shift to performance of services outside the United States during any Term of this Agreement shall be deemed a material breach, subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10.

## 37. PUBLIC USE

Concessionaire's operation and this Agreement shall not be construed so as to affect the privileges accorded to the public's use of the Area, or to restrain or prevent individual persons or groups of persons from bringing their own food and beverages into the Area.

## 38. NO DISCRIMINATION

A. Concessionaire 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. Concessionaire 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. l0:5-1 et seq.; and all rules and regulations promulgated pursuant thereto.

C. Specifically, Concessionaire shall not unlawfully discriminate: 1) against any person, employee, or applicant for employment, or 2) in allowing access to and use of the Concession Premises.

DRAFT

## 39. AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT REQUIREMENTS

A. Pursuant to N.J.A.C. 17:27-3.5, Concessionaire agrees that:

(i) Concessionaire or its subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Concessionaire 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. Concessionaire 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) Concessionaire or its subcontractor, where applicable, shall, in all solicitations or advertisements for employees placed by or on behalf of Concessionaire, 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) Concessionaire or its subcontractor, where applicable, shall send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of Concessionaire's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment; and

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

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

(i) Concessionaire and its subcontractor, if any, agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

(ii) Concessionaire and its subcontractor, if any, agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

(iii) Concessionaire and its subcontractor, if any, agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

DRAFT

(iv) In conforming with the targeted employment goals, Concessionaire and its subcontractor, if any, agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

## 40. PAYMENT ABATEMENT

A. In the event that Concessionaire is unable to operate the Concession Premises as a direct result of the performance of, failure to perform or negligent performance by Department, its officers, agents, servants, and employees, of any act under the control or responsibility of Department, Concessionaire may be considered for an abatement of payment for the period that the Concession Premises cannot be operated. Circumstances for consideration of payment abatement shall include but not be limited to, disruption caused by Department construction activities in or around the Concession Premises and interruption of utility service as a result of actions by Department. Construction activities outside the control of Department and interruption of utility services by the utility service provider shall not be grounds for abatement. Suspension of Operations, as provided in Paragraph 9, shall not be grounds for abatement. Notwithstanding the circumstances, the decision whether or not to grant an abatement and the amount of any abatement lies completely within the discretion of Department.

B. 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, or emergencies. Payment abatements will not be given for inclement weather, water quality closures, or government closures. Department shall only consider payment abatements for closures due to HAB if it is confirmed by Department. Further, Department will not consider payment abatement for closures due to HAB or staffing until the total number of full-day closures exceeds more than five (5) consecutive calendar days. No abatements will be given for partial closures that do not extend fully during the Core Business Hours of 11:00 a.m. through 3:00 p.m.

C. To be eligible for consideration for payment abatement, Concessionaire shall submit a written request to Department setting forth specific details and circumstances comprising grounds for abatement and the amount of abatement requested. Said request shall be submitted in the approved Department format within thirty (30) calendar days of the last day for which abatement is claimed.

D. All abatement awards shall be adjusted, disbursed or credited after the Annual Report and final payment are received.

## 41. FINAL DECISION

Concessionaire covenants that the decision of the Commissioner of Department, relative to the performance of the terms and conditions of this Agreement, shall be final and conclusive.

## 42. CORPORATION

A. For any Concessionaire 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 Concessionaire as a legal corporation.

B. Concessionaire shall adopt the required corporate or partnership resolution, as applicable, authorizing the execution of this Agreement by Concessionaire. Concessionaire shall submit a copy of said resolution to Department prior to execution of this Agreement by Department.

DRAFT

C. Prior to the Effective Date of this Agreement, Concessionaire shall provide the Department with a completed Ownership Disclosure Form pursuant to N.J.S.A. 52:25-24.2.

## 43. SUBCONTRACTING

A. Concessionaire may not subcontract without the prior written consent of Department. Such consent, if granted, shall not relieve Concessionaire of any of its responsibilities under this Agreement, nor shall it create privity of contract between Department and any subcontractor. If Concessionaire uses a subcontractor to fulfill any of its obligations, Concessionaire shall be responsible for the subcontractor's performance, compliance with all of the terms and conditions of this Agreement, and compliance with the requirements of all applicable laws. Any subcontracting without the prior written consent of Department shall be a material breach of this Agreement, subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10.

B. If subcontracting is approved pursuant to Subparagraph 43(A), Concessionaire shall provide, on a monthly and cumulative basis, a breakdown in accordance with the budget submitted, of all monies paid to any small business, minority or woman-owned subcontractor(s). This breakdown shall be sent to the Chief of Operations, Division of Revenue, P.O. Box 628, Trenton, NJ 08646.

## 44. NO CONTRACTUAL RELATIONSHIP BETWEEN SUBCONTRACTORS AND DEPARTMENT

Nothing contained in any Agreement documents, including the Bid Specifications and Concessionaire's bid or proposal for this Agreement, shall be construed as creating any contractual relationship between any subcontractor and Department.

## 45. ASSIGNMENT OF AGREEMENT OR SALE OF INTERESTS

Concessionaire shall not assign this Agreement or sell controlling interest in the Concession without prior written approval from Department. Any attempt to assign or sell controlling interest without prior written approval from Department shall be a material breach of this Agreement, subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10.

## 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 this Agreement, subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10, for Concessionaire to do any of the following during any Term of this Agreement:

(i) make or solicit a contribution in violation of Chapter 51 or EO 117;

(ii) knowingly conceal or misrepresent a contribution given or received;

(iii) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;

(iv) make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or of Lieutenant Governor, or to any State, county, or municipal party committee, or any legislative leadership committee;

(v) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by Concessionaire itself, would subject Concessionaire 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 Concessionaire to the restrictions of Chapter 51 or EO 117. It is Concessionaire's continuing obligation to report any contributions it makes during any and all Term(s) of this Agreement.

B. Concessionaire is required, on a continuing basis, to report any contributions and solicitations Concessionaire makes during any Term of this Agreement at the time any such contribution or solicitation is made. Failure to do so is a breach of this Agreement, subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10.

C. Concessionaire 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 Concessionaire receives contracts in excess of Fifty Thousand ($50,000.00) dollars from public entities in a calendar year. It is Concessionaire'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. ENTIRE AGREEMENT

A. This Agreement represents the entire agreement between Department and Concessionaire, and all negotiations, oral agreements, and understandings are merged herein. This Agreement may be amended, supplemented, changed, modified, or altered only upon mutual agreement of Department and Concessionaire, and an amendment, in writing, executed by either the Assistant Commissioner, Natural and Historic Resources or the Director of the Division of Parks and Forestry.

B. This Agreement shall be construed as if it were drafted by both Parties hereto, and both Parties waive all statutory and common law presumptions which would serve to have the document construed in favor of, or against, any Party as the drafter hereof. This Agreement contains the entire understanding of the Parties hereto and represents full and final settlement of and resolution of the matter set forth herein. There are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

## 48. SUBMISSIONS, APPROVALS, AND NOTICES

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

To Department: Department of Environmental Protection
Natural and Historic Resources

Office of Leases & Concessions
PO Box 420, Mail Code: 501-04C
Trenton, New Jersey 08625-0420
**Fax:** (609) 984-0836
**Email:** OfficeofLeases@dep.nj.gov

Copy to Area Superintendent:

Bass River State Forest
762 Stage Road
Tuckerton, New Jersey 08087
**Fax: (**609)-296-5456
**Email:** Cynthia.Coritz@dep.nj.gov

To Concessionaire:

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

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

## 50. NOT A LEASE

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

## 51. WAIVER OF TRIAL

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

## 52. WAIVER

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

DRAFT

**53. SUPERSEDES**

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

**54. SUCCESSION AND BINDING AGREEMENT**

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

**55. HEADINGS**

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

**56. GOVERNING LAW**

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

**57. SEVERABILITY**

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

**58. CLAIMS**

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

**59. ASSIGNMENT OF ANTITRUST CLAIM(S)**

A. Concessionaire recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and as consideration for executing this Agreement, Concessionaire, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns, and transfers to the State of New Jersey, for itself and on behalf of its political subdivisions and public agencies, all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired by the State of New Jersey or any of its political subdivisions or public agencies pursuant to this Agreement.

B. In connection with this assignment, the following are the express obligations of Concessionaire:

(i) It shall take no action that will in any way diminish the value of the rights conveyed or assigned hereunder.

(ii) It shall advise the Attorney General of New Jersey in advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action, and immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.

(iii) It shall notify the defendants in any antitrust suit of the within assignment at the earliest practicable opportunity after Concessionaire has initiated an action

DRAFT

on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice shall be sent to the Attorney General of New Jersey.

(iv) It is understood and agreed that in the event any payment under any such claim or cause of action is made to Concessionaire, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

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

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

**61. MACBRIDE PRINCIPLES AND IRANIAN INVESTMENTS**

A. Concessionaire certifies pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.

B. In addition, Concessionaire certifies that neither the Concessionaire nor any of the Concessionaire's parents, subsidiaries, or affiliates is listed on the N.J. Department of the Treasury's list of entities determined to be engaged in prohibited activities in Iran pursuant to N.J.S.A. 52:32-55.

**62. PREVAILING WAGE ACT**

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

**63. HAZARDOUS SUBSTANCES**

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

**64. BANKRUPTCY**

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

DRAFT

## 65. LIST OF EXHIBITS

Exhibit A: Concession Premises
Exhibit B: Concession Payment Schedule
Exhibit C: N.J.A.C. 8:24, Sanitation in Retail Food Establishments and Food and Beverage Vending Machines

## 66. AUTHORITY

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

DRAFT

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

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

By: _____

Ray Bukowski, Assistant Commissioner
Natural and Historic Resources

Date: _____

**CONCESSIONAIRE**

By: _____ By: _____

Witness _____, Concessionaire

Date: _____ Date: _____

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

**GURBIR S. GREWAL**
**ATTORNEY GENERAL OF NEW JERSEY**

By: _____

Deputy Attorney General

Date: _____

DRAFT