

TEXAS PARKS AND WILDLIFE DEPARTMENT

LICENSE AGENT AGREEMENT

Texas Parks and Wildlife Department (TPWD), a state agency located at 4200 Smith School Road, Austin, Texas 78744 and Hidalgo County (License Agent), also known as Hidalgo County Clerk's Office located at 100 N Closner - 1st Floor, Edinburg, TX 78539 enter into this License Agent Agreement according to the following terms and conditions.

WHEREAS TPWD is authorized by law to issue licenses, endorsements and similar items to individuals and License Agent desires to act as agent for TPWD in issuing those items under the authority of Texas Parks and Wildlife Code Section 12.702; and

WHEREAS, under the authority of Section 12.703 of the Texas Parks and Wildlife Code, TPWD issues licenses through the use of an automated point of sale system or other methods when appropriate;

THEREFORE, TPWD and License Agent each for adequate consideration agree to the following:

1. **TERM:** This Agreement begins on September 1, 2013 and ends on August 31, 2018. The contract may be extended for up to an additional five year period. Any extensions shall be at the same terms and conditions, plus any approved changes.
2. **DEFINITIONS:** For the purposes of this Agreement the following terms have the following meaning:
 - 2.1. *Account Notification Date:* The date on which a notification is available to the License Agent of the amount to be withdrawn from the License Agent's electronic funds transfer account. (see Para. 3.1.7.3).
 - 2.2. *Contractor:* The business entity that TPWD contracts with for support of the TPWD Hunting and Fishing License Point of Sale System.
 - 2.3. *License Agent:* The individual or corporation entering into an agreement with TPWD to issue licenses, endorsements and other items authorized by TPWD.
 - 2.4. *License Funds:* All forms of currency including, but not limited to, cash, credit card charges, debit card charges, and checks received by License Agent for issuing TPWD items, except for License Agent's commission.
 - 2.5. *Other Funds:* All equipment lease fees that are due and payable to TPWD as set out in Schedule 1, all fees due TPWD for non-returned documents for all voids as set out in Para. 3.2.3, all fees for non-transfer of funds as set out in Para. 3.1.8.3, and the funds due TPWD as repayment for damaged and lost equipment as set out in Para. 3.5.2.
 - 2.6. *Sales Period:* The seven (7) calendar day period of sales prior to the Account Notification Date.
 - 2.7. *Scheduled Sweep Date:* The regularly scheduled day of the week in which funds are electronically withdrawn from License Agent account and deposited to TPWD. Whenever the Scheduled Sweep Date falls on a U.S. Federal Reserve holiday, the Scheduled Sweep Date shall be the next business day after the holiday.
3. **RESPONSIBILITIES OF LICENSE AGENT:** License Agent shall issue license, endorsements and other items authorized by TPWD to individuals at each License Agent sales outlet.

3.1. Fee Collection and Remittance: License Agent shall:

- 3.1.1. Collect from each individual only the fee for each license/item as established by law or TPWD regulation. License Agent understands that such fees may be changed by TPWD and that all changes will be communicated to License Agent.
- 3.1.2. Acknowledge that it is a material breach for License Agent to charge a customer an amount that is not authorized by this Agreement. Upon receiving a customer complaint that License Agent charged the customer an amount other than authorized under this Agreement, TPWD will investigate the complaint. If TPWD determines that such complaint is valid, TPWD may terminate this Agreement.
- 3.1.3. Collect all information from customers as required by the TPWD license system.
- 3.1.4. Issue license/items only in the form prescribed by or furnished by TPWD.
- 3.1.5. Accept payment from customers in the form of cash, check, debit card and credit card for purchase of any item sold under this Agreement, except when License Agent does not accept one of the above items in its usual course of business. License Agent is responsible for all charges or losses related to acceptance of any such form of payment.

3.1.6. Electronic Funds Transfer Account:

- 3.1.6.1. License Agent shall establish an electronic funds transfer (EFT) account with a financial institution with full EFT capability acceptable to the State Comptroller for the deposit of all License Funds received under this Agreement and for the deposit of all Other Funds due TPWD. License Agent shall furnish to TPWD at least five (5) business days prior to the beginning date of this Agreement all information pertaining to License Agent's EFT account as completed in the Agent Application. License Agent shall provide TPWD with two (2) weeks prior notice of changes to the EFT account. If changing EFT accounts, License Agent shall continue to fund prior EFT account for Scheduled Sweeps until the new account transfer is confirmed by TPWD.
- 3.1.6.2. License Agent authorizes TPWD to make automatic, periodic withdrawals from the License Agent's designated account at the financial institution listed in the License Agent Application. License Agent understands that withdrawals and/or adjustments will be electronically made in accordance with this Agreement and that all such transactions are governed by the rules and regulations of the National and Local Automated Clearing House (ACH) Associations and Texas Law.
- 3.1.6.3. License Agent agrees to authorize the financial institution to charge withdrawals from the account as indicated on the Account Notification made available to License Agent by TPWD. Adjusting entries to correct errors and to collect additional charges, which may include penalties, are also hereby authorized.

3.1.7. Scheduled Sweeps:

- 3.1.7.1. The full monthly lease payment for each piece of leased equipment will be swept by TPWD on the first Scheduled Sweep of each month. Upon cancellation of this Agreement, all remaining equipment payments may become due and payable to TPWD as per TPWD instructions.
- 3.1.7.2. The License Funds and all Other Funds due to TPWD shall be remitted according to the schedule set out in Schedule 1. License Agent understands and acknowledges that its failure to transfer License Funds in a timely manner is a material breach of this Agreement and may constitute theft of public funds, a criminal offense under Texas Penal Code. License Agent understands and acknowledges that it holds all License Funds and Other Funds in trust for TPWD.

- 3.1.7.3. The Account Notification Date will be available to the License Agent two (2) business days prior to the Scheduled Sweep Date. The account notification will reflect sales of licenses, endorsements and other items occurring during the Sales Period. License Agent shall ensure that funds are available on or before each Scheduled Sweep Date. Any disputes must be communicated to TPWD within one business day prior to the scheduled sweep and the item in question will be placed on hold for further investigation. Valid disputes communicated after one business day but within forty five (45) calendar days will be reflected on a future sweep. Disputes after forty five (45) days may not be corrected.

3.1.8. Insufficient Funds:

- 3.1.8.1. License Agent shall provide the amount set out in the Account Notification of License Funds and Other Funds due TPWD, making it available for the EFT account transfer on Scheduled Sweep Date set out in Schedule 1 unless otherwise directed in writing by TPWD. License Agent acknowledges and agrees that it is a material breach of this Agreement to have insufficient funds in the EFT account available for transfer on Scheduled Sweep Dates.
- 3.1.8.2. If License Agent does not have sufficient funds in an EFT account for transfer on a Scheduled Date, TPWD may immediately terminate License Agent's ability to issue items through the point of sale system or other methods. TPWD may also require License Agent to pay the funds by cashier's check or money order. If License Agent fails to make payment of insufficient funds and the fee for non-transfer of funds within five (5) business days of demand by TPWD, License Agent acknowledges and agrees it is a material breach and TPWD may terminate this Agreement, may collect from any letter of credit provided under this Agreement, and may take further steps necessary to collect all funds owed TPWD.
- 3.1.8.3. Upon notice of insufficient funds in License Agent's EFT account on a Scheduled Date, License Agent may be assessed a penalty in an amount equal to five (5) percent of the amount of the funds due but not paid.

3.1.9. Letters of Credit:

- 3.1.9.1. If the License Agent fails to place sufficient funds in the EFT account for transfer on any three (3) Scheduled Dates during the term of this Agreement, the License Agent may be required to establish a letter of credit in an amount determined by TPWD but not to exceed the sales amount for the License Agent's peak quarter as determined by TPWD.
- 3.1.9.2. License Agent shall ensure that all letters of credit contain the correct wording and are on proper forms obtained from TPWD. The letters of credit must be effective for the full term of the Agreement. TPWD does not send a reminder letter for letter of credit renewals. Further, filing a claim on a letter of credit does not relieve License Agent from the responsibility of paying money owed under this Agreement. Any money collected as a result of a claim filed on a letter of credit will be deducted from monies owed by License Agent when the money is received by TPWD. License Agent shall pay any balance owed to TPWD, after any such deduction.
- 3.1.9.3. The financial institution issuing the letter of credit shall have "Tier 1 Capital" and be classified as "well capitalized" as defined by the FDIC. The FDIC's website is www.fdic.gov/individual/bank/index.html.

3.2. Returns/Voids:

- 3.2.1. In the normal issue of hunting and fishing licenses, errors may occur due to clerical errors, mechanical errors (e.g. printer problems), purchase of wrong license, failure of the buyer to communicate current information on address, or other data related issues. The License Agent may void any license within forty-eight (48) hours without an authorization

number from TPWD Headquarters. Subsequent to forty-eight (48) hours, but within thirty (30) calendar days, the License Agent must request an authorization number from TPWD Headquarters in order to void a license. After thirty (30) calendar days, the License Agent cannot void a license.

- 3.2.2. All License Agents are required to mail (or hand deliver) all documents that are voided to TPWD. License Agents may obtain a listing of their returnable documents under the "reports" menu selection for reconciliation purposes. If a license does not print out, the License Agent shall provide written documentation stating the license did not print referencing the store Agent ID number and the document number, TLC number, or transaction number as a substitute for the returnable document/void. The returnable document/void or, when not available, the written documentation, must be returned to TPWD within thirty (30) calendar days unless prior written approval from TPWD has been given. All original voided licenses shall be returned to TPWD License Section-Returnable Documents at 4200 Smith School Road Austin, TX 78744.
- 3.2.3. After forty-five (45) calendar days TPWD will charge License Agent for all voided documents not returned. License Agents must review the returnable documents report on a regular basis and contact TPWD prior to forty-five (45) days to dispute an item. Once the License Agent has been charged, TPWD cannot reverse the charge. License Agent agrees that funds owing TPWD for the amount of the full retail value of unreturned documents may be charged to the License Agent
- 3.3. **Staff:** License Agent shall maintain staff that is adequately trained in the maintenance and use of the point of sale equipment. License Agent shall ensure that all staff that sell licenses to the public have a general knowledge of the license types available for sale and general knowledge of laws and regulations that apply to each license.
- 3.4. **Sales Commission:**
 - 3.4.1. License Agent will be paid a commission on sales made by License Agent on the point of sale equipment. The sales commission for this Agreement shall be five percent (5%) of sales price for each item. The sales commission established herein is subject to change by rule or statute without requiring an amendment to this Agreement.
 - 3.4.2. License Agent shall provide their Federal Tax Identification number to TPWD by completing IRS W-9 form, Request for Taxpayer Identification and Certification Number.
- 3.5. **Equipment and Supplies:** License Agent shall:
 - 3.5.1. Pay monthly lease fees in the amounts set out in Schedule 1 for any equipment requested by License Agent.
 - 3.5.2. Safeguard all equipment and supplies provided. License Agent shall at a minimum provide a secure area for all equipment and supplies provided under this Agreement that prevents unauthorized access or damage. License Agent agrees to pay TPWD for all damages to any property supplied to it by TPWD or contractor that is caused by License Agent actions or inactions. The parties agree that compensation for damaged, lost, stolen or destroyed equipment will be based on the cost of replacement or repair of the equipment or supplies as determined by TPWD. License Agent agrees to maintain at its cost reasonable and customary property insurance on the equipment and supplies provided under the terms of this Agreement. In the event that License Agent receives funds for reimbursement from insurance for any loss or damage to equipment or supplies furnished by TPWD or contractor under this Agreement, License Agent shall immediately transfer any such funds to TPWD.
 - 3.5.3. Setup and install all equipment in accordance with instructions supplied with the equipment.
 - 3.5.4. License Agent shall not dispose, lend or otherwise transfer possession of any equipment furnished under this Agreement to another party.

- 3.5.5. Be responsible for all costs and coordination related to necessary phone line installation, maintenance and usage. License Agent is responsible for connecting all license sales terminals to necessary telephone lines and shall ensure that the telephone line is active and in good repair. Failure of License Agent to keep all terminals connected to necessary telephone lines that are active and in good working order is a material default and TPWD may terminate the Agreement. At the License Agent's expense, high speed internet connection may be used in lieu of the phone line.
- 3.5.6. Maintain adequate supplies of paper, ribbons and other consumables. TPWD may limit the quantities of supplies provided at no charge to License Agent based on sales statistics or other relevant data.
- 3.5.7. Ensure that printer ribbons are destroyed in a manner that prevents loss or theft of TPWD information imprinted on used ribbons.
- 3.5.8. Notify TPWD and/or contractor immediately if any unauthorized user obtains access to the point of sale equipment and/or license sales system. Until TPWD and/or contractor receives such notification, the License Agent understands and agrees that the License Agent shall continue to be responsible to pay for all transactions that are processed through the License Agent's equipment.

3.6. License System Data:

- 3.6.1. The data contained in the License System Equipment (also referred to as Automated System or POS) was obtained by TPWD through a written agreement with the Texas Department of Public Safety. The License System Equipment data is intended only for use by TPWD and its agents in carrying out TPWD's functions as a governmental entity, and may not be used for any other purpose. License Agent is a private entity acting on behalf of TPWD, and may only use the License System Equipment data when operating under the terms of this Agreement. Further, License Agent's access to the License System Equipment data is not considered a resale or re-disclosure of the information under the Motor Vehicle Records Disclosure Act.
- 3.6.2. License System Equipment data may only be used for transactions specifically authorized by the Agreement. License Agent, its agents or employees may not use information contained in the License System Equipment for any other purpose. Use of the License System Equipment data by License Agent, its agents or employees for any purpose not authorized by the Agreement is a material breach of the Agreement and TPWD may terminate this Agreement immediately upon discovery of any such unauthorized use.

3.7. Equipment Problems: License Agent equipment problems can be resolved by contacting contractor's Help Desk @ 1-866-852-8793.

- 3.7.1. If equipment problems are not resolved over the phone and replacement equipment is warranted, contractor will provide replacement to License Agent with a pre-paid equipment return/shipping label for returning the defective items.
- 3.7.2. Upon receipt of broken or damaged equipment replacements, License Agent shall use return mail label supplied by TPWD or contractor to return broken parts and damaged or malfunctioning equipment within forty-eight (48) hours of receiving the replacement. TPWD will continue to bill License Agent for equipment until equipment is returned.
- 3.7.3. When replacement equipment is not warranted, License Agent will coordinate with contractor to register the reported problems and contractor will provide the License Agent with a "work order ticket number". The remedy ticket number will be used to track the status of equipment repairs.
- 3.7.4. When terminating the License Agent Agreement, contractor shall provide License Agent with a pre-paid equipment return/shipping label for returning the items held. TPWD will continue to bill License Agent for equipment until equipment is returned.

3.8. **Security Deposit:** License Agent shall submit a security deposit in the amount and in the manner set out in Schedule I. Any security deposit submitted to TPWD under this subparagraph will be returned to License Agent upon conditions and in the manner set out in Schedule I.

3.9. **Recordkeeping:** License Agent shall:

3.9.1. Retain, and make available to TPWD upon request, a copy, paper or electronic, of each dealer receipt for every sale made by License Agent under the terms of this Agreement for at least three (3) years following the end of the calendar year during which the sale was completed. Failure to retain and promptly return dealer receipts to TPWD upon request may be grounds for termination of the Agreement.

3.9.2. Allow employees or representatives of TPWD or Texas State Auditor's Office access to License Agent's records related to this Agreement during normal business hours. After prior notice and/or upon request by TPWD, License Agent shall mail requested records to TPWD at 4200 Smith School Road, Austin, Texas 78744. Further, License Agent will allow TPWD and/or Texas State Auditor's Office access to its records for at least three (3) years following termination of this Agreement. Failure of License Agent to allow access to or provide records as required under this Agreement is a material breach.

3.10. **Promotional/Educational Products:** License Agent shall:

3.10.1. Assist TPWD by promoting new products, discount packages and other promotions as requested by TPWD.

3.10.2. Accept delivery of TPWD's Outdoor Annual and other educational/instructive materials and distribute a copy to license customers. If License Agent has more than fifty (50) license sales outlets, TPWD will send educational/instructive materials to a single location designated by the License Agent.

3.11. **Other Requirements:** License Agent shall:

3.11.1. Furnish to TPWD or contractor without undue delay, all information reasonably necessary to fulfill any requirement of this Agreement.

3.11.2. Allow authorized employees or representatives of TPWD access to License Agent's premises during normal hours of business and, upon notification, at other agreed times to install, repair, maintain, and remove equipment.

3.11.3. Be responsible for its actions and those of its employees, officers, agents and visitors and indemnify and hold TPWD harmless from any claim or legal action, resulting damages, costs and expenses that may be incurred by TPWD as a result of direct or indirect actions of License Agents, its employees, officers, agents or visitors.

3.11.4. Implement and follow all rules and procedures provided in writing to License Agent.

4. **TPWD RESPONSIBILITIES:** TPWD will:

4.1. Establish a contact person to coordinate and to help resolve any issues between contractor and License Agent expeditiously and fairly. Provide training aids for License Agent.

4.2. Ensure that contractor or TPWD maintains a help desk to provide assistance to License Agent.

4.3. Provide assistance to accomplish equipment repair and/or replacement of malfunctioning equipment.

4.4. Provide account notifications prior to sweeping funds from License Agent's account(s).

4.5. Provide supplies and materials needed to perform duties under this Agreement such as receipt paper, license stock and license printer ribbons.

- 4.6. Allow License Agent to retain a commission for sales.
5. **SEVERABILITY**: If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement shall continue in full force and effect.
 6. **FORCE MAJEURE**: None of the parties shall be considered in default of their obligations hereunder (except the payment of money, which shall not be excused) if performance of such obligations is prevented or delayed by acts of God or government, war, riots, acts of civil disorder, failure or delay of transportation, or such other causes as are beyond such party's control. The burden of proof for the need of such relief shall rest upon the License Agent. To obtain release based on force majeure, License Agent shall file a written request with TPWD.
 7. **WAIVERS**: License Agent understands that the terms of this Agreement are subject to change upon prior notice by TPWD. The Parties agree that any waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any subsequent or prior breach.
 8. **ASSIGNMENT**: License Agent may not transfer or assign any part or the whole of this Agreement. Equipment must be returned and may not be transferred or assigned due to change in ownership.
 9. **DISPUTES**: The parties shall attempt to resolve all disputes arising from this Agreement but to the extent that it is applicable and not preempted by other law, those disputes not resolved shall follow the dispute resolution process provided for in Texas Government Code, Title 10, Chapter 2260.
 10. **SPECIAL CONDITIONS**: TPWD may cancel this Agreement without penalty should subsequent law necessitate cancellation. Nothing in this Agreement is intended to waive any sovereign immunity to which TPWD is entitled under law.
 11. **TERMINATION**: Either party may terminate this Agreement with a minimum of thirty (30) calendar days written notice. TPWD may terminate this Agreement immediately, without notice, for License Agent's breach or failure to perform, including those acts or omissions identified herein as a material breach. Upon termination of this Agreement the License Agent shall:
 - 11.1. Within ten (10) calendar days following termination return all equipment or other property owed to TPWD or TPWD's contractor as instructed by TPWD (See Para. 3.7); and
 - 11.2. Remit all monies due to TPWD, no later than the next regularly Schedule Sweep Date following the date of termination; and
 - 11.3. Upon request, provide TPWD or its designee reasonable opportunity to enter License Agent's property to remove all equipment supplied to License Agent under this Agreement including, but not limited to, all equipment listed on Schedule 1, attached hereto and included herein for all purposes by this reference.
 12. **RIGHT TO AUDIT**: License Agent understand that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, TPWD, or any successor agency to conduct an audit or investigation in connection with those funds. License Agent further agrees to cooperate fully with the above parties in the conduct of the audit or investigation, including providing access to any information the state auditor considers relevant to the investigation or audit. License Agent shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the vendor and the requirement to cooperate is included in any subcontract it awards.

13. **NOTICES:** All notices given by any party or required under this Agreement shall be in writing and addressed and delivered to the relevant party or parties at the following locations:

Texas Parks and Wildlife Department
Attention: License Issuance Lead
4200 Smith School Road
Austin, Texas 78744

Hidalgo County
100 N Closner - 1St Floor
Edinburg, TX 78539

14. **TPWD CONTRACTOR:** The TPWD contractor for the hunting and fishing license point of sale system can be contacted at 1-866-852-8793.
15. **COMPLETE AGREEMENT:** This Agreement and the attached Schedule 1 represent the complete Agreement and understanding of the parties with respect to the subject matter herein, and supersede any other understanding, written or oral. This Agreement may only be revised by written amendment. All such amendments are subject to the terms and conditions of this Agreement not specifically amended thereby.
16. **AUTHORITY TO BIND:** The signatories to this Agreement represent and warrant that they have the authority to enter into this Agreement and that they have authority to bind the entity on whose behalf they execute this Agreement.

License Agent Signature

Texas Parks and Wildlife Department

Printed Name: _____

Title: Manager, License Unit

Title: _____

Date: _____

Date: _____

Agent ID: 4949

Schedule 1
Rates and Schedules for Agent ID 4949
Between TPWD and Hidalgo County (License Agent)

1. **Equipment/Rates:** TPWD has provided the following equipment to License Agent:
 - 1.1. **0 License Printer** to use with **Personal Computer Setup**, Kit A (Personal Computer supplied by License Agent) at an annual lease fee of \$0.
 - 1.2. **1 License Terminal & License Printer Setup** at an annual lease fee of \$0.
2. **Security Deposit:** A security deposit (\$75 PC Kit and \$150 Thin Client Kit) is required on all equipment setups. A security deposit submitted for equipment will be returned to License Agent after TPWD receives the original equipment, or replacement equipment for any original equipment that has been replaced, that is in good condition except for ordinary wear and tear. TPWD will keep License Agent's security deposit if original or replacement equipment is not returned in good condition except for ordinary wear and tear to TPWD, or TPWD's contractor as instructed by TPWD, within thirty (30) days following the termination date of the Agreement or within thirty (30) days of the date of receipt of written notice by TPWD to return the equipment, whichever is earlier. TPWD reserves the right to keep License Agent's security deposit to recompense for those monies not remitted under 11.2 of the Agreement.

3. **Scheduled Sweeps:**

Account Notification Date will occur on Monday each week. Whenever the Account Notification Date falls on a U.S. Federal Reserve holiday, the Account Notification Date will be the next business day after the holiday. The Scheduled Sweep Date shall occur two (2) business days subsequent to the Account Notification Date. (See Agreement, Para. 3.1.7).