

**STATE BOARD OF EDUCATION**  
**Consent Item**  
July 21, 2016

**SUBJECT:** Approval of Amendments to Rules Related to the Division of Blind Services

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**PROPOSED BOARD ACTION**

For Approval

**AUTHORITY FOR STATE BOARD ACTION**

Sections 413.011(3)(l), 413.051, 1001.02(2)(n), Florida Statutes

**EXECUTIVE SUMMARY**

The proposed rule changes in Chapter 6A-18, Part I, are intended to align current Division of Blind Services, Bureau of Business Enterprise, policies and procedures with the Division of Blind Services rules.

The proposed rulemaking contains substantial changes in rule 6A-18.0421, which governs the conditions under which a blind vendor's Licensed Operator Facility Agreement may be terminated or the blind vendor's license may be suspended or revoked. These changes include specific acts or omissions that could lead to discipline of the blind vendor, a table outlining the ranges of discipline applicable to certain acts or omissions, and aggravating and mitigating factors available to the Division for consideration. Another area of significant change is in rule 6A-18.0425, which describes the selection process utilized to award vending facilities to blind vendors. The point system and interview process provided for in policy have been added to this rule.

Other substantive changes in this proposed rulemaking are: the incorporation of the applicable federal regulations (6A-18.0401); clarification of the factors examined in the establishment of a vending facility and the Division's right to seek vending machine income from facilities on federal or state property that are not operated by blind vendors (6A-18.041); clarification of the background screening requirement and the requirements for a blind vendor to maintain their license (6A-18.042); updated timeframes for the blind vendor grievance procedures (6A-18.0423); clarification of procedures governing announcement of a vending facility opportunity (6A-18.0424); and more detail on the Licensed Operator Facility Agreements and the responsibilities of the blind vendor and the Division under those agreements (6A-18.044). The remaining rules in Chapter 6A-18 Part I contain technical or other minor changes.

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**Supporting Documentation Included:** Proposed Rules 6A-18.040, 6A-18.0401, 6A-18.041, 6A-18.042, 6A-18.0421, 6A-18.0422, 6A-18.0423, 6A-18.0424, 6A-18.0425, 6A-18.043, 6A-18.044, 6A-18.045, and 6A-18.046, F.A.C. Form DBS-BBE 005, Application for the Vending Facility Training Program; Form DBS -BBE 007, Business Opportunity Application; Form DBS-BBE 700w, Facility Vendor's Monthly Business Report; Form DBS 730, Licensed Operator Facility Agreement; Form DBS 730a, Temporary Licensed Operator Facility Agreement; and DBS-BBE Form 016, Consultant Questionnaire

**Facilitator:** Brent McNeal, Deputy General Counsel

#### **6A-18.040 Definitions.**

The following definitions apply throughout Chapter 6A-18:

(1) Department means the Florida Department of Education.

(2) Division means the Division of Blind Services.

(3) Permanent Licensed Operator Facility Agreement (Permanent L.O.F.A.) means a contract between the Division and a Blind licensee for the operation of a Division Vending facility in perpetuity. It contains the contractual obligations and expectations between the Vendor and the Division as well as the terms governing the interactions of both with property owners.

(4) Temporary Licensed Operator Facility Agreement (Temporary L.O.F.A.) means a contract between the Division and a Blind licensee for the operation of a Division Vending facility for a specific period of time. It contains the contractual obligations and expectations between the Vendor and the Division as well as the terms governing interactions of both with property owners.

~~Unless otherwise qualified in these rules, the definitions contained in 34 Code of Federal Regulations, § 395.1 Terms, and Section 413.051(2), F.S. (1997), are incorporated herein by reference.~~

~~Rulemaking Authority 413.011(3)(l), 413.051(12) FS. Law Implemented 413.011 ~~413.051~~ FS. History—New 4-5-83, Amended 7-9-84, Formerly 6A-18.02, 6A-18.002, Amended 10-20-98, Formerly 38K-1.002, Amended~~

#### **6A-18.0401 Federal Regulations Adopted by Reference.**

The Department adopts and incorporates by reference Title 34, Code of Federal Regulations, Parts 361, effective January 17, 2001, and 395, effective January 19, 1981 (<http://www.flrules.org/Gateway/reference.asp?No=Ref->). The regulations may also be obtained by contacting the Division of Blind Services, 325 West Gaines Street, Suite 1114, Tallahassee, Florida 32399-0400.

~~Rulemaking Authority 413.011(3)(l), 413.051(12), FS. Law Implemented 413.011(3)(l), FS. History—New.~~

#### **6A-18.041 Establishment of Vending Facilities.**

The Division shall establish and maintain Vending facilities on federal, state, and other property wherever feasible, in light of appropriate space and potential patronage, projected Vendor income, required Division investment, availability of funds and other factors unique to each potential Vending facility, only where feasible, as

~~space and funds are available. For the purposes of this rule, the term feasible shall mean satisfying the Facility Feasibility Analysis (See subsection 6A-18.046(1), F.A.C.).~~ The Division shall retain title to all equipment, fixtures, and other items purchased with Division funds and assigned to a Vvending facility. Should the Division, for any reason, temporarily forego the establishment of a Vending facility, the Division shall pursue the Division's right to vending machine income under 20 U.S.C. § 107d-3, 34 C.F.R. § 395, and Chapter 413, Florida Statutes.

*Rulemaking Authority 413.011(3)(l), 413.051(12) FS. Law Implemented 413.011(3)(f), 413.041, 413.051 FS. History—New 4-5-83, Amended 11-5-85, Formerly 6A-18.03, 6A-18.003, Amended 10-20-98, Formerly 38K-1.003, Amended*

#### **6A-18.042 Issuance of License.**

(1) In order to be eligible for and maintain a license to operate a Vvending facility, an individual must be:

(a) A Blind person ~~Legally blind~~ as defined in 34 CFR § 395.1, Terms, and Section 413.033(1), F.S.;

(b) A citizen of the United States;

(c) Eighteen (18) years of age or older;

(d) Possess a high school diploma or equivalency; ~~and,~~

(e) Must pass ~~undergo~~ a security background investigation, which shall include, ~~but not be limited to,~~ fingerprinting, statewide criminal and juvenile records checks through the Florida Department of Law Enforcement and federal criminal records checks through the Federal Bureau of Investigation, and may include local criminal records checks through local law enforcement agencies; and,

(2) An individual who is found to have been convicted of or pled guilty or nolo contendere to, whether or not adjudication is withheld, any a crime that which is a felony or a first degree misdemeanor, ~~a felony, or any misdemeanor or felony involving moral turpitude~~ shall be disqualified from eligibility for a license to operate a Vvending facility unless the Department agency exempts the individual from disqualification based on a consideration of:

(a) The passage of time since commission of the crime(s);

(b) The circumstances surrounding the crime(s);

(c) The nature of the harm caused any victim of the crime(s); and,

(d) Other evidence provided by the applicant demonstrating to a clear and convincing standard that the applicant

should not be disqualified from eligibility.

(3) The Division shall issue a license to operate a Vvending facility after an individual has satisfactorily completed the ~~Application for the Vending Facility Training Program~~ Application (Form DBS-BBE 005) as incorporated by reference in Rule 6A-18.046, F.A.C., ~~and the subsequent Vending Facility Training Program , and the Licensure Examination (See subsection 6A-18.046(2), F.A.C.).~~

(4) The license shall be continuously valid, subject to:

(a) The Blind licensee's continuing to meet the requirements of licensure;

(b) The voluntary relinquishment of the license;

(c) Death of the Blind licensee; ~~or~~

(d) Revocation of the license as set forth in Rule 6A-18.00421, F.A.C., or

(e) The Blind licensee failing, for a period of five (5) years, to actively hold either a Permanent or a Temporary L.O.F.A.;

(5) Any Blind licensee whose license becomes invalid under Rule 6A-18.042(4)(e), F.A.C., must complete the requirements of Rule 6A-18.042(3), F.A.C., prior to participating in any future selection process.

*Rulemaking Authority 413.011(3)(l), 413.051(12) FS. Law Implemented 413.011(3)(f) (2), 413.041, 413.051 FS. History—New 4-5-83, Amended 11-5-85, Formerly 6A-18.04, Amended 7-8-87, Formerly 6A-18.004, Amended 10-20-98, Formerly 38K-1.004, Amended 10-25-10.*

**6A-18.0421 Conditions for Termination of a L.O.F.A. Removal from a Facility; Suspension or Revocation of License.**

(1) A Vendor's L.O.F.A. may be terminated ~~vendor shall be removed from a vending facility~~ or a license may ~~shall~~ be suspended or revoked for failing or refusing to comply with any one of the following: these rules, the terms and conditions for licensure, the Licensed Operator Facility Agreement between the vendor and the Division, or the terms and conditions of any permit or lease for property on which a vending facility is located.

(a) The rules of Chapter 6A-18, Florida Administrative Code;

(b) The terms and conditions for licensure as set forth in Rule 6A-18.042(1), F.A.C.;

(c) The Permanent or Temporary L.O.F.A.; or

(d) The terms and conditions of any permit or lease for property on which a Vending facility is located.

(2) A Vendor's L.O.F.A. may ~~vendor shall~~ also be terminated ~~removed from a vending facility~~, or a license may ~~shall~~ be suspended or revoked for any of the following reasons:

(a) Misuse or unauthorized use of Vending facility or equipment, in violation of the L.O.F.A. Licensed Operator Facility Agreement, including damage or destruction due to negligence or the failure to use ordinary or reasonable care;

(b) Removal of state property, ~~equipment~~, or state funds from a Vending facility without the prior written approval of ~~from~~ the Division;

(c) Misuse or misappropriation of state funds;

(d) Falsification of facility records or reports relating to the selection for or the operation of a Vending facility;

(e) The use of threatening, discriminatory, harassing, or abusive language at the Vending facility;

(f) Being in possession of, selling or being under the influence of illegal drugs or alcohol at a Vending facility  
~~Use, sale, or being under the influence of alcohol, or the possession, use, sale, or being under the influence of illegal drugs, at the vending facility;~~

(g) Becoming incapacitated to such a degree that the Vendor can no longer manage the Vending facility in a manner consistent with the requirements of Rule 6A-18.0421(1), F.A.C. ~~Prolonged incapacity of a vendor to manage the vending facility in a manner consistent with the needs of the Vending Facility Program;~~

(h) Failure to successfully complete, every two (2) years, three (3) continuing education units (CEUs) of courses approved by the Division;

(i) Conviction of or plea of guilty or nolo contendere to, whether or not adjudication of guilt is withheld, a crime that ~~which~~ is a felony or a first degree misdemeanor, ~~a felony, or any misdemeanor or felony involving moral turpitude; or~~

(j) Unlicensed carrying of concealed weapons or concealed firearms, as set forth in section 790.01, Florida Statutes, Possession of a firearm in a at the Vending facility by the Blind licensee, excluding tools typically used in the operation of a Vending facility;-.

(k) Failure by the Blind licensee to pay the Division for:

1. Initial working capital when due;

2. Set-aside funds.

(l) Failure by the Blind licensee to pay commissions or other financial obligations incurred in execution of the

L.O.F.A., following due notice from the Division;

(m) Default on any repayment plan between the Blind licensee and the Division for initial working capital, Set-aside funds, or commission deficiencies. Default shall be determined as lack of satisfaction of the balance on said debt, following due notice from the Division;

(n) Failure by the Blind licensee on two (2) consecutive occasions to submit, under the L.O.F.A., the monthly business reports or Set-aside funds by the due date; or

(o) Failure on three (3) separate occasions during any calendar year to submit, under the L.O.F.A., the monthly business reports and Set-aside funds by the date due.

(3) When the Division finds that a Blind licensee has committed any act for which the Division may impose discipline, the Division shall impose an appropriate penalty within the ranges set forth for various acts or violations in the following disciplinary guidelines unless, based upon consideration of aggravating and mitigating factors in the individual case that are among those set out in subsection (5) of this rule, the Division determines that a penalty outside the range in those guidelines but within statutory limitation is appropriate. In those cases in which the Division relies on aggravating or mitigating factors to depart from the ranges in the discipline guidelines, such aggravating and mitigating factors shall be stated in the written notice informing the Vendor of the the penalty.

(4) The following disciplinary guidelines shall apply to the below listed rule violations and to the described action that may be a basis for determining violations of particular rule provisions. Each of the following disciplinary guidelines shall be interpreted to include “letter of warning,” “letter of sanction,” “termination of L.O.F.A.,” “suspension,” and “revocation.” The term “letter of sanction” shall mean a written communication from the Division to the Vendor outlining a violation as described in this subsection and carrying such penalty as described in rule 6A-18.0425(3)(b)4., F.A.C. The terms “suspension” and “revocation” shall mean any length of suspension or revocation of a license to operate a Vending facility, including permanent revocation, and shall include a comparable period of denial of an application for a license.

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| <u>(a) Violation of the rules laid out in Chapter 6A-18, F.A.C.</u>                                    | <u>Letter of Warning -<br/>Revocation</u>       |
| <u>(b) Violation of the requirements for licensure as set forth in subsection 6A-18.042(1), F.A.C.</u> | <u>Termination of L.O.F.A. –<br/>Revocation</u> |
| <u>(c) Breach of the L.O.F.A. in violation of paragraph 6A-18.0421(1)(c),</u>                          | <u>Letter of Warning –</u>                      |

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| <u>F.A.C.</u>  | <u>Termination of L.O.F.A.</u>                               |
| <u>(d) Non-compliance with the terms and conditions of any permit or lease for property on which a Vending facility is located in violation of paragraph 6A-18.0421(1)(d), F.A.C.</u>  | <u>Letter of Warning –</u><br><u>Termination of L.O.F.A.</u> |
| <u>(e) Misuse or unauthorized use of Vending facility or equipment, including damage or destruction due to negligence or the failure to use ordinary or reasonable care in violation of paragraph 6A-18.0421(2)(a), F.A.C.</u> | <u>Letter of Warning –</u><br><u>Termination of L.O.F.A.</u> |
| <u>(f) Removal of state property or state funds from a Vending facility without the prior written approval of the Division in violation of paragraph 6A-18.0421(2)(b), F.A.C.</u>  | <u>Termination of L.O.F.A. -</u><br><u>Revocation</u>        |
| <u>(g) Misuse or misappropriation of state funds in violation of paragraph 6A-18.0421(2)(c), F.A.C.</u>  | <u>Termination of L.O.F.A. -</u><br><u>Revocation</u>        |
| <u>(h) Falsification of facility records or reports in violation of paragraph 6A-18.0421(2)(d), F.A.C.</u>   | <u>Letter of Warning -</u><br><u>Revocation</u>              |
| <u>(i) The use of threatening, discriminatory, harassing, or abusive language at the Vending facility in violation of paragraph 6A-18.0421(2)(e), F.A.C.</u>   | <u>Letter of Sanction –</u><br><u>Revocation</u>             |
| <u>(j) Being in possession of, selling or being under the influence of illegal drugs or alcohol at a Vending facility in violation of paragraph 6A-18.0421(2)(f), F.A.C.</u>   | <u>Letter of Sanction -</u><br><u>Revocation</u>             |
| <u>(k) Becoming incapacitated to such a degree that the Blind licensee can no longer manage the Vending facility in a manner consistent with the requirements of subsection 6A-18.0421(1), F.A.C.</u>                          | <u>Termination of L.O.F.A. –</u><br><u>Revocation</u>        |
| <u>(l) Failure to successfully complete, every two (2) years, three (3)</u>  | <u>Suspension – Revocation</u>                               |

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| <u>continuing education units (CEUs) of courses approved by the Division in violation of paragraph 6A-18.0421(2)(h), F.A.C.</u>  |   |
| <u>(m) Conviction of or plea of guilty or nolo contendere to, whether or not adjudication of guilt is withheld, a crime that is a felony or a first degree misdemeanor in violation of paragraph 6A-18.0421(2)(i), F.A.C.</u>  | <u>Termination of L.O.F.A. -<br/>Revocation</u> |
| <u>(n) Unlicensed carrying of concealed weapons or concealed firearms, as set forth in section 790. 01, Florida Statutes, in a Vending facility by the Blind licensee, excluding tools typically used in the operation of a Vending facility, in violation of paragraph 6A-18.0421(2)(j), F.A.C.;</u>                                      | <u>Termination of L.O.F.A. -<br/>Revocation</u> |
| <u>(o) Failure by the Blind licensee to pay the Division for initial working capital when due, or Set-aside funds, in violation of paragraph 6A-18.0421(2)(k), F.A.C.</u>  | <u>Termination of L.O.F.A. -<br/>Revocation</u> |
| <u>(p) Failure by the Blind licensee to pay commissions or other financial obligations incurred in execution of the L.O.F.A., following due notice from the Division, in violation of paragraph 6A-18.0421(2)(l), F.A.C.</u>   | <u>Termination of L.O.F.A. -<br/>Revocation</u> |
| <u>(q) Default on any repayment plan between the Blind licensee and the Division for initial working capital, Set-aside funds, or commission deficiencies. Default shall be determined as lack of satisfaction of the balance on said debt, following due notice from the division, in violation of paragraph 6A-18.0421(2)(m), F.A.C.</u> | <u>Termination of L.O.F.A. -<br/>Revocation</u> |
| <u>(r) Failure by the Blind licensee on two (2) consecutive occasions to submit, under the L.O.F.A., the monthly business reports or Set-aside funds by the due date in violation of paragraph 6A-18.0421(2)(n), F.A.C.</u>  | <u>Termination of L.O.F.A. -<br/>Revocation</u> |
| <u>(s) Failure on three (3) separate occasions during any calendar year to submit, under the L.O.F.A., the monthly business reports or Set-aside funds by the date due in violation of paragraph 6A-18.0421(2)(o), F.A.C.</u>  | <u>Termination of L.O.F.A. -<br/>Revocation</u> |

(5) Based upon consideration of aggravating and mitigating factors present in an individual case, the Division may deviate from penalties recommended in subsection (4) of this rule. The Division may consider the following as

aggravating or mitigating factors:

(a) The severity of the offense;

(b) The danger to the public;

(c) The number of repetitions of offenses;

(d) Length of time since the violation;

(e) The number of times the Blind licensee has been previously disciplined by the Division;

(f) The length of time the Blind licensee has been licensed and contributions to the program;

(g) The actual damage, physical or otherwise, caused by the violation;

(h) The deterrent effect of the penalty imposed;

(i) The effect of the penalty on the Blind licensee's livelihood;

(j) Any effort of rehabilitation by the Blind licensee;

(k) The actual knowledge of the Blind licensee pertaining to the violation;

(l) Attempts by the Blind licensee to correct or stop the violation or refusal by the Blind licensee to correct or stop the violation;

(m) Actual negligence related to the Blind licensee in any violation;

(n) Penalties imposed for related offenses under subsection (4) of this rule;

(o) Monetary or other benefit to the Blind licensee;

(p) Present status of physical and/or mental condition contributing to the violation including recovery from addiction;

(q) Any other relevant mitigating or aggravating factors under the circumstances.

(6) (3) A vendor's license to operate a Vvending facility may be revoked for failure to pass meet the security background investigation required by criminal record requirements of Rule 6A-18.042, F.A.C., subject to the exemption criteria in Rule 6A-18.042(2), F.A.C.

(7) (4) The Division shall serve written notice of its intent to remove a Vvendor from a Vending facility or to suspend or revoke a license by hand delivery or certified mail, to the Vvendor's last known address. Such action shall be governed by Rule 6A-18.0423, F.A.C., and Chapter 120, F.S.

*Rulemaking Authority 413.011(3)(l), 413.051(12) FS. Law Implemented 413.011(3)(f) 413.011(2), 413.041, 413.051 FS. History—New 10-20-98, Formerly 38K-1.0041, Amended 10-25-10.*

**6A-18.0422 Emergency Removal of a Vendor from a Vending Facility.**

(1) If a Vendor's actions in operating a Vending facility constitute an immediate danger to public health, safety or welfare, or to the assets of the Vending facility, the Division shall immediately remove the Vendor from the Vending facility.

(2) The Division shall provide the Vendor written documentation of the cause for such removal within ten (10) days of the date of the action by hand delivery or certified mail to the Vendor's last known address.

*Rulemaking Authority 413.011(3)(l), 413.051(12), ~~4001.02~~ FS. Law Implemented 413.011(3)(f)~~413.051~~ FS. History—New 10-20-98, Formerly 38K-1.0042, Amended*

**6A-18.0423 Grievance Procedure.**

(1) A Blind licensee may file a grievance if dissatisfied with action taken by the Division which affects the Blind licensee in the operation of the relevant Vending facility.

(2) The grievance shall be reviewed by a five (5) member board which shall be comprised of two (2) persons selected by the Division and three (3) persons selected by the State Committee of Vendors. The board shall review the written grievance, and documents attached to such grievance and all relevant Division documents.

(3) The grievance shall be filed in writing with the Division, within twenty-one (21) calendar days of notice of the action giving rise to the grievance.

(4) In all matters not involving decisions under Rule 6A-18.00425, F.A.C.:

(a) The written grievance shall specify the action being grieved, ~~and~~ contain a recommendation for its resolution and include any documents deemed relevant by the grievant to the grieved action or the proposed resolution;

(b) The board shall consider the facts presented in the written grievance, the documents attached to such grievance, and all relevant Division documents to determine if any action taken by the Division violates the applicable rules and regulations;

(c) ~~(b)~~ The ~~b~~Board shall issue a recommendation to the Division supported by a simple majority of the board within fifteen (15) business days of the Division's receipt of the written grievance;

(d) The Division shall advise the Blind licensee in writing of its disposition of the grievance within thirty (30) business days of the Division's receipt of the written grievance;

(e) ~~(e)~~ If the grievance is not resolved in writing to the satisfaction of the Blind licensee within thirty (30) business calendar days of the receipt of the grievance, the Blind licensee may request a hearing pursuant to Chapter 120, F.S.; The which request shall be in writing, must comply with the requirements of Section 120.569(2)(c), F.S., and filed with the Director, Division of Blind Services, within twenty-one (21) calendar days of receipt of the Division's disposition response.

(5) In matters involving decisions under Rule 6A-18.00425, F.A.C., the procedure shall be as stated above except that:

(a) The grievance shall be filed in writing with the Division within seven (7) business days of the Division appointment announcement;

(b) The written grievance shall not include any material required under subsection 6A-18.00425(1), F.A.C.; ~~and~~

(c) The board shall consider the facts presented in the written grievance, the documents attached to such grievance, and all relevant Division documents to determine if any action taken by the Division violates the applicable rules and regulations; and

(d) ~~(e)~~ The ~~b~~Board's recommendation shall be issued to the Division within twelve (12) business days of the Division's appointment announcement.

*Rulemaking Authority 413.011(3)(l), 413.051(12) FS. Law Implemented 413.011(3)(f), 413.041,413.051 FS.  
History—New 10-20-98, Formerly 38K-1.0043, Amended*

**6A-18.0424 Announcement of Vending Facility Vacancies.**

(1) Upon the establishment of a new Vending facility or when a vacancy occurs in an existing Vending facility, the Division shall announce the vacancy in an accessible format ~~to all licensees, vendors and trainees~~ as a competitive opportunity.

(2) An individual is deemed eligible to compete for a Vending facility vacancy only if the individual:

(a) Is a Blind licensee;

(b) Has completed the Business Opportunity Application form, Form DBS-BBE 007, as incorporated by reference in rule 6A-18.046(2), F.A.C.;

(c) Does not have an outstanding debt to the Bureau of Business Enterprise;

(d) Is current with Continuing Education requirements (see rule 6A-18.0421(2)(h), F.A.C.); and

(e) In the case of a Vending facility vacancy filled with a Vendor under a Permanent L.O.F.A., has established or, if selected, will establish within thirty (30) days of executing the Permanent L.O.F.A. and maintain for the term of such L.O.F.A. a legal physical residence within seventy-five (75) miles of the Vending facility. A single thirty (30) day extension of this requirement shall be granted upon written request by the Vendor

(3) ~~(2)~~ Each vacancy shall be announced for a minimum of two (2) weeks and shall contain, at a minimum, the following information:

(a) The location of the Vending facility;

(b) The type of Vending facility;

(c) The hours of operation;

(d) A general description of services and items currently sold;

(e) Accessibility of the Vending facility;

(f) Staffing pattern;

(g) Estimated annual sales;

(h) Application instructions;

(i) Deadline date for applying; and

(j) Any special information or requirements.

(4) ~~(3)~~ After notification to the chairperson ~~Chairman~~ of the State Committee of Vendors, the Division may elect not to announce a vacancy and instead directly place a ~~vendor~~, Blind licensee ~~or trainee~~ under the following

circumstances:

- (a) To operate a new or existing Vending facility to determine accurate gross sales information; or
- (b) To remedy a situation that has improperly or adversely affected a Blind licensee, vendor, or
- (c) ~~To provide a trainee the required experience in accordance with the Vending Facility Training Program and licensure requirements.~~

*Rulemaking Authority 413.011(3)(l), 413.051(12) FS. Law Implemented 413.011(3)(f), 413.041, 413.051 FS. History—New 10-20-98, Formerly 38K-1.0044, Amended*

#### **6A-18.0425 Application and Selection.**

(1) Selection applications shall be submitted on the Business Opportunity Application (Form DBS-BBE 007) as incorporated by reference in rule 6A-18.046, F.A.C form specified by the Division (See subsection 6A-18.046(3), F.A.C.). All items in such form must be completed and such form postmarked or received by fax in accordance with the application instructions by the closing date indicated in the announcement.

(2) Selection panel(s). The Division shall establish and maintain a permanent statewide selection panel(s). The selection ~~Each~~ panel shall be responsible for recommending candidates for vacant Vendor manager's positions for ~~of~~ Vending facilities referred to the panel by the Division. The selection ~~Each~~ panel shall be composed of five (5) members, two (2) selected by the Division and three (3) selected by two-thirds vote of the State Committee of Vendors. The selection ~~Each~~ panel shall have two (2) alternate members; ~~one alternate shall be selected by the Division and one~~ by two-thirds vote of the State Committee of Vendors. Alternate members shall serve when a primary member selected by the State Committee of Vendors is unable to serve. Members' selected by the State Committee of Vendors shall serve ~~terms shall be~~ for three (3) years. However, in order to establish staggered terms, initially,

(a) One (1) representative selected by the Committee ~~and one representative from the Division~~ shall each serve a one (1) year term,

(b) One (1) representative selected by the Committee ~~and one representative from the Division~~ shall each serve a two (2) year term, and

(c) One (1) representative selected by the Committee shall serve a three (3) year term.

(d) Alternate selection panel members shall have three (3) year terms.

~~(e) When requested by the property owner or custodian, a representative from the property on which the facility exists shall serve as an ad hoc member of the selection panel solely for the purpose of considering applicants for the position in that facility.~~

~~(3) (f) The selection~~ Each panel is responsible for reviewing all ~~s~~Selection ~~a~~Applications, formulating any interview questions to be asked, ~~performing any background checks deemed appropriate~~, interviewing applicants, ranking the applicants, and submitting the recommendation package to the Division for final action. ~~The selection~~ Each panel shall observe the following elements in evaluating an applicant's credentials ~~consider the following selection criteria:~~

(a) Each applicant shall take a test provided on a date and time specified by the Division. The test shall be proctored by a Division employee to ensure consistency in test taking procedures. The questions will be scaled such that an applicant can receive a total of forty (40) points.

(b) Each applicant will be subject to a performance review. Worth a maximum of twenty-five (25) points in the selection process, the performance review consists of the following:

1. A maximum of six (6) points are available as credit for experience, at the rate of .1 points per month under a L.O.F.A. No extra points are given for applicants holding a current L.O.F.A.

2. A maximum of ten (10) points are available for Division business consultant responses to a performance questionnaire. The questionnaire is to be completed by a Division business consultant and provided to the Division. For Vendors under a L.O.F.A. for the most recent thirty-six (36) consecutive months, the questions shall be equally weighted to allow for a maximum of ten (10) points. For a Vendor under a L.O.F.A. for less than the most recent thirty-six (36) consecutive months, the questionnaire score shall be pro-rated by the number of months under a L.O.F.A. divided by thirty-six (36). Vendors not currently under a L.O.F.A. are ineligible for consultant questionnaire points.

3. A maximum of nine (9) points are available for meeting the net profit margin percentages, as set forth in the L.O.F.A., during the most recent thirty-six (36) consecutive months. A maximum of three (3) points are available per twelve (12) month period. Net profit points will be pro-rated for Vendors with more than twelve (12) months but fewer than thirty-six (36) months duration under a L.O.F.A or who have changed Vending facilities in the most recent twelve (12) consecutive months.

4. Applicants shall be penalized for the following incidents during the most recent thirty-six (36) consecutive months. A L.O.F.A. terminated for breach or abandonment during the thirty-six (36) month period results in a loss of any performance review points due for performance prior to the termination and a fifteen (15) point reduction in score. The fifteen (15) point reduction for termination may be avoided if the Blind licensee completes retraining required by the Division. Letters of sanction result in a five (5) point reduction in score for each letter received during the thirty-six (36) month period. Letters of warning result in a two (2) point reduction in score for each letter received during the thirty-six (36) month period. Late monthly business reports result in a loss of one (1) point per late business report during the thirty-six (36) month period.

(c) Applicants with the top five (5) combined testing and performance review scores, including ties, qualify for an interview with the selection panel. If the Vending facility in question is currently run under a Temporary L.O.F.A., the applicant who holds the Temporary L.O.F.A. is also automatically eligible to be interviewed. The interview and associated points are structured as follows:

1. Break the ice period: The selection panel will initiate the interview with general opening questions. There are no points for this portion of the interview.

2. Structured interview component: The selection panel will ask each applicant the same five (5) questions, determined prior to the first interview, and each panelist will rate the responses on a scale of 0 to 5. At the end of this portion of the interview each panelist's scores are averaged and then all panelists' averaged scores are added together. A maximum of twenty-five (25) points are available.

3. Interactive component: The applicant is given the opportunity to present the reasons they feel they are best suited to this Vending facility. Following the presentation the selection panel may ask questions of the applicant relating to the presentation or regarding any inconsistencies between Division documentation and the presentation. The selection panel is also permitted to question the applicant regarding past performance. Based on the presentation and the following discussion each panelist will rate the applicant from 0 to 10. These scores will be averaged for a maximum possible score of ten (10) points.

4. Distressed Vending facility points: A Vending facility may be determined to be distressed by the Division upon consideration of the following factors: a significant decrease in gross sales; a significant decrease in customer base; the condition of the equipment; and the overall condition of the Vending facility. If the applicant currently holds a Temporary L.O.F.A. in a Vending facility determined to be distressed by the Division and is applying for a

Permanent L.O.F.A. in the same Vending facility, the applicant is eligible for up to five (5) points. The panelists will review Vending facility records and on a scale of 0 to 5 rate the improvement made by the applicant. The panelists' scores will be averaged for a maximum possible score of five (5) points.

~~1. Managerial and other skills and abilities demonstrated by the applicants, including handling labor needs, financial skills needed, food planning and preparation, and customer relations; and~~

~~2. Previous records of the applicants, including submission of required reports in an accurate and timely manner; customer satisfaction reports; meeting or improving assigned profit levels; safety and sanitation inspections; fee and bill payment history; financial standing with the Bureau of Business Enterprises, and attendance at continuing education classes.~~

(4) Following the interview, the scores from the test, performance review, and interview are totaled. The selection panel reviews the total scores, prior performance, experience, and the type of Vending facility. The selection panel may recommend that the Vending facility be re-advertised or that one of the applicants who was interviewed be awarded the Vending facility. If the selection panel recommends an applicant without the highest score it must provide an explanation, in writing, to the Division. The selection panel will submit its recommendations, in writing, to the Division.

~~(5) (3) Division responsibilities.~~ The Division shall review the recommendation package to ensure all conditions described above are complied with prior to making the appointment. The Division shall make all appointments.

*Rulemaking Authority 413.011(3)(l), 413.051(12) FS. Law Implemented 413.011(3)(f), 413.041, 413.051 FS. History—New 10-20-98, Formerly 38K-1.0045, Amended*

#### **6A-18.043 The State Committee of Vendors.**

(1) The Division shall establish a State Committee of Vendors. The committee shall be composed of one (1) representative and one (1) alternate from each vending facility district, and a chairperson ~~chairman~~ and vice chairperson ~~chairman~~ elected on a statewide basis by a majority vote of all Vvendors. The districts shall be established to assure equitable representation of all Vvendors in the program on the basis of such factors as geography and Vvending facility type with the goal of providing for proportional representation of Vvendors on federal, state, and private property.

(2) The State Committee of Vendors shall:

(a) Actively participate with the Division in major administrative decisions and policy and program development decisions affecting the overall administration of the Vvending facility program;

(b) Receive and transmit to the Division grievances at the request of Vvendors and serve as advocates for such Vvendors in connection with such grievances;

(c) Actively participate with the Division in the development and administration of a system for the transfer and promotion of Vvendors;

(d) Actively participate with the Division in the development of training and retraining programs for Vvendors; and

(e) Sponsor, with the assistance of the Division, meetings and instructional conferences for Vvendors within the state.

(3) The Division shall provide for the biennial election of the members to the State Committee of Vendors. A committee member, the chairperson ~~chairman~~, and vice chairperson ~~chairman~~ may serve more than one (1) term.

(4) The State Committee of Vendors shall meet not less than quarterly in a location agreed upon by the chairperson ~~chairman~~ and the Division.

*Rulemaking Authority 413.011(3)(l), 413.051(12), ~~4001.02~~ FS. Law Implemented 413.011(3)(f), 413.041, 413.051 FS. History—New 4-5-83, Amended 7-9-84, 11-5-85, Formerly 6A-18.09, 6A-18.009, Amended 10-20-98, Formerly 38K-1.009, Amended*

#### **6A-18.044 Licensed Operator Facility License Agreement.**

(1) Each Vvendor operating a Vvending facility shall execute and maintain a L.O.F.A. Licensed Operator Facility Agreement with the Division (~~See subsection 6A-18.046(4), F.A.C.~~).

(2) A Permanent L.O.F.A. is implemented for the operation of a Division Vending facility in perpetuity by a Vendor. It contains contractual obligations and expectations between the Vendor and the Division as well as the interactions of both with property owners. A Permanent L.O.F.A. is awarded through the selection process, except as provided by Rule 6A-18.0424(4), F.A.C.

(a) Blind licensees who fall into any of the following three (3) categories must sign a Permanent L.O.F.A. for a minimum contract period of twelve (12) months on their next Vending facility:

1. Blind licensees who have never operated a Vending facility under a Permanent L.O.F.A.

2. Blind licensees whose most recent Permanent or Temporary L.O.F.A. was cancelled for breach or abandonment.

3. Blind licensees who have not actively held either a Permanent or a Temporary L.O.F.A. within five (5) years immediately preceding the offer of the L.O.F.A. and who have successfully completed the required retraining in accordance with Rule 6A-18.042(5), F.A.C.

(b) An exception to Rule 6A-18.044(2)(a)1., F.A.C., exists for Blind licensees who have operated a Vending facility under a Temporary L.O.F.A. Blind licensees who have operated a Vending facility under a Temporary L.O.F.A. may sign a Permanent L.O.F.A. for less than twelve (12) months if they are awarded a Permanent L.O.F.A. at the Vending facility where they held the Temporary L.O.F.A. The twelve (12) months requirement shall be reduced by the number of months the Vendor held the Temporary L.O.F.A.

(3) A Temporary L.O.F.A is identical to a Permanent L.O.F.A. except that it is time specific as to its duration and is not awarded in the selection process but rather by recommendation of a committee.

(a) The committee consists of:

1. A business consultant from a region other than where the vacancy has occurred;
2. A designee of the Division;
3. The chairperson of the Committee of Vendors or his or her designee.

(b) Temporary L.O.F.A opportunities will be announced along with a deadline for applicants to respond. Following the response period the committee will interview applicants and make a recommendation to the Division.

(4) Blind licensees operating a temporarily closed Vending facility may sign a Temporary L.O.F.A. for one other Vending facility without losing their rights to the closed Vending facility. Upon notice of the reopen date for the closed Vending facility, the licensed operator has three (3) days to elect to return to the original Permanent L.O.F.A. Vending facility, when it reopens, or forfeit their rights to the original Vending facility and sign a Permanent L.O.F.A. for the Vending facility they currently operate under a Temporary L.O.F.A.

(5) The Division provides the initial working capital for each Vending facility in the form of inventory, cash, and coin necessary for conducting business. The total amount of initial working capital is entered on the L.O.F.A. Once initial working capital is supplied, it is the responsibility of the Vendor to maintain, at all times, a total inventory equal to the initial stock and/or cash value provided by the Division, less any amount repaid to the Division. The Blind licensee will not be allowed to apply for posted business opportunities, or enter into either a

Permanent L.O.F.A. or a Temporary L.O.F.A. while there is an initial working capital balance from any past Vending facilities operated by the Blind licensee.

(6) The required Set-aside funds, which are paid monthly under both the Permanent L.O.F.A. and the Temporary L.O.F.A., are a percentage of the monthly Net proceeds of the Vending facility set by the Division after collaboration with the Committee of Vendors.

(7) Under both the Permanent L.O.F.A. and the Temporary L.O.F.A., the Vendor shall file a monthly report utilizing the on-line reporting system maintained by the Division, no later than the last calendar day of the following month. The Set-aside funds are due with the monthly report.

*Rulemaking Authority 413.011(3)(l), 413.051(12) FS. Law Implemented 413.011(3)(f), 413.041, 413.051 FS. History—New 4-5-83, Amended 11-5-85, Formerly 6A-18.10, Amended 7-8-87, Formerly 6A-18.010, Amended 10-20-98, Formerly 38K-1.010, Amended*

#### **6A-18.045 Newspaper Vending Sales.**

(1) General. The Division of ~~Blind Services~~ has the exclusive right to provide Vvending facilities, including ~~which includes~~ newspapers racks and newspaper vending machines, at interstate highway rest stops pursuant to 23 U.S.C. Section 111(c) ~~(b)~~, 20 U.S.C. Section 107, et seq., and Sections ~~413.011 and~~ 413.051, F.S.. The Division's authority to approve the sale of newspapers and other information to the traveling public at highway rest areas is subject to an agreement with the Florida Department of Transportation. All regularly published newspapers shall have the opportunity to provide vending sales at interstate rest stops by permit subject to the conditions established in this rule.

(2) Conditions.

(a) The publisher or distributor will be responsible to provide a rack or vending machine of the type, style, and color normally used by the publisher or distributor that is stable, durable, and fastened to the ground ~~subject to the approval of the division, as to stability and durability. Such approval shall not be unreasonably withheld.~~

(b) The rack or vending machine will be maintained, repaired, operated and cleaned by the publisher or its agent. The rack or vending machine will be new or in like-new condition when placed into use in the rest area.

(c) When necessary for stability, the publisher or distributor will provide a concrete reinforced pad on which to place the newspaper vending machines. The placement of the rack or vending machine will be in an area agreed

upon by the Department of Transportation ~~Maintenance Engineer~~ and the Division of ~~Blind Services~~. The placement must not create a safety hazard or interfere physically with access to other rest area facilities or vending machines. Publishers and ~~distributors~~ agrees to maintain the newspaper vending machines in ~~reasonable~~ working order ~~to ensure its clean neat appearance~~ and remove ~~to be responsible for~~ any refuse created by the use of the vending machine.

(d) The publisher or distributor ~~shall~~ will be responsible to provide continuous availability of its current issue to the public.

(e) The publisher or distributor shall indemnify and hold harmless the Division and the State of Florida against any claims arising out of negligence in the presence and/or operation of the rack or vending machine provided. All contracts for vending services at rest stops entered into after the effective date of this rule will require this same indemnification.

(3) Compensation. The publisher or distributor will be required to compensate the division at the rate of ten (10) dollars annual administrative fee per newspaper rack. The Department reserves the right to monitor the service being provided and inspect the condition, cleanliness of equipment and other matters related to the operation of the applicant's newspaper vending on the interstate.

(4) Application and permit procedures ~~current vending locations~~.

~~(a) All publishers with news racks in place at the time of the effective date of this rule will not be required to make application to retain those locations. Such publishers must, within a reasonable time, provide the Department with a listing of their pre-existing news rack locations. Publishers with news racks in place may retain those locations.~~

(a) ~~(b)~~ Publishers or distributors wishing to dispense newspapers on the interstate highway shall, by letter, prepare an application for permit to dispense newspapers, and mail the application to the Division of Blind Services, 325 West Gaines Street, Suite 1114 ~~2540 Executive Center Circle, West, Suite 201~~, Tallahassee, Florida 32399-0400.

(b) ~~(c)~~ The application letter shall include: the locations desired, the newspapers to be sold, and proposed timing of the installations. If the Division fails to notify the publisher or distributor within ten (10) business days of receipt of the application, the application will be deemed approved. All applications shall be assumed to be approved unless publishers are notified by the Department within ten (10) days of receipt of the application.

~~(c) (d)~~ Transfer of newspaper news racks from one location to another may be accomplished at the request of the publisher or distributor depending upon the availability of space, by filing a notice with the Department.

~~If the aforementioned conditions are complied with, no application for newspaper vending under this rule will be denied. Each publisher is responsible for filing the proper application and notices under this subsection with the Department within a reasonable time (ten (10) to fifteen (15) days). Failure to do so is grounds for removal of a new rack from a particular location.~~

(5) Termination of permit.

(a) Either the newspaper publisher ~~or~~ or distributor or the Division of ~~Blind Services~~ may terminate a permit entered into under this rule, by giving thirty (30) calendar days written notice. If the permit is to be terminated by the Division of ~~Blind Services~~, written notice with reasons for the termination will be given to the newspaper publisher or distributor. The ~~Division~~ Department may only terminate a ~~any~~ permit if the requirements of paragraph (2)(a)-~~(d)(e)~~ of this rule are not met or, if a safety hazard is created and not remedied by a publisher or distributor, or if the licensing fee is not paid.

(b) The written notice shall also provide the publisher ~~or~~ or distributor with ~~at least~~ thirty (30) calendar days to institute corrective action. If the Division of ~~Blind Services~~ determines that the publisher ~~or~~ or distributor has failed to institute corrective action within the time allowed in the written notice, it shall notify the publisher ~~or~~ or distributor in writing and direct the publisher ~~or~~ or distributor to remove the rack(s) or vending machine(s) in question within ten (10) calendar days. If, during these final ten (10) days the publisher or distributor files a request ~~notice~~ for administrative hearing pursuant to Chapter 120, F.S., the ~~news racks~~ or vending machines that ~~which~~ are the subject of the dispute will not be removed until after a ~~the~~ final order of the hearing officer is issued. If the publisher ~~or~~ or distributor fails to remove racks or vending machines ~~do so~~, the Division of ~~Blind Services~~ may remove the rack(s) or vending machine(s) without further notice. The notice that the corrective action has not been taken or is not adequate shall be considered final agency action for the purposes of Section 120.569 ~~120.57~~, F.S..

*Rulemaking Authority ~~20.05(5), 229.053(1), 413.011(3)(l), 413.051(12)~~ FS. Law Implemented 413.011(3)(f), 413.041, 413.051 FS. History—New 3-1-93, Formerly 6A-18.012. Formerly 38K-1.012, Amended*

**6A-18.046 Incorporation by Reference.**

The below listed documents are incorporated by reference to become effective July 2016 in Chapter 6A-18, F.A.C., and may be obtained from the ~~Director~~, Division of Blind Services, 325 West Gaines Street, Suite 1114, Tallahassee, Florida 32399-0400. The documents may be found online at <http://dbs.myflorida.com/Business%20Enterprise/Forms/index.html>

~~(1) Facility Feasibility Analysis, DLES Form DBS 741 (8/98);~~

(1) ~~(2)~~ Application for the Vending Facility Training Program, ~~DLES Form DBS-BBE 005 (rev. 11/11) (DOS link) 403 (3/98);~~

(2) ~~(3)~~ Business Opportunity Application, ~~DLES Form DBS -BBE 007 (rev. 5/16) (DOS link) 729 (3/98); and~~

(3) Facility Vendor's Monthly Business Report, Form DBS-BBE 700w (DOS link) (rev. 6/16);

(4) The Licensed Operator Facility Agreement, ~~DLES Form DBS 730 (rev.6/16) (DOS link) (4/98);~~

(5) Temporary Licensed Operator Facility Agreement, Form DBS 730a (rev. 6/16) (DOS link); and

(6) Consultant Questionnaire, Form DBS-BBE 016 (rev. 6/16) (DOS link).

*Rulemaking Authority 413.011(3)(l), 413.051(12) FS. Law Implemented 413.011(3)(f), 413.041, 413.051 FS.*

*History—New 10-20-98, Formerly 38K-1.013, Amended*

## Application for the Vending Facility Training Program

|  |                |
|--|----------------|
| <b>Part 1—Contact and Basic Information</b>  |                |
| Name:  | Date:          |
| Street Address:  |                |
| City:  | Zip:           |
| Email Address:   |                |
| Phone:   | Date of Birth: |
| Legally Blind? Yes <input type="checkbox"/> No <input type="checkbox"/> Gender M <input type="checkbox"/> F <input type="checkbox"/> |                |
| <b>Part 2—Required Documentation</b>   |                |
| HAVE YOU PROVIDED PROOF OF THE FOLLOWING?<br>THESE DOCUMENTS MUST BE SUBMITTED WITH THE APPLICATION:                                 |                |
| <input type="checkbox"/> Age   |                |
| <input type="checkbox"/> U. S. Citizenship   |                |
| <input type="checkbox"/> High School Diploma or equivalency, or higher   |                |
| <input type="checkbox"/> Physician’s Statement of Client’s Health  |                |
| <input type="checkbox"/> Proof of bilateral visual impairment (legal blindness) from an optometrist/ophthalmologist                  |                |
| <b>Part 3—Criminal Background Information</b>  |                |
| Have you ever been convicted of a felony or a first degree misdemeanor? <input type="checkbox"/> Yes <input type="checkbox"/> No     |                |
| If “yes”, what charges?  |                |
| Where convicted?   |                |
| Date of Conviction:  |                |

|   |
|---|
| Have you ever pled nolo contendere or pled guilty to a crime which is a felony or first degree misdemeanor?<br><input type="checkbox"/> Yes <input type="checkbox"/> No   |
| If "yes", what charges?   |
| Where?  |
| Date:   |
| Have you ever had the adjudication of guilt withheld to a crime which is a felony or first degree misdemeanor?<br><input type="checkbox"/> Yes <input type="checkbox"/> No  |
| If "yes", what charges?   |
| Where?  |
| Date:   |
| Are you now under charges for any violation of law?<br><input type="checkbox"/> Yes <input type="checkbox"/> No   |
| Note: A "yes" answer to these questions will not automatically bar you from employment. The nature, job relatedness, severity and date of the offense in relation to the position for which you are applying are considered.<br><br>All the above information is true to the best of my knowledge.<br>Client Signature:<br><br>District Office<br>Home Counselor Name |

**Note: All required documentation must be provided with this application or you will not be considered for the Business Enterprise Program.**

# BUSINESS OPPORTUNITY APPLICATION

This application must be received by the Close of Business on the date posted on the Business Enterprise Web Site at

<http://dbs.myflorida.com/Business%20Enterprise/Business%20Opportunities/index.html>

## **Contact Information:**

Name:

Street or PO Box:

City, State and Zip:

Daytime Phone:

Cell Phone:

Email:

**Desired Facility Number** (list each facility number):

**Selection Test** Make sure to check the announcements for testing dates and times.

Desired Location (please select from the list): Select Location

Please select the format for taking the selection test: Test Options

- CCTV:
- I will not need a CCTV.
  - I will need DBS to provide a CCTV for me.
  - I will provide my own CCTV.

## **Background Screening**

Individuals applying for a vacancy shall submit to a background screening as set forth in rule 6A-18.042, F.A.C.

Have you completed the required background screening requirement through BBE since December 20, 2010? Select

### Information Release Consent

I give my consent for the release of this application, my selection test score, and any other information, including but not limited to my facility performance history, to authorized persons involved in the Selection Process as provided by Chapter 6A-18.0425, Florida Administrative Code. I understand such release shall be in a manner as to protect my privacy to the extent possible.

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

THE APPLICATION CAN BE MAILED, FAXED OR E-MAILED.

**Mail to:** Division of Blind Services  
Business Enterprise Program  
Attention: Compliance Officer  
325 West Gaines Street  
Suite 1114  
Tallahassee, FL 32399

**Fax to:** (850) 245-0364

**E-Mail to:** [alan.risk@dbs.fldoe.org](mailto:alan.risk@dbs.fldoe.org)

**FACILITY VENDOR'S  
MONTHLY BUSINESS REPORT**

**PART I**

|   |  |                    |                        |
|---|--|--------------------|------------------------|
| <b>OFFICIAL USE ONLY</b>  |  | <b>Contract #:</b> | <b>Contract I D #:</b> |
| <b>1. Facility Number (3 digit number)</b>  | <b>2. Reporting Month</b>                    | <b>3. Date</b>     |                        |
| <b>4. Printed Vendor's Name</b>   | <b>5. Business Name</b>                      |                    |                        |
| <b>6. Vendor's Federal Employer ID Number</b>   |  |                    |                        |
| <b>9. Vendor's Signature</b><br><br>_____   |  |                    |                        |
| I declare that I have examined this report, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. |  |                    |                        |
| <b>10. Printed Preparer's Name</b>  | <b>11. Preparer's Signature</b><br><br>_____ |                    |                        |

**THIS REPORT IS TO BE RECEIVED NO LATER THAN  
THE LAST BUSINESS DAY OF THE FOLLOWING MONTH.**

**Copies are acceptable but must have original signature.**

**Mail To:**

Department of Education  
Division of Blind Services  
Business Enterprises Program  
Room 924 E, Turlington Building  
325 West Gaines Street  
Tallahassee, FL 32399-0400

**Part II**  
**Computation of Net Income for**  
**Set Aside Levy**

|  |  |  |
|--|--|--|
| 1. Vending Drink Sales (less sales tax)  |  |  |
| 2. Vending Snack Sales (less sales tax)  |  |  |
| 3. Over the Counter Sales (less sales tax)   |  |  |
| 4. Total Sales (Line 1 plus Line 2 plus Line 3)  |  |  |
| 5. Sales Tax Collected   |  |  |
| 6. Cost of Goods Sold a. Beginning Merchandise Inventory Value   |  |  |
| 6. Cost of Goods Sold b. Purchase of Merchandise   |  |  |
| 6. Cost of Goods Sold c. Ending Merchandise Inventory Value  |  |  |
| 7. Cost of Goods Sold (Line 6a, plus Line 6b minus Line 6c)  |  |  |
| 8. Gross Profit on Sales (Line 4 minus Line 7)   |  |  |
| 9. Gross Wages of Employees (do not include vendor/manager draw or salary)   |  |  |
| 10. Payroll Taxes (do not include taxes for vendor/manager)  |  |  |
| 11. Total Approved Business Expenses (from Page 3, Part III, Section D, Line 1)  |  |  |
| 12. Net Profit From Facility (Line 8 minus Line 9 minus Line 10 minus Line 11)   |  |  |
| 13. Total Full Service Vending Machine and Other Income (from Page 3, Part IV, Line 4)   |  |  |
| 14. Net Profit (Line 12 plus Line 13)  |  |  |
| 15. Multiply Line 14 by current Set Aside Levy If Line 15 equals 0 or less enter 0. If greater than, 0 that is the money you owe.* |  |  |

**\* NOTE:** Attach a money order or business or cashier's check for amount owned **payable to the Division of Blind Services to monthly report.**

**Part III Approved Business Expenses**  
**All listed expenses require a proper invoice**

**Section A. Insurance Expenses (Attach invoice for each entry)**

|                                    |  |  |
|------------------------------------|--|--|
| 1. General Liability               |  |  |
| 2. Worker's Compensation           |  |  |
| <b>3. TOTAL INSURANCE EXPENSES</b> |  |  |

**Section B. License Expenses (Attach invoice for each entry)**

|   |  |  |
|---|--|--|
| 1. Federal License Expenses                       |  |  |
| 2. State License Expenses                         |  |  |
| 3. County License Expenses                        |  |  |
| 4. Municipal (Other than County) License Expenses |  |  |
| <b>5. TOTAL LICENSES EXPENSES</b>                 |  |  |

**Section C. Facility Service Expenses (Attach invoice for each entry)**

|  |  |  |
|--|--|--|
| 1. Utilities Facility Service Expenses                                       |  |  |
| 2. Rent Facility Service Expenses  |  |  |
| 3. Storage Space Rental (Non-Highway Vending Only) Facility Service Expenses |  |  |
| 4. Pest Control Facility Service Expenses                                    |  |  |
| 5. Equipment Rental (Attach Consultant Approval) Facility Service Expenses   |  |  |
| <b>6. TOTAL FACILITY SERVICES EXPENSES</b>                                   |  |  |

**Section D. Total Approved Business Expenses**

|  |  |  |
|--|--|--|
| <b>TOTAL APPROVED BUSINESS EXPENSES</b> (insurance plus license expenses plus facility service expenses) |  |  |
|--|--|--|

**Part IV**

**Full Service Vending Machine or Other Income**

(Attach copy of check or other form of payment for each entry)

| <b>Full Service Vending Machine or Other Income</b><br>A. Received From                 | <b>B. Check Date</b> | <b>C. Period Covered From</b> | <b>C. Period Covered To</b> | <b>D. Amount</b> |
|---|----------------------|-------------------------------|-----------------------------|------------------|
| 1.  |                      |                               |                             |                  |
| 2.  |                      |                               |                             |                  |
| 3.  |                      |                               |                             |                  |
| <b>4. Total Full Service Vending Machine or Other Income (Enter on Page 2, Line 13)</b> |                      |                               |                             |                  |

DBS 730 (rev. 6/16)

(For Official Use Only) Permanent Agreement Number: \_\_\_\_\_

Licensee Name: \_\_\_\_\_ Facility #: \_\_\_\_\_

## LICENSED OPERATOR FACILITY AGREEMENT

THIS LICENSED OPERATOR FACILITY AGREEMENT is entered into between the Licensee and the Licensor.

### RECITALS

- A. Licensor is the State Licensing Agency providing eligible individuals the opportunity to operate food service facilities (hereinafter "Facilities") consistent with the Randolph-Sheppard Act (20 U.S.C. §107) (hereinafter the "Act") and Chapter 413, Part 1, Florida Statutes (hereinafter the "Little Act").
- B. Licensee is an eligible individual, fully trained or certified as fully trained, by Licensor to operate a Facility consistent with the Act and the Little Act and all applicable statutes, ordinances, codes and regulations.
- C. Consistent with its duties under applicable law Licensor establishes Facilities through contract or permit with various Federal, State, County, City and Private Property owners (collectively "Property Owners").

NOW THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

- I. Acknowledgement of the Recitals; Composition of Agreement; Entire Agreement; No Modifications Except in Writing; Renegotiation.

The parties to this agreement acknowledge that the above recitals are true

and correct and are included as part of this agreement. This agreement between the Licensor and the Licensee concerning the subject matter hereof consists of this 14 page LICENSED OPERATOR FACILITY AGREEMENT, as well as any exhibits referenced in this LICENSED OPERATOR FACILITY AGREEMENT (the "Exhibits"). This LICENSED OPERATOR FACILITY AGREEMENT and any Exhibits may be referred to collectively as the "Agreement". The Agreement represents the total and complete agreement of the Licensor and Licensee relating to the subject matter hereof. This Agreement replaces any previous or existing agreement or other document, written or oral, entered into by Licensor or Licensee, excepting those of a temporary nature. This Agreement shall not be modified except in writing signed by both the Licensor and the Licensee. The parties hereto agree to renegotiate this Agreement if court decisions or federal or state revisions of any applicable laws or regulations make changes in this Agreement necessary to ensure consistency with applicable law and the parties' intent.

## II. The Licensee agrees:

### A. Federal and State Laws and Regulations

1. To comply with all applicable Federal, State, and County laws, ordinances, rules, and regulations applicable to the Licensee and applicable to their performance under this Agreement.
2. To abide by and conduct business in accordance with the provisions of the applicable property-owner lease, contract, permit, agreement or other written instrument, incorporated by reference, allowing the Licensor to establish and operate a vending facility on federal, state or other property, including but not limited to so many stipulated hours of operation. Exhibit "A" includes a true and correct copy of such written instrument.
3. To abide by and conduct business in accordance with all rules, policies and procedures developed in collaboration with the State Committee of Vendors and implemented by the Licensor.

## B. Assignments and Subcontracts

Not to sell, give away, or trade to another its responsibilities under this Agreement. Licensee agrees further not to enter into a contract, merger, reorganization, or consolidation relating to its responsibilities, assets, or liabilities under this Agreement unless approved in writing by the Licensor. Such approval shall not be unreasonably withheld. Nothing in this Agreement, however, shall preclude the Licensee from hiring employees or agents to carry out functions, duties, or operations relating to the Facility, so long as the Licensee remains fully responsible for the operation of the Facility in accordance with the terms of this Agreement.

## C. Independent Contractor and Indemnification

1. That Licensee is an independent contractor and, except for responsibilities imposed on the Licensor and Property Owners by the Act, Little Act, and rules and regulations implementing them, solely responsible for the proper operation of the Facility consistent with the terms of the Agreement.
2. The Licensee is responsible for the payment of Social Security, Income Tax, State Sales Tax, Unemployment and all other taxes applicable to an independent contractor and arising from the operation of the Facility.
3. Except as specifically stated within this Agreement, Licensor shall not have the power to hire or fire Licensee's employees, control or have access to Licensee's funds or the expenditures of such funds, or in any other way exercise control over the Licensee's actions relative to this Agreement, except where necessary to ensure Licensee's compliance with the terms of this Agreement.
4. Nothing in this Agreement shall be construed as creating an employment relationship, partnership, joint venture or agency between the parties or

their respective employees, agents or representatives. Nor shall this Agreement be construed as creating any obligation on the part of either party for any debts or liabilities of the other or of any employee, agent or representative.

5. To indemnify, defend, and hold the Licensor harmless from all claims, suits, judgments, or damages arising out of the negligent acts, negligent omissions or willful conduct of the Licensee, its employees, agents or representatives. Nothing in this Agreement is intended to serve as a waiver of sovereign immunity, nor shall anything in this Agreement be construed as consent by a state agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any agreement.

D. Credit Agreements

To honor all terms of credit agreements offered by purveyors or other entities, including timely payment, required for the receipt of goods or services.

E. Insurance

1. That Licensee shall not be insured, in any manner, by or through the Licensor, in particular, or the State of Florida, in general, as a result of this Agreement.
2. To provide annually as well as at such other times consistent with Subsection F. of this section to the Licensor proof of adequate coverage for public liability, worker's compensation insurance, and other policies of insurance required by law to protect the Licensee from claims or actions arising from Licensee's operation of the Facility.

F. Monitoring

To admit at reasonable times to the Facility duly authorized agents of the Licensor for the purpose of inspecting records, papers, documents, facilities, equipment, goods, and services of the Licensee directly relevant to the operation of the Facility under this Agreement. The Licensee agrees further to allow such agents to interview, in a professional manner, representatives, agents, or customers of the Licensee in order that Licensor may be assured of satisfactory performance of the terms and conditions of this Agreement. Following such inspection and interview, Licensor shall deliver to the Licensee by hand or certified mail any written report, notation, or comment noting deficiencies or substandard conditions recorded by Licensor or its agent relating to such inspection and interview. The Licensee agrees to correct within 30 days of written notice any such deficiency or substandard condition. Failure by the Licensee to correct a serious or continuing deficiency or condition within 30 days of written notice may be considered by the Licensor to be a material breach of the Agreement.

G. Facility Operations

1. To set aside a percentage of the monthly net proceeds of the Facility (hereinafter the "Set-Aside Levy") which percentage is set by the Licensor after collaboration with the State Committee of Vendors.
2. To ensure that Licensor receives, by not later than the last business day of the following month, a monthly report of operations of the Facility on a form and in a manner specified by the Licensor together with remittance by check drawn on the business account of the Licensee, money-order, cashier's check or electronic funds transfer for the full amount of the Set-Aside Levy generated during such month.
3. To maintain an annualized average net proceeds percentage which net proceeds and the means for proper calculation thereof are stated in the attached Exhibit "B."

H. Public Records

To allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, F.S., and made or received by the contractor in conjunction with this Agreement. Licensee's noncompliance herewith shall be a material breach of this Agreement.

### III. THE LICENSOR AGREES:

#### A. Facility

1. The Licensor shall have exclusive responsibility for site surveys, negotiation, and contracting with the appropriate property manager or owner to acquire the necessary lease, contract, or permit for the Facility.
2. The Licensor agrees to provide adequate Facility equipment, salable inventory, and adequate petty cash to operate the Facility when the Licensee begins operation of the Facility. A list of such Facility equipment is attached hereto as Exhibit "C."

#### B. Facility Equipment

1. Through the statewide Set-Aside Funds, to maintain, or cause to be maintained, listed Facility equipment.
2. To regularly replace, improve or add to listed Facility equipment when necessary and economically prudent, in the Licensor's sole discretion.
3. Upon reasonable notice to and in consultation with the Licensee, modify or renovate the Facility from time to time as it deems necessary.

#### C. Provision of Applicable Rules, Regulations and Policies

To provide the Licensee an accessible copy of this Agreement, the property lease agreement, and upon request of the Licensee, any applicable Rules,

Regulations and Policies, which govern the administration of the Randolph-Sheppard Act and the Little Randolph-Sheppard Act no later than the signing of this Agreement.

IV. THE LICENSEE AND LICENSOR MUTUALLY AGREE:

A. Effective Timeframe

This Agreement shall begin on \_\_\_\_\_, or the Effective Date, whichever is earlier. The Effective Date shall not occur prior to signature by both parties.

B. Facility

As between the Licensee and the Licensor, the Licensor retains title to the Facility and all listed Facility Equipment and fixtures contained therein, except that Licensee may own and operate such additional equipment as may be allowed under the terms and conditions governing the operation of the Facility.

C. Adequacy of Facility, Equipment, Product and Petty Cash

The Facility, listed equipment, inventoried product and stated petty cash are adequate for the purposes of this Agreement.

D. Termination

1. Termination by Mutual Consent. This Agreement may be terminated by mutual written consent of the parties.
2. Termination Because of Lack of Funds. In the event government funding to finance the specific government program within the State Licensing Agency under and through which this Agreement was drafted becomes unavailable, the Licensor may partially or totally suspend or

terminate its obligations under the Agreement upon no less than forty-eight (48) hours notice to the Licensee. In the event of a suspension, should the Licensee be financially able to operate the Facility and honor all obligations brought on by the operation of the Facility, including adequate insurance thereon, then, notwithstanding the Licensor's lack of funds, Licensee may do so until such time as the Licensor's ability to monitor the Facility's operation, or repair or replace equipment, makes the continued operation of the Facility unsafe, untenable, or impracticable. In the event the Licensor chooses to exercise its termination option under this section neither party hereto shall have any further rights or obligations hereunder. In the event the Licensor suspends this Agreement but does not reinstate it before the end of the Agreement term, such suspension shall be considered an exercise of the Licensor's termination option. The Licensor shall be the final authority in determining all issues regarding this paragraph.

3. Termination due to Withdrawal of Facility. In the event the Facility is no longer available to the Licensor this Agreement shall be terminated.
4. Termination due to Abandonment of Facility. In the event the Facility is not open for business as required by the property owner's leasing arrangements with the Division and the Licensee fails to notify the Division at least 48 hours in advance of such failure to operate, this Agreement shall be terminated.
5. Termination for Breach. The Licensor may, by written notice to the Licensee, terminate this Agreement immediately upon any material breach by Licensee. In addition to those material breaches found as a matter of law, license revocation and such other additional items as are specifically identified in this Agreement or in Exhibit "D", which is attached hereto, shall also be considered material breaches of this Agreement.
6. Procedure upon Termination

- i. Upon demand by the Licensor on or after the date of termination of this Agreement, the Licensee shall surrender the Facility without delay, along with equipment, fixtures, inventory, and petty cash not the property of the Licensee. The Licensee shall at the same time provide to the Licensor true copies of all business records of the Facility.
- ii. Upon termination of this Agreement, the parties or their designated representatives shall conduct or cause to be conducted an exit inventory, record of which shall be provided to the Licensee and Licensor. If the cost basis of the exit inventory is greater than the cost basis of the initial inventory, the Licensor shall forthwith submit to the Licensee a check in the amount of the difference. If the cost basis of the exit inventory is less than the cost basis of the initial inventory, the Licensee shall forthwith submit to the Licensor a check in the amount of the difference.

#### E. Notice and Contact

1. All notices to the Licensor shall be directed to the attention of the Bureau Chief of Business Enterprise, Division of Blind Services, Department of Education, Room 1114, Turlington Building, 325 West Gaines Street, Tallahassee, Florida 32399-0400; 850/245-0300 (Voice) and 850/245-0364 (Fax). All notices to Licensee under this Agreement shall be directed to Licensee. The Licensee shall keep the Licensor informed at all times of its current mailing address, telephone number and, where applicable, electronic address or fax number.
2. Unless otherwise provided herein, any notice to be given hereunder shall be in writing and shall be sent by hand-delivery, overnight courier service, by U.S. certified mail, postage prepaid, return receipt requested or by fax. Any notice given by properly addressed and stamped U.S. certified mail, return receipt requested, shall be deemed to be given three (3) days following the date of mailing. Notice by overnight courier

service shall be deemed to be given one (1) business day after such mailing. Notice by fax shall be deemed identical to hand-delivery.

F. Venue

Applicable law shall control venue.

G. Captions; Governing Law

This Agreement shall be governed by and construed in accordance with Florida law. Caption headings are inserted for convenience only and shall be ignored in interpreting the provisions of this Agreement.

H. Compliance with Law

To comply with all applicable federal and state laws and regulations, local ordinances, regulations of the Property Owner, including, but not limited to, the Act and the Little Act, as well as such requirements as may apply to the specific Facility or to the location thereof.

I. Mutual Drafting and Negotiation

Both parties contributed equally to the drafting and negotiation of this Agreement. As such, both parties agree that, in the event of a dispute over this Agreement, the provisions hereof shall not be more strictly construed against any party.

J. Remedies of Parties Cumulative

In addition to all remedies available to the parties hereunder, in the event either party breaches its obligations under this Agreement, the other party shall be entitled to exercise any remedy available or provided under Florida law (all rights and remedies granted in this Agreement to the Parties or available at law or equity shall be cumulative and not mutually exclusive).

K. Amendment Process

In the event changes in this Agreement or its Exhibits are needed, an amendment may be executed by written acknowledgement by both the Licensee and the Licensor of such changes.

L. Review and Renewal

This Agreement shall be reviewed as needed. In the event a new Agreement is more appropriate than an amendment, as provided herein, the Licensee holding the original Agreement shall have the first right of refusal for the subsequent Agreement involving the same Facility, provided such new Agreement is to be effected within the temporary timeframe specified herein, unless such right is abrogated by the Licensee's material breach coincidental to the need for such subsequent Agreement.

M. Attached Exhibits

- Exhibit "A" - Property Ownership Written Agreement
- Exhibit "B" - Net Proceeds Calculation
- Exhibit "C" - List of Facility Equipment
- Exhibit "D" – Additional Breaches

IN WITNESS THEREOF, the parties hereto have caused this 14 page Agreement and it's Exhibits to be executed by their undersigned officials as duly authorized.

PROPERTY

OWNER:

FACILITY

LOCATION:

\_\_\_\_\_

\_\_\_\_\_

(Street Address, City, Zip code)

FACILITY  
NUMBER: \_\_\_\_\_

GEOGRAPHIC  
LOCATION:  
LICENSEE  
NAME: \_\_\_\_\_ LICENSE  
NUMBER: \_\_\_\_\_

WORKING  
CAPITAL           \$  
\_\_\_\_\_

BUSINESS  
NAME: \_\_\_\_\_  
SS#: \_\_\_\_\_

FID#: \_\_\_\_\_  
EFFECTIVE  
DATE: \_\_\_\_\_

LICENSEE:

SIGNED  
BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
(Must be signed by Licensee)

LICENSOR: STATE OF FLORIDA, DEPARTMENT OF EDUCATION, BUSINESS  
ENTERPRISE PROGRAM

SIGNED \_\_\_\_\_

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_

THIS AGREEMENT IS NOT VALID UNTIL SIGNED AND DATED BY BOTH PARTIES.

State of Florida  
Department of Education  
Division of Blind Services, Business Enterprise Program

Licensed Operator Facility Agreement

Exhibit "A"

Property Ownership Written Agreement

The attached is a true and correct copy of the written instrument, which authorizes the Licensor to establish and operate a vending facility on the granting owner's property.

Exhibit "A", Page 1 of \_\_\_\_\_

State of Florida  
Department of Education  
Division of Blind Services, Business Enterprise Program

Licensed Operator Facility Agreement

Exhibit "B"

Net Proceeds Calculation

The following net proceed percentage (calculated before the set-aside levy is taken out) shall be maintained on an annualized basis:

Facility  
Number : \_\_\_\_\_

- Facility  
Type:
- Cafeteria  
(12%)
  - Highway Vending Only  
(40%)
  - Non-Highway Vending Only  
(25%)
  - Snack Bar and Other  
(15%)

State of Florida  
Department of Education  
Division of Blind Services, Business Enterprise Program

Methodology for Set-Aside

I. Set-Aside Levy Percentage

The set-aside levy to be assessed to licensees is \_\_\_\_\_ percent (effective with the business month on \_\_\_\_\_, 20\_\_).

II. Methodology for Assessing the Set-Aside Levy.

The set-aside levy will be assessed on the net profit found on line 15 of the Facility Monthly Business Report.

Exhibit "B", Page 2 of 2

State of Florida  
Department of Education  
Division of Blind Services, Business Enterprise Program

Licensed Operator Facility Agreement

Exhibit "C"

List of Facility Equipment

Facility  
Number : \_\_\_\_\_

The attached is a list of equipment located at this facility at the time this agreement was signed.

Exhibit "C", Page 1 of \_\_\_\_\_

State of Florida  
Department of Education  
Division of Blind Services, Business Enterprise Program

Licensed Operator Facility Agreement

Exhibit "D"

Additional Material Breaches

1. Failure by the Licensee to pay the Licensor for operational debts incurred in execution of this Agreement. Failure shall be determined as lack of satisfaction of said debt, after due notice from the Licensor.
2. Default on any repayment plan between the Licensee and the Licensor for any current or prior operational debt. Default shall be determined as lack of satisfaction of the balance on said debt, after due notice from the Licensor.
3. Failure by the Licensee on two consecutive occasions to provide the monthly business report and set-aside levy by the date due.
4. Failure on three separate occasions during any calendar year to provide the monthly business reports and set aside levy by the date due.
5. Removal of state property from the Facility without the written approval of the Licensor.
6. Misuse or unauthorized use of state property.

7. Misuse of or misappropriation of state funds.
8. Falsification of Facility records or reports.
9. The possession, use, sale, or being under the influence of alcohol or illegal drugs at the Facility.
10. A finding of discrimination or sexual harassment.
11. Conviction of or plea of guilty or no lo contendere to, whether or not adjudication of guilt is withheld, a crime that is a felony or a first degree misdemeanor.
12. Unlicensed carrying of concealed weapons or concealed firearms, as set forth in section 790.01, Florida Statutes, in a Facility by the Blind Licensee, excluding tools typically used in the operation of a Facility.
13. The use of threatening, discriminatory, harassing, or abusive language at the Facility.
14. Fighting in the Facility whether physically or verbally.

DBS 730a (rev. 6/16)

(For Official Use Only) Temporary Agreement Number: \_\_\_\_\_

Licensee Name: \_\_\_\_\_ Facility #: \_\_\_\_\_

## **TEMPORARY LICENSED OPERATOR FACILITY AGREEMENT**

THIS LICENSED OPERATOR FACILITY AGREEMENT is entered into between the Licensee and the Licensor.

### RECITALS

- A. Licensor is the State Licensing Agency providing eligible individuals the opportunity to operate food service facilities (hereinafter "Facilities") consistent with the Randolph-Sheppard Act (20 U.S.C. §107) (hereinafter the "Act") and Chapter 413, Part 1, Florida Statutes (hereinafter the "Little Act").
- B. Licensee is an eligible individual, fully trained or certified as fully trained, by Licensor to operate a Facility consistent with the Act and the Little Act and all applicable statutes, ordinances, codes and regulations.
- C. Consistent with its duties under applicable law Licensor establishes Facilities through contract or permit with various Federal, State, County, City and Private Property owners (collectively "Property Owners").

NOW THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

- I. Acknowledgement of the Recitals; Composition of Agreement; Entire Agreement; No Modifications Except in Writing; Renegotiation.

The parties to this agreement acknowledge that the above recitals are true

and correct and are included as part of this agreement. This agreement between the Licensor and the Licensee concerning the subject matter hereof consists of this 20 page LICENSED OPERATOR FACILITY AGREEMENT, as well as any exhibits referenced in this LICENSED OPERATOR FACILITY AGREEMENT (the "Exhibits"). This LICENSED OPERATOR FACILITY AGREEMENT and any Exhibits may be referred to collectively as the "Agreement". The Agreement represents the total and complete agreement of the Licensor and Licensee relating to the subject matter hereof. This Agreement replaces any previous or existing agreement or other document, written or oral, entered into by Licensor or Licensee, excepting those of a temporary nature. This Agreement shall not be modified except in writing signed by both the Licensor and the Licensee. The parties hereto agree to renegotiate this Agreement if court decisions or federal or state revisions of any applicable laws or regulations make changes in this Agreement necessary to ensure consistency with applicable law and the parties' intent.

## II. The Licensee agrees:

### A. Federal and State Laws and Regulations

1. To comply with all applicable Federal, State, and County laws, ordinances, rules, and regulations applicable to the Licensee and applicable to their performance under this Agreement.
2. To abide by and conduct business in accordance with the provisions of the applicable property-owner lease, contract, permit, agreement or other written instrument, incorporated by reference, allowing the Licensor to establish and operate a vending facility on federal, state or other property, including but not limited to so many stipulated hours of operation. Exhibit "A" includes a true and correct copy of such written instrument.
3. To abide by and conduct business in accordance with all rules, policies and procedures developed in collaboration with the State Committee of Vendors and implemented by the Licensor.

## B. Assignments and Subcontracts

Not to sell, give away, or trade to another its responsibilities under this Agreement. Licensee agrees further not to enter into a contract, merger, reorganization, or consolidation relating to its responsibilities, assets, or liabilities under this Agreement unless approved in writing by the Licensor. Such approval shall not be unreasonably withheld. Nothing in this Agreement, however, shall preclude the Licensee from hiring employees or agents to carry out functions, duties, or operations relating to the Facility, so long as the Licensee remains fully responsible for the operation of the Facility in accordance with the terms of this Agreement.

## C. Independent Contractor and Indemnification

1. That Licensee is an independent contractor and, except for responsibilities imposed on the Licensor and Property Owners by the Act, Little Act, and rules and regulations implementing them, solely responsible for the proper operation of the Facility consistent with the terms of the Agreement.
2. The Licensee is responsible for the payment of Social Security, Income Tax, State Sales Tax, Unemployment and all other taxes applicable to an independent contractor and arising from the operation of the Facility.
3. Except as specifically stated within this Agreement, Licensor shall not have the power to hire or fire Licensee's employees, control or have access to Licensee's funds or the expenditures of such funds, or in any other way exercise control over the Licensee's actions relative to this Agreement, except where necessary to ensure Licensee's compliance with the terms of this Agreement.
4. Nothing in this Agreement shall be construed as creating an employment relationship, partnership, joint venture or agency between the parties or

their respective employees, agents or representatives. Nor shall this Agreement be construed as creating any obligation on the part of either party for any debts or liabilities of the other or of any employee, agent or representative.

5. To indemnify, defend, and hold the Licensor harmless from all claims, suits, judgments, or damages arising out of the negligent acts, negligent omissions or willful conduct of the Licensee, its employees, agents or representatives. Nothing in this Agreement is intended to serve as a waiver of sovereign immunity, nor shall anything in this Agreement be construed as consent by a state agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any agreement.

D. Credit Agreements

To honor all terms of credit agreements offered by purveyors or other entities, including timely payment, required for the receipt of goods or services.

E. Insurance

1. That Licensee shall not be insured, in any manner, by or through the Licensor, in particular, or the State of Florida, in general, as a result of this Agreement.
2. To provide annually as well as at such other times consistent with Subsection F. of this section to the Licensor proof of adequate coverage for public liability, worker's compensation insurance, and other policies of insurance required by law to protect the Licensee from claims or actions arising from Licensee's operation of the Facility.

F. Monitoring

To admit at reasonable times to the Facility duly authorized agents of the Licensor for the purpose of inspecting records, papers, documents, facilities, equipment, goods, and services of the Licensee directly relevant to the operation of the Facility under this Agreement. The Licensee agrees further to allow such agents to interview, in a professional manner, representatives, agents, or customers of the Licensee in order that Licensor may be assured of satisfactory performance of the terms and conditions of this Agreement. Following such inspection and interview, Licensor shall deliver to the Licensee by hand or certified mail any written report, notation, or comment noting deficiencies or substandard conditions recorded by Licensor or its agent relating to such inspection and interview. The Licensee agrees to correct within 30 days of written notice any such deficiency or substandard condition. Failure by the Licensee to correct a serious or continuing deficiency or condition within 30 days of written notice may be considered by the Licensor to be a material breach of the Agreement.

G. Facility Operations

1. To set aside a percentage of the monthly net proceeds of the Facility (hereinafter the "Set-Aside Levy") which percentage is set by the Licensor after collaboration with the State Committee of Vendors.
2. To ensure that Licensor receives, by not later than the last business day of the following month, a monthly report of operations of the Facility on a form and in a manner specified by the Licensor together with remittance by check drawn on the business account of the Licensee, money-order, cashier's check or electronic funds transfer for the full amount of the Set-Aside Levy generated during such month.
3. To maintain an annualized average net proceeds percentage which net proceeds and the means for proper calculation thereof are stated in the attached Exhibit "B."

## H. Public Records

To allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, F.S., and made or received by the contractor in conjunction with this Agreement. Licensee's noncompliance herewith shall be a material breach of this Agreement.

## III. THE LICENSOR AGREES:

### A. Facility

1. The Licensor shall have exclusive responsibility for site surveys, negotiation, and contracting with the appropriate property manager or owner to acquire the necessary lease, contract, or permit for the Facility.
2. The Licensor agrees to provide adequate Facility equipment, salable inventory, and adequate petty cash to operate the Facility when the Licensee begins operation of the Facility. A list of such Facility equipment is attached hereto as Exhibit "C."

### B. Facility Equipment

1. Through the statewide Set-Aside Funds, to maintain, or cause to be maintained, listed Facility equipment.
2. To regularly replace, improve or add to listed Facility equipment when necessary and economically prudent, in the Licensor's sole discretion.
3. Upon reasonable notice to and in consultation with the Licensee, modify or renovate the Facility from time to time as it deems necessary.

### C. Provision of Applicable Rules, Regulations and Policies

To provide the Licensee an accessible copy of this Agreement, the property lease agreement, and upon request of the Licensee, any applicable Rules, Regulations and Policies, which govern the administration of the Randolph-Sheppard Act and the Little Randolph-Sheppard Act no later than the signing of this Agreement.

#### IV. THE LICENSEE AND LICENSOR MUTUALLY AGREE:

##### A. Effective Timeframe

This Agreement shall begin on \_\_\_\_\_, or the Effective Date, whichever is earlier, and terminate on \_\_\_\_\_, unless terminated otherwise as provided herein. The Effective Date shall not occur prior to signature by both parties.

##### B. Facility

As between the Licensee and the Licensor, the Licensor retains title to the Facility and all listed Facility Equipment and fixtures contained therein, except that Licensee may own and operate such additional equipment as may be allowed under the terms and conditions governing the operation of the Facility.

##### C. Adequacy of Facility, Equipment, Product and Petty Cash

The Facility, listed equipment, inventoried product and stated petty cash are adequate for the purposes of this Agreement.

##### D. Termination

1. Termination by Mutual Consent. This Agreement may be terminated by mutual written consent of the parties.

2. Termination Because of Lack of Funds. In the event government

funding to finance the specific government program within the State Licensing Agency under and through which this Agreement was drafted becomes unavailable, the Licensor may partially or totally suspend or terminate its obligations under the Agreement upon no less than forty-eight (48) hours notice to the Licensee. In the event of a suspension, should the Licensee be financially able to operate the Facility and honor all obligations brought on by the operation of the Facility, including adequate insurance thereon, then, notwithstanding the Licensor's lack of funds, Licensee may do so until such time as the Licensor's ability to monitor the Facility's operation, or repair or replace equipment, makes the continued operation of the Facility unsafe, untenable, or impracticable. In the event the Licensor chooses to exercise its termination option under this section neither party hereto shall have any further rights or obligations hereunder. In the event the Licensor suspends this Agreement but does not reinstate it before the end of the Agreement term, such suspension shall be considered an exercise of the Licensor's termination option. The Licensor shall be the final authority in determining all issues regarding this paragraph.

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5. Termination for Breach. The Licensor may, by written notice to the Licensee, terminate this Agreement immediately upon any material breach by Licensee. In addition to those material breaches found as a matter of law, license revocation and such other additional items as are specifically identified in this Agreement or in Exhibit "D", which is attached hereto, shall also be considered material breaches of this

Agreement.

6. Procedure upon Termination

- i. Upon demand by the Licensor on or after the date of termination of this Agreement, the Licensee shall surrender the Facility without delay, along with equipment, fixtures, inventory, and petty cash not the property of the Licensee. The Licensee shall at the same time provide to the Licensor true copies of all business records of the Facility.
- ii. Upon termination of this Agreement, the parties or their designated representatives shall conduct or cause to be conducted an exit inventory, record of which shall be provided to the Licensee and Licensor. If the cost basis of the exit inventory is greater than the cost basis of the initial inventory, the Licensor shall forthwith submit to the Licensee a check in the amount of the difference. If the cost basis of the exit inventory is less than the cost basis of the initial inventory, the Licensee shall forthwith submit to the Licensor a check in the amount of the difference.

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2. Unless otherwise provided herein, any notice to be given hereunder shall be in writing and shall be sent by hand-delivery, overnight courier service, by U.S. certified mail, postage prepaid, return receipt requested

or by fax. Any notice given by properly addressed and stamped U.S. certified mail, return receipt requested, shall be deemed to be given three (3) days following the date of mailing. Notice by overnight courier service shall be deemed to be given one (1) business day after such mailing. Notice by fax shall be deemed identical to hand-delivery.

F. Venue

Applicable law shall control venue.

G. Captions; Governing Law

This Agreement shall be governed by and construed in accordance with Florida law. Caption headings are inserted for convenience only and shall be ignored in interpreting the provisions of this Agreement.

H. Compliance with Law

To comply with all applicable federal and state laws and regulations, local ordinances, regulations of the Property Owner, including, but not limited to, the Act and the Little Act, as well as such requirements as may apply to the specific Facility or to the location thereof.

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Both parties contributed equally to the drafting and negotiation of this Agreement. As such, both parties agree that, in the event of a dispute over this Agreement, the provisions hereof shall not be more strictly construed against any party.

J. Remedies of Parties Cumulative

In addition to all remedies available to the parties hereunder, in the event either party breaches its obligations under this Agreement, the other party

shall be entitled to exercise any remedy available or provided under Florida law (all rights and remedies granted in this Agreement to the Parties or available at law or equity shall be cumulative and not mutually exclusive).

K. Amendment Process

In the event changes in this Agreement or its Exhibits are needed, an amendment may be executed by written acknowledgement by both the Licensee and the Licensor of such changes.

L. Review and Renewal

This Agreement shall be reviewed as needed. In the event a new Agreement is more appropriate than an amendment, as provided herein, the Licensee holding the original Agreement shall have the first right of refusal for the subsequent Agreement involving the same Facility, provided such new Agreement is to be effected within the temporary timeframe specified herein, unless such right is abrogated by the Licensee's material breach coincidental to the need for such subsequent Agreement.

M. Attached Exhibits

- Exhibit "A" - Property Ownership Written Agreement
- Exhibit "B" - Net Proceeds Calculation
- Exhibit "C" - List of Facility Equipment
- Exhibit "D" – Additional Breaches

IN WITNESS THEREOF, the parties hereto have caused this 14 page Agreement and it's Exhibits to be executed by their undersigned officials as duly authorized.

PROPERTY  
OWNER:

---

FACILITY  
LOCATION: \_\_\_\_\_  
(Street Address, City, Zip code)

FACILITY  
NUMBER: \_\_\_\_\_

GEOGRAPHIC  
LOCATION:  
LICENSEE NAME: \_\_\_\_\_ LICENSE NUMBER: \_\_\_\_\_

WORKING CAPITAL \$ \_\_\_\_\_

BUSINESS  
NAME: \_\_\_\_\_  
SS#: \_\_\_\_\_

FID#: \_\_\_\_\_  
EFFECTIVE  
DATE: \_\_\_\_\_

LICENSEE:

SIGNED  
BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
(Must be signed by Licensee)

LICENSOR: STATE OF FLORIDA, DEPARTMENT OF EDUCATION, BUSINESS  
ENTERPRISE PROGRAM

SIGNED  
BY:

\_\_\_\_\_

DATE:

\_\_\_\_\_

TITLE:

\_\_\_\_\_

THIS AGREEMENT IS NOT VALID UNTIL SIGNED AND DATED BY BOTH PARTIES.

State of Florida  
Department of Education  
Division of Blind Services, Business Enterprise Program

Licensed Operator Facility Agreement

Exhibit "A"

Property Ownership Written Agreement

The attached is a true and correct copy of the written instrument, which authorizes the Licensor to establish and operate a vending facility on the granting owner's property.

Exhibit "A", Page 1 of \_\_\_\_\_

State of Florida  
Department of Education  
Division of Blind Services, Business Enterprise Program

Licensed Operator Facility Agreement

Exhibit "B"

Net Proceeds Calculation

The following net proceed percentage (calculated before the set-aside levy is taken out) shall be maintained on an annualized basis:

Facility  
Number : \_\_\_\_\_

- Facility  
Type:
- Cafeteria  
(12%)
  - Highway Vending Only  
(40%)
  - Non-Highway Vending Only  
(25%)
  - Snack Bar and Other  
(15%)

State of Florida  
Department of Education  
Division of Blind Services, Business Enterprise Program

Methodology for Set-Aside

I. Set-Aside Levy Percentage

The set-aside levy to be assessed to licensees is \_\_\_\_\_ percent (effective with the business month on \_\_\_\_\_, 20\_\_).

II. Methodology for Assessing the Set-Aside Levy.

The set-aside levy will be assessed on the net profit found on line 15 of the Facility Monthly Business Report.

State of Florida  
Department of Education  
Division of Blind Services, Business Enterprise Program

Licensed Operator Facility Agreement

Exhibit "C"

List of Facility Equipment

Facility  
Number : \_\_\_\_\_

The attached is a list of equipment located at this facility at the time this agreement was signed.

Exhibit "C", Page 1 of \_\_\_\_\_

State of Florida  
Department of Education  
Division of Blind Services, Business Enterprise Program

Licensed Operator Facility Agreement

Exhibit "D"

Additional Material Breaches

1. Failure by the Licensee to pay the Licensor for operational debts incurred in execution of this Agreement. Failure shall be determined as lack of satisfaction of said debt, after due notice from the Licensor.
2. Default on any repayment plan between the Licensee and the Licensor for any current or prior operational debt. Default shall be determined as lack of satisfaction of the balance on said debt, after due notice from the Licensor.
3. Failure by the Licensee on two consecutive occasions to provide the monthly business report and set-aside levy by the date due.
4. Failure on three separate occasions during any calendar year to provide the monthly business reports and set aside levy by the date due.
5. Removal of state property from the Facility without the written approval of the Licensor.
6. Misuse or unauthorized use of state property.

7. Misuse of or misappropriation of state funds.
8. Falsification of Facility records or reports.
9. The possession, use, sale, or being under the influence of alcohol or illegal drugs at the Facility.
10. A finding of discrimination or sexual harassment.
11. Conviction of or plea of guilty or no lo contendere to, whether or not adjudication of guilt is withheld, a crime that is a felony or a first degree misdemeanor.
12. Unlicensed carrying of concealed weapons or concealed firearms, as set forth in section 790.01, Florida Statutes, in a Facility by the Blind Licensee, excluding tools typically used in the operation of a Facility.
13. The use of threatening, discriminatory, harassing, or abusive language at the Facility.
14. Fighting in the Facility whether physically or verbally.

Consultant Questionnaire

Vendor Name:

Consultant Name:

Consultant Cell Phone:

Date:

(1) As of today, does the Vendor have proof of all required insurance policies (liability, worker's compensation, and commercial vehicle)?

- Yes
- No

(2) Over the most recent 36 month period, has the Vendor kept all scheduled appointments with you for facility visitations?

- Yes
- No

(3) As of today, does the Vendor have clearly posted contact information at the facility and on all vending machines comprising the facility?

- Yes
- No

(4) Over the most recent 36 month period, have documented health inspection reports and consultant visitation reports reflected that all food products are being maintained at the temperatures required by DBPR Chapter 509 and US Food Code 2009? This includes freezers, refrigerators, dry storage areas and vending machines.

- Yes
- No

(5) Over the most recent 36 month period, has the Vendor responded to all documented customer complaints within ten days of receiving the complaint?

- Yes
- No

- (6) As of today, based upon the most recent monthly sales reports, does the Vendor maintain a merchandise inventory equal to or above a level that ensures that all products and services are available for sale without interruption?

Yes  
 No

- (7) Over the most recent 36 month period, has the Vendor corrected all Division, DBPR, or other health inspection cleaning and sanitation deficiencies within the required timeframe indicated on the report?

Yes  
 No

- (8) As of today, have all invoices from the Vendor's suppliers/purveyors been paid on-time and the Vendor has no business tax-liens pending against them?

Yes  
 No

- (9) As of today, does the Vendor have all business licenses and permits as required by law?

Yes  
 No

- (10) Over the most recent 36 month period, has the Vendor been directly involved in the day-to-day operations of their facility?

Yes  
 No

When the answer to any of the above questions is No, the business consultant shall attach documentation supporting that response. The required documentation may include, but is not limited to, copies of Facility Visitation Reports, Food Service Inspection Reports, Property Owner Correspondence and/or Customer Complaint Letters. If there is no documentation, then the Yes response must be checked.

Comments – Notes – Explanations: