

**AGREEMENT BETWEEN THE
STATE OF WISCONSIN**

Department of Health Services
Special Supplemental Nutrition Program for Women, Infants and Children (WIC)
P.O. Box 2659, Madison, Wisconsin 53701-2659

and

This agreement is entered into between the Wisconsin Special Supplemental Nutrition Program for Women Infants and Children (WIC Program) of the Department of Health Services, Division of Public Health, hereinafter referred to as the "department", and the vendor applicant, hereinafter referred to as the "vendor." This agreement will be for a period beginning November 1, 2010, or the initial authorization date, and will expire on October 31, 2013. The department will terminate the agreement if it determines that the vendor has provided false information in connection with its application for authorization. Either party may choose to terminate the agreement for cause after providing not less than 15 days advance written notice, subject to any applicable appeal rights under Wis. Admin. Code ch. DHS 149.

The Vendor Agreement does not constitute a license or a property interest. If the vendor wishes to continue to be authorized beyond the period of its current agreement, the vendor must reapply for authorization. If a vendor is disqualified, the WIC Program will terminate the vendor's agreement and the vendor will have to reapply in order to be authorized after the disqualification period is over. In all cases, the vendor's new application will be subject to the vendor selection criteria and any vendor limiting criteria in effect at the time of reapplication.

A. The VENDOR Agrees To:

General terms. The vendor shall

1. Comply with the terms of this agreement and applicable WIC Program rules and regulations, including but not limited to Wis. Admin. Code ch. DHS 149, Wis. Stat. § 253.06, 7 CFR § 246 and other applicable statutes, rules, and regulations; policies and procedures as stated in the completed application form, the stock price surveys, the *WIC Vendor Manual*; and further agrees to comply with amendments or updates made during the contract period, the list of approved foods, memos or other formal instructions and terms of participation issued by the State WIC Office to vendors;
2. Comply with the vendor selection criteria throughout the contract period, including any changes to the criteria;
3. Allow the State agency, as part of the redemption process, to make price adjustments to the purchase price on WIC checks submitted by the vendor for redemption to ensure compliance with the price limitations applicable to the vendor;

Discrimination. The vendor shall

4. Comply with the nondiscrimination provisions of Parts 15, 15a and 15b of Title 7 and the Age Discrimination Act of 1975 to ensure that no otherwise qualified person be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination in any manner on the basis of age, race, color, handicap, sex, or national origin under the WIC Program and will immediately take any measure necessary to effectuate this part of the Agreement;

5. Comply with Title VI of the Civil Rights Act of 1964 prohibiting employment discrimination where (1) the primary purpose of the Agreement is to provide employment, or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the WIC Program;

General Business operations. The vendor shall

6. Transact and redeem WIC checks properly using the processes described in the *WIC Vendor Manual*;
7. Allow the purchase of all authorized foods in the full amount specified on the check;
8. Allow another form of payment, e.g., cash, FoodShare/SNAP (Supplemental Nutrition Assistance Program, formerly the Food Stamp Program,) credit or debit card, etc., to pay the difference if the purchase price exceeds the dollar value on the Fruit and Vegetable check;
9. Provide approved WIC foods that are fresh and have not exceeded their "sell by", "best if used by" or other date limiting the sale or use of the food item;
10. Demonstrate business integrity;
11. Submit an accurately completed *Stock Price Survey* to the State WIC Office or local WIC Project upon request indicating the non-sale prices of the WIC approved foods;
12. Derive less than 50 percent of annual food sales from WIC checks;
13. Purchase infant formula provided to WIC participants only from a supplier listed on the authorized infant formula provider list;
14. When authorized as a pharmacy, order infant formulas or liquid nutritional/medical products at the request of WIC participants or the local WIC project. Pharmacies agree to have an established procedure with a distributor or manufacturer which would enable the pharmacy to supply infant formula within a reasonable time when requested by a WIC participant or the local WIC project;
15. Maintain regular, established hours of operation. This includes a minimum of two 4-hour blocks of time on each of five days per week. Daily operating hours must be consistent from week to week;
16. Use a cash register that generates receipts that include the date, the total price, and the price of each item received by the WIC participant or proxy, at each check-out lane;
17. Maintain at all times the required minimum stock of WIC approved foods in the customer area of the store for purchase by WIC Program participants. "Minimum stock" as used in this agreement shall mean the amount and kinds of food items specified on the *Stock Price Survey* and in the *WIC Vendor Manual*. (Stores with infant formula theft problems may keep infant formula in a secure area. A notice of the location and prices must be posted in the area where the participant would expect to find the formula. Minimum stock must be maintained);
18. Display the prices of WIC approved foods on the foods, on the shelves in proximity to the foods or in the immediate area where the foods are kept in the customer area of the store;
19. Maintain the establishment in a clean, orderly and safe condition;

Prohibited practices. The vendor shall

20. NOT provide coupons or certificates redeemable for cash, alcoholic beverages, tobacco products or non-WIC items, that are contingent upon the redemption of a WIC check;
21. NOT buy or sell a WIC check for cash;
22. NOT sell in exchange for a WIC check alcohol, an alcoholic beverage, a tobacco product or a non-WIC item;

23. NOT redeem WIC checks in whole or in part for cash, rain checks or other items of value or as a credit on accounts;
24. NOT provide foods in quantities greater than the quantities specified on WIC checks;
25. NOT charge participants (or their proxies) prices that are higher than prices charged to other customers;
26. NOT charge WIC participants more than the current shelf price for an approved food;
27. NOT charge for approved food not received by a WIC participant;
28. NOT provide cash for returned WIC-approved food;
29. NOT charge or collect sales tax on WIC food purchases;
30. NOT increase prices of approved foods to levels that would make the vendor ineligible for authorization;
31. NOT claim reimbursement for the sale of a specific approved food in an amount that exceeds the vendor's store's documented inventory of that food for the same period of time;
32. NOT receive or redeem a WIC check for a vendor that is not a WIC-authorized vendor;
33. NOT redeem a WIC check for food purchased or received at an address other than the store address that appears on the authorized vendor's application;
34. NOT deposit a WIC check into a bank account other than the authorized vendor's bank account;
35. NOT contact, question, or seek restitution from participants, parents, caretakers, or proxies for WIC checks not paid or partially paid by the WIC Program;
36. NOT provide refunds or permit exchanges for authorized supplemental foods obtained with WIC checks, except for exchanges of an identical authorized supplemental food item when the original item is defective, spoiled or has exceeded its "sell by" "best if used by" or other date limiting the sale or use of the food item. Identical authorized supplemental food item means the exact brand and size as the original item obtained and returned by the participant;
37. NOT accept WIC checks before the first day to use or after the last day to use as stated on the WIC check;
38. NOT charge more than the maximum price for a standardized combination of foods as compared to the prices charged by other WIC vendors in the same vendor peer group;
39. NOT provide any incentive items to participants if the store has been determined to be an above-50-percent vendor;

Files, signs and recordkeeping. The vendor shall

40. Keep on file in the above store, a copy of the *WIC Vendor Manual*, this agreement, the approved application, stock price surveys, updates and amendments received from the State WIC Office;
41. Display a sign, sticker, or other evidence of authorization as a WIC vendor, furnished by the WIC Program, in an area visible to WIC participants;
42. Have the current list of approved WIC foods readily accessible to all cashiers;
43. Provide in a timely fashion all information requested during the contract period by the State WIC Office or its designee;
44. Maintain for a period of three years and provide access to paper or electronic records used for state or federal tax reporting purposes and other Program records including: inventory records showing all purchases,

wholesale and retail, in the form of invoices that identify the quantity and prices of specific WIC foods, books of account, shelf price records and other pertinent records;

45. Make available upon the request of representatives of the State WIC Office, or the USDA, or the Comptroller General of the United States all WIC checks in the vendor's possession and all required inventory and accounting records for inspection and audit;
46. Allow authorized personnel to monitor the store for compliance with WIC rules and provide access to WIC checks available in the grocery store or pharmacy at the time of the visit;
47. Allow authorized personnel to audit the vendor's inventory and records as a monitoring procedure to determine whether the vendor has claimed reimbursement for the sale of WIC foods in an amount that exceeds the vendor's documented inventory for that food for the same time period;

Vendor stamp and WIC logo. The vendor shall

48. Ensure that the WIC vendor stamp is used only for the purpose and in the manner authorized by the terms of this agreement, state and federal WIC Program rules as stated in regulations, policies and applicable laws.
49. If the vendor's bank applies the vendor's vendor stamp number electronically to vendor's WIC checks during processing, ensure that each check is correctly associated with the vendor.
50. Keep the vendor stamp in a safe place and shall report loss of the vendor stamp to the State WIC Office within 2 days of the loss;
51. Ensure that the vendor stamp is not duplicated, and that a duplicated stamp is not used;
52. Use the acronym "WIC" or the WIC logo only to identify the vendor as an authorized vendor and to identify approved foods in the store. No vendor may include the acronym "WIC" in the name under which the vendor is registered in the WIC Program or in the name under which the vendor does business. No vendor may include the WIC logo, or close facsimiles of the WIC logo, in total or in part, name under which the vendor is registered in the WIC Program or in the name under which the vendor does business;

Duty to notify. The vendor shall

53. Notify the State WIC Office at least 15 days prior to the change of location, name, address, management, corporate officers and majority stockholders;
54. Notify the State WIC Office or local WIC project upon termination of this agreement due to voluntary termination, change of ownership, or when the store ceases operation and to return the stamp following termination or disqualification from the WIC Program. Return the vendor stamp to the State WIC Office within 15 days following a change of ownership, upon closing the store, or upon disqualification;
55. Immediately provide written notification of any change in vendor ownership, store location, or cessation of operations. WIC business shall cease and WIC checks shall be deposited promptly. This agreement shall become null and void on the date a change of ownership occurs;
56. Using the vendor/participant complaint form, notify the state or local WIC project of any instance where a participant fails to comply with WIC requirements;

Training. The vendor shall

57. Participate or require designee to participate in annual training in WIC Program requirements and other training sessions when required to do so;
58. Ensure that all employees who accept and deposit checks are trained in check processing procedures;

Responsibility. The vendor shall

59. Be fully responsible for violations of this agreement committed by its owners, officers, managers, employees, agents, representatives or other individuals who directly or indirectly participate in the vendor's operations;
60. Implement a corrective action plan if imposed by the State WIC Office;
61. Comply with applicable federal, state and local health protection laws and ordinances;

Checks, deposits and claims. The vendor shall

62. Accept WIC checks only from participants or authorized proxies as indicated with a name and signature on the WIC Identification;
63. Ensure that the purchase price and date of use is entered in ink for the WIC approved foods actually purchased before the WIC check is signed and that the signature of the participant or proxy is obtained and verified in the presence of the cashier. In EBT systems, a Personal Identification Number (PIN) may be used in lieu of a signature;
64. Deposit WIC checks for payment within 45 days of the first date to use;
65. Pay any claim assessed by the State WIC Office when the State has established a claim in the amount of full purchase price of each WIC check that contained a vendor overcharge or other error, which has not been justified or corrected. In collecting a claim, the State WIC Office may offset the claim against current and subsequent amounts to be paid to the vendor and may sanction the vendor for overcharges or other errors in accordance with Section C of the Agreement; and,
66. Submit a refund or justification for overcharges to the State WIC Office within thirty (30) days of written notification.

B. The WIC PROGRAM Agrees To:

1. Make payment to the vendor for actual retail costs for WIC checks accepted and redeemed in compliance with the conditions contained in Section A. above, Wis. Admin. Code ch. DHS 149 and the *WIC Vendor Manual*. Checks deposited must be within the maximum dollar value established for the check type based on reported shelf prices, redeemed values and reject percentages;
2. Provide an opportunity for vendors to receive payment for checks that exceed the maximum dollar value or other processing errors by re-presenting (re-depositing) the check or electronic payments through ACH debit or ACH credit processes;
3. Provide the vendor with instructions for redeeming WIC checks and for obtaining assistance;
4. Provide a WIC vendor stamp for use in redeeming WIC checks. The WIC Program may allow the vendor's bank to apply a vendor stamp number electronically in lieu of an ink vendor stamp;
5. Provide annual training for the vendor; and,
6. Not discriminate on the basis of race, color, national origin, sex, age, or disability as prohibited by Federal law and U.S. Department of Agriculture policy.

NOTE: To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, S.W., Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). "USDA is an equal opportunity provider and employer."

C. Sanctions for Fraud or Abuse

1. The State WIC Office shall permanently disqualify a vendor from participation in the WIC Program if the vendor is convicted of providing cash in exchange for a WIC check or of selling a firearm, ammunition, explosive or controlled substance in exchange for a WIC check. Disqualification of a vendor shall be effective upon mailing the notice of administrative action by the WIC Program to the vendor's address of record in the program. The State WIC Office may not impose a civil money penalty in lieu of a permanent disqualification.
2. The State WIC Office shall disqualify a vendor from participation in WIC for 6 years for:
 - (a) One incident of buying or selling a WIC check for cash; or
 - (b) One incident of selling in exchange for a WIC check a firearm, ammunition, an explosive, or a controlled substance as defined in 21 U.S.C. 802.
3. The State WIC Office shall disqualify a vendor from participation in WIC for 3 years for:
 - (a) One incident of selling in exchange for a WIC check alcohol, an alcoholic beverage or a tobacco product;
 - (b) Three or more incidents of claiming reimbursement for the sale of a specific approved food in an amount that exceeds the vendor's store's documented inventory of that food for the same period of time;
 - (c) Three or more incidents of any combination of:
 1. Intentionally or unintentionally charging WIC participants more for approved food than non-participants;
 2. Charging WIC participants more than the current shelf price for an approved food.
 - (d) Three or more incidents of receiving or redeeming a WIC check outside of authorized channels, including but not limited to receiving or redeeming a WIC check for a vendor that is not an authorized vendor; redeeming a WIC check for food purchased at an address other than the store address that appears on the authorized vendor's application; or depositing a WIC check into a bank account other than the authorized vendor's bank account;
 - (e) Three or more incidents of charging for approved food not received by a WIC participant; or
 - (f) Three or more incidents of providing in exchange for a WIC check credit or non-food items other than alcohol, an alcoholic beverage, a tobacco product, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802.
4. The State WIC Office shall disqualify a vendor from participation in WIC for one year for any one of the following:
 - (a) Three or more incidents of providing unapproved foods in exchange for a WIC check.
 - (b) Three or more incidents of charging for approved food provided in excess of food listed on the WIC check.
5. When a vendor who previously has received a mandatory disqualification receives a second subsequent mandatory disqualification, the State WIC Office impose double period of disqualification.
6. When a vendor who previously has received two or more mandatory disqualifications receives another subsequent mandatory disqualification, the State WIC Office shall double the third period of disqualification and all subsequent periods of disqualification.
7. For any of the following violations, the State WIC Office may send a warning letter to the vendor, require training for designated vendor personnel, require implementation of a corrective action plan, require payment of a forfeiture, require recoupment, disqualify the vendor for no more than one year, or impose any combination of these sanctions.
 - (a) Providing cash for returned approved food;
 - (b) Failing to implement a corrective action plan imposed by the State WIC Office;
 - (c) Failing to meet the minimum requirements for authorization listed in Wis. Adm. Code § DHS 149.04(3); or
 - (d) Providing false information to the State WIC Office.
 - (e) One or two incidents of violations stated in 3 (b) – (f) and 4 (a) and (b).

8. For any of the following violations, the State WIC Office may send a warning letter to the vendor, require training for designated vendor personnel, require implementation of a corrective action plan, require payment of a forfeiture, require recoupment, disqualify the vendor for no more than six months, or impose any combination of these sanctions.
 - (a) Failing to comply with check processing and redemption procedures described in the vendor agreement;
 - (b) Failing to display prices for approved foods on the foods, on the shelves in proximity to the foods, or in the immediate area where the foods are kept in the customer area of the store;
 - (c) Stocking or selling approved foods that were expired or otherwise not fresh;
 - (d) Failing to complete training as required by the State WIC Office or a local project;
 - (e) Failing to comply with applicable health protection laws and ordinances;
 - (f) Failing to maintain or provide the State WIC Office with required information on a timely basis;
 - (g) Duplicating or using a duplicate vendor stamp;
 - (h) Failing to notify the local project in the project service area in which the vendor is located of an instance in which a participant has failed to comply with WIC Program requirements; or
 - (i) Failing to provide to WIC participants or proxies the same courtesies as offered to other customers.
9. Except where prohibited by federal regulation, if the State WIC Office determines in its sole discretion that disqualification of the authorized vendor would result in inadequate participant access, the State WIC Office shall impose a civil money penalty in lieu of disqualification. If a vendor does not pay, only partially pays, or fails to timely pay a civil money penalty assessed in lieu of disqualification, the State WIC office shall disqualify the vendor for the length of the disqualification corresponding to the violation for which the civil money penalty was assessed.
10. The State WIC Office may recoup excess payments made to the authorized vendor resulting from the vendor's violation of this chapter. If a recoupment is imposed, the State WIC Office shall also impose an enforcement assessment of 50 percent of the amount of the recoupment imposed.
11. The State WIC Office shall disqualify from the WIC Program a vendor who is disqualified from SNAP.
12. The State WIC Office may impose a civil money penalty in lieu of a disqualification if the State WIC Office determines that disqualification would result in inadequate participant access.
13. The State WIC Office may disqualify a vendor who has had a civil money penalty for hardship by SNAP.
14. Voluntary withdrawal of a vendor and non-renewal of the vendor agreement as alternatives to disqualifications will not be accepted, and will be entered on the record.
15. Violations as outlined in Wis. Admin. Code ch. DHS 149 and summarized in the *WIC Vendor Manual* may result in termination or disqualification, following provision to the vendor of reasonable notice and opportunity for a hearing.
16. Violations of Wis. Stat. § 253.06 or conditions of eligibility in Wis. Admin. Code ch. DHS 149 may result in termination or disqualification, following provision to the vendor of reasonable notice and opportunity for a hearing.
17. Violations of Wis. Stat. § 253.06 may result in a forfeiture of not less than \$10 nor more than \$1000, recoupment and an enforcement assessment of 50% of the amount imposed, following provision to the vendor of reasonable notice and opportunity for a hearing.
18. The State WIC Office will determine the action to be taken whenever vendor abuse, fraud, or administrative violations are discovered. If the State WIC Office determines that the vendor has violated applicable rules or regulations, the vendor will be disqualified from participation in the WIC Program for a period of no more than the maximum period allowed under 7 CFR § 246. To obtain re-authorization, vendors who are disqualified must re-apply and meet all current requirements for authorization.

19. If an individual, partnership, corporation or other business structure is convicted of a criminal offense involving WIC, SNAP, or any other Program operated by the Food and Nutrition Service of the U.S. Department of Agriculture, all grocery stores and pharmacies wholly or partially owned or managed by the convicted individual, partnership, corporation or other business structure, or by a partner of a convicted partnership or an officer, director or majority stockholder of a convicted corporation, shall be terminated from WIC vendor authorization and shall be disqualified from future WIC vendor authorization for the maximum disqualification period allowed by federal law. This termination and disqualification shall occur whether or not the grocery store or pharmacy was the location at which the crime occurred, and regardless of any penalty imposed upon the convicted party by the court of conviction.
20. State WIC office sanctions for program abuse shall not be construed as excluding or replacing any criminal or civil sanctions or other remedies that may be applicable under any federal and state statute or local ordinance. A vendor who commits fraud or abuse of the program is liable to prosecution under applicable federal, state or local laws.
21. The State WIC Program will, where appropriate, refer vendors who abuse the program to federal, state and local authorities for prosecution.

D. Vendor Appeals

1. Vendor appeals are governed by this section and 7 CFR § 246.18, Wis. Stat. 227 Subch. III, and Wis. Admin. Code ch. HA 1. A vendor may file a written request for a chapter 227 administrative review of an adverse action taken by the State WIC Office.
2. As an alternative to a chapter 227 hearing, a vendor may request from the department an abbreviated review for any of the following actions taken by the State WIC Office:
 - (a) Denial of authorization based on a SNAP disqualification or civil money penalty in lieu of disqualification from SNAP;
 - (b) Denial of authorization based on vendor selection criteria if the basis of the denial is a WIC vendor sanction or a SNAP withdrawal of authorization or disqualification; or
 - (c) Termination of the agreement because of a change in ownership or location or cessation of operations.
3. The following actions are not subject to appeal:
 - (a) Expiration of a vendor's authorization;
 - (b) The validity or appropriateness of the State WIC Office's selection criteria;
 - (c) The validity or appropriateness of the State WIC Office's vendor peer group criteria and the criteria used to identify vendors that are above-50-percent vendors or comparable to above-50-percent vendors;
 - (d) The validity or appropriateness of the State WIC Office's participant access criteria and the State WIC Office's determination regarding participant access;
 - (e) The State WIC Office's determination whether a vendor had an effective policy and program in effect to prevent trafficking and whether the vendor owner was involved in the conduct of the violation;
 - (f) Denial of authorization if the State WIC Office vendor authorization is subject to procurement procedures applicable to the state agency;
 - (g) Disputes regarding check payments and vendor claims (other than the opportunity as permitted by 7 CFR § 246.12(k)(3) to justify or correct a vendor overcharge or other error); or
 - (h) Disqualification of an authorized vendor as a result of disqualification from SNAP.
4. The State WIC Office shall begin an adverse action, including disqualification or imposition of a civil money penalty, forfeiture, recoupment or enforcement assessment by serving upon the vendor a written notice of the action by certified mail or personal delivery at least 15 days in advance of the effective date of the action described in the notice.
5. Requests for a hearing shall be in writing and shall be filed within 15 days after service of notice and adverse action. A request shall be considered filed on the date of actual receipt by the agency, or the date of the postmark, whichever is earlier. A request filed by facsimile is complete upon transmission.
6. Requests for an administrative hearing shall be filed with the department of administration's division of hearings and appeals. Requests for abbreviated review shall be filed with the State WIC Office.

7. The decision-maker's review decision shall constitute the agency's final decision. Review decisions shall include notice of a vendor's right to appeal the determination to circuit court.
8. If the department finds that public health, safety or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, summary suspension of WIC authorization may be ordered, pending proceedings for revocation or other action. Such proceedings shall be promptly instituted and determined.

E. General Conditions

1. The State WIC Office will terminate the agreement if it identifies a conflict of interest, as defined by applicable State laws, regulations and policies, between the vendor and the State WIC Office or its local projects.
2. The State WIC Office reserves the right to amend this agreement upon thirty (30) days' notice.
3. Neither party has any obligation to renew this agreement.

This agreement, the rules and regulations referenced within, together with the *WIC Vendor Manual* contain all terms and conditions agreed upon by the parties. The vendor agrees that the vendor has read, understands, and will comply with the terms in this agreement. The vendor also agrees to comply with conditions stated in: 7 CFR § 246, Wis. Admin. Code ch. DHS 149, the completed application form, stock price surveys, the *WIC Vendor Manual*, list of approved foods, memos, other formal instructions and terms of participation issued to vendors by the State WIC Office.

The undersigned represents that he/she is an owner or has other legal authority to obligate the vendor.

For initial applicants, this Agreement is effective when training is completed and the *WIC Vendor Manual* and authorized WIC vendor stamp are provided. For vendors making reapplication, this Agreement is effective on November 1, 2010 or the date signed by the Department, whichever is later.

 Print Name and Title of Vendor, or
 Person with legal authority to obligate Vendor

SIGNATURE

 Date Signed

The undersigned has authority to sign this Agreement on behalf of the Wisconsin WIC Program:

Patti J. Hauser, Wisconsin WIC Director

 Name and Title of person with authority to sign

SIGNATURE – Authorized Person

 Date Signed