

VENDOR AGREEMENT

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES THE SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC)

Vendor Number: _____ **SNAP Number:** _____ **County:** _____
Name of Vendor: _____
Address: _____
City: _____ **State:** _____ **Zip Code:** _____
Email Address: _____ **Telephone Number:** _____

This Agreement is for the period of XXXXXX to XXXXXX. The Vendor named above is authorized to participate in the West Virginia Special Supplemental Nutrition Program for Women, Infants and Children under administration of the West Virginia Department of Health and Human Resources subject to the following terms and conditions:

A. The WV WIC Program Agrees To The Following:

1. The WV WIC Program will accept applications and authorize Vendors to maximize Program benefits while ensuring participant access, statewide coverage and fair treatment.
2. The WV WIC Program will use the same standards for vendor application and participation in the WIC Program for everyone regardless of race, color, national origin, age, sex, or disability. The State Agency will compile data, maintain records and submit reports as required to permit effective enforcement of the nondiscrimination laws.
3. The WV WIC Program will provide Vendors with training and guidance regarding Program requirements annually and once every three (3) years, or, on a more frequent basis as indicated by error patterns or violations. Consideration will be given to Vendor requests for additional training at the discretion of the WV WIC Program.
4. The WV WIC Program will ensure that an account is maintained with sufficient funds to cover daily banking activity.
5. The WV WIC Program will establish and apply limits on the purchase price and/or amount of reimbursement allowed for WIC food items and Vendor redemption requests. In setting allowable reimbursement levels, the WV WIC Program must consider participant access in a geographic area and may include a factor to reflect fluctuations in wholesale prices.
6. The WV WIC Program will provide Vendors with WV WIC Program materials including but not limited to the WIC Window decal, The WIC Approved Shopping Guide, shelf labels, the Vendor Handbook and any Vendor training materials.
7. The WV WIC Program will provide technical assistance and monitoring to ensure Vendors are operating in compliance with WV WIC Program requirements.
8. The WV WIC Program will maintain a fair hearings process to hear appeals related to denial of application to become an authorized Vendor, any adverse action which affects participation during the term of the Vendor Agreement and Vendor disqualification.
9. The WV WIC Program will notify Vendor in writing via email or regular mail of changes to Federal or State statutes, regulations, policies, or procedures governing the WV WIC Program at least sixty (60) days prior to implementation. The Vendor must comply with the Vendor Agreement and Federal and State statutes, regulations, policies, and procedures governing the Program, including any changes made during the Agreement period.

B. The Vendor Agrees To The Following:

Food Items and WIC Materials

10. Vendor shall carry the required minimum quantity and variety of food items per food category from the WV WIC Approved Food List as determined by the WV WIC Program. Such food shall not be stale, spoiled, or remain available for purchase beyond the expiration date. Vendor shall maintain an inventory record (paper, electronic and/or digital) showing the availability of WV WIC Approved foods throughout the period that this Agreement is in effect.
11. Vendor shall order WIC approved infant formula only from the Manufacturers, Wholesalers, Distributors, and Retailers on the list provided annually by the WV WIC Program to ensure product integrity. The Vendor must notify the State Agency within 30 days, if their primary source of WIC Approved formula has changed from what was reported at the time of application or previously reported.
12. Vendor shall ensure prices on all WV WIC approved food items are clearly marked. Vendor shall maintain a record of shelf prices on WV WIC Approved Foods throughout the period that this Agreement is in effect.
13. Vendor shall remain price competitive based on Vendor's peer group and competitive price criteria throughout the period of this Agreement. Furthermore, Vendor shall not derive more than 50 percent of its total annual food sales revenue from eWIC transactions. A Vendor's failure to remain price competitive, or designation as an above-50-percent WIC Vendor, is cause for termination of the Vendor Agreement, even if actual payments to the vendor are within the maximum reimbursement amount.
14. Vendor shall provide suitable hours, visibly posted and adhered to, and environment for participant access.
15. Vendor shall use WV WIC Program materials as specified by the WV WIC Program, including but not limited to the WIC Window decal, which must be prominently displayed and seen from the outside of the store; the WIC Approved Shopping Guide, which must be easily accessible to cashiers at each register; and the Vendor Handbook and any Vendor training materials, all of which must be kept on-site and available for inspection upon request during any monitoring visit.

Training

16. Vendor, its manager(s) and/or authorized representative(s), shall attend interactive training concerning WV WIC Program requirements: 1) prior to or at time of initial authorization; 2) at least once every three (3) years when the Vendor Agreement is nearing expiration date; and 3) more frequently if the WV WIC Program deems it necessary. The WV WIC Program will have sole discretion to designate the date, time, and location of all interactive training although at least one alternative date shall be provided for the Vendor to attend such training.
17. The WV WIC Program must provide training annually to each authorized Vendor. At least one (1) Vendor representative must participate in this annual training. Annual vendor training may be provided in a variety of formats, including newsletters, videos, and interactive training. If annual training is provided by training video(s) or training newsletter, the State Agency will allow the Vendor thirty (30) days to view this material. The Vendor will be required to confirm in writing that annual training was provided.
18. Vendor shall inform and train cashiers and other staff regarding WV WIC Program requirements.
19. Vendor shall be accountable for any violations committed by its owners, officers, managers, agents, representatives, and employees, whether acting legally or illegally as well as with or without Vendor's knowledge.

Family Benefits

20. Vendor shall provide only WV WIC Approved Foods as specified on the WV WIC Approved Food List. Vendor shall provide this food in the size, form, brand, and quantities stated on the eWIC benefit card. This includes only providing the authorized infant formula, which the Vendor has obtained from sources included on the list described in Article 11 of this agreement to participants in exchange for eWIC benefits specifying infant formula.

21. Vendor may not provide refunds or permit exchanges for authorized supplemental foods obtained with the eWIC benefit card, except for the replacement of an identical authorized supplemental food item when the original authorized supplemental food 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. An identical authorized supplemental food item means the exact brand and size as the original authorized supplemental food item obtained and returned by the participant. Vendor understands that the WV WIC Program is not obligated to reimburse Vendor for benefits when substitutions have been made.
22. Vendor may not provide unauthorized food items or non-food items in exchange for eWIC benefits, nor permit any unauthorized product or service to be paid for with a eWIC benefit card.
23. Vendor shall not provide cash or credit (including rain-checks) for redemption of food benefits in addition to and/or in lieu of authorized food. Vendor shall not allow the eWIC benefit card to be used to pay on a charge account or due bill instead of providing the food listed on the WIC Approved Food List. Vendor understands that the WV WIC Program is not obligated to reimburse Vendor for benefits when such redemption is made.
24. Vendor shall not compel participants to buy store brands, to buy a lesser quantity than specified on the eWIC benefit card or compel participants to buy a lesser or more expensive brand, with the exception of milk which must be the least expensive brand due to State cost containment policies, as long as the selected food(s) is WV WIC approved and complies with the quantity and type of food(s) specified on the eWIC benefit card.
25. Vendor shall provide the supplemental food at the current shelf price or at less than the current shelf price charged to other customers. Vendor understands that any charge for an item of more than the shelf price made by any agent, representative, employee or equipment of the Vendor, whether intentional or unintentional, will be considered an overcharge. The purchase price and requested reimbursement for WIC purchases must include only the authorized supplemental food items actually provided to the WIC customer.
26. Vendor shall accept eWIC benefit cards only from participants, parents or caretakers of infant and child participants, or authorized proxies during their specified benefit time period. Vendor shall not require identification other than the eWIC card and Personal Identification Number (PIN). Keep all eWIC cardholder information confidential.
27. Vendor shall offer the WV WIC Program and participants, parents or caretakers of infant and child participants, or authorized proxies the same courtesies as offered to other customers. Vendor shall offer a sales receipt (paper, digital, or electronic), honor manufacturer coupons, store reward/loyalty cards, extend a sale or any other promotional or discount offers to the WV WIC Program and participants as offered or extended to other customers.
28. An eWIC receipt, at a minimum must: show the last four digits of the card number, store name and address, the date and time of the transaction, purchased food items including quantity, description and unit of measure, unit cost, total purchase price, benefit expiration date, and the remaining balance of available benefits.
29. Vendor shall not collect sales tax on WV WIC food purchases. The only exception to this policy is overage of the fruit and vegetable benefit. The participant will be responsible for any dollar amount over the value of the fruit and vegetable benefit. The vendor must allow the participant, authorized representative or proxy to pay the difference when a fruit and vegetable purchase exceeds the value of eWIC benefits (also known as a split tender transaction).
30. Vendor shall not charge participants, parents or caretakers of infant and child participants, or authorized proxies' money for food purchased with the eWIC benefit card. Acceptance of eWIC for payment of purchase of WV WIC approved food constitutes payment in full to the Vendor. The only exception to this policy regards an overage of a fruit and vegetable benefit. The participant will be responsible for any dollar amount over the value of the fruit and vegetable benefit. The vendor must allow the participant, authorized representative or proxy to pay the difference when a fruit and vegetable purchase exceeds the value of eWIC benefits (also known as a split tender transaction).
31. Vendor shall not provide incentive items, vendor discounts, coupons or other promotions to WIC customers that are not offered to non-WIC customers. This includes any food, merchandise or service provided by a Vendor to attract WIC customers or encourage customer loyalty.

32. Cashiers can manually enter the payment card number (PAN) if they identify the eWIC benefit card cannot be read by their point of sale (POS) system. Under no circumstances can the 16 digit PAN be manually entered without the eWIC cardholder presenting the actual eWIC benefit card and entering a PIN. Cashiers should encourage the eWIC cardholder to contact the local agency so that the benefit card can be replaced. If further help is needed pertaining to this issue, ask for management assistance.

Food Delivery System

33. Vendor must be WIC EBT capable with use of a Point of Sale (POS) device, integrated system or mobile application. Transactions may be supported through in-lane procedures, self-checkout, scan and go, curbside pickup and online ordering with curbside or in-store payment and pickup. Regardless of checkout method, personnel familiar with WIC transactions must be present for assistance, and customer must manually enter their Personal Identification Number (PIN) when completing the payment.
34. Vendor must comply with the Electronic Benefits Transfer (EBT) operating rules, standards and technical requirements of the WV WIC EBT system, and United States of Agriculture (USDA), Food and Nutrition Service (FNS) regulations.
35. Vendor shall not charge the WV WIC Program any third-party commercial processing costs and fees incurred from Electronic Benefits Transfer (EBT) multi-function equipment. Commercial transaction processing costs and fees imposed by a third-party processor which the Vendor elects to use to connect to the EBT system of the WV WIC Program shall be the responsibility of the Vendor. The WV WIC Program shall not pay for ongoing maintenance, processing fees or operational costs for vendor integrated systems to support WIC EBT.
36. The WV WIC Program will not pay or reimburse the Vendor for interchange fees related to WIC EBT transactions.
37. Point of Sale (POS) terminals used to support the WIC Program and participant access will be deployed in accordance with the minimum lane coverage provisions of §246.12(z)(2). At its discretion, on a case-by-case basis, the WV WIC Program may pay the ongoing maintenance, processing fees or operational costs, as outlined in the WV WIC third party processor contract, of POS terminals utilized solely for WIC transactions, or, multi-function POS terminals at Vendor locations necessary for participant access. Any costs shared by the WV WIC Program will be proportional to the POS terminal usage for the WIC Program. The WV WIC Program may remove excess terminals if actual redemption activity warrants a reduction consistent with the redemption levels outlined in §246.12(z)(2)(i) and (z)(2)(ii):

- Class 1 and Class 2 stores (Superstores and Supermarkets)

One POS terminal for every \$11,000 in monthly WIC redemption up to a total of four POS terminals, or the number of lanes in the location; whichever is less. At a minimum, terminals shall be installed in monthly WIC redemption threshold increments as follows: one terminal for \$0 to \$11,000; two terminals for \$11,001 to \$22,000; three terminals for \$22,001 to \$33,000; and four terminals for \$33,001 and above.

- All other Vendors

One POS terminal for every \$8,000 in monthly redemption up to a total of four POS terminals, or the number of lanes in the location; whichever is less. At a minimum, terminals shall be installed in monthly WIC redemption thresholds as follows: one terminal for \$0 to \$8,000; two terminals for \$8,001 to \$16,000; three terminals for \$16,001 to \$24,000; and four terminals for \$24,001 and above.

The monthly redemption levels used for the installation formula shall be the average redemptions based on a period of up to 12 months of prior redemption.

38. Vendor must return state issued POS terminals within thirty (30) days when a WIC Vendor Agreement is terminated. The WV WIC Program will provide a pre-paid return shipping label.
39. Vendor shall apply the WV WIC Approved Product List (APL) to their integrated processing systems when retrieved, and no later than within 48 hours of the APL file create date and time as recorded in the APL file header record in accordance with provisions of Section 11.5 of the FNS Operating Rules.

Payment of Redeemed Food Benefits

40. The WV WIC Program may make price adjustments to the purchase price on benefits or redemption requests submitted by the Vendor to ensure compliance with the price limitations applicable to the Vendor's peer group and competitive price criteria.
41. The WV WIC Program may deny payment for improperly transacted eWIC purchases or may initiate a claim for payments already made on improperly redeemed eWIC purchases. When the WV WIC Program determines the Vendor has committed a violation which affects the payment to the Vendor, the WV WIC Program will delay payment or establish a claim. The WV WIC Program may delay payment or establish a claim in the amount of the full purchase price of each transaction that contained the Vendor overcharge or other error. The WV WIC Program will provide an opportunity for the Vendor to justify or correct an overcharge or error even though the Vendor must pay any claim assessed by the WV WIC Program. In collecting a claim, the WV WIC Program may offset the claim against current or subsequent amounts to be paid to the Vendor. In addition to denying payment or assessing a claim, the WV WIC Program may sanction the Vendor for overcharges or other errors in accordance with the WV WIC Sanction Policy and Listing.
42. Vendor shall notify the WV WIC Program of any out-of-balance discrepancy or transaction that is erroneously handled, or is believed to be erroneously handled, by the processing system within ten (10) business days from the original transaction date. Merchant shall supply the WV WIC Program with any supporting documentation upon request. Failure to notify the WV WIC Program within such ten (10) business day's period waives any right to an adjustment. In addition, the WV WIC Program may initiate adjustments where a WIC participant submits a substantiated claim within ninety (90) calendar days of the date of a transaction or where other system errors have been identified. Out of balance discrepancies are between the Vendor and WV WIC Program, and are not client or retailer adjustments that must comply with the timeframes as specified in the federal regulations.
43. Vendor shall notify the WV WIC Program promptly of any erroneously settled funds to Vendor's account and repay such erroneously settled funds to the WV WIC Program within ten (10) days after its discovery of the erroneous settlement.
44. Vendor shall not seek any contribution from participant, parent or caretaker of infant and child participants, or authorized proxies on a valid purchase when the purchase amount exceeds the established maximum allowable reimbursement level. Nor may Vendor refuse acceptance of the eWIC benefit card or restrict quantity or type of food being purchased as long as the foods selected are WV WIC approved and meet with the specific food message on the eWIC benefit card.
45. Vendor may not seek restitution from participants, parents or caretakers of infant and child participants, or authorized proxies for eWIC purchases for which the WV WIC Program has denied payment or provided partial payment. WV WIC purchases are conditional payment instruments, which must meet specific requirements for payment. All payment issues are strictly between the Vendor and the WV WIC Program.
46. Vendor shall permit the WV WIC Program to transfer reimbursements by electronic funds transfer into Vendor's designated bank account.

Routine Monitoring

47. Vendor understands that it may be monitored by the WV WIC Program and/or the USDA/FNS for compliance with WV WIC Program requirements. That monitoring includes, but is not limited to, the Program's authority to conduct covert compliance purchases to determine improper Vendor practices.
48. The Vendor must maintain inventory records (paper, electronic or digital) used for Federal tax reporting purposes and other records the State Agency may require throughout the course of the Vendor Agreement for a period of three (3) years. Upon request, the Vendor must make available to representatives of the State Agency, USDA, and the Comptroller General of the United States, at any reasonable time and place for inspection and audit all Program related records (paper, electronic or digital).
49. During a monitoring visit or at any other time, Vendor shall provide the WV WIC Program with inventory reports. Reports must demonstrate correct shelf prices and stock varieties and amounts required for Program participation, shelf price records and wholesale purchase invoices throughout the existing Agreement period which details the list of WV WIC food items purchased by Vendor, and access to all of Vendor's WV WIC Program related records.
50. Vendor shall provide access to eWIC redemptions negotiated the day of the monitoring visit at the request of the

reviewer.

51. The Vendor must maintain and make available purchasing records to the WV WIC Program within 21 calendar days of a written request from the State Agency. The purchasing records (paper, electronic, and/or digital) must show the source and date of purchase of all WIC Approved formulas and foods.

Governing Regulations and Policies

52. Vendor shall comply with federal and state civil rights legislation and regulations.
53. A Vendor who commits fraud or abuse of the WV WIC Program is liable for prosecution under applicable federal, state or local laws. Vendors who have willfully misapplied, stolen or fraudulently obtained WV WIC Program funds shall be subject to a fine of not more than \$25,000 or imprisonment for not more than five years or both, if the value of 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.
54. Vendor understands the WV WIC Program shall refer Vendors who abuse the Program to federal, state or local authorities for prosecution under applicable statutes, where appropriate.
55. Vendor understands the WV WIC Program will terminate the Agreement if the WV WIC Program identifies a conflict of interest, as defined by applicable State laws, regulations, and policies, between the Vendor and the WV WIC Program or its Local Agencies.
56. Vendor shall comply with the nondiscrimination provisions of the USDA's Regulations found at 7 C.F.R. parts 15, 15a and 15b.
57. Vendor shall comply with the Vendor Agreement, Federal and State statutes, regulations, policies, and procedures governing the Program, including any changes made during the Agreement period, and to the conditions specified in the WV WIC Vendor Handbook, incorporated herein by reference. Vendor agrees that it is subject to the sanctions mandated by USDA and the sanctions established by the WV WIC Program. Vendors shall be subject to the WV WIC Sanction Policy and Listing found in the WV WIC Vendor Handbook, incorporated herein by reference.

Vendor Agreement

58. Vendor understands that the WV WIC Program will immediately terminate the Agreement if it determines that the Vendor has provided false information in connection with its application for authorization.
59. Vendor understands that this Agreement shall not be modified by the Vendor in any manner and that any alterations made to the terms and conditions set forth herein shall be null and void and the terms, as originally set forth herein, shall remain in full force and effect.
60. Vendor understands that the 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. If the Vendor is disqualified, the WV WIC Program will terminate the Vendor's Agreement, and the Vendor will have to reapply for authorization after the disqualification period is over. The Vendor will be subject to the Vendor selection and limiting requirements in effect at the time of the reapplication.
61. Vendor shall notify the WV WIC Program of change in ownership or store location or cessation of operation. Vendor understands that authorization is non-transferable; if ownership changes, this Agreement shall be terminated. Vendor shall provide such notification in writing at least thirty (30) days in advance so that another Vendor may be authorized if deemed appropriate by the WV WIC Program. Vendor understands that the WV WIC Program is not obligated to authorize the new ownership. The WV WIC Program may permit Vendors to move short distances without terminating the Agreement, but the WV WIC Program has discretion to determine whether a change in location qualifies as a short distance, and whether a change in business structure constitutes a change in ownership.
62. Vendor understands that it must return its original signed Agreement for approval and acceptance by the WV WIC Program. Vendor Agreements may be mailed to the WV WIC Program, Vendor Management Unit or returned at the time the Vendor's representatives, agents and/or employees attend Vendor authorization training. Vendor shall be approved to accept eWIC benefits on the same day as authorization.

63. Vendor understands that it must notify the WV WIC Program of any changes, i.e., a decrease or increase in number of cash registers, which may affect an authorized WIC Vendor's peer group classification. The WV WIC Program may change the Vendor's peer group classification due to changes in methodology being used to determine classification or updated Vendor information.
64. Vendor understands that it must comply with the vendor selection criteria throughout the Agreement period, including any changes to the criteria. Failure by Vendor to meet these criteria will result in sanction assessment and/or termination of the Agreement. Using the current vendor selection criteria, the WV WIC Program may reassess the Vendor at any time during the Agreement period.
65. Vendor understands that the use of any USDA service mark, including the WIC acronym may not be used in a manner which states or implies that the Vendor itself is affiliated with or sponsored by the State Agency, USDA or WIC Program.

Vendor Sanctions and Appeals Process

66. Vendor shall have the right to appeal the WV WIC Program's decision pertaining to denial of application to become an authorized Vendor, disqualification or any other adverse action which affects participation during the period of the Vendor Agreement. All adverse actions which may be subject to administrative appeal are listed in the WV WIC Program's Fair Hearing Policy for Vendors located in the Vendor Handbook. All adverse actions not subject to administrative appeal are:
 - i. The validity or appropriateness of the State agency's vendor limiting criteria or vendor selection criteria for minimum variety and quantity of supplemental foods, business integrity, and current Supplemental Nutrition Assistance Program (SNAP) disqualification or civil money penalty for hardship (§246.12(g)(3));
 - ii. The validity or appropriateness of the State agency's selection criteria for competitive price, including, but not limited to, vendor peer group criteria and the criteria used to identify vendors that are above-50-percent vendors or comparable to above-50-percent vendors;
 - iii. The validity or appropriateness of the State agency's participant access criteria and the State agency's participant access determinations;
 - iv. The State agency's determination to include or exclude an infant formula manufacturer, wholesaler, distributor, or retailer from the list required pursuant to §246.12(g)(11)
 - v. The validity or appropriateness of the State agency's prohibition of incentive items and the State agency's denial of an above-50-percent vendor's request to provide an incentive item to customers pursuant to §246.12(h)(8)
 - vi. The State agency's determination whether to notify a vendor in writing when an investigation reveals an initial violation for which a pattern of violations must be established in order to impose a sanction, pursuant to §246.12(l)(3)
 - vii. The State agency's determination whether a vendor had an effective policy and program in effect to prevent trafficking and that the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation (§246.12(l)(1)(i)(B))
 - viii. Denial of authorization if the State agency's vendor authorization is subject to the procurement procedures applicable to the State agency
 - ix. The expiration of a vendor's agreement
 - x. Disputes regarding food instrument, EBT, or cash-value voucher payments and vendor claims (other than the opportunity to justify or correct a vendor overcharge or other error, as permitted by §246.12(k)(3))
67. Vendor understands the WV WIC Program may disqualify and/or sanction a Vendor for reasons of Program abuse as set forth in the WV WIC Vendor Handbook, WV WIC Sanction Policy and Listing, and this Agreement. Vendor further understands that the sanctions found in the WV WIC Sanction Policy and Listing have been structured in such a way as to take into account the relative severity and type of conduct listed. Vendor shall be familiar with those violations found in the WV WIC Vendor Handbook, Sanction Policy and Listing, and this Agreement to take appropriate measures in implementing safeguards to prevent their occurrence.
68. Vendor understands the sanctions found in WV WIC Sanction Policy and Listing **do not** take into account whether the violations represented Vendor policy, occurred with or without management knowledge, were the actions of an individual, agent, employee or representative who did not understand WV WIC Program rules, or if prior warning and an opportunity for correction was provided to the Vendor.

69. Payment of a Vendor claim does not absolve the Vendor for violations which give rise to sanctions whenever the Vendor violation meets the conditions set forth in the WV WIC Vendor Sanction Policy and Listing. Vendor further understands that the WV WIC Program considers certain violations, i.e. overcharge, trafficking, etc., to be of such serious nature to warrant disqualification at any level or degree of the violation.
70. Vendor understands that its disqualification from participating in the WV WIC Program may result in its disqualification from SNAP, and that this disqualification is not subject to administrative or judicial review under SNAP.
71. Vendor understands that its disqualification from participation in SNAP shall result in its disqualification from the WV WIC Program, unless, at its discretion, the WV WIC Program determines that such disqualification would result in inadequate participant access as defined by WV WIC Program policy. A Vendor's disqualification from the WV WIC Program as a result of disqualification from SNAP is not subject to administrative or judicial review under the WV WIC Program.
72. Vendor understands if SNAP imposes a civil money penalty in lieu of program disqualification, the WV WIC Program may impose a disqualification period equal to the length of SNAP's original proposed length of disqualification.
73. Vendor understands the provision of sanctions for WV WIC Program violations shall not be construed as excluding or replacing any additional penalties or sanctions available to WV WIC Program or any criminal or civil sanctions or other remedies that may be applicable under any federal or state statute or local ordinance.
74. Vendor understands a potentially hearable issue shall not be considered at a later hearing if this issue was: (a) not challenged at a previously offered opportunity; or, (b) challenged but then abandoned by the Vendor and/or representative; or, (c) challenged and a final decision was rendered.
75. In addition to claims collection, the Vendor may be sanctioned for Vendor violations in accordance with the WV WIC Program's sanction schedule. Sanctions may include administrative fines, disqualifications, and civil money penalties in lieu of disqualification. The WV WIC Program must notify a Vendor in writing when an investigation reveals an initial violation for which a pattern of occurrences must be established in order to impose a sanction, before another such incidence is documented, unless the WV WIC Program determines, in its discretion, on a case-by-case basis, that notifying the Vendor would compromise an investigation.
76. To ensure that civil money penalties (CMPs) are applied consistently and proportionately for violations of WV WIC Program regulations, the penalty will be calculated by Multiply the product from [paragraph \(I\)\(1\)\(x\)\(B\)](#) of this section by the number of months for which the store would have been disqualified. This is the amount of the civil money penalty, provided that the civil money penalty shall not exceed the maximum amount specified in [§ 3.91\(b\)\(3\)\(v\) of this title](#) for each violation. For a violation that warrants permanent disqualification, the amount of the civil money penalty shall be the maximum amount specified in [§ 3.91\(b\)\(3\)\(v\) of this title](#) for each violation. When during the course of a single investigation the State agency determines a vendor has committed multiple violations, the State agency must impose a CMP for each violation. The total amount of civil money penalties imposed for violations investigated as part of a single investigation may not exceed the amount specified in [§ 3.91\(b\)\(3\)\(v\) of this title](#) as the maximum penalty for violations occurring during a single investigation.
77. Vendor understands a Vendor resignation will not be accepted to avoid mandatory training, sanction point assessment, and/or disqualification. Vendor also understands that any sanctions assessed to the Vendor will remain with the Vendor throughout the period of the current Vendor Agreement and will be reinstated and be part of the Vendor's sanction record should Vendor resign and then regain authorization as a WV WIC Vendor within this aforementioned Agreement period.

General Conditions

78. Upon expiration of this Agreement, the Vendor may reapply for consideration for Vendor authorization. Vendor understands that renewal or reauthorization of Vendor status is not automatic.
79. Vendor understands neither the WV WIC Program nor the Vendor has an obligation to renew the Vendor Agreement.

80. This Agreement may be terminated by mutual agreement of all parties at any time.
81. The WV WIC Program shall provide the Vendor with not less than fifteen (15) days advance notice of the expiration date of the Vendor Agreement.
82. Except when a sanction action is pending, Vendor may terminate this Agreement at any time upon thirty (30) days written notice to the WV WIC Program. Failure to notify the WV WIC Program at least thirty (30) days prior to such termination could result in denial of any future application for participation by the Vendor.
83. Either the WV WIC Program or the Vendor may terminate the Agreement for cause after providing advance written notice of a period of not less than fifteen (15) days.
84. The WV WIC Program reserves the right to modify the terms and conditions of this Agreement at any time. When it desires to modify the terms and conditions of this Agreement, the WV WIC Program shall notify the Vendor, in writing, 60 days in advance of the effective date of the new Agreement. The term of the revised Agreement will be from the revised effective date through the revised expiration date of the original Agreement.
85. This Agreement shall be performed in accordance with the provisions of Title VII of the Civil Rights Act of 1964, current federal WIC Program regulations and/or WV WIC Program policies and regulations. Vendor shall acknowledge that Program participants may not be discriminated against based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA. The following Nondiscrimination Statement is provided for any person seeking to file a civil rights complaint.

Nondiscrimination Statement

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

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

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

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

This institution is an equal opportunity provider.

86. The Vendor hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendment Act of 2008 (42 U.S.C. 12131-12189) as implemented by Department of Justice regulations at (28 CFR Parts 35 and 36); Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." (August 11, 2000), all provisions required by the implementing regulations of the U.S. Department of Agriculture (7 CFR Part 15 et seq);

and FNS directives and guidelines to the effect that no person shall, on the ground of race, color, national origin, age, sex (including gender identity and sexual orientation), or disability, or reprisal or retaliation for prior civil rights activity be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity for which the Agency receives Federal financial assistance from FNS; and hereby gives assurance that it will immediately take measures necessary to effectuate this agreement.

By providing this assurance, the Vendor agrees to compile data, maintain records and submit records and reports as required to permit effective enforcement of the nondiscrimination laws, and to permit Department personnel during normal working hours to review and copy such records, books and accounts, access such facilities, and interview such personnel as needed to ascertain compliance with the non-discrimination laws. If there are any violations of this assurance, the Department of Agriculture shall have the right to seek judicial enforcement of this assurance.

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

This assurance is binding on the Vendor, its successors, transferees, and assignees as long as it receives assistance or retains possession of any assistance from the Department. The person or persons whose signatures appear below are authorized to sign this assurance on the behalf of the Vendor.

87. The Vendor shall immediately inform the State Agency of: a. Any conviction of a storeowner on a felony charge, b. Any investigation of a storeowner by SNAP, c. Any suspected or observed improper use of eWIC cards or Cash Value Benefits by a participant; and d. Any other circumstance impacting service to participants or the Program.
88. If any provision of this Vendor Agreement, WV WIC Vendor Handbook or Sanction Policy and Listing is adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of the Vendor Agreement, WV WIC Vendor Handbook, or Vendor Sanction Policy and Listing, but shall be confined in its operation to the provisions thereof directly involved in the controversy in which such judgment shall have been rendered, and the applicability of such provision to other persons or circumstances shall not be affected thereby.

VENDOR AGREEMENT

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES THE SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC)

Vendor Number:

SNAP Number:

County:

Name of Vendor:

Address:

City:

State:

Zip Code:

Email Address:

Telephone Number:

The undersigned representative for the Vendor specified on this Agreement, do hereby acknowledge that I have read the WV WIC Vendor Agreement and agree to the requirements as set forth by the WV WIC Program and this Vendor Agreement. I acknowledge that I or my designated representative(s) has attended Vendor Authorization Training. I have had sufficient opportunity to review and consider this Agreement, consult with legal counsel, and ask questions of WV WIC Program representatives regarding such requirements. I acknowledge that I have reviewed the WV WIC Vendor Handbook, Vendor Sanction Policy, and Vendor Sanction Listing and that I fully understand that violations of WV WIC Policy by employees, representatives, or agents of the above-named Vendor will result in disqualification from the WV WIC Program.

Vendor Representative: _____

Signature of Vendor Representative

_____ Date

WV WIC Representative: _____

Signature of WV WIC Program Representative

_____ Date

Effective: November 15, 2019