

Eddie Baza Calvo  
Governor

**GSA**

**GENERAL SERVICES AGENCY**

(Ahensian Setbision Hinirat)  
Department of Administration

148 Route 1 Marine Drive, Piti, Guam 96915  
Tel: (671) 475-1707 Fax Nos: (671) 475-1727 / 472-4217

Ray Tenorio  
Lieutenant Governor

Christine Won Pat Baleto  
Acting Director

Anisia B. Terlaje  
Deputy Director

# REQUEST FOR PROPOSALS

RFP/DOC NO. RFP-016-001

COMMISSARY CONCESSIONARY FOR DEPARTMENT OF CORRECTIONS

**PROPOSAL DUE DATE**

**3:00 P.M. Friday,  
April 04, 2016**

**Chamorro Standard Time**

**PLACE OF SUBMITTAL**

**General Services Agency  
148 Route 1 Marine Corps Drive  
Piti, Guam 96915**

**Attn: Claudia S. Acfalle  
Chief Procurement Officer**

**REVISED**

*APRIL 15, 2016*

COMMITTED TO EXCELLENCE

**RFP: RFP/DOC-016-001**

**COMMISSARY CONCESSIONARY FOR DEPARTMENT OF CORRECTIONS**

**ACKNOWLEDGEMENT RECEIPT FORM**

**Please be advised that to be considered a prospective offeror you must fill out this Acknowledgement receipt form. Please submit by fax form to 475-1727**

**Acknowledgement Receipt Form must be submitted no later than three (3) days from issued date.**

<b>Name</b>	_____
<b>Signature</b>	_____
<b>Date</b>	_____
<b>Time</b>	_____
<b>Contact Number</b>	_____
<b>Fax Number</b>	_____
<b>Contact Person regarding RFP</b>	_____
<b>Title</b>	_____
<b>E-Mail Address</b>	_____
<b>Company/Firm</b>	_____
<b>Address</b>	_____

**REQUEST FOR PROPOSAL  
RFP/DOC NO. RFP-16-001**

**COMMISSARY CONCESSIONARY FOR  
DEPARTMENT OF CORRECTIONS**

The Department of Corrections an instrumentality of the Government of Guam, invites the submission of proposals from qualified offerors to finance, develop, manage, and operate a Commissary Concession (“Concession”) at the Department of Corrections, Guam. DOC's goals and objectives are to optimize revenue for DOC.

This RFP is available for download from GSA’s website at [www.gsa.doa.guam.gov](http://www.gsa.doa.guam.gov) and public inspection at GSA’s Office located at 148 Route 1 Marine Corps Drive, Piti, Guam, 96915, Monday through Friday, excluding holidays, between 8:00 a.m. and 5:00 p.m. A copy of the RFP may be picked up at the GSA Office upon registration with GSA. GSA recommends that any and all prospective offerors register by submitting to GSA the Acknowledgement of Receipt Form included as an Attachment to this RFP. GSA shall not be liable for failure to provide notice(s) or addenda to any prospective offerors who did not submit an Acknowledgement of Receipt Form.

A Pre-Proposal Conference will be held at GSA’s Conference Room located at 148 Route 1 Marine Corps Drive, Piti, Guam 96915 on Monday, March 28, 2016, at, 10:00 a.m. (Chamorro Standard Time (ChST)), followed by a site inspection or site visit right after the pre-proposal conference.

To be considered, Offerors must deliver in a sealed package to the address below prior to the date and time stated: 1) one original and four copies of their proposal prepared in accordance with the instructions set forth in this RFP; and 2) all other documents and information required by the RFP. The outside of the sealed envelope or package must be labeled “Commissary Concessionary for Department of Corrections Proposal,” with the RFP No., the Offeror’s name and showing the Due Date and Time of the Proposal submission date.

Deliver proposals to:

By Hand Delivery:  
General Services Agency, Guam  
148 Route 1 Marine Corps Dr.  
Piti, Guam 96915  
Attn: Claudia S. Acfalle

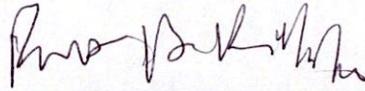
By Mail:  
General Services Agency  
148 Marine Corps Drive  
Piti, Guam 96915  
Attn: Claudia S. Acfalle

**PROPOSALS MUST BE RECEIVED BY GSA NO LATER THAN  
3:00 PM, Monday, April 04, 2016 (ChST)**

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Late proposals will not be considered. The submission of a proposal by any Offeror does not in any way commit GSA to enter into an agreement with that offeror, or any other offeror. GSA reserves the right to reject any or all proposals, to advertise for new proposals or to cancel the RFP. For further information please contact Ms. Anita T. Cruz, Buyer Supervisor at [anita.cruz@gsadoa.guam.gov](mailto:anita.cruz@gsadoa.guam.gov).



CLAUDIA S. ACFALLE  
Chief Procurement Officer

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## OVERVIEW OF PROJECT SCOPE

Proposals are solicited for providing a full range of Commissary services for prisoners, the integration of a Point of Sale (POS) system shall be incorporated in any and all operations of the Department of Corrections (DOC) Commissary activities. Designated DOC Officer-In-Charge (OIC) shall have total access to the POS or any other financial management system to monitor and ensure compliance of existing policies in relation to the collection, disbursement, and accountability of funds collected. This contract is for an initial Term of five (5) years on an EXCLUSIVE basis, with one (1) option by DOC to extend the term for up to five (5) years on a NON-EXCLUSIVE basis, not to exceed a period of ten (10) years.

<b>KEY ELEMENTS OF THE RFP PROCESS</b>
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<u>ELEMENT</u>	<u>DESCRIPTION</u>
<b>Schedule</b>	GSA has adopted the following schedule of events for this RFP. This schedule is subject to change at the sole discretion of GSA and Offerors will be notified of any changes by an amendment to this RFP. All times are Chamorro Standard Time (ChST).
<b>Event</b>	<b>Date</b>
RFP Issue Date	Wednesday, March 23, 2016
Pre-Proposal Conference and Tour	Monday, March 28, 2016 at 10:00 a.m. Meet at GSA Conference Room; site inspection to follow immediately after.
Deadline for Receipt of Written Questions	Friday, April 01, 2016 at 4:00 p.m.
Proposal Due Date and Time	Monday, April 04, 2016 at 3:00 p.m.
Interviews with Proposers	Offerors will be notified
Notice of Award	Upon completion of negotiation process
<b>Minimum Concession Fee</b>	Offeror's shall include in their proposals, their proposed percentage rate for each Contract Year of the initial term, which shall be a percentage of Concessionaire's Gross Revenues. Such Concession Fee percentage rate shall be a rate greater than or equal to 45% of Gross Revenues or a flat monthly rate of \$20,000.00, whichever is higher. DOC is not required to select the proposal with the highest projected compensation to DOC. The actual Concession Fee to be paid by the successful offeror is subject to negotiations.

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<u>ELEMENT</u>	<u>DESCRIPTION</u>
<b>Proposal Guaranty</b>	Each proposal shall be accompanied by a Proposal Guaranty in the amount of Ten Thousand U.S. Dollars (\$10,000) in a form of bank cashier's or bank certified check payable to Treasurer of Guam. Cash and other types of checks will not be accepted. Such Proposal Guaranty shall be submitted with the understanding that it will guarantee that the Offeror will not withdraw its proposal for a period of one hundred twenty (120) days after the scheduled Proposal Due Date and Time and that if selected, the successful Offeror will commence negotiations with GSA.
<b>Minimum Qualifications</b>	Offerors must have a minimum of five (5) years of substantial, continuous and recent experience in the development, operation, and management of retail and/or wholesale business. Offerors must have at least five (5) years of experience in doing business with prison environment.
<b>Term</b>	Initial Term of five (5) years on an EXCLUSIVE basis, with one (1) option by DOC to extend the term for up to five (5) years on a NON-EXCLUSIVE basis, not to exceed a period of ten (10) years.
<b>Definitions</b>	Capitalized terms not otherwise defined in the RFP shall have such meaning as is set forth in the Draft Concession Agreement. (Attachment C)

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**SECTION 1**  
**SCHEDULE OF EVENTS**

GSA has adopted the following schedule of events for this RFP. This schedule is subject to change at the sole discretion of GSA and offerors will be notified of any changes by an amendments to this RFP. All times are Chamorro Standard Time (ChST).

<b><u>EVENT</u></b>	<b><u>DATE</u></b>
RFP Issue Date	Wednesday, March 23, 2016
Mandatory Pre-Proposal Conference And site inspection	Monday, March 28, 2016 at 10:00 a.m. Meet GSA Conference Room; site inspection to follow immediately after.
Deadline for Receipt of Written Questions	Friday, April 01, 2016 at 4:00 p.m.
Proposal Due Date	Monday, April 04, 2016 at 3:00 p.m.
Interviews with Offerors	Offerors will be notified

## GENERAL INFORMATION

### 2.1. PROJECT OVERVIEW

Proposals are solicited for providing a full range of Commissary services for prisoners, the integration of a Point of Sale (POS) system shall be incorporated in any and all operations of the Department of Corrections (DOC) Commissary activities. Designated DOC Officer-In-Charge (OIC) shall have total access to the POS or any other financial management system to monitor and ensure compliance of existing policies in relation to the collection, disbursement, and accountability of funds collected. This contract is for an initial Term of five (5) years on an EXCLUSIVE basis, with one (1) option by DOC to extend the term for up to five (5) years on a NON-EXCLUSIVE basis.

### 2.2. SINGLE POINT OF CONTACT

From the date this RFP is issued until final award, **Offerors shall not communicate with any DOC staff, officials regarding this RFP**, except for the single point of contact for this RFP. Any unauthorized contact may disqualify the Offeror from further consideration. Contact information for the single point of contact is as follows:

Anita T. Cruz  
Buyer Supervisor  
General Services Agency  
148 Route 1 Marine Corps Drive  
Piti, Guam 96915

or

Tianna Sarrosa  
Buyer  
General Services Agency  
148 Route 1 Marine Corps Dr  
Piti, Guam 96915

Tel: (671) 475-1713

Fax: (671) 475-1727

Email: [anita.cruz@gsadoa.guam.gov](mailto:anita.cruz@gsadoa.guam.gov)

Tel: (671) 475-1713

Fax: (671) 475-1727

Email: [tiaanna.sarrosa@gsadoa.guam.gov](mailto:tiaanna.sarrosa@gsadoa.guam.gov)

### 2.3. RFP PACKAGE

Please review the RFP upon receipt to ensure that you have in your possession all of the necessary documents. If you find that certain required documents are missing, please contact the single point of contact to obtain any missing documents. GSA will not be bound by any oral instructions or information given that is not contained in this Request for Proposals or any future amendment issued. All capitalized terms shall have the meanings set forth in the attached draft Concession Agreement, unless otherwise defined in this RFP.

### 2.4. COMPLETENESS OF PROPOSALS

Selection and award will be based on the information contained in the proposal. Proposals may not include references to information located elsewhere, such as Internet websites or libraries, unless specifically requested by GSA.

2.5. **FAILURE TO COMPLY WITH INSTRUCTIONS**

Offerors failing to comply with the instructions set forth in this RFP may be subject to point deductions. GSA may also choose to not evaluate, may deem non-responsive, and/or may disqualify from further consideration any proposals that do not follow the required proposal format, are difficult to understand, are difficult to read, or are missing any requested information.

2.6. **RECEIPT/OPENING OF PROPOSALS**

Proposals shall not be opened publicly, and shall be opened in the presence of two or more procurement officials. Proposals and modifications shall be time-stamped upon receipt and held in a secure place until the established due date. After the date established for receipt of proposals, a Register of Proposals shall be prepared which shall include for all proposals the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the supply, service, or item offered. The Register of Proposals shall be opened to public inspection only after award of the contract.

2.7. **CLASSIFICATION OF PROPOSALS AS RESPONSIVE OR NON-RESPONSIVE**

All proposals will initially be classified as either “responsive” or “non-responsive”. Proposals may be found non-responsive any time during the evaluation process or contract negotiation if any of the required information is not provided; the submitted price is found to be excessive or inadequate as measured by criteria stated in the RFP; or the proposal is not within the plans and specifications described and required in the RFP. If a proposal is found to be non-responsive, it will not be considered further.

2.8. **DETERMINATION OF RESPONSIBILITY**

GSA will determine whether an offeror has met the standards of responsibility. Such a determination may be made at any time during the evaluation process and through contract negotiation if information surfaces that would result in a determination of non-responsibility. If an offeror is found non-responsible, the determination must be in writing, made a part of the procurement file and issued to the affected offeror.

2.9. **GSA’S RIGHTS RESERVED**

While GSA has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes a commitment by GSA to award and execute a contract. Upon a determination such actions would be in its best interest, GSA, in its sole discretion, reserves the right to:

- Cancel or terminate this RFP;
- Reject any or all proposals received in response to this RFP;
- Waive any undesirable, inconsequential, or inconsistent provisions of this RFP which would not have significant impact on any proposal;

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- Waive any minor informalities in proposals received, or have them corrected by the offeror in accordance with applicable statutes and or regulations;
- Not award if it is in the best interest of GSA not to proceed with contract execution;

#### 2.10. **CONFIDENTIALITY**

In accordance with Guam Procurement Regulations § 3114(h)(2), offerors may identify trade secrets and other proprietary data contained in their proposals. If the offeror selected for award has requested in writing the nondisclosure of trade secrets and other proprietary data so identified, GSA shall examine the request to determine its validity prior to entering into negotiations. If the parties do not agree as to the disclosure of data, GSA shall inform the offeror in writing what portion of the proposal will be disclosed and that, unless the offeror withdraws the proposal or protests under 5 G.C.A. Chapter 5 Article 9 the proposal will be so disclosed.

#### 2.11. **DEBARMENT**

The offeror certifies, by submitting its proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If a offeror cannot certify this statement, attach a written explanation for review by the GSA.

#### 2.12. **TAXES**

Offerors are cautioned that they are subject to Guam Business Privilege Taxes and Guam Income Taxes and the selected offeror shall be solely responsible for ensuring that it complies with all applicable tax laws. Specific information regarding taxes may be obtained from the Director of Revenue and Taxation.

#### 2.13. **LICENSING**

Offerors are cautioned that they are subject to Guam Licensing laws and the selected offeror shall be solely responsible for ensuring that it complies with all applicable licensing laws. Specific information on licenses may be obtained from the Director of Revenue and Taxation.

#### 2.14. **CONTRACT**

2.14.1. **Concession Agreement.** The term of the Commissary Concession Agreement shall be exclusive for an initial term of five (5) years with one (1) option to extend at DOC's discretion for up to five (5) years on a non-exclusive basis, not to exceed a total term of ten (10) years. The right to operate a concession shall not be exclusive at the DOC, but Concessionaire shall have the sole and exclusive right, for the Initial Term of the Concession Agreement, to provide the Service (as defined in the Concession Agreement) within the DOC building. During any Extended Term and until expiration or termination of the concession agreement, Concessionaire shall have the continued right to provide the Service, but on a non-exclusive basis, and DOC expressly reserves the right to enter into other commercial advertising concession agreements during that time period. The draft form of the Concession Agreement

intended to be awarded is included as **Attachment C**. The form Concession Agreement is subject to change and negotiation.

2.15. **SECURITY DEPOSIT**

Upon successful negotiation and execution of the Concession Agreement, the Concessionaire shall furnish to GSA, at Concessionaire's sole cost and expense, a security deposit in the amount of \$25,000.00. The security deposit shall be submitted via cashier's or certified check. The Security Deposit shall be security for the full, faithful, and prompt performance of and compliance with, on the part of the Concessionaire, all of the provisions, terms, and conditions of the Concession Agreement.

2.16. **INSURANCE**

The successful offeror shall be required to maintain such insurance as is set forth in the draft Concession Agreement included as **Attachment C**.

2.17. **SUBCONTRACTS**

All subcontractors are subject to the approval of DOC. The successful offeror shall be responsible to DOC for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly or indirectly by the successful offeror. Further, nothing contained within this document or any contract documents created as a result of any contract awards derived from this RFP shall create any contractual relationships between any subcontractor and DOC.

2.18. **REPRESENTATIONS, ETC.**

In making a proposal, the Offeror expressly offers to assume all the obligations and liabilities contained in this RFP, including the representations and warranties made by the "Concessionaire" in the Concession Agreement.

**SECTION 3**  
**INSTRUCTIONS & PROCEDURES**

3.1. **AVAILABILITY**

This RFP is available for download from GSA's website at [www.gsa.doa.guam.gov](http://www.gsa.doa.guam.gov) and public inspection at GSA's Office located at 148 Route 1 Marine Corps Drive, Piti, Guam, 96915, Monday through Friday, excluding holidays, between 8:00 a.m. and 5:00 p.m. A copy of the RFP may be picked up at the GSA Control Office upon registration with GSA and receipt of payment of a non-refundable fee of TEN DOLLOARS (\$10.00) payable in cash, or by Cashier's or certified check payable to the Treasurer of Guam. GSA recommends that any and all prospective Offerors register by submitting to GSA the Acknowledgement of Receipt Form included as an Attachment to this IFB. GSA shall not be liable for failure to provide notice(s) or amendments to any prospective offerors who did not submit an Acknowledgement of Receipt Form.

3.2. **AMENDMENTS**

GSA reserves all rights to revise or amend this RFP prior to the date set for submission of proposals. Such revisions and amendments, if any, will be announced by an amendment to this RFP and shall be identified as such. The amendment shall refer to the portions of the RFP it amends. Amendments shall be sent to all prospective offerors who have submitted the Acknowledgement of Receipt Form to GSA and shall also be made available on GSA's website. All prospective offerors who have submitted the Acknowledgement of Receipt Form to GSA must acknowledge receipt of all amendments issued.

3.3. **PRE-PROPOSAL QUESTIONS AND CONFERENCE**

3.3.1. **Pre-Proposal Questions.** Prospective offerors with questions or requiring clarification or interpretation of any section of this RFP must address their questions in writing or via e-mail to the Single Point of Contact identified above on or before the deadline set forth in the Schedule of Events. Each question must provide clear reference to the section, page, and item of this RFP in question. Questions received after the deadline may not be considered.

3.3.2. **GSA's Response.** GSA will provide an official written answer to all questions received by written amendment if required. Any other form of interpretation, correction, or change to this RFP will not be binding upon the GSA. Any written amendment will be forwarded to all prospective offerors who submitted an Acknowledgement of Receipt Form by the close of business on the date of issuance of GSA's response. Prospective offerors must acknowledge receipt of all amendments upon receipt and with their proposals.

3.3.3. **Pre-proposal Conferences.** Pre-proposal conferences will be permitted at GSA's discretion any time prior to the deadline for submission of proposals. The conferences will be conducted only to explain the procurement requirements for this Request for Proposal. Notice of

any pre-proposal conference will be provided to all entities or individuals who have picked-up an RFP and submitted an Acknowledgement of Receipt Form. GSA will notify all prospective offerors in writing via an amendment to this RFP of any substantive clarification provided in response to any inquiry raised during the pre-proposal conference. A mandatory pre-proposal conference is currently scheduled as set forth in the Schedule of Events.

3.3.4. **Inspection of the Facility.** Offerors will have an opportunity to inspect the Concession Area at the DOC building, following the Mandatory Pre-Proposal Conference. Statements by any GSA representative made before or during the inspection shall not be a part of this procurement and may not be relied upon by the offeror.

### 3.4. **PROPOSAL GUARANTY**

3.4.1. Each proposal shall be accompanied by a Proposal Guaranty as follows: cashier's or certified check made payable to Treasurer of Guam in the amount of Ten Thousand U.S. Dollars (US\$10,000.00). Cash will not be accepted in lieu thereof. Such Proposal Guaranty shall be submitted with the understanding that it will guarantee that the offeror will not withdraw its proposal for a period of one hundred twenty (120) days after the scheduled Proposal Due Date, and that if the offeror is selected to commence negotiations with GSA, the offeror will commence such negotiations and if negotiations are successful, will sign the Concession Agreement (**Attachment C**), without delay. In the event that a proposal is withdrawn within said one hundred twenty (120) day period and/or the offeror selected to commence contract negotiations with GSA fails or refuses to commence negotiations and/or following successful negotiations, the selected offeror fails to execute the Concession Agreement without delay, the offeror shall be liable to GSA in the full amount of the Proposal Guaranty for damages to GSA for the delay and additional work and costs associated therewith. The Proposal Guaranty will be returned to those unsuccessful proposer(s) upon expiration of said one hundred twenty (120) days or upon execution of the Agreement with the successful offeror, whichever is earlier.

3.4.2. The successful offeror's failure or refusal to execute the Concession Agreement as provided herein, provide all other required information and other materials to GSA, or meet and/or perform all other obligations, including, without limitation, providing the Security Deposit, within sixty (60) days after of receipt of the written Notice of Intent to Award, unless otherwise extended by GSA in writing, shall be just cause for cancellation of the intent to award and forfeiture of the Proposal Guaranty submitted by the selected offeror and any interest thereon, without the necessity of any further action on the part of GSA, not as a penalty, but as liquidated damages. Offerors acknowledge that GSA has incurred costs and will incur additional costs and damages by reason of such default and that such damages are difficult to determine.

3.4.3. Upon failure or refusal of the successful offeror to execute the Concession Agreement GSA reserves the right to accept the Proposal of any other Offeror. Neither the exercise of such right by GSA nor the failure to do so shall operate as a release by GSA of the defaulting Offeror as to any claims or rights that GSA may have against such defaulting Offeror pursuant to the preceding paragraphs or otherwise.

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### 3.5. **PROPOSALS**

3.5.1. **General.** Proposals must be in writing, signed in ink, and must include all required information. The Proposal must be signed on behalf of the offeror and acknowledged as specified. Offerors must clearly mark one proposal as "ORIGINAL", provide four (4) hard copies. The original and each hard copy must be separately bound. Erasures or other changes in a proposal must be explained or noted over the signature of the offeror. Proposals containing any conditions, omissions, unexplained erasures or alterations or items not called for in the RFP, or irregularities of any kind may be rejected by GSA as being non-compliant. The original and copies must be placed in a sealed package clearly addressed to the attention of the Chief Procurement Officer and labeled with the offeror's name and address and the RFP Number and name.

3.5.2. **Modification of Proposals.** Proposals may be modified at any time prior to the conclusion of discussions.

3.5.3. **No Late Proposals.** Proposals must be received at the receptionist's desk of GSA's Control Office by the Proposal Due Date set forth in the Schedule of Events. Postmarks will not be considered in judging the timeliness of submissions. Oral, email or facsimile proposals will not be accepted. Regardless of cause, late proposals will not be accepted and will automatically be disqualified from further consideration. It shall be the offeror's sole risk to assure delivery at the receptionist's desk at the designated office by the designated time. Late proposals will not be opened and may be returned to the offeror at the expense of the offeror or destroyed if requested.

3.5.4. **GSA Not Responsible for Preparation Costs.** The costs for developing and delivering proposals in response to this RFP and any subsequent presentations of the proposal as requested by GSA shall be at the sole cost and expense of the offeror. GSA is not liable for any expense incurred by the offeror in the preparation, delivery, and/or presentation of its proposal or any other costs incurred by the offeror.

3.5.5. **All Timely Submitted Materials Become GSA Property.** All materials submitted in response to this RFP become the property of GSA and shall be appended to any formal documentation, which would further define or expand any contractual relationship between GSA and the successful offeror resulting from this RFP process.

3.5.6. **Rejection of Proposals.** Any proposal submitted in response to this RFP may be rejected in whole or in part when it is in the best interests of GSA or the government of Guam in accordance with Guam Procurement Regulations § 3115(e).

### 3.6. **MINIMUM QUALIFICATIONS**

3.6.1. **Minimum.** Offerors must have a minimum of five (5) years of substantial, continuous and recent experience in the development, operation, and management of retail and/or wholesale business. Offerors must have at least five (5) years of experience in doing business with prison environment.

3.6.1.1 Minimum Gross Sales Required. Said business must have had minimum gross sales of at least two hundred thousand dollars (\$200,000.00) annually, for each of the qualifying years.

3.6.1.2 Franchise. Franchise offerors must provide the required information on financial capabilities, franchise operations, and may include information on the operations of the franchisor. Franchisees shall include a letter from franchisor granting approval to offer Commissary services for the Department of Corrections.

3.6.1.3 The abilities, qualifications and experience of key person(s) who are proposed to manage the Commissary, if awarded, in a form of a resume or whatever is deemed appropriate.

3.6.1.4 A plan giving as much detail as is practical explaining how the Commissary will be managed and operated to include the incorporation of a training program for the employment of a prison workforce.

3.6.1.5 Other Criteria. Each proposal will be reviewed for other criteria such as offeror's other relevant experience and history at wholesale or retail store operations, and offeror shall detail location(s) outlets or places of business, number of employees, landlord(s), accountant's reports and GRT filing reports confirming revenues, and other relevant information, including letters of recommendation from current landlord(s), if applicable.

3.6.2. **Evaluation Committee.** Upon opening the proposals received in response to this RFP, the Chief Procurement Officer of GSA will establish an evaluation committee to hold any necessary discussions with offerors and to review and evaluate all timely proposals received.

3.6.3. **Discussions.** In accordance with the Guam Procurement Regulations, the evaluation committee may in its discretion conduct discussions with any Offeror. The purposes of such discussions shall be to clarify and/or explain parts of the proposal. The discussions will be recorded. In conducting discussions there shall be no disclosure of any information derived from proposals submitted by any of the offerors.

3.6.4. **Evaluation of Proposals.** Before fully evaluating the technical merits of the proposal, the procurement officials will first determine whether the offeror satisfies the minimum qualifications described in this RFP, if any. Failure to comply with or satisfy the minimum qualifications or requirements shall result in disqualification or rejection of the proposal. The GSA may waive minor irregularities whenever it is deemed to be in the best interest of DOC. The evaluation committee will review and score written proposals based on the Evaluation Criteria identified in Section 5. The evaluation committee may utilize other sources for technical assistance and guidance.

3.6.5. **Sources of Information.** In the process of evaluation, GSA may acquire and use, to the extent deemed necessary, information obtained from the following sources:

- i. The Offeror, including representations and other data contained in Offeror's Proposal, or other information provided by offeror.
- ii. Other information available to GSA, including financial data and records concerning Offeror's performance.
- iii. Publications, including credit ratings, trade and financial journals or reports.
- iv. Other sources, including banks or other financial companies; state, county and municipal departments and agencies.
- v. The results of background investigations of Offerors made to verify information furnished or to secure additional information GSA may deem necessary or desirable. In addition, GSA reserves the right to audit or to appoint a competent representative to audit the books and records of any Offeror in order to verify its financial responsibility.

3.6.6 **Selection of the Best Qualified Offerors and Award.** After completion of the Discussion and Evaluation of Proposals phases, the evaluation committee shall select, in the order of their respective qualification ranking, no fewer than three (3) offerors (or such lesser number if less than three (3) acceptable proposals were submitted) deemed to be the best qualified, most qualified and qualified. The recommended ranking and request to award to the best qualified offeror will be presented to the Director of DOC for approval subject to successful contract negotiations. If approved, GSA shall commence negotiations of an agreement. The agreement will be similar to the Draft Concession Agreement attached hereto (**Attachment C**), but modified to incorporate provisions from this RFP, the successful offeror's proposal, and other terms and conditions that may be mutually agreed upon by GSA and the successful offeror. If negotiations are successful and all contract terms are agreed upon with the best qualified offeror, award will be made to that offeror. If negotiations fail with the best qualified offeror, GSA may enter into negotiations with the most qualified offeror, and so on, as provided in the Guam Procurement Regulations.

### 3.7. **REQUIRED AFFIDAVITS.**

Each offeror is required to submit the affidavits and assurances. Failure to include said affidavits and assurances shall render a proposal non-responsive.

3.7.1. **Disclosure of major shareholders per 5 GCA § 5233 (Attachment A-1).** As a condition of this RFP, any partnership, sole proprietorship or corporation doing business with the government of Guam shall submit an affidavit executed under oath that lists the name and address of any person who has held more than ten percent (10%) of the outstanding interest or shares in said partnership, sole proprietorship or corporation at any time during the twelve (12) month period

immediately preceding submission of a proposal. The affidavit shall contain the number of shares or the percentage of all assets of such partnership, sole proprietorship or corporation which have been held by each such person during the twelve (12) month period. In addition, the affidavit shall contain the name and address of any person who has received or is entitled to receive a commission, gratuity or other compensation for procuring or assisting in obtaining business related to this RFP for the offeror and shall also contain the amounts of any such commission, gratuity or other compensation. The affidavit shall be open and available to the public for inspection and copying.

3.7.2. **Certification of Independent Price Determination per 2 GAR § 3126 (Attachment A-2)**. By submitting an offer, the offeror certifies that the price submitted was independently arrived at without collusion.

3.7.3. **Representation Regarding Gratuities and Kickbacks per 5 GCA § 5630 (Attachment A-3)**. **Gratuities**. It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract; or to any solicitation or proposal therefor. **Kickbacks**. It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

3.7.4. **Prohibition against Contingent Fees per 2 GAR § 11108 (Attachment A-4)**. It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a government contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

3.7.5. **Representation regarding Ethical Standards per 2 GAR § 11103 (Attachment A-5)**. The bidder, offeror, or contractor represents that it has not knowingly influenced and promises that it will not knowingly influence a government employee to breach any of the ethical standards set forth in 5 GCA Chapter 5 Article 11 (Ethics in Public Contracting) of the Guam Procurement Act and in Chapter 11 of the Guam Procurement Regulations.

3.7.6. **Wage Determination per 5 GCA § 5801 (Attachment A-6)**. In such cases where the government of Guam enters into contractual arrangements with a sole proprietorship, a partnership or a corporation ('contractor') for the provision of a service to the government of Guam, and in such cases where the contractor employs a person(s) whose purpose, in whole or in part, is

the direct delivery of service contracted by the government of Guam, then the contractor shall pay such employee(s) in accordance with the Wage Determination for Guam and the Northern Mariana Islands issued and promulgated by the U.S. Department of Labor for such labor as is employed in the direct delivery of contract deliverables to the government of Guam. The Wage Determination most recently issued by the U.S. Department of Labor at the time a contract is awarded to a contractor by the government of Guam shall be used to determine wages, which shall be paid to employees pursuant to this Article. Should any contract contain a renewal clause, then at the time of renewal adjustments, there shall be made stipulations contained in that contract for applying the Wage Determination, as required by this Article, so that the Wage Determination promulgated by the U.S. Department of Labor on a date most recent to the renewal date shall apply.

3.8. **PROHIBITION AGAINST EMPLOYMENT OF SEX OFFENDERS**

Pursuant to 5 GCA § 5253,

(a) No person convicted of a sex offense under the provisions of Chapter 25 of Title 9 Guam Code Annotated, or an offense as defined in Article 2 of Chapter 28, Title 9 GCA in Guam, or an offense in any jurisdiction which includes, at a minimum, all of the elements of said offenses, or who is listed on the Sex Offender Registry, and who is employed by a business contracted to perform services for an agency or instrumentality of the government of Guam, shall work for his employer on the property of the government of Guam other than a public highway.

(b) All contracts for services to agencies listed herein shall include the following provisions: (1) warranties that no person providing services on behalf of the contractor has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry; and (2) that if any person providing services on behalf of the contractor is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry, that such person will be immediately removed from working at said agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction.

**SECTION 4**  
**CONCESSION OPPORTUNITY**

4.1. **SCOPE OF CONCESSION OPPORTUNITY**

a. The successful offeror will be solely responsible for the provision of all activities, personnel, equipment, furnishings and other items, including without limitation, the maintenance of the concession area pursuant to the terms and conditions specified in the Concession Agreement and the objectives of this RFP.

b. Successful Offeror is responsible for providing a full range of Commissary services for prisoners, the integration of a Point of Sale (POS) system shall be incorporated in any and all operations of the DOC Commissary activities. Designated DOC Officer-In-Charge (OIC) shall have total access to the POS or any other financial management system to monitor and ensure compliance of existing policies in relation to the collection, disbursement, and accountability of funds collected.

c. The covenant between DOC and the successful offeror should provide for a fixed rate of return combined with a sales growth incentive.

d. All articles provided for sale shall be set at a price that is high enough to allow the DOC Commissary to achieve a reasonable profit margin and yet low enough to keep all merchandise affordable and competitive with other local vendors within the municipality of Mangilao. Even though there is no hard and fast rule for pricing merchandise, most retailers use a 50 percent markup, known in the trade as keystone. What this means, in plain language, is doubling your cost to establish the retail price. Because markup is figured as a percentage of the sales price, doubling the cost means a 50 percent markup. For example, if your cost on an item is \$1, your selling price will be \$1.50. Fifty percent of \$2 is \$1, which is your markup.

e. The value of services shall be measured periodically by the Best Value Practice incorporating the four C's;

1. Challenge – is the performance high enough? Why and how is the service provided?  
Do the services address security concerns? Can services be delivered differently?  
And do inmates/detainees and the Department want such services?
2. Compare – How does the services and financial performances compare with other correctional institutions?
3. Consult – How does the Commissary seek views of stakeholders about the services it provides?
4. Compete – How does Commissary operations secure efficient and effective services?  
Are services provided are of appropriate quality and affordability for inmates/detainees?

f. The successful offeror is prohibited in providing three nutritional meals a day that have already been awarded through a competitive Food Service Contract. All other food stuff outside the three daily or special meals contained in the Food Service Contract may be provided by the successful offeror.

g. The successful offeror is also restricted from providing any commodity or services prohibited by law or DOC policies.

h. All commodities and services provided by the successful offeror must be preapproved by the Director of Corrections or by his/her designee.

i. The existing Program for prisoners to obtain basic needs such as under wears, socks, clothing, shoes, ect., from nonprofit organizations such as the Salvation Army shall remain in effect.

j. Other than initial incoming of items from family members or associates of prisoners, the only items that will be authorized will be items approved in the initial in-processing of all pretrial detainees and inmates. All items thereafter which are not provided by DOC shall be obtain through the Commissary.

k. The successful offeror shall be subjected to all safety and security policies and procedures established by DOC.

l. Utilization of an electronic accounting system to monitor and track all Commissary activities. All Commissary transactions including but not limited to collection and accountability of funds collected from prisoners, inventory, sales, profits, etc.

m. All necessary equipment and or supplies needed to establish a digital accounting system and POS system shall be the responsibility of the successful offeror.

n. All fees or proceeds due to the Department of Corrections shall be deposited in the Prison Industries Revolving Fund established by law with the Department of Administration (DOA) by the successful offeror.

o. The successful offeror shall maintain accurate and concise accounting records of all the transactions of the DOC Commissary and such books and records shall be subject for inspection semiannually by the DOC Commissary OIC.

p. All activities of the DOC Commissary may also be subjected to an annual audit by a certified auditor selected by the Department of Corrections or by the Public Auditor.

q. Any wages for inmate labor employed by the successful offeror shall be deposited at DOA where individual accounts will be established per prisoner participating in the Prison Industries Program.

r. No prisoner is to make any transaction by cash or credit (buy & pay later). DOC shall have a monthly maximum allowable allowance of each prisoner of three hundred dollars (\$300.00). The deposit of funds for each prisoner shall be made by family, friends, or wages earned. An account for each prisoner shall be established and a monthly itemized balance of such accounts shall be provided to the DOC Commissary OIC. The accountability of each prisoner account shall also be maintained in the DOC "Server" which is housed and maintained by the Bureau of Information Technology (BIT) and can be accessed for inspection and review at any time by the DOC Commissary OIC.

s. The deposits into prisoner allowances cited in item "r" above shall be established and maintained by DOA. In the event that there is a delay in establishing these accounts with DOA, the successful offeror may establish such accounts at a Bank doing business on Guam provided that all bank statements are provided to DOC on a monthly basis. In addition, a copy of the receipts provided to all depositors into the individual prisoner account shall also be provide to the DOC Commissary OIC where a such deposits will also be individually tracked, recorded and compared with deposits made into the local Bank to ensure transparency.

t. The "maximum allowable allowance" will not be reduced during the duration of this award, however, the Director reserves the right to increase the "maximum allowable allowance" per prisoner during this award period.

u. Any prisoner released from confinement at DOC shall be reimbursed the remaining balance in their deposited allowances without penalty from the successful offeror.

v. Any security violation or financial accountability discrepancies shall not only be subject to the possible termination of this agreement but may also be subjected to a criminal prosecution.

w. Title and Risk of Loss of any goods or services shall not pass to the Department of Corrections.

x. Proposal must specify the number of calendar days the commodities ordered by prisoners under normal conditions may be delivered. Failure to specify will be considered reason enough to cause the offer to be disregarded. Required days for delivery quoted will be given consideration in awarding orders. If deliveries of items are not made within a reasonable closeness to the time of the specified delivery in the RFP, the entire agreement may be canceled.

#### 4.2 **TERM.**

The Concession Agreement shall have an Initial Term of five (5) years on an EXCLUSIVE basis, with one (1) option by DOC to extend the term for up to five (5) years on a NON-EXCLUSIVE basis, not to exceed a period of ten (10) years.

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#### 4.3 CONCESSION AREA.

4.3.1. The Premises covered under the Agreement include Storage Space, the Concession Area.

4.3.2. The Department reserves the right to recapture all or a portion of the Premises during the term of the Agreement DOC, in its sole discretion, determines that all or such portion is required for public facilities, utilities, or other uses directly related to the efficient operation. In such event, DOC shall either offer substitute space or make a proportionate adjustment to the rent, effective on the date of such recapture. Nothing in this paragraph shall be deemed to require that DOC provide substitute space which shall be in the sole discretion of DOC.

#### 4.4 INSPECTION AND CONDITION OF FACILITIES

DOC shall deliver the Premises to the Successful Offeror in an “as is” condition. By submitting a Proposal, Offeror is deemed to agree that the Premises has been inspected and is in a condition suitable for the provision of the Service. The Offeror agrees to accept the as of date of delivery without any further recourse to DOC in regard thereto.

4.4.1. Contribution by DOC. DOC will consider investment plans by successful offeror that include DOC contributing a portion of the Minimum Investment Amount in exchange for a higher Concession Fee.

4.4.2. Existing Fixtures and Equipment. The successful offeror, may, with the prior written consent of DOC, renovate, refurbish, replace, and/or remove any of DOC’s existing equipment or fixtures in the Concession Area as needed to implement successful offeror’s Development Plan.

#### 4.5 PROPOSED CONCESSION FEE

Offerors shall include in their proposals, their proposed percentage rate for each Contract Year of the Initial Term, which shall be a percentage of Concessionaire’s Gross Revenues. Such Concession Fee percentage rate shall be a rate greater than or equal to 45% of Gross Revenues or a flat monthly rate of \$20,000.00, whichever is higher. DOC is not required to select the proposal with the highest projected compensation to DOC. The actual Concession Fee to be paid by the successful offeror is subject to negotiation.

#### 4.6 FAILURE TO OBTAIN LICENSES, PERMITS, ETC.

If DOC determines, in its sole discretion, that successful offeror has failed to diligently and promptly apply for or pursue all required permits, licenses, and certificates or failed to obtain the permits, licenses, and certificates required to operate the Concession within sixty (60) calendar days of receipt of the Notice of Intent to Award, including any extension of time authorized by DOC, DOC may (i) withdraw the Notice of Intent to Award the Concession Agreement to the Successful Offeror and begin negotiations with the next most qualified offeror, or (ii) cancel the RFP without making an award, or (iii) take such other action as DOC shall determine appropriate.

#### **4.7 OPERATIONAL STANDARDS**

4.7.1. Advertisements, advertising copy, advertising materials and manners of commercial presentation (“Advertisements”) shall be subject to the reasonable approval of the DOC. The DOC shall provide written notice to Concessionaire of any disapproval of Advertisements within five (5) working days of submission of graphics sample by Concessionaire. Concessionaire shall not display any Advertisements reasonably disapproved by the Department. Concessionaire shall immediately remove from the Facility upon written demand of the Department, at Concessionaire’s sole cost and expense, any reasonably disapproved Advertisements. In the event that any so disapproved Advertisement is not removed promptly upon receipt of written demand, the Department may remove and store said Advertisement. The DOC shall not in any way be held responsible or liable for any damage to any Advertisement so removed.

4.7.2. The Concessionaire agrees to use the Assigned Areas solely for the commissary concessionaire purpose, and shall make good faith efforts in every proper manner to maintain the area.

#### **4.8 Performance Criteria.**

4.8.1. Performance Criteria include, but are not limited to the following:

4.8.1.1 Maintain a sales force;

4.8.1.2 Maintain staff and scheduling commensurate with facilities;

4.8.1.3 Offeror must identify a manager who will be the primary point of contact with DOC for aspects of management of the concession. The manager must be available for meetings with DOC management and staff during normal business hours.

4.8.2 Personnel must be available for emergency contact during all hours of DOC operation.

4.8.3 The successful offeror shall not demolish, modify or remove, in whole or in part, any fixture or without the prior written approval of DOC.

4.8.4 DOC reserves the right to inspect concessionaire area at any given time during normal business hours.

**REVISED**

*APRIL 15, 2016*

**SECTION 5**  
**EVALUATION CRITERIA**

All properly completed proposals will be reviewed by an evaluation committee, appointed by the DOC. The evaluation committee shall make a recommendation to the Chief Procurement Officer and the Director of DOC for approval of the ranking of proposals as to the best qualified offeror for contract negotiations. GSA, through the Director of DOC, may accept the recommendation and order negotiations with the best qualified offeror, or may reject the recommendation and order the re-issuance of another RFP.

The following criteria shall be considered by the evaluation committee in evaluating the proposals which have been assigned point values based on a 100 point scale:

- |  |    |
|--|----|
| a) Experience of Offeror and its Management and Personnel -- Offeror's successful experience in the ownership, management or operation of a retail or wholesale establishment or closely related business operations. An evaluation of the Offeror's current and past performance in providing comparable services. Experience of Offeror and those employees of the Offeror whom the Offeror certifies will have overall management supervision as well as those persons who will have major responsibilities in the control and management of the operation of the Concession. | 20 |
| b) Planning – A plan giving as much detail as is practical explaining how the Commissary will be managed and operated to include the incorporation of a training program for the employment of a prison workforce. Demonstrated ability of Offeror to promote programs, and plan to obtain maximum patronage from prison workforce. Offeror's plans for marketing and promoting the Concession and plans to satisfy DOC's performance criteria.  | 20 |
| c) Offeror experience and history at wholesale or retail store operation, and offeror shall detail location(s) outlets or places of business, number of employees, landlord(s), accountant's reports and GRT filing reports confirming revenues, and other relevant information, including letters of recommendation from current landlord(s).   | 10 |
| d) Management and Operations Plan -- Ability to effectively provide management and staff to oversee the operation of the concession on a day-to-day basis. Offerors must demonstrate the ability to promote, safety and security plans and management policies.  | 15 |

- e) Expected Sales and Revenues – Projected financial return to DOC based on the percentage fee offered and Offeror’s proven ability to maximize sales. 15
  
- f) Offeror’s professional capabilities, experience and understanding of an integrated Point of Sale (POS) system to be incorporated in all operational activities. Offeror’s experience in working with a POS or other financial management system to monitor and ensure compliance of existing policies in relation to the collection, disbursement, and accountability of funds collected. The financial condition of Offeror, and if relevant, any Controlling Party, and the ability to obtain adequate financing to perform those functions necessary for the Concession. Offeror’s community involvement. 20

TOTAL.....100 Points

In the process of evaluation, GSA may acquire and use, to the extent deemed necessary, information obtained from the following sources:

- The Offeror, including representations and other data contained in Offeror’s Proposal, or other information provided by Offeror.
- Other information available to GSA, including financial data and records concerning Offeror’s performance.
- Publications, including credit ratings, trade and financial journals or reports.
- Other sources, including banks or other financial companies; state, county and municipal departments and agencies.
- The results of background investigations of Offerors made to verify information furnished or to secure additional information GSA may deem necessary or desirable. In addition, GSA reserves the right to audit or to appoint a competent representative to audit the books and records of any Offeror in order to verify its financial responsibility.

# Section 6. Attachments

(Attachment A – Affidavits (A-1 through A-6))  
(Attachment B – Financial Statement Form)  
(Attachment C – Draft Agreement)

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*APRIL 15, 2016*

**AFFIDAVIT DISCLOSING OWNERSHIP and COMMISSION**

CITY IN \_\_\_\_\_ )  
 ) ss.  
 ISLAND OF GUAM )

A. I, the undersigned, being first duly sworn, depose and say that I am an authorized representative of the offeror and that [please check only one]:

[ ] The offeror is an individual or sole proprietor and owns the entire (100%) interest in the offering business.

[ ] The offeror is a corporation, partnership, joint venture, or association known as \_\_\_\_\_ [please state name of offeror company], and the persons, companies, partners, or joint ventures who have held more than 10% of the shares of interest in the offering business during the 365 days immediately preceding the submission date of the proposal are as follows [if none, please so state]

<u>Name</u>	<u>Address</u>	<u>% of Interest</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

B. Further, I say that the persons who have received or are entitled to receive a commission, gratuity or other compensation for procuring or assisting in obtaining business related to the bid or proposal for which this affidavit is submitted are as follows [if none, please so state]:

<u>Name</u>	<u>Address</u>	<u>Compensation</u>
_____	_____	_____

C. If the ownership of the offering business should change between the time this affidavit is made and the time an award is made or a contract is entered into, then I promise personally to update the disclosure required by 5 GCA §5233 by delivering another affidavit to the government.

\_\_\_\_\_  
 Signature of one of the following:  
 Offeror, if the offeror is an individual;  
 Partner, if the offeror is a partnership;  
 Officer, if the offeror is a corporation

Subscribed and sworn to before me  
 this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
 NOTARY PUBLIC  
 My commission expires \_\_\_\_\_

**REVISED**

*APRIL 15, 2016*









Eddie Baza Calvo  
Governor

**GENERAL SERVICES AGENCY**  
Government of Guam  
148 Route 1 Marine Drive Corp  
Piti, Guam 96915

Ray Tenorio  
Lt. Governor



Christine Baletto  
Director, Dept. of Admin.

Anishia Terlaje  
Deputy Director

**FORM E**

**DECLARATION RE COMPLIANCE WITH U.S. D.O.L. WAGE DETERMINATION**

Procurement No: \_\_\_\_\_  
**PURCHASE, INSTALLATION AND MAINTENANCE OF ACCESS CONTROL, INTRUSION DETECTION, AND  
CCTV SECURITY SYSTEMS (SECURE OUR SCHOOL SAFE ACT OF 2013)**

Name of Offeror Company: \_\_\_\_\_ hereby certifies under  
penalty of perjury:

- (1) That I am \_\_\_\_\_ (the offeror, a partner of the offeror, an officer of the offeror) making the bid or proposal in the foregoing identified procurement;
- (2) That I have read and understand the provisions of 5 GCA § 5801 and § 5802 which read:

**§ 5801. Wage Determination Established.**

In such cases where the government of Guam enters into contractual arrangements with a sole proprietorship, a partnership or a corporation ("contractor") for the provision of a service to the government of Guam, and in such cases where the contractor employs a person(s) whose purpose, in whole or in part, is the direct delivery of service contracted by the government of Guam, then the contractor shall pay such employee(s) in accordance with the Wage Determination for Guam and the Northern Mariana Islands issued and promulgated by the U.S. Department of Labor for such labor as is employed in the direct delivery of contract deliverables to the government of Guam.

The Wage Determination most recently issued by the U.S. Department of Labor at the time a contract is awarded to a contractor by the government of Guam shall be used to determine wages, which shall be paid to employees pursuant to this Article. Should any contract contain a renewal clause, then at the time of renewal adjustments, there shall be made stipulations contained in that contract for applying the Wage Determination, as required by this Article, so that the Wage Determination promulgated by the U.S. Department of Labor on a date most recent to the renewal date shall apply.

**§ 5802. Benefits.**

In addition to the Wage Determination detailed in this Article, any contract to which this Article applies shall also contain provisions mandating health and similar benefits for employees covered by this Article, such benefits having a minimum value as detailed in the Wage Determination issued and promulgated by the U.S. Department of Labor, and shall contain provisions guaranteeing a minimum of ten (10) paid holidays per annum per employee.

- (3) That the offeror is in full compliance with 5 GCA § 5801 and § 5802, as may be applicable to the procurement referenced herein;
- (4) That I have attached the most recent wage determination applicable to Guam issued by the U.S. Department of Labor. [INSTRUCTIONS – Please attach!]

\_\_\_\_\_  
Signature Date

**REVISED**

*APRIL 15, 2016*

WD 05-2147 (Rev.-18) was first posted on www.wdol.gov on 07/14/2015

REGISTER OF WAGE DETERMINATIONS UNDER  
THE SERVICE CONTRACT ACT  
By direction of the Secretary of Labor

U. S. DEPARTMENT OF LABOR  
EMPLOYMENT STANDARDS ADMINISTRATION  
WAGE AND HOUR DIVISION  
WASHINGTON D.C. 20210

Daniel W. Simms  
Director

Division of  
Wage Determinations

Wage Determination No.: 2005-2147  
Revision No.: 18  
Date Of Revision: 07/08/2015

Note: Executive Order (EO) 13658 establishes an hourly minimum wage of \$10.10 for 2015 that applies to all contracts subject to the Service Contract Act for which the solicitation is issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.10 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

States: Guam, Northern Marianas, Wake Island

Area: Guam Statewide  
Northern Marianas Statewide  
Wake Island Statewide

**\*\*Fringe Benefits Required Follow the Occupational Listing\*\***

OCCUPATION CODE - TITLE	FOOTNOTE	RATE
01000 - Administrative Support And Clerical Occupations		
01011 - Accounting Clerk I		12.50
01012 - Accounting Clerk II		13.53
01013 - Accounting Clerk III		15.59
01020 - Administrative Assistant		17.67
01040 - Court Reporter		15.38
01051 - Data Entry Operator I		10.48
01052 - Data Entry Operator II		11.99
01060 - Dispatcher, Motor Vehicle		13.06
01070 - Document Preparation Clerk		12.25
01090 - Duplicating Machine Operator		12.25
01111 - General Clerk I		10.29
01112 - General Clerk II		11.28
01113 - General Clerk III		12.32
01120 - Housing Referral Assistant		17.15
01141 - Messenger Courier		10.12
01191 - Order Clerk I		11.23
01192 - Order Clerk II		12.25
01261 - Personnel Assistant (Employment) I		14.33
01262 - Personnel Assistant (Employment) II		14.90
01263 - Personnel Assistant (Employment) III		16.48
01270 - Production Control Clerk		18.34
01280 - Receptionist		9.67
01290 - Rental Clerk		11.10
01300 - Scheduler, Maintenance		13.75
01311 - Secretary I		13.75
01312 - Secretary II		15.38
01313 - Secretary III		17.15
01320 - Service Order Dispatcher		11.57
01410 - Supply Technician		17.67
01420 - Survey Worker		15.26
01531 - Travel Clerk I		11.61
01532 - Travel Clerk II		12.57
01533 - Travel Clerk III		13.44
01611 - Word Processor I		12.25
01612 - Word Processor II		13.75
01613 - Word Processor III		15.38
05000 - Automotive Service Occupations		
05005 - Automobile Body Repairer, Fiberglass		13.34
05010 - Automotive Electrician		13.06
05040 - Automotive Glass Installer		12.10
05070 - Automotive Worker		12.10
05110 - Mobile Equipment Servicer		8.59

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05130 - Motor Equipment Metal Mechanic	13.06
05160 - Motor Equipment Metal Worker	12.10
05190 - Motor Vehicle Mechanic	13.06
05220 - Motor Vehicle Mechanic Helper	10.12
05250 - Motor Vehicle Upholstery Worker	12.10
05280 - Motor Vehicle Wrecker	12.10
05310 - Painter, Automotive	12.37
05340 - Radiator Repair Specialist	12.10
05370 - Tire Repairer	7.81
05400 - Transmission Repair Specialist	12.10
07000 - Food Preparation And Service Occupations	
07010 - Baker	10.47
07041 - Cook I	9.54
07042 - Cook II	11.78
07070 - Dishwasher	7.25
07130 - Food Service Worker	7.78
07210 - Meat Cutter	11.86
07260 - Waiter/Waitress	7.59
09000 - Furniture Maintenance And Repair Occupations	
09010 - Electrostatic Spray Painter	14.38
09040 - Furniture Handler	8.85
09080 - Furniture Refinisher	14.38
09090 - Furniture Refinisher Helper	10.66
09110 - Furniture Repairer, Minor	12.51
09130 - Upholsterer	14.38
11000 - General Services And Support Occupations	
11030 - Cleaner, Vehicles	8.23
11060 - Elevator Operator	8.23
11090 - Gardener	10.99
11122 - Housekeeping Aide	8.33
11150 - Janitor	8.23
11210 - Laborer, Grounds Maintenance	9.14
11240 - Maid or Houseman	7.25
11260 - Pruner	8.23
11270 - Tractor Operator	10.33
11330 - Trail Maintenance Worker	9.14
11360 - Window Cleaner	9.14
12000 - Health Occupations	
12010 - Ambulance Driver	15.81
12011 - Breath Alcohol Technician	15.81
12012 - Certified Occupational Therapist Assistant	21.70
12015 - Certified Physical Therapist Assistant	21.70
12020 - Dental Assistant	13.20
12025 - Dental Hygienist	29.85
12030 - EKG Technician	23.96
12035 - Electroneurodiagnostic Technologist	23.96
12040 - Emergency Medical Technician	15.81
12071 - Licensed Practical Nurse I	14.14
12072 - Licensed Practical Nurse II	15.81
12073 - Licensed Practical Nurse III	17.63
12100 - Medical Assistant	11.54
12130 - Medical Laboratory Technician	14.14
12160 - Medical Record Clerk	11.82
12190 - Medical Record Technician	13.59
12195 - Medical Transcriptionist	14.14
12210 - Nuclear Medicine Technologist	34.75
12221 - Nursing Assistant I	10.03
12222 - Nursing Assistant II	11.30
12223 - Nursing Assistant III	12.31
12224 - Nursing Assistant IV	13.84
12235 - Optical Dispenser	15.81
12236 - Optical Technician	14.14
12250 - Pharmacy Technician	13.41
12280 - Phlebotomist	13.84
12305 - Radiologic Technologist	22.64
12311 - Registered Nurse I	20.70
12312 - Registered Nurse II	25.32
12313 - Registered Nurse II, Specialist	25.32
12314 - Registered Nurse III	30.64
12315 - Registered Nurse III, Anesthetist	30.64
12316 - Registered Nurse IV	36.72
12317 - Scheduler (Drug and Alcohol Testing)	19.59
13000 - Information And Arts Occupations	
13011 - Exhibits Specialist I	15.06
13012 - Exhibits Specialist II	18.66

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13013 - Exhibits Specialist III	22.83
13041 - Illustrator I	15.06
13042 - Illustrator II	18.66
13043 - Illustrator III	22.83
13047 - Librarian	20.66
13050 - Library Aide/Clerk	12.00
13054 - Library Information Technology Systems Administrator	18.66
13058 - Library Technician	15.06
13061 - Media Specialist I	13.46
13062 - Media Specialist II	15.06
13063 - Media Specialist III	16.80
13071 - Photographer I	12.82
13072 - Photographer II	14.32
13073 - Photographer III	17.75
13074 - Photographer IV	21.73
13075 - Photographer V	26.30
13110 - Video Teleconference Technician	12.91
14000 - Information Technology Occupations	
14041 - Computer Operator I	13.65
14042 - Computer Operator II	15.76
14043 - Computer Operator III	17.56
14044 - Computer Operator IV	19.50
14045 - Computer Operator V	21.81
14071 - Computer Programmer I	(see 1) 15.73
14072 - Computer Programmer II	(see 1) 19.50
14073 - Computer Programmer III	(see 1) 23.84
14074 - Computer Programmer IV	(see 1)
14101 - Computer Systems Analyst I	(see 1) 24.23
14102 - Computer Systems Analyst II	(see 1)
14103 - Computer Systems Analyst III	(see 1)
14150 - Peripheral Equipment Operator	13.65
14160 - Personal Computer Support Technician	19.50
15000 - Instructional Occupations	
15010 - Aircrew Training Devices Instructor (Non-Rated)	24.23
15020 - Aircrew Training Devices Instructor (Rated)	29.32
15030 - Air Crew Training Devices Instructor (Pilot)	33.30
15050 - Computer Based Training Specialist / Instructor	24.23
15060 - Educational Technologist	22.82
15070 - Flight Instructor (Pilot)	33.30
15080 - Graphic Artist	20.47
15090 - Technical Instructor	17.65
15095 - Technical Instructor/Course Developer	21.58
15110 - Test Proctor	13.87
15120 - Tutor	13.87
16000 - Laundry, Dry-Cleaning, Pressing And Related Occupations	
16010 - Assembler	8.08
16030 - Counter Attendant	8.08
16040 - Dry Cleaner	9.34
16070 - Finisher, Flatwork, Machine	8.08
16090 - Presser, Hand	8.08
16110 - Presser, Machine, Dry-cleaning	8.08
16130 - Presser, Machine, Shirts	8.08
16160 - Presser, Machine, Wearing Apparel, Laundry	8.08
16190 - Sewing Machine Operator	9.86
16220 - Tailor	10.33
16250 - Washer, Machine	8.46
19000 - Machine Tool Operation And Repair Occupations	
19010 - Machine-Tool Operator (Tool Room)	14.49
19040 - Tool And Die Maker	18.20
21000 - Materials Handling And Packing Occupations	
21020 - Forklift Operator	12.49
21030 - Material Coordinator	18.34
21040 - Material Expediter	18.34
21050 - Material Handling Laborer	10.65
21071 - Order Filler	9.66
21080 - Production Line Worker (Food Processing)	12.49
21110 - Shipping Packer	13.33
21130 - Shipping/Receiving Clerk	13.33
21140 - Store Worker I	13.23
21150 - Stock Clerk	18.58
21210 - Tools And Parts Attendant	12.49
21410 - Warehouse Specialist	12.49
23000 - Mechanics And Maintenance And Repair Occupations	
23010 - Aerospace Structural Welder	20.69

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23021 - Aircraft Mechanic I	19.70
23022 - Aircraft Mechanic II	20.69
23023 - Aircraft Mechanic III	21.74
23040 - Aircraft Mechanic Helper	13.70
23050 - Aircraft, Painter	18.50
23060 - Aircraft Servicer	16.09
23080 - Aircraft Worker	17.38
23110 - Appliance Mechanic	14.49
23120 - Bicycle Repairer	9.74
23125 - Cable Splicer	15.43
23130 - Carpenter, Maintenance	13.00
23140 - Carpet Layer	13.55
23160 - Electrician, Maintenance	14.99
23181 - Electronics Technician Maintenance I	14.72
23182 - Electronics Technician Maintenance II	15.05
23183 - Electronics Technician Maintenance III	18.31
23260 - Fabric Worker	12.60
23290 - Fire Alarm System Mechanic	15.43
23310 - Fire Extinguisher Repairer	11.67
23311 - Fuel Distribution System Mechanic	15.43
23312 - Fuel Distribution System Operator	13.01
23370 - General Maintenance Worker	11.95
23380 - Ground Support Equipment Mechanic	19.70
23381 - Ground Support Equipment Servicer	16.09
23382 - Ground Support Equipment Worker	17.38
23391 - Gunsmith I	11.67
23392 - Gunsmith II	13.55
23393 - Gunsmith III	15.43
23410 - Heating, Ventilation And Air-Conditioning Mechanic	15.76
23411 - Heating, Ventilation And Air Conditioning Mechanic (Research Facility)	16.55
23430 - Heavy Equipment Mechanic	15.15
23440 - Heavy Equipment Operator	13.73
23460 - Instrument Mechanic	15.43
23465 - Laboratory/Shelter Mechanic	14.49
23470 - Laborer	10.65
23510 - Locksmith	14.49
23530 - Machinery Maintenance Mechanic	17.38
23550 - Machinist, Maintenance	15.43
23580 - Maintenance Trades Helper	9.92
23591 - Metrology Technician I	15.43
23592 - Metrology Technician II	16.41
23593 - Metrology Technician III	17.37
23640 - Millwright	15.43
23710 - Office Appliance Repairer	14.38
23760 - Painter, Maintenance	13.55
23790 - Pipefitter, Maintenance	15.32
23810 - Plumber, Maintenance	14.38
23820 - Pneudraulic Systems Mechanic	15.43
23850 - Rigger	15.43
23870 - Scale Mechanic	13.55
23890 - Sheet-Metal Worker, Maintenance	15.21
23910 - Small Engine Mechanic	13.55
23931 - Telecommunications Mechanic I	19.01
23932 - Telecommunications Mechanic II	19.76
23950 - Telephone Lineman	18.24
23960 - Welder, Combination, Maintenance	14.66
23965 - Well Driller	15.43
23970 - Woodcraft Worker	15.43
23980 - Woodworker	11.67
24000 - Personal Needs Occupations	
24570 - Child Care Attendant	10.09
24580 - Child Care Center Clerk	12.58
24610 - Chore Aide	12.43
24620 - Family Readiness And Support Services Coordinator	12.44
24630 - Homemaker	16.12
25000 - Plant And System Operations Occupations	
25010 - Boiler Tender	15.43
25040 - Sewage Plant Operator	14.49
25070 - Stationary Engineer	15.43
25190 - Ventilation Equipment Tender	10.73
25210 - Water Treatment Plant Operator	14.49
27000 - Protective Service Occupations	
27004 - Alarm Monitor	10.90

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27007	-	Baggage Inspector	7.35
27008	-	Corrections Officer	12.05
27010	-	Court Security Officer	12.05
27030	-	Detection Dog Handler	10.90
27040	-	Detention Officer	12.05
27070	-	Firefighter	12.05
27101	-	Guard I	7.37
27102	-	Guard II	10.90
27131	-	Police Officer I	12.05
27132	-	Police Officer II	13.40
28000	-	Recreation Occupations	
28041	-	Carnival Equipment Operator	9.53
28042	-	Carnival Equipment Repairer	10.08
28043	-	Carnival Equipment Worker	7.78
28210	-	Gate Attendant/Gate Tender	13.18
28310	-	Lifeguard	11.01
28350	-	Park Attendant (Aide)	14.74
28510	-	Recreation Aide/Health Facility Attendant	10.76
28515	-	Recreation Specialist	18.26
28630	-	Sports Official	11.74
28690	-	Swimming Pool Operator	17.71
29000	-	Stevedoring/Longshoremen Occupational Services	
29010	-	Blocker And Bracer	15.20
29020	-	Hatch Tender	15.20
29030	-	Line Handler	15.20
29041	-	Stevedore I	14.22
29042	-	Stevedore II	16.25
30000	-	Technical Occupations	
30010	-	Air Traffic Control Specialist, Center (HFO) (see 2)	35.77
30011	-	Air Traffic Control Specialist, Station (HFO) (see 2)	24.66
30012	-	Air Traffic Control Specialist, Terminal (HFO) (see 2)	27.16
30021	-	Archeological Technician I	17.49
30022	-	Archeological Technician II	19.56
30023	-	Archeological Technician III	24.21
30030	-	Cartographic Technician	23.18
30040	-	Civil Engineering Technician	21.93
30061	-	Drafter/CAD Operator I	17.49
30062	-	Drafter/CAD Operator II	19.56
30063	-	Drafter/CAD Operator III	20.74
30064	-	Drafter/CAD Operator IV	24.21
30081	-	Engineering Technician I	14.62
30082	-	Engineering Technician II	16.41
30083	-	Engineering Technician III	18.36
30084	-	Engineering Technician IV	22.34
30085	-	Engineering Technician V	27.83
30086	-	Engineering Technician VI	33.66
30090	-	Environmental Technician	21.10
30210	-	Laboratory Technician	20.74
30240	-	Mathematical Technician	23.34
30361	-	Paralegal/Legal Assistant I	19.06
30362	-	Paralegal/Legal Assistant II	21.53
30363	-	Paralegal/Legal Assistant III	26.35
30364	-	Paralegal/Legal Assistant IV	30.80
30390	-	Photo-Optics Technician	21.93
30461	-	Technical Writer I	22.17
30462	-	Technical Writer II	27.10
30463	-	Technical Writer III	32.79
30491	-	Unexploded Ordnance (UXO) Technician I	22.74
30492	-	Unexploded Ordnance (UXO) Technician II	27.51
30493	-	Unexploded Ordnance (UXO) Technician III	32.97
30494	-	Unexploded (UXO) Safety Escort	22.74
30495	-	Unexploded (UXO) Sweep Personnel	22.74
30620	-	Weather Observer, Combined Upper Air Or (see 2)	20.74
		Surface Programs	
30621	-	Weather Observer, Senior (see 2)	23.00
31000	-	Transportation/Mobile Equipment Operation Occupations	
31020	-	Bus Aide	8.15
31030	-	Bus Driver	9.69
31043	-	Driver Courier	8.97
31260	-	Parking and Lot Attendant	7.25
31290	-	Shuttle Bus Driver	9.99
31310	-	Taxi Driver	8.21
31361	-	Truckdriver, Light	8.97
31362	-	Truckdriver, Medium	11.61
31363	-	Truckdriver, Heavy	12.48
31364	-	Truckdriver, Tractor-Trailer	12.48

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99000 - Miscellaneous Occupations	
99030 - Cashier	7.46
99050 - Desk Clerk	9.70
99095 - Embalmer	22.74
99251 - Laboratory Animal Caretaker I	16.24
99252 - Laboratory Animal Caretaker II	17.04
99310 - Mortician	22.74
99410 - Pest Controller	13.28
99510 - Photofinishing Worker	11.95
99710 - Recycling Laborer	10.76
99711 - Recycling Specialist	16.27
99730 - Refuse Collector	10.24
99810 - Sales Clerk	8.95
99820 - School Crossing Guard	15.03
99830 - Survey Party Chief	20.30
99831 - Surveying Aide	11.54
99832 - Surveying Technician	15.00
99840 - Vending Machine Attendant	20.19
99841 - Vending Machine Repairer	23.57
99842 - Vending Machine Repairer Helper	20.19

ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:

HEALTH & WELFARE: \$4.27 per hour or \$170.80 per week or \$740.13 per month

VACATION: 2 weeks paid vacation after 1 year of service with a contractor or successor; and 4 weeks after 3 years. Length of service includes the whole span of continuous service with the present contractor or successor, wherever employed, and with the predecessor contractors in the performance of similar work at the same Federal facility. (Reg. 29 CFR 4.173)

HOLIDAYS: A minimum of ten paid holidays per year, New Year's Day, Martin Luther King Jr's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. (A contractor may substitute for any of the named holidays another day off with pay in accordance with a plan communicated to the employees involved.) (See 29 CFR 4174)

THE OCCUPATIONS WHICH HAVE NUMBERED FOOTNOTES IN PARENTHESES RECEIVE THE FOLLOWING:

1) COMPUTER EMPLOYEES: Under the SCA at section 8(b), this wage determination does not apply to any employee who individually qualifies as a bona fide executive, administrative, or professional employee as defined in 29 C.F.R. Part 541. Because most Computer System Analysts and Computer Programmers who are compensated at a rate not less than \$27.63 (or on a salary or fee basis at a rate not less than \$455 per week) an hour would likely qualify as exempt computer professionals, (29 C.F.R. 541.400) wage rates may not be listed on this wage determination for all occupations within those job families. In addition, because this wage determination may not list a wage rate for some or all occupations within those job families if the survey data indicates that the prevailing wage rate for the occupation equals or exceeds \$27.63 per hour conformances may be necessary for certain nonexempt employees. For example, if an individual employee is nonexempt but nevertheless performs duties within the scope of one of the Computer Systems Analyst or Computer Programmer occupations for which this wage determination does not specify an SCA wage rate, then the wage rate for that employee must be conformed in accordance with the conformance procedures described in the conformance note included on this wage determination.

Additionally, because job titles vary widely and change quickly in the computer industry, job titles are not determinative of the application of the computer professional exemption. Therefore, the exemption applies only to computer employees who satisfy the compensation requirements and whose primary duty consists of:

(1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;

(2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

(3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or

(4) A combination of the aforementioned duties, the performance of which requires the same level of skills. (29 C.F.R. 541.400).

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2) AIR TRAFFIC CONTROLLERS AND WEATHER OBSERVERS - NIGHT PAY & SUNDAY PAY: If you work at night as part of a regular tour of duty, you will earn a night differential and receive an additional 10% of basic pay for any hours worked between 6pm and 6am. If you are a full-time employed (40 hours a week) and Sunday is part of your regularly scheduled workweek, you are paid at your rate of basic pay plus a Sunday premium of 25% of your basic rate for each hour of Sunday work which is not overtime (i.e. occasional work on Sunday outside the normal tour of duty is considered overtime work).

HAZARDOUS PAY DIFFERENTIAL: An 8 percent differential is applicable to employees employed in a position that represents a high degree of hazard when working with or in close proximity to ordnance, explosives, and incendiary materials. This includes work such as screening, blending, dying, mixing, and pressing of sensitive ordnance, explosives, and pyrotechnic compositions such as lead azide, black powder and photoflash powder. All dry-house activities involving propellants or explosives. Demilitarization, modification, renovation, demolition, and maintenance operations on sensitive ordnance, explosives and incendiary materials. All operations involving regrading and cleaning of artillery ranges.

A 4 percent differential is applicable to employees employed in a position that represents a low degree of hazard when working with, or in close proximity to ordnance, (or employees possibly adjacent to) explosives and incendiary materials which involves potential injury such as laceration of hands, face, or arms of the employee engaged in the operation, irritation of the skin, minor burns and the like; minimal damage to immediate or adjacent work area or equipment being used. All operations involving, unloading, storage, and hauling of ordnance, explosive, and incendiary ordnance material other than small arms ammunition. These differentials are only applicable to work that has been specifically designated by the agency for ordnance, explosives, and incendiary material differential pay.

\*\* UNIFORM ALLOWANCE \*\*

If employees are required to wear uniforms in the performance of this contract (either by the terms of the Government contract, by the employer, by the state or local law, etc.), the cost of furnishing such uniforms and maintaining (by laundering or dry cleaning) such uniforms is an expense that may not be borne by an employee where such cost reduces the hourly rate below that required by the wage determination. The Department of Labor will accept payment in accordance with the following standards as compliance:

The contractor or subcontractor is required to furnish all employees with an adequate number of uniforms without cost or to reimburse employees for the actual cost of the uniforms. In addition, where uniform cleaning and maintenance is made the responsibility of the employee, all contractors and subcontractors subject to this wage determination shall (in the absence of a bona fide collective bargaining agreement providing for a different amount, or the furnishing of contrary affirmative proof as to the actual cost), reimburse all employees for such cleaning and maintenance at a rate of \$3.35 per week (or \$.67 cents per day). However, in those instances where the uniforms furnished are made of "wash and wear" materials, may be routinely washed and dried with other personal garments, and do not require any special treatment such as dry cleaning, daily washing, or commercial laundering in order to meet the cleanliness or appearance standards set by the terms of the Government contract, by the contractor, by law, or by the nature of the work, there is no requirement that employees be reimbursed for uniform maintenance costs.

The duties of employees under job titles listed are those described in the "Service Contract Act Directory of Occupations", Fifth Edition, April 2006, unless otherwise indicated. Copies of the Directory are available on the Internet. A link to the Directory may be found on the WHD home page at <http://www.dol.gov/esa/whd/> or through the Wage Determinations On-Line (WDOL) Web site at <http://wdol.gov/>.

REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND WAGE RATE (Standard Form 1444 (SF 1444))

Conformance Process:

The contracting officer shall require that any class of service employee which is not listed herein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination.

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Such conformed classes of employees shall be paid the monetary wages and furnished The fringe benefits as are determined. Such conforming process shall be initiated by the contractor prior to the performance of contract work by such unlisted class(es) of employees. The conformed classification, wage rate, and/or fringe benefits shall be retroactive to the commencement date of the contract. (See Section 4.6 (C) (vi)) When multiple wage determinations are included in a contract, a separate SF 1444 should be prepared for each wage determination to which a class(es) is to be conformed.

The process for preparing a conformance request is as follows:

- 1) When preparing the bid, the contractor identifies the need for a conformed occupation(s) and computes a proposed rate(s).
- 2) After contract award, the contractor prepares a written report listing in order proposed classification title(s), a Federal grade equivalency (FGE) for each proposed classification(s), job description(s), and rationale for proposed wage rate(s), including information regarding the agreement or disagreement of the authorized representative of the employees involved, or where there is no authorized representative, the employees themselves. This report should be submitted to the contracting officer no later than 30 days after such unlisted class(es) of employees performs any contract work.
- 3) The contracting officer reviews the proposed action and promptly submits a report of the action, together with the agency's recommendations and pertinent information including the position of the contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. (See section 4.6(b)(2) of Regulations 29 CFR Part 4).
- 4) Within 30 days of receipt, the Wage and Hour Division approves, modifies, or disapproves the action via transmittal to the agency contracting officer, or notifies the contracting officer that additional time will be required to process the request.
- 5) The contracting officer transmits the Wage and Hour decision to the contractor.
- 6) The contractor informs the affected employees.

Information required by the Regulations must be submitted on SF 1444 or bond paper.

When preparing a conformance request, the "Service Contract Act Directory of Occupations" (the Directory) should be used to compare job definitions to insure that duties requested are not performed by a classification already listed in the wage determination. Remember, it is not the job title, but the required tasks that determine whether a class is included in an established wage determination. Conformances may not be used to artificially split, combine, or subdivide classifications listed in the wage determination.

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## OFFEROR FINANCIAL STATEMENT

Offerors must submit this Financial Statement covering their most recently completed full fiscal year with their **technical proposal**. Failure to do so will result in the offeror being determined non-responsive whereby the offeror will be disqualified. Offerors may designate this statement as confidential.

Name of Offeror: \_\_\_\_\_

Current Assets \$ \_\_\_\_\_

Fixed Assets (Depreciated) \$ \_\_\_\_\_

Other Assets \$ \_\_\_\_\_

**TOTAL ASSETS:** \$ \_\_\_\_\_

Current Liabilities \$ \_\_\_\_\_

Long Term Liabilities \$ \_\_\_\_\_

**TOTAL LIABILITIES** \$ \_\_\_\_\_

**NET WORTH** \$ \_\_\_\_\_

Prepared by (Name and Title): \_\_\_\_\_  
Certified Public Accountant

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

Offeror Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**REVISED**

APRIL 15, 2016

**ATTACHMENT C**

**DRAFT Form of**  
**COMMISSARY CONCESSIONAIRE AGREEMENT**  
**BETWEEN THE**  
**DEPARTMENT OF CORRECTIONS, GOVERNMENT OF GUAM**  
**AND**

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COVERING THE OPERATION AND MANAGEMENT OF A  
COMMISSARY CONCESSIONAIRE  
AT THE DEPARTMENT OF CORRECTIONS

**REVISED**

*APRIL 15, 2016*

## COMMISSARY CONCESSIONAIRE AGREEMENT

**THIS COMMISSARY CONCESSIONAIRE AGREEMENT** (“Agreement”), is made and entered into by and between the DEPARTMENT OF CORRECTIONS, GOVERNMENT OF GUAM (“Department of Corrections” or “DOC”), whose mailing address is Post Office Box 3236 Hagatna, Guam 96932 , and \_\_\_\_\_ (“Concessionaire”), whose mailing address is \_\_\_\_\_.

### RECITALS

WHEREAS, the Department is the owner of the Department of Corrections (hereinafter referred to as “DOC”) and operates said Department pursuant to Public Law 9-208 is charged with the duty and responsibility to provide care, control and custody of adjudicated adult law offenders, including pretrial prisoners; and

WHEREAS, the Department consists of an Adult Correctional facility that houses approximately 630 +/- inmates and detainees at any given day. The Adult Correctional facility has 14 housing units and the Hagatna Detention Facility has two housing units; and

WHEREAS, the Department issued Request for Proposal No. RFP/DOC-16-001 for Commissary Concessionaire seeking proposals from experienced firm to finance, develop, manage, and operate a Commissary (“Concession”) at the Department, to optimize revenue for DOC (the “RFP”) and maintain and expand opportunities for inmates and prisoners that are consistent with DOC’s statutory requirements.

WHEREAS, Concessionaire submitted to the Department a proposal responding to the RFP;

WHEREAS, the Department carefully analyzed and fully reviewed all timely proposals submitted; and

WHEREAS, the award of this Agreement to Concessionaire has been made pursuant to a finding by the Department that Concessionaire is the successful offeror based on the evaluation factors set forth in the Request for Proposals and negotiations of terms and conditions that have been determined to be fair and reasonable, and such award was approved by the Director of DOC.

NOW, THEREFORE, the parties hereto, for and in consideration of the payment of the fees and charges hereinafter provided, and of the covenants and conditions hereinafter contained to be kept and performed, DO HEREBY AGREE AS FOLLOWS:

**REVISED**

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**ARTICLE 1**  
**INCORPORATION OF RECITALS AND EXHIBITS**

1.1. Recitals. The Recitals set forth above are incorporated herein by reference as if fully set forth herein.

**ARTICLE 2**  
**DEFINITIONS**

2.1. "Department" shall mean as the "Department of Corrections, Government of Guam".

2.2. "Concession" shall mean the Commissary set forth in this Agreement.

2.3. "Concessionaire Agreement or Agreement" shall mean this Concessionaire Agreement together with the Request for Proposal (RFP), all amendments or addenda thereto, the Concessionaire's Proposal, and all exhibits referenced within or attached to these documents.

2.4. "Concession Area" shall mean and include any areas designated and approved by the Department for the purpose of accommodating the Commissary approved by the Department, the Improvements thereon, and any other property or structures located therein. The Department reserves the right to modify the size and location of the Concession Area.

2.5. "Concession Fee" shall mean that portion of the Rent payable by Concessionaire pursuant to Article 5, and shall be based on a percentage of Concessionaire's Gross Revenues.

2.6. "Concessionaire" or "Successful Offeror" shall mean the second party to this Agreement. Upon execution of this Concession Agreement, the "Successful Offeror" becomes the "Concessionaire" and shall fulfill the obligations stated for the "Proposal," "Successful Offeror" or "Concessionaire" in the Agreement.

2.7. "Concessionaire's Property" shall mean any moveable trade fixtures, business equipment, inventory, trademarked items, signs, counters and other removable personal property installed in or on the Concession Area by Concessionaire at its expense and not permanently affixed thereto all as identified in this Concession Agreement.

2.8. "Contract Year" means a successive period of twelve (12) calendar months.

2.9. "Effective Date" means the date specified by the Director in a written notice ("Effective Date Notice") delivered to Concessionaire on which the Department will deliver the Premises, or a portion thereof, to Concessionaire for the use contemplated under this Agreement.

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2.10. "Director" shall mean the Director, or his/her designee, of the Department as from time to time appointed by the Governor authorized to act with respect to any or all matters pertaining to this Agreement.

2.11. "First Contract Year" means the first Contract Year commencing on the date of the signature of the Governor.

2.12. "Gross Revenues," as used herein, shall mean all Concessionaire's receipts, no matter how classified, from all proceeds permitted hereunder. Concessionaire, on demand of the Department must provide sufficient data to permit verification of such receipts. All Gross Revenues shall be deemed to be received at the time of the determination of the amount due to Concessionaire for each transaction, unless otherwise specifically authorized by the Department in writing. No deductions from gross receipts shall be allowed by Concessionaire, unless specifically stated herein or unless approved in writing by the Department. Gross Revenue may not be reduced by volume discounts unless the discount is documented for each transaction and the documentation is submitted with Concessionaire's monthly report.

2.13. "Hazardous Materials" means any chemical, material, or substance (including, without limitation, Permitted Substances as defined in this Agreement), waste or wastewater, pollutant, or emission which is regulated by any governmental entity as toxic or hazardous or exposure to which is prohibited, limited, or regulated by any governmental entity or which, even if not so regulated, may or could pose a hazard to the health and safety of any person at the DOC as determined by the Department in its sole discretion.

2.14. "Improvements" shall mean all structures and other items affixed to, within, or on the Concession Area (including, but not limited to, interior walls, ceilings, floor coverings, electrical wiring, water pipes, plumbing, heating and air conditioning ducts and equipment, and all interior decoration and finishing), that are installed, before or after the signing of this Concession Agreement, to render the Concession Area ready to provide the Concession in accordance with the Agreement.

2.15. "Permitted Substances" means the following Hazardous Materials when used in the Concession Area in strict compliance with all DOC regulations, applicable laws, and required permits or authorizations from governmental entities: (1) Substances necessary for the ordinary cleaning and care of the Concession Area.

2.16. "Procurement Officer" shall mean the Director or his designee.

2.17. "Proposal" shall mean the proposal submitted by Concessionaire in response to the RFP.

2.18. "Rent" shall mean all of the rent, fees and charges, including, without limitation the Concession Fee, to be paid by Concessionaire under this Agreement.

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2.19. "Service" shall mean the provision of all activities, personnel, equipment, furnishings, and other items in furtherance of operating the Commissary Concession at the Department under the terms and conditions specified in the Agreement and to finish all Improvements and to otherwise render the Concession Area ready to provide the Service in accordance with the Agreement.

### **ARTICLE 3**

### **TERM OF AGREEMENT**

3.1. Effective Date. This Agreement shall be effective and binding on the last date of execution by the parties.

3.2. Initial Term; Termination Date. The initial term of this Agreement ("Initial Term") shall be for a period of five years, beginning on the date initial signing of this Agreement by the Governor and ending on the last day of the fifth Contract Year, unless otherwise extended or terminated as hereinafter provided. All references to Termination Date in this Agreement shall include properly exercised extended terms.

3.3. Extension of Term.

3.3.1. Notwithstanding any other provisions herein to the contrary, the Department shall have one (1) option to extend the term of the Agreement at the end of the Initial Term on all the same terms and conditions set forth herein, except for Rent for up to five (5) additional years, (the "Extended Term") on a non-exclusive basis.

3.3.2. The Department shall provide Concessionaire notice of its intent to extend the term of this Agreement not less than ninety (90) days prior to the Termination Date of Initial Term.

3.4. Exclusive and Non-Exclusive Rights. The right to operate a concession shall not be exclusive at the Department, but Concessionaire shall have the sole and exclusive right, for the Initial Term of this Agreement, to provide the Service in the Department. During the Initial Term of this Agreement the Department shall confer no right upon, nor suffer nor allow any person other than Concessionaire to provide the Service in the Department. During any Extended Term and until expiration or termination of this Agreement, Concessionaire shall have the continued right to provide the Service in the Department, but on a non-exclusive basis. During any Extended Term and until expiration or termination of this Agreement, expressly reserves the rights to enter into agreements with other concessionaires to provide the same or similar service.

3.5. Transition of Service. Concessionaire shall fully cooperate with the Department and any succeeding concessionaire and will take all action reasonably necessary to provide a smooth transition of service with any concessionaire in place prior to the Commencement Date and any concessionaire selected to provide the Service after the

Termination Date in order to ensure uninterrupted commissary services at the Department.

**ARTICLE 4**  
**PREMISES**

4.1. Premises. The Premises consists of the Concession Area. As of the Effective Date, all square footage identified is approximate, and is subject to final correction in accordance with field measurements to be taken after completion of the Improvements. All such measurements relating to the Premises will be made to and from the “lease lines” as identified. If the actual measured square footage of the Premises differs from the square footage identified in the actual measured square footage will prevail.

4.1.1. Concession Area. The Concession Area shall be used for retail services, selling of authorized products.

4.1.2. Storage Space. Storage Space is to be used to store equipment and supplies for use in the provision of the Service. It may be used for other purposes relating to the Concession with the consent of the Director. If the Director determines that Concessionaire is using Storage Space for purposes unrelated to the Concession, the Director may unilaterally delete the Storage Space from the Premises. If the Director determines that the size of the Storage Space exceeds the needs of the Concessionaire, the Director may unilaterally reduce the size of the Storage Space.

4.1.3. Additional Concession Area.

4.1.3.1. During the term of this Agreement, DOC may from time to time, in its sole discretion, make Additional Concession Area(s) available in the Department for Concessionaire’s Concession. In such event, DOC shall send written notice to Concessionaire advising Concessionaire of the size and location of the Additional Concession Area being offered. Within fifteen (15) calendar days of receiving the notice, Concessionaire must notify DOC if it accepts or rejects the Additional Space. Upon notification from Concessionaire to DOC that it accepts the Additional Space, the square footage will be added to the Concession Area under this Agreement and modified accordingly.

4.1.3.2. During the term of this Agreement, Concessionaire may from time to time request Additional Concession Area(s). In such event, Concessionaire shall send written notice to DOC requesting the Additional Concession Area and identifying the size and location of the Additional Concession Area being requested. Thereafter, DOC shall notify Concessionaire in writing if it accepts or rejects Concessionaire’s request, in DOC’s sole discretion.

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4.1.3.3. Additional Concession Area(s) shall be included as part of the Premises on the applicable Effective Date. Notwithstanding that the Effective Date for the Additional Concession Area may be later than the first Initial Date, the lease term for the Additional Concession Area shall run concurrent with the Term of this Agreement. Additional Concession Areas is solely for the benefit of DOC, and whether such Additional Concession Area is offered to Concessionaire or accepted by DOC is at DOC's sole and absolute discretion.

4.2. Effective Date. Notwithstanding the Effective Date of this Agreement, Concessionaire shall have no right to use, occupy or operate any portion of the Premises until the Agreement is signed by the Governor. Concessionaire agrees to accept delivery of the Premises, or any portion thereof, on the Effective Date as specified by the Director. Within ten (10) calendar days following the Department's request, Concessionaire shall execute the Effective Date Memorandum in the form of acknowledging the Effective Date of the applicable part of the Premises, together with such other information as the Department may request. Concessionaire's failure to execute an Effective Date Memorandum shall not affect the Effective Date of the applicable portion of the Premises nor the performance of Concessionaire's obligations with respect thereto.

4.3. Opportunity to Inspect. Concessionaire acknowledges that it has had an opportunity to its satisfaction to inspect the Premises. Concessionaire accepts the Premises "as is" in the condition existing as of the applicable Effective Date.

4.4. Use for Specific Purpose. Concessionaire shall use the Premises in full compliance with all provisions of the Agreement solely for the purpose of providing and operating the Concession and for no other purpose whatsoever unless otherwise approved in writing by the Department. All operations of Concessionaire authorized under the Agreement must occur within the Premises.

4.5. Additional Concessions. During the Renewal Term, if any, the DOC reserves the right to establish additional concessions at the DOC similar to those to be provided under the terms of the Agreement as it may deem to be necessary in its sole discretion.

4.6. Right to Recapture. The Department reserves the right to recapture all or a portion of the Premises during the term of this Agreement if the Department, in its sole discretion, determines that all or such portion is required for public facilities, utilities, or other uses directly related to the efficient operation of the Department. In such event, the Department shall either offer substitute space or make a proportionate adjustment to the Rent, effective on the date of such recapture. Nothing in this paragraph shall be deemed to require that the Department provide substitute space which shall be in the sole discretion of the Department.

## **ARTICLE 5** **PAYMENT OF RENT**

5.1. Rent. All rentals, fees, charges and payments due hereunder shall begin on the first Effective Date.

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5.2. Monthly Concession Fee. In consideration of Concessionaire's lease of the Premises and for the privilege of conducting and operating the Concession and providing the Service under the conditions herein set forth, Concessionaire agrees, during the term hereof, to pay to the Department eight percent (8%) each month, in accordance with the provisions of this Article as Rent, concession fees, based on a percentage ("Concession Fee Percentage") of Concessionaire's Gross Revenues ("Concession Fees").

5.3. Annual Concession Fee. Offerors shall include in their proposals, their proposed percentage rate for each Contract Year of the Initial Term, which shall be a percentage of Concessionaire's Gross Revenues. Such Concession Fee percentage rate shall be a rate greater than or equal to 45% of Annual Gross Revenues. DOC is not required to select the proposal with the highest projected compensation to DOC. The actual Concession Fee to be paid by the Selected Offeror is subject to negotiation.

5.4. Monthly Gross Revenues Report and Payment. Concessionaire shall furnish to the Department in a format and level of specificity approved by the Department a report of its Gross Revenues for the preceding calendar month and shall simultaneously pay the Department the Concession Fee without offset, deduction, or further notice from the Department, on the fifteenth (15th) day of the month immediately following the calendar month during which the business on which the Concession Fee is based occurred.

5.5. Annual Gross Revenues Reports. Within ninety (90) calendar days after the close of each Contract Year, Concessionaire shall furnish to the Department a sworn statement, certified by an independent certified public accountant, showing total Gross Revenues derived from its operation of the Concession for the immediately preceding Contract Year. If the aggregate of all Concession Fee payments made for any Contract Year shall exceed the required percentage for that specific Contract Year, any excess shall be credited to Concessionaire's account, without interest, and applied against the next succeeding monthly payment(s). Upon expiration of the Agreement, a corresponding adjustment calculation shall be made and any credit balance due Concessionaire shall be reimbursed, without interest, by the Department, after offset for any monies due to the Department from Concessionaire under this Agreement.

5.6. Fees and Charges. Concessionaire shall pay, as additional rent, any and all fees, charges, costs, fines, or other similar charges payable by Concessionaire to the Department pursuant to the Rules and Regulations of the Department. Concessionaire shall pay all such charges within thirty (30) calendar days of receipt of copies of said Agreement.

5.7. Payment Deficiency. If such certified sworn statement indicates that Concessionaire has paid the Department less than the required percentage for that specific Contract Year, Concessionaire shall pay the Department any deficiency not later than ten (10) calendar days following delivery of the sworn statement to the Department together with the Service Charge and interest applicable below.

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5.8. Service Charge; Interest. All delinquent payments of any amounts due to the Department by Concessionaire shall be subject to a Service Charge of two percent (2.0%) per month on the outstanding balance from the date such amount was due until paid. In addition to the Service Charge, the Department shall be entitled to interest at the judgment rate applicable on the date the payment was due until paid, plus all costs of collection of amounts past due, including without limitation, attorneys' fees and court costs.

5.9. Non-Disclosure. Concessionaire shall not list Concession Fees payable to the Department as a separate item on its customer contracts or invoices.

5.10. The Rent payments specified herein shall begin on the Commencement Date of the Agreement and no allowance will be made for interruptions in operations as a result of the transition from the prior concessionaire or a delay in Concessionaire completing its Work.

## **ARTICLE 6**

### **RIGHTS AND PRIVILEGES**

6.1. Commissary Concession. The Department hereby grants to the Concessionaire the privilege to conduct and operate a Commissary Concession in the Department subject to the terms and conditions contained in the Agreement.

6.2. Concession Area. The Department reserves the right to modify the size and location of the Concession Areas to accommodate maintenance, renovation, new construction. Concessionaire shall relocate commissary concession upon request of the Department to areas approved by the Department.

6.3. Limitations on Use. In addition to any other limitations set forth in this Agreement, Concessionaire's use of the Concession Area shall be in accordance with the following:

6.4. Compliance with Laws. Concessionaire shall comply with all laws, rules and regulations concerning the Concession Area or Concessionaire's use of the Concession Area, including, without limitation, the obligation at Concessionaire's cost to alter, maintain, or restore the Concession Area in compliance and conformity with all laws, rules and regulations relating to the condition, use, or occupancy of the Concession Area during the term.

6.4.1. Waste; Nuisance. Concessionaire shall not use the Concession Area in any manner that will constitute waste, nuisance, or unreasonable annoyance (including, without limitation, the use of a loudspeaker or sound or light apparatus that can be heard or seen outside the Concession Area) in which the Concession Area are located. Concessionaire shall not use the Concession Area as a dwelling, for sleeping, washing clothes, cooking, or the preparation, manufacture, or mixing of anything that might emit any odor or objectionable noises or lights into the building in which the Concession Area are located.

6.4.2. Overloading. Concessionaire shall not do anything on the Concession Area that will cause damage to the building on which the Concession Area are located. The Concession Area shall not be overloaded. No machinery, apparatus, or other appliance shall be used or operated in or on the Concession Area that will in any manner injure, vibrate, or shake the Concession Area.

## **ARTICLE 7**

### **STANDARDS OF SERVICE**

7.1. The covenant between DOC and the Concessionaire should provide for a fixed rate of return combined with a sales growth incentive.

7.2. All articles provided for sale shall be set at a price that is high enough to allow the DOC Commissary to achieve a reasonable profit margin and yet low enough to keep all merchandise affordable and competitive with other local vendors within the municipality of Mangilao. Even though there is no hard and fast rule for pricing merchandise, most retailers use a 50 percent markup, known in the trade as keystone. What this means, in plain language, is doubling your cost to establish the retail price. Because markup is figured as a percentage of the sales price, doubling the cost means a 50 percent markup. For example, if your cost on an item is \$1, your selling price will be \$1.50. Fifty percent of \$2 is \$1, which is your markup.

7.3. The value of services shall be measured periodically by the Best Value Practice incorporating the four C's;

1. Challenge – is the performance high enough? Why and how is the service provided? Do the services address security concerns? Can services be delivered differently? And do inmates/detainees and the Department want such services?

2. Compare – How does the services and financial performances compare with other correctional institutions?

3. Consult – How does the Commissary seek views of stakeholders about the services it provides?

4. Compete – How does Commissary operations secure efficient and effective services? Are services provided are of appropriate quality and affordability for inmates/detainees?

7.4. The Concessionaire is prohibited to provide three nutritional meals a day that have already been awarded through a competitive Food Service Contract. All other food stuff outside the three daily or special meals contained in the Food Service Contract may be provided by the Concessionaire.

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7.5. The Concessionaire is also restricted from providing any commodity or services prohibited by law or DOC policies.

7.6. All commodities and services provided by the Concessionaire must be preapproved by the Director of the Department or by his/her designee.

7.7. The existing Program for prisoners to obtain basic needs such as under wears, socks, clothing, shoes, ect., from nonprofit organizations such as the Salvation Army shall remain in effect.

7.8. Other than initial incoming of items from family members or associates of prisoners, the only items that will be authorized will be items approved in the initial in-processing of all pretrial detainees and inmates. All items thereafter which are not provided by DOC shall be obtain through the Commissary.

7.9. The Concessionaire shall be subjected to all safety and security policies and procedures established by DOC.

7.10. Utilization of an electronic accounting system to monitor and track all Commissary activities. All Commissary transactions including but not limited to collection and accountability of funds collected from prisoners, inventory, sales, profits, etc.

7.11. All necessary equipment and or supplies needed to establish a digital accounting system and POS system shall be the responsibility of the Concessionaire.

7.12. All fees or proceeds due to the Department of Corrections shall be deposited in the Prison Industries Revolving Fund established by law with the Department of Administration (DOA) by the Concessionaire.

7.13. The Concessionaire shall maintain accurate and concise accounting records of all the transactions of the DOC Commissary and such books and records shall be subject for inspection semiannually by the DOC Commissary OIC.

7.14. All activities of the DOC Commissary may also be subjected to an annual audit by a certified auditor selected by the DOC or by the Public Auditor.

7.15. Any wages for inmate labor employed by the Concessionaire shall be deposited at DOA where individual accounts will be established per prisoner participating in the Prison Industries Program.

7.16. No prisoner is to make any transaction by cash or credit (buy & pay later). DOC shall have a monthly maximum allowable allowance of each prisoner of three hundred dollars (\$300.00). The deposit of funds for each prisoner shall be made by family, friends, or wages earned. An account for each prisoner shall be established and a monthly itemized balance of such accounts shall be provided to the DOC Commissary OIC. The accountability of each prisoner account shall also be maintained in the DOC "Server" which is housed and maintained by the Bureau of Information Technology (BIT) and can be accessed for inspection and review at any time by the DOC Commissary OIC.

7.17. The deposits into prisoner allowances cited in item "7.16." above shall be established and maintained by DOA. In the event that there is a delay in establishing these accounts with DOA, the Concessionaire may establish such accounts at a Bank doing business on Guam provided that all bank statements are provided to DOC on a monthly basis. In addition, a copy of the receipts provided to all depositors into the individual prisoner account shall also be provided to the DOC Commissary OIC where such deposits will also be individually tracked, recorded, and compared with deposits made into the local Bank to ensure transparency.

7.18. The "maximum allowable allowance" will not be reduced during the duration of this award, however, the Director reserves the right to increase the "maximum allowable allowance" per prisoner during this award period.

7.19. Any prisoner released from confinement at DOC shall be reimbursed the remaining balance in their deposited allowances without penalty from the Concessionaire.

7.20. Any security violation or financial accountability discrepancies shall not only be subject to the possible termination of this agreement but may also be subjected to a criminal prosecution.

7.21. Title and Risk of Loss of any goods or services shall not pass to the Department of Corrections.

7.22. Merchandise must be delivered no later than two (2) calendar days upon receipt of the commodities ordered by prisoners under normal conditions.

7.23. Department of Corrections reserves the right to extend this contract for an additional period of five (5) year term, not to exceed ten (10) years, after the original award period if all parties agree.

7.24. Advertisements, advertising materials shall be subject to the reasonable approval of the DOC. The DOC shall provide written notice to Concessionaire of any disapproval of advertisements within five (5) working days of submission of graphics sample by Concessionaire. Concessionaire shall not display any advertisements reasonably disapproved by the DOC. Concessionaire shall immediately remove from the Facility upon written demand of the DOC, at Concessionaire's sole cost and expense, any reasonably disapproved advertisements.

In the event that any so disapproved advertisement is not removed promptly upon receipt of written demand, the DOC may remove and store said advertisement. The DOC shall not in any way be held responsible or liable for any damage to any advertisement so removed.

7.25. No advertisements reasonably considered offensive by the Department may be posted. The Concessionaire will promptly remove or modify the presentation of any advertisement if so directed by the DOC.

## **ARTICLE 8** **LIABILITY**

8.1. Security Deposit. Upon the execution of the Agreement by Concessionaire and effective date thereof to the Department, Concessionaire shall also deliver to the Authority as a Security Deposit, a cashier's check, certified check, in the amount of Twenty-Five Thousand Dollars (\$25,000.00). The Security Deposit shall be deposited by DOC into its bank account and shall be security for the full, faithful, and prompt performance of and compliance with, on the part of the Concessionaire, all of the provisions, terms, and conditions of this Agreement. DOC shall have the right to use the Security Deposit and any interest thereon or any part thereof in whole or partial satisfaction of any of its claims or demands against Concessionaire. In the event DOC shall use the Security Deposit, or any part thereof, Concessionaire shall, on demand of DOC and within two (2) business days thereafter, deposit with DOC the sum necessary to maintain the Security Deposit at the amount herein set forth. DOC will return the Security Deposit to Concessionaire upon termination of this Concession Agreement, less any monies owed to DOC under this Concession Agreement and without interest.

## **ARTICLE 9** **IMPROVEMENTS**

9.1. Concessionaire, at its own expense, may make improvements to the Concession Area as may be required for providing the Service under the terms and conditions in the Agreement ("Concessionaire's Work" or "Work"), provided that Concessionaire shall not make any additions to, or alterations or modifications of, the Concession Area without first obtaining the written approval of the Department.

9.2. Application for Work Authorization. Prior to commencing its Work, Concessionaire shall submit to the Department, via an Application for Work Authorization Form, for its review and approval detailed plans, designs, and specifications, including its cost estimates and proposed contractors for its Work. No change, addition, or alteration shall be made in the scope or extent of Concessionaire's Work as approved by the Department without first obtaining approval in writing from the Department. The approval by the Department of the plans and specifications refers only to the approval of the general architectural and aesthetic plans set forth therein. The Department cannot and will not approve such plans and specifications for architectural or engineering design or compliance with applicable federal and Guam laws, statutes, ordinances, codes, rules and regulations and the Department, by approving such plans and specifications, assumes no liability or responsibility therefor or for any defect in

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any Improvement constructed according to such plans and specifications. The Department reserves the right to reject any plans and specifications submitted, and shall state its reasons, in writing, for such rejection.

9.3. Compliance with Federal and Guam Laws. Concessionaire's Work shall comply with applicable federal and Guam statutes, ordinances, building codes, and rules and regulations. Concessionaire shall procure all building, fire and safety, and other permits necessary in connection with its Work.

9.4. Concessionaire, within ten (10) calendar days after notification by the Department of its approval, shall commence its Work in the Concession Area in accordance with the conditions of approval and schedule agreed to by the Department. Concessionaire shall be fully liable to the Department for any damage that results from its Work. All deliveries of materials and supplies shall be made as directed by the Department.

9.5. All Work, equipment supplied and installed, and decor furnished by Concessionaire, as herein provided, shall be at Concessionaire's sole cost and expense, free and clear of liens for labor and material, and Concessionaire shall hold the Department harmless from any liability in respect thereto.

9.6. Liens. Nothing herein contained shall be deemed to constitute consent to the creation of any lien or claim against the Department, the Concession Area or any part thereof, any Improvements thereto or thereon, and Concessionaire shall not permit any lien to be attached to such areas.

9.7. Upon the completion of all Improvements, title thereto shall be automatically transferred to and vested in the Department. During the term of the Agreement, Concessionaire, at its expense, shall maintain, replace, and keep in good repair and operating condition of all Improvements.

9.8 Title to Property. Concessionaire shall retain title to Concessionaire's property.

## **ARTICLE 10**

### **REPAIRS AND MAINTENANCE**

10.1. Responsibility of Repairs and Maintenance to Concessionaire. Concessionaire, at its own expense, shall maintain the Concession Area in a good state of repair and operating condition, including the replacement and refurbishing of any such items as may require same during the term of the Agreement, whether installed by the Department or Concessionaire.

10.2. Janitorial Service. Concessionaire shall furnish, at its own expense, janitorial service for the Concession Area and all other areas assigned to Concessionaire for its use, if any, and shall maintain such areas and all the furnishings and equipment included therein in a safe, clean, neat, and sanitary condition at all times satisfactory to the Department.

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Concessionaire shall be responsible for collection and daily removal of its refuse and waste from the Concession Area.

10.3. Department's Options to Repair and Maintain. In the event Concessionaire fails to commence repairs, replacements or refurbishing required hereunder within a period of ten (10) calendar days after written notice from the Department to do so, or fails to complete same within the date specified in such notice, the Department may, at its option, and in addition to all such other remedies which may be available to it, repair, replace or refurbish any such item included in said notice and the cost thereof shall be paid by Concessionaire upon demand.

10.4. Delivery. Concessionaire shall have the right to contract for delivery of its requirements for any material necessary to the Service. All deliveries shall be made as may be designated by the Department, and shall conform to the Department's rules and regulations.

10.5. Cleaning Services. The Concessionaire will perform major cleaning services to the Concession Area.

## **ARTICLE 11**

### **ACCESS TO CONCESSION AREA**

11.1. Access. The Concessionaire, its customers, employees, Concessionaires, suppliers of material, and furnishers of services, shall have ingress and egress privileges into the Concession Area, provided the requirements of the Department's Security Program is adhered. Access to the Department from the local roadways used in common with others is authorized, however, the Department may temporarily or permanently close any such roadway and any other area at the DOC presently or hereafter used as such, so long as an equivalent means of ingress and egress remains available to Concessionaire.

11.2. Release of Liability for Actions Arising Out of Closing of Roadway. Concessionaire hereby releases and discharges the Department, its successors and assigns, of and from any and all claims, demands, or causes of action arising or alleged to arise out of the closing of any roadway or other area, whether on or off the DOC.

11.3. Right to Inspect. The Department, by its employees, agents, and representatives shall have the right at all reasonable times to enter upon the Premises for the purpose of inspecting the same and for observing the performance by Concessionaire of its obligations under the Agreement and otherwise.

11.4. Right to Maintain. Without limiting the foregoing, the Department, through its employees, agents, representatives, concessionaires, and furnishers of utilities and other services shall have the right to maintain existing and future utility, mechanical, electrical and other systems, and to enter upon the Concession Area at all reasonable times upon prior notice as set forth hereinabove, except during an emergency (which includes any event involving Hazardous Materials) when no notice is required, to make such investigations, tests, repairs,

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replacements, remediation, or alterations as the Department may deem necessary or advisable and, from time to time, to construct or install over, in or for access to other parts of the DOC otherwise not conveniently accessible; provided, however, that the exercise of such rights shall not unreasonably interfere with the use and occupancy of the Concession Area by Concessionaire, and that every reasonable effort shall be made to restore the Concession Area to the condition existing prior to the exercise of such rights.

11.5. The exercise of any or all of such rights by the Department, or others acting on behalf of the Department, shall not be construed to be an eviction of Concessionaire nor be the grounds for any abatement of the Rent, or charge of any type, nor for any claim or demand for damages, consequential or otherwise.

## **ARTICLE 12**

### **REPRESENTATIONS AND WARRANTIES**

Concessionaire represents and warrants to the Department that:

12.1. It is duly organized and validly existing under the laws of its jurisdiction, incorporation or establishment;

12.2. It has the power and the authority to enter into and perform its obligations under the Agreement and to pay any payments and other fees required under the Agreement;

12.3. The Agreement has been duly authorized, executed, and delivered by it and constitutes a legal, valid, and binding obligation of it enforceable against it in accordance with the terms hereof, subject to applicable bankruptcy, insolvency, and similar laws affecting creditor's rights generally, and subject as to enforceability to general principles of equity regardless of whether enforcement is sought in a proceeding in equity or at law;

12.4. Its execution and delivery of the Agreement and its performance of its obligations hereunder do not and will not constitute or result in a default under, a breach or violation of, or the creation of any lien or encumbrance on any of its property under, its charter or by-laws (or equivalent organizational documents), or any other agreement, instrument, law, ordinance, regulation, judgment, injunction, or order applicable to it or any of its property;

12.5. All consents, authorizations, and approvals requisite for its execution, delivery, and performance of the Agreement have been obtained and remain in full force and effect and all conditions thereof have been duly complied with, and no other action by, and no notice to or filing with, any governmental authority or regulatory body is required for such execution, delivery or performance; and

12.6. To the best of its knowledge, there is no proceeding pending or threatened against it at law or in equity, or before any governmental instrumentality or in any arbitration, which would materially impair its ability to perform its obligations under the Agreement, and there is no such proceeding pending against it which purports or is likely to affect the legality, validity or enforceability of the Agreement.

12.7. Concessionaire is duly licensed and authorized to transact the business under the applicable laws of Guam.

### **ARTICLE 13** **OBLIGATIONS AND COVENANTS**

Concessionaire covenants to the Authority that as long as it shall have any obligations under the Agreement it shall:

13.1. Provide the Service pursuant to its Proposal and in accordance with this Agreement consistent with the Standards of Service set forth in Article 7 herein, except as modified by written agreement with the Department.

13.2. Conduct an operation that complies with the highest standards for providing the Service promptly, reliably, efficiently, and courteously to meet all reasonable demands therefore on a fair, equal, and nondiscriminatory basis.

13.3. Furnish all equipment, supplies, material, and personnel necessary for the Service.

13.4. Obtain and maintain in full force and effect all authorizations, consents, approvals, permits, licenses, and certificates required by any governmental or other authority (federal or local) to provide and operate the Service.

13.5. Concessionaire shall notify the Department immediately in writing in the event that any such authorization, consent, approval, permit, license, or certificate is terminated, revoked, restricted, suspended, forfeited, or otherwise lost for any reason.

13.6. Use its best efforts in every proper manner to maintain, develop, and increase the business conducted by it hereunder.

13.7. Not divert or cause to be diverted any business provided under the Agreement or which may be provided by other tenants on the DOC.

13.8. Not place any advertising displays outside the Concession Area at any time without the prior written approval of the Department.

13.9. Conduct its operations in an orderly and proper manner so as not to unreasonably annoy, disturb, or be offensive to others on or near the Department.

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13.10. Concessionaire shall take all reasonable measures to eliminate vibrations tending to damage any equipment, structures, buildings, or portions of buildings. Any activity associated with the installation, removal or relocation of advertising displays shall be performed at a time approved by the Department to minimize any disruption to DOC operations. The Department may limit such installation, removal or relocation to nighttime hours or periods of low passenger activity.

13.11. Be responsible for the conduct, demeanor, and appearance of its employees and of those doing business with it. Upon receipt of any complaint or objection to the conduct, demeanor, or appearance of the employees, or those doing business with the Concessionaire, Concessionaire shall immediately take all reasonable steps necessary to remove the cause of the complaint or objection.

13.12. Except where the Department has specifically assumed responsibility for trash removal herein, be responsible for the proper storage and removal from the DOC of all garbage, debris, and other waste materials, arising out of its operation. Concessionaire shall not use any facilities of the Department for such purpose without the prior written consent of the Department. No such garbage, debris, or other waste materials shall be thrown, discharged, or deposited into or upon the waters on or bordering the DOC.

13.13. Not do or permit to be done anything that may interfere with free access and passage on the Department.

13.14. Pay all taxes, fees, license charges, and other assessments of any nature whatsoever arising in connection with any aspect of the Service, as well as all such taxes and other assessments against Concessionaire's Property. Concessionaire agrees to pay all such taxes, fees, license charges, and other assessments directly to the appropriate governmental entity, without involving the Department.

#### **ARTICLE 14**

#### **COMPLIANCE WITH LAW AND DOC RULES AND REGULATIONS**

14.1. Without limiting the specific obligations set forth in this Section, Concessionaire shall observe and obey and shall ensure that its officers, employees and agents, observe and obey, all federal and local laws and ordinances, including all governmental rules, regulations, decisions, and orders of any nature whatsoever applicable to the operations of the DOC or to Concessionaire's operation at the DOC whether presently in force or enacted during the term of the Agreement (hereinafter "governmental rules"). Concessionaire shall also take such action as may be reasonably necessary to ensure that its guests and those doing business with it at the DOC observe and obey such governmental rules. Concessionaire, its representatives, successors in interest, and assigns will not discriminate against any person on the grounds of race, color, sex, creed, or national origin, nor exclude any person from participation in, nor deny the benefits of or be otherwise subjected to discrimination in the provision of the Service, or in the construction of any Improvements relating to the Concession Area or the furnishing of the Service thereon

14.2. Concessionaire will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Concessionaire. The Concessionaire agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

14.3. Concessionaire, in all solicitations or advertisements for employees placed by or on behalf of the Concessionaire, will state that Concessionaire is an equal opportunity employer.

14.4. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

14.5. Concessionaire will include the provisions of the foregoing subsections 14.1, 14.2, 14.3 in every subcontract or purchase order of over \$10,000 which pertains to its operations in the Concession Area so that the provisions will be binding upon each sub-concessionaire or vendor.

14.6. Concessionaire shall comply with all applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*, 47 U.S.C. 225, 47 U.S.C. 611) (“ADA”), with regard to the operations of the Service. Concessionaire shall indemnify the Department for any damages suffered by or liability imposed on the Department as a result of Concessionaire's failure to comply with the obligations and responsibilities imposed by the ADA.

14.7. Concessionaire shall undertake an affirmative action program as required by 14 C.F.R. Part 152, Subpart E, as amended, or any subsequent comparable regulation, to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in or receiving the services or benefits of any program or activity covered by this regulation. Concessionaire assures that it will require that its covered sub-organizations provide assurance to Concessionaire that they similarly will undertake affirmative action programs and that they will require like assurance from their sub-organizations, as required by 14 C.F.R. Part 152, Subpart E, which is expressly incorporated herein and made a part hereof by reference.

14.8. Security Compliance. Concessionaire shall comply with and conform its use of the Concession Area to the Department’s DOC Security Program, Security Directives and Emergency Amendment. Concessionaire shall require all persons, including without limitation its agents, employees entering the Department, including without limitation, surrounding facilities, parking lots, (collectively the “Department Premises”) to comply with the Security Requirements and the DOC Rules and Regulations. Concessionaire agrees to pay, indemnify and save the Department harmless from and against any and all fines and penalties imposed or

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assessed on the Department and/or Concessionaire for any breach of the Security Requirements by Concessionaire, its agents, employees, or invitees, whether intentional, non-intentional, or through negligence occurring on the DOC premises during the term, or any extended term, of this Concession Agreement.

14.9. Concessionaire shall not knowingly employ an unauthorized alien as defined in the Immigration Reform and Control Act of 1986.

14.10. Pursuant to local statute and/or any comparable federal law, Concessionaire agrees

14.10.1. Provide a drug-free workplace for its employees;

14.10.2. post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Concessionaire's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

14.10.3. state in all solicitations or advertisements for employees placed by or on behalf of the Concessionaire that the Concessionaire maintains a drug-free workplace; and

14.10.4. include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each sub-concessionaire or vendor.

14.11. The Concessionaire shall provide the Department a true copy of any notice, warning, summons, or other legal process for the enforcement of any laws, ordinances, rules, regulations, decisions, or orders which pertain directly or indirectly to the operation of the Concession immediately upon receipt of same. Concessionaire shall indemnify and hold the Department harmless from and against any and all claims, actions, damages, liabilities, fines, penalties, costs, and expenses including attorney fees suffered or incurred by the Department as a result of Concessionaire's noncompliance with any applicable laws, ordinances, rules, regulations, decisions, or orders.

14.12. Concessionaire shall have such time within which to comply with the aforementioned laws, ordinances, rules, regulations, decision, or orders as the authorities enforcing the same shall allow.

14.13. Concessionaire covenants and agrees that it will not enter into any agreements or understandings, whether or not binding, with any person, firm, association, corporation, or other entity, which would be in violation of applicable federal and/or local law.

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14.14. Compliance with DOC Rules and Regulations. Concessionaire shall observe and obey, and shall ensure that its officers, employees, agents, guests and those doing business with it observe and obey, all applicable rules and regulations of the Department, now in effect or hereinafter promulgated, governing the conduct and operation of the DOC.

14.15. Representations. Concessionaire hereby makes the following representations:

14.15.1. Ethical Standards. Concessionaire has not knowingly influenced, and will not knowingly influence a government employee to breach any of the ethical standards set forth in 5 G.C.A. Chapter 5, Article 11 and Chapter 11 of the Guam Procurement Regulations.

14.15.2. Gratuities and Kickbacks. Concessionaire has not violated, is not violating, and will not violate the prohibition against gratuities and kickbacks set forth in §11107 of the Guam Procurement Regulations. Concessionaire further agrees to execute and file a Non-Gratuity Affidavit before final payment under the Agreement is made by the Department.

14.15.3. Covenant Against Contingent Fees. Concessionaire warrants that it has not employed or retained any person or company, other than a bona fide employee working solely for Concessionaire, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Concessionaire, any gifts or other consideration or fee contingent upon the award or making this Agreement. Breach of this warranty shall give the Department the right to terminate this Agreement or, as consideration, deduct the amount of such commission, percentage brokerage or contingent fee from the Agreement price. This warranty shall not apply to commissions payable by Concessionaire upon contracts or sales secured or made through bonafide established commercial or selling agencies maintained by Concessionaire for the purpose of securing business.

14.15.4. Warranty Against Employment of Sex Offenders (5 GCA § 5253). Concessionaire warrants that no person providing services on behalf of Concessionaire has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 G.C.A. or an offense as defined in Article 2 of Chapter 28, Title 9 G.C.A., or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry. If any person providing services on behalf of Concessionaire is convicted of a sex offense under the provisions of Chapter 25 of Title 9 G.C.A. or an offense as defined in Article 2 of Chapter 28, Title 9 G.C.A. or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry, such person will immediately be removed from working at the Department and the Director will be informed within twenty-four (24) hours of such conviction.

**ARTICLE 15**  
**SUBORDINATION OF AGREEMENT**

15.1. The Agreement shall be subordinate to the provisions of any existing or future agreement between the Department and its Federal counterparts and the government of Guam relative to the operation, maintenance, or development of the DOC. In the event any such future provision materially impairs Concessionaire's ability to perform the Agreement, Concessionaire shall have the option to terminate the Agreement on six (6) months written notice to the Department.

15.2. The Agreement shall be subject to the effect of any covenants, conditions, restrictions, easements, mortgages, deeds of trust, ground leases, rights of way, and any other matters of record; and any land use or zoning laws or regulations of the government of Guam.

**ARTICLE 16**  
**OBLIGATIONS OF THE DEPARTMENT**

16.1. The Department agrees that upon payment of all rents and fees set forth herein during the term of this Agreement and any extension or renewal thereof, Concessionaire shall have the peaceful right to use the Concession Area for its Service in accordance with all the rights and privileges herein stated. The Department agrees to furnish to Concessionaire electricity for normal lighting in the Concession Area, and air conditioning as required in or about the Concession Area. Concessionaire shall furnish, at its own expense, all telephone line charges, internet and data services, phone equipment and the cost of maintenance therefore. In consideration of the Department providing utilities, Concessionaire hereby expressly waives any and all claims for compensation for any and all loss or damage sustained by reason of any defect, deficiency or impairment of any such utility or the delivery or removal system as result of typhoons, floods, civil commotion, riot, explosion, collapse of building, fire or collision. Concessionaire hereby expressly releases and discharges the Department, its management, employees, and agents for any and all demands, claims, actions and causes of action arising from any of the aforesaid. Notwithstanding the above, the Department assumes no liability for damages which may be suffered by Concessionaire as a result of vandalism or trespass.

**ARTICLE 17**  
**CASUALTY DAMAGE**

17.1. In the event that the Concession Area is damaged or destroyed, in whole or in part, from any cause whatsoever including, without limitation, fire, flood, storm, earthquake, vandalism or trespass, Concessionaire shall forthwith proceed with the replacement of, or the reconstruction work necessary to restore, the Improvements to the condition and function existing prior to the occurrence of such damage or destruction, and all costs and expense incurred in connection therewith, whether or not covered by insurance proceeds, shall be paid by Concessionaire. In performing such reconstruction and restoration, Concessionaire shall fully comply with Section 8 herein.

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17.2. In the event of casualty, regardless of cause, the Department shall have no responsibility to reimburse Concessionaire for any unamortized costs of capital improvements made to the Concession Area, including without limitation Concessionaire's Improvements, or any incidental or consequential damages, including, but not limited to, lost profits which may be sustained by Concessionaire or any loss or damage to any of Concessionaire's Property.

17.3. In the event that the DOC, or a majority thereof, is damaged or destroyed to the extent that operations within the DOC, including the Concession Area, cannot occur for a period in excess of ninety (90) calendar days, then either party may terminate this Agreement upon written notice to the other specifying the date of termination.

## **ARTICLE 18**

### **MANAGEMENT AND PERSONNEL**

18.1. Manager. Concessionaire shall have in charge at all times a competent and experienced Guam-based manager who shall be responsible for the day-to-day operation and maintenance of the Service under the Agreement. Concessionaire further agrees that upon notification by the Department of its dissatisfaction with the manager's performance, Concessionaire shall place the manager on probation for thirty (30) days and, if the manager's performance does not improve to the satisfaction of the Department, Concessionaire shall immediately replace the manager with one satisfactory to the Department. Uniforms. All employees or agents of Concessionaire shall wear good quality uniforms appropriate to the area and duty to which they are assigned and the services they perform. All uniforms used shall be approved by the Department prior to use, and no substitution shall be permitted without prior approval of the Department.

18.2. Concessionaire Personnel. Personnel performing the Service shall be neat, clean and courteous. Concessionaire shall not permit its agents, servants or employees to conduct business in a loud, noisy, boisterous, offensive or objectionable manner, or to solicit business outside the Concession Area in any manner.

## **ARTICLE 19**

### **RIGHT TO AUDIT RECORDS**

19.1. Concessionaire shall maintain, in accordance with generally accepted accounting practices, throughout the term of the Agreement and for five years (5) thereafter, records and books of account relating in any way to its operation of the Service, which records and books of account shall be made available upon demand at reasonable times for audit and inspection by the Department. If such records and books of account are maintained outside the Guam, Concessionaire shall reimburse the Department for expenses incurred in sending representatives to inspect such records wherever maintained, such expense to include but not be limited to, transportation, lodging, food, and other out-of-pocket expenses resulting from the necessity to leave Guam.

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**ARTICLE 20**  
**APPROVAL OF ADVERTISING DISPLAYS**

20.1. All advertising displays must be constructed, erected and contain advertising or fillers in accordance with standards approved by the Department and at no cost to the Department. Prior to the erection, construction, or placing of any such advertising displays in the Concession Area, Concessionaire shall submit to the Department, for its written approval, such advertising content drawings, sketches, design dimensions and type, number and character of the advertising display as necessary to obtain such approval.

20.2. Concessionaire shall not hang or affix any sign, poster or other form of display material anywhere outside the Concession Area, nor shall Concessionaire hang any posters, forms of advertising, or any object from the ceiling of the Concession Area.

20.3. Concessionaire shall not install any WiFi, Bluetooth, or other audio or electronic messaging system in the Concession Area without the express written approval of the Department.

**ARTICLE 21**  
**PARKING**

21.1. The Authority may permit the officers, employees and business visitors of Concessionaire to park vehicles in such areas designated by the Department for such purpose. The fee, if any, for such parking shall be paid by Concessionaire or the operator of the vehicle.

**ARTICLE 22**  
**INDEMNITY**

22.1. Concessionaire shall protect, defend, indemnify, and hold the Department and its Officers, Agents, and Assigns harmless from any and all liabilities, losses, claims, judgments, fines or demands, including reasonable attorneys' fees, arising out of any act or omission of the Concessionaire, its Officers, Agents, Employees, Licensees, or arising out of its activities under this Agreement, except for liabilities, losses, claims, judgments, fines or demands resulting from the sole negligence of the Department.

22.2. In the event of any injury (including death), or loss or damage (or claims or claims therefore), Concessionaire shall give immediate notice thereof to the Department within twenty-four (24) hours of the event.

**ARTICLE 23**  
**INSURANCE**

23.1. Insurance. Concessionaire shall procure at its own expense, and keep in effect at all times during the Term of this Agreement, the following types and amounts of insurance:

23.1. Statutory Workers' Compensation Insurance with Employer's Liability limits not less than \$300,000 each accident.

23.1.2. Comprehensive General Liability Insurance with limits not less than \$300,000 combined single limit each occurrence, an annual aggregate, Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products Liability and Completed Operations Coverages.

23.1.3. Comprehensive Automobile Liability Insurance with limits not less than \$300,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Employer's non-ownership liability and hired auto coverages.

23.1.4. Property Insurance on an all risk form covering all Concessionaire improvements, fixtures, equipment, and stock in the Concession Area in an amount equal to the full replacement value of the Concessionaire improvements, fixtures, equipment and stock.

23.2. Rating. All policies shall be provided by insurance carriers licensed to conduct business on Guam and having a financial rating of at least A- (Excellent) by A. M. Best, or Aa3 (Excellent) by Moody's, or AA- (Strong) by Standard & Poors.

23.3. Form of Policies. All insurance required by Concessionaire hereunder shall be pursuant to policies in form and substance and issued by companies satisfactory to the Department. The Department may, upon reasonable notice and reasonable grounds increase or change the required insurance hereunder, in which event Concessionaire shall obtain such required insurance. Without limiting the generality of the foregoing, all Comprehensive General Liability Insurance, Comprehensive Automobile Liability Insurance, and Property Insurance policies shall be endorsed to provide the following:

23.3.1. Name as additional insured, the Department and all of its members, and all of the officers, agents, and employees of each of them (collectively, "Additional Insureds");

23.3.2. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Lease, and that insurance applies separately to each insured against whom claim is made or suit is brought.

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23.3.3. That the insurance company(ies) shall give sixty (60) calendar days prior written notice to the Department by certified mail, return receipt requested, with copy by email to the Director at [jose.sanagustin@doc.guam.gov](mailto:jose.sanagustin@doc.guam.gov) of cancellation, non-renewal or reduction in coverage or limits, delivered to the Department at its address.

23.4. Delivery of Policies or Certificates. On or before the Commencement Date, Concessionaire shall provide to the Department copies of its insurance policies or certificates thereof evidencing the above insurance. At least ten (10) calendar days prior to the expiration date of any of the above policies, documentation showing that the insurance coverage has been renewed or extended shall be filed with the Department. If such coverage is canceled or reduced, Concessionaire shall, within ten (10) calendar days of such cancellation or reduction of coverage, file with the Department evidence that the required insurance has been reinstated or provided through another insurance company or companies.

23.5. Subrogation. With respect to all insurance coverage obtained by Concessionaire pursuant to this Agreement, Concessionaire shall obtain for the benefit of the Department, a waiver or any right of subrogation which the insurer(s) of Concessionaire may acquire against the Department by virtue of the payment of any loss covered by such insurance.

23.6. Subtenants. All subleases shall have a provision requiring sublessees to procure and keep in effect at all times during the term of the sublease, insurance of the types and amounts stated above.

23.7. The Department shall have no liability for any premiums charged for such coverage(s). The inclusion of the Department and all of its officers, employees and agents, and their assigns, as Additional Insureds, is not intended to, and shall not, make them, or any of them a partner or joint venturer with Concessionaire in its operations at the DOC.

## **ARTICLE 24**

### **HAZARDOUS MATERIALS**

24.1. The Department represents, warrants, and covenants that as of the commencement date of this Agreement, the Concession Area does not contain, or have upon it, any Hazardous Materials except Permitted Substances.

24.2. Concessionaire shall not use, install, generate, store, treat, transport, or dispose of any Hazardous Material, except Permitted Substances, in any part of the DOC, or otherwise cause or permit any part of the Department to contain or have upon it any Hazardous Materials except Permitted Substances.

24.3. Concessionaire shall ensure that all Hazardous Materials are contained, identified, characterized, packaged, labeled, stored, transported, and disposed of in accordance with all applicable local and federal laws and regulations. Concessionaire shall only ship or transport Hazardous Materials, or waste generated from Hazardous Materials, using properly licensed or permitted transporters, and Concessionaire shall only dispose of Hazardous Materials

or waste generated from Hazardous Materials at facilities properly licensed and permitted for such disposal.

24.4. Concessionaire shall promptly notify the Department in writing of any notice, order, or pending or threatened action by, or received from, any regulatory agency or other governmental body, or any claims made by any third party, relating to Hazardous Materials at the DOC, and shall promptly furnish the Department with copies of any documents or legal pleadings in connection therewith.

24.5. Concessionaire shall immediately notify the Department of any releases, spills, overfills, leaks, discharges or emissions of any Hazardous Materials. Concessionaire shall make, and shall provide the Department with copies of, all required filings and notifications to federal and local authorities related to any such releases or other occurrences set forth in the preceding sentence or related to its use or management of Permitted Substances. In addition, the Department shall have the right, but shall not be obligated, to notify any federal, or local governmental authority of information which may come to its attention with respect to Hazardous Materials at the DOC and Concessionaire releases the Department from any claims of loss, damage, liability, expense or injury relating to or arising from, directly or indirectly, any such disclosure which arises from any release, spill, overfill, leak discharge, or emission of Hazardous Material related to Concessionaire's operations.

24.6. If at any time during the Term of this Agreement the Department has any basis to suspect that Concessionaire has failed to observe or perform any provision, covenant, condition, or agreement contained in this Agreement related to Hazardous Materials, and in all events, upon the termination of this Agreement or upon the occurrence of a default, the Department may require Concessionaire, at the Department's option to (a) provide the Department, at Concessionaire's expense, a full or partial environmental inspection or audit, prepared by a qualified consultant approved by the Department, certifying as to the presence or absence of Hazardous Materials; or (b) permit the Department to inspect or audit the Area at Concessionaire's expense.

## **ARTICLE 25**

### **ASSIGNMENT OF AGREEMENT**

25.1. Concessionaire shall not at any time sell, assign, transfer, pledge or otherwise encumber in any manner whatsoever the Agreement nor any part thereof, nor sublet any portion of the Concession Area, nor any Improvements thereon or thereto for any purpose, nor allow others to use the Concession Area without the prior written consent of the Department.

25.2. Should Concessionaire request consent by the Department to any assignment, Concessionaire acknowledges that its experience and qualifications, and plan for performance set forth in the Proposal and as requested in the RFP were a material basis upon which Concessionaire was awarded this Agreement and that any assignee or successor must meet or exceed such requirements at the time of assignment or transfer. In addition, Concessionaire acknowledges that its financial capability as demonstrated during the procurement stage was a material basis upon which Concessionaire was awarded this Agreement and that meeting and

maintaining the financial capability requirements are critical to Concessionaire's ability to perform under this Agreement. Accordingly, in addition to any other requirements which the Department may impose, Concessionaire acknowledges and agrees that any proposed assignee or successor must meet the financial capability standard in the RFP at the time of the assignment or transfer and must thereafter maintain the required levels of financial capability throughout the remaining term of this Agreement.

25.3. No assignment permitted by the Department shall in any way affect or diminish Concessionaire's obligation to perform all of the terms and provisions contained in the Agreement.

25.4. The sale or transfer of (i) the controlling stock of a closely held corporation, (ii) the controlling interest in a partnership or limited liability company, (iii) a sale or transfer of a controlling interest in Concessionaire by a Controlling Party, or the transfer of interest by merger, acquisition or similar corporate transfer or transfer by operation of law, whether in a single transaction or as a result of more than one transaction, shall be considered as an assignment for the purpose of this Section.

**ARTICLE 26**  
**AGREEMENT BINDING UPON SUCCESSORS**

26.1. Notwithstanding the prohibition on assignment set forth above, the Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto as may be permitted herein.

**ARTICLE 27**  
**CONDEMNATION**

27.1. In the event of the acquisition by condemnation or the exercise of the power of eminent domain by a governmental entity (which for these purposes shall not be deemed to include the Department) of any interest in all or part of the Concession Area, Concessionaire shall not institute any action or proceeding or assert any claim against the Department for compensation or consideration of any nature whatsoever, and any provision herein contained contrary to the provisions of this Section shall have no force or effect. All compensation awarded or paid upon such a total or partial taking of the Concession Area shall belong to and be the property of the Department without any participation by Concessionaire.

27.2. Nothing contained herein shall be construed or preclude Concessionaire from recovering directly from the condemning authority the value of any claim, as may exist, for loss of business, or depreciation, damage, or cost of removal, or for the value of Concessionaire's Property; provided, however, that no such claim shall diminish or otherwise adversely affect the Department's award.

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**ARTICLE 28**  
**TERMINATION FOR CONVENIENCE**

28.1. Termination. The Procurement Officer may, when the interest of the territory or the Department so require, terminate this contract in whole or in part, for the convenience of the territory or the Department. The Procurement Officer shall give written notice of the termination to the Concessionaire specifying the part of the contract terminated and when termination becomes effective.

28.2. Concessionaire's Obligations. The Concessionaire shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Concessionaire will stop work to the extent specified. The Concessionaire shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Concessionaire shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Procurement Officer may direct the Concessionaire to assign the Concessionaire's right, title, and interest under terminated orders or subcontracts to the territory or the Department. The Concessionaire must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

28.3. Right to Supplies. The Procurement Officer may require the Concessionaire to transfer title and deliver to the territory or the Department in the manner and to the extent directed by the Procurement Officer:

28.3.1. any completed supplies; and

28.3.2. such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the Concessionaire has specifically produced or specially acquired for the performance of the terminated part of this Agreement.

28.4 The Concessionaire shall, upon direction of the Procurement Officer, protect and preserve property in the possession of the Concessionaire in which the territory has an interest. If the Procurement Officer does not exercise this right, the Concessionaire shall use best efforts to sell such supplies and manufacturing materials in accordance with the standards of 13 GCA §2706 (UCC). This in no way implies that the territory has breached the contract by exercise of the Termination for Convenience Clause.

28.5. Uniform Commercial Code of Guam, §2706 is quoted at the end of this Section. Utilization of this Section in no way implies that the territory has breached the contract by exercise of the Termination for Convenience Clause.

28.6. Compensation.

28.6.1. The Concessionaire shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data to the extent required by §3118 (Cost or Pricing Data) of the Guam Procurement Regulations bearing

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on such claim. If the Concessionaire fails to file a termination claim within one year from the effective date of termination, the Procurement Officer may pay the Concessionaire, if at all, an amount set in accordance with 28.6.3 of this Paragraph.

28.6.2. The Procurement Officer and the Concessionaire may agree to a settlement provided the Concessionaire has filed a termination claim supported by cost or pricing data to the extent required by §3118 (Cost or Pricing Data) of the Guam Procurement Regulations and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the territory, the proceeds of any sales of supplies and manufacturing materials under 28.6.3 of this clause, and the contract price of the work not terminated.

28.6.3. Absent complete agreement under 28.6.2 of this Paragraph, the Procurement Officer shall pay the Concessionaire the following amounts, provided payments agreed to under 28.6.2 shall not duplicate payments under this Subparagraph:

28.6.3.1. contract prices for supplies or services accepted under the contract;

28.6.3.2. costs incurred in preparing to perform and performing the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for accepted supplies or services; provided, however, that if it appears that the Concessionaire would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

28.6.3.3. costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to 28.6.2 of this clause. These costs must not include costs paid in accordance with 28.6.3.2 of this Paragraph;

28.6.3.4. the reasonable settlement costs of the Concessionaire including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this contract. The total sum to be paid the Concessionaire under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the Concessionaire reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph (b) of this Paragraph, and the contract price of work not terminated;

28.6.3.5. Cost claimed, agreed to, or established under 28.6.2 and 28.6.3 of this Paragraph shall be in accordance with Chapter 7 (Cost Principles) of the Guam Procurement Regulations.

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28.7 14 GCA §2796 (UCC) states:

28.7.1. The Concessionaire shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data to the extent required by §3118 (Cost or Pricing Data) of the Guam Procurement Regulations bearing on such claim. If the Concessionaire fails to file a termination claim within one year from the effective date of termination, the Procurement Officer may pay the Concessionaire, if at all, an amount set in accordance with 28.7.3 of this Paragraph.

28.7.2. The Procurement Officer and the Concessionaire may agree to a settlement provided the Concessionaire has filed a termination claim supported by cost or pricing data to the extent required by §3118 (Cost or Pricing Data) of the Guam Procurement Regulations and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the territory, the proceeds of any sales of supplies and manufacturing materials under Paragraph (3) of this clause, and the contract price of the work not terminated.

28.7.3. Absent complete agreement under 28.7.2 of this Paragraph, the Procurement Officer shall pay the Concessionaire the following amounts, provided payments agreed to under Subparagraph (b) shall not duplicate payments under this Subparagraph:

28.7.3.1. contract prices for supplies or services accepted under the contract;

28.7.3.2. costs incurred in preparing to perform and performing the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for accepted supplies or services; provided, however, that if it appears that the Concessionaire would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

28.7.3.3. costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to 28.2 of this clause. These costs must not include costs paid in accordance with 28.7.3.2 of this Paragraph;

28.7.3.4. the reasonable settlement costs of the Concessionaire including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this contract. The total sum to be paid the Concessionaire under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the Concessionaire reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph (b) of this Paragraph, and the contract price of work not terminated.

28.7.3.5. Cost claimed, agreed to, or established under 28.7.2 and 28.7.3 of this Paragraph shall be in accordance with Chapter 7 (Cost Principles) of the Guam Procurement Regulations.

28.8. 14 GCA §2796 (UCC) states:

28.8.1. §2076. Seller's Resale Including Contract for Resale.

28.8.2. Under the conditions stated in §2703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with an incidental damages allowed under the provisions of this division (§2710), but less expenses saved in consequence of the buyer's breach.

28.8.3. Except as otherwise provided in 28.8.2 or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms, but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

28.8.4. Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to resell.

28.8.5. Where the resale is at public sale:

28.8.5.1. Only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

28.8.5.2. It must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

28.8.5.3. If the goods are not to be within the view of those attending the sale, the notification of sale must state the place where the goods are located and provide for their reasonable inspection by the offeror; and

28.8.5.4. The seller may buy.

28.8.5.5. A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

28.8.5.6. The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (§2707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (Subsection 3) of §2711).

## **ARTICLE 29**

### **TERMINATION FOR DEFAULT**

29.1. Default. If Concessionaire refuses or fails to perform any of the provisions of this Concession Agreement with such diligence as will ensure its completion within the time specified in this Concession Agreement, or any extension thereof, otherwise fails to timely satisfy the Concession Agreement provisions, or commits any other substantial breach of this Concession Agreement, the Procurement Officer may notify the Concessionaire in writing of the delay or non-performance and if not cured in ten days or any longer time specified in writing by the Procurement Officer, such officer may terminate the Concessionaire's right to proceed with the Concession Agreement or such part of the Concession Agreement as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part the Procurement Officer may procure similar supplies or services in a manner and upon terms deemed appropriate by the Procurement Officer. The Concessionaire shall continue performance of the Concession Agreement to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

29.2. Concessionaire's Duties. Notwithstanding termination of the Concession Agreement and subject to any directions from the Procurement Officer, Concessionaire shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Concessionaire in which the territory has an interest.

29.3. Compensation. Payment for completed supplies delivered and accepted by the territory shall be at the Concession Agreement price. Payment for the protection and preservation of property shall be in an amount agreed upon by Concessionaire and the Procurement Officer; if the parties fail to agree, the Procurement Officer shall set an amount subject to Concessionaire's rights under Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations. The territory may withhold from amounts due Concessionaire such sums as the Procurement Officer deems to be necessary to protect the territory against loss because of outstanding liens or claims of former lien holders and to reimburse the territory for the excess costs incurred in procuring similar goods and services.

29.4. Excuse for Nonperformance or Delayed Performance. Except with respect to defaults of subcontractors, Concessionaire shall not be in default by reason of any failure in performance of this Concession Agreement in accordance with its terms (including any failure by the Concessionaire to make progress in the prosecution of the work hereunder which endangers such performance) if Concessionaire has notified the Procurement Officer within 15 calendar days after the cause of the delay and the failure arises.

**REVISED**

*APRIL 15, 2016*

**ARTICLE 30**  
**DEFAULT BY DEPARTMENT**

30.1. Concessionaire's sole remedy against the Department for its default shall be the right to terminate the Agreement upon ninety (90) calendar days written notice to the Department if the Department fails to comply with provisions of the Agreement and such failure is not cured by the Department within sixty (60) calendar days of receipt of written notice from Concessionaire.

**ARTICLE 31**  
**EXTRAORDINARY TERMINATION BY CONCESSIONAIRE**

31.1. The Agreement shall be subject to termination by Concessionaire in the event of any of the following events:

31.1.1. The permanent abandonment of the DOC as a commercial air terminal.

31.1.2. The lawful assumption by the United States government, or any authorized agency thereof, of the operation, control, or use of the DOC, or any substantial part or parts thereof in such a manner as to substantially restrict Concessionaire from operating there from for a continuous period in excess of ninety (90) calendar days.

31.1.3. Issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the Department's use of the DOC in such a manner as to substantially restrict Concessionaire from conducting its Services hereunder, provided that such injunction remains in force for a period of ninety (90) calendar days.

31.2. Any misconduct, negligence or breach by any other tenant or concessionaire at the DOC shall not release Concessionaire of its obligations herein.

31.3. In the event Concessionaire terminates the Agreement pursuant to this Section, Concessionaire shall have no right to seek or recover any damages against the Department by reason of the termination of the Agreement.

**ARTICLE 32**  
**SURRENDER OF POSSESSION; HOLDING OVER**

32.1. On the date of the expiration or other termination of the Agreement, the Concessionaire covenants and agrees to yield and deliver, peaceably and promptly, the Concession Area to the Department, all being in good condition as required by the Agreement.

**REVISED**

*APRIL 15, 2016*

32.2. Upon the expiration or termination of the Agreement, Concessionaire shall, upon notice from the Department, take all reasonable steps to cooperate with the designated replacement concessionaire to ensure a smooth transition of the Service.

32.3. If Concessionaire holds over and remains in possession of the Concession Area, or any part thereof, after the expiration or other termination of the Agreement, without the written approval of the Department, the Department may treat such holdover as a month to month tenancy, subject to all the terms and conditions provided in the Agreement, except that any applicable payments shall be equal to 100% of the current Rent in effect immediately prior to the date of the holding over.

32.4. In addition to any payments as set forth above, Concessionaire shall be liable to the Department for any and all loss or damages that result from holding over by Concessionaire without the written approval of the Department.

32.5. It is expressly agreed that the acceptance of any payment by the Department from Concessionaire in the event that Concessionaire holds over shall not constitute a waiver by the Department of its right to immediate possession of the Concession Area or any other right at law or equity or pursuant to the Agreement.

### **ARTICLE 33** **REMOVAL OF PROPERTY**

33.1. Upon the expiration or termination of the Agreement, or under any other circumstances permitting or requiring Concessionaire to remove all Concessionaire's Property, Concessionaire shall remove such property in a manner and at a time that shall permit continued, uninterrupted operation of the Service. Removal operation shall commence at a time specified by the Department and shall be completed within five (5) calendar days, but Concessionaire's Property shall be subject to any lien that the Department may have for any unpaid Rent or other fees and charges due under the terms of the Agreement.

33.2. Concessionaire shall repair all damage done to the Concession Area or other DOC property resulting from the removal of Concessionaire's Property by Concessionaire, employees, agents or contractors, and shall restore the Concession Area to the state of good repair that existed prior to the installation of Concessionaire's Property, less normal wear and tear.

### **ARTICLE 34** **WAIVERS**

34.1. Every provision herein imposing an obligation upon Concessionaire is a material inducement and consideration for the execution of the Agreement. No waiver by the Department of any of the terms, covenants, or conditions of the Agreement, or noncompliance therewith, shall be deemed as a waiver at any time thereafter of the same or any other term, covenant, or condition herein contained, nor of the strict and prompt performance thereof.

34.2. No delay, failure, or omission of the Department to re-enter the Concession Area or to exercise any right, power, privilege, or option arising from any default, or subsequent acceptance of payment of any sort then or thereafter accrued shall impair any such right, power, privilege, or option, nor be construed as a waiver of any such default or acquiescence therein.

34.3. Time is specifically expressed to be of the essence. No notice by the Department shall be required to restore or revive time as being of the essence hereof after waiver by the Department of any event of default in one or more instances.

**ARTICLE 35**  
**WAIVER OF CLAIMS FOR ANTICIPATED PROFITS**

35.1 Concessionaire waives any claims against the Department and its management, employees and agents for loss of anticipated profit in any suit or proceeding involving the Agreement or any part thereof.

**ARTICLE 36**  
**FORCE MAJEURE**

36.1. If either party hereto shall be delayed, hindered in, or prevented from, the performance of its obligations under the Agreement by reason of riots, insurrection, war, terrorism or other reason of like nature, not the fault of such party (hereinafter, "Permitted Delay"), such party shall be excused for the period of time equivalent to the delay caused by such Permitted Delay. Notwithstanding the foregoing, any extension of time sought by Concessionaire for a Permitted Delay shall be conditioned upon it providing written notice of such Permitted Delay to the Department within five (5) calendar days of the event causing the Permitted Delay.

In no event shall Concessionaire be relieved of its obligations to pay Rent except as otherwise set forth in the Agreement.

**ARTICLE 37**  
**DISPUTES**

37.1. The Department and Concessionaire agree to attempt resolution of all controversies which arise under, or are by virtue of, this Agreement through mutual agreement. If the controversy is not resolved by mutual agreement, then the controversy shall be decided by the Department in writing within sixty (60) calendar days after Contractor shall request the Department in writing to issue a final decision. If the Department does not issue a written decision within sixty (60) calendar days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then Concessionaire may proceed as though the Department had issued a decision adverse to Concessionaire.

**REVISED**

APRIL 15, 2016

37.1.1. The Department shall immediately furnish a copy of the decision to Concessionaire by certified mail with a return receipt requested, or by any other method that provides evidence of receipt.

37.1.2. The Department's decision shall be final and conclusive, unless fraudulent or unless Concessionaire appeals the decision as follows:

37.1.2.1. For disputes involving money owed by or to the Department under this Agreement, Concessionaire appeals the decision in accordance with the Government Claims Act by filing a government claim with the Department no later than eighteen months after the decision is rendered by the Department or from the date when a decision should have been rendered.

37.1.2.2. For all other disputes arising under this Agreement, Concessionaire files an appeal with the Office of the Public Accountability pursuant to 5 G.C.A. §§ 5706(a) and 5427(e) within sixty days of the Department's decision or from the date the decision should have been made.

37.1.3. Concessionaire shall exhaust all administrative remedies before filing an action in the Superior Court of Guam in accordance with applicable laws.

37.1.4. Concessionaire shall comply with the Department's decision and proceed diligently with performance of this Contract pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, this Agreement, except where Concessionaire's claims a material breach of this Agreement by the Department. However, if the Department determines in writing that continuation of services under this Agreement is essential to the public's health or safety, then Concessionaire shall proceed diligently with performance of the Agreement notwithstanding any claim of material breach by the Department.

37.2. All controversies between the Department and Concessionaire which arise under, or are by virtue of, this Concession Agreement, and which are not resolved by mutual agreement, shall be decided in accordance with the Guam Procurement Law, 5 G.C.A. § 5427.

### **ARTICLE 38** **SITUS AND SERVICE OF PROCESS**

38.1. The Superior Court of Guam shall have exclusive jurisdiction and venue with respect to all disputes, actions, and proceedings arising from or under the Agreement, regardless of the nature or basis of the dispute, provided that any suit, action, or other proceeding involving exclusive federal jurisdiction that relates in any way to the Agreement shall be filed in the U.S. District Court of Guam.

38.2. Concessionaire consents to the jurisdiction and venue of the Superior Court of Guam and waives personal service of any and all process upon Concessionaire in all such actions or proceedings, and consents that all such service or process shall be made by certified mail, return receipt requested, directed to Concessionaire at the address herein stated, and service so made shall be deemed to be completed two (2) calendar days after the same shall have been mailed as aforesaid.

**ARTICLE 39**  
**RELATIONSHIP OF PARTIES**

39.1. It is understood and agreed that nothing in the Agreement is intended or should be construed as in any way creating or establishing a partnership between the Department and Concessionaire or of creating a joint venture, or as establishing Concessionaire as the agent, representative, or employee of the Department for any purpose or in any manner whatsoever.

39.2. Concessionaire is to be, and shall remain, an independent contractor with respect to the Service and any other actions performed under the Agreement or any part thereof.

**ARTICLE 40**  
**DEALINGS AND NOTICES**

40.1. Whenever Concessionaire is required or permitted to obtain the approval of, consult with, give notice to, or otherwise deal with the Department, Concessionaire shall deal with the Department's authorized representative. The Department's authorized representative shall be its Director or his designee, unless or until the Department shall give Concessionaire written notice to the contrary.

40.2. All notices from one party to the other under the Agreement shall be in writing, delivered by hand or by recognized commercial courier services or mailed by registered or certified mail to the address indicated herein, with the right to change addresses upon written notice of one party to the other.

Department:  
Director  
Department of Corrections, Government of Guam  
P.O. Box 3236  
Hagatna, Guam 96932

Concessionaire:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ARTICLE 41**  
**INTERPRETATION**

41.1. The Agreement shall be construed according to the laws of the Guam.

41.2. The language of the Agreement shall be construed according to its fair meaning, and not strictly for or against either the Department or Concessionaire.

41.3. The table of contents, titles, and section headings appearing herein are solely for convenience of reference for the parties and shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of the Agreement.

41.4. If any provision of the Agreement is determined to be void or unenforceable for any reason by any court of competent jurisdiction, then such determination shall not affect any other provision of the Agreement and all such other provisions shall remain in full force and effect.

41.5. The Agreement constitutes the entire agreement between the Department and Concessionaire. Each of its documents and exhibits is incorporated herein by this reference as if fully set forth herein and made apart thereof. The Concessionaire and Department may modify or supplement any provision of this Agreement, however, no change in, modification of, or supplement to, the Agreement shall be valid or enforceable unless it is in writing and signed by the duly authorized representatives of both the Department and Concessionaire.

**ARTICLE 42**  
**REMEDIES**

42.1. Any dispute arising under or out of this Contract is subject to the provisions of Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations

[SIGNATURE PAGE FOLLOWS]

**REVISED**

APRIL 15, 2014

IN WITNESS WHEREOF, the parties hereto have executed this CONCESSION AGREEMENT on the date indicated by their respective signatures to be effective upon the Effective Date.

**DEPARTMENT OF CORRECTIONS  
GOVERNMENT OF GUAM**

**CONCESSIONAIRE:**

By: \_\_\_\_\_  
**JOSE A. SAN AGUSTIN**  
Director  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**APPROVED BY:**

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
**JOSE S. CALVO**  
Director, BBMR  
Date: \_\_\_\_\_

\_\_\_\_\_  
**ELIZABETH BARETTE-ANDERSEN**  
Attorney General of Guam  
Date: \_\_\_\_\_

**APPROVED BY:**

\_\_\_\_\_  
**EDDIE BAZA CALVO**  
Governor of Guam  
Date: \_\_\_\_\_