

Vendor I.D.: \_\_\_\_\_

**ARIZONA DEPARTMENT OF HEALTH SERVICES  
SPECIAL SUPPLEMENTAL NUTRITION PROGRAM  
FOR WOMEN, INFANTS AND CHILDREN (WIC)**

**VENDOR CONTRACT**

VENDOR NAME (Legal Name of Store): \_\_\_\_\_

NAME OF OWNER: \_\_\_\_\_

ADDRESS OF STORE: \_\_\_\_\_  
Street

City

County

State

Zip Code + 4

FEDERAL IDENTIFICATION NUMBER: \_\_\_\_\_

Arizona Department of Health Services (hereafter referred to as the Department) has authority to contract for the services specified herein in accordance with A.R.S. §§ 11-951, 36-104 and 36-132.

This Contract, including any amendments made by the Department by and between the Department and the above named Vendor is effective on either October 1, 20XX, or the date of the Department's signature, whichever is later, and ends September 30, 20XX, or until terminated by either party according to the terms in the Contract.

The purpose of this Contract is to establish an authorized retail outlet where WIC participants, parents or caretakers of infant and child participants, or proxies (hereafter collectively referred to as participants) may exchange eWIC funds for authorized WIC foods and to provide the terms and conditions of this Contract.

This Contract is contingent upon the availability of funds from the federal government to operate the WIC Program and the continued operation of the WIC Program by the Department. This Contract shall not constitute a license or a property interest.

This Contract is in effect for three (3) federal fiscal years or portion thereof beginning on October 1, 20XX, and ending on September 30, 20XX. Neither the Vendor nor the Department is obligated to renew this Contract or enter into a new Contract at the expiration or the termination of this Contract.

## **GENERAL TERMS**

1. The federal statutes and regulations that govern the WIC Program, the Arizona WIC Program Vendor Manual and any amendments or additions thereto, and the WIC Policy and Procedure Manual are incorporated in this Contract by reference.
2. If any provision of this Contract conflicts with federal statutes or regulations that govern the WIC Program, the federal statutes or regulations shall govern. If any provision of this Contract conflicts with the Vendor Manual, the Vendor Manual shall prevail.
3. Any provision of this Contract, or any document attached or incorporated by reference, that is waived or held to be invalid shall be severable from the remainder of this Contract and shall not affect any other provisions of this Contract. Any provision to this Contract that is found to be prohibited by law shall be severable and shall be in effect only to the extent such provision complies with the law.
4. Arizona law shall govern all aspects of this Contract not covered by federal statutes or regulations.
5. This Contract, Appendices and all incorporated documents represent the entire agreement between the Vendor and the Department. No condition or requirement contained in, or made a part of, this Contract shall be modified without an approved written amendment to this Contract. Amendments shall be effective only if in writing and signed by all parties to the Contract. The terms and provisions of this Contract shall remain in full force and effect except as amended and to the extent so amended. In the event that the Vendor does not sign an amendment to this Contract within thirty (30) days of receipt of the amendment, the Vendor shall be terminated from participation in the Arizona WIC Program.
6. The Vendor shall be considered an independent Contractor, not an agent of the Department, the State of Arizona, or the United States government.
7. The Department may, at any time, by written stop work order to the Vendor, require the Vendor to stop all or any part of the work called for by this Contract for the period indicated on the stop work order.
  - a. Upon receipt of the stop work order, the Vendor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage; and
  - b. If a stop work order issued under this clause is canceled or the period of the stop work order or any extension expires, the Vendor shall be notified in writing by the Department when to resume work.

## **VENDOR RESPONSIBILITIES**

### **THE VENDOR SHALL COMPLY WITH:**

- a. This Contract and the Arizona WIC Program Vendor Manual, and any subsequent amendments or additions thereto.
- b. Federal and state statutes (including 42 U.S.C. § 1786) and regulations (including United States Department of Agriculture (hereafter USDA) regulations 7 C.F.R. § 246.1 et seq.) that govern the WIC Program, including any changes made during the agreement period.
- c. The Arizona WIC Program Policy and Procedure Manual and any amendments or changes thereto.
- d. EBT operating rules, standards, and technical requirements established by the Department (as provided in the WIC EBT Operating Rules and Technical Implementation Guide, accessible online at <https://www.fns.usda.gov/wic/wic-electronic-benefits-transfer-ebt-guidance>).
- e. The Vendor selection criteria throughout the Contract period, including any changes to the criteria. Using the current Vendor selection criteria, the Department may reassess the Vendor at any time during the Contract period. The Department will terminate and/or disqualify the Vendor if the Vendor fails to meet the current selection criteria. The Vendor may also be subject to other sanctions, including administrative fines, termination, disqualification, and civil money penalties, or any combination of sanctions, according to the Violations and Sanctions section of the Vendor Manual.

### **THE VENDOR AGREES TO:**

1. Have at least one representative participate in training annually. Vendor training may be provided by the Department in a variety of formats, including newsletters, videos, and interactive training. The Department will have sole discretion to designate the date, time, and location of all interactive training, except that the Department will provide the Vendor with at least one alternative date on which to attend such training.
2. Train and update cashiers and other employees who handle WIC purchases on WIC Program requirements and provide special or additional training to employees as required by the Department to ensure that all cashiers and other employees who handle WIC purchases understand WIC Program requirements.
3. Be held responsible and accountable for the actions or inactions of its owners, officers, managers, agents, and employees who commit Vendor violations.
4. Maintain the required variety, quantity, and sizes of WIC approved foods at all times. The required variety, quantity, and sizes of WIC approved foods are found in the most current Arizona WIC Programs Food List and Section 2 of the Vendor Manual (Minimum Stock Requirements).
5. Maintain the minimum required stock from the date it submits its application to be a Vendor and, if authorized, throughout the entire Contract period.
6. Maintain its store in a clean and sanitary manner, which includes maintaining and displaying a current Health Code Operating Permit. The Vendor must also notify the Department immediately and in writing should the current Health Code Operating Permit and any required license or certificate be denied, suspended or revoked. If the Department becomes aware that the Vendor has failed to maintain sanitation or food safety standards, it may notify the proper regulatory office.
7. Display the “We Accept Arizona eWIC” decal so that WIC participants will see that the Vendor accepts WIC benefits.
8. Accept eWIC cards only from WIC-authorized participants.

9. Accept eWIC cards for WIC approved foods only.
10. Offer program participants the same courtesies offered to other customers.
11. Not deliver supplemental foods to WIC customers' homes.
12. Charge the WIC Program the current shelf price for each WIC supplemental food item. The current shelf price is the price marked on the item, shelf, container, or nearby sign and includes the sale price of an item.
13. Charge the WIC Program only for those supplemental food items actually received by the WIC participant and ensure food items purchased with WIC benefits are not left at the Vendor's location and retrieved by the customer later.
14. Ensure that the cashier enters the correct total price for each item purchased with eWIC benefits (stand-beside terminals) before the participant enters their Personal Identification Number (PIN) to finalize the transaction.
15. Not require identification from WIC participants.
16. Ensure that the participant enters their Personal Identification Number (PIN) in the presence of the cashier.
17. Allow WIC participants to pay the difference when a fruit and vegetable purchase exceeds the maximum amount of the cash value benefits or when purchasing non-WIC food items in the same transaction (also known as a split tender transaction). See Section 4 Redeeming WIC Food Benefits in the Vendor Manual.
18. Not keep participants' eWIC cards, card numbers, copies or pictures of eWIC cards (including handwritten, printed, electronic, or any other media source), and/or PINs for any reason.
19. Not provide refunds or permit exchanges for authorized supplemental WIC food items obtained with WIC benefits, except for exchanges of an identical authorized supplemental food item when the original authorized supplemental food item is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food item. (An identical authorized supplemental food item means the exact brand, type, and size of the original authorized supplemental food item obtained and returned by the participant).
20. Not allow the return of food purchased with WIC benefits in exchange for cash, credit, non-food items, or unauthorized food items.
21. Not collect sales tax or other taxes on authorized WIC foods purchased with WIC benefits.
22. Not allow the purchase of alcohol, alcoholic beverages, tobacco, or tobacco products in exchange for WIC benefits.
23. Not provide WIC food items, including infant formula, that are expired, spoiled or beyond their "sell by," "best if used by," or other date limiting the sale or use of the food item in exchange for WIC benefits.
24. Not approach, solicit, or leave advertisements or other promotional items for WIC applicants or participants at the WIC State Agency or Local Agency WIC clinics.

25. Not offer incentive items solely to WIC customers. All incentive items must be offered to all customers. Incentive items include, but are not limited to, free or reduced price food or other items; cash; lottery tickets; buy one, get one free; buy one, get one at a reduced price; free amounts added to an item by a manufacturer; manufacturer coupons; store loyalty cards; sales and specials for supplemental food; or free or reduced price services. Minimal customary courtesies of the retail food trade, such as bagging items for the participant and assisting the participant with loading items into his/her vehicle are not incentive items. See Section 12 Selection and Authorization in the Vendor Manual.
26. Not offer any incentive items to WIC customers, if the Vendor is receiving more than 50 percent of their annual food sales from the sale of supplemental foods obtained with WIC benefits. See Section 12 Selection and Authorization in the Vendor Manual.
27. Only use the WIC acronym and WIC logo in material provided by or as specified by the Department. No reproductions are permitted. The WIC acronym and WIC logo are registered service marks of the USDA, and all rights therein and goodwill pertaining thereto belong exclusively to USDA. The WIC acronym and WIC logo shall only be used by the Vendor under the following limited circumstances:
  - a. Vendor must display the official WIC window decal (in English, Spanish, or both) distributed by the Department in a place conspicuously visible to the general public. The purpose of the window decal is to identify the Vendor as an authorized WIC food Vendor.
  - b. Vendor must identify authorized WIC foods by attaching channel strips or shelf-talkers on store shelves that state "WIC-approved." Vendor can only use channel strips or shelf-talkers approved by the Department.
  - c. Vendor must display official signage to identify which checkout lanes may be used for the redemption of eWIC benefits, if not all checkout lanes are available to WIC participants.
28. Not use the WIC acronym or the WIC logo, including close facsimiles, in any other manner, such as:
  - a. Attaching the WIC acronym and/or WIC logo to any food item.
  - b. Using the WIC acronym and/or WIC logo in the official or business name of the Vendor. The Department has the authority to determine whether a Vendor has violated this prohibition, subject only to the oversight of the Food and Nutrition Service (FNS).
  - c. Using the WIC acronym and/or WIC logo in advertising or other promotional materials.
29. Not allow the sale of firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. § 802 in exchange for WIC benefits.
30. Maintain competitive prices for WIC authorized food items.
31. Ensure that the store has a permanently fixed storefront sign. The name on the sign must match the Owner Name or DBA (Doing Business As) Name on the store's Vendor Application.
32. Notify the Department in writing at least thirty (30) days before the Vendor stops doing business, the ownership changes, or the store location changes.
33. Ensure that no conflict of interest, as defined by state statutes, regulations or policies, exists between the Vendor and the Department or its local agencies.
34. Permit announced and unannounced visits by Department, state, local, and federal representatives to review compliance with WIC Program requirements.

35. Maintain records as originals or photocopies as required under this Contract during the Contract period and for a minimum of five (5) years after expiration or termination of this Contract, or final payment under this Contract, whichever is later.
36. Maintain separate records as required under this Contract for each authorized store.

## **RESPONSIBILITIES OF THE DEPARTMENT**

### THE DEPARTMENT WILL:

1. Provide the Vendor with a copy of the Arizona WIC Program Vendor Manual and training materials. The documents will also be available for Vendors on the Department's website.
2. Train WIC participants regarding program procedures for the use of eWIC cards. Training may be provided by Local Agencies.
3. Provide the Vendor with all required training, including one interactive training during the Contract period. The Department does not provide training or troubleshooting for the Vendor's eWIC software or point of sale (POS) system.
4. Ensure that Point of Sale (POS) terminals used to support the WIC Program shall be deployed in accordance with the minimum lane coverage provisions of USDA regulations 7 C.F.R. § 246.12(z)(2).
5. Notify Vendors of changes to federal or state statutes, regulations, policies, or procedures governing the WIC Program at the time the Department becomes aware of them before the changes are implemented. The Department will notify the Vendor of any changes in the WIC approved foods and changes which affect WIC redemption or program requirements before the changes are implemented.
6. Monitor the Vendor for compliance with federal and state statutes, regulations, rules, policies, and procedures. Monitoring may include, but is not limited to, routine monitoring visits, undercover compliance buys, investigations, and inventory audits.
7. Enforce compliance with this Contract, federal and state statutes, rules, regulations, Vendor Manual, policies, and procedures.
8. Make payments to the Vendor in accordance with the WIC redemption procedures set forth in this Contract and in the Vendor Manual, including subsequent revisions.

## **eWIC GRANT FUNDS AND COST SHARING**

The Department utilized special funding, prior to its statewide implementation of eWIC, to assist the Vendor with necessary upgrades to integrate equipment or systems that were not solely dedicated to eWIC transactions. The Department established a USDA FNS-approved Cost Sharing Plan, which details the approach for allocating special funds for equipment or systems enhancements for eWIC. Vendors that accepted this special funding and choose to terminate the Contract, are terminated, or disqualified from the Program by the Department within two (2) years of accepting the special funding shall refund the Department for the amount received, prorated at 4.16 percent per month while on the Program and accepting eWIC cards.

## **PAYMENT TO VENDORS AND CLAIMS**

The Department may make price adjustments to the purchase price from eWIC transactions submitted by the Vendor to ensure compliance with the price limitations applicable to the Vendor. See Section 5 Payments in the Vendor Manual.

1. The Department may delay payment or establish a claim in the amount of the full purchase price of each WIC transaction that contained Vendor overcharges or other errors. The Department will provide the Vendor with an opportunity to justify or correct a Vendor overcharge or other error. The Vendor must pay any claim assessed by the Department. In collecting a claim, the Department may offset the claim against current and subsequent amounts to be paid to the Vendor.
2. In addition to denying payment or assessing a claim, the Vendor may be sanctioned for Vendor violations found in the Contract and in the Violations and Sanctions section of the Vendor Manual (Section 8). Sanctions may include administrative fines, termination, disqualification, and civil money penalties in lieu of disqualification or any combination of sanctions.
3. The Vendor may not charge participants for authorized supplemental foods obtained with WIC benefits. In addition, the Vendor may not seek restitution from these individuals for WIC benefits not paid or partially paid by the Department.
4. The Vendor shall ensure that the most current Approved Product List (APL) file is downloaded daily or every day the store is open for business.
5. The Vendor shall not sell:
  - a. Foods that are not included in the APL file.
  - b. WIC approved foods for an amount that exceeds the current shelf price.
6. The Vendor shall not charge to the Department any third-party commercial processing costs and fees incurred by the Vendor from EBT multifunction equipment. All fees imposed by the Vendor's third-party processor shall be borne by the Vendor.
7. The Department shall not be obligated to reimburse the Vendor for interchange fees related to eWIC transactions.
8. The Department shall not pay for ongoing maintenance, processing fees, or operational costs for Vendor systems and equipment used to support eWIC unless the equipment is used solely for the Department and the Vendor is necessary for participant access. Costs shared by the Department will be proportional to the usage for eWIC.
9. Every payment obligation of the Department under this Contract is conditioned upon the availability of federal funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Contract, this Contract may be terminated by the Department at the end of the period for which funds are available. No liability shall accrue to the Department or the State of Arizona in the event this provision is exercised, and neither the Department nor the State shall be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

## **MONITORING AND AUDIT**

The Department shall monitor the Vendor. Pursuant to A.R.S. § 35-214, the Vendor shall maintain “all books, accounts, reports, files and other records relating to the Contract” during the Contract period and for a period of five (5) years after the expiration or termination, or final payment under this Contract.

“Records relating to the Contract” include:

- a. All WIC benefit records for eWIC transactions.
- b. All documents that list dollar amounts of all food sales by the Vendor per year.
- c. All inventory records per year.
- d. All receipts and invoices that list all purchases by the Vendor while a Vendor Contract is effective for all WIC approved foods for which a Vendor accepts WIC benefits.
- e. All invoices, bank statements, bank deposit slips, daily sales receipts, daily and monthly sales reports, and inventory documents of all WIC approved foods.
- f. All reports detailing the Supplemental Nutrition Assistance Program (SNAP) and cash sales on a daily, monthly, and yearly basis.
- g. All daily and monthly WIC, SNAP, and cash sales receipts and reports.
- h. Arizona Transaction Privilege, Use, and Severance Tax Return (TPT-1) on a monthly basis for each Vendor Contract year.
- i. All supporting documents that are used to prepare the Arizona Transaction Privilege, Use, and Severance Tax Return (TPT-1) on a monthly basis for each Vendor Contract year.
- j. Internal Revenue Service (IRS) annual tax return.
- k. All supporting documents used to prepare IRS annual tax return on a monthly basis for each Vendor Contract year.

The Vendor shall make available for inspection and audit such records at reasonable times and shall comply with the inspection and audit requirements described in A.R.S. § 35-214. The Vendor shall maintain separate records in the original or as a photocopy for each authorized store.

Monitoring may include, but is not limited to, the following:

- a. Unannounced monitoring visits by Department personnel or persons authorized by the Department; representatives from the United States Department of Agriculture or other federal agencies; federal, state or local law enforcement agencies; or authorized personnel from local WIC agencies.
- b. Compliance buys, which are undercover investigations to determine compliance with WIC requirements.
- c. Inventory audits.

During monitoring visits, the Vendor shall provide access during normal business hours to all records of eWIC transactions, shelf prices, shelf price records, and purchase records (invoices) of WIC authorized foods.

## **VENDOR RECORD REQUIREMENTS**

1. In addition to the records specified above, the Vendor shall retain records as originals or photocopies related to disputes, litigation, settlements of claims, or exceptions of the Director arising out of the performance of this Contract until such time as these matters have been finally resolved or for five (5) years, whichever is later.
2. Upon request, the Vendor shall make available to representatives of the Department; the USDA; any law enforcement agency; Office of the Attorney General; or the Comptroller General of the United States, at any reasonable time and place for inspection and audit, as originals or photocopies, all WIC transaction ledgers in the Vendor’s possession and all program-related records.



The Vendor shall, at its own expense, provide a legible original or photocopy of all such records to the Arizona WIC Program within thirty (30) calendar days of the written request of the Department or the USDA.

3. The Vendor shall, at the request of the Department, sign an appropriate release form provided by the Arizona Department of Revenue. The release form will authorize the Arizona Department of Revenue to provide copies to the Department of any tax returns (including sales tax forms) filed by the Vendor during the five (5) year period prior to the request.
4. The Vendor shall retain and produce for inspection and audit the original of all such records when needed to verify the authenticity of a photocopy.
5. The Vendor shall retain photocopies of all records provided to the Department or any other business entity (e.g., accountants).

### **PURCHASE AND INVENTORY RECORD REQUIREMENT**

Vendor purchase records as originals or photocopies shall reflect the name and address of the supplier, distributor, wholesaler or manufacturer, the date of the purchase, list of the items purchased, size, stock number, quantity, and the unit price. Vendor purchase records shall be maintained during the Contract period and for five (5) years after the expiration or termination, or final payment under the Contract. (Handwritten invoices are not acceptable.)

Vendors shall only purchase infant formula from sources on the Arizona WIC Program's list of infant formula manufacturers, wholesalers, or distributors.

Sales receipts for WIC authorized foods (other than infant formula) purchased at retail establishments (for resale by the Vendor) must include the name and address of the retail establishment, the date of the purchase, a description of the exact item(s) purchased (e.g., 12-ounce box of Total Cereal), the unit price of the items, and the total amount purchased.

- a. Receipts that do not completely describe the actual item purchased shall have codes that can be verified by contacting the retailer at which the item(s) were purchased.
- b. All receipts from purchases at retail establishments must be machine dated by the establishment. Hand or manually dated retail store receipts are not acceptable.
- c. Affidavits, Statements of Fact, other written statements, or oral statements shall not be accepted as evidence of inventory. Only purchase records or retail receipts as described above in this section shall be accepted and constitute evidence of inventory.

### **RELEASE OF VENDOR RECORDS**

1. The Department has the right to coordinate Vendor monitoring with the Inter Tribal Council of Arizona, Inc. (ITCA) and the Navajo Nation WIC Programs. This shall include, but is not limited to, joint investigations, compliance investigations, inventory audits, and access to Vendor records.
2. The Department may share records and information concerning the Vendor's participation in the WIC Program with other entities responsible for oversight, administration, or enforcement of the WIC Program or the Supplemental Nutrition Assistance Program (SNAP). These persons may include personnel from its local agencies and other WIC State and Local Agencies and persons investigating or prosecuting WIC or SNAP violations under federal, state, or local law or with persons directly connected with the administration or enforcement of any federal or state law.

## **VIOLATIONS – CARRYOVER**

Violations of the WIC Program that would result in federally-mandated sanctions, which occurred during the previous Contract period, may be carried over and used as a basis for termination and/or disqualification or other sanctions (including monetary claims) under any subsequent Contracts in accordance with the most recent Violations and Sanctions section of the Vendor Manual.

## **NOTIFICATION OF NAME, MAILING ADDRESS OR TELEPHONE NUMBER CHANGE**

The Vendor shall notify the Department in writing at least thirty (30) calendar days before any change in the owner and/or store name, the store's mailing address, or the store's telephone number. A change in Vendor location is not a change in mailing address.

## **CHANGE OF OWNERSHIP**

This Contract is not transferable between owners and establishments. The Contract will be terminated when the Vendor changes ownership. The Vendor shall notify the Department at least thirty (30) calendar days before a change in ownership, including bankruptcy of an authorized Vendor. See Section 12 Selection and Authorization in the Vendor Manual.

## **CHANGE IN LOCATION**

Vendors who change the location of their business will not be authorized at their new location unless they have applied to the Department for authorization, have met all selection and authorization criteria, and have received a Vendor Contract for the new location.

Vendors shall notify the Department in writing at least thirty (30) calendar days before changing locations. This Contract is not transferable between locations. The Contract will be terminated when the Vendor changes location.

## **MULTIPLE LOCATIONS**

Vendors shall provide with their application a current list of all individual store locations that are to be authorized under this Contract. Upon completion of the evaluation process, the Department shall develop the final list of all stores obligated by this Contract ("Multiple Locations Attachment"). See Attachment A of the Contract. By reference herein, the Multiple Locations Attachment shall be incorporated into the Contract. Only store locations listed in the Multiple Locations Attachment may transact business as a WIC Vendor.

Multiple store locations may be added or deleted in accordance with WIC Program policies and procedures without affecting the status of any other location. When the Vendor makes a request for store locations to be added or deleted, the Department shall amend the Multiple Locations Attachment to reflect all additions or deletions of store locations. Once amended, the most current version of the Multiple Locations Attachment will supersede and supplant the previous version. The Vendor agrees that when it requests to add or delete store locations, the Department may unilaterally amend the Multiple Locations Attachment in accordance with the Vendor's request.

The Vendor shall notify the Department in writing not less than thirty (30) calendar days before adding or deleting a location. See Section 12 Evaluation Process in the Vendor Manual.

## **CLOSING OF THE BUSINESS**

The Vendor Contract will be terminated when the Vendor ceases operation as a food store for any reason. The Vendor shall notify the Department in writing at least thirty (30) calendar days before closing their business.

## **TERMINATION AND EXPIRATION OF THE CONTRACT**

The Department will immediately terminate the Contract if it determines that the Vendor has provided false or misleading information in connection with its application for authorization.

The Vendor or the Department may terminate this Contract for cause after providing at least thirty (30) calendar days advance written notice. The Department may terminate this Contract and/or disqualify the Vendor for, but not limited to, the reasons stated below:

- a. Failure of the Vendor to comply with the conditions and responsibilities set forth in this Contract; the most recent federal regulations at 7 C.F.R. § 246. 1 et seq.; the WIC Vendor Manual, including Section 8 (Violations and Sanctions); the Department's WIC Policies and Procedures; or subsequent amendments or revisions to these documents.
- b. Low volume of WIC sales. See Section 12 Selection and Authorization in the Vendor Manual.
- c. Termination of the WIC Program or the non-availability of funds.
- d. Non-competitive prices.
- e. Failure to pay claims.\*
- f. Failure to maintain business integrity.
- g. Failure to maintain selection and authorization criteria.
- h. Fraud.
- i. Food sales revenue from WIC benefits is identified as more than 50 percent of the total food sales upon completion of the new Vendor six-month and/or annual assessment.
- j. Termination and/or disqualification from SNAP or another WIC Program.

\*The Department may pursue a reimbursement claim against a Vendor as a result of an adverse action. The Vendor may not appeal the reimbursement claim. Neither the Vendor nor its affiliates shall be eligible to participate as an authorized WIC Vendor until the reimbursement is paid in full. The Vendor may not circumvent reimbursement by selling or otherwise making changes or amendments to its corporate structure that was in place from the time of its initial authorization.

The Department may terminate a Vendor without cause with at least thirty (30) calendar days advance written notice.

The Contract expires and ceases to be effective when the end date specified in the Contract has been reached. Expiration of the Contract is not subject to appeal or to a fair hearing.

After the expiration or termination of the Contract, the Vendor must reapply for authorization. If a Vendor is disqualified, the Department will terminate the Vendor's Contract and the Vendor must apply for authorization in order to be authorized after the disqualification period is completed. In all cases, the Vendor's new application will be subject to the Department's Vendor selection criteria and any criteria the Department uses to limit the number of Vendors it will authorize.

Disqualification from the WIC Program may result in disqualification as a retailer in the SNAP. The Department will not accept or process an application from a Vendor during any period of disqualification.

## **APPEAL AND FAIR HEARINGS**

The Vendor has the right to appeal (request a fair hearing) certain adverse actions of the Department which result in denial of an application for a Vendor Contract, administrative fines, civil money penalties, termination of a Vendor Contract or disqualification from the WIC Program. The Vendor appeal rights and fair hearing procedures are found in Section 9 (Appeal Rights and Hearing Procedures) of the Vendor Manual. The Vendor will be notified of appeal rights and hearing procedures, if applicable, in the adverse action notice.

## **ARBITRATION**

The Parties to this Contract agree to resolve disputes arising out of or relating to this Contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes.

## **CRIMINAL PENALTIES**

A Vendor who commits fraud or abuse in the WIC Program is liable to prosecution under applicable federal, state, or local laws. Under federal law, those who have willfully misapplied, stolen, or fraudulently obtained program funds will be subject to a fine of not more than \$25,000 or imprisonment for not more than five (5) 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 (1) year or both.

## **BUSINESS INTEGRITY**

The Vendor shall comply with the business integrity requirements as stated in federal statutes and regulations that govern the WIC Program and in the Vendor Manual. See Section 12 Authorization and Selection in the Vendor Manual.

## **CONFLICT OF INTEREST**

1. The Vendor ensures that no conflict of interest shall exist with either the Department or local agencies. A conflict of interest relates to the standard of ethical conduct that no officer or employee shall have any interest, financial or otherwise, direct or indirect, or engage in any business transaction, or professional activity, or incur any obligation of any nature which is in conflict with the discharge of a person's duties.
2. The Department will immediately terminate this Contract as authorized by A.R.S. § 38-511 upon notification of the parties should such conflict of interest arise after the acceptance of this Contract by the parties. A.R.S. § 38-511 provides:
  - a. Such cancellation shall occur without any further obligation.
  - b. Conflict of interest shall include, but is not limited to, situations where any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on the behalf of the State, its political subdivisions, or any of the departments or agencies of either is, at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to this Contract in any capacity or a consultant to any other party of the Contract with respect to the subject matter of this Contract.
  - c. Cancellation under this section by the State or its political subdivisions shall be effective when written notice from the Governor or the chief executive officer or governing body of the political subdivision is received by all other parties to this Contract unless the notice specifies a later time.

## **ATTORNEY FEES AND COSTS**

If a Vendor initiates an action, appeal, or lawsuit against the Department relating to the terms of this Contract in any administrative or judicial tribunal of competent jurisdiction, and the Department prevails, the Vendor shall pay the Department's reasonable attorneys' fees and costs. The administrative or judicial tribunal of competent jurisdiction where the action, appeal, or suit was adjudicated can determine the Department's attorneys' fees (i.e., \$110.00 up to \$200.00 an hour) and costs. The Department is considered to prevail when:

- a. The Vendor's position was not substantially justified; and
- b. The Department prevailed as to the most significant issue or set of issues.

The Department shall submit its petition for reasonable attorneys' fees (i.e., \$110.00 up to \$200.00 an hour) and costs to the administrative or judicial tribunal of competent jurisdiction within twenty (20) days after the clerk's mailing of a decision on the merits of the cause, unless extended by the administrative or judicial tribunal. The Department's petition shall provide the following information to the administrative or judicial tribunal:

- a. Evidence of the Department's eligibility for attorneys' fees and costs.
- b. The amount sought.
- c. An itemized statement from the attorney(s) and expert(s) stating:
  - 1) The actual time spent representing the Department.
  - 2) The rate at which the fees were computed.

## **FORFEITURE**

Notwithstanding any provision of state law and in addition to any other penalty authorized by law, a court may order a person that is convicted of a violation of a provision of law, with regard to the trafficking of WIC benefits, funds, assets, or property that have a value of \$100.00 or more and that are subject of a grant or other form of assistance under this section, to forfeit to the United States all property as follows:

- a. All property, real and personal, used in a transaction or attempted transaction, to commit or to facilitate the commission of, a violation described above.
- b. All property, real and personal, constituting, derived from or traceable to any proceeds a person obtained directly or indirectly as a result of a violation described above.

All property subject to forfeiture under this clause, any seizure or disposition of the property, and any proceedings relating to the forfeiture, seizure, or disposition shall be subject to section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. § 853) other than subsection (d) of that section.

## **INDEMNITY**

1. The Vendor shall, at all times, indemnify, defend, and hold harmless the State and/or any of its agents, officials and employees from any and all claims, demands, suits, actions, proceedings, losses, costs and/or damages of every kind and description, including attorneys' fees and/or litigation expenses brought or made against or incurred by the State on account of loss of or damage to any property or for injuries to or death of any person, caused by, arising out of, or contributed to, in whole or in part, by reasons of any alleged act, omission, professional error, fault, mistake, or negligence of the Vendor, its employees, agents or representatives, or subcontractors, their employees' agents or representatives in connection with or incident to the performance of this Contract or arising out of workers' compensation claims, or unemployment compensation claims of employees of the Vendor and/or its subcontractor or claims under similar such laws or obligations. The Vendor's obligations and responsibilities under this section shall not extend to any liability caused by the sole negligence of the State or its employees.
2. The Vendor shall indemnify, defend, and hold harmless the Department from any claim, liability, or expense caused by the Vendor's default under this Contract.

## **PROHIBITION AGAINST DISCRIMINATION**

1. The Vendor shall comply with the nondiscrimination provisions of USDA regulations 7 C.F.R. §§ 15, 15a, and 15b.
2. Both the Vendor and the Department agree to comply with all aspects of anti-discrimination legislation, including all federal legislation and A.R.S. § 41-1463.
  - a. The Vendor shall not discriminate because of race, color, disability, age, national origin, or gender in any interactions with WIC recipients, representatives of the Department, or suppliers.
  - b. The Department shall not discriminate because of race, color, disability, age, national origin, or gender in any interactions with Vendors or Vendor applicants.
  - c. The Vendor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990, and its amendments.

## **E-VERIFY REQUIREMENTS**

In accordance with A.R.S. § 41-4401, the Vendor warrants compliance with all federal immigration laws and regulations relating to employees and warrants its compliance with A.R.S. § 23-214(A).

## **ANTITRUST VIOLATIONS**

The Vendor, the Department, and the State recognize that, in actual practice, overcharges resulting from antitrust violations are, in fact, borne by the purchaser. Therefore, the Vendor hereby assigns to the Department and the State any and all claims for such overcharges.

## **NOTICE**

Whenever notice is required by the terms of this Contract, unless otherwise specified, the notice shall be in writing; shall be delivered in person or by certified mail with a return receipt requested or by a Department-contracted courier service; and shall be directed to the person(s) and address(es) specified for such purpose on the execution page of this Contract or to such other person(s) and/or address(es) as either party may designate to the other party by written notice.

## VENDOR CONTRACT

ARIZONA DEPARTMENT OF HEALTH SERVICES

## APPLICANT

I, the undersigned, have read and understand all requirements of the Arizona WIC Program in addition to the terms and conditions of this contract and the attachments. I understand that I will be bound by these requirements.

The undersigned representative has legal authority to obligate this Vendor.

BY _____ Signature	_____ Signature	_____ Date
_____ ADHS Office of Procurement	_____ Print or Type Name and Title of Authorized Person	
_____ Date	_____ Store Name	
_____ Arizona Department of Health Services	_____ Street	
_____ 150 North 18 <sup>th</sup> Avenue	_____ City	_____ State
_____ Phoenix, Arizona 85007	_____ Zip Code	
_____ 1 (866) 737-3935 Telephone Number	_____ County/Reservation	
	_____ Telephone Number	