

TITLE 192 - NEBRASKA COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED

CHAPTER 3 - BLIND VENDOR PROGRAM

001. SCOPE AND AUTHORITY. The regulations govern the Blind Vendor's Program, which was created by the Randolph-Sheppard Act.

001.01. This program seeks to aid blind persons by providing needed rehabilitation and employment opportunities, to enable blind persons to achieve remunerative employment, to enlarge economic opportunities of blind persons, and to stimulate blind persons to greater self-sufficiency. The program aims to improve the image of blind persons by giving them the opportunity to interact with their community while providing a necessary service.

001.02. These regulations are authorized by the Nebraska vocational rehabilitation small business enterprises statutes, Nebraska Revised Statutes Sections 71-8610 to 71-8613, and Sections 71-8615 and 71-8616 and meet the requirements of the Randolph-Sheppard Act, 20 U.S.C. § 107 et seq., and federal regulations at 34 CFR 395.

002. DEFINITIONS.

002.01. ACTIVE PARTICIPATION shall mean the informed involvement that allows meaningful input into State Licensing Agency decisions. Active participation does not mean joint or equal decision-making authority. An ongoing process of negotiations between the State Licensing Agency and the Committee of Blind Vendors to achieve joint planning and approval of program policies, standards, and procedures affecting the overall operation of the vending facility program, prior to their implementation by the State Licensing Agency. The State Licensing Agency has the final authority for the administration of the vending facility program.

002.02. BLIND LICENSEE PERSON shall mean a person licensed by the State Licensing Agency to operate a vending facility on federal or other property, a person who, after examination by a physician skilled in diseases of the eye or by an optometrist, at the applicant's option, has been determined to have:

002.02A. Not more than 20/200 central visual acuity in the better eye after correction; or

002.02B. An equally disabling loss of the visual field in which the widest diameter subtends an angle no greater than 20 degrees (34 CFR 395.1).

002.03. BLIND VENDORS COMMITTEE shall mean the Committee created and defined in Section 006, pursuant to 20 U.S.C. 107b-1.

002.04. FEDERAL PROPERTY shall mean any building, land, or other real property owned, leased, or occupied by any department, agency or

instrumentality of the United States (including the Department of Defense and the United States Postal Service), or any other instrumentality wholly owned by the United States, or by any department or agency of the District of Columbia or any territory or possession of the United States (34 CFR 395.1).

002.05. FINAL ADMINISTRATIVE DECISION shall mean, for purposes of federal court judicial review, the decision rendered by the Secretary of Education upon appeal as provided in 013.02; Evidentiary Hearings and Arbitrations of Vendor Complaints.

002.06. MANAGEMENT SERVICES shall mean supervision, inspection, quality control, consultation, accounting, regulating, in-service training, and other related services provided on a systematic basis to support and improve vending facilities operated by blind vendors (34 CFR 395.1). Management services do not include those services or costs which pertain to the ongoing operation of the individual facility after the initial establishment.

002.07. NET PROCEEDS shall mean the amount remaining from the sale of articles or services of vending facilities, and any vending machines, or other income accruing to blind vendors after deducting the cost of such sale and other expenses (excluding set-aside charges required to be paid by such blind vendors) (34 CFR 395.1).

002.08. OTHER PROPERTY shall mean property which is not federal property and on which vending facilities are established or operated by the use of any funds derived in full or in part, directly or indirectly, from the operation of vending facilities on any Federal property (34 CFR 395.1).

002.09. PERMIT shall mean the official approval given the State Licensing Agency by a department, agency or instrumentality in control of the maintenance, operation, and protection of federal property, or persons in control of other property, whereby the State Licensing Agency is authorized to establish a vending facility. (34 CFR 395.1).

002.10. SET-ASIDE FUNDS shall mean funds that accrue to a State Licensing Agency from an assessment against the net proceeds of each vending facility in the state's vending facility program and any income from vending machines on federal property that accrues to the State-Licensing Agency.(34 CFR 395.1). Contributions to set-aside funds shall not be deducted from receipts when calculating net proceeds or net profits.

002.11. STATE LICENSING AGENCY (SLA) shall mean the Nebraska Commission for the Blind and Visually Impaired.

002.12. VENDING FACILITY shall mean shelters, counters, shelving, display and wall cases, refrigerating apparatus, and other appropriate auxiliary equipment necessary for the vending of articles approved by the office, agency, or person having control of the property on which the vending facility is located; and manual or coin-operated vending machines or similar devices for vending articles approved by the office, agency, or person having control of the property on which the vending facility is

located. Automatic vending machines, cafeterias, snack bars, cart service, shelters, counters, and such other appropriate auxiliary equipment which may be operated by blind licensees and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, food, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, and including the vending or exchange of changes for any lottery authorized by state law and conducted by an agency of a state within such state (34 CFR 395.1).

002.13. VENDING MACHINES shall mean for the purpose of assigning vending machine income, a coin or currency machine which dispenses articles or services, except those machines operated by the United States Postal Service for the sale of postage stamps or other postal products and services, machines providing services of a recreational nature, and telephones shall not be considered to be vending machines (34 CFR 395.1).

002.14. VENDING MACHINE INCOME shall mean receipts (other than those of a blind vendor) from vending machine operations on federal property, after deducting the cost of goods sold (including reasonable service and maintenance costs in accordance with customary business practices of commercial vending concerns), where the machines are operated, serviced, or maintained by, or with the approval of, a department, agency, or instrumentality of the United States, or commissions paid (other than to a blind vendor) by a commercial vending concern which operates, services, and maintains vending machines on federal property for, or with the approval of, a department, agency, or instrumentality of the United States. (34 CFR 395.1).

003. ISSUANCE OF LICENSES.

003.01. REQUIREMENT FOR LICENSING. The State Licensing Agency may issue licenses to those persons meeting the following requirements:

003.01A. Blind as defined by these rules and regulations under 002.02;

003.01B. Citizen of the United States;

003.01C. Certified by the State Vocational Rehabilitation Agency as qualified to operate a vending facility; and

003.01D. At least 19 years of age.

003.02. QUALIFICATIONS FOR TRAINING. To be eligible for selection, training, and licensing as a vendor, an individual must give evidence of being or able to become:

003.02A. Having the knowledge and ability to grasp the fundamentals of vending facility operation;

003.02B. Maintain personal grooming and manners as to be able to meet and interact effectively with the public;

003.02C. Honest and careful in handling sums of money;

003.02D. Willing to work hard to advance in the vending facilities program, improve business, and develop maximum vocational potential;

003.02E. Competent in maintaining business records and accounts;

003.02F. Able to control inventory;

003.02G. Able to work with other business persons, including supervisors, jobbers and others in the business community;

003.02H. Able to recognize and where reasonably feasible, correct machine problems;

003.02I. Able to reflect favorably on the competence of blind persons in the eyes of the public by handling business and relations with the public in a competent manner.

003.03. PREFERENCE TO BLIND PERSONS IN NEED OF EMPLOYMENT. The State Licensing Agency, in issuing licenses to operate vending facilities, shall give priority to blind persons who are in need of employment.

003.04. DURATION AND TERMINATION OF LICENSES. The State Licensing Agency shall issue all licenses for an indefinite period, subject to suspension or termination by the SLA if, after affording the vendor an opportunity for a full evidentiary hearing as provided under 013; Evidentiary Hearings and Arbitrations of Vendor Complaints the SLA finds that the facility is not being operated in accordance with its rules and regulations, the terms and conditions of the permit, and the terms and conditions of the agreement with the blind vendor (pursuant to Section 010; Operating Agreements; ref. Appendix A).

003.04A. A license may be terminated or suspended for any of the following reasons:

003.04A1. Improvement of vision so that the vendor no longer meets the definition of blindness found in these regulations;

003.04A2. Failing to personally operate the assigned facility as set forth in the permit or contract for any reason, unless approved in writing by the SLA;

003.04A3. Any leave, sick or vacation, requires notification of the SLA to prevent consideration of abandonment. Any unexplained or unexcused absence for more than five days shall be considered as abandonment and failing to personally operate the assigned facility unless another person is covering the business and approved by the SLA. Extended illness of more than thirty (30) days resulting in incapacity of the vendor to operate the vending facility must be

documented, and reviewed by the SLA Director for possible reassignment of the facility; or,

003.04A4. Evidence that the vendor does not meet one or more of the criteria under 003.01 and 003.02.

003.04A5. Failure to submit the required monthly reports, to the SLA by the 20th of the succeeding month, in two consecutive months or for three or more months in a 12 month period.

003.04A5(a). THE BLIND VENDORS COMMITTEE may review reports from the SLA of such failure and actively participate with respect to potential administration action to be taken.

003.04B. Administrative Actions will be imposed on the vendor for any of the above reasons according to policy decisions recommended by in accordance with active participation of the Blind Vendors Committee and approved by the SLA; as follows:

003.04B1. Written reprimand;

003.04B2. Corrective action plan;

003.04B3. Probation;

003.04B4. Loss of Facility;

003.04B5. Termination.

003.04C. A license may not be sold or assigned and will automatically terminate upon the death of the blind vendor.

004. VENDING FACILITY EQUIPMENT AND INITIAL STOCK.

004.01. FURNISHING OF FACILITY EQUIPMENT AND INITIAL STOCK. The State Licensing Agency shall provide adequate and suitable equipment necessary for the operation of each vending facility. The SLA shall also furnish each facility with the initial stock of merchandise to establish the facility.

004.02. OWNERSHIP OF FACILITY EQUIPMENT AND STOCK: All initial vending facility equipment and stock purchased by the state is and shall remain the property of the State of Nebraska while it is being used in the vending facility program, unless otherwise provided by Nebraska law.

005. MAINTENANCE AND REPLACEMENT OF EQUIPMENT.

005.01. SLA SHALL MAINTAIN AND REPLACE. The State Licensing Agency shall maintain (or cause to be maintained) all vending facility equipment in good repair and in an attractive condition and shall replace or cause to be replaced worn-out and obsolete equipment as required to ensure the continued successful operation of the facility.

005.02. VENDOR SHALL TAKE REASONABLE CARE AND MAKE MINOR REPAIRS. Each vendor, as a part of his or her day-to-day duties, shall take reasonable care of the equipment in his or her vending facility and, notwithstanding anything in 005.01, is responsible for routine maintenance and minor repairs, provided that no expenses are incurred by the vendor.

06. THE COMMITTEE OF BLIND VENDORS.

006.01. COMPOSITION OF COMMITTEE. The State Licensing Agency shall form a State Committee of Blind Vendors consisting of a minimum of five members (pursuant to current Bylaws of the Committee) to be elected at a general meeting of all vendors in May of each odd-numbered year. As much as possible, membership must be representative of vendor population in terms of such factors as geography, gender, and vending facility type with a goal of providing for proportional representation of blind vendors on federal property and blind vendors on other property.

006.02. VOTING. Every vendor licensed by the State Licensing Agency is entitled to vote and no vendor may be denied his or her vote for the nonpayment of dues or any other dues or any other fees. If any vendor is not able to attend the meeting, the State Licensing Agency shall poll and record his or her vote before the election becomes final.

006.02A. Any licensed vendor may submit his or her name as a candidate for election to the Committee to the State Licensing Agency. The submissions must be received by the SLA no later than the last day of April. If five or more names have been submitted, the State Licensing Agency shall make the list of candidates available to all licensed vendors not later than the 7th day of May. If fewer than five names are submitted prior to the last day of April, the SLA shall consult with the existing Committee of Blind Vendors to persuade one or more additional licensed vendors to be candidates for election to the Committee.

006.02B. Once five or more nominations have been submitted, the SLA shall prepare a ballot containing the names of all candidates. After review of the ballot for accuracy by the Committee of Blind Vendors, the SLA shall distribute ballots to all licensed blind vendors. Each vendor may vote for five or fewer candidates (or more pursuant to 006.01). The SLA shall certify the candidates with the highest total of votes as the elected Committee of Blind Vendors at the spring meeting. Ties will be broken by secret ballot or show of hands at the spring meeting. Any vendor may request Secret-Ballot ballots.

006.03. COMMITTEE SHALL CHOOSE OFFICERS: At the earliest convenient time, the elected members of the committee shall meet to choose officers.

006.04. MEETINGS WITH EXECUTIVE DIRECTOR. The committee shall meet with the Executive Director of the State Licensing Agency or his or her designated representative on at least a quarterly basis. Either the committee or the State Licensing Agency may request a special meeting at

any time and, if agreed upon between the parties, the SLA shall arrange the meeting.

006.05. VACANCIES: In the event of a vacancy occurring on the committee, the State Licensing Agency shall promptly provide for an election, conducted by either mail or phone canvass, to fill the vacancy. The person elected to fill the vacancy shall serve for the unexpired portion of the term.

006.06. MINUTES. The appropriate officer of the committee shall keep the minutes of each regular and special meeting and make them available for public inspection in accordance with the Public Meeting Law; Nebraska Revised Statutes Section 84-1413 within ten working days after the meeting. The State Licensing Agency shall duplicate the minutes and distribute them to all vendors. If any vendor requests that minutes be provided in Braille, recorded or electronic format, the State Licensing Agency will fill that request.

006.07. OPEN MEETING. All meetings of the committee are open to the public in accordance with the Public Meeting Law, Nebraska Revised Statutes Section 84-1408, except as allowed in accordance with Nebraska Revised Statutes Section 84-1410.

006.08. QUORUM AND BYLAWS. For the purpose of transacting business, a quorum shall consist of a simple majority of the committee. The committee shall establish procedural by-laws in order to facilitate the conduct of meetings and other business.

006.09. RESPONSIBILITIES OF THE COMMITTEE. The Committee of Blind Vendors shall:

006.09A. Actively participate with the State Licensing Agency in major administrative decisions and policy and program development decisions affecting the overall administration of the Nebraska vending facility program;

006.09B. Receive and transmit to the State Licensing Agency any grievance of a blind vendor who so requests and serve as advocate for such vendor in connection with such grievance if the grievant so requests, as provided in 013; Evidentiary Hearing and Arbitration of Vendor Complaints.

006.09C. Actively participate with the State Licensing Agency in the administration of a system for the transfer and promotion of blind vendors as provided in 010; Transfer and Promotion of Vendors.

006.09D. Actively participate with the State Licensing Agency in the development of training and retraining programs for blind vendors;

006.09E. Sponsor, with the assistance of the State Licensing Agency, meetings and instructional conferences for blind vendors within the state;

006.09F. Actively participate with the State Licensing Agency in determining set-aside charges as provided in 007; Set-Aside Funds.

006.09G. Actively participate with the State Licensing Agency in developing operating agreements as provided in 010; Operating Agreements.

006.09H. Carry out any similar functions that the committee and/or the State Licensing Agency find appropriate.

007. SET-ASIDE FUNDS.

007.01. AMOUNT OF SET-ASIDE FUNDS: The State Licensing Agency shall determine annually with the active participation of the Committee of Blind Vendors, the percentage of the net proceeds of each vending facility that shall accrue to the State Licensing Agency.

007.02. USE OF SET-ASIDE FUNDS: The State Licensing Agency shall establish, with the active participation of the Committee of Blind Vendors, a set-aside schedule which covers the purposes for which any and all set-aside funds are used and the method of determining the charge for each intended purpose.

007.02A. Funds shall be set aside in accordance with this rule for any of the following purposes:

007.02A1. Maintenance and replacement of equipment;

007.02A2. Purchase of new equipment;

007.02A3. Management services;

007.02A4. Assuring a fair minimum return to vendors;

007.02A5. Establishment and maintenance of retirement or pension funds, health insurance, and paid sick leave, and/or vacation time, if it is so determined by a majority vote of blind vendors licensed by the State Licensing Agency, after such agency provides to each such vendor information on all matters relevant to such proposed purposes.

007.02B. The conditions of 007.02A5 having been satisfied, there is hereby established a retirement plan for blind vendors with contributions from each blind vendor who chooses to participate being matched with an equivalent approved contribution from the Small Business Enterprise Cash Fund, said amount to be reviewed annually by the State Committee of Blind Vendors and the State Licensing Agency.

007.02C. Set-aside funds may not be used for any purpose not listed in 007.02A.

007.02D. The State Licensing Agency shall keep and maintain adequate record to support the reasonableness of each charge in the set-aside scheduled for each of the purposes listed in 007.02A. The State Licensing Agency shall submit any and all charges in the set-aside schedule to the Commissioner of the Federal Rehabilitation Services Administration for approval prior to taking effect.

007.02E. The State Licensing Agency shall design the set-aside scheduled to prevent, so far as is practicable, a greater charge for any purpose than is reasonably required. Allowances must be made for the retention of reasonable reserves necessary to assure that each such purpose can be provided on a continuing basis.

008. VENDING MACHINE INCOME.

008.01. INCOME ACCRUES TO STATE LICENSING AGENCY. All vending machine income from vending machines on federal property which is disbursed to the State Licensing Agency by a property managing department, agency or instrumentality of the United States under the vending machine income sharing provisions in 34 CFR 395) shall accrue to each blind vendor operating a vending facility on such federal property.

008.02. INCOME CEILING: The amount of the vending machine income accruing to an individual blind vendor is not to exceed the average net income of blind vendors within the state. The average net income must be determined each fiscal year on the basis of each prior year's operation, except:

008.02A. VENDING MACHINE INCOME shall not accrue to any blind vendor in any amount exceeding the average net income of blind vendors in the United States.

008.02B. NO BLIND VENDOR shall receive less vending machine income than he or she received during the calendar year prior to January 1, 1974, as a direct result of any limitation imposed on such income under this ceiling.

008.02C. NO LIMITATION WHEN MACHINES ARE PART OF A FACILITY. The State Licensing Agency shall not impose a limitation on income from vending machines combined to create a vending facility when such facility is maintained, serviced, or operated by a blind vendor.

008.02D. EXCESS RETAINED BY SLA. The State Licensing Agency shall retain vending machine income disbursed by a property managing department, SLA, or instrumentality of the United States in excess of the amounts eligible to accrue to blind vendors. The State Licensing Agency shall use the income for:

008.02D1. The establishment and maintenance of retirement or pension plans, for health insurance contributions, and for the provision of paid sick leave and vacation time for blind vendors, if it

is so determined by a majority vote of the licensed vendors, after each vendor has been furnished information on all matters relevant to such purposes;

008.02D2. Any vending machine income not necessary for such purposes shall be used for one or more of the following: maintenance and replacement of equipment; purchase of new equipment; management services, and assuring a fair return to vendors; and that any assessment charged to blind vendors shall be reduced pro-rata in an amount equal to the total of such remaining vending machine income.

008.03. DISBURSEMENT AT LEAST QUARTERLY. The State Licensing Agency shall disburse vending machine income to blind vendors within the state on at least a quarterly basis and shall inform vendors of the disbursement schedule.

009. PERMITS TO OPERATE ON FEDERAL AND OTHER PROPERTY.

009.01. PERMIT TO OPERATE ON FEDERAL PROPERTY. The procedures at 34 CFR 395.16 and 395.35 shall govern the issuance of permits on federal property, with the exception of cafeterias on Federal property, governed by 34 CFR 395.33.

009.02. PERMIT TO OPERATE ON STATE PROPERTY. A permit shall be submitted to the on-site official responsible for the State property of each property managing department, agency or instrumentality of the State of Nebraska, with the exception of the Game and Parks Commission and the University of Nebraska. Said permit shall provide that a priority to operate the vending facility shall be granted by the property managing department so long as the SLA's bid contains proposed product prices comparable in price to the product prices in similar bids submitted for similar products sold in similar buildings on similar property, and similar components in bids for state contracts. Under no conditions can a permit on State property require the payment of rent to the State. In all other respects a permit to operate a vending facility on State property shall be as reasonably equivalent as practicable to a permit to operate a vending facility on Federal property.

009.03. PERMIT TO OPERATE ON CITY, COUNTY, OR MUNICIPAL PROPERTY. In its discretion, the SLA may submit a permit for vending facility operation on property owned or controlled by any county, city or municipality. Said permit is subject to the approval of the local governing body. Said permit shall provide that a priority to operate the vending facility shall be granted by the property managing department so long as the SLA's bid contains proposed product prices comparable in price to the product prices in similar bids submitted for similar products sold in similar buildings on similar property, and similar components in bids for state contracts. In all other respects a permit to operate a vending facility on State property shall be as reasonably equivalent as practicable to a permit to operate a vending facility on Federal property.

0010. OPERATING AGREEMENTS.

010.01. DEVELOPMENT. The State Licensing Agency shall develop, with the active participation of the Committee of Blind Vendors, an operating agreement to be entered into between the State Licensing Agency and each blind vendor (Appendix A).

010.02. PROVISIONS: The agreement must provide

010.02A. The duties of the vendor and the performance of such duties in accordance with standards for vendors, developed with the active participation of the Committee of Blind Vendors, and prescribed by the SLA and with any applicable health laws and regulations of the federal or other SLA or organization in control of the site of the vending facility;

010.02B. The responsibilities of the SLA in providing management services and supervision to the vendor;

010.02C. That the vendor shall receive the net proceeds from the vending facility he or she operates;

010.02D. That the vendor shall furnish any reports that the SLA shall require;

010.02E. That the vendor may voluntarily terminate the operating agreement by notifying the SLA Executive Director at least thirty days prior to the termination if reasonably feasible;

010.02F. That the agreement shall terminate upon the failure of the vendor to operate the facility in accordance with applicable federal, state or local law or regulations or the provisions of the agreement after an opportunity for a hearing pursuant to 013; Evidentiary Hearings and Arbitration of Vendor Complaints if appropriate, or under any of the circumstances specified in 003.04.

011. TRANSFERS AND PROMOTION OF VENDORS.

011.01. NOTIFICATION TO ALL BLIND VENDORS. Whenever a new facility is to be established or a vacancy occurs in an existing facility, the State Licensing Agency shall notify all blind vendors in a reasonable time of the opening.

011.02. BIDDING FOR THE FACILITY OPENING. The State Licensing Agency shall establish a procedure whereby all blind vendors, if they so desire, may submit a bid to the State Licensing Agency requesting that they be placed in the available facility and

011.02A The State Licensing Agency shall submit each bid received to the Committee of Blind Vendors for their recommendation.

011.02B. The Committee shall forward its recommendation to the State Licensing Agency in writing with the reasons for the recommendation. The State Licensing Agency shall review any

recommendation for consideration, together with the reasons provided by the State Committee of Blind Vendors. In the event that the State Licensing Agency does not accept the recommendation of the Committee, it shall provide in writing to the Committee its reasons for not accepting its recommendations.

011.02C. In making its recommendations, the committee shall assess the qualifications of all those who have submitted bids according to any or all of the following criteria and any others that seem to be reasonably significant:

011.02C1. Length of experience as a vendor;

011.02C2. Demonstrated business competence;

011.02C3. Need for income improvement;

011.02C4. Dependability; and

011.02C5. Honesty.

011.02D. THE COMMITTEE may, if it chooses, interview any candidates who submit bids and may be granted access to financial records of any applicant who gives written permission.

011.03. APPEAL. Any individual who has bid and has not been successful may utilize the procedures for appealing State Licensing Agency decisions found in these regulations.

011.04. NOTICE TO ELIGIBLE CANDIDATES. Vocational Rehabilitation Counselors of the SLA will give notice of any remaining openings to eligible persons who are interested in becoming a blind vendor. Training pursuant to Section 011 will be required to enter the program.

012. TRAINING IN THE BLIND VENDOR PROGRAM.

012.01. TRAINING PROVIDED TO BLIND PERSONS. The State Licensing Agency shall provide training to all blind persons with the capacity and desire to operate a vending facility program, including on-the-job training in all aspects of vending facility operation. Such training may be a part of the general rehabilitation program and all training must be part of the Individualized Plan for Employment of the candidate and must be developed on an individual basis. The prospective trainee will be evaluated for blindness and math skills necessary to accomplish the objectives of Section 003.02. Training will be provided in areas identified as needing further instruction. Examples of further instruction include, but are not limited to the following: mobility, braille, computer, life skills, bookkeeping, math, and vending repair. The training for each individual shall include a probationary period not to exceed 90 days after the individual is placed in a vending facility, during which time there must be written evaluations of progress on at least a monthly basis. At the end of this probationary period, subject to satisfactory results of the periodic evaluations, the State Licensing Agency

shall issue a license to operate the vending facility, in accordance with applicable rules and an operator's agreement.

012.03. ASSISTANCE OF VENDORS. The State Licensing Agency shall provide further training to the extent feasible to any vendor who contacts the State Licensing Agency with an individual problem concerning the operation of his or her vending facility.

012.04. RIGHT TO APPEAL. Any vendor shall have the right to appeal a decision by the State Licensing Agency, as provided in 013, Evidentiary Hearings and Arbitration of Vendor Complaints, regarding the vendor's need of additional education or training.

013. EVIDENTIARY HEARINGS AND ARBITRATION OF VENDOR COMPLAINTS.

013.01. AUTHORIZATION FOR A FULL EVIDENTIARY HEARING. Any blind vendor who feels aggrieved by an action of the State Licensing Agency directly affecting him or her may file a grievance in writing with the Executive Director of the State Licensing Agency for a full evidentiary hearing before an individual or panel comprised of one designee of the SLA's Executive Director, one designee of the grievant, and one neutral party, agreed upon by both.

013.01A. Such a hearing shall include representation by counsel for the vendor at the vendor's expense, if desired; an opportunity for witnesses to testify; cross-examination of witnesses; and a written or recorded decision explaining why the grievance was either denied or granted; and shall conform to the requirements of Nebraska's Administrative Procedures Act, Nebraska Revised Statutes Section 84-901 et. seq.

013.01B. The State Licensing Agency shall hold the hearing at a reasonable time, not to exceed 30 days following the filing of the grievance by the vendor. The SLA shall give reasonable notice to the vendor of the time and place of the hearing, which may be postponed for good cause by the Panel or by mutual agreement of the parties.

013.01C. Should the aggrieved blind vendor so desire, he or she may first submit the grievance to the Committee of Blind Vendors requesting the Committee to act as his or her advocate in the matter. The aggrieved blind vendor may appear in person before the Committee, meeting specifically to hear the grievance, or may submit the grievance to the Committee in writing or in some recorded form (including braille or digital format).

013.01C1. The grievant may call upon others to testify in his or her behalf to the extent that the Committee of Blind Vendors deems it necessary to establish the facts of the situation. If such testimony should be relevant to the grievance, the Committee may exclude evidence that is needlessly cumulative.

013.01C2. The Committee of Blind Vendors shall review the written statement, if any, from the SLA announcing the action to the vendor who is appealing.

013.01C3. After reviewing all relevant facts, the Committee of Blind Vendors shall forward the grievance to the Executive Director of the SLA together with its recommendation as to disposition. The Committee of Blind Vendors may recommend any-thing from outright rejection of the grievance to acceptance of said grievance and reversal of the original action.

013.01C4. The Committee of Blind Vendors may seek to negotiate a reconciliation between the parties or it may act as advocate for the vendor.

013.01C5. On receipt of a grievance from the Committee of Blind Vendors, the State Licensing Agency shall respond in a reasonable time, not to exceed five working days, to the recommendation by either reaffirming, reversing or modifying its original action.

013.01C6. The Committee may meet in closed session only in accordance with Nebraska Revised Statute 84-1410.

013.02. APPEAL TO THE SECRETARY. If the aggrieved blind vendor is dissatisfied with the outcome of this hearing decision rendered subsequent to the full evidentiary hearing, he or she may file a complaint with the Secretary of Education. The complaint shall include all available supporting documents including the decision rendered at the hearing and the reasons in support thereof. The appeal shall be conducted in accordance with the federal rules of 34 CFR 395.

013.03. CONSENT FOR RELEASE OF INFORMATION. The filing of a complaint under this rule with either the State Licensing Agency or the Secretary shall indicate consent by the blind vendor for the release of such information as is necessary for the conduct of a full evidentiary hearing or the hearing of an ad hoc arbitration panel.

014. ACCESS TO PROGRAM AND FINANCIAL INFORMATION.

014.01. SLA ALLOWS VENDORS ACCESS TO FINANCIAL DATA. The State Licensing Agency shall provide each blind vendor access to all financial data of the State Licensing Agency relevant to the operation of the state vending facility program. Such data shall include quarterly and annual financial reports, but shall not include individual vendor's financial transactions or income. Such data may include vending facility gross income.

014.02. AVAILABLE IN ACCESSIBLE FORMAT. Insofar as practicable, the State Licensing Agency shall make such data available in the individual's preferred format to include print, large print, braille, electronic audio and text formats, as requested.

014.03. SLA ASSISTS VENDORS IN INTERPRETATION. At the request of a blind vendor, the State Licensing Agency staff shall arrange a time convenient to both parties to assist the blind vendor in the interpretation of such financial data.

015. NOTIFICATION TO VENDORS OF THEIR RIGHTS AND RESPONSIBILITIES.

015.01. DUTY OF STATE LICENSING AGENCY. The State Licensing Agency shall furnish to each blind vendor a copy of these rules and regulations and any amendments thereto, a written description of the arrangements for providing services and the agreement and permit covering the operation of the vending facility.

015.2. SLA ASSISTS VENDOR IN INTERPRETATION. At the request of a blind vendor, the State Licensing Agency staff shall arrange a time convenient to both parties to assist the blind vendor in the interpretation of the regulations, agreements or permits.

APPENDIX A

AGREEMENT FOR OPERATION OF A VENDING FACILITY UNDER RANDOLPH-SHEPPARD ACT

BETWEEN

THIS AGREEMENT entered into this XX day of XXXX by and between the **NEBRASKA COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED (State Licensing Agency - SLA)**, hereinafter referred to as **NCBVI** or **SLA**, and **Blind Vendor**, licensed by NCBVI as a Licensee under the Randolph-Sheppard Program, hereinafter referred to as the Licensee, WITNESSETH:

WHEREAS, **NCBVI** has been granted a permit by the **Government Entity** for the operation of a vending service facility hereinafter referred to as PERMIT on the properties located at **Facility Name and Address (see attachment 'B' for machine and location specs)** in Nebraska;

WHEREAS, **NCBVI** has offered the Licensee the opportunity to operate the vending service facility under the terms and conditions hereinafter set forth; and

WHEREAS, the Licensee wishes to undertake the operation of the vending service facility under the terms and conditions hereinafter set forth; and

WHEREAS, the parties wish to materially comply with all applicable Federal, State, or local laws or regulations in the performance of this agreement;

NOW, THEREFORE, premised on the Recitals above, and in consideration of the mutual promises and understandings of the parties set forth below, the parties agree as follows:

A. RESPONSIBILITIES OF NCBVI:

1. NCBVI will equip the vending service facility ("Facility" or the "vending facility") for carrying out the vending business authorized by the Licensee's permit ("Permit").
2. NCBVI will furnish initial stocks of merchandise sufficient to enable the vendor to commence operating the business authorized by the Permit.
3. Except as provided in Attachment A, NCBVI will maintain the NCBVI-owned snack equipment at the vending facility in good repair, and, in NCBVI's sole judgment, will replace obsolete and worn out equipment as it deems necessary.
4. NCBVI will obtain all applicable and necessary health permits, inspections, and liability insurance prior to opening the vending facility.
5. NCBVI will provide supervisory services as necessary for the efficient operation of the Facility. In the case where there is a new vendor, NCBVI will assist with administration until the Licensee can manage it themselves.

B. RESPONSIBILITIES OF THE LICENSEE:

1. The Licensee shall be responsible for having the vending facility open for business on the days and during the hours specified in the permit, which may encompass, 24 hours a day, 7 days a week and closed on observed federal or state holidays.
2. The Licensee shall operate the vending facility business on a cash basis except for such cashless or credit accounts as may be established or authorized by NCBVI.
3. The Licensee shall account for and maintain accurate business records and provide NCBVI access to such business records and accounting books of the business of the vending facility upon request by NCBVI. Moreover, Licensee shall amend its accounting methods and business record keeping procedures upon written request from NCBVI.
4. The Licensee shall carry on the business of the vending facility in compliance with applicable health laws and regulations including, but not limited to, food safety codes, and NCBVI regulations.
5. Except as provided in Section A3 above, the Licensee shall take proper care of the equipment of the vending facility, and may make alterations or changes to said equipment only with the prior written approval of NCBVI.
6. The Licensee shall notify NCBVI within a reasonable amount of time in advance of taking any voluntary leave from the Facility, and as soon as possible with respect to any involuntary leave.

7. The Licensee shall keep such records and make such reports as the SLA or NCBVI shall require.

8. The Licensee shall wear proper professional attire and maintain proper professional hygiene at all times in the vending facility.

9. The Licensee shall use appropriate professional behavior towards property management, employees, customers, NCBVI, and the SLA at all times.

10. The Licensee shall maintain all applicable Health Permits and Inspections after the first year of opening the vending facility. NCBVI will maintain said permits during the first year of the vending facility.

11. The Licensee shall maintain their Food Safety Certification at all times while operating the vending facility.

C. GENERAL:

1. The business to be carried on at the vending facility will be limited to that specified and authorized in the Permit.

2. The Licensee shall pay for general liability insurance, unless otherwise specified by NCBVI, during all periods in which NCBVI does not cover such costs. The business and premises of the vending facility shall be covered by general liability insurance, fire and theft insurance and any such other insurance as will protect the Licensee, anyone employed by the Licensee, and NCBVI, against losses and claims arising out of the conduct of the business of the vending facility, as NCBVI may require.

3. NCBVI, through its personnel or agents, shall have the right to access the business records of the Licensee upon reasonable notice to the Licensee.

4. NCBVI shall have the right to observe the operation of the Licensee including participation in daily cash counts for the purpose of determining the Licensee's compliance with SLA rules and regulations and the accuracy of the Licensee's reporting as well as to evaluate the potential of the location for future Licensee.

5. The right, title, and interest in and to the equipment of the vending facility and the stock in trade, are vested in the SLA, and will be left at the vending facility or turned over to the SLA on the termination of this agreement for any reason by either of the parties. In such an event the fair market value of the vendor's interest from the vending stock will be determined by the SLA and paid to the vendor or to the vendor's heirs or assignees.

6. This agreement may be terminated at any time by the Licensee subject to a thirty (30) calendar day notice submitted to the SLA in writing. This agreement shall be terminated upon the revocation or termination of the Permit or vending contract. In addition, this agreement may be terminated by NCBVI if the business of the vending facility is not conducted in accordance with this agreement, the terms and conditions of the SLA Permit with the Property

Managers, the Nebraska Business Enterprise (NBE) Rules and Regulations or with applicable Federal, State, or local laws and regulations.

7. Upon execution and dating of this agreement by NCBVI and the Licensee, it is understood that this agreement shall supersede and nullify any prior agreement between NCBVI and the Licensee with respect to the operation of a vending facility.

8. The Licensee encouraged to consult with the Blind Licensee Committee about their rights as the committee is available as an advocate for them.

9. This agreement includes the engagement of any other contracts or services solicited by any City, County State, or Federal Facility. It should be understood that all proposals for other business in government buildings shall be reviewed and approved by NCBVI.

10. Other terms and conditions as listed on Attachment A.

Date: _____ by _____

NCBVI Deputy Director

Date: _____ by _____

NBE Business Manager II

Date: _____ by _____

Licensee

Date: _____ by _____

Witness

Contract Certification Page

Agency Use Only

Contractor:

Service:

Contract # _____

Address Book # _____

Account Numbers

1. _____

2. _____

3. _____

Legal Review Performed by _____,

on _____.

Signature of Reviewing Legal Professional:

This contract form was reviewed by Michael G. Kuzma, Esq. of the Johnson, Flodman, Guenzel & Widger Law Firm on December ____, 2016.

ATTACHMENT A

1. Floor maintenance surrounding the vending machines, cleaning of the glass, and dusting the machines will be completed by the Licensee upon all machine servicing.
2. General maintenance on all cold units (including cleaning and brushing the screens) shall be completed every three months by the Licensee.
3. **On the 20th of each month, a payment for the previous month of the percentage of Set Aside agreed upon by the Committee of Blind Licensees and the SLA is due at the Nebraska Commission for the Blind and Visually Impaired Office, along with a monthly report for the month in question.**
4. Request for a price increase on vending products must be submitted to SLA. Once the SLA has obtained permission from Property Management and the price increase has been deemed appropriate, the price increase can be implemented at the vending facility.
5. Printing of all refund policies, contact information, business cards and publications regarding the facility shall be the responsibility of the Licensee.
6. It shall be the responsibility of the Licensee to survey the tenants of the property to determine customer satisfaction with services and products.
7. The facility may be closed on State or Federal Holidays not the day before or the day after the Holiday.
8. "Non-essential" equipment as defined by the NBE Rules & Regulations manual will be furnished by the Licensee.
9. Arrangements and fees for professional maintenance of the floors (stripping, waxing, buffing) will be the responsibility of the Licensee.

ATTACHMENT B

Route Locations: List address of each location, where in the building the machines are located, how many machines, and the type of machines.
