

MINNESOTA SPECIAL SUPPLEMENTAL PROGRAM
FOR WOMEN, INFANTS AND CHILDREN (WIC PROGRAM)

RETAIL FOOD VENDOR AGREEMENT

Effective Date:

This Retail Food Vendor Agreement (hereinafter Agreement) is entered into between

Name:

Address:

County:

(hereinafter Vendor), and the State of Minnesota, acting through its Department of Health, Community and Family Health Division, WIC Section (hereinafter State Agency). Vendor and State Agency agree that:

- I. The Vendor shall comply with Code of Federal Regulations, Title 7, Part 246, Minnesota Rules Chapter 4617, and applicable State and Federal statutes, policies and procedures, as amended. All terms used in this Agreement shall have the meanings given to them in Minnesota Rule 4617.0002.

- II. The Vendor shall maintain compliance with WIC vendor eligibility criteria as stated below.
 - A. The Vendor must at all times be licensed by all government entities, such as the city government or the Minnesota Commissioner of Agriculture, that require a license for the Vendor to be open to the public for business. This license must not have any restriction placed on it that would preclude the vendor from carrying the minimum stock of WIC foods specified in section II. C. below.
 - B. The Vendor must at all times be authorized by the United States Department of Agriculture SNAP Program to accept EBT benefits.
 - C. The Vendor must stock and have available for purchase at least the minimum authorized foods listed below:
 - (1) for vendors located in Anoka, Dakota, Hennepin or Ramsey counties:
 - (a) except as provided in section II(E) of this Agreement, 18 containers of milk-based powdered infant formula of the brand, size and level of iron fortification specified by the State Agency;
 - (b) 48 ounces of WIC-allowed plain, dry, infant cereal;

- (c) 15 gallons of unsweetened, unflavored, WIC-allowed fluid cow's milk in gallon or half-gallon containers in any combination of at least two of the following varieties:
 - (1) skim or nonfat;
 - (2) one percent milkfat; and
 - (3) two percent milkfat;
 - (d) six pounds of WIC-allowed domestic cheese in packages of at least one-half pound each, in any combination of at least three varieties;
 - (e) six one-dozen containers of WIC-allowed large fresh eggs;
 - (f) four packages in sizes up to 16 ounces of WIC-allowed dried legumes, which do not contain any added ingredients;
 - (g) 192 ounces of WIC-allowed canned beans or legumes, in any combination of at least three varieties;
 - (h) four containers in sizes up to 18 ounces of WIC-allowed peanut butter which does not contain any other food product such as jelly, jam or chocolate;
 - (i) 30 pounds of WIC-allowed fresh fruits and vegetables in at least seven varieties,
 - (j) 30 ounces of WIC-allowed canned fish;
 - (k) 18 containers of any combination of the following, as long as at least six containers are 100 percent citrus juice:
 - (1) 11.5- to 12-ounce containers of WIC-allowed pure and unsweetened frozen concentrate 100 percent juice; or
 - (2) 64-ounce containers of WIC-allowed pure and unsweetened 100 percent juice;
 - (l) 12 boxes or bags of whole grain WIC-allowed cereal in any combination of at least six varieties.
 - (m) 256 ounces of WIC-allowed baby food fruits and vegetables in at least three varieties of baby food fruits and three varieties of baby food vegetables; and
 - (n) five pounds of WIC-allowed whole grains, of at least three varieties.
- (2) for vendors located in all counties other than Anoka, Dakota, Hennepin or Ramsey counties:
- (a) except as provided in section II(E) of this Agreement, ten containers of milk-based powdered infant formula of the brand, size and level of iron fortification specified by the State Agency;

- (b) 24 ounces of WIC-allowed plain, dry, infant cereal;
- (c) ten gallons of unsweetened, unflavored, WIC-allowed fluid cow's milk in gallon or half-gallon containers in any combination of at least two of the following varieties:
 - (1) skim or nonfat;
 - (2) one percent milkfat; and
 - (3) two percent milkfat;
- (d) four pounds of WIC-allowed domestic cheese in packages of at least one-half pound each, in any combination of at least two varieties;
- (e) four one-dozen containers of WIC-allowed large fresh eggs;
- (f) three packages in sizes up to 16 ounces of WIC-allowed dried legumes, which do not contain any added ingredients;
- (g) 128 ounces of WIC-allowed canned beans or legumes, in any combination of at least three varieties;
- (h) three containers in sizes up to 18 ounces of WIC-allowed peanut butter which does not contain any other food product such as jelly, jam or chocolate;
- (i) 24 pounds of WIC-allowed fresh fruits and vegetables in at least five varieties,
- (j) 30 ounces of WIC-allowed canned fish;
- (k) 12 containers of any combination of the following, as long as at least four containers are 100 percent citrus juice:
 - (1) 11.5- to 12-ounce containers of WIC-allowed pure and unsweetened frozen concentrate 100 percent juice; or
 - (2) 64-ounce containers of WIC-allowed pure and unsweetened 100 percent juice;
- (l) nine boxes or bags of whole grain WIC-allowed cereal in any combination of at least five varieties;
- (m) 128 ounces of WIC-allowed baby food fruits and vegetables in at least two varieties of baby food fruits and two varieties of baby food vegetables; and
- (n) three pounds of WIC-allowed whole grains, of at least three varieties.

D. In determining the amounts and varieties of foods in stock and available for purchase, the Vendor will not include any expired or damaged foods or any food which originated from the Commodity Supplemental Food Program.

- E. If the Vendor has been authorized as a WIC retail food vendor for more than six months and, during the most recent six months for which data are available, has not redeemed any WIC food benefits for the infant formula specified in items 1 (a) or 2 (a), the Vendor does not need to maintain in stock and available for purchase that infant formula.
- F. The Vendor will operate at one business site, located at a fixed and permanent location.
- G. One or more of the controlling persons of the Vendor must at all times own or lease the real estate on which the Vendor is located. The Vendor shall maintain documentation showing that one or more controlling persons of the Vendor own or lease the real estate where the Vendor's business site is located, and shall provide this documentation to the State Agency within 30 days from the date of a request by the State Agency.
- H. The Vendor must inform and train cashiers and other staff on WIC program requirements. Employees who transact WIC food benefits for the Vendor must be able to demonstrate their ability to process WIC food benefits according to chapter 4617 of the Minnesota Rules.
- I. The Vendor must ensure that the price charged for each WIC-allowed food stocked by the Vendor is displayed for easy viewing or marked on the food. If the Vendor charges WIC customers less than the Vendor's usual and customary charge, the WIC customer price must be displayed for easy viewing or marked on the food.
- J. The Vendor must ensure that no controlling person of the Vendor and no spouse, child or parent of any controlling person of the Vendor:
 - (1) is employed by the Minnesota Department of Health in connection with the WIC program;
 - (2) is employed by a local agency in a capacity that allows the employee access to WIC food benefits; or
 - (3) has a direct or indirect financial interest in a local agency.
- K. The Vendor must generate and provide to each WIC customer the WIC transaction receipt.
- L. The Vendor must be open for business at least 40 hours each week and must be open during the business hours that the Vendor has reported to the State Agency.
- M. With the exception of the authorized foods in II(C)(1)(i) and 2(i), the Vendor shall be reimbursed no more than the maximum allowed reimbursement for each of the authorized foods specified in section II(C) of this Agreement, as calculated by the State Agency under guidelines set forth in 7 CFR 246.
- N. All signage with the WIC acronym must be approved by the State Agency before being displayed by the Vendor.

- III. The Vendor shall provide WIC-allowed foods to WIC customers in exchange for WIC food benefits. For each WIC food benefit transacted by the Vendor, the Vendor shall provide the WIC customer who has presented the WIC food benefit only the WIC-allowed foods specified on the WIC food benefit. The Vendor shall not provide unauthorized food.
- A. The Vendor shall not provide, in exchange for a WIC food benefit, any store credit (including rain checks), cash, non-food items, or food items other than WIC-allowed foods on the WIC food benefit.
 - B. The Vendor shall charge the WIC program only for WIC-allowed food received by a WIC customer. The Vendor shall not collect sales tax on WIC food purchases.
 - C. The Vendor shall not allow a WIC customer to return or exchange food bought with a WIC food benefit, unless the customer is exchanging expired or damaged food for the identical size and type of food and, in the case of infant formula, for infant formula of the identical brand, size, type, and level of iron fortification.
 - D. The Vendor shall not transact or redeem a WIC food benefit from any source other than a WIC customer. The Vendor shall not launder any WIC food benefit.
 - E. The Vendor shall not charge the WIC Program more money for an item than the Vendor's usual and customary charge to non-WIC customers for that item.
 - F. The Vendor shall not charge the WIC Program more than the Vendor's shelf price for the WIC-allowed food provided to the WIC customer at the time the Vendor transacts the WIC food benefit.
 - G. The Vendor shall not seek reimbursement from the WIC Program for the sale of a WIC-allowed food item which exceeds the Vendor's documented inventory for that food.
 - H. The Vendor shall not offer an incentive to a WIC customer for transacting a WIC food benefit at the Vendor's business site, and shall not advertise that the Vendor would provide such an incentive.
 - I. The Vendor shall not require that a WIC customer make a cash, credit or SNAP purchase in order to redeem a WIC food benefit.
 - J. The Vendor shall not require the purchase of a specific brand or type of WIC-allowed food when that specific brand or type of food is not specified on the WIC food benefit.
 - K. The Vendor shall accept manufacturer's coupons and the Vendor's store coupons for food purchased by a WIC customer.
 - L. The Vendor shall not provide a WIC customer any expired or damaged WIC-allowed food item.

- M. The Vendor shall not require a WIC customer to provide identification.
- N. For each WIC food benefit transacted by the Vendor, the Vendor shall ensure that the WIC food benefit is transacted at a check-out lane at the Vendor's business site.
- O. For a minimum of three years, the Vendor shall maintain, in chronological order: (1) documentation showing the dollar amount of all food sales by the Vendor; and (2) documentation, including receipts or invoices, showing all purchases by the Vendor while this Agreement is in effect of all WIC-allowed foods for which the Vendor transacted one or more WIC food benefits. All documentation required by this section shall specify the quantity, size, brand, and product name of each WIC-allowed food purchased by the Vendor, the date of purchase, the name and address of the entity from which the purchase was made, and the date of delivery to the Vendor. Within 15 business days of a request by the State Agency, the Vendor shall provide to the State Agency: (1) the documentation required by this section; and (2) the Vendor's inventory records relating to the inventory maintained during the two years before the State Agency's request.
- P. During normal business hours, the Vendor must have available for immediate review by WIC program representatives, at the Minnesota location indicated on the Vendor's most recent WIC application, the Vendor's original documentation, including receipts and invoices, reflecting all purchases of WIC-allowed food items by the Vendor during the most recent three months before a request by a WIC Program representative to review the documentation.
- Q. If a WIC customer requests one of the following products, the Vendor must ensure that a sufficient quantity of the product is in stock and available for purchase at the Vendor's location within one week of the WIC customer's request;
 - (1) an infant formula approved by the State Agency under part 4617.0171;
 - (2) WIC-allowed soy beverage;
 - (3) WIC-allowed tofu;
 - (4) WIC-allowed baby food meats;
 - (5) WIC-allowed frozen fruits and vegetables; and
 - (6) Other WIC-allowed products authorized under the provisions of the Code of Federal Regulations, title 7, part 246, as amended.

IV. The Vendor understands that:

- A. The State Agency is not liable for any bank fees incurred by the Vendor.
- B. The Vendor shall be reimbursed no more than the maximum allowed reimbursement for authorized foods, as described in section II (M) of this Agreement.
- C. The Vendor shall pay to the State Agency, within 30 days of a request by the State Agency, the amount of any overcharges paid by the State Agency to the Vendor, the amount paid by the State Agency to the Vendor in excess of the maximum price of the WIC allowed food calculated under section II (M) of this Agreement, the amount erroneously paid by the State Agency to the Vendor for a WIC food benefit, all money paid by the State Agency to the Vendor for food items not received by a WIC customer,

all money paid by the State Agency to the Vendor for products other than WIC-allowed foods, and all money paid by the State Agency to the Vendor for WIC food benefits transacted by the Vendor while there was not in effect a WIC vendor agreement for the Vendor. If the Vendor does not pay these amounts within 90 days of the initial request by the State Agency, then, in addition to any other sanction specified in this Agreement, the Vendor must pay interest to the State Agency computed in the same manner that interest on judgments is computed under Minnesota Statutes, section 549.09.

- D. The Vendor shall not seek reimbursement from any WIC customer for a WIC food benefit which has been only partially paid, for which the State Agency has requested reimbursement, or for any money paid by the Vendor to the State Agency under this Agreement.
 - E. The sanctions described in paragraph X of this Agreement shall be imposed regardless of whether a violation by the Vendor has resulted in the delay or denial of payment of WIC food benefits, reimbursement by the Vendor, or a request by the State Agency for the Vendor's reimbursement of monies paid.
 - F. The Vendor shall only purchase infant formula from the entities on the list maintained by the State Agency under section 17(h)(8)(A)(ix) of the Child Nutrition Act of 1966, codified at United States Code, title 42, section 1786(h)(8)(A)(ix), as amended.
 - G. The Vendor's annual revenue from WIC sales must not be greater than 50 percent of the Vendor's annual revenue from the sale of all food items.
- V. The Vendor shall comply with WIC Program nondiscrimination requirements.
- A. The Vendor shall comply with the nondiscrimination provisions of the United States Department of Agriculture regulations (Code of Federal Regulations, title 7, parts 15, 15a and 15b).
 - B. The Vendor shall not, on the basis of race, color, national origin, age, sex or handicap, exclude any person from participation in the WIC Program, deny any WIC benefits to any person, or subject any person to discrimination.
 - C. The Vendor shall offer each WIC customer the same courtesies offered to other customers.
- VI. The Vendor shall not provide the State Agency with any false or misleading material information. The Vendor shall not bribe or attempt to bribe a representative of the WIC Program.
- VII. The Vendor shall comply with requirements regarding change of vendor ownership, change of name, change of vendor location, cessation of operations, change in controlling persons, and business-related violations of cashiers or controlling persons.
- A. The Vendor shall submit to the State Agency a written notice of any change of vendor ownership, any change of name, any change of vendor location, and any cessation of

operations. This notice must be received by the State Agency before the effective date of the change.

- B. If there is a change of vendor ownership, a change of vendor location, or a cessation of the Vendor's operations, the State Agency will terminate this Agreement. The termination will be effective on the later of: 15 days after the State Agency mails written notice of termination; or the effective date of the change of ownership, change of location, or cessation of operations.
- C. The Vendor shall notify the State Agency of any change in controlling persons of the Vendor.
- D. The Vendor shall notify the State Agency of any business-related violation of any cashier or controlling person of the Vendor.

VIII. The Vendor shall comply with the WIC vendor management requirements.

- A. The Vendor shall comply with annual training requirements. The State Agency shall determine the content and format of the training. The format of the training shall be interactive at least once every three years. The Vendor shall ensure that:
 - (1) a representative of the Vendor completes WIC-approved training on the WIC program at least once every calendar year; and
 - (2) the representative who completes this training conveys all information presented during the training to all cashiers of the Vendor.
- B. Within one month of a request by the State Agency, the Vendor shall provide the State Agency with accurate and complete shelf price survey information in the format requested.
- C. If the State Agency requests it due to a violation of Minnesota Rules Chapter 4617, the Vendor shall display in proximity to each WIC-allowed food a current shelf label provided or approved by the State Agency which indicates that the food item is a WIC-allowed food.
- D. The Vendor shall allow the State Agency to monitor the Vendor for compliance with this Agreement. The Vendor shall allow representatives of the Minnesota Department of Health and representatives of the United States Department of Agriculture access to WIC food benefits that are present at the Vendor's business site on the day of an on-site monitoring visit and access to any cash register or other area of the Vendor's premises where WIC food benefits are transacted.

IX. The terms of the Agreement shall be as follows:

- A. This Agreement shall be effective on ----, and shall remain in effect until ----, unless the Vendor's authorization to transact WIC food benefits is terminated on an earlier date. The State Agency shall provide the Vendor with 15 days advance notice of the expiration of the Vendor's authorization to transact WIC food benefits. The expiration of the Vendor's authorization to transact WIC food benefits is not subject to appeal.
- B. Neither the State Agency nor the Vendor has an obligation to renew the Vendor's authorization to transact WIC food benefits.
- C. If the Vendor commits fraud or abuse of the WIC Program, then in addition to any other sanctions described in this Agreement, the Vendor is liable to prosecution under applicable federal, state or local laws.
 - (1) Under Minnesota law (Minnesota Statutes, section 393.07, subdivision 10 (2004)), if the Vendor buys WIC food benefits for cash or consideration other than eligible food, then the Vendor is guilty of theft and shall be subject to the sanctions authorized under Minnesota Statutes.
 - (2) Under federal law (42 U.S.C. § 1760(g) (2004)), if the Vendor willfully misapplies, steals, or fraudulently obtains WIC program funds, the Vendor shall be subject to the fines and penalties authorized under federal law.
- D. The Vendor's authorization to transact WIC food benefits shall cease if the Vendor is terminated or disqualified in accordance with sections VII(B) or X of this Agreement.
- E. This Agreement does not constitute a license or a property interest. If the Vendor wishes to continue to be authorized beyond the term of this Agreement, the Vendor must reapply for authorization. If the Vendor is disqualified, the State Agency will terminate this Agreement, and the Vendor must 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 State Agency's vendor selection criteria and any vendor limiting criteria in effect at the time of the reapplication.

X. The State Agency shall impose sanctions on the Vendor for noncompliance with one or more WIC Program requirements as contained in this Agreement.

- A. Permanent disqualification: The State Agency shall permanently disqualify the Vendor if any controlling person of the Vendor is criminally convicted of either:
 - (1) buying or selling one or more WIC food benefits for cash; or
 - (2) selling any firearms, ammunition, explosives, or controlled substances, as defined under the federal Controlled Substances Act, United States Code, title 21, section 802, clause (6), as amended, for one or more WIC food benefits.
- B. Six-year disqualification: Except as provided in sections X(O) and X(P) of this Agreement, the State Agency shall disqualify the Vendor for six years if the Vendor:

- (1) buys or sells one or more WIC food benefits for cash; or
 - (2) sells any firearms, ammunition, explosives, or controlled substances, as defined under the federal Controlled Substances Act, United States Code, title 21, section 802, clause (6), for one or more WIC food benefits.
- C. Providing alcohol or tobacco: Except as provided in sections X(O) and X(P) of this Agreement, the State Agency shall disqualify the Vendor for three years if the Vendor provides any alcohol, alcoholic beverage, or tobacco product in exchange for one or more WIC food benefits.
- D. Redeeming food benefits in excess of inventory: Except as provided in sections X(O) and X(P) of this Agreement, the State Agency shall disqualify the Vendor for three years if, on two occasions within any two-year period, the Vendor claims reimbursement for the sale of an amount of a specific supplemental food item during a specified period of time and the amount claimed exceeds the Vendor's documented inventory of that supplemental food item by at least 15 units for that period of time. The two occasions may be established during a single review of inventory records and may involve two different food items during the same period of time, two different food items during two different periods of time, or one food item during two different periods of time.
- E. Laundering WIC food benefits: Except as provided in sections X(O) and X(P) of this Agreement, the State Agency shall disqualify the Vendor for three years if, on two occasions within any two-year period, the Vendor launders one or more WIC food benefits.
- F. Providing credit or a nonfood item:
- (1) Except as provided in sections X(O), X(P) and X(S) of this Agreement, the State Agency shall disqualify the Vendor for three years if, twice within any two-year period, the Vendor provides credit, other than a rain check, or provides a nonfood item, other than alcohol, alcoholic beverage, tobacco product, cash, firearms, ammunition, explosives, or controlled substances, as defined under the federal Controlled Substances Act, United States Code, title 21, section 802, clause (6), as amended, in exchange for a WIC food benefit or benefit.
 - (2) Except as provided in sections X(O), X(P) and X(S) of this Agreement, the State Agency shall disqualify the Vendor for three years if, four times within any two-year period, the Vendor provides a rain check in exchange for a WIC food benefit.
- G. Overcharging and charging for food not received:
- (1) This section X(G) applies to the following two violations, which are accumulated separately to determine the number of violations:
 - (a) a vendor overcharge; and
 - (b) charging the WIC program for WIC-allowed food not received by a WIC customer.
 - (2) Except as provided in sections X(O), X(P) and X(S) of this Agreement, the State Agency shall disqualify the Vendor for three years if the Vendor commits a violation under section X(G)(1) twice within any two-year period and if:
 - (a) for each violation, the price the WIC program paid the Vendor was \$2 or more greater than the correct price for the transaction; and
 - (b) each violation involved any of the following circumstances:

- (i) the price the WIC program paid the vendor for the transaction was more than 20 percent greater than the correct price for the transaction;
 - (i) no receipt was provided at the time the WIC food benefit was transacted by the Vendor;
 - (iii) the price for any of the WIC-allowed food items obtained with the WIC food benefit was not displayed for easy viewing or marked on the food; or
 - (iv) the cashier or other store representative asked the WIC customer for any identification.
- (3) Except as provided in sections X(G)(2), X(O), X(P) and X(S) of this Agreement, the State Agency shall disqualify the Vendor for three years if the Vendor commits a violation under section X(G)(1) three times within any two-year period and if, for each violation, the price the WIC program paid the Vendor was \$2 or more greater than the correct price for the transaction.
- (4) Except as provided in sections X(G)(2), X(G)(3), X(O), X(P) and X(S) of this Agreement, the State Agency shall disqualify the Vendor for three years if the Vendor commits a violation under section X(G)(1) four times within any two-year period.

H. Providing unauthorized food:

- (1) Except as provided in sections X(O), X(P) and X(S) of this Agreement, the State Agency shall disqualify the Vendor for one year if the Vendor provides unauthorized food twice within any two-year period and each violation involved providing unauthorized food in exchange for any of the infant formula listed on the WIC food benefit, other than substituting another infant formula with the same level of iron fortification.
- (2) Except as provided in sections X(H)(1), X(O), X(P) and X(S) of this Agreement, the State Agency shall disqualify the Vendor for one year if the Vendor provides unauthorized food four times within any two-year period.

I. SNAP sanctions:

- (1) If the Vendor is disqualified from the USDA Supplemental Nutrition Assistance Program (SNAP), the State Agency shall disqualify the Vendor from the WIC program for an equal amount of time, except as provided in section X(O) of this Agreement.
- (2) If the SNAP assesses the Vendor a civil money penalty for hardship instead of disqualifying the Vendor from the SNAP, the State Agency shall disqualify the Vendor from the WIC program for the amount of time the Vendor would have been disqualified from the SNAP absent the hardship determination, except as provided in section X(O) of this Agreement.

- J. One year disqualification for one violation:
- (1) The State Agency shall disqualify the Vendor for one year if, during any 12-month period within three years before the disqualification, the dollar amount of the Vendor's WIC sales was greater than 50 percent of the Vendor's total food sales.
 - (2) Except as provided in section X(O) of this Agreement, the State Agency shall disqualify the Vendor for one year if:
 - (a) the Vendor provides the State Agency with false or misleading material information;
 - (b) a controlling person of the Vendor commits a business-related violation, unless the business-related violation results in permanent disqualification under section X(A) of this Agreement;
 - (c) the Vendor fails to provide as required, by the deadline and in the manner specified by the State Agency, documentation requested by the State Agency under section II(G), III(O), or III(P) of this Agreement;
 - (d) the real estate where the Vendor's business is located is not owned or leased by one or more controlling persons of the Vendor;
 - (e) during an on-site inspection, the Vendor fails to allow the State Agency access to any WIC food benefit located on the Vendor's premises or to any cash register lane at which WIC food benefits are transacted.
 - (f) the Vendor obtains infant formula from an entity that is not on the list maintained by the State Agency and described in section IV(F) of this Agreement.
- K. One year disqualification for two violations: Except as provided in section X(O) of this Agreement, the State Agency shall disqualify the Vendor for one year if the Vendor commits any of the following violations twice within any two-year period:
- (1) violating section V of this Agreement;
 - (2) offering an incentive for a WIC customer to redeem a WIC food benefit at the Vendor's business site or advertising that the Vendor would provide such an incentive; or
 - (3) allowing a WIC customer to return or exchange any infant formula bought with a WIC food benefit, unless the customer is exchanging infant formula that is expired or damaged food for the identical size, type, brand, and level of iron fortification.
- L. Six-month disqualification for two violations: Except as provided in section X(O) of this Agreement, the State Agency shall disqualify the Vendor for six months if the Vendor commits any of the following violations twice within any two-year period:

- (1) requiring a WIC customer to provide identification;
- (2) requesting any reimbursement or payment from a WIC customer in connection with any WIC purchase, or requiring that a WIC customer make a cash purchase in order to redeem a WIC food benefit; or
- (3) except as provided in section X(K)(3) of this Agreement, allowing a customer to return or exchange any food bought with a WIC food benefit, unless the customer is exchanging expired or damaged food for the identical size and type of food.

M. Three-month disqualification for three violations: Except as provided in section X(O) of this Agreement, the State Agency shall disqualify the Vendor for three months if the Vendor commits any of the following violations three times within any two-year period:

- (1) failing to accept a manufacturer's coupon for any food obtained by a WIC customer in exchange for a WIC food benefit;
- (2) failing to provide to a WIC customer a receipt for the WIC transaction; or
- (3) failing to provide the State Agency with accurate and complete shelf price survey information within one month of a request by the State Agency.

N. Written warnings; termination:

- (1) The State Agency shall terminate this Agreement if the State Agency disqualifies the Vendor or if termination of this Agreement is required under section VII(B) of this Agreement.
- (2) If the Vendor commits any of the following violations, the State Agency shall issue a written warning to the Vendor. The Vendor must correct the violation within 15 days after the Vendor receives the warning. If the Vendor fails to correct the violation or commits the same violation at any time more than 15 days but less than six months after receiving the written warning, the State Agency shall terminate this Agreement. The State Agency shall issue a written warning if:
 - (a) the Vendor violates section II(F), II(G), II(H), II(I), II(J), or II(M) of this Agreement;
 - (b) the Vendor does not meet one or more license or authorization requirements under section II(A) or II(B) of this Agreement;
 - (c) the Vendor fails to ensure that a representative of the Vendor receives required WIC-approved training;
 - (d) the Vendor fails to maintain the required minimum stock listed in section II(C) of this Agreement;

- (e) on two occasions, the Vendor fails to ensure that an item is in stock and available for purchase within one week of a WIC customer's request under section III(Q) of this Agreement;
- (f) the Vendor fails to make full payment to the State Agency within 120 days of a request by the State Agency under section IV(C) of this Agreement;
- (g) the Vendor has in stock and available for purchase any expired infant formula of the brand and level of iron fortification approved by the State Agency under Minnesota Rule 4617.0171;
- (h) the Vendor fails to be open for business during the business hours that the Vendor has reported to the WIC Program; or
- (i) the Vendor fails to provide to the State Agency by the applicable deadline the corrective action plan required under section X(O)(7) of this Agreement.

O. Inadequate participant access:

- (1) Before disqualifying the Vendor under any provision in this Agreement except section X(A) or X(J)(1), the State Agency shall determine whether disqualification of the Vendor would result in inadequate participant access, unless under section X(P)(3) the Vendor is not eligible for a civil money penalty instead of disqualification.
- (2) If the Vendor is located in a Tier 1 county, then disqualification of the Vendor would result in inadequate participant access if the Vendor is the only vendor in a clinic town or if:
 - (a) during the most recent 12 months for which WIC food benefit redemption information is available for the State Agency's review, the Vendor redeemed WIC food benefits in an average monthly amount of at least \$150; and
 - (b) as of the date of the notice of disqualification or civil money penalty:
 - (i) the next closest retail food vendor is more than one mile by public road from the Vendor, not including roads on which pedestrians are prohibited; and
 - (ii) there is no bus stop or other public transportation within one-half mile by public road from the Vendor, not including roads on which pedestrians are prohibited.
- (3) If the Vendor is located in a Tier 2 county, then disqualification of the Vendor would result in inadequate participant access if the Vendor is the only vendor in a clinic town or:
 - (a) during the most recent 12 months for which WIC food benefit redemption information is available for the State Agency's review, the Vendor redeemed WIC food benefits in an average monthly amount of at least \$100; and

- (b) as of the date of the notice of disqualification or civil money penalty, the next closest retail food vendor is more than five miles by public road from the Vendor, including roads on which pedestrians are prohibited.
- (4) If the State Agency determines under this section X(O) of this Agreement that disqualification of the Vendor would result in inadequate participant access, then instead of disqualifying the Vendor, the State Agency shall, except as provided in sections X(O)(5) and X(P)(3), impose on the Vendor one or more civil money penalties. The civil money penalty shall be computed pursuant to the provisions in 7 CFR 246.12(l), as amended.
- (5) A civil money penalty assessed under this section X(O) of this Agreement must be paid in full no later than 30 days after the date of the notice of assessment. If the Vendor does not pay, only partially pays, or fails to timely pay a civil money penalty assessed under this section X(O), the State Agency shall disqualify the Vendor for the length of time that the Vendor would have been disqualified if there had been no determination of inadequate participant access.
- (6) If disqualification of the Vendor under section X(I)(2) of this Agreement would result in inadequate participant access, then the State Agency shall not disqualify the Vendor under section X(I)(2) or impose a civil money penalty in lieu of disqualification under section X(I)(2).
- (7) If the State Agency imposes a civil money penalty on the Vendor, the State Agency shall also require the Vendor to create and implement a corrective action plan to prevent future violations.
- P. Second and subsequent sanctions:
- (1) For the purpose of this section X(P) of this Agreement, "federally mandated sanction" means any disqualification or civil money penalty assessed based on this section X(P) or the violations described in sections X(B) to X(H) and X(S).
- (2) If the Vendor has on one occasion received a federally mandated sanction and subsequently engages in conduct warranting a second federally mandated sanction, then the second federally mandated sanction shall be computed pursuant to the provisions in 7 CFR 246.12(l), as amended
- (3) If the Vendor has on two or more occasions received a federally mandated sanction and subsequently engages in conduct warranting a third or subsequent federally mandated sanction, then the Vendor shall be disqualified and shall not be eligible for a civil money penalty instead of disqualification, and the third and each subsequent sanction shall be doubled.
- Q. Multiple violations:
- (1) If, during a single investigation, the Vendor commits multiple violations that warrant disqualification, then:
- (a) the State Agency shall include all of the violations in the notice of disqualification;

- (b) the State Agency shall disqualify the Vendor for the period corresponding to the most serious violation, except as provided in X(P) of this Agreement; and
 - (c) if disqualification under sections X(A) to X(H), X(I)(1) or X(S) of this Agreement is not upheld on appeal and the Vendor has also committed one or more violations warranting disqualification under sections X(I)(2) or X(J) to X(M), the State Agency shall disqualify the Vendor for the period corresponding to the most serious violation described in sections X(I)(2) or X(J) to X(M), except as provided in section X(O).
- (2) For the purpose of this section X(Q) of this Agreement, a violation warranting disqualification that is described in section X(A) to X(H), X(I)(1) or X(S) shall be considered more serious than any violation warranting disqualification that is described in sections X(I)(2) or X(J) to X(M).

R. General provisions:

- (1) If a violation described in section X(F), X(G), X(H), X(K), X(L), X(M) or X(S) of this Agreement does not result in disqualification or a civil money penalty, the State Agency shall mail or deliver to the Vendor a notice of violation.
- (2) Except for a violation of section X(A) of this Agreement, the Vendor commits a violation of this Agreement if any controlling person, employee, or agent of the Vendor committed the described conduct.
- (3) If a violation involves the Vendor's transaction of a WIC food benefit, the violation occurs on the date the Vendor transacts the WIC food benefit.
- (4) The State Agency shall notify the Vendor in writing of the Vendor's disqualification and of the Vendor's termination. The written notice shall include all information required by federal regulations.
- (5) If the disqualification of the Vendor is a permanent disqualification based on section X(A) of this Agreement, then the disqualification shall be effective on the date the Vendor receives the written notice of disqualification. For any other disqualification, the disqualification shall be effective 30 days after the date the written notice of disqualification is mailed.
- (6) If the termination of this Agreement is required because the Vendor is being disqualified from the WIC Program, the termination shall be effective on the same date that the disqualification is effective. If the termination is based on section X(N)(2) of this Agreement, the termination shall be effective 30 days after the date the written notice of termination is mailed.
- (7) A disqualified vendor may apply for WIC vendor authorization after expiration of the disqualification period, according to Minnesota Rule 4617.0065, subpart 3.

- (8) If the Vendor is terminated but not disqualified, the Vendor may apply for WIC vendor authorization no sooner than two months after the effective date of the termination, except that if the Vendor is terminated under section VII(B) of this Agreement, the Vendor may apply for an immediate vendor agreement under Minnesota Rule 4617.0066, subpart 3.
 - (9) The Vendor may not terminate this Agreement or withdraw from the WIC program instead of disqualification. The expiration or termination of this Agreement shall not affect the State Agency's duty to disqualify the Vendor and shall not affect the Vendor's right to appeal the disqualification.
 - (10) Disqualification from WIC may result in disqualification as a retailer in the SNAP. Such disqualification may not be subject to administrative or judicial review under the SNAP.
 - (11) If the Vendor's owner sells the store to avoid disqualification, and if the new owner applies for WIC authorization at the store's location, the State Agency will deny the application.
 - (12) If the Vendor is disqualified, the State Agency shall immediately terminate this Agreement.
 - (13) If the Vendor provides food in exchange for redemptions of WIC food benefits under circumstances where the Vendor informs the WIC customer that the customer may return the food for cash or a nonfood item and if the WIC customer subsequently does return the food for cash or a nonfood item, the Vendor shall be sanctioned in the same way as if the Vendor had provided the cash or nonfood item directly to the WIC customer in exchange for the WIC food benefits.
- S. Previous history of disqualification. Notwithstanding sections X(F), X(G) and X(H) of this Agreement, if the Vendor was previously disqualified under Minnesota Rule 4617.0084, subpart 2 to 10 or 19, and if any controlling person of the Vendor was a controlling person at the time of the previous disqualification, then, except as provided in sections X(O) and X(P) of this Agreement, the State Agency shall disqualify the Vendor for:
- (1) three years, if, twice within any two-year period, the Vendor, in exchange for any portion of a WIC food benefit, provides credit other than a rain check or provides a nonfood item other than any alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances, as defined under the federal Controlled Substances Act, United States Code, title 21, section 802, clause (6), as amended;
 - (2) three years if the Vendor commits a vendor overcharge twice within any two-year period;

- (3) three years if, twice within any two-year period, the Vendor charges the WIC Program for WIC-allowed food not received by a WIC customer; and
- (4) one year if the Vendor provides unauthorized food twice within any two-year period.

XI. The Vendor understands the following provisions regarding the appeal of sanctions.

- A. The Vendor may appeal any adverse action by the State Agency that affects participation in the WIC program, except that the following actions by the State Agency cannot be appealed:
 - (1) disqualification from the WIC program that is based on the Vendor's disqualification from the SNAP;
 - (2) the State Agency's determination of whether disqualification of the Vendor would result in inadequate participant access, and the validity or appropriateness of the State's participant access criteria;
 - (3) a notice of violation, unless the violation results in the Vendor's disqualification, the Vendor's termination, a civil money penalty imposed on the Vendor, or denial of the Vendor's reauthorization application;
 - (4) the validity or appropriateness of the State's criteria for authorizing stores to transact WIC food benefits;
 - (5) the expiration of this Agreement; and
 - (6) disputes regarding WIC food benefit payments and payments requested by the State Agency under section IV(C) of this Agreement.
- B. An appeal must be in writing and must be received by the State Agency not more than 30 days after notice of adverse action was mailed.
- C. Appeals by the Vendor are subject to full administrative reviews under section XI(D) of this Agreement, except that appeals of the following actions by the State Agency are subject to abbreviated administrative reviews under section XI(E) of this Agreement:
 - (1) termination of this Agreement under section VII(B) of this Agreement; and
 - (2) disqualification of the Vendor under section X(A) or X(I)(2) of this Agreement.
- D. Full administrative reviews shall be conducted under the contested case provisions of the Minnesota Administrative Procedures Act (chapter 14 of the Minnesota Statutes), the

contested case rules promulgated by the Office of Administrative Hearings (chapter 1400 of the Minnesota Rules), and the provisions of Minnesota Rule 4617.0100, subpart 1(D).

- E. Abbreviated administrative reviews shall be conducted in writing, without a hearing, according to the provisions of Minnesota Rule 4617.0100, subpart 1(E).

- XII. As used in this Agreement, the term "modified rules" means rule amendments and new rules in Minnesota Rules Chapter 4617, and regulatory amendments and new regulations in Code of Federal Regulations, Title 7, chapter 246, that become effective while this Agreement is in effect. Notwithstanding anything in sections I through XI of this Agreement that conflicts with any modified rules, Vendor agrees to comply with all modified rules and Vendor understands and agrees that the State Agency will comply with all modified rules. No later than fifteen (15) days before the effective date of any modified rules affecting vendors, State Agency will mail or deliver to the Vendor a copy of these modified rules.

- XIII. The individual signing this Agreement on behalf of the Vendor certifies that he or she is authorized to sign this Agreement on behalf of the Vendor, has read and agrees that the Vendor will comply with all of the provisions contained in this Agreement, and understands that the Vendor is fully accountable for the intentional and unintentional actions of its controlling persons, employees, and agents relative to this Agreement.

Signature of Owner or Corporate Officer

Date

Printed Name of Owner or Corporate Officer

Title

Signature of State WIC Program Representative

Date

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, religious creed, disability, age, political beliefs, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

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- (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.

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