

**TERMS OF VENDOR AGREEMENT FOR FREE-STANDING PHARMACIES  
WITNESSETH:**

**This agreement is pursuant to 10A NCAC Subchapter 43D**

This agreement does not constitute a license or a property interest.

**Section I -- Vendor**

The Vendor agrees to:

1. Comply with the terms of this agreement and State and federal WIC Program rules, regulations, policies and applicable law governing the Program, including any changes made during the agreement period;
2. **Provide only exempt infant formula and WIC-eligible medical foods to WIC customers;** For purposes of this agreement, all references to supplemental food or WIC supplemental food means exempt infant formula and WIC-eligible medical foods;
3. Be placed into a peer group in accordance with 10A NCAC 43D.0706; The State agency may reassess an authorized vendor's peer group designation at any time during the vendor's agreement period and shall place the vendor in a different peer group if upon reassessment the State agency determines that the vendor is no longer in the appropriate peer group;
4. Comply with the vendor selection criteria throughout the agreement period, and any changes in the criteria, including the following:
  - a. Operate the store at a single, fixed location within the State of North Carolina; The store shall be located at the address indicated on the WIC vendor application and shall be the site at which WIC supplemental foods are selected by the WIC customer;
  - b. Keep the store open throughout the year for business with the public at least six days a week for a minimum of forty (40) hours per week between 8:00 a.m. and 11:00 p.m.;
  - c. Not use the acronym "WIC" or the WIC logo, including facsimiles thereof, in total or in part, in the official name in which the business is registered or in the name under which the store does business;
  - d. Not use the WIC logo in advertising or promotional literature;
  - e. Not apply stickers, tags, or labels having the WIC acronym or logo on North Carolina approved WIC supplemental foods;
  - f. Not submit false, erroneous, or misleading information to the State or local agency;
  - g. Not have any owner(s), officer(s), or manager(s) who are employed, or who have a spouse, child, or parent who is employed by the State WIC program or the local WIC program serving the county in which the vendor conducts business; A vendor shall not have an employee who handles, transacts, deposits, or stores WIC food instruments or cash-value vouchers who is employed, or who has a spouse, child, or parent who is employed by the State WIC program or the local WIC program serving the county in which the vendor conducts business. Such situations present a conflict of interest;
  - h. Not have any owner(s), officer(s), or manager(s) who in the last six years have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity, including, but not limited to, fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice;
  - i. Excluding chain stores and stores under a WIC corporate agreement that have a separate manager on site for each store, not have an owner who holds a financial interest in any of the following:
    - (1) A SNAP vendor which is disqualified from participation in the SNAP or has been assessed a civil money penalty for hardship in lieu of disqualification and the time period during which the disqualification would have run, had a penalty not been paid, is continuing; or
    - (2) Another WIC vendor which is disqualified from participation in the WIC Program or which has been assessed a monetary or civil money penalty pursuant to G.S. 130A-22(c1), Paragraph (e) or Paragraph (f) of 10A NCAC 43D.0710 as the result

of violation of Paragraphs (a) or (b) of 10A NCAC 43D.0710, and if assessed a penalty, the time during which the disqualification would have run, had a penalty not been assessed, is continuing;

The requirements of provision 3.j. of Section I. of this agreement shall not be met by the transfer or conveyance of financial interest during the period of disqualification. Additionally, the requirements of provision 3.j. shall not be met even if such transfer or conveyance of financial interest in a SNAP vendor under 3.j.(1) prematurely ends the disqualification period applicable to that SNAP vendor. The requirements of provision 3.j. shall apply until the time the SNAP vendor disqualification otherwise would have expired;

- j. Purchase all exempt infant formula and WIC-eligible medical food directly from State-approved sources and provide only such exempt infant formula and WIC-eligible medical food to WIC customers; Maintain and make available to the state or local WIC agency invoices, receipts, copies of purchase orders, and any other proofs of purchase documenting such purchases; All purchase documentation must satisfy the requirements of 10A NCAC 43D.0708 (30)(a) through (30)(c);
- k. Mark the current shelf prices of all WIC supplemental foods clearly on the foods or have the prices posted on the shelf or display case at all times;
- l. Not have an owner, officer or manager that currently has or previously had a financial interest in a WIC vendor that was assessed a claim by the WIC Program and the claim has not been paid in full;

The state agency may reassess the vendor at any time during the agreement period using the selection criteria in effect at the time of the reassessment and shall terminate the vendor agreement if the vendor fails to comply with the vendor selection criteria, including the criteria in Section I.4.a. through I. of this agreement;

- 5. Not discriminate on the basis of WIC participation, such as failing to offer WIC customers the same courtesies offered to other customers, including the acceptance of store and manufacturer's coupons, or requiring separate WIC lines; The vendor shall comply with the nondiscrimination provisions of 7 CFR Parts 15, 15a, and 15b;
- 6. Require an owner, store manager or other authorized store representative to attend annual vendor training upon notification of the training by the local WIC agency;
- 7. Inform and train vendor's cashiers and other staff on WIC Program requirements; The vendor also agrees to be accountable for the actions of its owners, officers, managers, agents and employees who commit vendor violations;
- 8. Submit a current accurately completed WIC Price List when signing this agreement;
- 9. Ensure that all supplemental foods in the store for purchase are within the manufacturer's expiration date;
- 10. Accept WIC Program food instruments in exchange for North Carolina approved WIC supplemental foods; Supplemental foods are those foods which satisfy the requirements of 10A NCAC 43D.0501;
- 11. Provide only the authorized supplemental foods listed on the food instrument, accurately determine the charges to the WIC Program, and clearly complete the "Pay Exactly" box on the food instrument prior to obtaining the signature of the WIC customer; The WIC customer is not required to get all of the supplemental foods listed on the food instrument;
- 12. Enter in the "Pay Exactly" box only the total amount of the current shelf prices, or less than the current shelf prices, for the supplemental food actually provided; Not charge or collect sales tax for the supplemental food provided; Not charge or collect tax on coupons used in conjunction with WIC food instruments;
- 13. Charge no more for supplemental food provided to a WIC customer than to a non-WIC customer or no more than the current shelf price, whichever is less; Violation of this provision, whether intentional or unintentional, is defined as a vendor overcharge;
- 14. Accept WIC Program food instruments only on or between the "First Date to Spend" and the "Last Date to Spend" date;
- 15. Enter in the "Date Transacted" box the month, day and year the WIC food instrument is exchanged for supplemental food prior to obtaining the WIC customer's signature;
- 16. Ensure that the WIC customer signs the food instrument in the presence of the cashier;

17. Imprint the WIC vendor stamp in the "Pay the Authorized WIC Vendor Stamped Here" box on the face of the food instrument to enable the vendor number to be read during the Program editing process;
18. Imprint the vendor's bank deposit stamp or the vendor's name, address and bank account number in the "Authorized WIC Vendor Stamp" box in the endorsement;
19. Deposit in the vendor's bank only WIC Program food instruments transacted at the vendor's store; All WIC program food instruments must be deposited in the vendor's bank within 60 days of the "First Date to Spend" on the food instrument;
20. Ensure that the WIC vendor stamp is used only for the purpose and in the manner authorized by this agreement and assume full responsibility for the unauthorized use of the WIC vendor stamp, including reimbursement to the State agency for food instruments redeemed through the unauthorized use of the WIC vendor stamp;
21. Maintain storage of the WIC vendor stamp so only the staff designated by the vendor owner or manager have access to the stamp and report loss of the stamp within two business days to the local WIC agency; Not reproduce the WIC vendor stamp;
22. Permit the purchase of supplemental food without requiring other purchases;
23. Refuse to transact any food instrument that has been altered;
24. Not transact food instruments in whole or in part for cash, credit (including rainchecks), unauthorized foods, or non-food items;
25. Not provide refunds or permit exchanges for authorized supplemental foods obtained with food instruments except for exchanges of an identical authorized supplemental food when the original authorized supplemental food is defective, spoiled, or has exceeded its "best if used by," "sell by" or other date limiting the sale or use of the food; An identical authorized supplemental food means the exact brand, type and size as the original authorized supplemental food obtained and returned by the WIC customer;
26. Not seek restitution from the WIC customer for reimbursement paid by the vendor to the State agency or for WIC food instruments not paid or partially paid by the State agency; Additionally, the vendor shall not charge the WIC customer for authorized supplemental foods obtained with food instruments;
27. Not contact a WIC customer outside the store regarding the transaction or redemption of WIC food instruments;
28. Notify the local WIC agency of misuse (attempted or actual) of WIC Program food instruments;
29. Allow monitoring and inspection of the store premises and procedures to ensure compliance with the agreement and State and federal WIC Program rules, regulations and applicable law; This includes providing access to all program-related records, including access to all WIC food instruments at the store; vendor records pertinent to the purchase and sale of WIC supplemental foods, including invoices, receipts, copies of purchase orders, and any other proofs of purchase; federal and state corporate and individual income tax and sales and use tax returns and all records pertinent to these returns; and books and records of all financial and business transactions. These records must be retained by the vendor for a period of three years or until any audit pertaining to these records is resolved, whichever is later. Notwithstanding any other provision of this agreement and Rules .0707, .0708 and .0710 of 10A NCAC 43D, failure or inability to provide these records for an inventory audit or providing false records for an inventory audit shall be deemed a violation of 7 CFR 246.12(l)(1)(iii)(B) and Subparagraph (a)(1) of 10A NCAC 43D.0710. Invoices, receipts, purchase orders, and any other proofs of purchase for WIC supplemental foods shall include:
  - (a) the name of the seller and be prepared entirely by the seller or on the seller's business letterhead;
  - (b) the date of purchase and the date the authorized vendor received the WIC supplemental food at the store if different from the date of purchase; and
  - (c) a description of each WIC supplemental food item purchased, including brand name, unit size, type or form, and quantity;
30. Reimburse the State agency in full or agree to a repayment schedule with the State agency within thirty (30) days of written notification of a claim assessed due to a vendor violation that affects payment to the vendor or a claim assessed due to the unauthorized use of the WIC vendor stamp; Failure to reimburse the State agency in full or agree to a repayment schedule within thirty (30)

days of written notification of a claim shall result in termination of the WIC Vendor Agreement. When the State agency determines the vendor has committed a vendor violation that affects payment to the vendor, the State agency will deny payment or assess a claim. The State agency has the authority to deny payment or assess a claim in the amount of the full purchase price of each food instrument or cash-value voucher affected by the vendor violation. Denial of payment by the State agency or payment of a claim by the vendor for a vendor violation(s) shall not absolve the vendor of the violation(s). The vendor shall also be subject to any vendor sanctions authorized under 10A NCAC 43D.0710 for the vendor violation(s);

31. Not be paid for invalid food instruments in accordance with 10A NCAC 43D.0704(a), but may attempt to justify or correct an invalid food instrument and may be paid in accordance with 10A NCAC 43D.0704(b);
32. Notify the local WIC agency in writing at least 30 days prior to a change of ownership, change in store location, cessation of operations, or withdrawal from the WIC Program;
33. Return the WIC vendor stamp to the local WIC agency upon termination of this agreement or disqualification from the WIC Program;
34. Be monitored for compliance with Program requirements through routine monitoring, compliance buys, inventory audits and any other means the State agency deems necessary to determine compliance with Program requirements; and
35. The WIC Vendor Agreement does not constitute a license or a property interest; A vendor must reapply to continue to be authorized beyond the period of its current WIC Vendor Agreement. Additionally, a store must reapply to become authorized following the expiration of a disqualification period or termination of the Agreement. In all cases, the vendor applicant is subject to the vendor peer group criteria of 10A NCAC 43D.0706 and the vendor selection criteria of 10A NCAC 43D.0707.

## **Section II – Local Agency**

The Local Agency agrees to:

1. Provide annual vendor training on WIC program requirements;
2. Conduct routine monitoring of the vendor's performance under this agreement to ensure compliance with the agreement and State and federal WIC Program rules, regulations and applicable law; A minimum of one-third of all authorized vendors, excluding military commissaries, shall be monitored within a fiscal year (October 1 – September 30) and all vendors shall be monitored at least once within three consecutive fiscal years. Any vendor shall be monitored within one (1) week of a written request by the State agency;
3. Provide vendors with the North Carolina WIC Vendor Manual, all Vendor Manual amendments, blank WIC Price Lists, the WIC vendor stamp, and any other documents and materials required for the vendor's participation as an authorized WIC vendor;
4. Assist the vendor with questions regarding the vendor's participation in the WIC Program; and
5. Maintain records pertaining to this agreement and vendor management activities in accordance with the NC Department of Health and Human Services Records Retention Schedule.

## **Section III – State Agency**

The State Agency agrees to:

1. Make payment to the vendor for food instruments transacted at the vendor's store upon compliance by the vendor with the conditions contained in Section I of this agreement and all WIC Program rules, regulations, policies and applicable law; Payment will not be made unless and until the conditions in Section I have been met. Notwithstanding the foregoing, if payment is made by the State agency and the conditions in Section I have not been satisfied, the State agency may assess a claim against the vendor. The vendor shall reimburse the State agency in full or agree to a repayment schedule within thirty (30) days of written notification of a claim. The State agency may offset a claim against current and subsequent amounts owed to a vendor if a vendor fails to pay a claim;
2. Provide annually a list of State-approved sources for the purchase of exempt infant formula and WIC-eligible medical foods; and

3. Provide the vendor written notification of an initial violation that requires a pattern of occurrences to impose a sanction, unless the State agency determines that notifying the vendor would compromise an investigation, as provided in 7 CFR 246.12(l)(3).

#### **Section IV -- Disqualification and Termination**

1. The State agency shall disqualify a vendor in accordance with the Vendor Sanction System referenced in Section VI of this agreement and 10A N.C.A.C. 43D.0710.
2. The State agency may not accept voluntary withdrawal of the vendor from the WIC Program or use nonrenewal of the vendor agreement as an alternative to disqualification.
3. If the State agency determines that disqualification of a vendor under the Federal Mandatory Vendor Sanctions for violations B. through I. and L. would result in inadequate participant access pursuant to 10A NCAC 43D.0710(e), the State agency will impose a civil money penalty ("CMP") in lieu of disqualification in accordance with 10A NCAC 43D.0710(f)(1). If the State agency determines that disqualification of a vendor under the State Vendor Sanctions for violations A. through L. would result in participant hardship pursuant to 10A NCAC 43D.0710(f)(3), the State agency may impose a monetary penalty in lieu of disqualification in accordance with 10A NCAC 43D.0710(f)(2). If a vendor does not pay, only partially pays, or fails to timely pay a civil money penalty or monetary penalty assessed in lieu of disqualification, the vendor shall be disqualified for the length of the original disqualification.
4. A second Federal Mandatory Vendor Sanction for any of the violations in B. through I. shall be doubled. A third or subsequent Federal Mandatory Vendor Sanction for any of the violations in B. through I. shall be doubled with no CMP option for inadequate participant access. State Vendor Sanctions for any of the violations in A. through L. detected during a single investigation shall be cumulative, provided that the total disqualification period may not exceed one year.
5. Disqualification from the WIC Program may result in disqualification as a retailer in SNAP. Such disqualification is not subject to administrative or judicial review under SNAP.
6. A vendor applicant shall not become authorized as a WIC vendor if the store has been disqualified from participation in the WIC Program and the disqualification period has not expired.
7. A vendor applicant shall not become authorized as a WIC vendor if the store is currently disqualified from SNAP or the store has been assessed a SNAP civil money penalty for hardship and the disqualification period that otherwise would have been imposed has not expired.
8. A change in ownership, change in store location of more than three miles from the store's previous location, cessation of operations, withdrawal from the WIC Program or disqualification from the WIC Program shall result in termination of the WIC Vendor Agreement by the State agency. Change of ownership, change in store location, ceasing operations, withdrawal from the WIC Program or nonrenewal of the WIC Vendor Agreement shall not stop a disqualification period applicable to the store.
9. Failure of an owner, store manager or other authorized store representative to attend annual vendor training by September 30 of each year shall result in termination of the WIC Vendor Agreement.
10. A vendor who commits fraud or abuse of the Program is liable to prosecution under applicable Federal, State, and local laws. Under 7 CFR 246.23, those who have embezzled, willfully misapplied, stolen, or fraudulently obtained program funds, or those who have knowingly received, concealed or retained such funds, shall be subject to a fine of not more than \$25,000 or imprisonment for not more than five years or both, if the value of the funds is \$100 or more. If the value is less than \$100, the penalties are a fine of not more than \$1,000 or imprisonment for not more than one year or both.
11. Either the State agency or the vendor may terminate this agreement for cause after providing 30 days' advance written notice. This agreement may be terminated by mutual agreement of both parties at any time. Neither the State agency nor the vendor has an obligation to renew the vendor agreement.

#### **Section V -- Appeal Procedures**

The vendor appeal procedures shall be in accordance with Section .0800 of 10A NCAC 43D. The vendor may appeal the adverse actions listed in 7 CFR 246.18 (a)(1)(i) and (a)(1)(ii). However, the following actions are not subject to administrative review: the validity or appropriateness of the State agency's vendor limiting or selection criteria; the validity or appropriateness of the State agency's participant access criteria and the State agency's participant access determinations; the State agency's determination to exclude an infant formula manufacturer, wholesaler, distributor or retailer from the State agency's list of approved sources; the State agency's determination whether to provide

written notification to a vendor when an investigation reveals an initial violation that requires a pattern of occurrences to impose a sanction; the expiration of a vendor’s agreement; disputes regarding food instrument or cash-value voucher payments and vendor claims, other than the opportunity to justify or correct as permitted by 7 CFR 246.12(k)(3); and the disqualification of a vendor as a result of disqualification from SNAP.

**Section VI—Vendor Sanction System**

<b>VENDOR SANCTION SYSTEM</b>		
<b>FEDERAL MANDATORY VENDOR SANCTIONS</b>		
<b>VIOLATIONS</b>		<b>DISQUALIFICATION PERIOD</b>
A.	A vendor criminally convicted of trafficking in food instruments or cash-value vouchers or selling firearms, ammunition, explosives, or controlled substances (as defined in 21 USC 802) in exchange for food instruments or cash-value vouchers. A vendor is not entitled to receive any compensation for revenues lost as a result of such violation.	Permanent
B.	One occurrence of buying or selling food instruments or cash-value vouchers for cash (trafficking) or one occurrence of selling firearms, ammunition, explosives, or controlled substances (as defined in 21 USC 802) in exchange for food instruments or cash-value vouchers.	6 years
C.	One occurrence of the sale of alcohol or alcoholic beverages or tobacco products in exchange for food instruments or cash-value vouchers.	3 years
D.	Claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for six or more days within a 60-day period. The six or more days do not have to be consecutive days within the 60-day period. Failure or inability to provide records or providing false records required under 10A NCAC 43D.0708(30) for an inventory audit shall be deemed a violation of 7 C.F.R.246.12(l)(1)(iii)(B) and 10A NCAC 43D.0710(a)(1).	3 years
E.	Two occurrences of vendor overcharging within a 12-month period.	3 years
F.	Two occurrences within a 12-month period of receiving, transacting or redeeming food instruments or cash-value vouchers outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person.	3 years
G.	Two occurrences within a 12-month period of charging for supplemental food not received by the WIC customer.	3 years
H.	Two occurrences within a 12-month period of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 USC 802, in exchange for food instruments or cash-value vouchers.	3 years
I.	Three occurrences within a 12-month period of providing unauthorized food items in exchange for food instruments or cash-value vouchers, including charging for supplemental foods provided in excess of those listed on the food instrument.	1 year
J.	2 <sup>nd</sup> sanction, excluding sanctions for trafficking convictions and SNAP disqualifications.	Double Sanctions
K.	3 <sup>rd</sup> sanction, excluding sanctions for trafficking convictions and SNAP disqualifications.	Double Sanctions and no CMP option
L.	Disqualification from SNAP	Same length of time as the SNAP disqualification and may begin at a later date than the SNAP disqualification

STATE VENDOR SANCTIONS		
VIOLATIONS		DISQUALIFICATION PERIOD
A.	Two occurrences within a 12-month period of discrimination on the basis of WIC participation as referenced in 10A NCAC 43D.0708(38).	1 year
B.	Three occurrences within a 12-month period of failure to properly transact a WIC food instrument or cash-value voucher by not completing the date and purchase price on the WIC food instrument or cash-value voucher before obtaining the WIC customer's signature, by not obtaining the WIC customer's signature in the presence of the cashier, or by accepting a WIC food instrument or cash-value voucher prior to the "Issue Date" (First Date to Spend) or after the "Participant Must Use By" (Last Date to Spend) dates on the food instrument or cash-value voucher.	1 year
C.	Three occurrences within a 12-month period of requiring a cash purchase to transact a WIC food instrument or cash-value voucher.	1 year
D.	Three occurrences within a 12-month period of contacting a WIC customer in an attempt to recoup funds for a food instrument or cash-value voucher or contacting a WIC customer outside the store regarding the transaction or redemption of a WIC food instrument or cash-value voucher.	270 days
E.	Three occurrences within a 12-month period of failure to provide program-related records referenced in 10A NCAC 43D.0708(30) when requested by WIC staff, except as provided in 10A NCAC 43D.0708(30) and 10A NCAC 43D.0710(a)(1) for failure or inability to provide records for an inventory audit.	180 days
F.	Three occurrences within a 12-month period of failure to provide the information referenced in 10A NCAC 43D.0708(31) when requested by WIC staff.	180 days
G.	Three occurrences within a 12-month period of failure to stock the minimum inventory specified in 10A NCAC 43D.0708(24).	180 days
H.	Three occurrences within a 12-month period of stocking WIC supplemental foods outside of the manufacturer's expiration date.	90 days
I.	Three occurrences within a 12-month period of failure to allow monitoring of a store by WIC staff.	90 days
J.	Five occurrences within a 12-month period of failure to submit a WIC Price List as required by 10A NCAC 43D.0708(32).	90 days
K.	Three occurrences within a 12-month period of failure to mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case.	60 days
L.	Five occurrences within a 12-month period of requiring the purchase of a specific brand when more than one WIC supplemental food brand is available.	60 days