

VENDOR NUMBER _____

COUNTY _____

**KANSAS WIC PROGRAM
VENDOR PARTICIPATION CONTRACT**

This contract is to be used for participation as a Kansas vendor in the Kansas 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 at least fifteen (15) days before the contract expires. The vendor does not have the right to appeal the non-renewal of a contract.
4. Vendors whose contracts were not renewed 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 an imposed 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 request an administrative review of a contract termination for certain conditions (See Section V of this contract). The request must be made in writing to the Office of Administrative Hearings 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.) Other than the exceptions noted in this contract, the vendor has fifteen (15) days from receipt of the notice of any adverse action to request an administrative review of the action of the State Agency. The request must be in writing and contain the reasons for the appeal (See Section V 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. Vendors renewing this Vendor Participation Contract will also be required to complete a Vendor Application Renewal Packet provided by the State Agency.
8. 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 or subcontracted in any manner.
9. The State Agency is not responsible for reimbursement for any WIC electronic benefit transaction processed by the Vendor during any time in which a valid contract is not in effect.
10. The Parties to this contract are subject to 31 U.S.C.A § 1352 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 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 may be terminated. Terminations based on the lack of usage may occur 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 an administrative review.

11.1 Proximity standards triggering a review:

Rural Counties: Vendors located within 5 miles of other WIC vendors;

Urban Counties: Vendors located within 1 mile of other WIC vendors.

11.2 Client Usage Standards:

Rural Counties: Vendor must average 25 clients for the months of April, May and June.

Urban Counties: Vendor must average 100 clients for the months of April, May and June.

12 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.

13 In accordance with Federal Law and U.S. Department of Agriculture policy, parties to this contract are prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability.

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at: http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866)632-9992. Submit your completed form or letter to USDA by:

Mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington D.C. 20250-9410; or by fax: (202)690-7442; Email: program.intake@usda.gov.

SECTION II - STATE AGENCY RESPONSIBILITIES

The State Agency agrees to:

1. Provide appropriate training and written materials to the vendor regarding program regulations, policies and procedures.
2. Monitor the Vendor for compliance with program regulations, policies and procedures.
3. Take appropriate action to maintain vendor compliance with program regulations, policies and procedures.
4. Evaluate the Vendor for continued participation in the WIC program.
5. Reimburse the Vendor for those WIC electronic benefit transactions properly processed for reimbursement according to the requirements outlined in this contract and detailed in the Kansas WIC Vendor Manual.
6. Reserve the right to deny reimbursement for any or all WIC electronic benefit transactions improperly processed for reimbursement, and may demand refunds for reimbursements already made on any or all improperly processed WIC electronic benefit transactions submitted for reimbursement, or may offset future reimbursements to vendor for the amount of the claim.
7. Provide an appropriate process for the Vendor to appeal decisions made by the WIC program that adversely affects the vendor. (See Section V of this contract and the "Vendor's Right to Administrative Review" section of the Vendor Manual.)
8. Notify all vendors of changes to policies that affect vendors before changes are implemented.
9. Maintain vendor confidentiality. Information that may be provided to others includes name, address, telephone number, email/website, store type and authorization status.
10. Encourage the commercial development to integrate eWIC functions within Electronic Cash Register Systems (ECR) for vendors not currently using an integrated eWIC system.

11. Provide WIC-only (single-function), stand-beside Point-of-Sale (POS) devices for non-integrated ECR systems as needed in those areas not currently being served by an integrated eWIC system, based on the store's average monthly WIC redemptions, number of cash registers or other agreed upon factors, if applicable. Kansas WIC will be responsible for ongoing maintenance, processing fees, and operational costs of WIC-only (single-function), stand-beside equipment. Costs of integrated systems and/or multi-function equipment will be paid by the Vendor, unless Kansas WIC determines the vendor is necessary for participant access. Any costs paid by the Kansas WIC Program will be cost allocated to pay only estimated or actual costs attributed to the WIC program.
12. Provide networks and host processing for eWIC transactions that provide on-line and real time approval, twenty-four (24) hours a day, seven (7) days a week at least 99.9% of the time. Occasionally system maintenance will occur and will be scheduled between 1am and 5am local time.
13. Make available daily the most current Approved Product List (APL) containing the products that are approved for redemption by the Kansas WIC program.
14. Establish a calculated Peer Group Not To Exceed (NTE) amount for each WIC approved food item and use this NTE in reimbursing vendors for items purchased by the eWIC cardholder.
15. Reimburse (settle to) the Vendor for all approved eWIC transactions that are processed in accordance with applicable state and federal rules and requirements. If eWIC transactions are found to be improperly processed, payment will be denied by the Program. Settlement will make use of commercial payment system settlement practices. Settlement amounts may differ from requested amounts because:
 - 15.1 The price of the food items within a transaction exceeds the NTE amount designated by the WIC program for that food item;
 - 15.2 Adjustments for previous transactions are applied.
16. Issue a claim, when appropriate, and bill the Vendor for payments the State Agency has already made to the vendor in error, or upon detection of a program violation. Vendors have thirty (30) calendar days to pay the claim. Failure to pay the claim shall result in future payments being withheld to offset the claim.
17. Prohibit processing fees from being charged by KDHE or KDHE's eWIC Contractor to WIC vendors using WIC only, stand-beside POS devices.

SECTION III - VENDOR RESPONSIBILITIES

The Vendor agrees to:

1. Sell to 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 through the electronic benefit transaction.
2. Attend and otherwise receive 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 electronic benefit transactions.
3. Comply with all policies and procedures as set forth in the current Kansas WIC Vendor Manual.
4. Permit State and Local Agency representatives to conduct on-site evaluation and monitoring visits to determine compliance with the requirements of the WIC program. When requested, Vendor must provide inventory records and access to electronic benefit transactions processed on the day of the evaluation or monitoring visit. 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. Cooperate with State and Local Agency staff, USDA officials, and appointed investigative personnel conducting compliance or investigation activities.
6. Offer WIC clients the same courtesies offered to other customers, including, but not limited to, equal access to checkout lanes, non-restricted shopping hours, and allowing WIC clients full access to all WIC approved foods sold by the Vendor.

7. Not use or allow incentives, give-a-ways, specials, or the like, for the purpose of encouraging or otherwise specifically enticing WIC clients to redeem their WIC benefits at the store. Vendor agrees to use only simple notices such "We Accept Kansas eWIC Cards".
8. 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. Submit a properly completed "Price Assessment" (PA) report indicating the requested price information to the State Agency by the specified due date. This assessment will be requested twice annually and is used to determine the Not-To-Exceed (NTE) reimbursement amount for WIC foods.
10. Sell no WIC foods past the manufacturer's expiration/best if sold by date printed on the package and/or container.
11. Collect no sales tax on purchases made with a WIC electronic benefit transaction.
12. Allow WIC clients to use manufacturer or store issued coupons to purchase WIC foods.
13. Seek no reimbursement, directly or indirectly, from WIC clients under any circumstances in connection with a WIC electronic benefit transaction.
14. Seek reimbursement from the WIC program only for foods and quantities sold in connection with a WIC electronic benefit transactions and only for food purchased by WIC clients using eWIC cards.
15. Post the State approved WIC decal in a highly visible location to indicate that WIC clients may redeem benefits at the Vendor's location.
16. Remove the WIC decal when the store ceases to be a WIC vendor.
17. Obtain written permission of the State Agency to use WIC shelf labels not provided by the WIC program.
18. 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. However, the Vendor may use "We accept the Kansas eWIC Card" when advertising their store.
19. Maintain the required minimum stock requirements for WIC foods. (See Minimum Stock Requirements in the Vendor Manual).
20. Charge a price for foods purchased by WIC customers the same as the current price charged to non-WIC customers.
21. Supply no unauthorized food or non-food items, cash or credit (including rain checks) in exchange for WIC benefits.
22. Supply no cash or other items to WIC clients who attempt to return WIC foods for cash or non-WIC items.
23. Ensure that no conflict of interest exists between the vendor and either State Agency or Local Agency WIC staff.
24. Ensure the Vendor is accountable for its owners, officers, managers, agents and employees who commit vendor violations.
25. Ensure the Vendor complies with the non-discrimination provisions as contained in the Kansas WIC Vendor Manual and in this contract.
26. Ensure the Vendor complies with all vendor selection criteria throughout the contract period, including any changes to the criteria.
27. 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.
28. Implement certified Electronic Cash Register (ERC)/Point-of-Sale (POS) system (integrated or a "stand-beside" system in those areas not currently being served by an integrated eWIC system) prior to accepting eWIC benefit cards for purchase in accordance with

published rules, policies and specifications including:

28.1USDA-FNS WIC EBT Operating Rules and the

28.2USDA-FNS WIC Technical Implementation Guide

28.3 All eligible integrated ECR/POS systems must be capable of processing on-line, real time eWIC transactions that originate from the Kansas WIC program and the use of a Kansas eWIC card

- 29 Process all eWIC transaction types that are required by the WIC program. At minimum this includes: balance inquiry (without requiring a purchase to be made), purchase, void, reversal and cash value for authorized fruits and vegetables.
- 30 Accept liability for any redemption of eWIC benefits:
 - 30.1 For which an approval has not been received from the WIC program.
 - 30.2 For the incorrect redemption of benefits (e.g. providing an item not authorized by the WIC program or not available in the cardholder's account).
 - 30.3 The WIC program may deny payment for improperly transacted WIC purchases or may initiate a claim for payments already made for improper eWIC purchases.
- 31 Accept as payment in full for each WIC authorized product purchased, the lesser of (i) the shelf price requested for the product or (ii) the WIC program calculated Not-To-Exceed (NTE) amount for that product. Coupon Discounts, coupon reductions, price matching or free items must be applied to the purchase transaction prior to accepting payment from the eWIC cardholder.
- 32 Ensure that the most current Kansas Approved Product List (APL) is downloaded to the Vendor's ECR system or stand-beside device every 24 hours.
- 33 Scan (or manually enter) the actual Universal Product Code (UPC) that is affixed to or associated with the item actually being purchased by the WIC client. Vendor is prohibited from scanning or manually entering any UPC code that is not affixed to or associated with the actual item being purchased by the WIC client, or using any UPC code as a substitute, replacement or otherwise not actually affixed to or associated with the actual item being purchased by the WIC client.
- 34 Adhere to the International Federation for Produce Standards (IFPS) for product look-up codes (PLU) for the purpose of eWIC transactions. Any unique fruit/vegetable UPC or PLU created by the store (e.g. any UPC starting with a '2') must be mapped to a PLU recognized by the IFPS.
- 35 Ensure that the price associated with the UPC code in the ERC/POS system is not greater than the price displayed on the package, container, shelf, or other signage in the store for the purchased item. Vendor is responsible for updating price changes in the ECR/POS system including, but not limited to, changes due to sales or other promotions.
- 36 Provide timely transaction documentation as requested and fully cooperate in the resolution of any dispute arising in relation to eWIC transactions.
- 37 Maintain required records for the greater of three (3) years after final payment is received or after all pending matters have been resolved. This includes the Vendor's purchase and inventory records for approved WIC food items which the Vendor has claimed reimbursement from the WIC Program.
- 38 Request state re-certification at least 60 days in advance if the Vendor or the company that supports the Vendor's ECR system revises the ECR system in any manner that impacts its eWIC transaction processing capabilities. Maintain a Kansas eWIC program certified in-store ECR system in a manner necessary to ensure system availability for eWIC redemption processing during all hours the Vendor is open. The Vendor's failure to maintain a state-certified ECR system on an on-going basis that ensures system compliance with WIC policies and procedures, transacts cash value, and ensures the accuracy of data, shall result in termination of the Vendor Participation Contract.
- 39 Ensure the certified in-store eWIC transaction process allows a reasonable degree of security for protecting the Personal Identification Numbers (PINs) used by WIC participants. Only the WIC participant may enter the PIN to initiate the transaction. The

vendor shall not enter the PIN for the WIC participant. The eWIC card must be present at the time of purchase. The card number may be manually keyed if the magnetic stripe is not functioning correctly only if the card is present.

- 40 Maintain strict confidentiality of all client and WIC-related system data. No WIC-related information may be provided to any non-party person or entity without the prior written approval of the Kansas WIC Program.
- 41 Provide the eWIC cardholder with a receipt, which at a minimum, shows the store name and address, the date of the transaction, the product(s) purchased, the price charged for each item, and the remaining balance of available WIC benefits.
- 42 Any eWIC cards found in the store or on the store property, if left unclaimed for twenty four (24) hours, shall be returned to: Kansas Department of Health & Environment, Nutrition and WIC Services, 1000 SW Jackson St., Ste 220, Topeka, KS 66612.
- 43 Vendors that have at least \$2 million dollars in total annual food sales (WIC and non-WIC) must have one eWIC capable lane for every \$11,000 in monthly WIC redemptions up to a total of four eWIC capable lanes or the number of lanes at the location, whichever is less. All other vendors must have one lane for every \$8,000 in monthly WIC redemptions. Vendors shall not restrict eWIC cardholders to a single lane when multiple lanes are eWIC capable.
- 44 Authorized vendors using a non-integrated stand-beside POS device may elect to provide eWIC processing capabilities to more lanes than the minimum number required by WIC regulations. If this option is elected, any additional costs incurred must be directly paid by the vendor unless pre-approved by the program. The vendor must contract with the Kansas eWIC Contractor for all stand beside POS equipment and support services.
- 45 Provide a current, active email address that is monitored at least weekly, for timely responses and/or resolutions of program requirements and to receive communications from the Kansas WIC program.
- 46 A WIC Vendor that utilizes a Value Added Reseller (VAR), an Acquirer, or a Third Party Processor (TPP) shall require that the entity is able to accurately process eWIC transactions. The vendor is responsible for expenses, costs and fees related to the utilization of a VAR, an Acquirer or a TPP.

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 benefits, 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 Supplemental Nutrition Assistance Program (SNAP) unless inadequate client access is determined. Vendor disqualifications as a result of disqualification from SNAP are not subject to administrative review, fair hearing or judicial appeal. A disqualification from the WIC program as a result of disqualification from the SNAP shall be for the same length of time and may begin at a later date than the SNAP disqualification.
3. Disqualification from the WIC program may also result in the vendor's disqualification from SNAP. Such disqualification is not subject to administrative or judicial appeal under the SNAP. 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 limiting 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. Generally, a "pattern" is defined as two to three replications of the same violation.
7. The State Agency will notify a vendor in writing 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 electronic benefit transactions, or those electronic benefit transactions selected by the State Agency, which were transacted 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. Federal Program Sanctions:
 - 11.1 Permanent disqualification from participation in the WIC program for vendors convicted of trafficking or engaged in other illegal sales of WIC benefits (buying or selling WIC benefits for cash or other considerations). The State Agency may impose a CMP 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.
 - 11.2 Six (6) year disqualification from participation in the WIC program for vendors found trafficking or engaged in other illegal sales of WIC benefits (buying or selling WIC benefits for cash or other considerations) as a result of a WIC program investigation.
 - 11.3 Three (3) year disqualification from participation in the WIC program for the following violations:
 - 11.3.1 Selling Alcoholic Beverages or Tobacco products in exchange for WIC benefits. Only one incidence is necessary to trigger the mandatory three-year disqualification.
 - 11.3.2 A pattern of claiming reimbursement for WIC transactions that are in excess of documented vendor inventory.
 - 11.3.3 A pattern of charging WIC customers more for food than non-WIC customers, or charging more than the shelf price for WIC foods.
 - 11.3.4 A pattern of receiving, transacting, and/or redeeming WIC benefits outside of authorized channels, including the use of an unauthorized vendor and/or an unauthorized person.
 - 11.3.5 A pattern of providing credit or non-food items in exchange for WIC benefits.
 - 11.4 One (1) year disqualification from participation in the WIC program for the following violations:
 - 11.4.1 A pattern of providing unauthorized foods in exchange for WIC benefits.
12. 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. Refer to the Kansas WIC Vendor Manual for State Agency Violation details.

The Kansas WIC program detects violations through monitoring, undercover buys, data analysis and reports from WIC clients and Local Agencies and the general public. 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. 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.

In addition to the sanctions mandated by federal regulations, the State Agency 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 vendor's contract period will result in termination of the Vendor Participation Contract and a six month (6) disqualification from the Kansas WIC Program.

Occurrence	Sanction	Points	Time Frame
First	Warning Letter with possible Mandatory Training session(s)	3 – 5	Points will accumulate for the vendor's contract cycle.
Second	\$100.00 fine	6 – 9	
Third	\$250.00 fine	10 – 14	
Fourth	Termination of Contract and six (6) month disqualification	15	

- 12.1 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.
- 12.2 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 a CMP in lieu of disqualification for third or subsequent sanctions.
- 12.3 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 \$49,000.00. 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 shall disqualify the vendor.
- 12.4 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

In advance of an Administrative Review, Vendors are encouraged to resolve areas of conflict with the State WIC Agency before pursuing this option. Most issues can be resolved at this less formal stage.

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.

I. Vendor's Right to Administrative Review.

- 1.1 The Local Agency and/or State Agency shall provide written notice of any adverse action taken against a vendor. The notice shall 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 electronic benefit transactions.
- 1.2 A vendor wishing to request an administrative review of an adverse action shall submit a written request via U.S. Mail or FAX for a review of the action. The written 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 requesting a review of the action. Requests for review shall be addressed to the Office of Administrative Hearings, 1020 South Kansas Avenue, Topeka, Kansas 66612-1327.

- 1.3 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.
- 1.4 The Office of Administrative Hearings shall not deny or dismiss a request for an administrative review unless:
 - 1.4.1 The written request is not received by the Office of Administrative Hearings within the time limit of 15 days from receipt of the notice of adverse action;
 - 1.4.2 The request is withdrawn in writing by the appellant or a representative;
 - 1.4.3 The appellant or a representative fails, without good cause, to appear at the scheduled hearing; or
 - 1.4.4 The request for review is regarding an adverse action that is not subject to administrative review.
- 1.5 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

- 2.1 The State agency shall 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. In the case of an adverse action that is subject to administrative review, the effective date of the adverse action shall be no later than the date the vendor receives the review decision.
- 2.2 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 Presiding Officer shall explain any available state appeal procedures. If an appeal is not available or has been exhausted, the Presiding Officer shall explain the 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

- 3.1 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 hearing. A pre-hearing conference may be conducted in person or over the telephone. If the issue cannot be resolved, the Presiding Officer shall schedule a tentative hearing date.
- 3.2 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:

- 4.1 The denial of authorization to become a WIC vendor based on:
 - 4.1.1 the vendor selection criteria for competitive price;
 - 4.1.2 the vendor selection criteria for minimum variety and quantity of authorized supplemental foods;
 - 4.1.3 a determination that the vendor is attempting to circumvent a sanction;
 - 4.1.4 the vendor selection criteria for business integrity;
 - 4.1.5 the vendor selection criteria for a current SNAP disqualification or CMP for hardship;
 - 4.1.6 a State Agency-established vendor selection criteria if the basis of the denial is a WIC vendor sanction or a SNAP withdrawal of authorization or disqualification;
 - 4.1.7 the State Agency's vendor limiting criteria;
 - 4.1.8 the vendor submitted its application outside the time frames during which applications are being accepted and processed as established by the State Agency;
 - 4.1.9 the vendor submitted its application and expects that 50% of their food sales revenue will be from WIC redemptions;
 - 4.1.10 the application of peer group criteria;
 - 4.1.11 the process of identifying a vendor as an above-50-percent vendor; and
 - 4.1.12 the fact vendor is not authorized by SNAP;
- 4.2 The termination of a current WIC Vendor contract:
 - 4.2.1 for cause; or

- 4.2.2 because of a change in ownership or location or cessation of operations.
- 4.3 The disqualification of a current WIC vendor:
 - 4.3.1.1 based on a trafficking conviction;
 - 4.3.1.2 based on the imposition of a SNAP CMP for hardship;
 - 4.3.1.3 the imposition of a fine or a CMP in lieu of disqualification; or
 - 4.3.1.4 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:
 - 5.1 the validity or appropriateness of the State Agency's vendor limiting or selection criteria;
 - 5.2 the validity or appropriateness of the State Agency's client access criteria and client access determinations;
 - 5.3 the validity or appropriateness of the State Agency's prohibition of incentive items;
 - 5.4 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;
 - 5.5 the denial of authorization if the State Agency's vendor authorization is subject to the procurement procedures applicable to the State Agency;
 - 5.6 the expiration of a vendor's contract;
 - 5.7 disputes regarding electronic benefit transaction 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));
 - 5.8 the disqualification of a vendor as a result of disqualification from the Kansas Food Assistance Program;
 - 5.9 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; and
 - 5.10 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:
 - 6.1 Step 1. The State Agency sends the vendor a written notification of the adverse action, the procedures to follow to obtain an administrative review with the Office of Administrative Hearings and the cause(s) for and the effective date of the action
 - 6.2 Step 2. The vendor submits a written request for an administrative review of the State Agency adverse action to the Office of Administrative Hearings.
 - 6.3 Step 3. The Office of Administrative Hearings 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.
 - 6.4 As part of the administrative review, the Office of Administrative Hearings must provide to the vendor:
 - 6.4.1 Adequate advance notice of the time and place of the administrative review to provide all parties involved sufficient time to prepare for the review;
 - 6.4.2 the opportunity to present its case and at least one opportunity to reschedule the administrative review date upon specific request;
 - 6.4.3 the opportunity to cross examine adverse witnesses;
 - 6.4.4 the opportunity to be represented by counsel if desired
 - 6.4.5 the opportunity to examine, prior to the hearing, the evidence upon which the State Agency's action is based;
 - 6.4.6 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
 - 6.4.7 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 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. This contract 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 by the 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 the 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 the 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. 44-111 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.

The provisions of this 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.
6. This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or any agency thereof has agreed to binding arbitration, or the payment or damages or penalties. Further, the State of Kansas and its agencies 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.
8. By signing this contract, 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.
9. 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.
10. 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.
11. 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.
12. 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.
13. Funds provided through this contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

SECTION VII - Compliance with the "Pilot Program for Enhancement of Contractor Employee Whistleblower Protections"

Congress has enacted a law, found at 41 U.S.C. 4712, encouraging employees to report fraud, waste, and abuse. This law applies to all employees working for contractors, grantees, subcontractors and subgrantees on federal grants and contracts [for the purpose of this document, "Recipient of Funds"]. The National Defense Authorization Act (NDAA) for Fiscal Year 2013 (Pub. L. 112-239, enacted January 2, 2013) mandated a pilot program entitled, "PILOT PROGRAM FOR ENHANCEMENT OF CONTRACTOR EMPLOYEE WHISTLEBLOWER PROTECTIONS". 41 U.S.C. 4712 has been amended, enacting a permanent extension of the pilot program.

This program requires all grantees, their subgrantees and subcontractors to:

- Inform their employees working on any Federal award they are subject to the whistleblower rights and remedies of the pilot program;
- Inform their employees in writing of employee whistleblower protections under 41 U.S.C. 4712 in the predominant native language of the workforce; and,
- Contractors and grantees will include such requirements in any agreement made with a subcontractor or subgrantee.

Employees of a contractor, subcontractor, grantee [or subgrantee] may not be discharged, demoted, or otherwise discriminated against as reprisal for "whistleblowing." In addition, whistleblower protections cannot be waived by any agreement, policy, form or condition of employment.

Whistleblowing is defined as making a disclosure "that the employee reasonably believes is evidence of any of the following:

- Gross mismanagement of a federal contract or grant;
- A gross waste of federal funds;
- An abuse of authority relating to a federal contract or grant;
- A substantial and specific danger to public health or safety; or,
- A violation of law, rule, or regulation related to a federal contract or grant (including the competition for, or negotiation of, a contract or grant).

To qualify under the statute, the employee's disclosure must be made to:

- A Member of Congress or a representative of a Congressional committee;
- An Inspector General;
- The Government Accountability Office;
- A federal employee responsible for contract or grant oversight or management at the relevant agency;
- An official from the Department of Justice, or other law enforcement agency;
- A court or grand jury; or,
- A management official or other employee of the contractor, subcontractor, grantee, or subgrantee who has the responsibility to investigate, discover, or address misconduct.

The Recipient of Funds acknowledges that as a condition of receiving funds, it has complied with the terms of the "PILOT PROGRAM FOR ENHANCEMENT OF CONTRACTOR EMPLOYEE WHISTLEBLOWER PROTECTIONS", as amended, and has informed its employees in writing and in the predominant native language of the workforce, that by working on any Federal award, the employees are subject to the whistleblower rights and remedies.

SECTION VIII - Non-Debarment Certification and Warranty

The Recipient of Funds acknowledges that KDHE is required to verify that any person or entity receiving funds has not been suspended, debarred or otherwise excluded from receiving federal funds. Verification may be accomplished by 1) checking the System for Award Management (SAM) at www.sam.gov; 2) obtaining a certification from the entity; or 3) by adding a clause or condition to the transaction.

The Recipient of Funds, as a condition of receiving funds, certifies and warrants that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency, or by any department or agency of the State of Kansas.

SECTION IX – Certification of Company Not Currently Engaged in a Boycott of Goods or Services from Israel

In accordance with HB 2482, 2018 Legislative Session, the State of Kansas shall not enter into a contract with a Company to acquire or dispose of goods or services with an aggregate price of more than \$100,000, unless such Company submits a written certification that such Company is not currently engaged in a boycott of goods or services from Israel that constitutes an integral part of business conducted or sought to be conducted with the State. As a contractor entering into a contract with the State of Kansas, it is hereby certified that the Company listed below is not currently engaged in a boycott of Israel as set forth in HB 2482, 2018 Legislature.

SECTION X – Copy of the Kansas Policy Regarding Sexual Harassment

WHEREAS, sexual harassment and retaliation for sexual harassment claims are unacceptable forms of discrimination that must not be tolerated in the workplace; and

WHEREAS, state and federal employment discrimination laws prohibit sexual harassment and retaliation in the workplace; and

WHEREAS, officers and employees of the State of Kansas are entitled to working conditions that are free from sexual harassment, discrimination, and retaliation; and

WHEREAS, the Governor and all officers and employees of the State of Kansas should seek to foster a culture that does not tolerate sexual harassment, retaliation, and unlawful discrimination.

NOW THEREFORE, pursuant to the authority vested in me as Governor of the State of Kansas, I hereby order as follows:

1. All Executive Branch department and agency heads shall have available, and shall regularly review and update at least every three years or more frequently as necessary, their sexual harassment, discrimination, and retaliation policies. Such policies shall include components for confidentiality and anonymous reporting, applicability to intern positions, and training policies.
2. All Executive Branch department and agency heads shall ensure that their employees, interns, and contractors have been notified of the state's policy against sexual harassment, discrimination, or retaliation, and shall further ensure that such persons are aware of the procedures for submitting a complaint of sexual harassment, discrimination, or retaliation, including an anonymous complaint.
3. Executive Branch departments and agencies shall annually require training seminars regarding the policy against sexual harassment, discrimination, or retaliation. All employees shall complete their initial training session pursuant to this order by the end of the current fiscal year.
4. Within ninety (90) days of this order, all Executive Branch employees, interns, and contractors under the jurisdiction of the Office of the Governor shall be provided a written copy of the policy against sexual harassment, discrimination, and retaliation, and they shall execute a document agreeing and acknowledging that they are aware of and will comply with the policy against sexual harassment, discrimination, and retaliation.
5. Matters involving any elected official, department or agency head, or any appointee of the Governor may be investigated by independent legal counsel.
6. The Office of the Governor will require annual mandatory training seminars for all staff, employees, and interns in the office regarding the policy against sexual harassment, discrimination, and retaliation, and shall maintain a record of attendance.
7. Allegations of sexual harassment, discrimination, or retaliation within the Office of the Governor will be investigated promptly, and violations of law or policy shall constitute grounds for disciplinary action, including dismissal.
8. This Order is intended to supplement existing laws and regulations concerning sexual harassment and discrimination and shall not be interpreted to in any way diminish such laws and regulations. The Order provides conduct requirements for covered persons and is not intended to create any new right or benefit enforceable against the State of Kansas.
9. Persons seeking to report violations of this Order, or guidance regarding the application or interpretation of this Order, may contact the Office of the Governor regarding such matters.

eWIC Definitions:

Approved Product List (APL) – An electronic file identifying WIC food items authorized by the Kansas WIC Program for purchase by WIC clients.

Balance Inquiry (BI) – to provide the eWIC cardholder with the balance of the food benefit prior to beginning a purchase.

Cash Value Benefit (CVB) – A fixed-dollar amount available in the WIC client’s electronic benefit account to be used by an eWIC cardholder to purchase authorized fruits and vegetables.

Electronic Cash Register (ECR) system - An electronic device used for registering and calculating transactions at a point of sale.

eWIC Cardholder - An authorized person (i.e., participant, parent, legal guardian, or caretaker) in possession of a eWIC benefit card. This benefit card and PIN allows the cardholder to purchase approved food items prescribed to one or more participants assigned to a family's electronic benefit account.

Kansas eWIC Contractor - an EBT processor hired by the Kansas WIC program to manage eWIC transactions from transaction to vendor payment.

eWIC Transaction - An online, real time payment method that electronically pays authorized vendors for food items purchased by an eWIC cardholder.

eWIC Card- A benefit card issued by the Kansas WIC program to eligible clients. Food benefits for all family members are accessed through one account and one eWIC card. The eWIC benefit card is used by the eWIC cardholder to purchase approved foods at authorized Kansas vendor locations. Cards cannot be used in other states.

Not To Exceed (NTE) amount – The maximum reimbursement amount per item. NTE calculations are based on the average price of each item in the vendor’s assigned to each specific peer group.

Personal Identification Number (PIN) - A secret identification number selected by the eWIC cardholder to prevent improper access to their WIC benefits.

Product Look Up (PLU) code - A 4 or 5 digit number defined by the International Federation for Produce Standards (IFPS). PLUs are used to identify fruit and vegetable products that typically are of variable measure.

Universal Product Code (UPC) – A specific type of barcode used to identify products sold by the WIC Vendor. WIC Approved UPC codes are contained in the APL file.

Void –to cancel a previously authorized and completed transaction. A WIC vendor may cancel the purchase of a single WIC food item, a method or payment or the entire transaction at the request of the WIC cardholder. (A voided transaction shall not be used to return or provide store credit for WIC foods.)

VENDOR # _____

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. I also hereby acknowledge that I have received a copy of the State of Kansas Policy Against Sexual Harassment, Discrimination, and Retaliation established by Executive Order 18-04 contained in SECTION IX, and agree to comply with the provisions of this policy.

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

Kansas Department of Health and
Nutrition & WIC Services
1000 SW Jackson St., Suite 220
Topeka, Kansas 66612-1274
(785) 296-1320 (voice)
(785) 559-4243 (fax)

Environment