DOC CONTRACT NO. DOC1212-COMMISSARY
BETWEEN
DELAWARE DEPARTMENT OF CORRECTION,
AND
SWANSON SERVICES CORPORATION
FOR
COMMISSARY SERVICES

A. Introduction

1. This contract is entered into between the Delaware Department of Correction (the Department) and Swanson Services Corporation (the Contractor).

2. The Contract shall commence on January 1, 2013 and terminate on December 31, 2016 unless specifically extended by an amendment, signed by all parties to the Contract. Time is of the essence.

B. Administrative Requirements

1. Contractor recognizes that it is operating as an independent Contractor and that it is liable for any and all losses, penalties, damages, expenses, attorney's fees, judgments, and/or settlements incurred by reason of injury to or death of any and all persons, or injury to any and all property, of any nature, arising out of the Contractor's negligent performance under this Contract, and particularly without limiting the foregoing, caused by, resulting from, or arising out of any act of omission on the part of the Contractor in their negligent performance under this Contract.

2. The Contractor shall maintain such insurance as will protect against claims under Worker's Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this Contract. The Contractor is an independent contractor and is not an employee of the State.

3. During the term of this Contract, the Contractor shall, at its own expense, carry insurance with minimum coverage limits as follows:

a) Comprehensive General Liability	$1,000,000
and	
b) Medical/Professional Liability	$1,000,000/$3,000,000
or	
c) Misc. Errors and Omissions	$1,000,000/$3,000,000
or	
d) Product Liability	$1,000,000/$3,000,000

All contractors must carry (a) and at least one of (b), (c), or (d), depending on the type of service or product being delivered.

If the contractual service requires the transportation of Departmental clients or staff, the contractor shall, in addition to the above coverage, secure at its own expense the following coverage:

e) Automotive Liability (Bodily Injury)	$100,000/$300,000
f) Automotive Property Damage (to others)	$ 25,000

4. Contractor will hold harmless, indemnify and defend the Department, the State of Delaware and their agents, employees, or officers of the State of Delaware from any and all suits, actions, losses, liability, damages (including punitive damages), expenses, reasonable attorney fees (including salaries of attorneys regularly employed by the State of Delaware), judgments, or settlements incurred by the Department, the State of Delaware or their agents, employees, or officers arising out of the provision of services by Contractor, its employees, or approved subcontractors under the contract, including direct or indirect negligence or intentional acts of omission or commission, and professional malpractice regardless of any negligence or any intentional act or omission by employees or officials of the Department. The legal duties and responsibilities set forth in this paragraph include the duty to cooperate with the Department, its employees, and attorneys in the defense of any legal action against the State, its agents, employees, or officers arising out of the provision of services by Contractor, which involve claims related to medical care, or which require information or testimony from Contractor's employees or approved subcontractors.

5. The policies required under Paragraph B. 3. must be written to include Comprehensive General Liability coverage, including Bodily Injury and Property damage insurance to protect against claims arising from the performance of the Contractor and the contractor's subcontractors under this Contract and Medical/Professional Liability coverage when applicable.

6. The Contractor shall provide a Certificate of Insurance as proof that the Contractor has the required insurance. The certificate shall indentify the Department of Correction as the "Certificate Holder" and shall be valid for the contract's period of performance as detailed in Paragraph A. 2.

7. The Contractor acknowledges and accepts full responsibility for securing and maintaining all licenses and permits, including the Delaware business license, as applicable and required by law, to engage in business and provide the goods and/or services to be acquired under the terms of this Contract. The Contractor acknowledges and is aware that Delaware law provides for significant penalties associated with the conduct of business without the appropriate license.

8. The Contractor agrees to comply with all State and Federal licensing standards and all other applicable standards as required, to provide services under this Contract, to assure the quality of services provided under this Contract. The Contractor shall immediately notify the Department in writing of any change in the status of any accreditations, licenses or

certifications in any jurisdiction in which they provide services or conduct business. If this change in status regards the fact that its accreditation, licensure, or certification is suspended, revoked, or otherwise impaired in any jurisdiction, the Contractor understands that such action may be grounds for termination of the Contract.

a) If a contractor is under the regulation of any Department entity and has been assessed Civil Money Penalties (CMPs), or a court has entered a civil judgment against a Contractor or vendor in a case in which Department of Correction or its agencies was a party, the Contractor or vendor is excluded from other Department of Correction contractual opportunities or is at risk of contract termination in whole, or in part, until penalties are paid in full or the entity is participating in a corrective action plan approved by the Department.

b) A corrective action plan must be submitted in writing and must respond to findings of non-compliance with Federal, State, and Department requirements. Corrective action plans must include timeframes for correcting deficiencies and must be approved, in writing, by the Department.

c) The Contractor will be afforded a thirty (30) day period to cure non-compliance with Section 8(a). If, in the sole judgment of the Department, the Contractor has not made satisfactory progress in curing the infraction(s) within the aforementioned thirty (30) days, then the Department may immediately terminate any and/or all active contracts.

9. Contractor agrees to comply with all the terms, requirements and provisions of the Civil Rights Act of 1964, the Rehabilitation Act of 1973 and any other federal, state, local or any other anti discriminatory act, law, statute, regulation or policy along with all amendments and revision of these laws, in the performance of this Contract and will not discriminate against any applicant or employee or service recipient because of race, creed, religion, age, sex, color, national or ethnic origin, disability or any other unlawful discriminatory basis or criteria.

10. The Contractor agrees to provide to the Department of Correction Purchasing Services Administrator, on an annual basis, if requested, information regarding its client population served under this Contract by race, color, national origin or disability.

11. This Contract may be terminated in whole or part:

a) by the Department upon five (5) calendar days written notice for cause or documented unsatisfactory performance,

b) by the Department upon fifteen (15) calendar days written notice of the loss of funding or reduction of funding for the stated Contractor services as described in Appendix B,

c) by either party without cause upon sixty (60) calendar days written notice to the other Party, unless a longer period is specified in Appendix A.

12. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, models, maps, photographs, and reports or other material prepared by Contractor under this contract shall, at the option of the Department, become the property of the Department.

13. In the event of termination, the Contractor, upon receiving the termination notice, shall immediately cease work and refrain from purchasing contract related items unless otherwise instructed by the Department.

14. The Contractor shall be entitled to receive reasonable compensation as determined by the Department in its sole discretion for any satisfactory work completed on such documents and other materials that are usable to the Department. Whether such work is satisfactory and usable is determined by the Department in its sole discretion.

15. Should the Contractor cease conducting business, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets, or shall avail itself of, or become subject to any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or protection of the rights of creditors, then at the option of the Department, this Contract shall terminate and be of no further force and effect. Contractor shall notify the Department immediately of such events.

16. Any notice required or permitted under this Contract shall be effective upon receipt and may be hand delivered with receipt requested or by registered or certified mail with return receipt requested to the addresses listed below. Either Party may change its address for notices and official formal correspondence upon five (5) days written notice to the other.

    To the Department at:

    Department of Correction
    245 McKee Road
    Dover, DE 19904
    Attn: Purchasing Services Administrator

    To the Contractor at:

    Swanson Services Corporation
    1133 Pennsylvania Street
    Denver, CO 80203
    Attn: Kelly Swanson, President

17. In the event of amendments to current Federal or State laws which nullify any term(s) or provision(s) of this Contract, the remainder of the Contract will remain unaffected.

18. This Contract shall not be altered, changed, modified or amended except by written consent of all Parties to the Contract.

19. The Contractor shall not enter into any subcontract for any portion of the services covered by this Contract without obtaining prior written approval of the Department. Any such subcontract shall be subject to all the conditions and provisions of this Contract. The approval requirements of this paragraph do not extend to the purchase of articles, supplies, equipment, rentals, leases and other day-to-day operational expenses in support of staff or facilities providing the services covered by this Contract.

20. The term "Contract Documents" shall mean the documents listed in this Section. Each of the Contract Documents is an essential part of the agreement between the Parties, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and to describe and provide for a complete agreement. This entire Contract between the Contractor and the Department is composed of these several pages and the attached Appendices. In the event of any conflict among the Contract Documents, the order of precedence shall be as set forth below:

    1. Standard Department Contract (pages 1 – 10 of this contract)
    2. Appendix A – Departmental Requirements
    3. Appendix B – Service and Budget Description
    4. Appendix C – Excluded Items subject to 10% commission rate
    5. DOC Request for Proposals for Contract # DOC1212-COMMISSARY and any amendments thereto
    6. Swanson Services Corporation Proposal in response to DOC Request for Proposals for Contract # DOC1212-COMMISSARY

21. This Contract shall be interpreted and any disputes resolved according to the Laws of the State of Delaware. Except as may be otherwise provided in this contract, all claims, counterclaims, disputes and other matters in question between the Department and Contractor arising out of or relating to this Contract or the breach thereof will be decided by arbitration if the parties hereto mutually agree, or in a court of competent jurisdiction within the State of Delaware.

22. In the event Contractor is successful in an action under the antitrust laws of the United States and/or the State of Delaware against a vendor, supplier, subcontractor, or other party who provides particular goods or services to the Contractor that impact the budget for this Contract, Contractor agrees to reimburse the State of Delaware, Department of Correction for the pro-rata portion of the damages awarded that are attributable to the goods or services used by the Contractor to fulfill the requirements of this Contract. In the event Contractor refuses or neglects after reasonable written notice by the Department to bring such antitrust action, Contractor shall be deemed to have assigned such action to the Department.

23. Contractor covenants that it presently has no interest and shall not acquire any interests, direct or indirect, that would conflict in any manner or degree with the performance of this Contract. Contractor further covenants that in the performance of this contract, it shall not employ any person having such interest.

24. Contractor covenants that it has not employed or retained any company or person who is working primarily for the Contractor, to solicit or secure this agreement, by improperly influencing the Department or any of its employees in any professional procurement process; and, the Contractor has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working primarily for the Contractor, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this agreement. For the violation of this provision, the Department shall have the right to terminate the agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

25. The Department shall have the unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other materials prepared under this Contract. Contractor shall have no right to copyright any material produced in whole or in part under this Contract. Upon the request of the Department, the Contractor shall execute additional documents as are required to assure the transfer of such copyrights to the Department.

    If the use of any services or deliverables is prohibited by court action based on a U.S. patent or copyright infringement claim, Contractor shall, at its own expense, buy for the Department the right to continue using the services or deliverables or modify or replace the product with no material loss in use, at the option of the Department.

26. Contractor agrees that no information obtained pursuant to this Contract may be released in any form except in compliance with applicable Federal and State of Delaware laws and policies on the confidentiality of information and except as necessary for the proper discharge of the Contractor's obligations under this Contract. The Department authorizes in writing the release of any information in the application of the vendor before any information is shared.

27. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of this Contract shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Contract unless stated to be such in writing, signed by authorized representatives of all parties and attached to the original Contract.

28. If the amount of this Contract listed in Paragraph C2 is over $25,000, the Contractor, by their signature in Section E, is representing that the Firm and/or its Principals, along with its subcontractors and assignees under this Contract, are not currently subject to either suspension or debarment from Procurement and Non-Procurement activities by the Federal Government.

29. The Department is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Contract.

30. The Department shall subtract from any payment made to Contractor all damages, costs and expenses caused by Contractor's negligence, resulting from or arising out of errors or omissions in Contractor's work products, which have not been previously paid to Contractor.

31. If any term or provision of this Contract is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Contract, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

C. Financial Requirements

1. The Contractor is solely responsible for the payment of all amounts due to all subcontractors and suppliers of goods, materials or services which may have been acquired by or provided to the Contractor in the performance of this contract. The Department is not responsible for the payment of such subcontractors or suppliers.

2. The Contractor shall not assign the Contract or any portion thereof without prior written approval of the Department and subject to such conditions and revisions as the Department may deem necessary. No such approval by the Department of any assignment shall be deemed to provide for the incurrence of any obligations of the Department in addition to the total agreed upon price of the Contract.

3. Contractor shall maintain books, records, documents and other evidence directly pertinent to performance under this Contract in accordance with generally accepted accounting principles and practices. Contractor shall also maintain the financial information and data used by Contractor in the preparation of support of its bid or proposal. Contractor shall retain this information for a period of five (5) years from the date services were rendered by the Contractor. Records involving matters in litigation shall be retained for one (1) year following the termination of such litigation. The Department shall have access to such books, records, documents, and other evidence for the purpose of inspection, auditing, and copying during normal business hours of the Contractor after giving reasonable notice. Contractor will provide facilities for such access and inspection.

4. The Contractor agrees that any submission by or on behalf of the Contractor of any claim for payment by the Department shall constitute certification by the Contractor that the services or items for which payment is claimed were actually rendered by the Contractor or its agents, and that all information submitted in support of the claims is true, accurate, and complete.

5. The cost of any Contract audit disallowances resulting from the examination of the Contractor's financial records will be borne by the Contractor. Reimbursement to the

Department for disallowances shall be drawn from the Contractor's own resources and not charged to Contract costs or cost pools indirectly charging Contract costs.

6. When the Department desires any addition or deletion to the deliverables or a change in the services to be provided under this Contract, it shall so notify the Contractor. The Department will develop a Contract Amendment authorizing said change. The Amendment shall state whether the change shall cause an alteration in the price or time required by the Contractor for any aspect of its performance under the Contract. Pricing of changes shall be consistent with those prices or costs established within this Contract. Such amendment shall not be effective until executed by all Parties pursuant to Paragraph B.14.

D. Miscellaneous Requirements

1. The Contractor, including its parent company and its subsidiaries, and any subcontractor, including its parent company and subsidiaries, agree to comply with the provisions of 29 Del. Code, Chapter 58: "Laws Regulating the Conduct of Officers and Employees of the State," and in particular with Section 5805 (d): "Post Employment Restrictions."

2. It is understood that in the performance of the services herein provided for, Contractor shall be, and is, an independent Contractor, and is not an agent or employee of Delaware and shall furnish such services in its own manner and method except as required by this Contract. In addition to its responsibilities under as set forth herein, Contractor shall be solely responsible for, and shall indemnify, defend and save Delaware harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever. Contractor acknowledges that it and any approved subcontractors, agents or employees employed by Contractor shall not, under any circumstances, be considered employees of Delaware, and that they shall not be entitled to any of the benefits or rights afforded employees of Delaware, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. Delaware will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of Delaware or any of its officers, employees or other agents. Contractor shall be responsible for providing necessary liability insurance for itself and its personnel. As an independent Contractor, Contractor has no authority to bind or commit Delaware. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose.

3. *When required by Law*, Contractor shall conduct child abuse and adult abuse registry checks and obtain service letters in accordance with 19 Del. Code Section 708; and 11 Del. Code, Sections 8563 and 8564. Contractor shall not employ individuals with adverse registry findings in the performance of this contract.

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E. Authorized Signatures:

For the Contractor:

Kelly Swanson
President
Swanson Services Corporation

December 21, 2012
Date

For the Department:

Mike DeLoy
Bureau Chief
Bureau of Prisons
Delaware Department of Correction

1/2/13
Date

Erika Martine-Duquette
Purchasing Services Administrator
Delaware Department of Correction

1/3/13
Date

APPENDIX A

DEPARTMENT OF CORRECTION REQUIREMENTS

1. Funds received and expended under the contract must be recorded so as to permit the Department to audit and account for all contract expenditures in conformity with the terms, conditions, and provisions of this contract, and with all pertinent federal and state laws and regulations. The Department retains the right to approve this accounting system.

2. The Contractor shall recognize that no extra contractual services are approved unless specifically authorized in writing by the Department. Further, the Contractor shall recognize that any and all services performed outside the scope covered by this Contract and attached budgets will be deemed by the Department to be gratuitous and not subject to any financial reimbursement.

3. All documents are expected to be free of misspellings and typos, as well as punctuation, grammatical and design errors. Acronyms should be avoided; when used, they should be spelled out on first reference with the acronym in parentheses after that reference. For example, 'Department of Correction (DOC)' on first reference.

4. No part of any funds under this contract shall be used to pay the salary or expenses of any contractor or agent acting for the contractor, to engage in any activity (lobbying) designed to influence legislation or appropriations pending before the State Legislature and/or Congress.

5. The Contractor agrees that, if defunding occurs, all equipment purchased with Department funds for $1,000.00 or more and a useful life expectancy of one (1) year, will be returned to the Department within thirty (30) days.

6. Contractors receiving Federal funds must comply with all the requirements of the Federal Office of Management and Budget (OMB) Circular A-133, Audits of State, Local Governments, and Non-profit Organizations.

APPENDIX B
SERVICE AND BUDGET DESCRIPTION

1. Contractor: Swanson Services Corporation
   Address: 1133 Pennsylvania St, Denver, CO 80203
   Phone: (303) 832-3920
   E.I. No.: 65-0264044

2. Department: Department of Correction ("DOC")

3. Service: Commissary Services at Howard R. Young Correctional Institution, Delores J. Baylor Women's Correctional Institution, Sussex Correctional Institution and James T. Vaughn Correctional Center

4. Total fixed percentage commission rate of total monthly gross sales will be 18%. Commissions will be based on the Wholesale Pricing (Option #1) calculations outlined in Swanson's response to RFP, page 81, with the exception of items listed on Appendix C, which will be 10%. The Department reserves the right to adjust commissions at any time with written notification to Swanson.

5. Commissary Services will begin at James T. Vaughn Correctional Center (JTVCC) on March 1, 2013.

6. Swanson Services Corporation agrees to obtain and operate a distribution center in Delaware by March 1, 2013.

7. Swanson agrees to waive all annual SmartCard fees outlined on page 9 of Swanson's response to RFP.

8. Swanson agrees that the handling of unclaimed orders outlined on page 9 of Swanson's response to RFP, is amended to allow for return of the order, to its warehouse, for a credit back to the inmate's account, in the event that the inmate is released prior to their order being delivered to the facility. Page 60 also amended to clarify that return of unclaimed orders will be returned by all facilities, to Swanson for a credit to the inmate account.

9. Price Review Meetings will occur more frequent than every six months for the transition phase of the Contract. The first meeting will be held in January 2013, or on an as-needed basis for immediate concerns.

10. Swanson Services Corporation will cover cost of all wiring. Swanson agrees to consult with DOC Information Technology staff before installation commences and will engage only those vendors currently contracted to the State of Delaware to complete this wiring.

11. Swanson Services Corporation shall be responsible for ensuring that all services, products and deliverables furnished herein comply with the standards promulgated by the Department of Technology and Information ("DTI"), published at http://dti.delaware.gov/, and as modified from time to time by DTI. If any service, product or deliverable furnished herein does not conform to DTI standards, Swanson Services Corporation shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform with DTI standards. Swanson Services Corporation shall be and remain liable in accordance with the terms of its contract with the DOC and applicable law for all damages to the DOC caused by Swanson Services Corporation's failure to ensure compliance with DTI standards.

12. All orders to the facilities will adhere to the delivery schedule as outlined on page 62 of the Swanson Services Corporation Response to DOC1212-COMMISSARY.

13. Section II, G. "Commissary Menu" Item 1, Sentence 3, is hereby amended to read: "As the needs of the facility change, the successful vendor and the Department's Product Review Committee shall meet to discuss any modifications to the commissary menu." This change is to ensure statewide menu consistency.

14. Section II, K. "Inventory and Substitution Requirements" Item 3 is hereby amended to read: "No items may be added, deleted, or changed in brands, packaging, or sizing without the mutual agreement of the Warden and Department Product Review Committee."

15. All Commissary menu items must contain "Healthy Food Options." All menu items must have prior approval by the facility Warden. DOC will establish a "Product Review Committee" and meet in early January 2013 to enact final changes to initial menu items.

16. Swanson Services Corporation mark-up over invoice on items sold will not exceed 45%. This is fixed for the initial term of this contract.

17. Swanson Services Corporation will establish a quarterly market comparison mechanism whereas the DOC will select sample items from the commissary menu for comparison. Swanson Services Corporation will utilize the selected items for market comparison and report back to the facility Warden on all findings.

18. All data generated by this Contract will remain the property of the DOC.

APPENDIX C

EXCLUDED COMMISSARY ITEMS SUBJECT TO 10% COMMISSION RATE

ITEM NUMBER	DESCRIPTION
6252	Clear Radio
6311	Radio
6312	Walkman - Sony
6316	Headphones
6336	Color TV
6380	Circular Fan
8558	Reebok
8559	Reebok