

**STATE OF FLORIDA
DEPARTMENT OF HEALTH
BUREAU OF WIC PROGRAM SERVICES**

WIC VENDOR AGREEMENT

IDENTIFICATION OF CONTRACTING PARTIES: This Vendor Agreement (Agreement) is entered into consistent with the terms and representations provided in the Vendor's application the Vendor submitted to the Department requesting participation in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) (Program). The Agreement is therefore, under those conditions, executed by and between:

The State of Florida Department of Health
Bureau of WIC Program Services (Department)
BIN #A-16, 4052 Bald Cypress Way, Tallahassee, Florida 32399-1726

and

SAMPLE

WIC VENDOR AGREEMENT

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SAMPLE

1.01 POTENTIAL WIC VENDOR IS ENCOURAGED TO SEEK LEGAL COUNSEL

The WIC Vendor Agreement is a legal binding Agreement between the Vendor and the Florida Department of Health (Department). Entering into this Agreement may affect the Vendor's rights and responsibilities under Florida law. It is therefore most likely that the Vendor will have individual legal concerns that are best addressed by an attorney representing that Vendor's interests.

The Department is not permitted to provide legal advice regarding this Agreement. The Department is only permitted to explain the various terms, conditions and functions of the requirements within the Agreement. The Department may not advise the Vendor as to the Vendor's rights under the Agreement's provisions. Any representation either implied or stated by any party, or any agent of the Department in this regard to the contrary shall have no effect and shall not be relied upon regarding this Agreement.

Each Vendor is therefore strongly encouraged to seek legal advice from an attorney licensed in the State of Florida before entering into this Agreement. The Department respects the Vendor's right to seek proper legal counsel. The Department will certainly discuss the provisions of the proposed contract with a properly licensed attorney representing the Vendor and answer any questions or concerns without affecting the Vendor's opportunity in the Program whatsoever.

Pursuant to 7 CFR §246.12(h)(1)(ii)(2), the terms of this Agreement are applied uniformly throughout the state and therefore are not subject to negotiation. Therefore, any communication with the Vendor's legal representative shall be for the sole purpose of providing information regarding the legal implications of the Agreement's terms and conditions.

1.02 QUESTIONS AND ANSWERS

All questions must be directed to:

Florida Department of Health
Bureau of WIC Program Services
BIN #A-16, 4052 Bald Cypress Way, Tallahassee, Florida 32399-1726
1-800-342-3556 or (850) 245-4202

1.03 RECITALS

- I. The United States Secretary of Agriculture is required to administer the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) (Program) pursuant to Section 17 of the Child Nutrition Act of 1966, as amended. The purpose of the Program is to provide supplemental foods and nutrition education at no cost to eligible persons. The Program serves as an adjunct to good health care during critical times of growth and development, to prevent the occurrence of health problems and improve the health status of program participants.
- II. The Florida Department of Health, Bureau of WIC Program Services (Department) is authorized to administer the Program in the State of Florida. The Department is required to design, establish and administer a uniform retail food delivery system supporting the requirements of the WIC Program throughout the State of Florida consistent with all governing federal and state laws, rules, and regulations. The purpose of the uniform system is to ensure adequate participant access to supplemental foods at the most competitive prices available in the market.
- III. The designed food delivery system permits adult participants, and parents or caretakers of infant and child participants to obtain authorized supplemental foods by submitting a food instrument to an authorized WIC vendor. The Department issues food instruments to authorized participants for specific WIC food items. The participant exchanges food instruments for WIC approved food items at retail stores authorized to participate in the WIC Program.
- IV. Food instruments are completed in a specific fashion with required information. The Vendor shall accept the food instrument in payment for authorized quantities of WIC food items. The Vendor then deposits the food instrument in a servicing financial institution. The financial institution submits the food instruments through the federal banking system to the Department's bank for payment in a fashion similar to bank checks. The Vendor's retail account is ultimately credited with funds based on properly completed and approved food instruments.
- V. The Department authorizes an appropriate number and distribution of vendors in order to meet the Program's objectives. The Vendor has applied for participation in the Program as an authorized WIC vendor. The Department has approved the Vendor based upon selection criteria, the Vendor's geographic location,

availability to the WIC participant population, and competitive prices (regular price and not “sale price”) within a designated vendor peer group.

- VI. The Department is required to ensure Vendors: comply with applicable competitive price requirements within their respective peer group; detect questionable food instruments; prevent overcharges; and do not engage in other violations or errors. Vendors are required to know and understand the requirements for properly transacting and submitting food instruments for redemption. Therefore, Vendor redemptions shall continually be subject to evaluation for Program compliance errors and violations. The Department may delay or deny payment, require repayment, and impose sanctions regarding Vendor food instrument and cash value voucher transactions and redemptions consistent with the requirements of this Agreement and federal and state law and regulation.
- VII. This Agreement memorializes the requirements for successful participation in the Program which serves the needs of authorized WIC participants. It articulates the responsibilities of each party in achieving the stated Program goals, vendor surveillance, vendor sanctions, and conditions under which the Agreement may or shall be terminated.
- VIII. The Vendor, in accepting the terms of this Agreement, agrees to support the objectives of the WIC Program and participate in the delivery of the WIC-authorized foods at the lowest possible competitive price for the benefit of all individuals authorized to participate in the Program. Therefore, once approved, the WIC vendor is required to maintain its qualifications and meet all federal and state Program requirements in order to maintain this Agreement in force for its entire term.

A. THE PARTIES AGREE:

1. TO ESTABLISH AN AGREEMENT.

a. In exchange for the privilege and benefit of participating in the WIC Program, the Vendor hereby agrees to the terms of the Agreement.

b. In exchange for the food benefits received by authorized WIC participants and the Vendor’s participation in the Program, the Department agrees to the terms of the Agreement.

2. COMPOSITION OF AGREEMENT. The entire Agreement document shall be composed of:

a. The above stated provision encouraging the Vendor to seek legal counsel, the mandatory reference for questions, and the recitals, which are incorporated herein by reference;

b. This Agreement;

c. Attachment 1, Governing Definitions, and Attachment 2, WIC Program Violations, attached to this Agreement which are incorporated herein by reference;

d. Attachment 3, Applicable Statement of Multiple Physical Addresses, attached to this Agreement which is incorporated herein by reference pursuant to the terms of the Agreement; and

e. Any amendments accepted pursuant to the terms of the Agreement.

3. AFFECT OF AGREEMENT.

a. The Vendor's participation in the Program is a privilege extended to the Vendor by the Department based upon selection criteria, the Vendor's geographic location, availability to the WIC participant population, and competitive prices (regular price and not "sale price") within a designated vendor peer group;

b. The Vendor acknowledges that portions of the vendor selection criteria are confidential pursuant to Program regulation and accepts such determination consistent with the terms of this Agreement without reservation;

c. The Agreement does not constitute a license or property interest and therefore does not confer any such rights or privileges;

d. This Agreement:

(1) Shall encumber a Vendor:

(a) At that Vendor's single fixed physical address; or

(b) At multiple Vendor locations at stated fixed physical addresses. Such addresses shall be stated in Attachment 3 to this Agreement and shall therefore be incorporated herein by reference into the Agreement consistent with the terms of the Agreement by reference to this section.

(2) May be amended from time to time, in those instances where multiple stated physical addresses are permitted, with additions and deletions of physical address locations, subject to the requirements of the Agreement, without affecting those locations remaining in the Agreement.

4. PERIOD OF THE AGREEMENT. The Agreement becomes effective upon signature by the Department and shall expire unless otherwise terminated pursuant to the terms of the Agreement on **December 31, 2013**.

5. VENDOR AGREEMENT PERIOD AND EXTENSION.

a. This Agreement shall expire; on the date specified in this Agreement unless:

(1) The Agreement is terminated earlier for cause; or

(2) The Agreement is terminated without cause by either party upon 30 days advanced written notice; or

(3) The Department provides written notification, subject to the terms of the Agreement, that the Agreement shall be extended for administrative convenience; or

(4) The Department provides written notification that the Agreement shall be extended until such time as pending administrative action has been completed.

b. The Department may extend the Agreement for the purpose of completing any administrative proceedings regarding any Program violation that is alleged to have occurred during the term of the Agreement.

c. The Vendor may not voluntarily withdraw from the contract for the purpose of avoiding a sanction for breach of the Agreement once the Vendor has received written notification that the Department has proposed to disqualify the Vendor or take other administrative action regarding the Vendor's participation in the Program.

d. Neither party is obligated to sign a new Agreement after the expiration date of this Agreement.

6. VENDOR AGREEMENT AMENDMENT

a. The Department shall have the right to amend the Agreement from time to time as required under the Program's regulations or for operational necessity.

(1) Such amendment shall be mailed to the Vendor's last reported mailing address and shall be effective upon the earlier of:

(a) 30 days after receipt of the amendment; or

(b) 30 days after the five day period after the Notice is mailed to the Vendor.

(2) The Amendment shall be adopted by reference into the original Agreement and considered effective against all parties at the end of the applicable 30 day period unless:

(a) The Vendor submits written notice of objection to the amendment and its intent to withdraw from the Program within 30 days of receipt of the amendment; or

(b) The Department withdraws the amendment.

b. The Vendor may amend its statement of multiple physical addresses pursuant to the terms of the contract, and such amendment shall become incorporated by reference in the contract upon:

(1) Written submission of a signed amendment to the Department stating the additions and deletions to the physical addresses to be effected by the contract; and

(2) The Department's acceptance of such amendment evidenced by the Department representative's approval signature on the amendment.

7. CONFIDENTIALITY.

a. Participant Information.

(1) Any information about a WIC participant, whether obtained from the participant or another source, that identifies a WIC participant individually or anyone authorized to act on behalf of the participant is confidential regardless of its original source and exclusive of previously applicable confidentiality provided under Federal or State law.

(2) Such information shall not be made available to the public or to any person who does not have a direct relationship to the administration or enforcement of the WIC Program.

(3) The use and disclosure of confidential participant information is restricted to persons directly connected with the administration, delivery or enforcement of the WIC Program, the Department and those the Vendor designates as having a need to know for Program operation and payment purposes.

b. Vendor Information.

(1) Vendor information obtained from any source that individually identifies the vendor is considered confidential except for name, address, telephone number, web site/e-mail address, store type, and authorization status.

(2) Except as otherwise provided in 7 CFR §246.26, such information shall be restricted from disclosure to the public and may only be provided to persons directly connected with or with direct relationship to the administration or enforcement of the WIC Program.

8. WIC AND SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP) RELATIONSHIP.

a. The WIC Program and the Supplemental Nutrition Assistance Program (SNAP), formally known as the Food Stamp Program, are federally funded programs governed by rules, policies and procedures issued by the U.S. Department of Agriculture, Food and Nutrition Service.

b. A Vendor's disqualification from the WIC Program may result in the Vendor's disqualification from SNAP and may not be subject to administrative or judicial review.

c. A Vendor permanently disqualified from the SNAP will be permanently disqualified from the WIC Program and its Agreement with the Department shall be terminated.

9. BREACH OF AGREEMENT. The Agreement shall be considered breached upon the Vendor's:

- a. Commission of a WIC Program violation as described in Attachment 2 to this Agreement; or
- b. Failure to fulfill the terms of the Agreement; or
- c. Failure to comply with applicable federal or state laws or Program regulations.

10. NOTICE OF SANCTION FOR BREACH OF AGREEMENT

a. Notice of Sanction for Breach of Agreement

(1) The Notice of Sanction for Breach of this Agreement shall be in writing and provided to the Vendor by registered return receipt mail to the Vendor's last self-reported mailing address.

(2) The Vendor shall be considered to have received the Notice of Sanction for Breach upon receipt of the delivered notice or five days after the

Department has mailed the Notice to the Vendor's last self reported mailing address.

b. Content of Notice of Sanction. The Notice shall state:

- (1) What condition or conditions the Vendor has failed to fulfill regarding the terms of the Agreement or federal or state laws or Program regulations;
- (2) The sanction assessed under the Agreement;
- (3) That the Vendor has a right to appeal disqualification or other adverse actions consistent with the terms of this Agreement; and
- (4) The Department has no obligation to enter into a new contract with the Vendor subsequent to any disqualification period.

c. Sanction for breach shall apply upon the following events:

- (1) The end of the period after the Department has formally identified a breach and notified the Vendor of the Department's decision to sanction the Vendor and the Vendor's right to appeal that decision has expired without such appeal; or
- (2) An Administrative Hearing Officer's finding that the Vendor violated the terms and conditions of this Agreement or federal or state regulation, rules policies or procedures; or
- (3) The final determination of an appellate court regarding an Administrative Review Official's finding, imposition of sanction and/or termination of the Agreement.

d. Exception to Notice of Breach. Pursuant to 7 CFR §246.12(1)(3) and §246.18(a)(1)(iii)(F) a warning for an initial violation of Program requirements shall not be given to the Vendor in the following on-going investigation(s) and is not subject to administrative review.

- (1) WIC inventory audit;
- (2) WIC disqualification or civil money penalty based on a Food Stamp Program violation; or
- (3) Covert investigation, compliance buy and similar action by WIC or another agency.

11. SANCTIONS FOR PROGRAM ABUSE.

a. Agreement termination. The Agreement may be terminated for the Vendor's violation of the terms of this Agreement or commission of a violation identified in Attachment 2 to this Agreement or a violation of federal or state laws or Program regulations.

b. Disqualification.

- (1) After the Department has completed its evidence collection, the Vendor shall be notified of the Department's intent to disqualify the Vendor from participation in the Program for a stated period of time allowed under the

current federal regulations (7 CFR Part 246) and this Agreement and terminate the Agreement with the Vendor.

(2) This Agreement shall be terminated upon the Vendor's disqualification from the WIC Program.

(3) Vendors who are disqualified may apply for re-authorization as permitted by Program regulation and must meet all then current requirements for authorization for participation in the Program to be considered for re-authorization. Approval of all applications shall be subject to Program requirements and needs at the time of application.

c. Grounds for Disqualification. Vendors shall be disqualified and the Agreement terminated as a result of violations specified in Attachment 2 to this Agreement and in 7 CFR § 246 that include but are not limited to the list shown at Attachment 2 to this Agreement.

d. Second and Subsequent Disqualification. When a vendor, who previously has been assessed a sanction for violations specified in this Agreement or 7 CFR §246, receives another sanction for any of these violations, the WIC Program shall double the second and subsequent sanction.

e. A civil money penalty shall be imposed in lieu of disqualification and termination upon the Department's determination that:

(1) The Vendor disqualification would result in inadequate participant access, such access being lack of other WIC vendors located within five miles of the subject vendor;

(2) The Department's determination that the penalty has been correctly calculated pursuant to the formula established in 7 CFR §246;

(3) If the assessment is a second civil money penalty the Department shall double the original penalty; and

(4) Such penalty is not assessed in lieu of disqualification for the third or subsequent sanction.

12. PAYMENT OF CIVIL MONEY PENALTY

a. The payment of the civil money penalty may be in installments upon the Department's approval.

b. Failure to pay a civil money penalty in full will result in the Vendor's disqualification from the program and termination of the Vendor's Agreement.

13. TERMINATION AND NOTICE

a. The Agreement shall terminate upon the date of expiration unless the Department takes additional actions described in this Agreement. Prior to automatic termination, the Agreement may be terminated upon written notice for:

(1) The convenience of either party, with 30 days written advance notice to the other party, prior to the expiration date specified in this Agreement,

provided the Department has not extended the Agreement for administrative action;

(2) The Vendor's written notification of objection to an Agreement amendment and election to withdraw from the Program within 30 days of the Vendor's receipt of the written notification of the proposed amendment to the Agreement;

(3) The Department's determination that the Vendor provided false or incomplete information in its application for Program authorization or at any time during authorization of the Vendor;

(4) The sale or change of ownership of the Vendor's store or business;

(5) Determination that a conflict of interest exists between the Vendor and the WIC Program at either the state or the local level;

(6) The Vendor's failure to comply with the terms of this Agreement which shall result in the Vendor's disqualification as a WIC vendor; or

(7) Disqualification.

b. Notice of Termination

(1) The Notice of Termination of this Agreement shall be in writing and provided to the Vendor by registered return receipt mail to the Vendor's last self-reported mailing address.

(2) The Vendor shall be considered to have received the Notice of Termination upon receipt of the delivered notice or five days after the Department has mailed the Notice to the Vendor's last self-reported mailing address.

c. Content of Notice of Termination. The Notice shall state:

(1) What condition or conditions the Vendor has failed to fulfill regarding the terms of the Agreement or federal or state laws or Program regulations;

(2) The Vendor is notified of the Department's intention to terminate the Vendor Agreement and may also include a statement of its intention to seek sanctions for a breach of the Agreement in addition to termination;

(3) Any applicable right of administrative review regarding the Department's decision.

14. AUTHORITY TO IMPOSE SANCTION FOR BREACH OF AGREEMENT. The following may institute sanctions for breach of Agreement:

a. The Department's election to sanction the Vendor for breach of the terms of the Agreement or a violation of federal or state laws or Program regulations may result in:

(1) Termination of the Agreement and a stated period of disqualification; or

(2) A civil money penalty consistent with the terms of the Agreement.

- b. An Administrative Review Official's determination of a sanction or that the Vendor has breached the terms of the Agreement or violated federal or state laws or Program regulations; or
- c. The final determination of an appellate court regarding an Administrative Review Official's finding, imposition of sanction and/or termination of the Agreement.

15. CLAIMS ASSESSED AGAINST VENDORS.

a. When it is determined the Vendor has committed a vendor violation that affects the WIC payment to the vendor or the Department identifies errors in the Vendor's completed food instrument or food instruments submitted for payment, in addition to any other authorized penalty or sanction, the Department shall delay payment or establish a claim against the Vendor. Such claims shall be for:

- (1) Overcharges on food instruments;
- (2) Charging the Program for food not received by a participant;
- (3) Allowing the purchase of ineligible foods or substitutions for foods on a food instrument;
- (4) Food instrument transaction or redemption violations occurring during a vendor compliance investigation;
- (5) An administrative finding of trafficking/illegal sales of food instruments;
- (6) Receiving, transacting, and/or redeeming food instruments outside of authorized channels (laundering); or
- (7) Failure to provide valid supplier invoices proving sufficient inventory was available on the Vendor's sales shelf that support the amount claimed in food instruments the Vendor has submitted for payment to the Department.

b. The Vendor shall be provided an opportunity to justify or correct a vendor overcharge or other error. Should the Department not approve the justification or correction, the Vendor shall repay the claim assessed. Such claims are not subject to administrative review.

c. Claims for repayment may be collected by:

- (1) Written request for repayment to the Vendor specifying repayment; or
- (2) Offsetting the claim against current and subsequent amounts to be paid to the Vendor; or
- (3) Assignment to a debt collection service if not paid within thirty days of the demand date.

16. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP) CIVIL MONEY PENALTY.

a. The WIC Program:

- (1) May disqualify a vendor that has been assessed a civil money penalty in lieu of other penalty in SNAP because of a hardship; or

(2) Shall assess a civil money penalty consistent with 7 CFR §246 when the WIC Program determines disqualifying a specific vendor would result in inadequate participation access.

b. The length of any disqualification assigned shall correspond to the period for which the vendor would otherwise have been disqualified in SNAP.

17. DEPARTMENT AUTHORITY TO SEEK OTHER ACTIONS AT LAW.

a. The WIC Program sanctions for Vendor violations shall not be construed as excluding or replacing any criminal or civil sanctions or other remedies that may be applicable under any federal or state statute or local ordinance;

b. WIC Program sanctions do not limit or replace the authority of the USDA, Comptroller General, or Department to seek damages, or civil or criminal action;

c. Nothing in this Agreement precludes the Department from obtaining damages as well as any other remedy authorized by law as a result of the Vendor's breach of this Agreement.

18. PROSECUTION FOR FRAUD OR ABUSE.

a. A vendor who commits a Program violation may be prosecuted under applicable federal, state or local laws.

b. Under the Child Nutrition Act of 1966, as amended, and WIC Program regulations, those who have willfully misapplied, stolen, or fraudulently obtained WIC funds shall be subject to a fine of not more than \$25,000 or imprisonment of not more than five years or both, if the value of the 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.

c. Vendors convicted of a pattern of trafficking/illegal food sales or selling firearms, ammunition, explosives or controlled substances in exchange for food instruments shall be permanently disqualified from the WIC Program.

(1) The vendors shall not receive any compensation for revenue lost as a result of such violation; and

(2) The WIC Program may, though it is not required to, impose a civil money penalty in lieu of disqualification if it determines in its sole discretion:

(a) Disqualification of the vendor would result in inadequate participant access; or

(b) 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.

19. PROGRAM APPLICATION.

a. A Vendor application shall be required for participation in the WIC Program from:

- (1) A new owner of the Vendor's business who wishes to participate as a WIC Vendor;
- (2) A Vendor who is disqualified after the Vendor's period of disqualification has expired;
- (3) A current WIC Vendor in good standing wishing to continue as a WIC Vendor after expiration of its current Agreement.

b. WIC Vendor application

- (1) The Department's vendor selection criteria and any vendor limiting criteria in effect at the time of application or re-application shall apply to:
 - (a) A new Vendor's application; or
 - (b) A vendor's re-application after a period of disqualification; or
 - (c) A current WIC vendor in good standing wishing to continue as a WIC vendor after expiration of its current Agreement.
- (2) The applicant vendor is prohibited from accepting or redeeming food instruments during the application process.

20. VENDOR SELECTION CRITERIA.

a. Throughout the Agreement period the Vendor shall continue to comply with:

- (1) The selection criteria used during the Vendor's successful selection;
- (2) Changes to the selection criteria adopted during the term of the Agreement; and
- (3) The requirement to maintain competitive prices within the Vendor's peer group.

b. The Department may assess the Vendor's compliance with then current vendor selection criteria and current updated peer group prices at any time during the Agreement period;

c. The Department may terminate the Agreement if the Vendor fails to meet the then current vendor selection criteria or current updated peer group prices.

B. THE DEPARTMENT AGREES TO:

1. PROVIDE VENDOR TRAINING AND INSTRUCTION. The Department shall provide training and instruction to each Vendor:

a. Prior to or at the time of the first Agreement between the Vendor and Department;

b. Annually to at least one representative of the Vendor, as specified by the Department. Training shall be:

- (1) On a date, time and location designated at the Department's sole discretion; and

(2) On at least one alternative date also designated at the Department's discretion;

- c. During scheduled and no-notice Vendor compliance reviews that Program representatives shall conduct from time to time throughout the term of the Agreement;
- d. In periodic Vendor newsletter updates reporting program changes, outlining Program requirements, or emphasizing key Program components;
- e. Upon a Vendor's request, at a mutually convenient time, to provide individual or facility training on designated portions of the Program that may include but are not limited to Program rules, food instrument transaction and payment procedures, and inventory requirements.

2. PROVIDE PROGRAM MATERIALS. The Department shall provide the Vendor materials to include:

a. The Vendor Handbook. The handbook shall contain Program procedures, requirements, and policies the Vendor is required to enforce while participating in the Program. The Vendor may receive a copy of the Handbook:

(1) Annually; or

(2) From the Department's web site: www.FloridaWIC.org.

b. WIC Vendor Stamp required for uniquely validating food instruments for payment to the Vendor's account;

c. Mandatory Minimum Inventory form listing inventory requirements;

d. A list of WIC-authorized foods;

e. Door stickers to identify the store as an authorized WIC vendor;

f. Upon request, shelf stickers for the vendor to identify WIC-authorized foods;

g. Instructions for receiving payment review of food instruments rejected for payment by the Program's processing bank.

3. PROCESS FOOD INSTRUMENTS FOR PAYMENT. The Department shall process food instruments presented for reimbursement according to the following requirements:

a. Pay the Vendor the amount identified on properly presented food instruments that have been correctly transacted and submitted for payment according to Program requirements;

b. Reconsider for payment food instruments not paid by the Program's processing bank provided the food instruments are submitted to the Department within 120 days of the first date of use for those instruments;

c. Deny payment or assess a claim; and

d. Elect at the Department's option to sanction the vendor consistent with this Agreement, federal and program regulations, and applicable administrative rules and law.

4. PROCESS DEMAND FOR REPAYMENT.

- a. The Department may demand repayment from the Vendor consistent with the terms of this Agreement.
- b. The Department may demand repayment for amounts previously paid by the Department for food instruments transacted by participants which do not meet Program requirements.

5. DETERMINE SERVICE MARK USE IN WIC VENDOR FACILITIES.

- a. The Department shall provide a written determination regarding the Vendor's proposed use of a WIC service mark or any indication of the WIC service mark in brand identification channel strips or shelf talkers containing such product information.
- b. The Department shall provide its determination within 30 days of receipt of a complete Vendor request that shall include a detailed example and description of intended use.

C. THE VENDOR AGREES TO:

1. COMPLY WITH PROGRAM REQUIREMENTS AND THIS AGREEMENT. The Vendor shall comply with all Program requirements stated in federal and state law, regulation, policy, and this Agreement. The Vendor shall:

- a. Comply with the terms of this Agreement, the Florida WIC Vendor Handbook, the Department specified Mandatory Minimum Inventory Requirements, federal and state WIC Program rules, regulations, policies and applicable law. Comply with any changes in these requirements during the term of this Agreement;
- b. Comply with the provisions of Title VI and VII of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973, and Title III of the Americans with Disabilities Act of 1992;
- c. Ensure that no person providing services for the Vendor shall discriminate against any WIC participant on the basis of race, color, national origin, sex, age or disability;
- d. Ensure one or more Vendor representative(s), specified by the Department, participate in training. Train all cashiers and facility staff on program rules and requirements.
- e. Accept full responsibility for any intentional or unintentional action of any owners, officers, agents, managers, and employees (with or without the knowledge of management) that violates the Vendor Agreement or federal or state statutes, regulations, policies or procedures governing the WIC Program;
- f. Provide WIC participants:
 - (1) The same courtesies as offered to other Vendor customers including, but not limited to, use of customer cards, manufacturer and store promotions and specials.

(2) At the time of purchase, an itemized receipt for all items purchased with food instruments.

g. Maintain a selling price to cost ratio or “mark-up” for authorized WIC foods that is unchanged by the fact that these foods are authorized for the WIC Program.

h. Sell all WIC foods at competitive prices consistent with those of the Vendor’s peer group at all times during the term of this Agreement;

i. Provide only the least expensive brands of foods available at the time of purchase when specified by the Department;

j. Mark the current shelf prices of all WIC foods clearly on the food items or have the prices posted on the appropriate store shelf holding the WIC food item at all times;

k. Operate a single, fixed store that is open to the public a minimum of forty hours a week;

l. Participate and cooperate in all Vendor Compliance Reviews and similar evaluations, to include production of all documents required by the individual conducting that review;

m. Submit an accurately completed WIC food price list to the Department upon written request;

n. Submit accurate WIC food price updates for all foods the Vendor offers for WIC purchase to the Department’s WIC Vendor web site portal upon the Department’s request;

o. Notify the Department of attempted or actual misuse of WIC Program foods or food instruments;

p. Promptly pay all sanction demands determined either by the Department or upon determination pursuant to a hearing consistent with the provisions of this Agreement, 7 CFR §246 and Chapter 120, Florida Statutes.

2. THE AGREEMENT AMENDMENT PROCEDURE. The Vendor shall:

a. Elect to comply with the Agreement amendments issued by the Department by permitting the period of notice of objection to expire:

(1) 30 days from the date of the receipt of the written notice of Agreement amendment; or

(2) 30 days after the five day period after the Department mails the Vendor notice of the Agreement amendment.

b. Provide written notice to the Department of objection to the amendment and the Vendor’s intention to withdraw from the Program within the earlier of:

(1) 30 days from the date of the receipt of the written notice of Agreement amendment; or

(2) 30 days after the five day period after the Department mails the Vendor notice of the Agreement amendment.

3. PROVIDE MINIMUM INVENTORY OF WIC APPROVED ITEMS AT ALL TIMES. The Vendor hereby agrees to fully support the objectives of the Program and ensure that all inventory, product quality and quantity requirements are met at all times on the facility's display shelves that are available to the public. The Vendor shall:

- a. Provide fresh and wholesome products, in a sanitary environment, that are not expired, have not exceeded their "sell by", "best if used by" or other date limiting the sale or use of the food item in its freshest condition;
- b. Maintain at all times the required minimum inventory of eligible food items in the customer sales areas of the store for purchase by WIC Program participants;
- c. Purchase and make available to WIC participants infant formulas only from manufacturers, wholesalers, distributors, and retailers approved by the Department;

4. PROCESS FOOD INSTRUMENTS CONSISTENT WITH PROGRAM REQUIREMENTS. The Vendor hereby agrees to timely and accurately process all food instrument transactions consistent with the Program requirements. The Vendors shall:

- a. Transact food instruments only for the types, sizes, and quantities of food specified on the food instrument;
- b. Charge:
 - (1) WIC participants accurately for the WIC foods they present for purchase and receive;
 - (2) No more than the posted shelf prices for these foods;
 - (3) WIC participants the same price or less than the price other customers of the Vendor would be charged for the identical foods.
 - (4) The exact total price for the WIC foods actually provided the participant and enter that amount on the food instrument prior to obtaining the signature of the person authorized to use the food instrument to purchase WIC foods;
- c. Accept food instrument only from authorized participants, or an authorized representative, co-caretaker or proxy:
 - (1) Within 30 days of the "first day to use" date and deposit food instrument for payment within 45 days of the "first day to use" date;
 - (2) Confirm the identity of the authorized food instrument user by:
 - (a) Requiring the authorized signature on the food instrument only after the amount of purchase is entered on the food instruments;
 - (b) Confirming the identity of the authorized person by comparing the signature on the food instrument with the signature on the individual's WIC identification card; and
 - (c) Refuse to accept food instrument(s) from any person unable to demonstrate their authorization to use such instrument(s).

- (3) When the participant signs the check in the presence of the cashier and only after all required WIC food information is entered on the WIC check;
- (4) Only upon delivery of the foods to the authorized recipient; and
- (5) Within the store premises.

d. Provide an itemized receipt:

- (1) For each food instrument transaction; and
- (2) That clearly identifies the item or items purchased and the individual price charged for each item listed.

5. SECURELY MAINTAIN THE WIC VENDOR STAMP. The Vendor shall be provided a WIC vendor stamp upon approval of the Agreement. The Vendor is responsible for the proper security and use of the vendor stamp and pursuant to this Agreement accepts full responsibility for any unauthorized use of the WIC vendor stamp. The Vendor shall:

- a. Use only the WIC vendor stamp issued by the Department to validate food instrument(s) the Vendor submits to the Department for payment from the Vendor's store;
- b. Ensure that the WIC vendor stamp is only used in the manner authorized in this Agreement;
- c. Agree to be fully responsible for any unauthorized use of the WIC vendor stamp;
- d. Immediately report the loss or theft of the WIC vendor stamp to the Department;
- e. Return the WIC vendor stamp to the Department or local WIC office within 10 days following termination of the Agreement due to voluntary termination, sale of the business, store closing, change of ownership, change in partners, change in location or disqualification from the WIC Program.

6. NOT ENGAGE IN THE FOLLOWING PROHIBITED CONDUCT. The Vendor shall not:

- a. Offer incentives specifically to use food instrument(s). Such prohibited incentives include but are not limited to raffles, free food or non-food items, grocery delivery, or customer transportation;
- b. Seek restitution from customers for food instrument(s) not paid or partially paid by the Department;
- c. Question WIC participants about Program operations or payment procedures;
- d. Charge sales tax on WIC food purchases;
- e. Provide refunds for authorized supplemental foods obtained with food instrument(s);
- f. Engage in the sale, barter, exchange or laundering of food instrument(s) offered from any source or individual;

- g. Permit WIC participants to exchange food items unless such exchange is for an identical WIC-authorized food item;
- h. Charge the WIC Program for any food items not received by a WIC Program participant.
- i. Require WIC participants or their authorized representatives to purchase all of the items prescribed on the WIC check;
- j. Require WIC participants or their authorized representatives to purchase (or spend) the full amount of the WIC cash value voucher;
- k. Deny WIC participants or their authorized representatives the prerogative of paying the difference with cash or another form of acceptable payment when the value of fruit and vegetable items selected exceed the value of the WIC cash value voucher presented in an authorized food instrument transaction;
- l. Make or keep or permit anyone else to make or keep a record of a participant's name or WIC identification number after a food instrument transacted by or on behalf of a participant has been redeemed or payment has been denied by the WIC Program.
- m. Provide unauthorized food items or substitution of unauthorized food items, non-food items, cash, credit, rain checks for later delivery of a food item, or credit for past accounts in exchange for food instrument(s);
- n. Accept telephone orders for WIC purchases;
- o. Accept and hold food instrument(s) in promise of providing foods at a future date or different location;
- p. Permit the Vendor's current owners, officers, managers, agents, or employees (with or without the knowledge of management) to violate the vendor Agreement or federal or state statutes, regulations, policies or procedures governing the Program.
- q. Deny the purchase of a WIC-authorized food item of the type, size, and quantity authorized on a WIC food instrument and identified as an eligible food in a Florida WIC Program publication current at the time the food instrument is presented for transaction.

7. MAINTAIN INVENTORY AND PURCHASE RECORDS FOR WIC ITEMS. The Vendor agrees to maintain and have available for audit, the following required vendor program records. The Vendor agrees to retain these records for three years after December 31 of the year this Vendor Agreement expires or is terminated. The following vendor program records shall be retained:

- a. Vendor food inventory records used for federal tax reporting purposes; and
- b. All original, itemized invoices suppliers provide the Vendor at the time of the purchase of WIC authorized food items for sale in the Vendor's facility. The original, itemized invoices must identify the date of the purchase and the type, quantity and price of specific WIC foods.

8. FACILITATE VENDOR WIC RECORD AND FACILITY REVIEW. The Vendor shall maintain its facility and WIC associated records in such a manner to permit access and review as required. The Vendor shall:

- a. Assure that all required WIC inventory records and purchase invoices the Vendor intends to use to support the receipt of WIC Program funds provided by the Department are available for inspection, audit, or copying at a reasonable time or place by the Department or other federal, state, or local personnel authorized by this Agreement, administrative rule or law;
- b. Allow person(s) directly connected with or with direct relationship to the administration or enforcement of the WIC Program to monitor the store for compliance with WIC program requirements;
- c. Facilitate access and allow Person(s) directly connected with or with direct relationship to the administration or enforcement of the WIC Program to audit the Vendor's inventory, any food instrument(s) that have not been deposited, and vendor program-related records at the time of the visit.

9. MAKE PAYMENT TO THE DEPARTMENT AS REQUIRED. The Vendor shall make prompt and timely payment for all demands from the Department. The Vendor shall within 30 days of receiving the Department's notification of the requirement refund to the Department:

- a. Any payments that exceed the actual shelf price of WIC foods authorized for purchase;
- b. Any other payments made on improperly transacted food instruments.

10. USE WIC SERVICE MARK ONLY AS AUTHORIZED

- a. The Vendor shall not:
 - (1) Infringe on the WIC Service Marks (service marks) owned by the U.S. Department of Agriculture (USDA) through improper or impermissible use;
 - (2) Use the service marks in any manner on its goods, containers, packages or on tags or labels affixed thereto;
 - (3) Use the WIC logo in advertising or promotional literature in any manner;
 - (4) Use the WIC acronym in advertising or promotional materials in any manner that:
 - (a) Is likely to imply that the WIC Program or USDA endorses either the Vendor or its products;
 - (b) Is likely to cause confusion, mistake, or deception as to the affiliation, or connection of the Vendor to WIC; or
 - (c) Associates the Vendor with the WIC Program other than as a vendor authorized to accept food instruments; or
 - (d) States or implies any WIC Program sponsorship or approval of the Vendor's goods, services, advertising, or commercial activities, including

nutritional message(s), by the WIC Program, USDA, or the Florida WIC Program; or

(e) Uses the WIC acronym except to inform the public that the vendor is WIC authorized. The proper display of the WIC disclaimer required in this Agreement must accompany all such advertising or promotional materials.

(5) Affix stickers or permit such stickers to be affixed on any foods offered for sale to the public containing a WIC service mark; or

(6) Use the WIC service marks, including any close or similar facsimiles thereof, in total or in part, either in the Vendor's official name or in the Vendor's fictitious doing business as name; or

(7) Place the term "WIC Program" in any advertisement, bill board, poster or store sign or designation; or

(8) Use the letters "W", "I", and "C" in that order next to one another in the Vendor's name, or these letters in that order but not next to one another, with the letters made to stand out in some fashion, such as with a different color or size than other letters.

b. The Vendor shall:

(1) Submit any offering or proposal to use a WIC service mark or any indication of the WIC service mark in brand identification channel strips or shelf talkers containing such product information to the Department for approval at least 30 days prior to any intended date of use;

(2) Only use those signs, stickers or indicators that the Department has approved in advance and in writing either in a general statement of regulation or individually addressed authorization;

(3) Include the following properly displayed statement (disclaimer) when using the WIC acronym to inform the public that the vendor is WIC authorized: "WIC is a registered service mark of the U.S. Department of Agriculture for USDA's Special Supplemental Nutrition Program for Women, Infants and Children."

(4) Comply in all respects with the Department's written determination of appropriate use of the WIC service mark.

c. The Vendor may:

(1) Describe itself as a WIC-authorized food vendor only;

(2) Place Florida WIC Program approved signs on the Vendor's store stating only that the Vendor is a WIC-authorized vendor.

11. PROVIDE WRITTEN NOTICE TO DEPARTMENT. The Vendor shall provide the Department written notice:

a. If it intends to terminate the Agreement with 30 days written notice;

- b. Requesting Department approval of a change in store location in writing at least 30 days in advance of such proposed change;
- c. Providing the Department at least 30 days advance written notice of any change in Vendor ownership, management, or cessation of operation;
- d. Of any changes in the operation of the store, including changes in customer business hours or temporary changes such as closure for health code violations or suspension of the sale of perishable products while new refrigeration is being installed.

D. GENERAL PROVISIONS TO WHICH BOTH PARTIES AGREE:

1. SURVIVAL OF COVENANTS, WARRANTIES, AND REPRESENTATIONS.

- a. All representations, warranties, covenants, and agreements of each of the parties to this Agreement shall survive the consummation of the Agreement and shall not be affected by any investigation by or on behalf of the other party to this Agreement.
- b. The Vendor agrees that for a period of three years commencing December 31 of the year this agreement is terminated for whatever reason:
 - (1) To retain all records and accounts required under the terms of this agreement; and
 - (2) To be subject to all requirements for restitution or repayment resulting from an audit or investigation of the Vendor's records and accounts.

2. NOTICES.

- a. All notices and other communications required or permitted under this Agreement shall be in writing and shall be deemed given when delivered personally or five days after being sent to the appropriate entity shown in the Identification of Parties in the beginning of this Agreement.
- b. The Vendor shall ensure that the Department is provided a written notice of any change in the Vendor's mailing address (when different than the store's physical address) within five days of the change in that address.

3. GOVERNING LAW AND VENUE.

- a. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- b. Venue for any action arising from the terms of this Agreement or the application of state or federal law to any dispute between the parties shall be Leon County, Florida to the exclusion of all other courts and jurisdictions. Any action regarding this Agreement shall be brought to the Department for an administrative hearing that shall be conducted in Leon County, Florida to the exclusion of all other courts and jurisdictions. Any appeal of a Final Order shall be to the First District Court of Appeal, in Leon County, Florida to the exclusion of all other courts and jurisdictions.

4. ADMINISTRATIVE REVIEW AND HEARING.

a. Vendors who choose to seek an Administrative Review of an adverse ruling under the terms of this Agreement agree to submit a written request for an administrative review to the Department within 21 days of the date the Vendor is considered to have received notice of the adverse action.

b. Hearings shall be conducted pursuant to Sections 120.569, 120.57, 120.80(15), Florida Statutes and 7 CFR §§246.18(a)(3)(i) and 246.18(b).

c. The Department shall appoint an impartial Hearing Officer pursuant to Section 120.80(15), F.S. and 7 CFR §246.18(b)

d. The following actions shall not be subject to appeal pursuant to 7 CFR §246.18:

- (1) The validity or appropriateness of vendor limiting or selection criteria;
- (2) The validity or appropriateness of vendor peer group criteria and the criteria used to identify vendors that are above-50-percent vendors or comparable to above-50-percent vendors;
- (3) The validity or appropriateness of participant access criteria and participant access determinations;
- (4) The Department's determination as to whether the Vendor had an effective policy and program in effect to prevent trafficking and that the ownership of the business was not aware of, did not approve of, and was not involved in the conduct of the violation;
- (5) The expiration of a Vendor Agreement;
- (6) Disputes regarding food instrument payment and claims (other than the opportunity to justify or correct an overcharge or other error);
- (7) Disqualification from the Program as a result of disqualification from SNAP.

5. **PARTIAL INVALIDITY.** Whenever possible, each provision of this Agreement shall be interpreted in such a way as to be effective and valid under applicable law, it shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

6. **TITLES AND HEADINGS.** Titles and headings to articles, sections, or paragraphs in this Agreement are inserted for convenience of reference only and are not intended to effect the interpretation or construction of the Agreement.

7. **NONDISCRIMINATION.** In accordance with Federal law and U.S. Department of Agriculture (USDA) policy, all institutions that participate in the WIC Program are prohibited from discriminating on the basis of race, color, national origin, sex, age or disability. To file a complaint of discrimination, write USDA, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call toll free (866) 632-9992 (Voice). Individuals who are hearing impaired or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339; or (800) 845-6136 (Spanish).

8. NONASSIGNABILITY. Neither this Agreement nor performance under this Agreement shall be assigned. The Department shall terminate this Agreement upon notification of change in ownership.

9. REMEDIES CUMULATIVE. The remedies provided in this Agreement shall be cumulative, and the assertion by any party of any right or remedy shall not preclude the assertion by such party of any other rights or the seeking of any other remedies.

10. SUCCESSORS AND PARTIES IN INTEREST. This Agreement shall be binding on and inure to the benefit of the parties to it and their successors, provided no assignment shall relieve the assigning party of its obligations under the Agreement.

11. CONFLICT BETWEEN THIS AGREEMENT AND FEDERAL PROGRAM REQUIREMENTS.

- a. The terms of this agreement shall govern the conduct of the parties;
- b. The definition of the words and phrases found in Attachment 1 to this Agreement shall govern its enforcement;
- c. Any direct conflict between the terms of this Agreement and WIC Federal Program requirements stated in 7 CFR §246, associated Program regulation, policy or the USDA Approved State Plan, shall be resolved in favor of the current Federal Program requirement, associated Program regulation, policy or the USDA Approved State Plan for only those parts of this Agreement's requirements in direct conflict with Federal Program requirements, associated Program regulation, policy or the USDA Approved State Plan. All other provisions shall remain unchanged.

12. ENTIRE AGREEMENT; AMENDMENTS.

- a. This Agreement constitutes the entire Agreement between the parties to it and supersedes any prior or contemporaneous understanding or Agreement with respect to the transactions contemplated.
- b. The Agreement may be amended only by:
 - (1) The Department issuance of an amendment;
 - (2) Expiration of time for the Vendor to reject an amendment and withdraw from the Program as described in the Agreement.
- c. Amendments issued by the Department and accepted by the Vendor consistent with the terms of the Agreement shall take precedence over any terms or conditions in the original Agreement unless expressly stated otherwise in the Amendment.

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I/we have been advised to seek legal counsel before signing this document. I/we have read and agree to the statements and terms in this Agreement.

By my signature, I/we warrant and affirm that I/we have read this entire Agreement, and that I/we understand and accept the requirements herein. I/we further agree to process food instruments in accordance with the terms of this Agreement, state and federal WIC Program rules, regulations, policies and applicable law without exception. I/we agree to train all staff and cashiers in program rules and requirements and accept full responsibility for any intentional or unintentional violations of this agreement.

(Print) Store Name

(Print) Store Street Address

(Print) City County State Zip

(Print) Store Mailing Address

(Print) City County State Zip

(_____) _____
Store Telephone Number

(Print) Complete Name of Corporation, Partnership,
Limited Partnership or Sole Proprietorship

(Print) Mailing Address of Owner

(Print) City County State Zip

Federal Employer Identification Number (FEID)

Authorized Signature

(Print) Name and Title of Authorized Representative

Date Signed

ATTEST: SWORN TO AND SUBSCRIBED before me in _____ County, Florida
this _____ day of _____, 20_____.

Notary Public

(Print, type or stamp Commissioned
Name of Notary Public)

(check one) Personally known _____ or
Produced identification _____.
My Commission Expires _____.

DO NOT WRITE BELOW THIS LINE – FOR DEPARTMENT USE ONLY

Grant of Participation, Agreement Execution, and Authority to Participate in the Florida
WIC Program

The undersigned Department Representative is authorized to execute this Agreement with
WIC vendors. The Department agrees to the terms of the Agreement and grants the Vendor
authority to participate as a vendor in the WIC Program consistent with the terms of the
Agreement.

Date: _____

(Print Name and Title)

GOVERNING DEFINITIONS

The following definitions shall apply to the terms used within the WIC Vendor Agreement. Should a direct conflict be found between those definitions in 7 CFR §246 and the WIC Vendor Agreement, only that portion of the definition found in 7 CFR §246 that is in conflict with this Agreement shall take precedence.

1. **Administrative determination** means a WIC Program determination of a violation of this Agreement or WIC Program requirements.
2. **Administrative conviction** means a finding by an Administrative Hearing Officer or reviewing court of competent jurisdiction that a program violation has occurred.
3. **Agreement termination** means the formal agreed to termination of the Agreement upon the date stated in the Agreement. Agreement termination does not effect those requirements of the Agreement which survive the Agreement such as the requirement to retain records for a period of three years after December 31 of the Vendor Agreement's expiration or termination.
4. **Authorized representative** is an adult participant, or a parent, or caretaker of a minor participant who represents the participant for WIC program services including the certification process and/or pick-up and/or transaction of food instruments. The term includes any person authorized to transact food instruments as part of a compliance investigation. The term does not include a proxy.
5. **Authorized supplemental food** means those types, sizes, and quantities of foods authorized on WIC food instruments and approved by the Department for issuance to a WIC participant on WIC food instruments.
6. **Cash value voucher** means a type of WIC food instrument commonly referred to as a WIC fruit and vegetable voucher.
7. **Co-Caretaker** means an individual identified by the authorized representative as sharing responsibility for the care, health and welfare of an infant/child. This individual may be the mother, father, wife of the father, husband of the mother, or grandparent of the infant/child participant, who shares primary caretaker responsibility for the infant/child. This definition does not include a baby-sitter unless such is also one of those individuals in the category listed above. Only one person may be designated as a co-caretaker at a time.
8. **Code of Federal Regulation (CFR)** means the federal rules published by the United States Government. In the context of this Agreement, this applies to those regulations the United States Department of Agriculture publishes regarding WIC under Title 7 of the CFR pursuant to the Special Supplemental Nutrition Program for Women, Infants and Children, Section 17 of the Child Nutrition Act of 1966, as amended. The WIC Program is specifically regulated in 7 CFR §§246, 3016, 3017, and 3019. These publications along with other appropriate authorized authorities are used in regulating the direction and management of the WIC Program within each state.

9. **Compliance investigation** means the evaluation of a vendor's conformance to this Agreement's requirements and applicable local, state and federal requirements. Investigations include inventory audits and compliance buys.
10. **Compliance buys** means the process of purchasing (covertly) WIC authorized food items from a Vendor and the assessment of that Vendor's processing of the purchase and claim for reimbursement.
11. **Confidential** means the limitation of access to information, records, data or other similar information to certain individuals or entities.
12. **Confidential information** means:
- a. Confidential vendor information means any information about a vendor (whether it is obtained from the vendor or another source) that individually identifies the vendor, except for vendor's name, address, telephone number, web site/e-mail address, store type, and authorization status.
 - b. Confidential participant information means information regarding a WIC participant and their involvement with WIC. Such participation is carried out or information revealed with the expectation that anything done or revealed (regardless of whether by the individual or WIC activities) shall be kept private and disclosed only to those individuals who have a need to know the information for Program and enforcement purposes.
13. **Conviction** means having been found guilty, with or without adjudication of guilt, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.
14. **Department** means the Florida Department of Health Bureau of WIC Program Services.
15. **Discrimination (Unlawful)**. The treatment or consideration of, or making a distinction in favor of or against, a person based on that person's race, color, national origin, sex, age, or disability.
16. **Disqualification** means the act of ending the Program participation of an authorized food vendor whether as a punitive sanction or for administrative reasons. Vendors are prevented from applying for participation in the Program during any period of disqualification as stated in this agreement or under State or Federal Program regulation.
17. **First day to use** means the date entered on food instruments provided to WIC participants. This date is the first date on which the participant is permitted to present and the Vendor is permitted to receive that specific food instrument in payment for authorized WIC foods.
18. **Food delivery system** means the method the Department uses to provide supplemental foods to WIC participants.
19. **Food instrument** means a WIC food instrument (also known as a WIC check) or a cash value voucher (also known as a WIC fruit and vegetable voucher) that is used by a WIC-authorized person to obtain Program-authorized supplemental foods.

20. **Identical food item** means the exact brand and size as the original WIC authorized food item a WIC participant originally obtained and returns to the vendor for replacement.

21. **Inventory audit** means the examination of food invoices or other proof of purchase to determine whether a vendor has purchased sufficient quantities of supplemental foods to provide WIC participants the quantities specified on food instruments the Vendor redeemed during a given period of time.

22. **Launder** means the act of transferring illegally obtained food instruments through individuals engaged in legitimate activities or accounts so that the illegal source of the laundered food instrument can not be traced back to the source or sources engaged in the illegal possession of food instruments.

23. **Mandatory minimum inventory requirements** means the least quantity of each of the required food items designated for the Program that must be maintained on the public sales shelf in the Vendor's facility whenever that facility is open for business to the public.

24. **Participant** means pregnant woman, breastfeeding woman, postpartum woman, infant or child who is receiving supplemental foods or food instruments under the WIC Program, and the breastfed infant of a participating breastfeeding woman. A participant is also a person who transacts a WIC food instrument as part of a compliance investigation.

25. **Pattern** means more than one occurrence of the same or similar event or transaction or the same or similar conduct during two or more compliance buys, compliance visits, or incidences identified during an investigation, or routine monitoring visits, or food instrument reviews.

26. **Person directly connected with or with direct relationship to the administration or enforcement of the WIC Program** means:

- a. Personnel from the USDA, the Comptroller General of the U.S., Florida Department of Health Bureau of WIC Program Services, local WIC agencies, and authorized local, state and federal law enforcement personnel;
- b. Personnel under contract with the Department to perform tasks regarding the WIC Program;
- c. Persons investigating or prosecuting WIC Program violations that have occurred under Federal, State or local law;
- d. Persons charged with determining if WIC Program violations have occurred under Federal, State or local law;
- e. Persons investigating or prosecuting Supplemental Nutrition Assistance Program (SNAP) violations under Federal, State or local law;
- f. Vendor designated personnel who have a strict need to know participant information in order to perform their duties for the Vendor in delivering WIC Program services or seeking payment of food instruments from the Department, e.g., store cashier, accountant, and WIC store owner;

- g. Other persons designated in writing by the Department's Bureau of WIC Program Services granting them access to WIC data.
27. **Peer Group system** means a system of classification for authorized WIC vendors. The Peer Group system places the vendors into groups based on common characteristics or criteria that affect food prices. The Department places vendors in vendor peer groups for the purpose of applying appropriate competitive price criteria to vendors and limiting payments for food to competitive levels for the benefit of WIC participants.
28. **Price** means that cost at which WIC authorized supplemental foods are offered to the public, exclusive of any temporary reduction in cost due to manufacturer and store promotions and specials. Examples of promotions and specials include: buy one, get one free; buy one, get one at reduced price; free ounces added by the manufacturer; manufacturer or store cents-off coupons; or use of store savings card or customer reward card.
29. **Program** means the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) authorized by Section 17 of the Child Nutrition Act of 1966, as amended.
30. **Program requirements** means those procedures, standards, conventions, rules, regulations, policy, guidance and instructions published by federal, state and local authorities directly or indirectly applicable to the Vendor and its participation as a WIC Vendor, as designated by the Department.
31. **Proxy** means any person designated by a woman participant, or by a parent or caretaker of an infant or child participant, to obtain food instruments or to transact food instruments for authorized supplemental foods on behalf of a participant. Parents or caretakers applying to the WIC Program on behalf of infant and child participants are not considered a proxy.
32. **Service mark** means the WIC acronym and WIC logo registered with the U.S. Trademark and Patent Office by the U.S. Department of Agriculture.
33. **Then current** means the applicable federal, state, local, and WIC rules and regulations in effect at the time of an assessment of Vendor conduct. Such assessment may occur at any point during the term of the Agreement.
34. **Trafficking** means the buying, selling, barter, or trade of a food instrument or food items purchased with WIC funds for cash or for other than their authorized purpose.
35. **Transact or transacting** means the process between an authorized WIC recipient and WIC authorized vendor in which properly completed and verified food instruments are exchanged for the correct size and quantity of authorized WIC food items.
36. **Vendor** means a sole proprietorship, partnership, cooperative association, corporation, or other business entity operating one or more stores authorized by the Department to provide authorized supplemental foods to participants under a retail food delivery system.
37. **Vendor compliance review** means the Department's systematic evaluation of the Vendor's facility and WIC food inventory for compliance with federal and state program requirements and the terms of this Agreement.

38. **Vendor program records** means all vendor: food inventory records used for federal tax reporting purposes; books of account; inventory records showing wholesale or retail purchases; original, itemized invoices suppliers provide the Vendor at the time of the purchase of WIC authorized food items for sale in the Vendor's facility that contain the date of the purchase and the type, quantity and price of specific WIC foods.

39. **Vendor violation** means any intentional or unintentional action of a vendor's current owners, officers, managers, agents, or employees (with or without the knowledge of management) that violates the vendor Agreement or federal or state statutes, regulations, policies or procedures governing the Program.

40. **WIC logo** means a stylized graphic representation of the word WIC including a picture of a woman and children.

41. **WIC** means the acronym for the Special Supplemental Nutrition Program for Women, Infants and Children.

42. **WIC customer** means a WIC authorized representative, participant, proxy, co-caretaker, or representative of the WIC Program.

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SAMPLE

<u>Item</u>	<p style="text-align: center;">WIC Vendor Agreement, Attachment 2</p> <p style="text-align: center;">WIC PROGRAM VIOLATIONS</p> <p style="text-align: center;">Shall Include those stated in 7 CFR §246</p>	<p style="text-align: center;"><u>Period of Disqualification</u></p>
<u>AN ADMINISTRATIVE OR CRIMINAL CONVICTION OF:</u>		
1.	A pattern of trafficking in food instruments or cash value vouchers or selling firearms, ammunition, explosives, or controlled substances (defined in Sec 102 of the Controlled Substances Act (21 U.S.C. 802)) in exchange for food instruments or cash value vouchers.	Permanent Disqualification or at Department Discretion a Civil Money Penalty pursuant to 7 CFR §246.12(l)(i)
2.	One incidence of buying or selling one or more food instruments for cash (trafficking)	6 years
3.	One incidence of selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for one or more food instruments	6 years
4.	One incidence of the sale of alcoholic beverages or tobacco products in exchange for one or more food instruments	3 years
5.	A pattern of claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time	3 years
6.	A pattern of overcharges	3 years
7.	A pattern of receiving, transacting and/or redeeming a food instrument outside of authorized channels (laundering), including the use of an unauthorized vendor and/or an unauthorized person	3 years
8.	A pattern of charging for supplemental food not received by the participant	3 years
9.	A pattern of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for one or more food instruments	3 years
10.	A pattern of providing unauthorized food items by type, or size, or quantity in exchange for food instruments, including charging for authorized supplemental foods provided in excess of those listed on the food instrument	1 year
11.	Vendor, previously sanctioned (within ten years of date of new violation) under provisions of one or more of the violations listed in items 1 through 10 above	Double the first applicable sanction listed for the original violation. Civil money penalty limited by 7 CFR §246.12

12.	Vendor, previously sanctioned two or more times (within ten years of date of new violation) under provisions of one or more of the violations listed in items 1 through 10 above	Double the second applicable sanction listed for the original violation. No civil money penalty shall be permitted in lieu of disqualification
13.	Disqualification from the Supplemental Nutrition Assistance Program (SNAP), formerly known as the Food Stamp Program	Same amount of time as SNAP disqualification (may begin at a later time)
14.	Vendor assessed a civil money penalty in lieu of another penalty in SNAP because of hardship	Same period of original SNAP disqualification (subject to participant access determination)

**AN ADMINISTRATIVE DETERMINATION OR ADMINISTRATIVE CONVICTION OF ENGAGING
IN A PATTERN OF THE FOLLOWING:**

15.	Failure to record the amount of purchase on a food instrument before the WIC participant signs the WIC check	1 year
16.	Failure to maintain original invoice records of purchases of WIC foods from wholesalers and other suppliers	1 year
17.	Unauthorized use of the WIC vendor stamp or unauthorized replication of the WIC vendor stamp	1 year
18.	Requiring participants to pay for a rejected food instrument	1 year
19.	Failure to allow monitoring by authorized personnel	1 year
20.	Accepting one or more food instruments in promise of providing foods at a future date or different location	1 year
21.	Purchasing infant formula from a source not approved by the Florida WIC Program	1 year
22.	Offering incentives specifically to use a food instrument	6 months
23.	Failure to maintain required inventory of eligible WIC foods for sale to the public on vendor display shelf at all times while open to the public	6 months
24.	Failure to charge competitive prices for WIC foods as defined in Chapter 64F-1, Florida Administrative Code	6 months
25.	Offering for sale any WIC food product that has exceeded: its expiration date; freshness date; "sell by"; "best if used by"; or other date limiting the sale or use of the food item in its freshest condition or offering such foods in an unsanitary environment or condition.	6 months
26.	Charging sales tax on WIC foods	6 months
27.	Discrimination against any participant using one or more food instruments on the basis of race, color, national origin, sex, age or disability	3 months
28.	Failure to provide WIC customers the same courtesies as offered to other customers	3 months

29.	Providing refunds or permitting exchanges of foods obtained with one or more food instruments, except for exchanges of an identical authorized food item when the original food item is defective, spoiled or outdated	3 months
30.	Failure to provide at least thirty days advance written notification of any change in vendor ownership, store location, or cessation of operations	3 months
31.	Failure to notify the Department of any changes in the operational status of the store, including changes in customer business hours and temporary closures	3 months
32.	Failure to comply with the Department's requirements regarding training on WIC Program procedures	3 months
33.	Failure to provide an itemized receipt with each food instrument transaction	3 months
34.	Placing the WIC logo in any advertisement or promotional materials	3 months
35.	Use of the WIC acronym in Vendor advertisements or other promotional materials or other documents used by or offered to the public in any way except to inform the public the vendor is WIC authorized or without the proper display of the WIC disclaimer required in this Agreement	3 months
36.	Use of WIC service mark or acronym including close facsimiles in total or in part either in the Vendor's official name registered with the State of Florida or in the Vendor's doing business as fictitious name	3 months
37.	Offering food items for sale to the public that have the WIC logo or WIC acronym on the food item	3 months
38.	Vendor use of the letters "W" "I" and "C" in that order next to one another in the Vendor's name or these letters in that order but not next to one another with the letters made to stand out in some fashion such as with a different color or size than other letters presented to the public in any fashion	3 months
39.	Failure to comply with the terms regarding use of WIC service marks provided in the Agreement and federal and state regulation and rule	3 months
40.	Violation of state rules governing WIC Vendors not otherwise addressed in this contract	3 months
41.	Failure to post current prices for WIC authorized items on the store shelf; or individual item; or in a display clearly visible to the WIC customer	3 months
42.	Vendor requiring WIC customers to purchase all items listed in the food instrument	3 months
43.	Vendor making or keeping a record of a participant's name or WIC identification number after a food instrument transacted by or on behalf of a participant has been redeemed or payment has been denied by the WIC Program	3 months
44.	Use or disclosure of confidential participant information to persons other than those directly connected with the administration, delivery or enforcement of the WIC Program, the Department and those the Vendor designates as having a need to know for Program operation and payment purposes	3 months
45.	Denying the purchase of a WIC-authorized food item.	3 months

APPLICABLE STATEMENT OF MULTIPLE PHYSICAL ADDRESSES

(Refer to Terms Controlling Agreement and Amendments for Validity)

SAMPLE