

## DEFINITIONS

**“Administrative Appeal”** means a formal proceeding where a vendor who has received a notice of violation from the department has the opportunity to present his or her case in an impartial setting and be heard by the department.

**“Annual Training Requirements”** means the document published by department describing the annual training requirements for authorized vendors and their employees. The document is available on the department website at <http://www.doh.wa.gov> and upon request from the department.

**“Automated Clearing House (ACH)”** means the nationwide electronic network for financial transactions. It includes credit and debit transactions as well as direct deposit of payroll and payments to vendors.

**“CFR”** means Code of Federal Regulations.

**“Cash Value Voucher”** means a WIC food instrument used by a participant to obtain fresh fruits and vegetables.

**“Civil Monetary Penalty”** or **“CMP”** means a monetary fine the department may levy in lieu of disqualification for noncompliance with program requirements.

**“Compliance buy”** means a covert, onsite investigation in which a representative of the department poses as a participant, parent or caretaker of an infant or child participant, transacts one or more WIC food instruments, and does not reveal during the visit that he or she is a program representative.

**“Confidential Information ”** means information that must be kept confidential under 7 CFR 246.21 and 7 CFR 246.26, or is exempt from disclosure under chapter 42.56 RCW, and other state or federal statutes and regulations.

**“Contract”** means this agreement, which, once completed and signed by both parties, is the written legal document binding a vendor and the department to designated terms and conditions and authorizes the WIC vendor to transact food instruments.

**“Contracting Officer”** means the department’s Contract Administrator and his/her delegates authorized to execute this agreement on behalf of the department.

**“Contractor”** means the WIC vendor, sole proprietorship, partnership, cooperative association, corporation, firm, organization, individual or other entity party to this contract. The term includes any store location, employee, agent, or any person acting under the authority of the Contractor as permitted under the terms of this agreement.

**“Current shelf life”** or **“pull date”** or **“use by date”** means a date and code printed on an item that indicates its best quality. This date shows when a product must be either sold by or pulled from a store shelf.

**“Department”** means the Washington State Department of Health (DOH).

## WIC Vendor Contract 2015-2018

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**“Disqualification”** means the act of revoking the authorization and terminating the contract of an authorized vendor for a specific period of time or permanently for noncompliance with WIC program requirements.

**“Food Instrument”** means the method of payment used by a participant to obtain WIC approved foods. This method may include WIC checks, Cash Value Vouchers, or EBT payment.

**“ID stamp”** means the tool each store uses to imprint the vendor’s assigned identification number on each WIC food instrument to identify their store.

**“Inventory Audit”** means the examination of food invoices or other proofs of purchase to determine whether a vendor has purchased sufficient quantities of supplemental foods to provide participants the quantities specified on WIC food instruments redeemed by the vendor during a given period of time.

**“Maximum Allowable Reimbursement Level (MARL)”** means the most that the department will pay for WIC food instruments. Each vendor is part of a “peer group” with MARL amounts calculated for the WIC food instruments redeemed by vendors in the group. The MARL is based on the average redemption amount charged by vendors within the peer group, plus a margin to account for variation of products, shelf prices and other factors.

**“Minimum Inventory Requirements”** means the required amount of WIC approved foods that the vendor must have on premises available for purchase at all times. The department publishes the Minimum Inventory Requirements in a document which is available on the department website at <http://www.doh.wa.gov> and upon request from the department.

**“Notice of Adverse Action”** means a written document in which the department notifies the vendor that the department is taking action such as termination of the contract or disqualification for the vendor’s noncompliance with program requirements, federal WIC regulations, WAC 246-790, or this Contract.

**“Notice of Violation”** means a written document given to a vendor when the department determines the vendor has not complied with program requirements, federal WIC regulations, WAC 246-790, or this Contract. A Notice of Violation does not impose an action adverse to the vendor and is not subject to administrative appeal.

**“Participant”** means a woman, infant or child receiving WIC benefits. For the purpose of this Contract, participant includes parents or caretakers of infant or child participants, and alternate endorsers.

**“Participant Access”** means the ability of WIC participants to purchase authorized WIC foods, with considerations made to factors including, but not limited to, geography, population density and participant dietary needs, as determined by the department.

**“Peer Group”** means a group of authorized vendors which share certain characteristics and can be expected to have similar business practices and prices. Peer group criteria and assignments are determined by the department. Vendors in the same peer group are subject to the same WIC maximum allowable reimbursement levels. Peer group criteria include, but are not limited to, characteristics such as geography or size.

## WIC Vendor Contract 2015-2018

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**"Redeeming WIC foods outside of authorized channels"** means not following the requirements regarding who can accept WIC food instruments. Examples include, but may not be limited to:

1. A vendor accepting WIC food instruments without having a signed contract with the department;
2. A vendor using WIC food instruments to repay debt at a different authorized vendor; or
3. A vendor who accepts WIC food instruments from an unauthorized source.

**"Routine Monitoring"** means overt, onsite review of a vendor during which department representatives identify themselves to vendor personnel.

**"SNAP"** means the federal Supplemental Nutrition Assistance Program. This is the current name for the Food Stamp Program.

**"Trafficking"** means buying or selling WIC food instruments for cash.

**"Vendor Selection Criteria"** means, for the purposes of this Contract, the federally approved criteria in WAC 246-790-077 established by the department to select individual vendors for authorization consistent with the requirements of 7 CFR 246.12

**"WAC"** means Washington Administrative Code.

**"Washington WIC Approved Infant Formula Suppliers"** means the list of WIC approved suppliers and manufacturers of infant formula. The document is available on the department website at <http://www.doh.wa.gov> and upon request from the department.

**"Wholesale supplier"** means a business licensed to sell food and other goods at prices lower than retail to retail vendors for resale to customers.

**"WIC", "WIC Nutrition Program", "WIC Program", or "program"** means the federally funded Special Supplemental Nutrition Program for Women, Infants and Children as described in 7 CFR 246.

**"WIC program requirements" or "program requirements"** mean the requirements that all contractors, including the individual vendors, must meet in order to participate in the WIC Program.

**"WIC Shopping Guide"** means the lists of WIC approved foods and information for participants and vendors, including directions for retail clerks to transact WIC food instruments. The document is available on the department website at <http://www.doh.wa.gov> and upon request from the department.

**"WIC Vendor"** means the store location operated by a Contractor authorized by the department to provide WIC approved foods to WIC participants.

## TERMS AND CONDITIONS

### 1. PROGRAM REQUIREMENTS:

1.1. The Contractor shall comply fully with this Contract and the Federal and State statutes, regulations, policies, and procedures governing the WIC Program including, but not limited to:

- 1.1.1. Any future amendments to the Contract;
- 1.1.2. Provisions of 7 CFR 246 applicable to vendors, including, but not limited to, 7 CFR 246.2, .12, .18, .21, .23, and .26;
- 1.1.3. WAC 246-790;
- 1.1.4. Vendor Selection Criteria;
- 1.1.5. WIC Minimum Inventory Requirements;
- 1.1.6. Washington WIC Approved Infant Formula Suppliers;
- 1.1.7. Federal, state, county, and city required licenses;
- 1.1.8. WIC Shopping Guide; and
- 1.1.9. Annual Training Requirements.

1.2. The Contractor shall comply with any changes made to Federal and State statutes, regulations, policies, and procedures governing the Program (including the Vendor Selection Criteria) made during the contract period. If the Contractor is unable or unwilling to comply with such changes, the department will terminate the Contract as provided in Paragraph 22 Expiration or Termination.

1.3. The regulations, rules, and documents specified in 1.1 above are incorporated into and made a part of this Contract.

### 2. CONTRACTOR'S GENERAL DUTIES:

The Contractor shall:

- 2.1. Be accountable for its owner, officers, managers, agents, and employees who commit contract violations or violate federal regulations governing the WIC Program.
- 2.2. Offer WIC participants the same courtesies offered to other customers.
- 2.3. Not offer free items or other discounts exclusively to WIC participants as an incentive to redeem WIC benefits.
- 2.4. Notify the department at least 30 days before of any changes to contact information, including changes to email address and phone numbers.
- 2.5. Provide written notice of any change in ownership, change in store location, change in organization structure, change in legal status, or cessation of operations at least 30 days before the effective date of the change. If the Contractor fails to provide notice, the Contractor shall pay all costs incurred by the department as a result of the lack of notice.
- 2.6. Not ask a WIC participant directly or indirectly to pay for payments the department denied, partially paid, or reclaimed.
- 2.7. Not seek restitution through a collection agency for WIC food instruments not paid by the bank in full or in part.

### 3. FOOD INSTRUMENT TRANSACTION PROCEDURES:

The Contractor shall:

- 3.1. Comply with the information in the Retail Checkers section set forth in the WIC Shopping Guide.
- 3.2. Accept WIC food instruments only from a participant named on the face of the food instrument.

- 3.3. Ask the WIC participant for identification when the participant presents the WIC food instrument. Allow the participant to use the WIC Appointment Folder as identification.
- 3.4. Provide only the authorized supplemental foods in the quantities listed on the WIC food instrument. This includes not allowing substitutions for any item listed on the WIC food instrument, even if the proposed substitution is a WIC approved food, and not selling unapproved food items or nonfood items in exchange for WIC food instruments.
- 3.5. Allow the WIC participants to buy all the foods in the amounts listed on the WIC food instruments.
- 3.6. Provide infant formula obtained only from sources on the Washington WIC Approved Infant Formula Suppliers list in exchange for WIC food instruments.
- 3.7. Not accept WIC food instruments before the "First Day to Use" or after the "Last Day to Use" as shown on the face of the food instrument.
- 3.8. Print the purchase price on the WIC food instrument clearly and carefully with a black or dark blue ink pen before the participant signs it. The purchase price must only include the food items actually provided.
- 3.9. Require the participant to sign the food instrument in the presence of the checker.
- 3.10. Not charge sales tax.
- 3.11. Not charge WIC participants for authorized supplemental foods obtained with WIC food instruments, except that the Contractor may allow the WIC participant to pay the difference when the purchase cost of authorized fruits and vegetables exceeds the value of the WIC cash value voucher for fruits and vegetables.
- 3.12. Not add a fee or surcharge to the purchase amount charged to the department. Military commissaries are exempt from this provision.
- 3.13. Accept the Maximum Allowable Reimbursement Level (MARL) as the most the department will pay for a WIC food instrument.

#### **4. FOOD INSTRUMENT REDEMPTION PROCEDURES:**

The Contractor shall:

- 4.1. Stamp each food instrument with the ID number assigned to the store using the ID stamp provided by the department.
- 4.2. Stamp each WIC food instrument in the box on the food instrument: "Retailer Stamp ID Here".
- 4.3. Make sure the stamped number is legible with all five numbers fully formed.
- 4.4. Notify the department immediately if the ID stamp is lost, stolen or wears out.
- 4.5. Not transfer food instruments between stores.
- 4.6. Endorse and deposit food instruments in a timely manner. All food instruments must be deposited within sixty (60) days of the "First Day to Use" printed on the food instrument.

#### **5. EXCHANGES OF WIC APPROVED FOODS OR WIC FOOD INSTRUMENTS:**

The Contractor shall:

- 5.1. Not provide refunds or permit exchanges for authorized supplemental foods obtained with WIC food instruments; except that the Contractor must allow exchanges of an identical approved food obtained with WIC food instruments when the original approved 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 approved food item means the exact brand and size as the original approved food item obtained and returned by the WIC participant.

5.2. Not provide credit (including rain checks), cash, gift cards, or coupons in exchange for WIC food instruments or for the return of spoiled or defective food and not use a WIC food instrument as payment on a credit account.

**6. RECORDKEEPING:**

In addition to complying with the recordkeeping requirements set forth in the Vendor Selection Criteria, the Contractor shall:

6.1. Maintain all records related to the WIC Program in a retrievable and readable format for a period of six years following the date of contract expiration or termination. Such records include, but are not limited to: this Contract and any amendments, all receipts for purchase of WIC inventory, documents kept for compliance with WAC 458-20-254, bills of sales, real property agreements, business organization documents such as Articles of Incorporation, bylaws and the like, or bank statements.

6.2. Secure and preserve original receipts for all purchase of WIC inventory; such receipts must clearly show the seller's business name and address; Contractor's name and store identification; food product name; brand name, if applicable; container or unit size; quantity sold; price of each item; and the date of sale. An original invoice marked by seller as "paid" or a copy of the seller's paid invoice records are acceptable substitutes for receipts if the invoice or record has all the information otherwise required on a receipt.

6.3. Upon request, submit inventory receipts proving Contractor purchased inventory in compliance with WAC 246-790-077(1) and (2). All receipts must comply with Paragraph 6.1.

6.4. Within 15 days of Department's notice of an inventory audit, submit copies of requested inventory receipts to the Department in an organized, legible format and comply with any other directives in the notice. All receipts must comply with Paragraph 6.1

6.5. Upon request, submit to the Department annual sales information including gross sales and tax exempt food sales by payment type, including cash, SNAP EBT, WIC and credit or debit.

6.6. Upon request, submit to the Department shelf price and stock level information.

6.7. Upon request, make all records related to the WIC Program available for inspection and audit by the Department, USDA Food and Nutrition Services, and the Comptroller General of the United States at any reasonable time and place.

6.8. Upon request, make all Food Instruments and Cash Value Vouchers in Contractor's possession available for inspection and audit at by the Department, USDA Food and Nutrition Services, and the Comptroller General of the United States at any reasonable time and place.

**7. INVENTORY MANAGEMENT:**

In addition to complying with the procedures for inventory set forth in the Vendor Selection Criteria, the Contractor shall:

7.1. Maintain in store sufficient quantities and varieties of WIC approved foods, including infant formula, as required to assure the vendor will meet the Minimum Inventory Requirements AT ALL TIMES. Expired and spoiled foods do not count as inventory.

7.2. Ensure that WIC approved foods have a current shelf life and are not defective, spoiled, or kept on the store shelves past their "sell by" date or "best if used by" date.

**8. FOOD PRICING:**

In addition to complying with procedures for food pricing set forth in the Vendor Selection Criteria, the Contractor shall:

- 8.1. Provide a complete and accurate updated WIC Food Price Survey to the department within thirty (30) days of the date of request using the Online Retailer Application Portal.
- 8.2. Sell WIC approved foods to WIC participants at the same price charged to other customers.

**9. CONTRACTOR TRAINING:**

The Contractor shall:

- 9.1. Participate in annual training on program requirements by reading and distributing to employees all training materials provided by the department.
- 9.2. Ensure a representative from each authorized vendor participates in interactive training sessions designed, conducted, or approved by the department at least once every three years. Store representatives who attend training must sign an attendance roster and indicate which store they represent.
- 9.3. Attend or ensure a representative from each authorized store attends any training identified by the department as mandatory.
- 9.4. Train checkers, customer service specialists, front end supervisors, managers, bookkeepers, and inventory control employees who do not attend training conducted by department representatives on program requirements and on the consequences of failing to follow those requirements.
- 9.5. Maintain records identifying when training took place and which staff were trained, for staff that are trained by store representatives.

**10. COOPERATION WITH COMPLIANCE ACTIVITIES:**

10.1. The Contractor shall cooperate with the department's compliance activities described in Paragraph 18 Compliance Activities.

10.2. The Contractor shall:

- 10.2.1. Allow right of access to the store, at all reasonable times, to the department, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, in order to monitor and evaluate performance, compliance, and/or quality assurance with program requirements.
- 10.2.2. Submit all documentation required for an inventory audit upon department request.
- 10.2.3. Comply with all corrective actions required by the department by the requested date, even if the action is subject to appeal.
- 10.2.4. Provide documentation of corrective action implemented when required by the department.

**11. CLAIMS:**

11.1. As provided in Paragraph 20 Establishment of Claims, the department will deny payment or establish a claim for reimbursement for overcharges, improperly handled WIC food instruments, and any vendor violation of this Contract or federal regulations that affects payment to the Contractor.

11.2. The Contractor will have the opportunity to justify or correct an overcharge or error.

11.3. The Contractor shall:

- 11.3.1. Reimburse the department for payments made on overcharges and improperly handled WIC food instruments.

11.3.2. Reimburse the department for inventory audit findings when there is a negative difference between foods sold to participants using WIC food instruments and the store's wholesale invoices showing what was available for sale.

11.3.3. Pay any claim assessed by the department, if unable to justify an overcharge, error, or inventory audit results.

**12. APPEALS:**

12.1. The Contractor has the right to an administrative appeal for certain actions taken by the department. Actions that cannot be appealed are listed in WAC 246-790-125(1).

12.2. If seeking an administrative appeal, the Contractor must file as specified in WAC 246-790-125(3).

12.3. If the Contractor files a timely appeal of a Contract termination, the Contract is suspended as of the termination date set forth in the notice of termination and the Contractor shall comply with the procedures in Paragraph 25 Procedures upon Expiration, Suspension, or Termination of the Contract. The Contract will remain suspended until the administrative appeals process is complete.

**13. USE OF WIC IDENTITY:**

The Contractor shall:

13.1. Not imply the business is owned or operated by the WIC Program.

13.2. Not identify a particular food as "WIC approved" by attaching or affixing those words to a food item container.

13.3. Use the WIC acronym and logo to identify the Contractor as an authorized WIC vendor only with department permission.

**14. DEPARTMENT'S GENERAL DUTIES:**

14.1. The department shall:

14.1.1. Comply with the Contract and the Federal and State statutes, regulations, policies, and procedures governing the WIC Program.

14.1.2. Modify program requirements at any time to meet new federal or state requirements.

14.1.3. Notify the Contractor of changes to Federal or State statutes, regulations, policies or procedures governing the WIC Nutrition Program before the changes are implemented.

14.1.4. Notify the Contractor in writing at least fifteen (15) days in advance of contract expiration.

14.2. The department may, at its discretion, reassess and modify the Vendor Selection Criteria during the contract period.

**15. FOOD INSTRUMENT PAYMENT PROCEDURES:**

The department shall:

15.1. Assign each authorized vendor to a peer group.

15.2. Notify each authorized vendor of its peer group assignment at least once each contract period.

15.3. Calculate Maximum Allowable Reimbursement Levels (MARL) for each authorized vendor's peer group based on current redemption data and adjust MARL regularly to reflect market conditions.

15.4. Periodically recalculate MARL amounts to reflect current food instrument redemption data.

15.5. Pay the Contractor the amount of the purchase price on the face of valid and properly transacted WIC food instruments, except that the department shall pay no more than the MARL for the specific food instrument.

15.6. Offer the Contractor a purchase price adjustment through a process called presumptive payment when food instruments reject for exceeding the MARL. This process allows payment of the food instrument's MARL using an ACH transaction. Contractors who do not participate in the presumptive payment process may contact the department for a different method of payment.

15.7. Deny payment on food instruments that do not comply with this Contract and federal requirements.

15.8. Deny requests for payment of Contractor bank charges incurred because of improperly transacted WIC food instruments.

15.9. Deny payment on food instruments issued by other state agency WIC Programs.

### **16. TRAINING PROVIDED BY THE DEPARTMENT:**

The department shall:

16.1. Provide annual vendor training, which may be in a variety of formats, including electronic and printed materials.

16.2. Provide technical assistance on program requirements.

16.3. Advertise and conduct interactive training on an ongoing basis at locations statewide. The department has sole discretion to designate the date, time, and location of all interactive training, but will provide the Contractor at least one alternative date for training.

16.4. Maintain documentation of Contractor's training, including when and where the training took place, and the content of the training.

### **17. PROGRAM MATERIALS:**

17.1. The department shall provide WIC materials, including ID stamps and ink, current WIC Shopping Guide, WIC infant formula identification materials, and other WIC approved food identification materials or tools, shelf tags, and "WIC Accepted Here" door signs, to each authorized vendor.

17.2. The department will provide the Contractor additional materials on request.

### **18. COMPLIANCE ACTIVITIES:**

18.1. In conformance with 7 CFR 246.12(j), the department shall monitor the Contractor for compliance, including, but not limited to, the following activities:

18.1.1. Follow-up on complaints.

18.1.2. Regular review of the Contractor's compliance with program requirements and the Vendor Selection Criteria.

18.1.3. Requiring food price surveys at least two times per year.

18.1.4. Conducting on-site routine monitoring.

18.1.5. Reviewing WIC food instruments submitted for payment to ensure compliance with redemption procedures and to detect errors or overcharges.

18.1.6. Examining WIC food instruments and shelf prices to detect overcharges.

18.1.7. Conducting compliance investigations including random compliance buys and compliance buys for cause.

18.1.8. Conducting random inventory audits and inventory audits for cause.

18.1.9. Referring complaints and incidences of civil rights violations to the USDA Director and Office of Adjudication.

18.2. In response to Contractor noncompliance, the department shall take the following enforcement action depending on the severity and frequency of the noncompliant activity:

18.2.1. Verbal or written technical assistance.

18.2.2. Written Notice of Violation.

- 18.2.3. Written Notice of Adverse Action.
- 18.2.4. Establishing a claim as provided in Paragraph 20 Establishment of Claims.
- 18.2.5. Suspending the Contract as provided in Paragraph 21 Suspension.
- 18.2.6. Terminating the Contract as provided in Paragraph 22 Expiration or Termination.
- 18.2.7. Disqualifying the Contractor as provided in Paragraph 23 Disqualification.

**19. NOTICE OF ADVERSE ACTION:**

- 19.1. In the case of adverse action, the department shall give the Contractor written notice not less than fifteen (15) days prior to the effective date of any adverse action, except for the following where the effective date is the date the Contractor receives the notice:
  - 19.1.1. The Contractor provides false information in connection with its WIC application.
  - 19.1.2. The Contractor commits a violation under 7 CFR 246.12(l)(1)(i) that results in permanent disqualification.
  - 19.1.3. The department suspends the Contract as provided in Paragraph 21 Suspension, unless the department provides otherwise in its suspension notice.
- 19.2. The notice of adverse action must explain what action the department is taking, the effective date of the action, and the procedure for requesting an administrative appeal, if the action being taken is one that can be appealed.
- 19.3. Upon receiving the notice of adverse action, the Contractor shall comply timely with the department's directives even if the Contractor intends to appeal the department's decision.

**20. ESTABLISHMENT OF CLAIMS:**

- 20.1. In conformance with 7 CFR 246.12(k), the department shall:
  - 20.1.1. Establish a claim for reimbursement or delay payment to the Contractor for overcharges, payments made on improperly handled WIC food instruments, or any other vendor violation that affects payment to the Contractor. The claim may be for the full purchase price of each food instrument containing an error or reflecting a violation.
  - 20.1.2. Establish a claim, in addition to a mandatory disqualification, if the result of an inventory audit shows a negative difference between foods sold to participants using WIC food instruments and the store's wholesale invoices showing what was purchased for sale.
  - 20.1.3. Provide the Contractor the opportunity to justify or correct overcharges or errors.
  - 20.1.4. Pay the Contractor when presented with satisfactory justification for an error.
- 20.2. Any claim or delay of payment established by the department is in addition to any suspension, termination, or disqualification provided for under Paragraphs 21 Suspension, 22 Expiration or Termination, or 23 Disqualification.
- 20.3. The department may offset the claim against amounts to be paid to the Contractor.

**21. SUSPENSION**

- 21.1. Either party may suspend performance of the Contract in lieu of termination unless WIC Program regulations require the department to terminate the Contract.
- 21.2. The department must immediately suspend the Contract if the department determines during the course of an inventory audit that the Contractor cannot prove the purchase of sufficient quantities of WIC foods to provide the quantities specified on the WIC food instruments redeemed by the Contractor during a specific period of time and the value of the difference between the actual inventory and the amount claimed to have been sold to WIC participants is greater than one thousand dollars (\$1000).
- 21.3. If funds for the Program from any source are withdrawn, reduced, or limited in any way during the term of this Contract, the department may suspend performance of the Contract as an

alternative to termination by giving notice of suspension and its effective date to Contractor. If the department determines funding is sufficient to resume the Contract, the department shall provide notice to the Contractor that the suspension has ended. The Contractor shall resume WIC transactions in conformance with the Contract.

21.4. The period of suspension does not toll the expiration date of the Contract.

21.5. The department may deliver notices of suspension by electronic communication, fax, hand delivery, or by US Postal Service.

### **22. EXPIRATION OR TERMINATION**

22.1. Either the Contractor or the department may terminate the Contract at will with 30 days' advance notice. The Contractor's termination upon unwillingness or inability to comply with changes as provided for in Paragraph 1 are an at will termination.

22.2. Either the Contractor or the department may terminate the Contract for cause with fifteen (15) days' advance notice.

22.3. The department may, at its sole discretion, terminate the Contract upon a change in ownership, change in store location, or cessation of operations.

22.4. The department may terminate the Contract for the Contractor's failure to participate in the food price surveys.

22.5. The department may terminate the Contract for the Contractor's failure to remain price competitive even if payments of the food instruments are within the MARL.

22.6. The department must terminate the Contract if it determines the Contractor has:

22.6.1. Been identified as receiving more than 50-percent of their total food sales from WIC redemptions.

22.6.2. Provided false information in connection with the application for authorization or at any time during the contract period.

22.6.3. Failed to comply with the Vendor Selection Criteria at any time during the contract period.

22.6.4. Failed to comply with corrective action requirements in a timely manner.

22.6.5. A conflict of interest as defined in Paragraph 31 Conflict of Interest.

22.7. The department must terminate the Contract if the Contractor is disqualified as a vendor in the WIC Program. The Contractor will have to reapply after the disqualification period is over and be subject to the Vendor Selection Criteria in effect at the time of application.

22.8. Neither the department nor the Contractor is obligated to renew the contract. When the contract expires or is terminated, the Contractor must reapply to be considered for a new contract. The Contractor's new application is subject to the Vendor Selection Criteria and any other criteria in effect at the time of the reapplication.

### **23. DISQUALIFICATION**

23.1. For violations specified in 7 CFR 246.12(l), the department must disqualify the vendor for the federally specified period. All federal sanctions are mandatory as shown in the Federal Sanction Table in Attachment A.

23.2. Federally required disqualifications are mandatory regardless whether the Contractor pays the claim, if any, arising from the incident leading to the disqualification.

23.3. For violations not specified in 7 CFR 246.12(l), the department may disqualify the vendor in conformance with the State Sanction Table in Attachment A. If a violation listed in the State Sanction Table requires a "pattern", the department may take adverse action upon the showing of a pattern. The department shall notify the Contractor in writing when an investigation reveals an initial violation for which a pattern of incidences must be established before imposing a penalty, unless the department

determines that notifying the Contractor would compromise the investigation. At the department's discretion, the department's actions may include:

- 23.3.1. Notice of Violation and offer of technical assistance for the first incident;
- 23.3.2. Technical assistance, or notice of violation and warning of disqualification for the second incident of the same type of violation;
- 23.3.3. One-year disqualification for the third incident of the same type of violation in a contract period.

23.4. Disqualification from the WIC Program may result in disqualification from the Supplemental Nutrition Assistance Program (SNAP). Any vendor disqualified from SNAP as the result of disqualification from the WIC Program may have no right to administrative or judicial appeal for the SNAP disqualification.

23.5. The department may disqualify a vendor that has received a Civil Monetary Penalty (CMP) instead of a disqualification from SNAP.

23.6. The department may disqualify a vendor that has been disqualified from the WIC Nutrition Program in another state.

23.7. Individual stores covered under this Contract may be disqualified without affecting the other stores covered under the Contract.

23.8. In conformance with 7 CFR 246.12(l)(1)(ix) (federal sanctions), and, 7 CFR 246.12(l)(2) (state sanctions), the department may offer the Contractor a civil monetary penalty in lieu of disqualification if the department determines the Contractor's vendor location is necessary to assure adequate participant access.

#### **24. FRAUD OR ABUSE IN THE PROGRAM**

24.1. If the department discovers evidence of the Contractor committing criminal fraud or abuse in the WIC Program, the department must provide such evidence to appropriate law enforcement authorities.

24.2. A vendor who commits fraud or abuse in the WIC Program is liable to prosecution under the applicable Federal, State, or local laws. Those who have willfully misapplied, stolen, or fraudulently obtained program funds are 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.

#### **25. PROCEDURES UPON EXPIRATION, SUSPENSION, OR TERMINATION OF THE CONTRACT**

25.1. Upon receiving the notice of suspension or termination from the department, the Contractor shall:

25.1.1. Stop accepting WIC food instruments on the date and time specified in the notice,

25.1.2. Deposit any WIC food instruments in the Contractor's possession within three (3) days (not counting Saturday, Sunday or national holidays) following the suspension or termination date,

25.1.3. Immediately notify the department if the Contractor is unable to deposit any WIC food instruments in compliance with this Contract and provide the department with the total number of WIC food instruments in the Contractor's possession.

25.1.4. If the department suspends the Contract, the Contractor shall not accept WIC food instruments at any time during the suspension period unless otherwise directed by the department. If a period of suspension ends without termination of the Contract, the Contractor may resume accepting WIC food instruments on the date directed by the department.

25.1.5. Comply with any other directives in the department's notice.

25.2. The Contractor shall comply with the above procedures if the Contract expires without the Contractor entering into a new agreement with the department.

25.3. The Contractor is solely responsible for any fees or costs the Contractor incurs for failure to comply with the procedures set forth here.

**26. NOT A LICENSE OR PROPERTY INTEREST**

26.1. The parties to this Contract have freely entered into it.

26.2. This Contract is not a license or property interest.

**27. AMENDMENTS**

27.1. This contract may be amended by mutual written agreement of the parties. Such bilateral amendments must be signed by personnel authorized to bind each of the parties.

27.2. The department may unilaterally amend the Contract in writing to comply with any changes made to federal and state statutes, regulations, and policies and procedures governing the Program (including Vendor Selection Criteria). Such unilateral amendments require only the signature of the department's designated contracting officer.

**28. ATTORNEYS' FEES**

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney's fees and costs.

**29. COMPLETE AGREEMENT**

The Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract are deemed to exist or to bind any of the parties hereto.

**30. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION -**

30.1. Certain information about the Contractor is confidential under 7 CFR 246.26(e).

30.2. All information about WIC participants is confidential under 7 CFR 246.26(d).

30.3. The use or disclosure by any party, either verbally or in writing, of any confidential information shall be subject to applicable provisions of 7 CFR 246.26 and Chapter 42.56 RCW, as well as other applicable federal and state laws and administrative rules governing confidentiality.

30.4. Specifically, all parties agree to limit access to confidential information to the minimum amount of information necessary, to the fewest number of people, for the least amount of time required to do the work.

30.5. The obligations set forth in this clause shall survive completion, cancellation, expiration, or termination of this Contract.

**31. CONFLICT OF INTEREST**

31.1. Notwithstanding any determination by the Executive Ethics Board or other tribunal, the department may, in its sole discretion, by written notice to the Contractor, terminate this Contract in accordance with 7 CFR 246.12(h)(3)(xx) if it is found, after due notice and examination by the department or its agent that there is a violation of the ethics in public service act, chapter 42.52 RCW, or any similar statute involving the Contractor in the procurement of, or performance of this Contract.

31.2. In the event this Contract is terminated as provided above, the department shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a

breach of the Contract by the Contractor. The rights and remedies of the department provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

31.3. In addition, the department must terminate the Contract if the department identifies a conflict of interest between the Contractor and the department or between the Contractor and a local WIC agency.

### **32. DEBARMENT**

32.1. The Contractor, by signature to this contract, certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded in any Federal department or agency from participating in transactions.

32.2. The Contractor agrees to include the above requirement in all subcontracts into which it enters to complete this contract.

### **33. EFFECTIVE DATE**

33.1. Unless otherwise specified under period of performance, the effective date of this Contract and subsequent amendments, if any, is the date of execution.

33.2. The date of execution is the last date of signature of the parties to the Contract.

### **34. GOVERNING LAW**

34.1. This contract shall be governed by the laws of the state of Washington and applicable federal laws and regulations.

34.2. The venue of any legal action or suit concerning this agreement shall be the Thurston County Superior Court and all actions or suits thereon shall be brought therein.

### **35. INDEMNIFICATION**

35.1. To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the state of Washington, the department, and all officials, agents and employees of the State, from and against all claims, suits, or actions for injuries and death arising out of or resulting from Contractor's acts or omissions while performing under the terms of this Contract.

35.2. The Contractor's obligation to indemnify, defend and hold harmless includes any claim by the Contractor's agents, employees, representatives, or any subcontractor or its employees.

35.3. The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents or employees.

### **36. THIRD PARTY ASSISTANCE:**

If the Contractor secures the services of a third party agent, consultant, broker, or similar advisor to aid the Contractor in comprehending or complying with the terms of this Contract, the Contractor shall provide the name and contact information of such third party assistant to the department. The Contractor is solely responsible for compliance with the terms and conditions of this Contract regardless of whether the Contractor has secured the services of such a third party assistant.

### **37. INDEPENDENT CAPACITY OF THE CONTRACTOR**

37.1. The parties intend that an independent contractor relationship will be created by this Contract.

37.2. The Contractor and his or her employees or agents performing under the Contract are not employees or agents of the department.

37.3. The Contractor shall not hold himself/herself out as nor claim to be an officer or employee of the department or of the state of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such employee under law.

**38. INDUSTRIAL INSURANCE COVERAGE**

The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance.

**39. INSURANCE**

The Contractor shall maintain insurance coverage in full force and effect during the term of this Contract, as follows:

39.1. Commercial General Liability Insurance Policy - Provide a commercial general liability insurance policy in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000 per occurrence.

39.2. Automobile Liability. In the event that services delivered pursuant to this Contract involve the use of vehicles, either owned or not owned by the Contractor, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a combined single limit for bodily injury and property damage.

39.3. The insurance required shall be issued by an insurance company that is authorized to do business within the state of Washington.

39.4. Upon request, the Contractor shall submit to the department, a certificate of insurance which outlines the coverage and limits defined in this paragraph. If a certificate of insurance is requested, the Contractor shall submit renewal certificates as appropriate during the term of the Contract.

**40. LICENSING, ACCREDITATION AND REGISTRATION**

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards necessary for the performance of this Contract. This includes, but is not limited to, maintaining a valid Food Establishment Permit issued by the local health agency.

**41. LIMITATION OF AUTHORITY**

41.1. This Contract is subject to the written approval of the Contracting Officer of the department, or his/her delegate, and is not binding until so approved.

41.2. Only the Contracting Officer or his/her delegate by writing (delegation to be made prior to action) has the expressed, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract.

41.3. Furthermore, any alteration, amendment, modification or waiver of any clause or condition of this Contract is not effective or binding unless made in writing and signed by the Contracting Officer or delegate.

**42. NONDISCRIMINATION LAWS NONCOMPLIANCE**

42.1. In the event of the Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this Contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the department.

42.2. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance.

**43. ORDER OF PRECEDENCE**

In the event of an inconsistency in this Contract, unless otherwise provided herein, the inconsistency is resolved by giving precedence in the following order:

- 43.1. Applicable Federal Statutes and Regulations, including, but not limited to, 7 CFR 246.2, .12, .18, .21, .23, and .26,
- 43.2. Applicable State Statutes and Regulations, including, but not limited to, WAC 246-790-010, -077, -086, -105, and -125.
- 43.3. Terms and Conditions of this Contract,
- 43.4. Attachments to this Contract,
- 43.5. WIC Minimum Inventory Requirements,
- 43.6. Washington WIC Approved Infant Formula Suppliers,
- 43.7. WIC Shopping Guide,
- 43.8. Annual Training Requirements,
- 43.9. Any other provision of the Contract whether incorporated by reference or otherwise.

**44. REGISTRATION WITH DEPARTMENT OF REVENUE**

The Contractor shall complete registration with the Washington State Department of Revenue, if applicable, and be responsible for payment of all taxes due on payments made under this Contract.

**45. SEVERABILITY**

If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract which can be given effect without the invalid provision, and to this end the provisions of this Contract are declared to be severable.

**46. SUBCONTRACTING**

The Contractor shall not enter into subcontracts for any of the Contractor's duties under this Contract. In no event shall the existence of the subcontract operate to release or reduce the liability of the Contractor to the department for any breach in the performance of the Contractor's duties.

**47. TAXES**

All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

**48. WAIVER OF DEFAULT**

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by department's designated contracting officer.

## WIC Vendor Contract 2015-2018

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The period of performance under this Contract is from **April 1, 2015 through March 31, 2018** unless ended sooner.

IN WITNESS WHEREOF: The Department and the Contractor have signed this Contract.

**Contractor:**

**Department of Health**

Name of Business	WIC Nutrition Program
Signature of Authorized Person	Signature of DOH Designee
Printed name of Authorized Person	Printed Name of DOH Designee
Title of Authorized Person	Title of DOH Designee
Date Signed	Date Signed

Approved as to form.

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Janis Snoey  
Assistant Attorney General

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WIC Vendor Contract 2015-2018

**Attachment A**  
**WIC Vendor Contract 2015-2018**  
**Vendor Sanction Table**

<b>MANDATORY FEDERAL SANCTIONS</b>	
<b>Violation</b>	<b>Sanction</b>
1. Vendor convicted of trafficking WIC food instruments or cash-value vouchers or selling firearms, ammunition, explosives, or controlled substances [as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)] in exchange for WIC food instruments or cash-value vouchers.	Termination of contract, permanent disqualification
2. One incidence of selling firearms, ammunition, explosives or controlled substances [as defined in 21 U.S.C. 802] in exchange for WIC food instruments or cash-value vouchers.	Termination of contract, 6 year disqualification
3. One incidence of buying or selling WIC food instruments or cash-value vouchers for cash (trafficking).	Termination of contract, 6 year disqualification
4. One incidence of sale of alcohol or alcoholic beverages or tobacco products in exchange for WIC food instruments or cash-value vouchers.	Termination of contract, 3 year disqualification.
5. A pattern of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments or cash-value vouchers.	Termination of contract, 3 year disqualification.
6. A pattern of charging for supplemental food not received by the WIC participant.	Termination of contract, 3 year disqualification.
7. A pattern of receiving, transacting, and/or redeeming WIC food instruments outside of authorized channels, including the use of an unauthorized vendor and/or an unauthorized person.	Termination of contract, 3 year disqualification.
8. A pattern of claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time.	Termination of contract, 3 year disqualification.

## WIC Vendor Contract 2015-2018

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9. A pattern of vendor overcharges.	Termination of contract, 3 year disqualification.
10. A pattern of providing unauthorized food items in exchange for food instruments or cash-value vouchers, including charging for supplemental foods provided in excess of those listed on the food instrument.	Termination of contract, 1 year disqualification.
11. Vendor who has been disqualified from SNAP.	Termination of contract and disqualification for the same length of time as the SNAP disqualification. No administrative review is allowed.

For all of the Federal violations listed above: if the department determines that disqualification of a vendor would result in inadequate participant access, the department may levy a civil monetary penalty in lieu of disqualification.

**Second mandatory sanction:**

If a vendor who has been previously assessed a sanction for Violations 2 - 10 on this table, receives another sanction for any of these violations, the department must double the second sanction. If a civil monetary penalty was assessed in lieu of disqualification, the amount may be doubled up to the limits specified in Federal WIC Regulations at 7 CFR 3.91(b)(3)(v).

**Third or subsequent mandatory sanction:**

If a vendor, who has previously been assessed two or more sanctions for Violations 2 - 10, receives another sanction for any of these violations, the department must double the third sanction and all subsequent sanctions. Civil monetary penalties may not be imposed in lieu of disqualification for third or subsequent sanctions.

## WIC Vendor Contract 2015-2018

<b>STATE SANCTIONS</b>	
<b>Violation</b>	<b>Sanction</b>
1. A pattern of failing to check WIC participant identification against the name or names listed below the signature box on the food instrument	<b>Termination of contract and 1 year disqualification.</b>
2. A pattern of failing to refuse a WIC food instrument for these conditions: <ul style="list-style-type: none"> <li>○ pre-signed WIC food instrument,</li> <li>○ participant has no ID, and/or</li> <li>○ the food instrument is altered.</li> </ul>	<b>Termination of contract and 1 year disqualification.</b>
3. A pattern of failing to write the total purchase amount on the food instrument at the time of redemption.	<b>Termination of contract and 1 year disqualification.</b>
4. A pattern of having the WIC participant sign the food instrument before the purchase price is entered on the food instrument.	<b>Termination of contract and 1 year disqualification.</b>
5. A pattern of failing to post prices where WIC participants can see them.	<b>Termination of contract and 1 year disqualification.</b>
6. A pattern of not getting participant's signature on a WIC food instrument.	<b>Termination of contract and 1 year disqualification.</b>
7. A pattern of giving free items or discounts to WIC participants that are not offered to other customers.	<b>Termination of contract and 1 year disqualification.</b>
8. A pattern of not meeting the WIC Minimum Inventory Requirements.	<b>Termination of contract and 1 year disqualification.</b>
9. A pattern of selling WIC approved infant formula when it is spoiled; has exceeded its "sell by," "best if used by," or other date limiting its sale or use; or the container is defective.	<b>Termination of contract and 1 year disqualification.</b>
10. A pattern of failing to keep training records, or timely submit such on request.	<b>Termination of contract and 1 year disqualification.</b>
11. A pattern of failing to keep inventory receipts, or timely submit such on request.	<b>Termination of contract and 1 year disqualification.</b>
12. A pattern of failing to submit Food Price Surveys.	<b>Termination of contract and 1 year disqualification.</b>

For all of the State violations listed above: if the department determines that disqualification of a vendor would result in inadequate participant access, the department may levy a civil monetary penalty in lieu of disqualification.

This institution is an equal opportunity provider.

**Washington State WIC Nutrition Program does not discriminate.**

For persons with disabilities, this document is available on request in other formats.

To submit a request, please call 1-800-841-1410 (TDD/TTY 1-800-833-6388).

**PUBLIC HEALTH**  
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