VENDOR NUMBER _____ **COUNTY** _____

KANSAS WIC PROGRAM
VENDOR PARTICIPATION CONTRACT

This contract is to be used for participation as a Kansas vendor in the United States Department of Agriculture (USDA) Special Supplemental Nutrition Program for Women, Infants, and Children, herein after referred to as WIC.

This contract is entered into by and between the Kansas Department of Health and Environment, Topeka, Kansas, herein after referred to as the State Agency and _____ herein referred to as the vendor.

This contract becomes effective _____ and expires_____ .

It is mutually agreed between these parties that:

SECTION I - GENERAL CONDITIONS:

1. Nothing in this contract creates a license or a property interest.

2. This contract with amendments, along with the Kansas WIC Vendor Manual, embodies the whole contract of the parties and shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto.

3. Neither the State Agency nor the vendor has an obligation to renew this contract. Vendors whose contract will not be renewed shall be notified in writing by the State Agency fifteen (15) days before the contract expires. The vendor does not have the right to appeal the non-renewal of a contract.

4. Vendors with non-renewed contracts must re-apply to continue program authorization and will be subject to all State Agency evaluation and selection procedures. The State Agency will not authorize a vendor applicant if it is determined that the store has been sold in an attempt to circumvent a sanction.

5. This contract may be terminated by either the vendor or the State Agency giving at least fifteen (15) days advance written notice to the other party. The vendor may appeal a contract termination for certain conditions (See Section V of this contract). The appeal must be made in writing to the State Agency within fifteen (15) days following receipt of the adverse action notice. Voluntary termination to avoid sanctions is not allowed. (See Section IV, #5 of this contract.)

6. The State Agency will immediately terminate this contract if it is determined that the vendor has provided false information in connection with its application for authorization.

7. This contract is null and void upon change of ownership. A new application and contract must be completed and approved by the State Agency for the new owner to participate in the WIC program. No portion of this contract may be assigned.

8. Other than the exceptions noted in this contract, the vendor has fifteen (15) days from receipt of the notice of any adverse action to appeal the action of the State Agency. The request to appeal must be in writing and contain the reasons for the appeal (See Section V of this contract).

9. The State Agency is not responsible for reimbursement for any WIC food instrument accepted by the vendor during any time in which a valid contract is not in effect.

10. Parties to this contract are subject to Section 1352 of Public Law 101-121, File 31, U.S. Code and Federal Regulation at 7 CFR Part 3017 which prohibits the procurement of goods and services from entities that have been debarred or suspended from entering into contracts or agreements.

11. In order to establish a manageable number of WIC vendors in a given geographic area, while at the same time considering client access to vendors, the State Agency will annually assess the proximity of WIC vendors to other WIC vendors in the same geographic area and will consider client usage of individual WIC vendors that are in proximity to other WIC vendors in the same geographic area. Contracts with those vendors whose client usage falls below an established standard will be terminated. This termination will occur on an annual basis prior to the end of the standard three-year contract term. Contracts in this situation will be terminated on September 30. The State Agency's determination of inadequate or adequate client access is not subject to appeal.

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12. Proximity standards:
    a. Rural Counties: Vendors should be located no closer together than 15 miles.
    b. Urban Counties: Vendors should be located no closer together than 1 mile.

13. Client Usage Standards:
    a. Rural Counties: The store must average 25 clients for the months of April, May and June.
    b. Urban Counties: The store must average 100 clients for the months of April, May and June.

14. Using the current vendor selection criteria, the State Agency may reassess the vendor at any time during the contract period. The State Agency will terminate the vendor contract if the vendor fails to meet the current vendor selection criteria.

15. In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age or disability. To file a complaint of discrimination, write USDA, Director, Office of Adjudication and Compliance, 1400 Independence Avenue, SW, Washington DC 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TTY). USDA is an equal opportunity provider.

16. WIC food instruments that are submitted for payment and not stamped by the authorized vendor in the box with the heading "Not Negotiable without Kansas WIC Vendor Stamp Here" shall be returned unpaid by the Kansas WIC banking contractor. All bank charges and/or fees incurred will be the sole responsibility of the vendor.

SECTION II - STATE AGENCY RESPONSIBILITIES

The State Agency agrees:

1. To provide appropriate training and written materials to the vendor regarding program regulations, policies and procedures;

2. To monitor the vendor for compliance with program regulations, policies and procedures;

3. To take appropriate action to maintain vendor compliance with program regulations, policies and procedures;

4. To evaluate the vendor for continued participation in the WIC program;

5. To reimburse the vendor for those WIC food instruments properly redeemed and submitted for reimbursement according to the requirements outlined in this contract and detailed in the Kansas WIC Vendor Manual;

6. To reserve the right to deny reimbursement for any or all WIC food instruments improperly submitted for reimbursement, and may demand refunds for reimbursements already made on any or all improperly redeemed WIC food instruments submitted for reimbursement, or may offset future reimbursements to vendor for the amount of the claim;

7. To provide an appropriate process for the vendor to appeal decisions made by the WIC program that adversely affect the vendor. (See Section V of this contract and the "Vendor's Right to Administrative Review" section of the Vendor Manual.) and

8. To notify all vendors of changes to policies that affect vendors before changes are implemented.

9. To maintain vendor confidentiality. Information that may be provided to others includes name, address, telephone number, email/website, store type and authorization status.

SECTION III - VENDOR RESPONSIBILITIES

The vendor agrees:

1. To provide for WIC clients only those foods approved according to the current WIC approved food list. The quantities of food provided shall not exceed the quantities specified on the food instrument;

2. To attend all required vendor training, thoroughly inform and train all appropriate store employees on program requirements and be accountable for actions of all employees involved in the handling of WIC food instruments or provision of supplemental foods;

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3. To comply with all policies and procedures as set forth in the current Kansas WIC Vendor Manual;

4. To permit State and Local Agency representatives to conduct on-site evaluation and monitoring visits to determine compliance with the requirements of the WIC program. Vendor must provide inventory records and access to food instruments negotiated on the day of the evaluation or monitoring visit. Vendor must provide cash register receipts for WIC food instruments submitted for reimbursement within the last 30 days. Evaluation and monitoring visits shall include, but not be limited to: verifying that the store has a minimum stock of WIC foods and copies of current WIC vendor program information; obtaining current shelf prices of WIC foods in stock; and giving technical assistance to vendors when needed;

5. To cooperate with State and Local Agency staff, USDA officials, and appointed investigative personnel conducting compliance or investigation activities;

6. To offer WIC clients the same courtesies offered to other customers, including, but not limited to, equal access to checkout lines, non-restricted shopping hours, and allowing WIC clients full access to all brands allowed in the WIC Program Booklet;

7. To not use or allow incentives, give aways, specials, or the like, for the purpose of encouraging or otherwise enticing WIC clients to redeem their WIC food instruments at the store. Vendor agrees to use only simple notices such as “This is an authorized WIC Vendor” or “WIC Checks accepted here”;

8. To notify the Local WIC Agency or the State Agency in writing at least fifteen (15) days in advance of when the store ceases operation, changes ownership, name, or location. In these instances, except for a name change and/or close proximity location change, the State Agency shall terminate the vendor contract;

9. To submit a properly completed "Quarterly Price Assessment" (QPA) report indicating the requested price information to the State Agency by the specified due date. This QPA is used to determine the purchase price for all WIC foods. This is done by averaging all prices reported on QPA’s and then adding a buffer percentage to the average price, which then becomes the maximum price to be paid;

10. To sell no WIC foods past the manufacturer's expiration date printed on the package and/or container;

11. To collect no sales tax on purchases made with a WIC food instrument;

12. To allow WIC clients to use manufacturer or store issued coupons to purchase WIC foods;

13. To seek no reimbursement, directly or indirectly, from WIC clients under any circumstances in connection with the negotiation of a WIC food instrument;

14. To treat each WIC food instrument as a separate transaction, to seek reimbursement from the WIC program only for foods and quantities specified on WIC food instruments and only for food purchased by WIC clients using WIC food instruments;

15. To post the State approved WIC decal in a highly visible location to indicate that WIC clients may redeem food instruments at the store;

16. To remove the WIC decal when the store ceases to be a WIC vendor;

17. To obtain written permission of the State Agency to use WIC shelf labels not provided by the WIC program;

18. To not use the WIC acronym or the WIC logo in the name under which the vendor is registered or in the name under which the vendor does business. No vendor may include the WIC logo, or close facsimiles of the WIC logo, in total or in part, in advertising or promotional natures or on labels adhered directly to food items.

19. To maintain the required minimum stock requirements for WIC foods. (See Minimum Stock Requirements in the Vendor Manual);

20. To be responsible for, and to safeguard against, any unauthorized use of the Authorized Kansas WIC Vendor Stamp;

21. To ensure that the Authorized Kansas WIC Vendor Stamp issued by the State Agency is:
    a) used as specified in the Vendor Manual.
    b) not duplicated.
    c) returned to the State or Local Agency upon a change of ownership or termination or suspension of this contract;

22. To adhere to the following approved procedures in accepting WIC food instruments:

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a) Accept WIC food instruments only from WIC clients, parents or caretakers of infant and child clients, or proxies of WIC clients.
b) Provide authorized food only upon receipt of an authorized WIC food instrument as long as the total quantity of such foods does not exceed the maximum allowed as indicated on the food instrument.
c) Charge a price for foods purchased with the WIC food instrument the same as the current price charged to non-WIC customers.
d) Accept WIC food instruments only when used on or between the First Day to Use and Last Day to Use dates as printed on the face of the food instrument.
e) Supply no unauthorized food or non-food items, cash, or credit (including rain checks) in exchange for food instruments.
f) Supply no cash or other items to WIC clients who return WIC foods for cash or non-WIC merchandise exchanges.
g) Make no alterations to the WIC food instrument. The vendor shall not accept any food instrument that has been altered. Alterations include, but are not limited to, altering the client's name, altering the type and quantity of allowed foods and altering the first or last day of use dates. Price corrections and signature and date corrections that are initialed by appropriate store personnel or WIC clients are allowed.
h) Write in the actual total price of the WIC food purchased before the client signs and dates the WIC food instrument.
i) Submit WIC food instruments for reimbursement within sixty (60) days of the First Day to Use date printed on the food instrument.
j) Upon request, provide to the State Agency information on retail prices charged for WIC food items;

23. That the vendor shall <u>not</u> receive reimbursement for food instruments submitted for reimbursement and rejected for the following reasons:
    a) The date the food instrument is received for processing is more than 60 days after First Day to Use date printed on the food instrument.
    b) The client, caregiver, alternate, or proxy signature is not present.
    c) The actual date of use is prior to the First Day to Use date printed on the food instrument.
    d) The actual date of use is after the Last Day to Use date printed on the food instrument.
    e) The food instrument information has been altered;

24. That the vendor shall be given the opportunity to correct or justify food instruments submitted for reimbursement and rejected for the following reasons:
    a) The total purchase price is missing or not legible.
    b) The actual date of use is missing or not legible.
    c) The total purchase price exceeds the maximum allowed amount.
    d) The Vendor stamp or Vendor identification is missing or not legible;

25. To ensure that no conflict of interest exists between the vendor and either State Agency or Local Agency WIC staff;

26. That the vendor is accountable for its owners, officers, managers, agents and employees who commit vendor violations;

27. That the vendor must comply with the non-discrimination provisions as contained in the Kansas WIC Vendor Manual and in this contract;

28. That the vendor must comply with the vendor selection criteria throughout the contract period, including any changes to the criteria;

29. To purchase infant formula from the list of approved sources provided by the State Agency. The vendor shall request approval prior to purchasing any formula from a source not on the approved list. Approval will come from the State Agency after an investigation and if the new source is approved, the source will then be placed on the approved list for distribution to all vendors.

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SECTION IV - CONTRACT VIOLATIONS AND APPLICABLE SANCTIONS

Parties to this contract agree to the following provisions regarding contract violations and sanctions for contract violations:

1. The State Agency may disqualify a vendor or impose a Civil Money Penalty (CMP) for contract violations. The State Agency shall give a fifteen (15) day notice before imposing a sanction, except for the sanction of permanent disqualification as a result of a conviction of trafficking or other illegal sales of WIC food instruments, in which case the State Agency must take immediate action upon receipt of the sanction notice by the vendor.

2. The State Agency shall disqualify a vendor from the WIC program who is disqualified from the USDA Food Stamp Program (FSP) unless inadequate client access is determined. Vendor disqualifications as a result of disqualification from the FSP are not subject to administrative or judicial appeal. A disqualification from the WIC program as a result of disqualification from the FSP shall be for the same length of time and may begin at a later date than the FSP disqualification.

3. Disqualification from the WIC program may result in the vendor=s disqualification from the FSP. Such disqualification is not subject to administrative or judicial appeal under the FSP. The State Agency shall notify the Food and Nutrition Service, United States Department of Agriculture, of all WIC disqualifications and CMP's.

4. The State Agency shall sanction vendors based on the contract violations described in the Kansas WIC Vendor Manual. As an alternative to a standard sanction, the State Agency may impose a CMP when it is determined that client access to a WIC vendor would be unacceptable to the program. The State Agency shall not give a CMP for a third or subsequent violation. A third or subsequent violation will result in the required sanction.

5. The State Agency shall not accept a vendor's voluntary withdrawal from the WIC program or the non-renewal of a vendor's contract as an alternative to imposing sanctions.

6. The determination of whether or not a pattern of violations exists is made by the State Agency. The type and severity of the violation and the number of incidences of the violation influence the determination of a "pattern". Generally, a "pattern" is defined as two to three replications of the same violation.

7. The State Agency will notify a vendor of the initial occurrence of a violation if that violation requires a pattern of occurrences before imposing a sanction against the vendor. This notification will occur before imposing a sanction unless notification would compromise an investigation.

8. If disqualified under any provisions of this contract, this contract will be terminated and the vendor must reapply for authorization to participate in the WIC program.

9. In conjunction with a contract violation or sanction, reimbursement from the vendor to the State Agency may be required for all WIC food instruments, or those food instruments selected by the State Agency, which were accepted during a specified period determined by the State Agency.

10. Convicted vendors, even if the decision is later overturned, are not entitled to receive compensation for revenues lost as a result of a disqualification.

11. Sanctions (Please refer to the Kansas WIC Vendor Manual for more details):
    a) <u>Permanent disqualification from participation in the WIC program</u> for vendors convicted of trafficking or engaged in other illegal sales of WIC food instruments (buying or selling WIC food instruments for cash or other considerations). The State Agency may impose a civil money penalty in lieu of a disqualification for this violation when it determines, in the State Agency's sole discretion, that disqualification of the vendor would result in inadequate client access or that the vendor had, at the time of the violation, an effective policy and program in effect to prevent trafficking; and the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation.

    b) <u>Six (6) year disqualification from participation in the WIC program</u> for vendors found trafficking or engaged in other illegal sales of WIC food instruments (buying or selling WIC food instruments for cash or other considerations) as a result of a WIC program investigation.

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c) Three (3) year disqualification from participation in the WIC program for the following violations:
   i) Selling Alcoholic Beverages or Tobacco products in exchange for WIC food instruments. Only one incidence is necessary to trigger the mandatory three-year disqualification.
   ii) A pattern of claiming reimbursement for WIC transactions that are in excess of documented vendor inventory.
   iii) A pattern of charging WIC customers more for food than non-WIC customers, or charging more than the shelf price for WIC foods.
   iv) A pattern of receiving, transacting, and/or redeeming WIC food instruments outside of authorized channels, including the use of an unauthorized vendor and/or an unauthorized person.
   v) A pattern of claiming reimbursement for food not received by the WIC client. For example: Claiming reimbursement for the full price of the food on a food instrument even though the client chose not to purchase several items.

d) One (1) year disqualification from participation in the WIC program for the following violations:
   i) A pattern of providing credit or non-food items other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives or controlled substances as defined in 21 U.S.C. 802 in exchange for WIC food instruments. If the vendor allows the credit to be used for the purchase of alcohol or alcoholic beverages or tobacco products or other items included in the trafficking violation, then the vendor's actions fall under those violations which trigger a sanction after one incidence.

e) Kansas WIC vendors determined to be in violation of WIC program policies and procedures, federal regulations, state statutes, the WIC Vendor Participation Contract or the Vendor Manual shall be sanctioned as indicated below.

   i) Vendor violations may be intentional or unintentional. The Kansas WIC program may refer vendors who commit fraud and/or abuse of the WIC program to federal, state or local authorities for prosecution under applicable statutes. The WIC program has two levels of violations: those that result in Kansas WIC program sanctions and those that result in federally mandated sanctions.
   ii) The Kansas WIC program detects violations through monitoring, undercover buys, data analysis and reports from WIC clients and Local Agencies (LA). Vendors who commit fraud and abuse may be prosecuted under federal, state and local laws and may be fined or imprisoned in addition to program sanctions.
   iii) Imposed sanctions may include warning letters, mandatory training sessions, administrative fines, monetary claims, Civil Money Penalties (CMP), suspensions, terminations or disqualifications from the WIC program, or any combination of sanctions.
   iv) In addition to the sanctions mandated by federal regulations, the State Agency (SA) will institute program sanctions. Each instance of a violation of Kansas WIC program rules has a set point value. The accumulation of fifteen (15) findings points or more within a twelve month (12) period will result in termination of the Vendor Participation Contract and a six month (6) disqualification from the Kansas WIC program.

f) Program sanctions can also take the form of warning letters with or without mandatory training session(s) and monetary fines. The following table lists Kansas WIC program sanctions:

Occurrence	**Sanction**	**Points**	**Time Frame**
First	Warning Letter with possible Mandatory Training session(s)	3 - 5	Points will accumulate for a one-year period, beginning October 1.
Second	$100.00 fine	6 - 9	
Third	$250.00 fine	10 - 14	
Fourth	Termination of Contract and six (6) month disqualification	15 +	

   i) If a vendor is disqualified from the Kansas WIC program, that vendor may also be subjected to a termination from the Kansas Food Assistance Program. Likewise, a vendor disqualified from the Kansas Food Assistance Program shall have its WIC authorization terminated.

g) Second Sanction: When a vendor, who previously has been assessed a sanction for any of the violations in this section receives another sanction for any of these violations, the State Agency shall double the second sanction. CMP's may only be doubled up to the limits allowed.

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h) Third or Subsequent Sanction: When a vendor, who previously has been assessed two or more sanctions for any of the violations in this section receives another sanction for any of these violations, the State Agency shall double the third sanction and all subsequent sanctions. The State Agency shall not impose civil money penalties in lieu of disqualification for third or subsequent sanctions.

i) Civil Money Penalties: A CMP may be imposed on a vendor whose disqualification from the WIC Program would cause inadequate client access. The CMP is calculated as follows: (1) determine the vendor's average monthly redemptions for at least the 6-month period ending with the month immediately preceding the month during that the notice of administrative action is dated; (2) multiply the average monthly redemptions figure by 10 percent; and (3) multiply the product from Step 2 by the number of months for which the vendor would have been disqualified. This is the amount of the CMP, provided that it does not exceed $11,000.00. In addition, the total amount of CMP's imposed for multiple violations investigated as part of a single investigation must not exceed $44,000.00. The State Agency may authorize the use of installment plans for the collection of CMP's. If a vendor does not pay an imposed CMP or fails to pay a CMP within thirty (30) days of written notice of CMP, or fails to maintain an agreed upon installment payment plan, the State Agency must disqualify the vendor.

j) Criminal Prosecution: The State Agency shall request prosecution by Local or State authorities if it appears that fraud or theft has occurred in the WIC program. A vendor who commits fraud or abuse of the program is liable to prosecution under applicable Federal, State or Local laws. Under 7 CFR § 246.23, those who have willfully misapplied, stolen or fraudulently obtained program funds shall be subject to a fine of not more than $25,000 or imprisonment for not more than five years or both, if the value of funds is $100 or more. If the value is less than $100, the penalties are a fine of not more than $1,000 or imprisonment for not more than one year or both.

SECTION V- ACTIONS SUBJECT TO ADMINISTRATIVE REVIEW AND REVIEW PROCEDURES

Authorized WIC vendors have the responsibility to comply with WIC program regulations, policies and procedures. As indicated in this contract, the State Agency may impose sanctions on vendors for non-compliance. These sanctions range from warning letters to permanent disqualification from participation in the WIC program. Refer to Section IV of the Vendor Participation Contract for a full description of the sanctions.

1. Vendor's Right to Administrative Review.
   a) The Local Agency and/or State Agency must provide written notice of any adverse action taken against a vendor. The notice must specify the action being taken, the effective date of the action, the reasons for the action, and explain the vendor's right to and the procedures to follow to obtain an administrative review. Notice must be given prior to any adverse action being taken, with the exception of disqualification due to conviction of trafficking WIC food instruments.
   b) A vendor wishing to appeal an adverse action must submit (via U.S. Mail or FAX) a written request for a review of the action. The request must be made within fifteen (15) days of receipt of the notice of adverse action. The request for a review must include a summary of the reasons for appealing the action. Requests for appeal shall be addressed to Director, KDHE Nutrition and WIC Services, 1000 SW Jackson St., Suite 220, Topeka, Kansas 66612-1274.
   c) Appealing an action does not relieve the food vendor of responsibility for continued compliance with the terms of any written agreement or contract with the State Agency or Local Agency. Participating vendors who are disqualified from the program must reapply for authorization to participate. Applicants who are denied participation at application may appeal the denial, but shall not participate in the program while awaiting the decision.
   d) The State agency shall not deny or dismiss a request for an administrative review unless:
      i) The request is not received in writing by the State within the time limit of 15 days from receipt of the notice of adverse action.
      ii) The request is withdrawn in writing by the appellant or a representative.
      iii) The appellant or a representative fails, without good cause, to appear at the scheduled hearing.
      iv) The request for review is regarding an adverse action that is not subject to administrative review.
   e) When a vendor is disqualified due in whole or in part to violations in 7 CFR 246.12(l)(1), such notification must include the following statement: "This disqualification from WIC may result in disqualification as a retailer in the Food Stamp Program. Such disqualification is not subject to administrative or judicial review under the Food Stamp Program."

2. Effective Date of Adverse Actions against Vendors
   a) The State agency must make denials of authorization and disqualifications effective on the date of receipt of the notice of adverse action. The State Agency must make all other adverse actions effective no earlier than 15 days after the date of the notice of adverse action and no later than 90 days after the date of the notice of adverse action or, in the case of an adverse action that is subject to administrative review, no later than the date the vendor receives the review decision.
   b) Decisions rendered under the administrative review procedures are the final state agency action. If a decision is rendered as a result of a hearing and the vendor expresses an interest in pursuing a higher review of the decision, the State Agency shall explain any available state level re-hearing procedures. If a re-hearing is not available or has been exhausted, the State Agency shall explain the

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right to pursue judicial review of the decision. Kansas statutes allow individuals to file suit against the State of Kansas in District Courts.

3. Pre-hearing conference
   a) Prior to the official administrative review, a pre-hearing conference may be held. A pre-hearing conference is a conference between the parties or their counsel and the Presiding Officer to discuss matters relevant to a full and fair hearing. A pre-hearing conference may be conducted in person or over the telephone.
   b) At the pre-hearing conference, the proceeding may, with the agreement of all parties and the concurrence of the Presiding Officer, be converted to an administrative review or a summary proceeding for disposition of the matter as provided by the Kansas Administrative Procedure Act.

4. The following adverse actions are subject to administrative reviews:
   a) The denial of authorization to become a WIC vendor based on:
      i) the vendor selection criteria for competitive price;
      ii) the vendor selection criteria for minimum variety and quantity of authorized supplemental foods;
      iii) a determination that the vendor is attempting to circumvent a sanction;
      iv) the vendor selection criteria for business integrity;
      v) the vendor selection criteria for a current FSP disqualification or CMP for hardship;
      vi) a State Agency-established vendor selection criteria if the basis of the denial is a WIC vendor sanction or a FSP withdrawal of authorization or disqualification;
      vii) the State Agency's vendor limiting criteria;
      viii) the vendor submitted its application outside the time frames during which applications are being accepted and processed as established by the State Agency;
      ix) the vendor submitted its application and expects that 50% of their food sales revenue will be from WIC redemptions,
   b) the termination of a current WIC Vendor contract:
      i) for cause;
         (1) because of a change in ownership or location or cessation of operations;
         (2) the disqualification of a current WIC vendor:
         (3) based on a trafficking conviction;
         (4) based on the imposition of a FSP CMP for hardship;
         (5) the imposition of a fine or a CMP in lieu of disqualification; and
         (6) the disqualification or a CMP imposed in lieu of disqualification based on a mandatory sanction imposed by another WIC State Agency.

5. The following adverse actions are **NOT** subject to administrative review:
   a) the validity or appropriateness of the State Agency's vendor limiting or selection criteria;
   b) the validity or appropriateness of the State Agency's client access criteria and client access determinations;
   c) the State Agency's determination whether a vendor had an effective policy and program in effect to prevent trafficking and that the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation;
   d) the denial of authorization if the State Agency's vendor authorization is subject to the procurement procedures applicable to the State Agency;
   e) the expiration of a vendor's contract;
   f) disputes regarding food instrument payments and vendor claims (other than the opportunity to justify or correct a vendor overcharge or other error, as permitted by 246.12(k)(3)); and
   g) the disqualification of a vendor as a result of disqualification from the Kansas Food Assistance Program;
   h) the State Agency's determination whether to notify a vendor when an investigation reveals an initial violation for which a pattern of violation must be established in order to impose a sanction;
   i) the State Agency's determination to include or exclude an infant formula manufacturer, wholesaler, distributor or retailer from the approved list.

6. The procedures for an administrative review are:
   a) Step 1 The State Agency sends the vendor a written notification of the adverse action, the procedures to follow to obtain an administrative review and the cause(s) for and the effective date of the action
   b) Step 2 The vendor submits a written request for an administrative review of the decision.

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c) Step 3 The State Agency replies in writing to the requesting party either denying the review and stating the reason for denial, or advising the requesting party at least ten days in advance of the time and place of the pre-hearing conference or administrative review.

d) As part of the administrative review, the State Agency must provide the vendor with the following:
   i) The opportunity to appeal the adverse action within a time period specified by the State Agency in its notification of adverse action;
   ii) adequate advance notice of the time and place of the administrative review to provide all parties involved sufficient time to prepare for the review;
   iii) the opportunity to present its case and at least one opportunity to reschedule the administrative review date upon specific request;
   iv) the opportunity to cross examine adverse witnesses;
   v) the opportunity to be represented by counsel if desired
   vi) the opportunity to examine, prior to the review, the evidence upon which the State Agency's action is based;
   vii) an impartial decision-maker whose determination is based solely on whether the State Agency has correctly applied Federal and State statutes, regulations, policies, and procedures governing the program, according to the evidence presented at the administrative review; and
   viii) written notification of the review decision, including the basis for the decision. The written notification need not amount to a full opinion or contain formal findings of fact and conclusions of law. The written notification should be provided within 90 days from the date of receipt of a vendor's request for an administrative review. This time frame is only an administrative requirement for the State Agency and does not provide a basis for overturning the State Agency's adverse action if a decision is not made within the specified time frame.

SECTION VI - KANSAS DEPARTMENT OF ADMINISTRATION CONTRACTUAL PROVISIONS:

1. It is expressly agreed that the terms of each and every provision below shall prevail and control over the terms of any other conflicting provision in any other document relating to any part of this contract.

2. All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.

3. If, in the judgment of the Director of Accounts and Reports, State Department of Administration, sufficient funds are not appropriated to continue the function performed in this contract and for the payment of the charges hereunder, State may terminate this contract at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the contract by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.

4. Neither State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).

5. The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1 11 et seq.) and the applicable Provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be canceled, terminated or suspended in whole or in part by the contracting state agency or the Kansas Department of Administration; and (f) if it is determined that the contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of contract and the contract may be canceled, terminated or suspended in whole or in part by the contracting state agency or the Kansas State Department of Administration.

Initial for acceptance _____

6. Parties to this contract understand that the provisions of the paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total $5,000 or less during this fiscal year of such agency.

7. This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

8. Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment or damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

9. By signing this document, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this document on behalf of the contractor and the contractor agrees to be bound by the provisions thereof.

10. The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes, which may be imposed or levied upon the subject matter of this contract.

11. The State of Kansas shall not be required to purchase any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the state to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.

12. No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.

13. The Eleventh Amendment to the United States Constitution is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment.

Initial for acceptance _____

Please type or print information below.

Wherefore, the parties have executed this contract in accordance with the terms contained herein.

The undersigned represent that they are either sole owner or that they have the authority to enter into this contract for and on behalf of the vendor.

_____
Vendor Name

_____
Address

_____
City State Zip

_____
County

X _____
Authorized Manager/Owner Signature

X _____ / _____
Type or Print Manager/Owner Name Date

FOR STATE AGENCY USE ONLY

DATE OF APPROVAL: _____

BY: _____
Kansas Department of Health & Environment
Nutrition and WIC Services

Revised: July 2009

Kansas Department of Health and Environment
Nutrition & WIC Services
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