

When recorded, return to:  
Icicle Acquisition Subsidiary, LLC  
P.O. Box 79003  
Seattle, WA 98119



WASHINGTON STATE DEPARTMENT OF  
**Natural Resources**

Peter Goldmark - Commissioner of Public Lands

### AQUATIC LANDS NET PEN LEASE

**Lease No. 22-B02777**

Grantor: Washington State Department of Natural Resources  
Grantee(s): Icicle Acquisition Subsidiary, LLC  
Legal Description: Section 35, Township 31 North, Range 6 West, W.M.  
Assessor's Property Tax Parcel or Account Number: Not Applicable  
Assessor's Property Tax Parcel or Account Number for Upland parcel used in conjunction with this lease: Not Applicable

THIS LEASE is between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and ICICLE ACQUISITION SUBSIDIARY, LLC a Washington corporation ("Tenant").

### BACKGROUND

Tenant desires to lease the aquatic lands commonly known as Port Angeles Harbor, which is a harbor area located in Clallam County, Washington, from State, and State desires to lease the property to Tenant pursuant to the terms and conditions of this Lease. State has authority to enter into this Lease under Chapter 43.12, Chapter 43.30 and Title 79 of the Revised Code of Washington (RCW).

THEREFORE, the Parties agree as follows:

## SECTION 1 PROPERTY

### 1.1 Property Defined.

- (a) State leases to Tenant and Tenant leases from State the real property described in Exhibit A together with all the rights of State, if any, to improvements on and easements benefiting the Property, but subject to the exceptions and restrictions set forth in this Lease (collectively the "Property").
- (b) This Lease is subject to all valid interests of third parties noted in the records of Clallam County, or on file in the Office of the Commissioner of Public Lands, Olympia, Washington; rights of the public under the Public Trust Doctrine or federal navigation servitude; and treaty rights of Indian Tribes.
- (c) This Lease does not include a right to harvest, collect or damage any natural resources, including aquatic life or living plants; water rights; mineral rights; or a right to excavate or withdraw sand, gravel, or other valuable materials, except to the extent expressly permitted in Exhibit B.
- (d) State reserves the right to grant easements and other land uses on the Property to others when the easement or other land uses will not interfere unreasonably with the Permitted Use.

### 1.2 Survey and Property Descriptions.

- (a) Tenant prepared Exhibit A, which describes the Property. Tenant warrants that Exhibit A is a true and accurate description of the Lease boundaries and the improvements to be constructed or already existing in the Lease area. Tenant's obligation to provide a true and accurate description of the Property boundaries is a material term of this Lease.
- (b) State's acceptance of Exhibit A does not constitute agreement that Tenant's property description accurately reflects the actual amount of land used by Tenant. State reserves the right to retroactively adjust rent if at any time during the term of the Lease State discovers a discrepancy between Tenant's property description and the area actually used by Tenant.

**1.3 Inspection.** State makes no representation regarding the condition of the Property, improvements located on the Property, the suitability of the Property for Tenant's Permitted Use, compliance with governmental laws and regulations, availability of utility rights, access to the Property, or the existence of hazardous substances on the Property. Tenant inspected the Property and accepts it "AS IS."

## SECTION 2 USE

**2.1 Permitted Use.** Tenant shall use the Property for: net pen aquaculture for Atlantic Salmon (the "Permitted Use"), and for no other purpose. Exhibit B describes the Permitted Use in detail. The Permitted Use is subject to additional obligations in Exhibit B.

**2.2 Restrictions on Permitted Use and Operations.** The following limitations apply to the Property and adjacent state-owned aquatic land. Tenant's compliance with the following does not limit Tenant's liability under any other provision of this Lease.

- (a) Tenant shall not cause or permit:
  - (1) Damage to natural resources,
  - (2) Waste, or
  - (3) Deposit of material, unless approved by State in writing. This prohibition includes deposit of fill, rock, earth, ballast, wood waste, refuse, garbage, waste matter, pollutants of any type, or other matter. This prohibition includes excessive accumulation of surplus feed or other byproducts resulting from net pen operation.
- (b) Tenant shall not cause or permit scour or damage to aquatic land and vegetation. This prohibition includes the following limitations:
  - (1) Tenant shall not use or allow use of a pressure washer to clean underwater surfaces unless the water is deeper than seven (7) feet at the time.
  - (2) Tenant shall not allow moorage or anchorage of vessels in water more shallow than seven (7) feet at the extreme low tide or water.
  - (3) If anchoring, Tenant shall use and shall require use of anchor lines with midline floats.

**2.3 Conformance with Laws.** Tenant shall, at all times, keep current and comply with all conditions and terms of permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding Tenant's use or occupancy of the Property.

**2.4 Liens and Encumbrances.** Unless expressly authorized by State in writing, Tenant shall keep the Property free and clear of liens or encumbrances arising from the Permitted Use or Tenant's occupancy of the Property.

### SECTION 3 TERM

**3.1 Term Defined.** The term of this Lease is ten (10) years (the "Term"), beginning on the 1<sup>st</sup> day of October, 2015 (the "Commencement Date"), and ending on the 30<sup>th</sup> day of September, 2025 (the "Termination Date"), unless terminated sooner under the terms of this Lease.

**3.2 Renewal of the Lease.** This Lease does not provide a right of renewal. Tenant may apply for a new lease, which State has discretion to grant. Tenant must apply for a new lease at least one (1) year prior to Termination Date. State will notify Tenant within ninety (90) days of its intent to approve or deny a new Lease.

**3.3 End of Term.**

- (a) Upon the expiration or termination of this Lease, Tenant shall remove Improvements in accordance with Section 7, Improvements, and surrender the Property to State in the same or better condition as on the Commencement Date, reasonable wear and tear excepted.

- (b) **Definition of Reasonable Wear and Tear.**
- (1) Reasonable wear and tear is deterioration resulting from the Permitted Use that has occurred without neglect, negligence, carelessness, accident, or abuse of the Property by Tenant or any other person on the premises with the permission of Tenant.
  - (2) Reasonable wear and tear does not include unauthorized deposit of material prohibited under Paragraph 2.2 regardless of whether the deposit is incidental to or the byproduct of the Permitted Use.
- (c) If Property is in worse condition, excepting for reasonable wear and tear, on the surrender date than on the Commencement Date, the following provisions apply.
- (1) State shall provide Tenant a reasonable time to take all steps necessary to remedy the condition of the Property. State may require Tenant to enter into a right-of-entry or other use authorization prior to the Tenant entering the Property if the Lease has terminated.
  - (2) If Tenant fails to remedy the condition of the Property in a timely manner, State may take steps reasonably necessary to remedy Tenant's failure. Upon demand by State, Tenant shall pay all costs of State's remedy, including but not limited to the costs of removing and disposing of any material deposited improperly on the Property, lost revenue resulting from the condition of the Property and administrative costs associated with State's remedy.

### 3.4 **Holdover.**

- (a) If Tenant remains in possession of the Property after the Termination Date, the occupancy will not be an extension or renewal of the Term. The occupancy will be a month-to-month tenancy, on terms identical to the terms of this Lease, which either Party may terminate on thirty (30) days' written notice.
- (1) The monthly rent during the holdover will be the same rent that would be due if the Lease were still in effect and all adjustments in rent were made in accordance with its terms.
  - (2) Payment of more than the monthly rent will not be construed to create a periodic tenancy longer than month-to-month. If Tenant pays more than the monthly rent and State provides notice to vacate the property, State shall refund the amount of excess payment remaining after the Tenant ceases occupation of the Property.
- (b) If State notifies Tenant to vacate the Property and Tenant fails to do so within the time set forth in the notice, Tenant will be a trespasser and shall owe the State all amounts due under RCW 79.02.300 or other applicable law.

## SECTION 4 RENT

**4.1 Annual Rent.** Tenant shall pay to State an annual rent based on a Fixed Minimum Annual Payment and any Production Payment in excess of the Fixed Minimum Annual Payment. Any payment not paid by State's close of business on the date due is past due.

- (a) **Fixed Minimum Annual Payment.** Tenant shall pay State a Fixed Minimum Annual Payment of Thirty-Three Thousand Seven Hundred Forty-Five and 96/100 Dollars (\$33,745.96), which is due and payable in full on or before the Commencement Date, and on or before the same date of each year thereafter.
- (b) **Production Payment.**
  - (1) Tenant shall pay State a Production Payment calculated in accordance with Paragraph 4.1(b)(2). The Production Payment, or a portion of it, is due and payable thirty days after the end of each quarter in which the yearly aggregate of quarterly Production Payments exceeds the Fixed Minimum Annual Payment for that year as follows:
    - (i) At the end of the first quarter of each lease year, Tenant shall begin computing the Production Payment due at the end of each quarter.
    - (ii) At the end of the quarter in which the aggregate of all the quarterly Production Payments within a single lease year exceeds the Fixed Minimum Annual Payment for that year, Tenant shall pay State an amount equal to the excess. Tenant then shall pay quarterly Production Payment in full through the remainder of the lease year.
  - (2) The Production Payment is calculated by multiplying the total number of pounds of Salmon sold during the quarter by the average price per pound for the fish during the quarter and a royalty rate.
    - (i) The average price is calculated from the price paid to the producer minus processing costs ("ex-farm gate price").
    - (ii) The royalty rate is calculated on a sliding scale in accordance with the chart in Exhibit C.
- (c) Tenant is not entitled to a refund if the Fixed Minimum Annual Payment for a lease year exceeds the sum of Production Payments for that year. Production Payments do not carry-back or carry-forward from one lease year to another.
- (d) Tenant shall submit a quarterly report with the total number of pounds of product sold and the average price per pound during each quarter to State and the Department of Fish and Wildlife within thirty (30) days after the end of each quarter.

**4.2 Payment Place.** Tenant shall make payment to Financial Management Division, 1111 Washington St SE, PO Box 47041, Olympia, WA 98504-7041.

## SECTION 5 OTHER EXPENSES

**5.1 Utilities.** Tenant shall pay all fees charged for utilities required or needed by the Permitted Use.

**5.2 Taxes and Assessments.** Tenant shall pay all taxes (including leasehold excise taxes), assessments, and other governmental charges applicable or attributable to the Property, Tenant's leasehold interest, the improvements, or Tenant's use and enjoyment of the Property.

**5.3 Right to Contest.** If in good faith, Tenant may contest any tax or assessment at its sole cost and expense. At the request of State, Tenant shall furnish reasonable protection in the form of a bond or other security, satisfactory to State, against loss or liability resulting from such contest.

**5.4 Proof of Payment.** If required by State, Tenant shall furnish to State receipts or other appropriate evidence establishing the payment of amounts this Lease requires Tenant to pay.

**5.5 Failure to Pay.** If Tenant fails to pay amounts due under this Lease, State may pay the amount due, and recover its cost in accordance with Section 6.

### SECTION 6 LATE PAYMENTS AND OTHER CHARGES

**6.1 Failure to Pay Rent.** Failure to pay rent is a default by the Tenant. State may seek remedies under Section 14 as well as late charges and interest as provided in this Section 6.

**6.2 Late Charge.** If State does not receive any full rent payment within ten (10) days of the date due, Tenant shall pay to State a late charge equal to four percent (4%) of the unpaid amount or Fifty Dollars (\$50), whichever is greater, to defray the overhead expenses of State incident to the delay.

**6.3 Interest Penalty for Past Due Rent and Other Sums Owed.**

- (a) Tenant shall pay interest on the past due rent at the rate of one percent (1%) per month until paid, in addition to paying the late charges determined under Paragraph 6.2. Rent not paid by the close of business on the due date will begin accruing interest the day after the due date.
- (b) If State pays or advances any amounts for or on behalf of Tenant, Tenant shall reimburse State for the amount paid or advanced and shall pay interest on that amount at the rate of one percent (1%) per month from the date State notifies Tenant of the payment or advance. This includes, but is not limited to, State's payment of taxes of any kind, assessments, insurance premiums, costs of removal and disposal of materials or Improvements under any provision of this Lease, or other amounts not paid when due.

**6.4 Referral to Collection Agency and Collection Agency Fees.** If State does not receive payment within thirty (30) days of the due date, State may refer the unpaid amount to a collection agency as provided by RCW 19.16.500 or other applicable law. Upon referral, Tenant shall pay collection agency fees in addition to the unpaid amount.

**6.5 No Accord and Satisfaction.** If Tenant pays, or State otherwise receives, an amount less than the full amount then due, State may apply such payment as it elects. State may accept payment in any amount without prejudice to State's right to recover the balance of the rent or pursue any other right or remedy. No endorsement or statement on any check, any payment, or any letter accompanying any check or payment constitutes accord and satisfaction.

**6.6 No Counterclaim, Setoff, or Abatement of Rent.** Except as expressly set forth elsewhere in this Lease, Tenant shall pay rent and all other sums payable by Tenant without the requirement that State provide prior notice or demand. Tenant's payment is not subject to counterclaim, setoff, deduction, defense or abatement.

## SECTION 7 IMPROVEMENTS

### 7.1 Improvements Defined.

- (a) "Improvements," consistent with RCW 79.105 through 79.145, are additions within, upon, or attached to the land. This includes, but is not limited to, fill, structures, bulkheads, docks, pilings, and other fixtures.
- (b) "Personal Property" means items that can be removed from the Property without (1) injury to the Property or Improvements or (2) diminishing the value or utility of the Property or Improvements. Net pens are Personal Property.
- (c) "State-Owned Improvements" are Improvements made or owned by State. State-Owned Improvements includes any construction, alteration, or addition to State-Owned Improvements made by Tenant.
- (d) "Tenant-Owned Improvements" are Improvements authorized by State and (1) made by Tenant or acquired by Tenant from the prior tenant.
- (e) "Unauthorized Improvements" are Improvements made on the Property without State's prior consent or Improvements made by Tenant that do not conform to plans submitted to and approved by the State.

**7.2 Existing Improvements.** On the Commencement Date, the following Improvements are located on the Property: Two (2) separate steel cage structures consisting of fourteen (14) net pens and six (6) net pens respectively, twenty (20) individual containment nets, two (2) predator nets, thirty-eight (38) Danforth-style anchors, one (1) wooden barge for storing nets, one (1) steel structure for housing feed, one (1) structure used for staff quarters and an unknown quantity of tractor tires used as fenders and encapsulated billets used for floatation. The Improvements are Tenant-Owned Improvements.

### 7.3 Construction, Major Repair, Modification, and Demolition.

- (a) This Paragraph 7.3 governs construction, alteration, replacement, major repair, modification, demolition, and deconstruction of Improvements ("Work").
- (b) All Work must conform to requirements under Paragraph 7.4. Paragraph 11.3, which applies to routine maintenance and minor repair, also applies to all Work under this Paragraph 7.3.
- (c) Except in an emergency, Tenant shall not conduct any Work without State's prior written consent, as follows:
  - (1) State may deny consent if State determines that denial is in the best interests of the State or if proposed Work does not comply with Paragraph 7.4 and 11.3. State may impose additional conditions reasonably intended to protect and preserve the Property. If Work is for removal of

- Improvements at End of Term, State may waive removal of some or all Improvements.
- (2) Except in an emergency, Tenant shall submit to State plans and specifications describing the proposed Work at least sixty (60) days before submitting permit applications to regulatory authorities unless Tenant and State otherwise agree to coordinate permit applications. At a minimum, or if no permits are necessary, Tenant shall submit plans and specifications at least ninety (90) days before commencement of Work.
  - (3) State waives the requirement for consent if State does not notify Tenant of its grant or denial of consent within sixty (60) days of submittal.
  - (d) Tenant shall notify State of emergency Work within five (5) business days of the start of such Work. Upon State's request, Tenant shall provide State with plans and specifications or as-builts of emergency Work.
  - (e) Tenant shall not commence or authorize Work until Tenant or Tenant's contractor has:
    - (1) Obtained a performance and payment bond in an amount equal to one hundred twenty-five percent (125%) of the estimated cost of construction. Tenant shall maintain the performance and payment bond until Tenant pays in full the costs of the Work, including all laborers and material persons.
    - (2) Obtained all required permits.
  - (f) Before completing Work, Tenant shall remove all debris and restore the Property, to an orderly and safe condition. If Work is intended for removal of Improvements at End of Term, Tenant shall restore the Property in accordance with Paragraph 3.3, End of Term.
  - (g) Upon completing work, Tenant shall promptly provide State with as-built plans and specifications.
  - (h) State shall not charge rent for authorized Improvements installed by Tenant during this Term of this Lease, but State may charge rent for such Improvements when and if Tenant or successor obtains a subsequent use authorization for the Property and State has waived the requirement for Improvements to be removed as provided in Paragraph 7.5.

**7.4 Standards for Work.**

- (a) Applicability of Standards for Work.
  - (1) The standards for Work in Paragraph 7.4(b) apply to Work commenced in the five year period following the Commencement Date. Work has commenced if State has approved plans and specifications.
  - (2) If Tenant undertakes Work five years or more after the Commencement Date, Tenant shall comply with State's then current standards for Work.
  - (3) At Tenant's option, Tenant may ascertain State's current standards for Work as follows:
    - (i) Before submitting plans and specifications for State's approval as required by Paragraph 7.3 of the Lease, Tenant shall request State



to provide Tenant with then current standards for Work on State-owned Aquatic Lands.

- (ii) Within thirty (30) days of receiving Tenant's request, State shall provide Tenant with current standards for Work, which will be effective for the purpose of State's approval of Tenant's proposed Work provided Tenant submits plans and specifications for State's approval within two (2) years of Tenant's request for standards.
  - (iii) If State does not timely provide current standards upon Tenant's request, the standards under Paragraph 7.4(b) apply to Tenant's Work provided Tenant submits plans and specifications as required by Paragraph 7.3 within two (2) years of Tenant's request for standards.
  - (iv) If Tenant fails to (1) make a request for current standards or (2) timely submit plans and specifications to State after receiving current standards, Tenant shall make changes in plans or Work necessary to conform to current standards for Work upon State's demand.
- (b) Standards for Work.
- (1) State will not approve plans to construct new Improvements or expand existing Improvements in or over habitats designated by State as important habitat. Tenant shall confirm location of important habitat on Property, if any, with State before submitting plans and specifications in accordance with Paragraph 7.3.

#### **7.5 Tenant-Owned Improvements at End of Lease.**

- (a) Disposition
- (1) Tenant shall remove Tenant-Owned Improvements in accordance with Paragraph 7.3 upon the expiration, termination, or cancellation of the Lease unless State waives the requirement for removal.
  - (2) Tenant-Owned Improvements remaining on the Property on the expiration, termination or cancellation date shall become State-Owned Improvements without payment by State, unless State elects otherwise. State may refuse or waive ownership. If RCW 79.125.300 or 79.130.040 apply at the time this Lease expires, Tenant could be entitled to payment by the new tenant for Tenant-Owned Improvements.
  - (3) If Tenant-Owned Improvements remain on the Property after the expiration, termination, or cancellation date without State's consent, State may remove all Improvements and Tenant shall pay State's costs.
- (b) Conditions Under Which State May Waive Removal of Tenant-Owned Improvements.
- (1) State may waive removal of some or all Tenant-Owned Improvements whenever State determines that it is in the best interests of the State and regardless of whether Tenant re-leases the Property.

- (2) If Tenant re-leases the Property, State may waive requirement to remove Tenant-Owned Improvements. State also may consent to Tenant's continued ownership of Tenant-Owned Improvements.
  - (3) If Tenant does not re-lease the Property, State may waive requirement to remove Tenant-Owned Improvements upon consideration of a timely request from Tenant, as follows:
    - (i) Tenant must notify State at least one (1) year before the Termination Date of its request to leave Tenant-Owned Improvements.
    - (ii) State, within ninety (90) days of receiving Tenant's notification, will notify Tenant whether State consents to some or all Tenant-Owned Improvements remaining. State has no obligation to grant consent.
    - (iii) State's failure to respond to Tenant's request to leave Improvements within ninety (90) days is a denial of the request.
- (c) Tenant's Obligations if State Waives Removal.
- (1) Tenant shall not remove Improvements if State waives the requirement for removal of some or all Tenant-Owned Improvements.
  - (2) Tenant shall maintain such Improvements in accordance with this Lease until the expiration, termination, or cancellation date. Tenant is liable to State for cost of repair if Tenant causes or allows damage to Improvements State has designated to remain.

**7.6 Disposition of Unauthorized Improvements.**

- (a) Unauthorized Improvements belong to State, unless State elects otherwise.
- (b) State may either:
  - (1) Consent to Tenant ownership of the Improvements, or
  - (2) Charge rent for use of the Improvements from the time of installation or construction and
    - (i) Require Tenant to remove the Improvements in accordance with Paragraph 7.3, in which case Tenant shall pay rent for the Improvements until removal,
    - (ii) Consent to Improvements remaining and Tenant shall pay rent for the use of the Improvements, or
    - (iii) Remove Improvements and Tenant shall pay for the cost of removal and disposal, in which case Tenant shall pay rent for use of the Improvements until removal and disposal.

**7.7 Disposition of Personal Property.**

- (a) Tenant retains ownership of Personal Property unless Tenant and State agree otherwise in writing.
- (b) Tenant shall remove Personal Property from the Property by the Termination Date. Tenant is liable for damage to the Property and Improvements resulting from removal of Personal Property.

- (c) State may sell or dispose of all Personal Property left on the Property after the Termination Date.
  - (1) If State conducts a sale of Personal Property, State shall apply proceeds first to the State's administrative costs in conducting the sale, second to payment of amount that then may be due from the Tenant to the State. State shall pay the remainder, if any, to the Tenant.
  - (2) If State disposes of Personal Property, Tenant shall pay for the cost of removal and disposal.

**7.8 Disposition of State-Owned Improvements.** Tenant shall remove State-Owned Improvements in accordance with Subsection 7.3 by the expiration, termination, or cancellation date of this Lease unless State waives the requirement for removal.

## SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION

### 8.1 Definitions.

- (a) "Hazardous Substance" means any substance that now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination, pollution, or cleanup.
- (b) "Release or threatened release of Hazardous Substance" means a release or threatened release as defined under any law described in Paragraph 8.1(a).
- (c) "Utmost care" means such a degree of care as would be exercised by a very careful, prudent, and competent person under the same or similar circumstances; the standard of care applicable under the Washington State Model Toxics Control Act ("MTCA"), Chapter 70.105 RCW, as amended.
- (d) "Tenant and affiliates" when used in this Section 8 means Tenant or Tenant's subtenants, contractors, agents, employees, guests, invitees, licensees, affiliates, or any person on the Property with the Tenant's permission.
- (e) "Liabilities" as used in this Section 8 means any claims, demands, proceedings, lawsuits, damages, costs, expenses, fees (including attorneys' fees and disbursements), penalties, or judgments.

### 8.2 General Conditions.

- (a) Tenant's obligations under this Section 8 extend to the area in, on, under, or above:
  - (1) The Property and
  - (2) Adjacent state-owned aquatic lands if affected by a release of Hazardous Substances that occurs as a result of the Permitted Use.
- (b) Standard of Care.
  - (1) Tenant shall exercise the utmost care with respect to Hazardous Substances.
  - (2) Tenant shall exercise utmost care for the foreseeable acts or omissions of third parties with respect to Hazardous Substances, and the foreseeable

consequences of those acts or omissions, to the extent required to establish a viable, third-party defense under the law.

**8.3 Current Conditions and Duty to Investigate.**

- (a) State makes no representation about the condition of the Property. Hazardous Substances may exist in, on, under, or above the Property.
- (b) This Lease does not impose a duty on State to conduct investigations or supply information to Tenant about Hazardous Substances.
- (c) Tenant is responsible for conducting all appropriate inquiry and gathering sufficient information about the existence, scope, and location of Hazardous Substances on or near the Property necessary for Tenant to meet Tenant's obligations under this Lease and utilize the Property for the Permitted Use.

**8.4 Use of Hazardous Substances.**

- (a) Tenant and affiliates shall not use, store, generate, process, transport, handle, release, or dispose of Hazardous Substances, except in accordance with all applicable laws.
- (b) Tenant shall not undertake, or allow others to undertake by Tenant's permission, acquiescence, or failure to act, activities that result in a release or threatened release of Hazardous Substances.
- (c) If use of Hazardous Substances related to Tenant's use or occupancy of the Property results in violation of law:
  - (1) Tenant shall submit to State any plans for remedying the violations, and
  - (2) Tenant shall implement any remedial measures to restore the Property or natural resources that State may require in addition to remedial measures required by regulatory authorities.
- (d) At a minimum, Tenant and affiliates shall observe the following Hazardous Substances operational standards. If the Washington Department of Ecology, U.S. Environmental Protection Agency or other regulatory agency establishes different standards applicable to Tenant's activities under the Permitted Use, Tenant shall meet the standard that provides greater protection to the environment.
  - (1) Tenant shall not allow work on overwater structures or vessels without protective measures to prevent discharge of toxins to the water, including:
    - (i) Tenant shall not cause or allow underwater hull scraping and other underwater removal of paints.
    - (ii) Tenant shall not cause or allow underwater refinishing work from boats or temporary floats unless permitted by an industrial National Pollution Discharge Elimination System (NPDES) permit.
    - (iii) Tenant shall not cause or allow above the waterline boat repairs or refinishing in-water except if limited to decks and superstructures and less than 25 percent of a boat is repaired or refinished in-water per year.

- (iv) Tenant shall use and require others to use tarps and other dust, drip and spill containment measures when repairing or refinishing boats in water.
- (2) Tenant shall not store or allow others to store fuel tanks, petroleum products, hydraulic fluid, machinery coolants, lubricants and chemicals not in use in locations above the water surface.
- (3) Tenant shall inspect all equipment using petroleum products, hydraulic fluids, machinery coolants, chemicals, or other toxic or deleterious materials on a monthly basis and immediately make all repairs necessary to stop leakage. Tenant shall submit to State an annual report documenting inspections and repair.
- (4) Tenant shall maintain a supply of oil spill containment materials adequate to contain a spill from the largest vessel in use on the Property.
- (5) Tenant shall not use or allow use of a pressure washer at any location above the water surface to clean any item that uses petroleum products.
- (e) Tenant shall incorporate best management practices to prevent the release of chemical contaminants, wastewater, garbage and other pollutants, as specified in Resource Manual for Pollution Prevention in Marinas published by the Washington Department of Ecology, publication number 98-11, available at <http://www.ecy.wa.gov/biblio/9811.html>. If the Department of Ecology or other regulatory agency establishes different standards, Tenant shall meet the most protective standard.

**8.5 Management of Contamination. If any.**

- (a) Tenant and affiliates shall not undertake activities that:
  - (1) Damage or interfere with the operation of remedial or restoration activities, if any;
  - (2) Result in human or environmental exposure to contaminated sediments, if any;
  - (3) Result in the mechanical or chemical disturbance of on-site habitat mitigation, if any.
- (b) If requested, Tenant shall allow reasonable access to:
  - (1) Employees and authorized agents of the Environmental Protection Agency, the Washington State Department of Ecology, health department, or other similar environmental agencies; and
  - (2) Potentially liable or responsible parties who are the subject of an order or consent decree that requires access to the Property. Tenant may negotiate an access agreement with such parties, but Tenant may not unreasonably withhold such agreement.

**8.6 Notification and Reporting.**

- (a) Tenant shall immediately notify State if Tenant becomes aware of any of the following:
  - (1) A release or threatened release of Hazardous Substances;

- (2) Any new discovery of or new information about a problem or liability related to, or derived from, the presence of Hazardous Substances;
  - (3) Any lien or action arising from the foregoing;
  - (4) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances;
  - (5) Any notification from the US Environmental Protection Agency (EPA) or the Washington State Department of Ecology (DOE) that remediation or removal of Hazardous Substances is or may be required at the Property.
- (b) Tenant's duty to report under Paragraph 8.6(a) extends to lands described in Paragraph 8.2(a) and to any other property used by Tenant in conjunction with the Property if a release of Hazardous Substances on the other property could affect the Property.
- (c) Tenant shall provide State with copies of all documents Tenant submits to any federal, state or local authorities concerning environmental impacts or proposals relative to the Property. Documents subject to this requirement include, but are not limited to, applications, reports, studies, or audits for National Pollution Discharge and Elimination System Permits; Army Corps of Engineers permits; State Hydraulic Project Approvals (HPA); State Water Quality certification; Substantial Development permit; and any reporting necessary for the existence, location, and storage of Hazardous Substances on the Property.

#### **8.7 Indemnification.**

- (a) Tenant shall fully indemnify, defend, and hold State harmless from and against Liabilities that arise out of, or relate to:
- (1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Tenant and affiliates occurring whenever Tenant occupies or has occupied the Property;
  - (2) The release or threatened release of any Hazardous Substance resulting from any act or omission of Tenant and affiliates occurring whenever Tenant occupies or has occupied the Property.
- (b) Tenant shall fully indemnify, defend, and hold State harmless for Liabilities that arise out of or relate to Tenant's breach of obligations under Paragraph 8.5.

#### **8.8 Reservation of Rights.**

- (a) For Liabilities not covered by the indemnification provisions of Paragraph 8.7, the Parties expressly reserve and do not waive any rights, claims, immunities, causes of action, or defenses relating to Hazardous Substances that either Party may have against the other under law.
- (b) The Parties expressly reserve all rights, claims, immunities, and defenses either Party may have against third parties. Nothing in this Section 8 benefits or creates rights for third parties.
- (c) The allocations of risks, Liabilities, and responsibilities set forth in this Section 8 do not release either Party from or affect the liability of either Party for Hazardous Substances claims or actions by regulatory agencies.

**8.9 Cleanup.**

- (a) If Tenant's act, omission, or breach of obligation under Paragraph 8.4 results in a release of Hazardous Substances that exceeds the threshold limits of any applicable regulatory standard, Tenant shall, at Tenant's sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substances in accordance with applicable law.
- (b) Tenant may undertake a cleanup of the Property pursuant to the Washington State Department of Ecology's Voluntary Cleanup Program, provided that Tenant cooperates with the Department of Natural Resources in development of cleanup plans. Tenant shall not proceed with Voluntary Cleanup without the Department of Natural Resources approval of final plans. Nothing in the operation of this provision is an agreement by the Department of Natural Resources that the Voluntary Cleanup complies with any laws or with the provisions of this Lease. Tenant's completion of a Voluntary Cleanup is not a release from or waiver of any obligation for Hazardous Substances under this Lease.

**8.10 Sampling by State, Reimbursement, and Split Samples.**

- (a) State may enter Property and conduct sampling, tests, audits, surveys, or investigations ("Tests") of the Property at any time to determine the existence, scope, or effects of Hazardous Substances.
- (b) If such Tests, along with any other information, demonstrate a breach of Tenant's obligations regarding Hazardous Substances under this Lease, Tenant shall promptly reimburse State for all costs associated with the Tests, provided State gave Tenant thirty (30) calendar days advance notice in nonemergencies and reasonably practical notice in emergencies.
- (c) In nonemergencies, Tenant is entitled to obtain split samples of Test samples, provided Tenant gives State written notice requesting split samples at least ten (10) calendar days before State conducts Tests. Upon demand, Tenant shall promptly reimburse State for additional cost, if any, of split samples. .
- (d) If either Party conducts Tests on the Property, the conducting Party shall provide the other with validated final data and quality assurance/quality control/chain of custody information about the Tests within sixty (60) calendar days of a written request by the other party, unless Tests are part of a submittal under Paragraph 8.6(c) in which case Tenant shall submit data and information to State without written request by State. Neither party is obligated to provide any analytical summaries or the work product of experts.

**8.11 Closeout Assessment.**

- (a) State may require Tenant to conduct a Closeout Environmental Assessment ("Closeout Assessment") prior to Termination of the Lease.
- (b) The purpose of the Closeout Assessment is to determine the existence, scope, or effects of Hazardous Substances on the Property and associated natural resources. The Closeout Assessment may include sediment sampling.

- (c) No later than one hundred eighty (180) calendar days prior to the Termination Date, or within ninety (90) days of valid notice to early termination, State shall provide Tenant with written notice that State requires a Closeout Assessment.
- (d) Within sixty (60) days of State's notice that Closeout Assessment is required and before commencing assessment activities, Tenant shall submit a proposed plan for conducting the Closeout Assessment in writing for State's approval.
- (e) If State fails to approve or disapprove of the plan in writing within sixty (60) days of its receipt, State waives requirement for approval.
- (f) Tenant shall be responsible for all costs required to complete planning, sampling, analyzing, and reporting associated with the Closeout Assessment.
- (g) If the initial results of the Closeout Assessment disclose that Hazardous Substances may have migrated to other property, State may require additional Closeout Assessment work to determine the existence, scope, and effect of Hazardous Substances on adjacent property, any other property subject to use by Tenant in conjunction with its use of the Property, or on associated natural resources.
- (h) Tenant shall submit Closeout Assessment to State upon completion.
- (i) As required by law, Tenant shall report to the appropriate regulatory authorities if the Closeout Assessment discloses a release or threatened release of Hazardous Substances.

## SECTION 9 ASSIGNMENT AND SUBLETTING

**9.1 State Consent Required.** Tenant shall not convey, transfer, or encumber any part of Tenant's interest in this Lease or the Property without State's prior written consent, which State shall not unreasonably condition or withhold.

- (a) In determining whether to consent, State may consider, among other items, the proposed transferee's financial condition, business reputation and experience, the nature of the proposed transferee's business, the then-current value of the Property, and such other factors as may reasonably bear upon the suitability of the transferee as a tenant of the Property. State may refuse its consent to any conveyance, transfer, or encumbrance if it will result in a subdivision of the leasehold. Tenant shall submit information regarding any proposed transferee to State at least thirty (30) days prior to the date of the proposed transfer.
- (b) State reserves the right to condition its consent upon:
  - (1) changes in the terms and conditions of this Lease, including, but not limited to, the Annual Rent; and/or
  - (2) the agreement of Tenant or transferee to conduct Tests for Hazardous Substances on the Property or on other property owned or occupied by Tenant or the transferee.
- (c) Each permitted transferee shall assume all obligations under this Lease, including the payment of rent. No assignment, sublet, or transfer shall release, discharge, or otherwise affect the liability of Tenant.



- (d) State's consent under this Paragraph 9.1 does not constitute a waiver of any claims against Tenant for the violation of any term of this Lease.

**9.2 Rent Payments Following Assignment.** The acceptance by State of the payment of rent following an assignment or other transfer does not constitute consent to any assignment or transfer.

**9.3 Terms of Subleases.**

- (a) Tenant shall submit the terms of all subleases to State for approval.
- (b) Tenant shall incorporate the following requirements in all subleases:
- (1) The sublease must be consistent with and subject to all the terms and conditions of this Lease;
  - (2) The sublease must provide that this Lease controls if the terms of the sublease conflict with the terms of this Lease;
  - (3) The term of the sublease (including any period of time covered by a renewal option) must end before the Termination Date of the initial Term or any renewal term;
  - (4) The sublease must terminate if this Lease terminates for any reason;
  - (5) The subtenant must receive and acknowledge receipt of a copy of this Lease;
  - (6) The sublease must prohibit the prepayment to Tenant by the subtenant of more than the quarterly installment;
  - (7) The sublease must identify the rental amount subtenant is to pay to Tenant;
  - (8) The sublease must provide that there is no privity of contract between the subtenant and State;
  - (9) The sublease must require removal of the subtenant's Improvements and Personal Property upon termination of the sublease;
  - (10) The subtenant's permitted use must be within the scope of the Permitted Use; and
  - (11) The sublease must require the subtenant to meet all obligations of Tenant under Section 10, Indemnification, Financial Security, and Insurance.

**9.4 Short-Term Subleases of Moorage Slips.** Short-term subleasing of moorage slips for a term of less than one year does not require State's written consent or approval pursuant to Paragraphs 9.1 or 9.3. Tenant shall conform moorage sublease agreements to the sublease requirements in Paragraph 9.3.

**9.5 Event of Assignment.** If Tenant is a corporation, dissolution of the corporation or a transfer (by one or more transactions) of a majority of the voting stock of Tenant is an assignment of this Lease. If Tenant is a partnership, dissolution of the partnership or a transfer (by one or more transactions) of the controlling interest in Tenant is an assignment of this Lease. Assignments defined in this Paragraph 9.5 require State's consent under Paragraph 9.1.

## SECTION 10 INDEMNITY, FINANCIAL SECURITY, INSURANCE

### 10.1 Indemnity.

- (a) Tenant shall indemnify, defend, and hold State, its employees, officers, and agents harmless from Claims arising out of the use, occupation, or control of the Property by Tenant, its subtenants, contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees.
- (b) "Claim" as used in this Paragraph 10.1 means any financial loss, claim, suit, action, damages, expenses, fees (including attorneys' fees), penalties, or judgments attributable to bodily injury, sickness, disease, death, and damages to tangible property, including, but not limited to, land, aquatic life, and other natural resources. "Damages to tangible property" includes, but is not limited to, physical injury to the Property and damages resulting from loss of use of the Property.
- (c) State shall not require Tenant to indemnify, defend, and hold State harmless for claims that arise solely out of the willful or negligent act of State or State's elected officials, employees, or agents.
- (d) Tenant waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold State and its agencies, officials, agents, or employees harmless.
- (e) Section 8, Environmental Liability/Risk Allocation, exclusively shall govern Tenant's liability to State for Hazardous Substances and its obligation to indemnify, defend, and hold State harmless for Hazardous Substances.

### 10.2 Insurance Terms.

- (a) Insurance Required.
  - (1) At its own expense, Tenant shall procure and maintain during the Term of this Lease, the insurance coverages and limits described in this Paragraph 10.2 and in Paragraph 10.3, Insurance Types and Limits. State may terminate this Lease if Tenant fails to maintain required insurance.
  - (2) Unless State agrees to an exception, Tenant shall provide insurance issued by an insurance company or companies admitted to do business in the State of Washington and have a rating of A- or better by the most recently published edition of Best's Reports. Tenant may submit a request to the risk manager for the Department of Natural Resources to approve an exception to this requirement. If an insurer is not admitted, the insurance policies and procedures for issuing the insurance policies shall comply with Chapter 48.15 RCW and 284-15 WAC.
  - (3) All general liability, excess, umbrella, property, builder's risk, and pollution legal liability insurance policies must name the State of Washington, the Department of Natural Resources, its elected and appointed officials, agents, and employees as an additional insured.
  - (4) All insurance provided in compliance with this Lease must be primary as to any other insurance or self-insurance programs afforded to or maintained by State.

- (b) Waiver.
- (1) Tenant waives all rights against State for recovery of damages to the extent insurance maintained pursuant to this Lease covers these damages.
  - (2) Except as prohibited by law, Tenant waives all rights of subrogation against State for recovery of damages to the extent that they are covered by insurance maintained pursuant to this lease.
- (c) Proof of Insurance.
- (1) Tenant shall provide State with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with insurance requirements specified in this Lease and, if requested, copies of policies to State.
  - (2) The certificate(s) of insurance must reference additional insureds and the Lease number.
  - (3) Receipt of such certificates or policies by State does not constitute approval by State of the terms of such policies.
- (d) State must receive written notice before cancellation or non-renewal of any insurance required by this Lease, as follows:
- (1) Insurers subject to RCW 48.18 (admitted and regulated by the Insurance Commissioner): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State forty-five (45) days' advance notice of cancellation or non-renewal.
  - (2) Insurers subject to RCW 48.15 (surplus lines): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State thirty (30) days' advance notice of cancellation or non-renewal.
- (e) Adjustments in Insurance Coverage.
- (1) State may impose changes in the limits of liability for all types of insurance as State deems necessary.
  - (2) Tenant shall secure new or modified insurance coverage within thirty (30) days after State requires changes in the limits of liability.
- (f) If Tenant fails to procure and maintain the insurance described above within fifteen (15) days after Tenant receives a notice to comply from State, State may either:
- (1) Deem the failure an Event of Default under Section 14, or
  - (2) Procure and maintain comparable substitute insurance and pay the premiums. Upon demand, Tenant shall pay to State the full amount paid by State, together with interest at the rate provided in Paragraph 6.2 from the date of State's notice of the expenditure until Tenant's repayment.
- (g) General Terms.
- (1) State does not represent that coverage and limits required under this Lease are adequate to protect Tenant.
  - (2) Coverage and limits do not limit Tenant's liability for indemnification and reimbursements granted to State under this Lease.

- (3) The Parties shall use any insurance proceeds payable by reason of damage or destruction to property first to restore the real property covered by this Lease, then to pay the cost of the reconstruction, then to pay the State any sums in arrears, and then to Tenant.

### 10.3 Insurance Types and Limits.

- (a) General Liability Insurance.
  - (1) Tenant shall maintain commercial general liability insurance (CGL) or marine general liability (MGL) covering claims for bodily injury, personal injury, or property damage arising on the Property and/or arising out of Tenant's use, occupation, or control of the Property and, if necessary, commercial umbrella insurance with a limit of not less than Two Million Dollars (\$2,000,000) per each occurrence. If such CGL or MGL insurance contains aggregate limits, the general aggregate limit must be at least twice the "each occurrence" limit. CGL or MGL insurance must have products-completed operations aggregate limit of at least two times the "each occurrence" limit.
  - (2) CGL insurance must be written on Insurance Services Office (ISO) Occurrence Form CG 00 01 (or a substitute form providing equivalent coverage). All insurance must cover liability arising out of premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and contain separation of insured (cross-liability) condition.
  - (3) MGL insurance must have no exclusions for non-owned watercraft.
- (b) Workers' Compensation.
  - (1) State of Washington Workers' Compensation.
    - (i) Tenant shall comply with all State of Washington workers' compensation statutes and regulations. Tenant shall provide workers' compensation coverage for all employees of Tenant. Coverage must include bodily injury (including death) by accident or disease, which arises out of or in connection with Tenant's use, occupation, and control of the Property.
    - (ii) If Tenant fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Tenant shall indemnify State. Indemnity shall include all fines; payment of benefits to Tenant, employees, or their heirs or legal representatives; and the cost of effecting coverage on behalf of such employees.
  - (2) Longshore and Harbor Workers' and Jones Acts. Longshore and Harbor Workers' Act (33 U.S.C. Section 901 *et seq.*) and/or the Jones Act (46 U.S.C. Section 688) may require Tenant to provide insurance coverage in some circumstances. Tenant shall ascertain if such insurance is required

and, if required, shall maintain insurance in compliance with law. Tenant is responsible for all civil and criminal liability arising from failure to maintain such coverage.

- (c) Employers' Liability Insurance. Tenant shall procure employers' liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than One Million Dollars (\$1,000,000) each accident for bodily injury by accident or One Million Dollars (\$1,000,000) each employee for bodily injury by disease.
- (d) Property Insurance.
  - (1) Tenant shall buy and maintain property insurance covering all real property and fixtures, equipment, tenant improvements and betterments (regardless of whether owned by Tenant or State). Such insurance must be written on an all risks basis and, at minimum, cover the perils insured under ISO Special Causes of Loss Form CP 10 30, and cover the full replacement cost of the property insured. Such insurance may have commercially reasonable deductibles. Any coinsurance requirement in the policy must be waived. The policy must include State as an insured and a loss payee.
  - (2) Tenant shall buy and maintain boiler and machinery insurance required by contract documents or by law, covering all real property and fixtures, equipment, tenant improvements and betterments (regardless of whether owned by Tenant or State) from loss or damage caused by the explosion of boilers, fired or unfired vessels, electric or steam generators, or pipes.
  - (3) In the event of any loss, damage, or casualty which is covered by one or more of the types of insurance described above, the Parties to this Lease shall proceed cooperatively to settle the loss and collect the proceeds of such insurance, which State shall hold in trust, including interest earned by State on such proceeds, for use according to the terms of this Lease. The Parties shall use insurance proceeds in accordance with Paragraph 10.2(g)(3).
  - (4) When sufficient funds are available, using insurance proceeds described above, the Parties shall continue with reasonable diligence to prepare plans and specifications for, and thereafter carry out, all work necessary to:
    - (i) Repair and restore damaged building(s) and/or Improvements to their former condition, or
    - (ii) Replace and restore damaged building(s) and/or Improvements with a new building(s) and/or Improvements on the Property of a quality and usefulness at least equivalent to or more suitable than, damaged building(s) and/or Improvements.
- (e) Protection and Indemnity Insurance (P&I). Tenant shall procure and maintain P&I insurance including hull coverage. This insurance must cover all claims with respect to injuries or damages to persons or property, including nets and fishing lines, sustained in, on, or about the Property, including while at a marina and in transit, with limits of liability not less than Two Million Dollars (\$2,000,000). If

necessary, Tenant shall procure and maintain commercial umbrella liability insurance covering claims for these risks.

#### 10.4 Financial Security.

- (a) At its own expense, Tenant shall procure and maintain during the Term of this Lease a corporate security bond or provide other financial security that State, at its option, may approve ("Security"). Tenant shall provide Security in an amount equal to Seventy-Five Thousand Dollars (\$75,000), which is consistent with RCW 79.105.330, and secures Tenant's performance of its obligations under this Lease, with the exception of the obligations under Section 8, Environmental Liability/Risk Allocation. Tenant's failure to maintain the Security in the required amount during the Term constitutes a breach of this Lease.
- (b) All Security must be in a form acceptable to the State.
  - (1) Bonds must be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better, in the most recently published edition of Best's Reports, unless State approves an exception. Tenant may submit a request to the risk manager for the Department of Natural Resources for an exception to this requirement.
  - (2) Letters of credit, if approved by State, must be irrevocable, allow State to draw funds at will, provide for automatic renewal, and comply with RCW 62A.5-101, *et. seq.*
  - (3) Savings account assignments, if approved by State, must allow State to draw funds at will.
- (c) Adjustment in Amount of Security.
  - (1) State may require an adjustment in the Security amount:
    - (i) At the same time as revaluation of the Annual Rent,
    - (ii) As a condition of approval of assignment or sublease of this Lease,
    - (iii) Upon a material change in the condition or disposition of any Improvements, or
    - (iv) Upon a change in the Permitted Use.
  - (2) Tenant shall deliver a new or modified form of Security to State within thirty (30) days after State has required adjustment of the amount of the Security.
- (d) Upon any default by Tenant in its obligations under this Lease, State may collect on the Security to offset the liability of Tenant to State. Collection on the Security does not (1) relieve Tenant of liability, (2) limit any of State's other remedies, (3) reinstate or cure the default or (4) prevent termination of the Lease because of the default.

### SECTION 11 MAINTENANCE AND REPAIR

**11.1 State's Repairs.** This Lease does not obligate State to make any alterations, maintenance, replacements, or repairs in, on, or about the Property, or any part thereof, during the Term.

**11.2 Tenant's Repairs, Alteration, Maintenance and Replacement.**

- (a) Tenant shall, at its sole cost and expense, keep and maintain the Property and all improvements (regardless of ownership) in good order and repair, in a clean, attractive, and safe condition.
- (b) Tenant shall, at its sole cost and expense, make any and all additions, repairs, alterations, maintenance, replacements, or changes to the Property or to any improvements on the Property which may be required by any public authority having jurisdiction over the Property and requiring it for public health, safety and welfare purposes.
- (c) Except as provided in Section 11.2(d), all additions, repairs, alterations, replacements or changes to the Property and to any improvements on the Property shall be made in accordance with, and ownership shall be governed by, Section 7, above.
- (d) Routine maintenance and repair are acts intended to prevent a decline, lapse or, cessation of the Permitted Use and associated Improvements. Routine maintenance or repair that does not require regulatory permits does not require authorization from State pursuant to Section 7.

**11.3 Limitations.** The following limitations apply whenever Tenant conducts maintenance, repair, or replacement.

- (a) Tenant shall not use or install treated wood at any location above or below water, except that Tenant may use non-creosote treated wood for above water structural framing.
- (b) Tenant shall not use or install tires (for example, floatation or fenders) at any location above or below water.
- (c) Tenant shall install only floatation material encapsulated in a shell resistant to ultraviolet radiation and abrasion. The shell must be capable of preventing breakup and loss of floatation material into the water.
- (d) Tenant shall orient night lighting to minimize the amount of light shining directly on the water by October 1, 2015.
- (e) Tenant shall not allow new floating structures to come in contact with underlying tidelands ("ground-out"). Tenant must either (1) locate all new floating structures in water too deep to permit grounding out or (2) install stoppers sufficient to maintain a distance of at least 1.5 feet (0.5 meters) between the bottom of the floats and the substrate.

**SECTION 12 DAMAGE OR DESTRUCTION**

**12.1 Notice and Repair.**

- (a) In the event of damage to or destruction of the Property or Improvements, Tenant shall promptly give written notice to State. State does not have actual knowledge of the damage or destruction without Tenant's written notice.

- (b) Unless otherwise agreed in writing, Tenant shall promptly reconstruct, repair, or replace the Property and Improvements as nearly as possible to its condition immediately prior to the damage or destruction in accordance with Paragraph 7.3, Construction, Major Repair, Modification, and Demolition and Tenant's additional obligations in Exhibit B, if any.

**12.2 State's Waiver of Claim.** State does not waive any claims for damage or destruction of the Property unless State provides written notice to Tenant of each specific claim waived.

**12.3 Insurance Proceeds.** Tenant's duty to reconstruct, repair, or replace any damage or destruction of the Property or any Improvements on the Property is not conditioned upon the availability of any insurance proceeds to Tenant from which the cost of repairs may be paid. The Parties shall use insurance proceeds in accordance with Paragraph 10.2(g)(3).

**12.4 Rent in the Event of Damage or Destruction.** Unless the Parties agree to terminate this Lease, there is no abatement or reduction in rent during such reconstruction, repair, and replacement.

**12.5 Default at the Time of Damage or Destruction.** If Tenant is in default under the terms of this Lease at the time damage or destruction occurs, State may elect to terminate the Lease and State then shall have the right to retain any insurance proceeds payable as a result of the damage or destruction.

## SECTION 13 CONDEMNATION

### 13.1 Definitions.

- (a) "Taking" means that an entity authorized by law exercises the power of eminent domain, either by judgment, settlement in lieu of judgment, or voluntary conveyance in lieu of formal court proceedings, over all or any portion of the Property and Improvements. This includes any exercise of eminent domain on any portion of the Property and Improvements that, in the judgment of the State, prevents or renders impractical the Permitted Use.
- (b) "Date of Taking" means the date upon which title to the Property or a portion of the Property passes to and vests in the condemner or the effective date of any order for possession if issued prior to the date title vests in the condemner.

**13.2 Effect of Taking.** If there is a taking, the Lease terminates proportionate to the extent of the taking. If this Lease terminates in whole or in part, Tenant shall make all payments due and attributable to the taken Property up to the date of taking. If Tenant has pre-paid rent and Tenant is not in default of the Lease, State shall refund Tenant the pro rata share of the pre-paid rent attributable to the period after the date of taking.



**13.3 Allocation of Award.**

- (a) The Parties shall allocate the condemnation award based upon the ratio of the fair market value of (1) Tenant's leasehold estate and Tenant-Owned Improvements and (2) State's interest in the Property; the reversionary interest in Tenant-Owned Improvements, if any; and State-Owned Improvements, if any.
- (b) If Tenant and State are unable to agree on the allocation, the Parties shall submit the dispute to binding arbitration in accordance with the rules of the American Arbitration Association.

**SECTION 14 DEFAULT AND REMEDIES**

**14.1 Default Defined.** Tenant is in default of this Lease on the occurrence of any of the following:

- (a) Failure to pay rent or other expenses when due;
- (b) Failure to comply with any law, regulation, policy, or order of any lawful governmental authority;
- (c) Failure to comply with any other provision of this Lease;
- (d) Commencement of bankruptcy proceedings by or against Tenant or the appointment of a trustee or receiver of Tenant's property.

**14.2 Tenant's Right to Cure.**

- (a) A default becomes an "Event of Default" if Tenant fails to cure the default within the applicable cure following State's written notice of default. Upon an Event of Default, State may seek remedies under Paragraph 14.3.
- (b) Unless expressly provided elsewhere in this Lease, the cure period is sixty (60) days. State may extend the cure period for nonmonetary defaults if the default is not reasonably capable of cure within sixty (60) days.
- (c) State may elect to deem a default by Tenant as an Event of Default if the default occurs within six (6) months after a default by Tenant for which State has provided notice and opportunity to cure and regardless of whether the first and subsequent defaults are of the same nature.

**14.3 Remedies.**

- (a) Upon an Event of Default, State may terminate this Lease and remove Tenant by summary proceedings or otherwise.
- (b) If the Event of Default (1) arises from Tenant's failure to comply with restrictions on Permitted Use and operations under Paragraph 2.2 or (2) results in damage to natural resources or the Property, State may enter the Property without terminating this Lease to (1) restore the natural resources or Property and charge Tenant restoration costs and/or (2) charge Tenant for damages. On demand by State, Tenant shall pay all costs and/or damages.
- (c) Without terminating this Lease, State may relet the Property on any terms and conditions as State may decide are appropriate.

- (1) State shall apply rent received by reletting: (1) to the payment of any indebtedness other than rent due from Tenant to State; (2) to the payment of any cost of such reletting; (3) to the payment of the cost of any alterations and repairs to the Property; and (4) to the payment of rent and leasehold excise tax due and unpaid under this Lease. State shall hold and apply any balance to Tenant's future rent as it becomes due.
- (2) Tenant is responsible for any deficiency created by the reletting during any month and shall pay the deficiency monthly.
- (3) At any time after reletting, State may elect to terminate this Lease for the previous Event of Default.
- (d) State's reentry or repossession of the Property under Paragraph 14.3 is not an election to terminate this Lease or cause a forfeiture of rents or other charges. Tenant is obligated to pay during the balance of the Term, unless (1) State gives Tenant written notice of termination or (2) a legal proceeding decrees termination.
- (e) The remedies specified under this Paragraph 14.3 are not exclusive of any other remedies or means of redress to which the State is lawfully entitled for Tenant's breach or threatened breach of any provision of this Lease.

#### SECTION 15 ENTRY BY STATE

State may enter the Property at any reasonable hour to inspect for compliance with the terms of this Lease, to monitor impacts to habitat, or survey habitat and species. State's failure to inspect the Property does not constitute a waiver of any rights or remedies under this Lease.

#### SECTION 16 DISCLAIMER OF QUIET ENJOYMENT

##### 16.1 No Guaranty or Warranty.

- (a) State believes that this Lease is consistent with the Public Trust Doctrine and that none of the third-party interests identified in Paragraph 1.1(b) will materially or adversely affect Tenant's right of possession and use of the Property, but State makes no guaranty or warranty to that effect.
- (b) State disclaims and Tenant releases State from any claim for breach of any implied covenant of quiet enjoyment. This disclaimer and release includes, but is not limited to, interference arising from exercise of rights under the Public Trust Doctrine; Treaty rights held by Indian Tribes; and the general power and authority of State and the United States with respect to aquatic lands and navigable waters.
- (c) Tenant is responsible for determining the extent of Tenant's right to possession and for defending Tenant's leasehold interest.

**16.2 Eviction by Third-Party.** If a third-party evicts Tenant, this Lease terminates as of the date of the eviction. In the event of a partial eviction, Tenant's rent obligations abate as of the date of the partial eviction, in direct proportion to the extent of the eviction; this Lease shall remain in full force and effect in all other respects.

### SECTION 17 NOTICE AND SUBMITTALS

Following are the locations for delivery of notice and submittals required or permitted under this Lease. Any Party may change the place of delivery upon ten (10) days written notice to the other.

State: DEPARTMENT OF NATURAL RESOURCES  
Orca-Straits District  
5310 Eaglemount Rd.  
Chimacum, WA 98325

Tenant: ICICLE ACQUISITION SUBSIDIARY, LLC  
Alan Cook, Vice President Aquaculture  
PO Box 79003  
Seattle, WA 98119

The Parties may deliver any notice in person, by facsimile machine, or by certified mail. Depending on the method of delivery, notice is effective upon personal delivery, upon receipt of a confirmation report if delivered by facsimile machine, or three (3) days after mailing. All notices must identify the Lease number. On notices transmitted by facsimile machine, the Parties shall state the number of pages contained in the notice, including the transmittal page, if any.

### SECTION 18 MISCELLANEOUS

**18.1 Authority.** Tenant and the person or persons executing this Lease on behalf of Tenant represent that Tenant is qualified to do business in the State of Washington, that Tenant has full right and authority to enter into this Lease, and that each and every person signing on behalf of Tenant is authorized to do so. Upon State's request, Tenant shall provide evidence satisfactory to State confirming these representations.

**18.2 Successors and Assigns.** This Lease binds and inures to the benefit of the Parties, their successors, and assigns.

**18.3 Headings.** The headings used in this Lease are for convenience only and in no way define, limit, or extend the scope of this Lease or the intent of any provision.

**18.4 Entire Agreement.** This Lease, including the exhibits and addenda, if any, contains the entire agreement of the Parties. This Lease merges all prior and contemporaneous agreements, promises, representations, and statements relating to this transaction or to the Property.

**18.5 Waiver.**

- (a) The waiver of any breach or default of any term, covenant, or condition of this Lease is not a waiver of such term, covenant, or condition; of any subsequent breach or default of the same; or of any other term, covenant, or condition of this Lease. State's acceptance of a rental payment is not a waiver of any preceding or existing breach other than the failure to pay the particular rental payment that was accepted.
- (b) The renewal of the Lease, extension of the Lease, or the issuance of a new lease to Tenant, does not waive State's ability to pursue any rights or remedies under the Lease.

**18.6 Cumulative Remedies.** The rights and remedies under this Lease are cumulative and in addition to all other rights and remedies afforded by law or equity or otherwise.

**18.7 Time is of the Essence.** TIME IS OF THE ESSENCE as to each and every provision of this Lease.

**18.8 Language.** The word "Tenant" as used in this Lease applies to one or more persons and regardless of gender, as the case may be. If there is more than one Tenant, their obligations are joint and several. The word "persons," whenever used, shall include individuals, firms, associations, and corporations. The word "Parties" means State and Tenant in the collective. The word "Party" means either or both State and Tenant, depending on the context.

**18.9 Invalidity.** The invalidity, voidness, or illegality of any provision of this Lease does not affect, impair, or invalidate any other provision of this Lease.

**18.10 Applicable Law and Venue.** This Lease is to be interpreted and construed in accordance with the laws of the State of Washington. Venue for any action arising out of or in connection with this Lease is in the Superior Court for Thurston County, Washington.

**18.11 Statutory Reference.** Any reference to a statute means that statute as presently enacted or hereafter amended or superseded.

**18.12 Recordation.** At Tenant's expense and no later than thirty (30) days after receiving the fully-executed Lease, Tenant shall record this Lease in the county in which the Property is located. Tenant shall include the parcel number of the upland property used in conjunction with the Property, if any. Tenant shall provide State with recording information, including the date of recordation and file number.

**18.13 Modification.** No modification of this Lease is effective unless in writing and signed by both Parties. Oral representations or statements do not bind either Party.

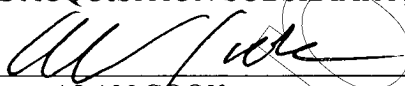
**18.14 Survival.** Any obligations of Tenant not fully performed upon termination of this Lease do not cease, but continue as obligations of the Tenant until fully performed.

**18.15 Exhibits.** All referenced exhibits are incorporated in the Lease unless expressly identified as unincorporated.

THIS AGREEMENT requires the signature of all Parties and is effective on the date of the last signature below.


ICICLE ACQUISITION SUBSIDIARY, LLC

Dated: November 2, 2015

  
By: ALAN COOK  
Title: Vice President, Aquaculture  
Address: P.O. Box 79003  
Seattle, WA 98119

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES

Dated: 20 Nov, 2015

  
By: MEGAN DUFFY  
Title: Deputy Supervisor for Aquatic  
Resources and Geology  
Address: 1111 Washington Street SE  
Olympia, WA 98504

Approved as to form this  
23 day of October 2015  
Terry Pruit, Assistant Attorney General

REPRESENTATIVE ACKNOWLEDGMENT

STATE OF WASHINGTON )  
 ) ss.  
County of King )

I certify that I know or have satisfactory evidence that ALAN COOK is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Vice President of Aquaculture for Icicle Acquisition Subsidiary, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: November 2, 2015 Brenda Lepenski  
(Signature)

(Seal or stamp)

Brenda Lepenski  
(Print Name) Notary Public

Notary Public in and for the State of  
Washington, residing at  
Seattle

My appointment expires 11-18-18



STATE ACKNOWLEDGMENT

STATE OF WASHINGTON )  
 ) ss  
County of Thurston )

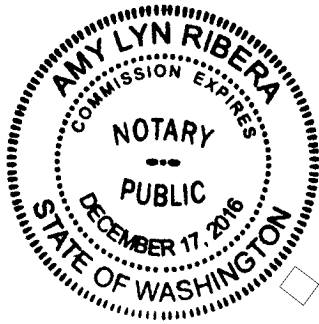
I certify that I know or have satisfactory evidence that MEGAN DUFFY is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the Deputy Supervisor of Aquatic Resources and Geology of the Department of Natural Resources to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 11.20.15

(Seal or stamp)

[Signature]  
(Signature)

Amylyn Ribera  
(Print Name)



Notary Public in and for the State of Washington, residing at

Olympic

My appointment expires 12.17.16

**EXHIBIT A**

**Agreement Number:** 22-B02777

**Recording number of final DNR approved survey in Clallam County:** 2005-1157443

**Legal description of the property:**

That portion of and above the beds of Port Angeles off the southerly limits of Government Out Lot 8, Township 31 North, Range 6 West, W.M., in Clallam County, Washington, described as follows:

Beginning at geodetic station Tucker, thence North 88°42'32" West, relative to the Washington State Grid System, North Zone (NAD83 1991), 3534.29 feet to the True Point of Beginning; thence North 83°00'06" West 1257.00 feet to a point which bears South 4°14'30" East 463.68 feet from the southerly witness corner to the meander corner on the westerly limits of said Out Lot 8; thence South 6°58'11" West 790.00 feet; thence South 83°00'06" East 1257.00 to a point which bears South 6°58'11" West of the True Point of Beginning; thence North 6°58'11" East 790.00 feet to the True Point of Beginning.

**Square footage of each of these Use classifications:**

Water-dependent	993,168
Nonwater-dependent	0
Public Access	0
<b>Total square feet</b>	<b>993,168</b>



**PLAN OF OPERATIONS  
EXHIBIT B**

**1. DESCRIPTION OF PERMITTED USE**

**A. Existing Facilities**

The facility is to be used for the net pen farming of Atlantic Salmon (*Salmo salar*). This includes stocking, husbandry, harvesting, and other activities related to and in support of this activity.

There are currently two floating net pen structures within the current lease area: one measuring approximately 183 ft. by 668 ft. and the other measuring approximately 183 ft. by 266 ft. One floating cage system has 14 individual pens while the other system has six individual pens. Ancillary equipment located on the leasehold include a floating wooden support raft measuring 20 ft. by 30 ft., feeding machine, generators and various smaller equipment such as pumps, pressure washers, and air compressors. The cage systems are moored in place with 38 Danforth-style anchors, chain and line. Tractor tires are used as fenders on the steel structure and are in contact with the water. Additionally, there is a building used for staffing quarters located on the larger net pen structure.

**B. Proposed Facilities.** Tenant proposes no new facilities.

**2. ADDITIONAL OBLIGATIONS**

**A.** Tenant shall replace existing treated wood and/or decking with non-toxic materials such as untreated wood, steel, concrete, or recycled plastic, or encased in a manner that prevents leaching of contaminants into surface water. Tenant may use non-cresote treated wood to replace above water structural framing. Replacement may occur under an ordinary maintenance or repair schedule, but all treated wood must be replaced by September 30, 2025.

**B.** Tenant shall replace existing unencapsulated floatation materials with encapsulated floatation materials. Replacement may occur under an ordinary maintenance or repair schedule, except with respect to the wooden float and the concrete float. Tenant must remove the wooden float from the Property or replace all unencapsulated floatation material on the wooden float by December 1, 2015. Tenant must replace all unencapsulated floatation material on the concrete float by December 1, 2016.

**C.** Tenant shall replace existing tires with inert or encapsulated materials such as plastic or enclosed foam. Replacement may occur under an ordinary maintenance or repair schedule, but all tires must be replaced by December 1, 2015.

- D.** Tenant shall design and secure predator exclusion and fencing devices so they do not break free and litter surrounding areas.
- E.** Tenant shall identify and regularly patrol areas where debris accumulates because of prevailing winds, currents, or other cause. Tenant shall retrieve any litter or debris that escapes the farm operation and, if necessary, shall employ divers in deeper water.
- F.** Tenant shall maintain spill prevention kits that include absorbent materials for all equipment on site to address spills of hydraulic fluids and fuels from vessels, vehicles, and other equipment. Tenant shall notify DNR and appropriate agencies of any spills in accordance with the Lease. Tenant shall:
- i. Routinely service all equipment to prevent loss of harmful fluids including any hydraulic fluid or petroleum products.
  - ii. Document inspections in writing.
- G.** Tenant shall prepare a contingency plan for addressing petroleum product toxic material spills in the intertidal area, and provide a copy to the Department of Natural Resources.
- H.** DNR must approve plans for termination or expansion. Prior to termination or expansion, Tenant shall conduct a benthic video dive survey to document visible biota and presence of any man-made debris and/or accumulations of organic materials on the bottom.
- i. DNR must approve protocol for the dive survey.
  - ii. Tenant shall submit reports as specified in Attachment 1 to this Exhibit B.
  - iii. DNR will notify Tenant of approval/rejection within sixty (60) days.
- I.** At DNR's written request, or annually on the Lease commencement anniversary date, Tenant shall provide the following records on operations unless stated otherwise in writing. The records shall include GPS coordinates using the NAD 83 coordinate system and noted in decimal degrees that depict the location(s) and extent(s) of the farm site(s). Tenant shall provide:
- i. Harvest records including weight and species.
  - ii. Harvest total weights and total harvest dollar value of farmed products.
  - iii. Survivorship and growth data from farm inspections during grow out.
- J.** Tenant shall only clean netting used in the aquaculture operation in an upland facility and dispose of the waste and waste water in accordance with state and federal laws.
- K.** By October 1, 2016, Tenant will ensure that all Improvements are located entirely on the Property.

- L.** Tenant occupies lands on Ediz Hook for use as a shore base in connection with the Property. A portion of the lands occupied by Tenant on Ediz Hook are tidelands and filled tidelands owned by the State (the Ediz Hook Tidelands). On April 18, 2011, and in connection with its occupancy of the Ediz Hook Tidelands, Tenant filed an Application for Authorization to Use State-Owned Aquatic Lands (No. 20-087303), which remains pending. Nothing in this Lease shall be construed as authorization to use the Ediz Hook Tidelands. Tenant acknowledges that it has no right to use, possess, or occupy the Ediz Hook Tidelands.

**EXHIBIT C**

The following table shall be used to determine the applicable royalty when calculating a production payment in accordance with Subsection 4.1 of the lease:

<b>Average Price/Pound</b>	<b>Royalty Rate</b>	<b>Average Price/Pound</b>	<b>Royalty Rate</b>
Up to \$1.50	1.000%	\$1.84	1.209%
\$1.51	1.005%	\$1.85	1.217%
\$1.52	1.011%	\$1.86	1.225%
\$1.53	1.017%	\$1.87	1.231%
\$1.54	1.022%	\$1.88	1.239%
\$1.55	1.028%	\$1.89	1.246%
\$1.56	1.033%	\$1.90	1.254%
\$1.57	1.039%	\$1.91	1.260%
\$1.58	1.044%	\$1.92	1.268%
\$1.59	1.051%	\$1.93	1.276%
\$1.60	1.057%	\$1.94	1.283%
\$1.61	1.061%	\$1.95	1.291%
\$1.62	1.067%	\$1.96	1.299%
\$1.63	1.074%	\$1.97	1.306%
\$1.64	1.080%	\$1.98	1.314%
\$1.65	1.085%	\$1.99	1.322%
\$1.66	1.092%	\$2.00	1.330%
\$1.67	1.099%	\$2.01	1.339%
\$1.68	1.105%	\$2.02	1.346%
\$1.69	1.111%	\$2.03	1.354%
\$1.70	1.117%	\$2.04	1.363%
\$1.71	1.123%	\$2.05	1.371%
\$1.72	1.129%	\$2.06	1.379%
\$1.73	1.136%	\$2.07	1.388%
\$1.74	1.143%	\$2.08	1.396%
\$1.75	1.149%	\$2.09	1.405%
\$1.76	1.156%	\$2.10	1.414%
\$1.77	1.162%	\$2.11	1.422%
\$1.78	1.169%	\$2.12	1.431%
\$1.79	1.176%	\$2.13	1.440%
\$1.80	1.183%	\$2.14	1.450%
\$1.81	1.189%	\$2.15	1.459%
\$1.82	1.196%	\$2.16	1.468%
\$1.83	1.203%	\$2.17	1.477%

Average Price/Pound	Royalty Rate	Average Price/Pound	Royalty Rate
\$2.18	1.487%	\$2.55	1.904%
\$2.19	1.496%	\$2.56	1.918%
\$2.20	1.505%	\$2.57	1.932%
\$2.21	1.514%	\$2.58	1.945%
\$2.22	1.524%	\$2.59	1.959%
\$2.23	1.534%	\$2.60	1.973%
\$2.24	1.544%	\$2.61	1.989%
\$2.25	1.554%	\$2.62	2.002%
\$2.26	1.564%	\$2.63	2.018%
\$2.27	1.574%	\$2.64	2.032%
\$2.28	1.584%	\$2.65	2.047%
\$2.29	1.594%	\$2.66	2.062%
\$2.30	1.605%	\$2.67	2.078%
\$2.31	1.616%	\$2.68	2.093%
\$2.32	1.627%	\$2.69	2.110%
\$2.33	1.637%	\$2.70	2.126%
\$2.34	1.648%	\$2.71	2.143%
\$2.35	1.659%	\$2.72	2.158%
\$2.36	1.670%	\$2.73	2.175%
\$2.37	1.681%	\$2.74	2.192%
\$2.38	1.693%	\$2.75	2.209%
\$2.39	1.704%	\$2.76	2.226%
\$2.40	1.716%	\$2.77	2.244%
\$2.41	1.727%	\$2.78	2.261%
\$2.42	1.739%	\$2.79	2.280%
\$2.43	1.750%	\$2.80	2.297%
\$2.44	1.762%	\$2.81	2.315%
\$2.45	1.775%	\$2.82	2.335%
\$2.46	1.787%	\$2.83	2.353%
\$2.47	1.799%	\$2.84	2.372%
\$2.48	1.811%	\$2.85	2.392%
\$2.49	1.825%	\$2.86	2.410%
\$2.50	1.838%	\$2.87	2.430%
\$2.51	1.850%	\$2.88	2.450%
\$2.52	1.864%	\$2.89	2.472%
\$2.53	1.876%	\$2.90	2.492%
\$2.54	1.890%	\$2.91	2.514%

Average Price/Pound	Royalty Rate
\$2.92	2.535%
\$2.93	2.557%
\$2.94	2.578%
\$2.95	2.600%
\$2.96	2.623%
\$2.97	2.646%
\$2.98	2.669%
\$2.99	2.692%
\$3.00	2.715%
\$3.01	2.740%
\$3.02	2.765%
\$3.03	2.789%
\$3.04	2.815%
\$3.05	2.840%
\$3.06	2.866%
\$3.07	2.892%
\$3.08	2.920%
\$3.09	2.948%
\$3.10	2.976%
\$3.11	3.003%
\$3.12	3.031%
\$3.13	3.060%
\$3.14	3.091%
\$3.15	3.120%
\$3.16	3.151%
\$3.17	3.182%
\$3.18	3.214%
\$3.19	3.245%
\$3.20	3.279%
\$3.21	3.311%
\$3.22	3.345%
\$3.23	3.379%
\$3.24	3.414%
\$3.25	3.450%
\$3.26	3.487%
\$3.27	3.524%
\$3.28 and above	3.542%

## ATTACHMENT 1

### Department of Natural Resources – Aquatic Resources Division Video Dive Survey Protocol – Aquaculture

#### Purpose

A video dive survey is used to document the presence of debris, emergent vegetation, or signs of contamination that are visible on the surface of bottom sediment. This information can be useful when establishing new, or cancelling existing, aquaculture use authorizations on state owned aquatic lands where there has not been a history of other more intensive use. The survey could also be used as a first course of action for deciding if additional inquiry or surveys are needed for determining the status of bottom sediments.

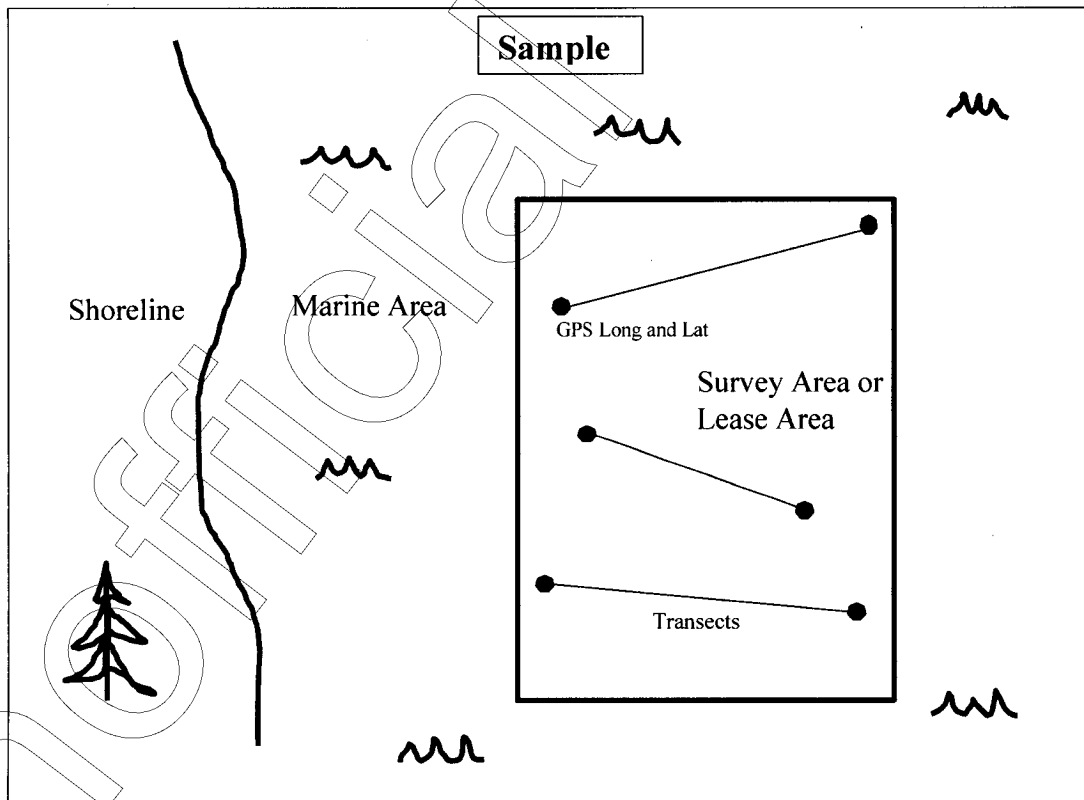
#### How

The Department of Natural Resources (DNR) requires the video dive survey be performed by SCUBA divers swimming freely above the bottom while recording images with an underwater video camera. Use a video camera with the minimum specification identified in Attachment 2 or better. Contractor shall submit a written plan to DNR outlining the dive survey work to be performed based on the protocols and other requirements provided in this document. The written plan shall be approved by DNR before any work is conducted. Any recommended changes in protocol must be approved by DNR. A final report, with map showing the position of transects, shall be provided to DNR outlining methods used and any observations made by the contractor. Contractor shall use a high quality recreational marine grade GPS using North American Datum (NAD) 83 Geodetic Reference System. The user must be familiar with how the GPS collects positioning data for the most accurate coordinates. Timing for conducting the dive survey is at the discretion of the contractor. The optimum timing for recording vegetation is during the height of the growing season between June and the end of September. For observing other than vegetation, visibility is generally better starting in late fall through early spring due to the slowdown in the growth of phytoplankton. The contractor should work with the local DNR Land Manager to time the dive survey appropriately for meeting site specific conditions and for addressing priorities.

#### Protocol

- Transects with start and end points shall be used to document portions of the survey area.
- Contractor shall establish an adequate number of transects to document variability of the area being surveyed.
- For each transect, the diver shall “swim” a pre-determined bearing and distance along the bottom from a starting point and continuously record the bottom using the video camera until reaching an end point.
- Transects shall be run perpendicular to depth contours of the bottom and the shoreline, and shall run from deep areas to shallow areas of the leasehold or vice versa.
- Contractor shall record the locations of all transects using a GPS receiver and provide a longitude and latitude of the start and end points of each transects and provide a transect number for each transect. Longitude and latitude shall be recorded in decimal degrees.

- A surface operated GPS may be used. Readings shall be taken at the start point where the diver drops vertically to the bottom, and also where the diver ascends vertically to the surface at the end of the transect.
- If the diver observes features of interest, outside of the set transects, that would help DNR understand the status of the bottom (sediment contamination, presence of vegetation, or presence of debris), the contractor may add transects or move transects to better represent the features.
- Contractor shall adjust video camera height off of the bottom (swim height) to maximize image clarity and coverage. Swim height shall be determined by the diver based on site specific conditions and will depend on water clarity and any other influences causing turbidity.
- Contractor shall time the dive to maximize image clarity depending on local conditions and depending on the focus of the survey.





ATTACHMENT 2

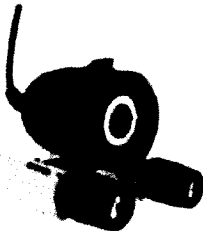
Deep Blue Pro - Underwater Video Camera Equipment | Splashcam



Home Products Customers Company Contact

Underwater Video Cameras » Deep Blue Pro

DEEP BLUE PRO - UNDERWATER VIDEO CAMERA



Deep Blue Pro

- Features**
- High resolution color picture
  - Low Light Operation
  - Virtually Indestructible Camera Housing
  - Military Grade Umbilical Cable
  - High Bright LED Underwater Lighting
  - Easy Deployment / Recovery
  - Recessed Lens Will Not Scratch
  - No Installation Required, Fully Portable

The Deep Blue is a time tested robust design that consistently satisfies both professional and recreational videographers. Its high-resolution camera and extremely low-light operating capability have made it one of the most widely acknowledged underwater cameras in the industry over the last decade. The external high intensity L.E.D. lighting system and phenomenal color recording capacity put the power of a mini submersible at your fingertips.

**Camera Specifications**

Video Output:	Composite NTSC (PAL Optional) - works with any video device with RCA video input
Focus:	Fixed 1 inch to 10ft infinity
Auxiliary Lighting:	High Intensity LED
Resolution:	520 TV Lines
CCD:	1/3" Sony Super HAD II
Pixel Array:	768H x 480V
Lens:	3.8mm
Info:	Electronik
Operating Temp:	-10 to 50C
Light Sensitivity:	0.1 lux
Input Voltage:	1.2 volts DC
Current Draw:	90 mA

**Physical Specifications**

Body Construction:	Anodized Cast Aluminum
Exterior Finish:	Thermoplastic Paint
Camera Weight:	1.2lbs water / 2lbs air (Dive weight can be added)
Depth Rating:	800ft standard / 2800ft with upgrade
Cable Strength:	700lbs break strength / 230lbs normal work load
Available Cable Lengths:	50 1000ft in 50ft increments
Dimensions:	3" Dia / 3.5" Length
Weight with 50ft Cable:	1.8lbs

Order Reference: For Details See Manual © 1996-2004 by Electronik

PRODUCT INFORMATION

- Camera Specifications
- Physical Specifications
- Common Questions
- Camera Deployment
- Request a Quote

VIDEO

- Compilation Video

PACKAGES

- Basic
- Explorer
- Explorer Plus
- Eco



Recommended Uses

- TV Broadcast / Film
- Marine Life Observation
- Research / Education
- Yachting & Sport