

## VENDOR AGREEMENT

**Vendor Contract Identification Number** \_\_\_\_\_

**Vendor Authorization Number** \_\_\_\_\_

This Vendor Agreement, hereinafter “Agreement,” is made between the California Department of Public Health, Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), hereinafter the “Department,” and the combination of an owner and an individual store location named below or on Exhibit A, hereinafter the “Vendor.” The individual(s) or business entity named below, has legal authority to individually or jointly represent the Vendor.

Vendor Store Name	
Street Address	
City, State	Zip Code
Mailing Address (if different from business address)	
Sole Owner Name, Partners’ Names, Limited Liability Company Name, or Corporation Name	

The Department may authorize more than one store belonging to an individual or business entity, hereinafter an “ownership,” in a Master Vendor Agreement, which shall specify all authorized stores covered by the Master Vendor Agreement in Exhibit A. The Department shall list all authorized stores covered by this Agreement on Exhibit A. The Department may add additional stores to Exhibit A after the execution of this Agreement upon receipt of an Addendum to this Agreement. The Addendum shall be in a form prescribed by the Department and must be signed by both Parties. When this Agreement covers multiple stores belonging to an ownership, this Agreement shall be considered a Master Vendor Agreement.

Each store on a Master Vendor Agreement represents a separate vendor. Each vendor, including each store on a Master Vendor Agreement, must complete an application and is subject to authorization criteria. The Master Vendor Agreement is offered to a vendor’s ownership as a convenience, the responsibilities and obligations of a vendor under this Agreement and Federal and State laws and regulations may not be combined or distributed amongst the stores on a Master Vendor Agreement. One store’s compliance with the requirements of this agreement will not be substituted or imputed to another store. Each store, including each

store in a Master Vendor Agreement, is authorized separately from any other store operated under an ownership and must maintain separate inventory purchase records for audits as specified in Article I Section 1(l). The Department shall monitor each store on a Master Vendor Agreement separately for compliance with this Vendor Agreement through activities including, but not limited to, compliance investigations, routine monitoring visits, on-site inspections and audits. The Department shall add or delete an individual store independently of the vendor(s) remaining on the Master Vendor Agreement, except as noted in Article III Section 3 (a) of this Vendor Agreement. The Department shall incorporate by addendum to the Master Vendor Agreement the addition of a vendor store when it has been authorized by the Department for participation in the WIC Program.

This Agreement is a standard vendor agreement used statewide for all vendors authorized to participate in the WIC Program. Pursuant to 7 C.F.R. §246.12(h)(2) the Department must use a standard vendor agreement, therefore the terms of this Agreement are not subject to negotiation. The Department shall not provide legal advice regarding this Vendor Agreement.

WHEREAS, the Department has entered into an agreement with the United States Department of Agriculture for the administration of the Special Supplemental Nutrition Program for Women, Infants, and Children within California,

WHEREAS the Department desires to enter into agreements with retail stores which meet the Department's vendor authorization criteria for the provision of authorized supplemental foods to WIC participants,

WHEREAS the Department must ensure that retail stores authorized to provide supplemental foods to WIC participants meet federal and state program requirements,

NOW, THEREFORE the Parties agree as follows:

## **ARTICLE I: VENDOR RESPONSIBILITIES**

1. Vendor Compliance with Program Requirements. As an authorized vendor in the WIC Program, in exchange for reimbursement as described in Article II, Vendor agrees to comply with the following rules:
  - (a) Vendor agrees to participate in the California Special Supplemental Nutrition Program for Women, Infants, and Children (hereafter known as the WIC Program) and agrees to all of the terms of this Vendor Agreement and to comply with and be subject to all of the following:
    - (1) The legislative requirements for the Special Supplemental Nutrition Program for Women, Infants, and Children in Section 17 of the Child Nutrition Act of 1966 as amended (42 U.S.C. 1786);
    - (2) Title 7, Code of Federal Regulations, Part 246 (7 C.F.R. §246);
    - (3) California Health and Safety Code, Sections 123275 et seq.;
    - (4) California Code of Regulations, Title 22, Sections 40601 et seq.;
    - (5) California WIC Program Bulletin Regulations (W.B.R.);
    - (6) Other applicable Federal and State laws, regulations, rules, memorandums, instructions, guidance, vendor alerts, and vendor bulletins governing the WIC Program; and
    - (7) The vendor sanction provisions in 7 C.F.R. §246.12 and Cal. Code Regs., tit. 22, §§40740 and 40741.

- (8) The administrative appeal provisions in 7 C.F.R. §246.18 and Cal. Code Regs., tit. 22, §§40751 and 40752.
- (b) Vendor store shall have a fixed location from which food instruments are transacted and authorized food provided to participants.
- (c) Vendor store must be open at least eight (8) hours per day, six (6) days per week. Of the eight (8) hours, at least four (4) of the hours that the vendor is open must be between 9:00 am and 5:00 pm as required by W.B.R. §71500.
- (d) Vendor must maintain a valid permit on the premises to operate a retail food facility, as required by the California Retail Food Facility Code (Health and Safety Code §114381) and, upon request, provide proof of the permit to the Department for the authorization period as required by W.B.R. §70200.
  - (1) Vendor must notify the Department, in writing, of any suspension or revocation of the permit within ten (10) business days.
- (e) Vendor must have obtained authorization for participation in the SNAP/CalFresh Program and provide the Department with the store's SNAP/CalFresh Program Number. The Vendor must maintain SNAP/CalFresh authorization during the term of this Agreement as required in W.B.R. §§71600 and 71700.
- (f) Vendor must maintain and use a cash register system which complies with W.B.R. §70300 to conduct all business sales transactions.
- (g) Vendor must have access to a computer or other electronic device that has the ability to access the internet, receive and send emails, use web-based applications and apply an electronic signature to official documents in compliance with W.B.R. §71200.
- (h) Vendor must accept that the Federal WIC logo and the WIC acronym are registered service marks of the United States Department of Agriculture (USDA). The Federal WIC logo and the California WIC logo are the property of the Federal and State Governments. Vendor agrees to use the WIC acronym and logo only as permitted by W.B.R. §71400 and mandatory federal requirements contained in federal statutes and regulation and all federal memoranda and guidance letters clarifying and interpreting the federal laws and regulations as adopted by WIC Regulatory Bulletin 2012-01.
- (i) Vendor or its designated representative must attend all mandatory trainings and comply with applicable testing or certification requirements as specified in Cal. Code Regs., tit. 22, §40733 and W.B.R. §71800.
  - (1) Vendor shall be responsible for training all employees who participate in Program transactions or handle food instruments regarding information contained in the interactive and annual trainings.
- (j) Vendor must maintain on the premises the WIC authorized supplemental foods listed in the amounts listed in W.B.R. §71100 at all times.
  - (1) Inventory counted for purposes of W.B.R. §71100 must be stocked on store shelves in the public area available for purchase except stock allowed in storage on the premises of that store location as specified in W.B.R. §71100.
- (k) Vendor must purchase authorized infant formula provided to participants only from authorized suppliers as described in W.B.R. §70900.

- (1) At the time of authorization and upon request from the Department, the Vendor shall provide to the Department information regarding the supplier(s) of all infant formula stocked by the Vendor, as specified below:
    - (A) For a supplier that is a manufacturer of infant formula registered with the Food and Drug Administration, the name and address of that manufacturer.
    - (B) For a supplier that is a wholesaler, distributor, or retailer within California, the name and address of that wholesaler, distributor, or retailer and its corresponding California seller's permit number.
    - (C) For a supplier that is a wholesaler, distributor, or retailer outside of California, the name and address of that wholesaler, distributor, or retailer and correspondence from that state WIC agency confirming that the supplier is included on that state WIC agency's list of authorized suppliers of infant formula.
  - (2) Vendor must maintain purchase records of all infant formula purchases in accordance with W.B.R. §71000. For each invoice containing a purchase of infant formula, the Vendor shall retain a record that documents that the purchase of infant formula was from an authorized supplier as specified in Article I Section 1 (k)(1). An invoice for purchase of infant formula that is not from an authorized supplier shall not be considered an acceptable record of inventory.
  - (3) Upon request, the Vendor shall provide to agents of the State, the Department, and the Comptroller General of the United States invoices for all purchases of infant formula and records that document that the infant formula purchase was from an authorized supplier.
- (l) Vendor must maintain adequate inventory purchase records, as defined in W.B.R. §71000, including adequate transfer records if inventory is moved from one store location to another. If the Vendor owns more than one vendor store, including multiple stores under a Master Vendor Agreement, separate inventory purchase records, including transfer records, must be maintained for each store location.
- (1) If the ownership owns more than one vendor store, including multiple stores under a Master Vendor Agreement, the ownership agrees to have each store monitored for compliance separately from all other stores including for the purpose of audits and the establishment of vendor claims.
  - (2) Upon request, the Vendor shall provide to agents of the State, the Department, and the Comptroller General of the United States all WIC program related records necessary for determination of compliance with program requirements.
- (m) Vendor must post prices of all WIC authorized supplemental foods so that the prices are visible to customers, as specified in W.B.R. §71900.
- (n) Vendor must meet competitive price criteria for as defined in W.B.R. §70600 at all times throughout the term of this Agreement.
- (1) Vendor must submit shelf prices to the Department as required in W.B.R. §70600.
- (o) Vendor must offer program participants, parents or caretakers of infant and child participants, and proxies as defined in 7 C.F.R. 246.2 (collectively "participants"), the same courtesies offered to other customers.

- (p) Vendor must comply with the provisions of Title VI of the Civil Rights Act, which provides for equal treatment of all persons, and Federal regulations set forth in Cal. Code Regs., tit. 7 parts 15, 15a and 15b governing discrimination. The Vendor shall comply with California Government Code §12990(d) and Cal. Code Regs., tit. 2, §§8103 and 8107 which prohibit discrimination against any person because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, or sex.
- (q) Vendor may not attempt to influence participants' store selection through solicitation on or in the vicinity of a WIC local agency clinic site.
- (r) Vendor must report any participants attempting to violate WIC Program rules when using food instruments. Vendor shall report such activities to the Department on the form "Vendor Report Concerning WIC Participants," CDPH 4007.
- (s) If offering incentive items to customers, Vendor must comply with the incentive item requirements in W.B.R. §70800.
  - (1) An above-50-percent vendor who wishes to provide allowable incentive items must obtain written approval from the Department prior to offering any incentive items to customers.
  - (2) Vendor requests for approval of allowable incentive items must be submitted to the Department at [WICVENDORINFO@cdph.ca.gov](mailto:WICVENDORINFO@cdph.ca.gov) and must include an email subject line stating, "Incentives Approval", the vendor ownership name, the contract ID number, a description of the incentive offer, a description of the allowed incentive item to be offered, and the purchase invoice showing the cost of the allowable incentive item.
- (t) Vendor agrees to follow and adhere to the administrative appeals provisions when appealing an adverse action. These provisions can be found in Title 22, §§40751 and 40752 of the California Code of Regulations and are available in Title 22, Division 2, Subdivision 6, Chapter 6, Article 7 at <http://ccr.oal.ca.gov/linkedslice/default.asp?SP=CCR-1000&Action=Welcome>.
  - (1) Unless vendor indicates an alternative preference by initialing subsection (2) below, vendor agrees that all administrative hearings shall be conducted in Sacramento, CA.
  - (2) By initialing this subsection, vendor does not agree to have all administrative hearings in Sacramento, and instead agrees that all administrative hearings shall be held at the facility that is closest to the location where the transaction occurred. \_\_\_\_\_ Initials
- (u) Vendor must keep the identities of participants confidential. Any information about a WIC participant, whether obtained from the participant or another source, that identifies a WIC participant individually or anyone authorized to act on behalf of the participant is confidential regardless of its original source.
- (v) Vendor must accept responsibility for the actions of all agents and employees who participate in Program transactions or handle food instruments.
- (w) If incorporated or organized, Vendor must maintain their business entity in good standing with the selected jurisdiction of incorporation or organization, e.g., a corporation may not be suspended or cancelled status.
- (x) Vendor must ensure the Department is provided with written notice of any change in Vendor's mailing address (when different than the store address) within five days of the change in address. Written notice should be directed to the Department at the address in Article VI.
- (y) Vendor must repay all vendor claims assessed by the Department. A vendor claim shall be either the full amount of an audit finding determined during an audit of the Vendor or the amount

of the full purchase price of any food instrument transacted in violation of state and federal regulation or this Agreement as defined in Cal. Code Regs., tit. 22, §40661.

- (z) In order for the Department to promote the goals of the WIC Program the Vendor shall provide the Department with such information and data in both form and manner prescribed by the Department as the Department may request.

2. Acceptance of Food Instruments and Cash Value Vouchers (CVVs) by Vendor. As an authorized vendor in the California WIC Program, Vendor agrees to process all food instruments and CVVs in accordance with Program regulations and the terms of this Agreement. When processing food instruments Vendor agrees to comply with the following rules:

- (a) Vendor must accept food instruments and CVVs for the duration of this Agreement.
- (b) Vendors must accept food instruments and CVVs only from participants, (as defined in 246.2), who provide proper WIC identification.
- (c) Vendor must accept food instruments and CVVs only at the time of actual purchase of the authorized supplemental foods.
- (d) Vendor may accept food instruments and CVVs only if the words "WIC AUTHORIZED VENDOR" have been entered on the "Pay to the Order of" line on the face of the food instrument.
- (e) Vendor must allow participants to redeem food instruments for only those food items and quantities printed on the food instrument. Vendor may not provide participants with substitutions including brands or items other than those included on the WIC Authorized Food List (W.B.R. §82000). Vendor must not provide participants with unauthorized food items, non-food items, cash, or credit, including rain checks. The Vendor shall provide participants with only those authorized supplemental foods designated in W.B.R. §82000.
- (f) Vendor may accept food instruments and CVVs only on or between the "first day to use" and the "last day to use" printed on the face of the food instrument. Vendor agrees not to accept any food instruments or CVVs prior to the "first day to use" or after the "last day to use" dates.
- (g) Vendor must accept food instruments and CVVs only at the vendor store location or locations authorized by this Agreement.
- (h) When accepting food instruments or CVVs, Vendor must ensure the participant signs the food instrument or CVVs in the presence of the cashier. The Vendor shall not accept pre-signed food instruments without requiring the participant to resign the food instrument.
- (i) When accepting food instruments or CVVs, Vendor must compare the signature on each food instrument with the signature on the customer's WIC Identification/Authorization Folder in the presence of the customer. Vendor must ensure that the customer's signature appears on the WIC Identification/Authorization Folder.
- (j) Vendor may not require participants to provide any personal information other than the participant's WIC Identification/Authorization Folder in the process of exchanging food instruments or CVVs for authorized supplemental food items.
- (k) Vendor may not accept the return of foods purchased with food instruments or CVVs. Foods purchased with food instruments or CVVs may not be returned for cash or credit or be exchanged for unauthorized foods. Foods purchased with food instruments may be exchanged for an identical food item only when the original food item is defective, spoiled, or in the case of infant formula, has a date beyond which the item can be legally sold. An identical food item is

defined as the exact brand, type and size and UPC code (if available) of the original WIC authorized supplemental food item obtained and returned by the client. For example: a dozen Brand X eggs that were spoiled at the time of purchase may only be exchanged for an identical dozen Brand X eggs.

- (l) Vendor must provide authorized supplemental foods to participants in exchange for food instrument free of any additional charge, except for the CVV for fresh fruits and vegetables as specified in Article I Section 2 (p)(3). Vendors may not charge a participant any fee to use or redeem a food instrument.
- (m) Vendor may not charge sales tax on WIC authorized supplemental foods sold to participants. Applicable sales tax may only be applied to any monetary amount paid with a participant's own funds (at their discretion) above the maximum allowable department reimbursement (MADR) rate that is printed on the fruits and vegetables CVV.
- (n) When accepting food instruments the vendor must enter the actual selling price for the quantity of foods selected by the participant. The actual selling price is the amount entered on the food instrument or CVV by a vendor at the time of sale, including all store coupon or advertisement discounts applied to the sale. The actual selling price must include only the WIC authorized supplemental food items actually provided to the participant.
- (o) Vendor must enter the actual selling price of the specific quantity of supplemental foods on each food instrument or CVV at the time of purchase and before the participant signs each food instrument.
- (p) When accepting CVVs for fruits and vegetables with a printed cash value:
  - (1) The Vendor shall enter the actual selling price of the fruits and vegetables when the cost of the quantity purchased by the participant is less than the MADR rate for the fruits and vegetables CVV.
  - (2) The Vendor shall enter the MADR rate for the fruits and vegetables CVV when the cost of the quantity of fruits and vegetables purchased by the participant equals or exceeds that rate.
  - (3) If the actual selling price of the fruits and vegetables selected exceeds the MADR rate and the participant wishes to purchase the full quantity he/she selected, Vendor shall accept and collect payment from the participant for the amount exceeding that rate. Vendor may not refuse to accept the additional payment from the participant for the purchase of fruits and vegetables exceeding the MADR rate for the fruits and vegetables CVV.
- (q) Vendor may not seek or accept payment from the participant with any food instrument except for the CVV redeemable for the purchase of fruits and vegetables.
- (r) Vendor may not give change on any food instrument or CVV when the actual selling price of the specified supplemental foods is less than the MADR rate for that food instrument.
- (s) Vendor may not allow the participant to purchase additional authorized supplemental foods in excess of the quantity printed on the food instrument when the actual selling price of the specified supplemental foods is less than the MADR rate for that food instrument.
- (t) Vendor must provide the same discount opportunities to WIC participants as to non-WIC customers.

(u) Vendor must provide agents of the State, the Department, and the Comptroller of the United States access to all food instruments and CVVs in the Vendor's possession, including but not limited to food instruments negotiated but not yet deposited, for review upon demand.

3. Vendor Redemption of Food Instruments and Cash-Value Vouchers. As an authorized vendor in the California WIC Program, Vendor agrees to redeem all food instruments and CVVs in accordance with Program regulations and the terms of this Agreement. When redeeming food instruments Vendor agrees to comply with the following rules:

(a) When redeeming food instruments for reimbursement, Vendor must associate the serial number of each food instrument with the vendor authorization number of the vendor store that accepted the food instrument or CVV. If an ownership owns more than one vendor store, including multiple stores under a Master Vendor Agreement, Vendor may not associate food instruments or CVVs accepted at one store location with a different store's vendor authorization number.

(b) Vendor must associate the serial number of a food instrument or CVV with the vendor location by transmitting the serial numbers of all food instruments and CVVs to the Department through one of the submission options described below prior to depositing the food instruments into its bank account.

(1) Vendor may use a computer equipped with web browser software and an internet connection to access the Department website at [vwix.ca.gov](http://vwix.ca.gov) and follow the menu of instructions provided by the WIC website; or

(2) Vendor may acquire technology that will scan the Magnetic Ink Character Recognition (MICR) line imprinted on each food instrument, collect each serial number and prepare in an electronic file format that can be submitted to the Department through the WIC website or through File Transfer Protocol (FTP) software.

(A) If the vendor chooses to associate the serial numbers of food instruments or CVVs using technology that will scan the MICR line on a food instrument, Vendor assumes all responsibility for acquisition of the technology to ensure successful transmission of food instrument or CVV serial numbers to the Department.

(c) Vendor shall be responsible for ensuring successful transmission of all food instrument or CVV serial numbers it redeems to the Department through any and all submission options.

(d) Failure by the Vendor to meet the requirements for submitting food instrument or CVV serial numbers may result in the delay or denial of reimbursement for each food instrument or CVV not redeemed as specified in Article I Section 3.

(e) Vendor shall be responsible for ensuring the security of the information provided to the Vendor by the Department including user identification numbers, passwords and access codes, which are required for submission of food instrument serial numbers to the WIC Program. Vendor shall hold the Department and the State harmless for any harm or loss to the Vendor arising from any breach of security of this information. Vendor shall be responsible for ensuring the proper training of any staff it delegates to complete food instrument or CVV redemption procedures.

(f) In order to receive reimbursement, after the food instrument or CVV has been associated with the vendor authorization number of the vendor store, Vendor must deposit the food instrument or CVV into the Vendor's bank account. All food instruments or CVVs must be deposited within forty-five (45) days of the "first day to use" date printed on the food instrument.

(g) Vendor must not redeem a food instrument or CVV outside of authorized channels. An authorized channel is defined as a vendor accepting a food instrument or CVV at a vendor store authorized by its vendor agreement and associating the serial number of the food instrument or

CVV with that vendor store's vendor authorization number and then depositing the food instrument or CVV into that vendor's bank account. Food instruments and CVVs may not be used in the repayment of debts to other parties.

- (h) Vendor must accept all financial responsibility for all account costs including returned check charges incurred by the vendor in the food instrument or CVV redemption process.
- (i) Vendor must accept the lesser of the vendor's posted price, the actual selling price, or the MADR as reimbursement for the supplemental foods purchased by the participant and included on the food instrument or CVV.
- (j) Vendor must accept Department's adjustments to the purchase price on the food instruments or CVVs submitted by the Vendor for redemption or rejection of the food instruments or CVVs for payment to ensure compliance with price limitations applicable to the Vendor's peer group.
- (k) Vendor may not seek restitution from the participant for food instruments or CVVs not paid or partially paid by the Department.
- (l) Any vendor who has willfully misapplied, stolen, or fraudulently obtained WIC Program funds shall be liable to prosecution under applicable Federal, State or local laws. If the value of such funds is \$100 or more, then the Vendor shall be subjected to a fine of not more than \$25,000 or imprisonment for no more than five (5) years, or both. If the value of such funds is less than \$100, then the penalties shall be a fine of not more than \$1,000, or imprisonment for no more than one (1) year, or both. In addition, the Vendor shall make full restitution to the State for the value of all food instruments transacted in violation of this Agreement.

## **ARTICLE II: DEPARTMENT RESPONSIBILITIES**

1. Departmental Reimbursement of Vendors. The Department shall reimburse the Vendor for food instruments and CVVs accepted and submitted for reimbursement in compliance with this Agreement and Program rules and regulations.
  - (a) The Department shall provide the Vendor access to information and instruction for using the food instrument serial number submission options specified in Article I Section 3 (b) of this Agreement. The Department shall provide the Vendor with the opportunity to confirm transmission of food instrument or CVV serial number to the WIC Program for each submission option.
  - (b) The Department shall establish a MADR rate for each peer group as payment in full for the maximum allowable quantity of food listed on a food instrument redeemed by vendors.
  - (c) The Department shall reimburse Vendor for CVVs as follows:
    - (1) The Department shall reimburse Vendor for the actual selling price of the fruits and vegetables when the cost of the quantity purchased by the participant is less than the MADR rate for the CVVs.
    - (2) The Department shall reimburse Vendor the MADR rate for the fruit and vegetable CVVs when the actual selling price of the quantity of fruits and vegetables purchased by the participant equals or exceeds the MADR rate.
      - (A) If the actual selling price of fruits and vegetables chosen by a participant exceeds the MADR rate for the fruit and vegetable CVVs and the participant wishes to purchase the full quantity selected, the Vendor shall accept and collect payment from the

participant for the amount by which the actual selling price exceeds the MADR rate of the CVVs.

- (d) The Department shall reimburse Vendor for food instruments as follows:
  - (1) The Department shall reimburse Vendor the lesser of the Vendor's posted price, the actual selling price, or the MADR rate for the supplemental foods purchased by the participant and included on the food instrument.
  - (2) If the Vendor submits a food instrument for payment in an amount that exceeds the MADR rate, that food instrument will be rejected and returned to the Vendor by the Department or its agent. When a food instrument is rejected, the Vendor must reduce the amount requested for reimbursement on the food instrument so that it does not exceed the MADR rate and resubmit the food instrument.
    - (A) Vendors may not seek or accept payment for any difference between the Vendor's posted price or the actual selling price of the supplemental foods purchased and the MADR rate for a food instrument when the Vendor's posted price or actual selling price of the supplemental foods exceeds the MADR rate.

(e) The Department shall not reimburse Vendor for counterfeit or stolen food instruments or CVVs.

- 2. Assignment of Vendor to a Peer Group. Upon authorization the Department shall assign Vendor to a peer group. The Department may assess and reassign Vendor to a peer group at any time during the term of this Agreement based on changes to the Vendor's business or changes in the peer group criteria. As part of the Department's peer group assessment, the Department shall assess and designate Vendor as an above-50-percent vendor or a non above-50-percent vendor.
- 3. Provision of Vendor Training. The Department shall provide Vendor with interactive training once every three years as specified in 7 C.F.R. §246.12(i) and Cal. Code Regs., tit. 22, §40733. The Department shall designate the date, time, and location of all interactive training for vendors. The Department will provide the vendor with at least one alternative date for vendors to attend such training.
- 4. Provision of Program Materials. The Department shall provide Vendor access to program materials as follows:
  - (a) The Department shall provide Vendor with access to materials produced by the WIC Program, such as posters, decals and stickers, containing the WIC acronym and/or California WIC logo for use in compliance with W.B.R. §71400. The Department shall review and provide written approval of printed materials produced by Vendor which meet the requirements of W.B.R. §71400.
  - (b) The Department shall post a copy of the WIC Authorized Food List and associated regulation on the WIC Regulations website at <http://www.cdph.ca.gov/programs/wicworks/Pages/WICRegulations.aspx>
- 5. Monitoring and Compliance. The Department may monitor Vendor for compliance with this Agreement through activities such as compliance investigations, routine monitoring visits, on-site inspections, and audits.
  - (a) The Department may audit Vendor's records and books of account to determine if violations of this Agreement have occurred and to identify amounts due the State for improperly transacted food instruments, including food reimbursement amounts paid to the Vendor which cannot be substantiated by Vendor's inventory records required in Article I Section 1 (l) of this Agreement and for food instrument reimbursement amounts for infant formula which cannot be

substantiated as infant formula that the Vendor purchased from an authorized supplier by the inventory records required in Article I Section 1 (k)(2) of this Agreement.

- (b) The Department shall provide Vendor with specific instructions regarding appeal rights at the time of notification of disqualification or other adverse action.
- (c) If the Department disqualifies Vendor for a violation in 7 C.F.R. §246.12(l)(1), the Department shall notify the Vendor that a disqualification from the WIC Program may result in disqualification from the Food Stamp Program/Supplemental Nutrition Assistance Program and such disqualification is not subject to appeal.

6. Vendor Claims. The Department shall deny payment or establish a claim for each food instrument or CVV transacted in violation of any statute, regulation, or the rules of this Agreement. A claim will either be the full amount of an audit finding determined during an audit of a vendor or the amount of the full purchase price of any food instrument or CVV transacted in violation of WIC Program regulations as identified during vendor monitoring. The Department will provide an opportunity to justify or correct a vendor claim as specified in Article V Section 1 (b)(9) of this Agreement. In addition to assessing a claim, the Department may sanction the vendor in accordance with Cal. Code Regs., tit. 22, §§40740 and 40741.

7. Notices. The Department shall provide notice to the Vendor as follows:

- (a) The Department shall notify Vendor in writing of adverse actions, vendor claims, and amendments to this Agreement by mail. Any written notice provided by mail pursuant to this Section shall be deemed to have been received by Vendor as specified in subsections (1)-(3) below:
  - (1) On the date of the delivery confirmed by the United States Postal Service (USPS) when mailed to the Vendor with USPS Tracking to the address indicated on page 1 of this Agreement or at the most recent address specified by written notice given to the Department by the Vendor in compliance with Article I Section 1 (x).
  - (2) On the date of delivery indicated on the return receipt, when mailed using first class postage prepaid certified mail, return receipt requested, and addressed to Vendor at the address indicated on page 1 of this Agreement or at the most recent address specified by written notice given to the Department by the Vendor in compliance with Article I Section 1 (x).
  - (3) On the fifth day after mailing to the Vendor, when mailed first class postage prepaid and addressed to Vendor at the address indicated on page 1 of this Agreement or at the most recent address specified by written notice given to the Department by the Vendor in compliance with Article I Section 1 (x).
- (b) The Department will provide Vendor with notice of any changes to California WIC Regulations at <http://www.cdph.ca.gov/programs/wicworks/Pages/WICRegulations.aspx>.
- (c) The Department will provide Vendor with notice of other Program actions at <http://www.cdph.ca.gov/programs/wicworks/Pages/WICGrocerAlerts.aspx>

## ARTICLE III TERM AND TERMINATION OF VENDOR AGREEMENT

1. Term. This Agreement remains in effect \_\_\_\_\_ months from \_\_\_\_\_, unless it is terminated earlier by the Vendor, or by the Department for cause, including but not limited to termination for failure to meet vendor selection criteria, or disqualification by the Department after 15 days written notice, except for a termination pursuant to W.B.R. §70400 as indicated in Article III Section 3(a) of this Agreement which is effective immediately, or a disqualification based on Cal. Code Regs., tit. 22, §40740(c), which becomes effective on the date of receipt of the notice of disqualification.
  - (a) If the Vendor wishes to continue to be authorized beyond the period of its current agreement, the Vendor must reapply for authorization.
  - (b) In the event the Department or the Vendor terminates vendor authorization, the Vendor must reapply for authorization and a new vendor agreement must be executed in order for the Vendor to become an authorized vendor in the WIC Program.
  - (c) If a Vendor is disqualified, the State agency will terminate the Vendor's agreement and the Vendor must reapply for authorization after the disqualification period is over.
  - (d) In all cases, the Vendor's new application will be subject to the Department's vendor authorization criteria, vendor selection criteria, any vendor limiting criteria in effect at the time of the reapplication, and the provisions of any vendor moratorium in effect at the time of application.
2. Neither the State nor the vendor has an obligation to renew this Agreement. The expiration of this Agreement is not subject to appeal.
3. Termination. This Agreement and the Vendor's authorization will be terminated if at any time during the term of this Agreement the Vendor fails to comply with the terms of this Agreement, Federal and State statutes, regulations, policies, and procedures governing the WIC Program, including any changes made during the agreement period.
  - (a) This Agreement will be immediately terminated if the Department determines that the Vendor provided false information in connection with its application for authorization and the false information was material to the Department's decision to authorize the Vendor as defined in W.B.R. §70400. If Vendor provides false information that was material to the Department's decision to reauthorize vendor stores on a master reauthorization application, all vendor stores on the master reauthorization application that were reauthorized using the false information will be terminated. Notification of the termination of the Agreement for this reason is not required prior to the actual termination.
  - (b) Except for an immediate termination specified in Article III Section 3 (a) of this Agreement and for a disqualification based on Cal. Code Regs., tit. 22, 40740(c) which becomes effective on the date of receipt of the notice of disqualification, the Department shall terminate the Agreement with a minimum of 15 days written notice.
  - (c) This Agreement and the Vendor's authorization will be terminated if the Vendor fails to comply with any of the rules or provisions of this Agreement.
  - (d) This Agreement will be terminated and the Vendor may be disqualified from the WIC program if the Vendor has been disqualified from the Food Stamp Program/Supplemental Nutrition Assistance Program or has received a Food Stamp Program/Supplemental Nutrition Assistance Program civil money penalty in lieu of disqualification.

- (e) This Agreement will be terminated and the Vendor will be disqualified for a violation listed in 7 C.F.R. §246.12(l) or Cal. Code Regs., tit. 22, §§40740 and 40741.
- (f) This Agreement and the Vendor's authorization will be terminated if at any time during the term of this Agreement the Vendor does not comply with the vendor authorization criteria (W.B.R. §70000 et seq.), including any changes to the criteria made during the Agreement period.
- (g) This Agreement and the Vendor's authorization will be terminated for any change in ownership, store location, or cessation of operations. The Vendor must provide the Department at least fifteen (15) days advance written notice of any such changes.
- (h) This Agreement and the Vendor's authorization will be terminated for closure of a vendor store due to suspension or revocation of the Vendor's permit to operate a retail food facility, or for failure to notify the Department of suspension or revocation, pursuant to W.B.R. §70200.
- (i) This Agreement and the Vendor's authorization will be terminated if the Department determines that the Vendor is subject to a ruling by a federal or state enforcement agency that the Vendor, on the grounds of race, color, national origin, age, sex or handicap, excluded from participation in, denied benefits to, or otherwise subjected to discrimination any Program participant in the process of obtaining Program benefits from that vendor pursuant to W.B.R. §70700.
- (j) This Agreement and the Vendor's authorization will be terminated if the Department identifies a conflict of interest between the Vendor and the Department or its WIC local agencies, as defined in W.B.R. §71300 or applicable State laws, regulations, and policies. Signing of this Agreement constitutes representation by the Vendor that there is no conflict of interest between the Vendor and the Department or any WIC local agency.
- (k) This Agreement and the Vendor's authorization will be terminated if the Vendor fails to complete the annual and interactive training as required by Cal. Code Regs., tit. 22, §40733 and W.B.R. §71800.
- (l) This Agreement and the Vendor's authorization will be terminated for failure to submit semi-annual price information upon request by the Department as required by W.B.R. §70600(f).
- (m) This Agreement and the Vendor's authorization will be terminated for failure to maintain the required inventory and transfer records, including separate inventory and transfer records for each Vendor location owned, as specified in W.B.R. §71000 and Article I Section 1 (l) of this Agreement.
- (n) This Agreement and the Vendor's authorization will be terminated if the Department determines that the Vendor is attempting to circumvent a WIC sanction or vendor claim as defined in W.B.R. §70500.
- (o) This Agreement and the Vendor's authorization will be terminated if the Vendor, after written notification from the Department, fails to repay the Department any money owed as a result of any vendor claim after entering in an installment plan agreement with the Department.

#### **ARTICLE IV: VENDOR SANCTIONS**

1. Vendor will be sanctioned and this Agreement will be terminated for vendor violations identified in Cal. Code Regs., tit. 22, §§40740-40741.
2. The Department shall notify Vendor in writing when an investigation reveals an initial incident of a violation for which a pattern of violations must be established in order to impose a sanction before

another such incident is documented. Violations not requiring a pattern of violations before imposing a sanction include those specified in Cal. Code Regs., tit. 22, §40740(c)-(d) and no warning letter will be provided for those violations.

3. Vendor shall be accountable for all vendor violations committed by its owners, officers, managers, agents and employees.

## **ARTICLE V: ACTIONS SUBJECT TO ADMINISTRATIVE APPEAL**

1. Vendor Right to Administrative Review. The Department shall provide Vendor administrative review of adverse actions in compliance with Cal. Code Regs., tit. 22 §40751 and 7 C.F.R. §246.18(a)(1).
  - (a) The Department shall provide Vendor with abbreviated administrative review for those adverse actions listed in Cal. Code Regs., tit. 22 §40752.
  - (b) The Department shall not provide administrative review of the following actions pursuant to 7 C.F.R. §246.18(a)(1)(iii):
    - (1) The validity or appropriateness of the Department's vendor limiting criteria, vendor selection criteria for minimum variety and quantity of supplemental foods, business integrity, and current SNAP disqualification or civil money penalty for hardship.
    - (2) The validity or appropriateness of the Department's selection criteria for competitive price criteria, including but not limited to vendor peer group criteria and the criteria used to identify vendors that are above-50-percent vendors or comparable to above-50-percent vendors.
    - (3) The validity or appropriateness of participant access determination criteria or a participant access determination.
    - (4) The Department's determination to include or exclude an infant formula manufacturer, wholesaler, distributor, or retailer from its authorized list from which to purchase infant formula.
    - (5) The validity or appropriateness of the Department's prohibition of incentive items or the Department's denial of an above-50-percent vendor's request to provide incentive items.
    - (6) The Department's determination of whether to notify a vendor in writing when an investigation reveals an initial violation for which a pattern of violations must be established in order to impose a sanction.
    - (7) The Department's determination of whether a vendor had an effective policy and program in effect to prevent trafficking and that the ownership of the vendor was not aware and did not approve of, and was not involved in the conduct of the violation.
    - (8) The expiration of a vendor agreement.
    - (9) Disputes regarding food instrument or CVV payments and vendor claims. Vendors who dispute vendor claims will be provided an opportunity to justify or correct a vendor overcharge or other error, as permitted by 7 CFR, §246.12(k)(3). Specific instructions regarding the opportunity to justify or correct will be provided to the Vendor at the time of notification of the assessment of a vendor claim.

- (10) The disqualification of a vendor as a result of disqualification from Food Stamp Program/Supplemental Nutrition Assistance Program.

## **ARTICLE VI: ADDITIONAL TERMS**

1. **Conflict Between this Agreement and Federal Rules.** Any direct conflict between the terms of this Agreement and the Federal WIC Program statutes, regulations, and any mandatory federal memoranda and guidance letters clarifying and interpreting the federal laws and regulations, shall be resolved in favor of the current federal requirement for only those parts of this Agreement's requirements in direct conflict with federal requirements. All other provisions shall remain unchanged.
2. **Not a License.** This Agreement does not constitute a license, property interest, or right.
3. **Assignment.** Vendor shall not assign any of its rights, duties or obligations under this Agreement.
4. **Independent Contractor Status.** Vendor shall be considered an independent contractor and not an employee or agent of the Department or the State of California in carrying out the terms of this agreement.
5. **Consultation with Counsel.** Vendor has entered and executed this agreement freely and voluntarily based on their own independent judgment after an opportunity for consultation with counsel and without duress, coercion, or undue influence of any kind.
6. **Contingency.** This Agreement is contingent upon the continued operation of the WIC Program by the Department and the availability of federal funds. In the event of the discontinuance of the WIC Program by the Department or the unavailability of federal funds, the Department shall immediately notify Vendor of the same, and Vendor, if so directed, shall cease accepting food instruments. The Department shall not be liable for any food instruments accepted by Vendor following such notice by the Department.
7. **Amendment.** The Department may issue from time to time, revisions to this Agreement to conform to amendments to applicable Federal and State laws, regulations, and policies. Refusal to sign amendments to this Agreement will result in termination of this Agreement by the Department.
8. **Governing Law and Venue.** This Agreement is executed in and intended to be performed in the State of California, and the laws of this state shall govern its interpretation and effect.
9. **Severability.** If any term, provision, covenant or condition to this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.
10. **Definitions.** Terms that are not specifically defined in this Agreement are used as set forth in Health and Safety Code § 123275 et seq., Cal. Code Regs., tit. 22, §40601 et seq., and 7 C.F.R. §246.2.
11. **Effect of Titles and Headings.** Article, section, paragraph, and other headings used in this Agreement are for reference purposes only and are in no way intended to describe, interpret, define or limit the scope or intent of this Agreement or any provision or term of it.
12. **The laws and regulations cited in this Agreement are subject to change; current versions, which are incorporated into this Agreement by reference, may be found at <http://www.cdph.ca.gov/programs/wicworks/Pages/WICRegulations.aspx>.**

13. For questions or comments regarding this Agreement, please contact:

WIC Program  
3901 Lennane Dr.  
Sacramento, CA 95834  
Attn: Vendor Management Branch

California Department of Public Health  
PO Box 997375, MS 8600  
Sacramento, CA 95899-7375  
1 (855) 942-7867

Information about the WIC Program is available on the internet at [www.wicworks.ca.gov](http://www.wicworks.ca.gov)

**ARTICLE VII: CERTIFICATION**

Vendor has read and understands the laws and regulations that govern the WIC Program and agrees to follow these requirements and all the terms of this Agreement as well as the provisions of the WIC Authorized Food List (W.B.R. §82000). Vendor also agrees to read any amendments or updates to this Agreement. The Vendor further agrees to comply with such amendments or updates if the vendor continues participation thereafter in the WIC Program.

The undersigned certifies that he/she has the full legal authority to bind the Vendor in this contract.

**SIGNATURE**

Vendor Printed Name and Title	Signature	Date Signed
CA WIC Program Printed Name, Chief or Designee	Signature	Date Signed