

Memorandum of Understanding # 12-214
Between
Delaware Division of Public Health
And
Delaware Division for the Visually Impaired-Business Enterprise Program
And
Delaware Department of Health and Social Services

This Memorandum of Understanding (hereinafter "MOU") is entered into between Delaware Division of Public Health ("DPH") and Delaware Division of Visually Impaired-Business Enterprise Program ("DVI-BEP") and Delaware Department of Health and Social Services (DHSS).

I. OVERVIEW AND PURPOSE

This MOU describes the intention of DPH to provide compensation for potential losses incurred during the Healthy Vending Pilot, from all food and beverage vending machines at the Herman Holloway Main Building, the Jesse Cooper Building, and the Adams State Service Center from October 26, 2011 through April 24, 2012.

II. REPRESENTATIONS

DPH and DVI-BEP agree that:

1. The collaboration under this MOU shall be conducted in good faith.
2. The Healthy Vending Pilot shall run from October 26, 2011 through April 24, 2012.
3. "Loss" shall be determined on a monthly basis.
4. While losses shall be determined on a monthly basis, any potential payment of losses from DPH to DVI-BEP shall be made in one lump sum, after April 24, 2012. A net loss in one month shall not be canceled out by a net gain in the following month. For example, a net loss in month #1 of \$200 shall not be canceled out for a net gain in month #2 of \$200.
5. "Loss" shall be defined as an amount less than the average monthly gross revenue for the previous two (2) years, for the period in question, of the pilot (October-April).
6. Average monthly gross revenue for the Herman Holloway Main Administration Building, for the previous two (2) years, for the months in question of the pilot (October-April) equals \$599.88. Should monthly gross revenue for the Herman Holloway Main Administration Building equal less than \$599.88, DPH shall compensate DVI-BEP for the difference between monthly gross revenue and \$599.88.
7. Average monthly gross revenue for the Jesse Cooper Building, for the previous two (2) years, for the months in question of the pilot (October-April) equals \$471.59. Should monthly gross revenue for the Jesse Cooper Building equal less than \$471.59, DPH shall compensate DVI-BEP for the difference between monthly gross revenue and \$471.59.

8. Average monthly gross revenue for the Adams State Service Center, for the previous two (2) years, for the months in question of the pilot (October-April) equals \$699.67. Should monthly gross revenue for the Adams State Service Center equal less than \$699.67, DPH shall compensate DVI-BEP for the difference between monthly gross revenue and \$699.67.

III. TERM AND TERMINATION

The term of this MOU shall commence on October 26, 2011 and shall continue for a period of six (6) months ending April 24, 2012. Either party may terminate this MOU at any time with or without cause upon thirty (30) days' written notice to the other party.

IV. COMPLIANCE WITH THE LAW

Each of the parties agrees to perform its obligations under this MOU in conformance with all applicable laws, regulations and administrative instructions that relate to the parties' performance of the Agreement.

V. GOVERNING LAW AND JURISDICTION

This MOU shall be construed and enforced in accordance with the laws of the State of Delaware. In the event of any dispute or claim arising out of or relating to this MOU, each of the parties consents and agrees to the jurisdiction of any state or federal court sitting in New Castle County, in the State of Delaware.

VI. NOTICES

Any and all notices and other communications required or permitted to be given hereunder shall be made in writing and effective upon receipt. Such notices shall be personally delivered, sent by registered or certified mail, by a nationally recognized overnight delivery service or sent by facsimile or electronic mail with confirmation, addressed as follows, unless such address is changed by written notice hereunder.

For DPH: Delaware Division of Public Health
ATTN: Dr. Karyl Rattay
Jesse Cooper Building, 417 Federal Street
Dover, DE 19901
Phone: (302) 744-4700
Fax: (302) 739-6659
Email: karyl.rattay@state.de.us

For DVI-BEP: Delaware Division for the Visually Impaired-Business Enterprise Program
ATTN: Robert Doyle
1901 North DuPont Highway, Biggs Building
New Castle, DE 19720
Phone: (302) 255-9800
Fax: (302) 255-9964
E-mail: robert.doyle@state.de.us

VII. MISCELLANEOUS

Nothing other than an express written agreement signed by both parties may modify any term of this MOU. Paragraph headings used in this MOU are for convenience only and are not intended to expand or restrict the scope or substance of the provisions of this MOU. Wherever used in this MOU, the singular shall include the plural, the plural shall include the singular, and pronouns shall be read as masculine, feminine or neuter as the context requires. It is specifically understood and agreed that the parties are operating as independent entities, and this MOU shall not be deemed to create any other form of relationship between the parties, including, but not limited to, employment, a partnership or a joint venture.

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[Signatures appear on the following page]

WITNESS the following signatures:

Delaware Division of Public Health

Delaware Division for the Visually Impaired-
Business Enterprise Program

By: _____
Name: Dr. Karyl T. Rattay, MD, MS
Title: Director

By: _____
Name: Robert Doyle
Title: Director

Date: _____

Date: _____

Delaware Department of Health and Social Services

By: _____
Name: Rita M. Landgraf
Title: Secretary

Date: _____