

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.

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:

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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.