

CHILD AND ADULT CARE FOOD PROGRAM

NS-407-G

PROGRAM APPLICATION PERMANENT AGREEMENT PART II

Revised: APRIL 2017

Nebraska Department of Education Nutrition Services

Catalog of Federal Domestic Assistance (CFDA) 10.558

PREFACE: In order to participate in the Child and Adult Care Food Program (CACFP), as set forth in the National School Lunch Act, as amended at Title 42, United States Code, Section 1766, and Title 7 of the Code of Federal Regulations (CFR) Part 226, as amended, the participating institution agrees to the following terms and conditions for the fiscal year stated in the on-line program application Part I (Form NDE 01-017). This agreement shall include Parts I and this part and all applicable attachments or policy statements pertaining to the institution as listed below.

List of Attachments and Policy Statements

- NEW For Profit Centers: Proprietary For-Profit (Title XIX or XX) Statement
NDE 01-030
- NEW sponsors/centers: Preaward Compliance -
NDE 01-032
- Adult Center Attachment - NDE 01-026
- Pricing Program Policy Statement
NDE 01-036
- Computer Access Application and Agreement -
NDE 01-033
- On-line Program Application and Agreement, Part I
- NDE 01-017
- On-line Center Site Information (one per site) -
NDE 01-018
- Administrative Review Procedure for the Child and
Adult Care Food Program -
NS-409-G

PART II

**SECTION I.
GENERAL INFORMATION**

A. Authority

To the extent of funds available, NDE shall reimburse the institution in accordance with the applicable provisions of the CACFP, for any fiscal year this agreement is in effect, provided that the institution agrees to administer the CACFP in accordance with the applicable requirements of 7 CFR Part 226, as

amended, and all other regulations and circulars incorporated therein; United States Department of Agriculture (USDA) Food and Nutrition Services (FNS) instructions which are available on the NDE Nutrition Services web site; and the administrative requirements of NDE listed above, any NDE policy memos which are available on the NDE Nutrition Services web site or otherwise referenced in this Part II of the Permanent Agreement.

B. Participating Institutions

Institutions participating in the CACFP may include: public, IRS tax-exempt or for-profit independent child or adult care centers, sponsoring organizations of child or adult care centers, or outside-school-hours centers, which have agreed to accept final financial and administrative responsibility for participation in the CACFP.

C. Reimbursement

The amount of Federal reimbursement for paid meals and snacks, for reduced price meals and snacks and for free meals and snacks, shall be computed based on the number of meals and snacks claimed and verified by the institution's records. The method of calculating reimbursement shall be as directed by NDE in accordance with 7 CFR 226.9. Failure to maintain complete and accurate program records in accordance with 7 CFR Part 226 may subject the institution to repayment of overclaims.

**SECTION II.
RECORD KEEPING AND PROGRAM
REQUIREMENTS**

A. Records

All records required to document claims for reimbursement shall be kept for a period of four years, or longer as necessary, to resolve all audits and review findings, from the date of the last payment made to the institution under the CACFP. Such records to be kept shall include a copy of the approved CACFP application; enrollment documentation for each participant that includes the following: participant's name, participant's date of birth, date enrolled,

signature of adult household member, and, if a child care center, days and times in care and usual meals served while in care, unless a parent/guardian is checking the child in/out, and, if a child care center, the enrollment must have been completed or updated and signed by an adult household member within the last twelve months; correctly determined income eligibility forms for all participants whose meals are claimed in the free and reduced price meal categories; daily records showing the number of meals, by type, served to participants (meal count sheets with meal counts taken at the point of meal service); daily attendance records which include documentation of time-in and time-out for all persons in attendance; daily records showing the number of meals, by type, to staff performing labor necessary to the food service; copies of invoices, receipts or other financial records to document administrative costs, operating costs and income to the program; copies of claims submitted to the Nebraska Department of Education; monthly claim for reimbursement worksheets; documentation to support a nonprofit food service operation, including time certification documentation, if required; an audit report for the last appropriate year, if a nonprofit organization receiving more than \$500,000 annually in federal funds or if a private for-profit organization receiving more than \$35,000 annually in CACFP funds; documentation that the sponsor/center is claiming the meal types approved in its application; documentation that shows procurement standards were met, if single item purchases exceed \$3,500; information on training session date(s), locations, topics presented and names of participants; documentation that sponsored sites were reviewed on schedule, if a sponsor of more than one site; if a for-profit center, documentation to show that at least 25% of the participants enrolled at the center (or if a child care center, 25% of licensed capacity, whichever is less) were beneficiaries of Title XIX or Title XX funds or, if a child care center, 25% of enrolled children were eligible for free or reduced price meals for the month(s) claimed; menu production records that document each meal component served and the total quantity served of each component and, if using a commercial software package that calculates quantity requirements or, if preparing a meal production record in advance, the institution must manually record the actual quantity of food prepared on the menu production record at the time of meal preparation; statements from recognized medical authorities for participants whose meals do not meet meal pattern

requirements for medical or other special dietary reasons; and, for centers claiming meals served to infants under one year of age, documentation of the formula selected, documentation that the center has informed parents of the formula selection, documentation that the parents accepted or declined the formula, documentation of infant's developmental readiness for solid foods, and infant production records for each infant whose meals are claimed on the program. Failure to have these records on file during announced or unannounced visits by the state agency, USDA or contracted auditors will result in an overclaim.

All required records for the current month, plus the previous 12 months, must be maintained either at the center(s) named in NDE 01-018 or at the address of the sponsoring organization named in NDE 01-017, and specified under "Location of Records" in NDE 01-017. Records older than 13 months may be maintained offsite if the sponsoring organization has specified an address under "Location of Records" in NDE 01-017. Offsite storage may be hard copy or digital storage, must remain under the control of the sponsoring organization, and be retrievable within a reasonable amount of time. If required records are not maintained onsite at the locations specified in NDE 01-018 and NDE 01-017 and the sponsoring organization did not provide an address of offsite storage on NDE 01-017, the sponsoring organization shall be subject to overclaims for the entire period of missing records.

All records must be made available, and made available to copy or remove from the premises, during the institution's normal business hours, to representatives of NDE, auditors on contract with NDE, and USDA for such CACFP reviews or audits as may be determined to be necessary by such representatives in accordance with 7 CFR Part 226, as amended.

Institutions must record the number of meals served to adults performing labor necessary to the food service, even though they cannot be claimed for reimbursement. Proprietary for-profit institutions shall also keep documentation to prove compliance with the requirements of 7 CFR 226.6(b)(8).

B. Records of New Institutions

New institutions participating in the CACFP must submit records to document the first month claim to

Nutrition Services. These records include: Income Eligibility Forms for participants whose meals are claimed in the Free and Reduced categories, records of meals and supplements served (point of service meal count records), meal production records, infant production records (if applicable), infant meal/formula selection forms (if applicable), claim for reimbursement worksheet. If other records are deemed necessary, they will be listed in the institution's approval letter.

If records submitted by a new institution for the first month's claim are incomplete or incorrect, the institution will be required to submit records for its second month of participation. Instructions on what is necessary to submit a complete and correct claim will be provided to the institution. If records submitted by a new institution do not meet CACFP requirements in the third month, the institution may be declared seriously deficient, and corrective action will be identified. If the institution does not comply with corrective action, the institution will be proposed to be terminated from participation in the CACFP.

For the purpose of this section, a new institution is defined as an institution that has not participated on the CACFP in the current fiscal year, or, if the institution has voluntarily quit participation or been terminated from the CACFP at any time.

A new institution must demonstrate that it has adequate financial resources to operate the CACFP on a daily basis, has adequate sources of funds to withstand temporary interruptions in Program payments and/or fiscal claims against the institution, and can document financial viability (for example, through audits, financial statements, etc.).

C. Meal Pattern Requirements

In order to qualify for reimbursement, all meals served by participating institutions must meet the meal pattern requirements of 7 CFR 226.20, as amended.

D. Program Requirements

The institution agrees that it:

1. Shall be responsible for the administration of the center/s included in the on-line application Part I of this agreement, or it is an agency to which the center/s included in Part I have delegated authority for the operation of the food service program.

2. Shall conduct the CACFP in accordance with USDA CACFP regulations 7 CFR Part 226 and NDE policies, memos, letters and requirements in order to qualify for reimbursement under this agreement, and specifically agrees to:

- a. operate a nonprofit food service using all of the income therefrom solely for the operation or improvement of such service, except that such income therefrom shall not be used to purchase land, to acquire or construct buildings, or to make alterations on existing buildings.
- b. serve meals/snacks which meet the minimum nutritional requirements as specified in 7 CFR 226.20, as amended.
- c. serve the same meal at no separate charge, unless the institution operates a pricing program, to all eligible enrolled participants who are in attendance at meal time.
- d. collect and maintain household size and income information for eligible enrolled participants as specified in 7 CFR 226.15(e) at the child/adult care center/s included in Part I to determine which participants are from households meeting the income eligibility guidelines for free or reduced price meals as set by USDA for any year this agreement is in effect. Such information shall be maintained on income eligibility forms distributed by NDE to participating institutions. This information shall be collected annually and at the time of enrollment of new participants. When claiming meals in the free and reduced categories, institutions are required to disseminate copies of the following NDE documents to all households of enrolled participants: 1) cover letter to households explaining participation in the CACFP, which includes the income eligibility guidelines for the current fiscal year and the nondiscrimination statement; and notice of the institution's participation in the CACFP, the Program's benefits, the name and telephone number of the institution and the name and telephone number of the state agency; 2) income eligibility application forms and 3) instructions for completing income eligibility application forms. These documents are distributed annually by NDE and are available from NDE on request and on the Nutrition Services web site.

- e. claim reimbursement only for meals served to eligible enrolled participants in each income category within limits of the license or registration certificate issued by the Nebraska Department of Health and Human Services (HHSS) or Fire Marshal or other appropriate Federal, State or local agency for the center/s included in Part I of this agreement. For child care centers, enrollment documentation must include the following information: child's name, date of birth, date care began, normal days and times in care, normal meals served while in care, and signature of a parent or legal guardian. If the child care center requires parents to sign their children in and out of care each day, this satisfies the requirement to collect information on the normal days and hours in care on each child's enrollment form provided that 1) the sign-in sheet captures the time the children arrive at and depart from the child care facility and 2) each day the sign-in and sign-out times are signed or initialed by a parent or guardian. Enrollment in the CACFP must be updated annually, with the exception of participants in adult care centers, outside school hours centers and area eligible programs.
- f. submit claims for reimbursement in accordance with procedures established by NDE and Office of Management and Budget (OMB) Circular A-122. Claims received after the deadline may be processed for payment the following month. Only final claims submitted and received within 60 days following the close of a claiming month shall be eligible for reimbursement unless the 36 months exception is requested. To be eligible for payment, a claim for reimbursement must be submitted to NDE within sixty (60) days of the close of the month for which the claim is being made. A revised claim for any upward adjustment in reimbursement must be submitted to NDE within sixty (60) days of the close of the month for which the revised claim is being made. Each institution may have a one-time exception to this 60-day deadline once every three years. A request for the exception must include: 1) the reason for the late claim, 2) a description of what procedures have been implemented to prevent future late claims and 3) the job description of the person responsible for the claim.
- g. maintain in the storage, preparation, and service of food, proper sanitation and health standards in conformance with all applicable State and local laws and regulations.
- h. use all commodities solely for the benefit of the CACFP, if any are received, and purchase those foods as may be plentiful which may be efficiently utilized.
- i. use cash received in lieu of commodities for the purchase of food pursuant to 7 CFR 240.9, as amended.
- j. maintain necessary facilities for storing, preparing and/or serving food.
- k. keep, maintain and secure full and accurate records of the CACFP as specified in Part II, Section II.A. of this agreement.
- l. provide adequate supervisory and operational personnel for overall monitoring and management of each food service operation, and to promptly take such actions that are necessary to correct deficiencies identified by a review of the institution's records or during any on-site visit or review by State or Federal authorities or auditors on contract with State or Federal authorities.
- m. utilize and comply with NDE's Administrative Review Procedures (NS-409-G) for the CACFP to review NDE actions.
- n. use only the forms provided by NDE to record or collect information when NDE has provided or distributed such forms for that purpose unless prior written approval is given by NDE to use other forms. If using a commercial software package that calculates quantity requirements, the institution must manually record the actual quantity of food prepared on the menu production record.
- o. if a sponsoring organization, the institution shall monitor and conduct reviews of all centers included in Part I according to the following schedule: Centers must be reviewed at least three times annually. New sites are defined as centers that have not participated in the CACFP under the sponsoring organization during the most recent fiscal year. New regular center sites must be reviewed within the first six weeks of CACFP operations. At least two of the three reviews must be unannounced. At

least one unannounced review must include the observation of a meal service; and not more than six months may elapse between reviews. Unannounced reviews must be made during the facility's normal hours of child or adult care operations, and monitors making such reviews must show photo identification that demonstrates that they are employees of the sponsoring organization. Sponsoring organizations must provide each sponsored center written notification of the right of the sponsoring organization, the Nebraska Department of Education, the U.S. Department of Agriculture, and other state and federal officials to make announced or unannounced reviews of their operations during the center's normal hours of child or adult care operations, and must also notify sponsored centers that anyone making such reviews must show photo identification that demonstrates that they are employees of one of these entities. For sponsored centers that are approved after July 29, 2002, the sponsoring organization must provide the notice before meal service under the Program begins. Reports of these site reviews must be documented and kept on file.

- p. if an adult care center, the institution shall complete and submit NDE 01-026, Adult Center Attachment on-line, as part of this application and agreement, for each participating center.
- q. if any changes are necessary in the operation of the CACFP from what is approved in Part I, the institution shall submit to NDE, in writing or on the electronic access application processing system, a request to amend Part I of this application and agreement. Changes in the operation of the CACFP will not become effective until approved, in writing, by NDE, or by automatic approval if using the electronic access application processing system, and specifying the date of the change. Pre-approval is required in order to claim meals served off-site, such as field trips.
- r. abide by all procurement standards cited in 7 CFR 226.22 and 2 CFR 200 regarding the standards and guidelines for the procurement of foods, supplies, equipment and other goods and services.

- s. A renewing institution must demonstrate that it has adequate financial resources to operate the CACFP on a daily basis, has adequate sources of funds to withstand temporary interruptions in Program payments and/or fiscal claims against the institution, and can document financial viability (for example, through audits, financial statements, etc.).
- 3. a. is a public organization or a nonprofit organization which has tax exempt status under the Internal Revenue Code of 1954, as amended
OR
b. that if the institution is a proprietary for-profit center, that it received amounts granted to the state under Title XIX or Title XX/Child Care Subsidy of the Social Security Act for at least 25% of the institution's eligible enrolled participants (if a child care center, then either 25% of enrollment or licensed capacity, whichever is less) OR, 25% of enrolled participants were eligible for free or reduced price meals during the month preceding application to the CACFP and shall continue to certify and provide such information on the claim for reimbursement in each succeeding month. The institution shall not claim reimbursement for meals served in any for-profit center for any month during which the center receives such compensation for less than 25% of its eligible enrolled participants or, if a child care center, 25% of enrollment or license capacity, whichever is less (See Part II, Section III) .
 - 4. That all centers included in Part I of this application shall have a valid license or registration certificate for providing care issued by the appropriate Federal, State or local government and any license or registration which may be required by authorities of local government.
 - 5. That, if an adult care center, it provides an individual plan of care for each participant in nonresidential settings.
 - 6. Public and private nonprofit centers shall not be eligible to participate in the Program under the auspices of a for-profit sponsoring organization.
 - 7. That it accepts financial and administrative responsibility for the conduct of its food service and financial and administrative responsibility for each center under its jurisdiction.

SECTION III.

PROPRIETARY FOR-PROFIT CENTERS ONLY

A. Independent Proprietary For Profit Centers

If the institution is a Proprietary Title XIX or Proprietary Title XX/Child Care Subsidy center, as defined in 7 CFR 226.2, it certifies that at least twenty-five per cent (25%) of the eligible enrolled participants or licensed capacity, whichever is less, receive benefits from Title XIX or Title XX of the Social Security Act in the calendar month prior to submitting this application and agreement to NDE. It certifies that:

1. It has submitted, as part of the CACFP application, a copy of its current agreement with the Title XIX or Title XX administering agency; and
2. If it is a new CACFP institution, it has completed and submitted, as part of this application and agreement, form NDE 01-030, "Proprietary For-profit Statement."
3. If it is a new CACFP institution, it has completed and submitted, as part of this application and agreement, a roster of eligible enrolled participants and documentation that benefits were received from Title XIX or Title XX/Child Care Subsidy for care for these participants for the calendar month prior to submitting this application and agreement to NDE.
4. The institution's claim for reimbursement each reporting month will include only creditable meals served to eligible enrolled participants if the center meets the 25% requirement for that month.
5. For profit centers are eligible for participation in the CACFP and to claim meals for reimbursement for any month in which 25% of the enrolled participants are eligible for Free or Reduced price meals.
6. Centers may qualify with either 25% Title XX or 25% Free and Reduced eligibility in any given month; Title XX and Free and Reduced eligibility may not be combined to meet the 25% requirement.

B. Sponsors of Proprietary For Profit Centers

If the institution is sponsoring proprietary Title XIX or Title XX/Child Care Subsidy centers, as defined in 7

CFR 226.2, it certifies that the 25% requirement is met at each of its centers in the calendar month prior to submitting this application and agreement to NDE. It certifies that:

1. It has submitted, as part of the CACFP application, a copy of its agreement/s with the Title XIX or Title XX Child Care Subsidy administering agency for each center included in the on-line Application Part I of this agreement.
2. If it is a sponsoring organization for a new CACFP center it has completed and submitted, as part of this application and agreement, form NDE 01-030, "Proprietary For-profit Statement" for each new center. It will submit a roster of eligible enrolled participants and documentation that benefits were received from Title XIX or Title XX Child Care Subsidy for care at least 25% of participants for the calendar month prior to submitting this application and agreement to NDE, or, if a child care center, at least 25% of enrolled participants were eligible for Free or Reduced price meals for the calendar month prior to submitting this application and agreement to NDE.
3. Only centers meeting the 25% requirement for the month will be included in each month's claim for reimbursement. The total number of Title XIX or Title XX beneficiaries, or, if a child care center, the total number of enrolled participants eligible for Free or Reduced price meals, by participating center, must be reported on the claim.
4. Its claim for reimbursement for each reporting month will include only creditable meals served by those centers meeting the 25% requirement in that month.

C. Legal Identity

If the institution is a Proprietary Title XIX or Proprietary Title XX organization, as defined in 7 CFR 226.2, the institution also certifies that all centers included in this agreement have the same legal identity as the institution. Child care centers may participate in the Program either as independent centers or under the auspices of a sponsoring organization; provided, however, that public and private nonprofit centers shall not be eligible to participate in the Program under the auspices of a for-profit sponsoring organization.

D. Records

In addition to other record keeping requirements listed in Part II, Section II of this agreement, all Proprietary Title XIX and Title XX centers shall keep documentation of Title XIX and Title XX beneficiaries issued by HHSS or other appropriate state or local agency to prove compliance with the 25% requirement. These records shall be maintained and available for inspection by representatives of NDE, auditors on contract with NDE and USDA or other state or federal officials at the primary business location during the institution's normal business hours.

E. Loss of Records Due to Natural Disaster

In the case of a natural disaster, personnel from the center must notify Nutrition Services at the Nebraska Department of Education within thirty (30) calendar days of the event. This notice must be in writing and include the following:

1. An itemized list of the destroyed or damaged records, including the month(s), year(s) and type(s) of record (income eligibility forms, meal counts, meal production records, receipts and invoices, time in/out attendance records, etc).
2. A copy of the insurance claim (if any) made for the CACFP records

The term "natural disaster" shall include any destructive, involuntary, physical event such as flood, tornado, fire.

NDE reserves the right to review each request on a case by case basis. Under no circumstances will a center be granted an exception to the record retention requirement as part of an attempt to avoid compliance with Federal regulations and its agreement with NDE. Should NDE's review of a situation indicate the center is using this process to commit fraud or avoid maintaining required records, the usual procedures for identifying serious deficiencies shall be used.

After receiving the center's request and the required documentation specified above, Nutrition Services will notify the center if their request is approved or, in the alternative, if an overclaim will be accessed for failure to maintain records.

If the center receives an insurance payment as a result for a claim relating to the CACFP records, the

amount of the insurance proceeds will be assessed as an overclaim and returned to USDA.

SECTION IV.

AT-RISK AFTER SCHOOL MEALS AND SNACK PROGRAMS ONLY

A. Eligibility of Centers

Child care centers may participate only as At-Risk centers. At-Risk centers are located within a school site boundary in which 50 per cent or more of the school site enrollment is approved for free/reduced price meals. A complete list of eligible school sites is available from Nutrition Services at NDE.

To be eligible for reimbursement for At-Risk After School Meals and Snacks, each eligible center must:

1. Provide children with regularly scheduled activities in an organized, structured and supervised environment; and
2. Include educational or enrichment activities.

At-Risk Meals and Snacks may not be claimed for reimbursement during summer vacation.

B. Meal and Snack Eligibility

Each At-Risk After School Meal or Snack will consist of the components in the amounts indicated in 7 CFR 226.20.

C. Child Eligibility

Reimbursement may be claimed for At-Risk After School Meals and Snacks served to school age children through the age of 18 in eligible after school care programs. Reimbursement may also be claimed for those children who turn age 19 during the school year.

The At-Risk After School Meals and Snacks may be claimed only for those children for whom attendance is documented. A sign-in sheet or attendance roster may be used to document attendance.

D. Required Records

The following records must be maintained:

1. Daily meal counts (number of At-Risk After School Meals and Snacks)
2. Documentation for each day of a child's attendance (attendance roster or sign-in sheet)
3. Documentation of compliance with meal pattern requirements.

E. Other Requirements

1. At-Risk After School Meals and Snacks are reimbursed at the free rate for all school age children.
2. The At-Risk After School Meals and Snacks must operate as a nonpricing program.
3. The At-Risk After School Meals and Snacks meal count must be taken at the point of service by counting the number of students receiving a reimbursable snack.
4. Reimbursement is limited to one meal and one snack per child per day.

**SECTION V.
ADMINISTRATIVE REVIEW PROCEDURES
FOR CACFP**

A. Right to Administrative Review

All participating institutions, responsible principals and responsible individuals have the right to an administrative review under 7 CFR 226.6(5)(k)(2) of a NDE action or decision on the following:

1. Denial of a new or existing institution's application for participation;
2. Denial of an application submitted by a sponsoring organization on behalf of a facility;
3. Proposed termination of an institution's agreement with renewing institutions and participating institutions suspended for health or safety violations;
4. Proposed disqualification of a responsible principal or responsible individual in new, renewing, and participating institutions, and participating institutions suspended for health or safety violations;
5. Suspension of an institution's participation for health or safety reasons or submission of a false or fraudulent claim;
6. Denial of an institution's application for start-up or expansion payments;
7. Denial of a request for an advance payment;
8. Recovery of all or part of an advance in excess of the claim for the applicable period;
9. Denial of all or a part of an institution's claim for reimbursement (except for a denial based on a late submission);
10. Decision by the Department not to forward to the United States Department of Agriculture (USDA) an exception request by an institution

for payment of a late claim, or a request of an upward adjustment to a claim;

11. Department's demand for the remittance of an overpayment; and,
12. Any other action of the Department affecting an institution's participation or its claim for reimbursement.

Actions not subject to administrative review include:

1. USDA decisions on claim deadline exceptions and requests for upward adjustments to a claim;
2. Determination of serious deficiency;
3. Disqualification and placement on the Department's list and the USDA's National Disqualified List; and,
4. Termination of a participating institution's agreement, including termination of a participating institution's agreement based on the disqualification of the institution by another state agency or the USDA.

B. Request for Review

Institutions or responsible individuals or responsible principals wishing to appeal a NDE action or decision must file a request for review in the format of the sample request for review contained in the CACFP Administrative Review Procedures (NS-409-G), and in accordance with the provisions in the Procedures. The Procedures are distributed to all new institutions and annually to all renewing institutions. The Procedures are available on request from NDE Nutrition Services. These are also available on the NDE Nutrition Services web site.

C. Timeline

A hearing request or a request for a review of the record to appeal a NDE action or decision must be filed within 15 calendar days of the day the notice of action is received from NDE. NDE acknowledges receipt of the request within 10 calendar days.

D. Submission

The request shall be sent by certified mail, return receipt requested, to:

Nutrition Services
Nebraska Department of Education
301 Centennial Mall South, 6th Floor
P.O. Box 94987
Lincoln, NE 68509-4987

**SECTION VI.
CONTRACTUAL PROVISIONS**

A. Disclaimer of Liability

Neither the State of Nebraska nor any agency thereof shall hold harmless or indemnify any institution for any liability whatsoever under this agreement.

B. Arbitration, Damages

Notwithstanding any language to the contrary, no agreement interpretation shall be allowed to find the State of Nebraska, or any agency thereof, has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further the State of Nebraska shall not agree to pay attorney fees and late payment penalties in the absence of a judicial order.

C. Authority to Contract

By signing this agreement, the representative of the institution thereby represents that such person is duly authorized by the institution to execute this agreement and that the institution agrees to be bound by the terms of the agreement.

D. Responsibility for Taxes

The State of Nebraska or any agency thereof, is not responsible for any Federal, or local tax liability which an institution may incur as a result of participation in the CACFP.

E. Effective Dates

This agreement shall be in effect for the duration of the fiscal year shown in on-line program application Part I of this agreement, beginning July 1 of the indicated year or upon the effective date of approval by NDE, whichever is later, and terminating on the last day of the fiscal year shown in Part I of this agreement unless terminated at an earlier date on the basis of a serious deficiency as defined in 7 CFR 226.6(c), or upon an institution's voluntary termination of CACFP participation.

F. Termination Due to Lack of Funding

If sufficient funds are not appropriated by the Federal government to continue the reimbursement claimed by an institution participating in the CACFP, NDE may terminate the agreement immediately, without advance notice. If possible, NDE will attempt to notify the institution participating in the CACFP in writing by

regular mail at least 30 days before the termination becomes effective.

**SECTION VII.
ADMINISTRATIVE AND FINANCIAL
RESPONSIBILITIES**

A. Duties and Responsibilities of the Responsible Individual or Principal

Authority is given under the terms of this agreement to the designated responsible individual or principal to enter into written agreements on behalf of the owner or sponsoring organization with NDE for the operation of the CACFP in the institution or sponsoring organization named in the on-line program application Part I and to present claims for reimbursement and sign for the owner or sponsoring organization on any other documents or reports relating thereto. They consent to be bound by the terms of the agreement.

The responsible individual or principal is responsible for the accuracy of claims for reimbursement submitted by the institution or sponsoring organization. Failure to submit accurate claims may result in overclaims being assessed, and/or suspension, termination, or legal action being taken against the center, owner (individual, corporate or otherwise), sponsoring organization, and/or responsible individual or principal.

B. Duties and Responsibilities of the Sponsoring Organization, Responsible Principals, Executive Director, Board Chair or Owner

The owner (individual, corporate, or otherwise), sponsoring organization representatives understand and agree that they are legally and financially responsible for all actions taken pursuant to this agreement, including actions taken by the responsible individual or principal.

The owner (individual, corporate or otherwise), sponsoring organization, or sponsoring organization representatives understand that they are responsible for the accuracy of claims for reimbursement submitted by this institution or sponsoring organization. Reimbursement shall only be claimed for meals served to eligible enrolled participants. Failure to submit accurate claims may result in overclaims being assessed, and/or suspension, termination or legal action being taken against the owner (individual, corporate or

otherwise), sponsoring organization representative, and/or responsible individual or principal.

The owner (individual, corporate or otherwise), sponsoring organization, or officials of the sponsoring organization assume full administrative and financial responsibility for all CACFP operations of the institution or sponsoring organization.

C. Record Retention

All reports, documents, policies, administrative memorandums, records and information as required or requested by NDE; the National School Lunch Act, as amended; 7 CFR Part 226, as amended; and all regulations incorporated therein; shall be kept for a period of not less than four years or longer as necessary to resolve all audits and review findings. All records shall be securely kept and maintained on site. Onsite shall be defined as the physical location/s of the institution/s included in the on-line program application Part I of this agreement. Failure to keep, maintain and secure all the necessary CACFP records to document each claim for reimbursement may result in overclaim assessments against the owner (individual, corporate or otherwise), sponsoring organization officials and/or responsible individual or principal. Audits will be arranged by NDE or conducted through the organization annually, in accordance with the provisions of 7 CFR 226 and the Federal OMB Circular A-128 or A-133 if the center, institution or sponsoring organization is proprietary and receives more than \$35,000 annually, or is non-profit and receives more than \$500,000 annually from all Federal sources. The institution is required to complete and submit a Federal Assistance Monitoring Form annually to NDE.

D. Change of Responsible Individual or Principal

If the responsible individual or principal changes during the period of time covered by this agreement, the owner, sponsoring organization or sponsoring organization representatives must submit one of the following to NDE within 10 calendar days of the change: 1) a new Certificate of Authority or 2) if using the electronic application and claims system, the Computer Access Application and Agreement (NDE 01-033). Claims with unauthorized signatures will not be paid.

E. Change of Business Structure or Ownership

If the business structure or ownership of the participating institution changes during the period of time covered by this agreement, the owner, sponsoring organization or sponsoring organization officials must submit a new certificate of authority to NDE within 10 calendar days of the change. Examples of business structure or ownership changes include the following: formation or dissolution of a corporate entity; sale of sole proprietorship; creation of a lease/purchase agreement; and change of corporate officials. Some of these changes in business structure or ownership may necessitate the termination of this agreement and the submission of a new CACFP application and agreement with the new owner/s.

F. Fraud

Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets or property that are the subject of a grant or other form of assistance under 7 CFR Part 226, whether received directly or indirectly from NDE or USDA or whoever received, conceals, retains such funds, assets, or property to his/her use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen or obtained by fraud shall, if such funds, shall, if such funds, assets, or property are of the value of \$100 or more, shall be fined not more than \$10,000 or imprisoned not more than five years, or both, or, if such funds, assets, or property are of value of less than \$100, shall be fined not more than \$1,000 or imprisoned or not more than one year, or both.

G. Collection

Any unpaid overclaim assessed to the participating institution shall be subject to collection proceedings through any means deemed necessary, including use of a private collection agency. Any fees associated with the collection of unpaid overclaims shall be assessed to the participating owner, sponsoring organization or sponsoring organization officials, and/or—responsible individuals or principals. The state agency must assess interest beginning with the initial demand for remittance of the overpayment and continuing through the period of administrative review unless the administrative review official overturns the state agency's action.

H. Electronic Access

The owner and/or the responsible individual or principal or individual, who are authorized to sign claims for the institution, understand and agree that they are each legally and financially responsible for all information submitted via the electronic access application and claims processing system. The owner and/or responsible individual or principal understand and agree that they are each responsible for protecting the security of the password used to access the electronic application and claims processing system. The owner and/or responsible individual or principal understand and agree that they are legally and financially responsible for any overclaims, corrective action, declaration of seriously deficient and termination resulting from errors, misuse or abuse of the electronic access application and claims processing system.

A computer access ID and password are assigned by NDE to each sponsor to allow the submission of the on-line application Part I and claims for reimbursement.

SECTION VIII. TRAINING REQUIREMENTS

A. New Institutions (New Agreement Numbers)

Institutions that are new to the CACFP must complete formal NDE training on the CACFP prior to the approval of the institution's application. This training must have occurred within the previous 6 calendar months prior to the submission of the application to NDE. This training shall consist of training on CACFP record keeping and meal requirements and production records. At a minimum, at least one of the institution's CACFP responsible individuals or principals must complete this training prior to CACFP approval. It is recommended that the CACFP contact person and the person(s) responsible for the food service operation also complete this training. New institutions may not begin claiming prior to the date when training was completed. At least one of the responsible individuals or principals from institutions providing care for infants under one year of age must complete infant training provided by NDE. Training can be completed in a one-day workshop which is provided by NDE.

B. New Responsible Individuals or Principals or Contact Persons

At least one of two responsible individuals or principals must have completed the NDE training. When an institution has a change in the responsible individual or principal and neither of the responsible individuals or principals has attended training, at least one of the responsible individuals or principals must complete formal NDE training on the CACFP within 4 months of becoming responsible individual or principal. This training shall consist of training on CACFP record keeping and meal requirements and production records. If the institution provides care for infants under one year of age, the new responsible individual or principal must complete infant training provided by NDE.

C. Currently Participating Institutions

Currently participating institutions are to receive ongoing training in CACFP requirements as changes occur in State and Federal policies, rules and regulations. Representatives of the institution must receive this training at least annually. Failure to complete annual training may result in the delay or denial of an institution's application to participate in the CACFP.

D. Corrective Action

Institutions which have been found by NDE to have deficiencies in their operation of the CACFP, either through reviews, audits or other means, may be required to complete CACFP formal training as part of a corrective action plan. Failure to comply with the corrective action plan shall result in the institution being declared seriously deficient and may be terminated from participation in the program.

SECTION IX.

NONDISCRIMINATION POLICY STATEMENT

Each participating institution hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d-7) and all requirements imposed by the regulations of the Department of Agriculture (7 CFR part 15), Department of Justice (28 CFR Parts 42 and 50) and USDA Food and Nutrition Service directives, policy memos and regulations issued pursuant to that act and the regulations, to the effect that, no person in the United States shall, on the grounds of age, sex, disability, color, race, or national origin, be excluded from

participation in, or be denied benefits of, or be otherwise subject to discrimination under any Program or activity for which the applicant received Federal financial assistance through NDE; and hereby gives assurance that it will immediately take any measures necessary to effectuate this agreement.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants and loans of Federal funds, reimbursable expenditures, grant or donation of Federal property and interest in property, the detail of Federal personnel, the sale and lease of, and the permission to use, Federal property or interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease or furnishing of services to the recipient, or any improvements made with Federal financial assistance extended to the Program applicant by NDE. This includes any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of cash assistance for the purchase of food, and cash assistance for purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance.

By accepting this assurance, the applicant agrees to compile data, maintain records and submit reports as required; to permit effective enforcement of Title VI of the Civil Rights Act; and to permit authorized representatives of NDE, auditors on contract with NDE, or USDA to review such records, books, and accounts as needed to ascertain compliance with Title VI. If there are any violations of this assurance, NDE shall have the right to seek judicial enforcement of this assurance.

This assurance is binding on the applicant institution, its successors in interest, transferees, and assignees as long as it receives assistance or retains possession of any assistance under the CACFP. The person or persons whose signatures appear in Part I of this agreement are authorized to sign this assurance on behalf of the applicant institution.

The institution assures NDE that all participants at the facility/s included in Part I are served the same meals at no separate charge, unless this is a pricing program,

regardless of race, color, sex, age, national origin, or disability, and there is no discrimination in the course of the meal service. If a pricing program, the institution assures that the separate charges for meals and meal service will not be discriminatory on the basis of race, color, sex, age, national origin, or disability.

The institution acknowledges that NDE assumes the responsibility for distributing a news release about the institution's policy for free and reduced price meals for pricing and non-pricing programs. If the institution elects to submit its own news release it will retain a copy of the release in its permanent file and also submit a copy of the news release to NDE with its application.

The institution gives assurance that it has collected actual beneficiary data by racial/ethnic category for each participant presently enrolled, and has included the data in the on-line program application Part I. The institution understands that the collection of this information is strictly for statistical reporting requirements and has no effect on the determination of eligibility to receive benefits under the CACFP.

SECTION X. FREE AND REDUCED PRICE MEAL POLICY STATEMENT

As required by CFR 226.23, as amended, each institution shall submit with its application for participation in the CACFP, a written policy statement concerning free and reduced price meals to be used uniformly in all child and adult care centers under its jurisdiction, and the institution shall not be approved or renewed for participation unless the policy statement has been approved by NDE. When a revision of the written policy statement is pending, the old policy statement shall remain in effect until the new statement is approved.

The institution agrees to collect and maintain household size and income information for eligible enrolled participants as specified in 7 CFR 226.15(e) at the child/adult care center/s included in Part I to determine which participants are from households meeting the income eligibility guidelines for free or reduced price meals as set by USDA for any year that this agreement is in effect. Such information shall be maintained on income eligibility forms distributed by NDE to participating institutions. This information shall be

collected annually and at the time of enrollment of new participants. When claiming meals in the free and reduced categories, institutions are required to disseminate copies of the following NDE documents to all households of enrolled participants: 1) cover letter to households explaining participation in the CACFP, which includes the income eligibility guidelines for the current fiscal year and the nondiscrimination statement; 2) income eligibility application forms and 3) instructions for completing income eligibility application forms.

A. Non-pricing Programs

All sponsoring organizations of centers or other institutions which do not serve meals at a separate charge shall agree to the following free and reduced price meal policy:

The representative/s of the institution applying for participation in the CACFP agree to accept the responsibility for and assure that the institution:

- a. will not physically segregate, nor discriminate in any way against any person receiving a free or reduced price meal benefit and that it will protect the anonymity of these persons and that there will be no overt identification of persons receiving a free or reduced price meal; and,
- b. will serve the same meals or snacks to all CACFP participants at no separate charge, regardless of race, color, national origin, sex, age, or disability and that there will be no discrimination in the course of the food service.

B. Pricing Programs

Institutions which have a separate charge for any meals covered by this application and agreement shall adhere to the Pricing Program Policy Statement (NDE 01-036). This policy statement shall be signed by the institution's responsible individual or principal and submitted as part of this application and agreement.

NON-DISCRIMINATION STATEMENT:

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

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:

(1) Mail: U.S. Department of Agriculture

Office of the Assistant Secretary for Civil Rights

1400 Independence Avenue, SW

Washington, D.C. 20250-9410;

(2) Fax: (202) 690-7442; or

(3) Email: program.intake@usda.gov.

This institution is an equal opportunity provider.

As stated above, all protected bases do not apply to all programs, "the first six protected bases of race, color, national origin, age, disability and sex are the six protected bases for applicants and recipients of the Child Nutrition Programs."