

PEASE DEVELOPMENT AUTHORITY  
DIVISION OF PORTS AND HARBORS

RIGHT OF ENTRY

Pease Development Authority, Division of Ports and Harbors (“PDA-DPH”) with an address of 555 Market St., Portsmouth, NH 03801 under authority set forth in NH RSA 12-G, grants a Right of Entry (“ROE”) to **Swell Oyster Company LLC. (“Swell”), 196 Drinkwater Rd., Hampton, NH 03844** to use property of the State of New Hampshire, Hampton Harbor Marine Facility, 1 Ocean Blvd. Hampton, NH 03842 (the “Premises”) pursuant to the terms of this Right of Entry and for the following purposes and for no other uses unless expressly authorized:

PREMISES: Hampton Harbor Marine Facility

PURPOSE OF ROE: Charter Boat Operations & Customer Parking

PERIOD OF USE: July 15, 2022-June 30, 2023

PARKING FEE: \$5.00 per vehicle

The ROE is given subject to the following conditions:

1. The term of this ROE shall be from July 15, 2022 through June 30, 2023. Requests for extension or renewal shall be submitted to the DPH Director in writing by April 1, 2023.
2. **Swell’s** customers shall have nonexclusive use of parking spaces situated at the Premises parking lot. PDA-DPH will charge customers a \$5.00 parking fee per car for any vehicle using the Marine Facility parking lot. Parking fees are subject to change during the term of this ROE in accordance with Administrative Rules PART Pda 610.
3. **Swell** shall obtain a separate Pier Use Permit in connection with its charter operation which allows nonexclusive access to the Premises pier, in accordance with N.H. Administrative Rules Part Pda 600.



4. **Swell** shall be familiar with and follow Administrative Rules CHAPTER 600. The Rules are available from PDA-DPH upon request or can be viewed on the Divisions web site, [www.portofnh.org](http://www.portofnh.org).
5. In accordance with Administrative Rule Pda 603.11 (a), **Swell** acknowledges that camping or sleeping on state-owned commercial piers and associated facilities is prohibited.
6. In accordance with Administrative Rule Pda 603.11 (b), **Swell** acknowledges the service and consumption of alcohol is prohibited unless permission has been granted with the terms of a written contractual agreement with PDA-DPH.
7. The scheduling of departures and arrivals in connection with any activity allowed under this ROE will not interfere with the scheduled use of common areas or adjoining areas by other entities which have actively conducted business at the Premises and have been previously issued an ROE(s) by PDA-DPH.
8. **Swell** shall indemnify, defend (with counsel acceptable to the State of New Hampshire and PDA-DPH) and hold the State of New Hampshire and PDA-DPH harmless against and from any and all claims, judgments, damages, penalties, fines, assessments, costs and expenses, liabilities and losses (including without limitation, sums paid in settlement of claims, attorney's fees, consultant's fees and experts' fees) resulting or arising during the term of this ROE:
  - A. From any condition of the Premises including any building structure or improvements thereon for which **Swell** has taken possession of hereunder;
  - B. From any breach or default on the part of **Swell** to be performed pursuant to the terms of this ROE, or from any act or omission of **Swell**, or any of its agents, contractors, servants, employees, licensees or invitees; or
  - C. From any accident, injury, death, loss or damage whatsoever caused to any person or property occurring during the term of this ROE, on or about the areas (including, but not limited to piers, docks, gangways, ticket office and parking areas) arising out of or incidental to the use, management or control of the area(s) and activities which are the subject of this ROE.
9. On or before the effective date of this ROE, **Swell** and any agent, contractor, or vendor of **Swell** shall provide PDA-DPH with proof of required insurance coverage as outlined in Exhibit A.
10. Notwithstanding the foregoing, no provision of this ROE shall be deemed to constitute or effect a waiver of the sovereign immunity of the State of New Hampshire and no provision of this ROE shall be deemed to constitute or effect a waiver of the sovereign immunity of PDA-DPH as a body politic and corporate of the State of New Hampshire. The sovereign immunity of the State of New Hampshire is reserved to the State of New



Hampshire to the fullest extent allowed under law and the sovereign immunity of PDA-DPH is reserved to it to the fullest extent allowed under law subject, however to contractual claims arising under this ROE to the extent such are permitted by New Hampshire NH RSA Ch. 491:8 as the same may be amended.

11. **Swell** will obtain advance approval for all signs and advertisements posted on the Premises. In all cases, the decision of PDA-DPH shall be final.
12. **Swell** may terminate this ROE by giving PDA-DPH a thirty (30) day notice in writing. The provisions of paragraph 8 shall survive termination.
13. PDA-DPH reserves the right to terminate this ROE upon thirty (30) days' notice for, including, but not limited to, violations of any Administrative Rules or policies of the PDA-DPH. The provisions of paragraph 8 shall survive termination.
14. PDA-DPH may terminate this ROE by giving **Swell** thirty (30) days advanced written notice of termination in the event of the failure of **Swell's** to perform, keep or observe any of the conditions of the ROE and the failure of **Swell** to correct the default or breach within the time specified by PDA-DPH. The provisions of paragraph 8 shall survive termination.
15. This ROE may be terminated immediately by PDA-DPH in the event **Swell** fails to provide proof of insurance coverage or engages in any activity which is deemed by PDA-DPH in its sole discretion to compromise public safety or health. The provisions of paragraph 8 shall survive termination.
16. In the performance of this ROE, **Swell** is in all respects an independent contractor and is neither an agent nor employee of the State of New Hampshire or PDA-DPH and that the State of New Hampshire and PDA-DPH shall, at no time, be legally responsible for any negligence or willful acts on the part of **Swell** or any of its officers, employees, agents or members resulting in either personal or property damage to any individual, firm or corporation. Neither **Swell** nor any of its officers, employees, agents or members shall have the authority to bind the State of New Hampshire or PDA-DPH nor are they entitled to any of the benefits, Worker's Compensation or emoluments provided by the State of New Hampshire or PDA-DPH to its employees. **Swell** agrees to hold the State of New Hampshire and PDA-DPH harmless against liability for loss or damage to its equipment or supplies or equipment rented or leased by the **Swell** from others from any cause whatsoever, while they are located on state property either during the operating period or while in storage.
17. In connection with the performance of this contract, **Swell** agrees to comply with all statutes, laws, regulations and orders of federal, state, county or municipal authorities, including those of PDA-DPH which shall impose any obligation or duty on **Swell**.

18. **Swell** shall obtain all necessary licenses and permits required in connection with the operations described herein. Required documents may include, but are not limited to, Pier Use Permit, Captains License(s), applicable NH Fish and Game Fishing and/or Charter licenses, and NH Secretary of State Registration paperwork.
19. **Swell** is responsible for providing all necessary and required safety equipment and training to its employees and customers as may be required and appropriate to the uses allowed under this ROE.
20. **Swell** shall be responsible for routine cleaning of all areas of the Premises and equipment which is used in connection with its operations at the Premises and for picking up garbage and rubbish its operations generate and depositing same at a designated location on the Premises where PDA-DPH can dispose of it.
21. **Swell** may not self-fuel any boat used in connection with this ROE on the premises. **Swell** will be allowed to purchase fuel from an approved vendor (diesel only) or from the fuel service available (diesel or gasoline). To purchase diesel fuel from an approved vendor, the vessel owner and associated vessel must have a fuel variance approved by the Office of the State Fire Marshall in accordance with BULLETIN #2015-07 as may be amended from time to time. Subject to increases which may be implemented from time to time, the vendor will pay PDA-DPH \$0.10 per gallon.
22. This ROE may not be assigned or transferred without the express written approval of the PDA-DPH.
23. Meetings shall be held when deemed necessary by PDA-DPH at a place and time to be agreed upon mutually by PDA-DPH and **Swells** for the purpose of discussing current operational issues, presentation of official requests for changes in schedules, process, and other pertinent business which may arise. The PDA-DPH will be represented at these meetings by the Director of the DPH or his/her authorized representative(s) and such subordinate supervisory personnel fully acquainted with field operations as he/she shall designate. **Swell** shall be represented, at a minimum, by one (1) officer/member of the company.
24. To the extent applicable, **Swell** agrees to hold the State of New Hampshire and PDA-DPH harmless with respect to taxes levied against the premises subject to this ROE as a consequence of the application of RSA 72:23 I. **Swell** agrees to pay, in addition to other payments, all properly assessed real and personal property taxes against the premises subject to this ROE in accordance with the provisions of RSA 72:23 I. In the event **Swell** shares a larger parcel of land and lessees or other ROE holders, it shall be obligated to pay only its pro rata share of any such taxes. Failure of **Swell** to pay its duly assessed personal and real estate taxes when due shall be cause to terminate said ROE by PDA-DPH. **Swell** shall, in addition, reimburse PDA-DPH for any taxes paid by it pursuant to RSA 73:23 I as a result of **Swell** failure to pay said taxes.
25. This RoE has been entered into in the State of New Hampshire and shall be interpreted under New Hampshire law.

Swell Oyster Company, LLC.  
Charter ROE, Hampton  
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26. **This RoE** may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Remainder of page left blank-Signature page follows]



Swell Oyster Company, LLC.  
Charter ROE, Hampton  
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**PEASE DEVELOPMENT AUTHORITY  
DIVISION OF PORTS AND HARBORS**

Date: 8/2/2022

*Baeline A. O'Neil*  
Witness signature

*Paul B. Brean*  
Paul B. Brean, Executive Director, PDA

Baeline A. O'Neil  
Witness printed name

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**SWELL OYSTER COMPANY, LLC**

Date: 7/15/22

*Conor Walsh*  
Witness

*Russ Hilliard*  
Russ Hilliard, Member

Conor Walsh  
Witness printed name

*Russ Hilliard*  
Witness

*Conor Walsh*  
Conor Walsh, Member

RUSSELL HILLIARD  
Witness printed name



**EXHIBIT A**

**MINIMUM INSURANCE REQUIREMENTS  
CHARTER RIGHT OF ENTRY HOLDERS, WITH AN ASSOCIATED BUILDING,  
OPERATING ON THE PROPERTY OF THE STATE OF NH,  
PEASE DEVELOPMENT AUTHORITY-DIVISION OF PORTS AND HARBORS (PDA-DPH)**

All Charter Right of Entry holders with an associated building are required to provide a Certificate of Insurance ("COI") to the Pease Development Authority-Division of Ports and Harbors ("PDA-DPH") before the commencement of business on PDA-DPH property and to maintain such insurance while conducting such business. ROE holder shall ensure renewal certificates of insurance are on file with PDA-DPH prior to policy expiration dates. Failure to comply with the requirements set forth herein may cause a delay in opening for business on schedule or result in the immediate termination of this contract.

The following are the minimum requirements for insurance coverage:

1. **Commercial General Liability:** shall provide for a liability limit on account of each accident resulting in bodily injury, death, or property damage to a limit of not less than \$1,000,000.00 per occurrence.
2. **Protection and Indemnity:** shall provide for a liability limit on account of each accident resulting in bodily injury, death, or property damage to a limit of not less than \$1,000,000.00 per occurrence.
3. **Dockside liability endorsement:** Covering piers, gangways, and docks
4. **Automobile Liability:** One (1) million dollars automobile liability coverage.
5. **Workers Compensation:** Coverage equal to minimum statutory levels as required by New Hampshire State law.
6. **Additional Insureds:** State of New Hampshire, Pease Development Authority, and Division of Ports and Harbors, must be named as additional insureds under all liability coverages
7. **Certificate Holder:**  
Pease Development Authority, Division of Ports of Harbors  
555 Market St.  
Portsmouth, NH 03801
8. **Notice of Cancellation:** A 30 day notice of cancellation (with the exception of a 10 day notice for non-payment of premium) must be provided.
9. **Waiver of Subrogation:** With the exception of workers compensation coverage, a statement that a waiver of subrogation is included with respect to applicable coverage
10. **Primary Insurance:** A provision that any liability coverage required to be carried shall be primary and noncontributing with respect to any insurance carried by the PDA.
11. **Renewed COI's to be forwarded to additional insured prior to previous COI expiration date.**

For questions, please contact the Pease Development Authority Legal Department at (603) 433-6348.