

FIRST AMENDED AND RESTATED  
INTER TRIBAL COUNCIL OF ARIZONA, INC.  
SUPPLEMENTAL NUTRITION PROGRAM FOR  
WOMEN, INFANTS AND CHILDREN (WIC)

**VENDOR CONTRACT**

This Amended and Restated Vendor Contract (“Contract”) is made and entered into between the Inter Tribal Council of Arizona, Inc. (“ITCA”) and the below listed retail merchant (Vendor).

**PARTIES**

Vendor Name  
(Legal Name of Store): \_\_\_\_\_

Doing Business As: \_\_\_\_\_

Name of Owner: \_\_\_\_\_

Federal Employer  
Identification Number: \_\_\_\_\_

**WHEREAS**, ITCA is an Arizona non-profit corporation authorized by the United States Department of Agriculture (“USDA”) to serve as a “state agency” for purposes of administering the Special Supplemental Nutrition Program for Women, Infants and Children and other approved programs, including pilot or demonstration projects authorized in accordance with law, (“WIC” or “WIC Program”).

**WHEREAS**, funding for the Special Supplemental Nutrition Program for Women, Infants and Children is authorized by Congress through Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. § 1786, *et seq.*), as amended, with funds for state agencies made available through the United States Department of Agriculture’s Food and Nutrition Service (“FNS”); and

**WHEREAS**, from time to time Congress and/or the USD/FNS authorizes projects to address other aspects of food security and hunger for WIC qualified clients, including, but not limited to the program authorized by FY 2010 Agriculture Appropriations Act (P.L. 111-80), known as the Summer Electronic Benefit Transfer for Children (“Summer EBTC”) demonstration program; and

**WHEREAS**, the ITCA WIC Program is a “State Agency” for purposes of administering the WIC Program and other FNS demonstration projects, such as the Summer EBTC program for the benefit of certain qualified Tribal participants, their parents, caretakers, or proxies (collectively, “WIC participants”, “WIC clients or “WIC customers”); and

**WHEREAS**, ITCA is required by 7 C.F.R., Part 246, to enter into a signed written agreement with each of its WIC Vendors in order to prescribe the terms and conditions, including standard business practices and requirements that the parties will follow to maximize the availability of WIC resources to WIC participants in conformance with the law.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth herein, the parties agree as follows:

**1. CONTRACT PERIOD**

This Contract by and between ITCA and the above named Vendor is effective **October 1, 2018**, or the date when it is signed by ITCA, whichever date is later, and up and until **September 30, 2021**.

**2. PURPOSE; GENERAL TERMS**

- A. The purpose of this Contract is to set forth the terms and conditions under which authorized Vendors will provide ITCA WIC clients and the parents or caretakers of infant and child clients (hereafter collectively referred to as “clients”) authorized WIC foods and to prescribe the terms for Vendors and the state agency to follow during transactions arising out of this Contract.
- B. Vendor agrees, as evidenced by the signature(s) of the individuals(s) named above, who have legal authority to individually or jointly represent the Vendor to fully comply with 7 C.F.R., Part 246; this Vendor Agreement; the ITCA WIC Program Vendor Manual (Vendor Manual) and the ITCA WIC Policy and Procedure Manual (Policy Manual); and all other applicable federal laws, regulations, and rules governing the WIC Program (including the WIC EBT Operating Rules), including any changes made to these documents during the Agreement Period, all of which are fully incorporated here by reference, as if stated in full, and which shall not require a written modification of this Agreement to be effective.
- C. For purposes of this Agreement, all terms shall have the same meaning as specified in 7 C.F.R., Part 246; Annex A, Definitions and Abbreviations, which is attached to the WIC EBT Operating Rules and those definitions set forth in federal statutes, regulations and rules governing the WIC Program.
- D. Any reference in this Agreement to “days” means calendar days unless expressly stated herein.
- E. If there is a conflict between any provision of this Agreement and the federal statutes, WIC regulations or operating rules governing the WIC program, the federal statutes, WIC regulations and operating rules shall govern. If any provision of this Agreement conflicts with the ITCA WIC Vendor Manual or the Policy and Procedure Manual regarding a specific standard or requirement, ITCA shall determine the standard to which the Vendor shall adhere. In determining the appropriate standard, ITCA shall allow consultation and input from the Vendor; however, the final decision shall remain with ITCA.
- F. If any provision of this Agreement or any document attached to or incorporated by reference in this Agreement is found to be invalid or otherwise prohibited by law, the provision shall be severable from the Agreement and shall be in effect only to the extent such provision complies with the law.

- G. This Agreement shall be construed in accordance with Arizona law. Any claim or litigation between ITCA and Vendor that arises out of or relates to this Agreement shall be commenced and maintained only in the Superior Court for Maricopa County, Arizona.
- H. This Agreement and all incorporated documents represent the entire agreement between Vendor and ITCA. No condition or requirement contained in, or made a part of, this Agreement shall be modified without an approved written amendment to this Agreement. Amendments shall be effective only if in writing and signed by all parties. The terms and provisions of this Agreement shall remain in full force and effect except as amended and to the extent so amended. In the event Vendor does not sign an amendment to this Agreement within thirty (30) days of receipt of the amendment, the Vendor shall be terminated from participation in all aspects of the ITCA WIC Program.
- I. This Agreement does not constitute a license or a property interest. If the Vendor wishes to continue to be authorized beyond the Agreement Period, the Vendor must reapply for authorization. If Vendor is disqualified, ITCA will terminate the Vendor Agreement, and the Vendor will have to reapply in order to be authorized after the disqualification period is over. In all cases, the Vendor's new application will be subject to the ITCA's vendor selection criteria and any vendor limiting criteria in effect at the time of the reapplication.
- J. The Vendor shall be considered an independent contractor, not an agent of ITCA, or the United States Government.
- K. ITCA is a private non-profit Arizona corporation; however, ITCA is entering into this Vendor Agreement as an authorized WIC State Agency. Vendor acknowledges and agrees that ITCA shall be protected to the full extent of the law from any liability as a State Agency. Vendor agrees to waive any and all claims and causes of action that it may have now or in the future against ITCA, its officers and directors and employees, which could not otherwise be pursued against Arizona as a State Agency under applicable law.

### **3. CONFIDENTIALITY**

- A. Vendor must maintain all data and records under this Agreement as confidential pursuant to 7 C.F.R. § 246.26 and applicable provisions of federal and state law. This includes, but is not be limited to, any information about WIC clients or participants that individually identify the client/participant or any family member(s) (collectively, "Confidential Information").
- B. Vendor agrees to establish and/or maintain procedures and controls that are acceptable to ITCA for the purpose of assuring that no Confidential Information shall be used or disclosed by Vendor, its agents, officers, or employees, except for WIC purposes. Vendor will also assume full responsibility for compliance with the standards for security of private or confidential records, data, software or equipment required by federal and state statutes and the WIC EBT Operating Rules which mandate implementation of strict measures to ensure physical and electronic security of the same and Vendor shall take such measures as may be necessary and appropriate to protect such Confidential

Information.

- C. In addition to the requirements of this subsection, Vendor acknowledges and agrees that all data and records are proprietary to and the property of ITCA and are deemed a “record” or a “system of records” as defined by the Federal Privacy Act, 5 USC §552a. Vendor agrees not to release or allow the use of such data or records by any other person, including governmental agencies, without the prior written approval of ITCA.

**4. INDEMNIFICATION**

- A. The Vendor shall, at all times, indemnify, defend and hold harmless ITCA and any of its officers, agents, officials and employees from any and all claims, demands, suits, actions, proceedings, losses, costs and/or damages of every kind and description, including attorney’s fees and/or litigation expenses or costs brought by or made against or incurred by ITCA 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 Vendor, its employees, agents or representatives, or subcontractors, their employees agents or representatives in connection with or related to Vendors’ performance of this Agreement 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 gross negligence or criminal acts of ITCA or its employees.

**5. VENDOR RESPONSIBILITIES**

In addition to the other Vendor responsibilities and obligations set forth herein, Vendor shall:

- A. Maintain a certified automation system to accept and process the eWIC card and, where implemented, the Summer EBTC card, for all WIC customers purchasing approved WIC items using either a stand-beside or integrated system that performs online WIC card transactions in accordance with the most recent version of published rules, policies and specifications, including:
  - 1. FNS WIC EBT Operating Rules;
  - 2. American National Standards Institute (ANSI) X9.93 specifications for WIC EBT transactions, a copy can be provided upon request; and
  - 3. FNS WIC EBT Technical Implementation Guide, a copy can be provided upon request.
- B. Provide an analog telephone line or Internet access; power to maintain equipment; and point of sale (POS) terminal supplies in order to participate as a WIC Vendor.
- C. For those stores using Stand-beside devices only, execute the ITCA eWIC service provider Merchant Agreement pertaining to accepting and processing eWIC, and where applicable, Summer EBTC transactions.

- D. Ensure the most current ITCA WIC Program Approved Product Listing (APL) is installed in the store's POS system and is being used for processing eWIC and Summer EBTC transactions. Vendor shall download the Approved Product List (APL) file daily or every day the store is open for business prior to any eWIC or Summer EBTC transactions.
- E. Submit new UPCs for WIC or Summer EBTC authorized items to the ITCA WIC Program. WIC/Summer EBTC authorized items that are not included in the APL must be reported to the ITCA WIC Program by submitting the product and UPC information using the request to add UPC form found in the Vendor Manual.
- F. Provide only the authorized foods during an eWIC/Summer EBTC transaction. The Vendor may not provide unauthorized food items, non-food items, cash or credit (including rain checks) in exchange for eWIC/Summer EBTC benefits. The Vendor may not override items during a transaction.
- G. Not provide refunds or permit exchanges for authorized foods obtained with eWIC/Summer EBTC benefits, except for exchanges of an identical authorized food item when the original authorized 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 and size as the original authorized food item obtained and returned by the participant.
- H. Not issue cash change to an authorized shopper for eWIC/Summer EBTC transactions less than the total face value of a Cash Value Benefit (CVB). The authorized shopper may, but is not required to, use his/her own funds for purchases in excess of the face value for a CVB.
- I. Offer authorized shoppers the same courtesies offered to other customers, and not treat WIC customers differently by offering incentive items that are not offered to non-WIC customers.
- J. Not include sales tax or container deposits as part of the actual cost of the authorized foods purchased in an eWIC/Summer EBTC transaction. Any monetary amount above the actual value of a CVB is subject to any tax which applies to non-WIC purchases of fruits and vegetables.
- K. Not charge the ITCA WIC Program for interchange or transaction fees.
- L. If the Vendor utilizes a Value Added Reseller, an Acquirer, or a Third Party Processor, incorporate the requirements of this Agreement, the WIC EBT Operating Rules, and other applicable provisions of law, as amended from time to time, into its agreements with these parties.
- M. Comply with all applicable eWIC transaction procedures required by 7 C.F.R., Part 246 and the WIC EBT Operating Rules, as summarized below:
  - 1. Vendor shall scan the actual item's Universal Product Code (UPC) that is affixed

to the item, unless the item being purchased is a fresh fruit or vegetable. The Vendor agrees to never scan codes from UPC codebooks or reference sheets. The retailer is prohibited from scanning any UPC as a substitute, replacement or otherwise not actually affixed to the actual item being purchased by the WIC customer using an eWIC/Summer EBTC card.

2. Vendor shall not retain or confiscate an eWIC/Summer EBTC card or ask a WIC participant for Personal Identification Number (PIN) or for any identification in addition to eWIC/Summer EBTC card.
3. Vendor shall witness the WIC participant enter the PIN during the transaction.
4. Vendor shall not charge the WIC client any fee, either directly or indirectly, arising out of or associated with operating, maintaining, or processing eWIC/Summer EBTC transactions.
5. The vendor shall work with ITCA WIC and their designated electronic benefit service provider to address any errors found during transaction processing, communication errors and incomplete transactions.
6. Vendor shall work with ITCA WIC and their designated electronic benefit service provider to adjust payment received due to an error in transaction processing.
7. Vendor shall provide only currently authorized WIC foods/formula in exchange for valid benefits issued by the WIC program.
8. Vendor shall sell only WIC foods/formula to WIC/Summer EBTC customers that are available in their current benefit balance.
9. Vendor shall sell only WIC foods/formula that are approved in the ITCA WIC "Approved Product Listing" (APL) to WIC participants.
10. Vendor shall provide the food item that corresponds specifically to the UPC code scanned from the item by the Vendor during the transaction.
11. Use of the "store and forward" transaction by an integrated Vendor is done at Vendor's own risk and Vendor agrees to hold ITCA harmless for any financial harm incurred as a result. Vendor acknowledges settlement for those transactions may be delayed or denied depending on the availability of benefits on the eWIC/Summer EBTC account and Vendor agrees to accept financial liability if the benefits are not available when the system is restored. The "store and forward" function is not an option for non-integrated Vendors.
12. Vendor shall always provide the WIC customer with a receipt at the end of the eWIC/Summer EBTC transaction, which at a minimum includes, last four digits of the card number of the Primary Account Number (no other digits should be displayed), store name, store address, city, state and zip code, date and time of purchase, store lane, if available, WIC food item identifier (if a separate WIC purchase receipt is not provided), benefit expiration date and time, purchased food

items including the food item quantity, description and unit of measure, unit cost, total purchase amount, benefits remaining, including the benefit description, quantity and unit of measure, unique transaction identifier or systems trace audit number.

13. Vendor shall provide the capability for WIC customers to retrieve their benefit balance while in the store, without requiring a purchase to be made that includes at a minimum, last four digits of the Primary Account Number (no other digits should be displayed), store name, store street address, city, state and zip code, local date and time, benefit expiration date or benefit effective and ending dates, benefits available including the benefit description, quantity and unit of measure and unique transaction identifier.
  14. Vendor shall not charge authorized shoppers for authorized foods obtained with eWIC/Summer EBTC benefits, however, it is required for Vendor to request, but not require, payment over the actual value of a CVB. In addition, Vendor shall not seek restitution from an authorized shopper or participant for an eWIC/Summer EBTC transaction not reimbursed or partially reimbursed by ITCA, or for which ITCA has requested payment from the Vendor.
- N. Comply with the selection criteria throughout the Agreement Period for each store and/or outlet at the time of signing this Agreement. ITCA may change the selection criteria at any time during the Agreement Period. Vendor must comply with the changes within fifteen (15) days of receipt of the notice of changes. Using the current Vendor selection criteria, ITCA may reassess the Vendor at any time during the term of this Agreement. ITCA will terminate and/or disqualify the Vendor if the Vendor fails to meet the current selection criteria. Vendor may also be subject to other sanctions including termination, administrative fines, disqualification, civil money penalties, and any combination of sanctions, according to the WIC Sanction Schedule of the Vendor Manual. In addition, Vendor understands and agrees that ITCA may apply the WIC selection criteria, as well as the WIC Sanction Schedule found in the Vendor Manual, to Vendor's participation in the Summer EBTC program.
- O. Designate at least one person, at each authorized Vendor location, to serve as the designated trainer. The designated trainer shall train all checkers, including pharmacy checkers, and other staff involved with eWIC and Summer EBTC. The Vendor or its designated trainer shall promptly inform employees of changes in the WIC Program, including changes to the Authorized Food List. The Vendor shall ensure that the designated trainer and store manager or other management employee participate in training prior to, or at the time of, the Vendor's first authorization and annually thereafter. Vendor training may be provided by ITCA personnel or persons authorized by ITCA in a variety of formats, including newsletters, videos, and face-to-face training. ITCA will have sole discretion to designate the date, time, and location of all face-to-face training, except that ITCA will provide the Vendor with at least one alternative date on which to attend such training. During the Agreement Period, ITCA will conduct at least one live interactive training for the Vendor. ITCA may, at its discretion, provide additional training for Vendors and Vendor staff as necessary to ensure compliance with Vendor requirements. This training may take place at a date, time and place as reasonably designated by ITCA.

- P. Train and update cashiers and other employees who handle eWIC and where applicable, Summer EBTC purchases, on program requirements and provide special or additional training to employees as required by ITCA to ensure WIC Program compliance. Vendor may be monitored for compliance with program requirements.
- Q. Be accountable for any intentional or unintentional action of its owners, officers, managers, employees or agents, with or without the knowledge of management, who violate this Vendor Agreement or federal or state statutes, regulations, policies or procedures governing the WIC Program.
- R. Maintain the required types and amounts of WIC authorized foods at all times. The required types and amounts of WIC authorized foods are found in the most current ITCA WIC Programs Food List and the Vendor Manual (Section 2-Minimum Stock Requirements). For purposes of this Agreement, the types and amounts of WIC authorized food found in the most current ITCA WIC Programs Food List and the Vendor Manual (Section 2-Minimum Stock Requirements) shall also be applicable to the Summer EBTC program.
- S. Only purchase infant formula from the list of infant formula manufacturers, licensed wholesalers, licensed retailers or licensed distributors provided by ITCA.
- T. Maintain the minimum required stock from the date Vendor submits its application to become of a WIC Vendor and, if authorized, throughout the entire Agreement Period. ITCA may provide an exception to the minimum stocking requirements under certain circumstances for certain food types of infant formula or foods if the clients in the geographic vicinity of Vendor do not need those foods. The exception may be revoked by ITCA at any time.
- U. Submit notice of change in pricing of WIC foods within ten (10) days of the change.
- V. Possess and maintain a current electronic mail address through which most correspondence with the ITCA will be conducted.
- W. Provide quality fresh food items and maintain its store in a clean and sanitary manner by:
  - 1. Keeping freezer and refrigeration equipment that stores WIC authorized food at the required safe temperatures.
  - 2. Maintaining and displaying a current Health Code Operating Permit (exceptions may be made for stores on tribal reservations).
  - 3. The Vendor must notify ITCA immediately and in writing should the current Health Code Operating Permit and any other required license or certificate be denied, suspended or revoked. If ITCA becomes aware that the Vendor has failed to maintain sanitation or food safety standards, it may notify the proper regulatory office. ITCA reserves the right to terminate this Agreement if any license or certificate required by law or regulation to be held by the Vendor to provide the

services required by this Agreement is for any reason denied, revoked or not renewed.

- X. Display “No Smoking” signs and enforce no smoking within 20 feet of the building.
- Y. As specified in the WIC EBT Operating Rules, display WIC decals or other signage provided by ITCA WIC so that WIC clients will recognize that the Vendor accepts WIC and to identify checkout lanes that accept eWIC Cards in a manner consistent with lane identifiers for other payment types. Vendor shall submit proposed alternate signage to ITCA for approval before use. Vendor may use the WIC acronym and logo to identify authorized WIC foods by attaching channel strips or shelf-talkers provided by ITCA to store shelves, stating "WIC-Approved".
- Z. Not use the WIC acronym in their advertising and other promotional materials, without prior written permission from ITCA.
- AA. Not use the WIC acronym or logo to:
  - 1. Imply that the Vendor is owned or operated by the ITCA WIC Program by using "ITCA-WIC Program," in whole or in part, or close facsimiles, in the official or business name of the Vendor.
  - 2. Identify a particular food as “WIC approved” by attaching or affixing it to a food item container.
- BB. Not visit WIC clinic locations to distribute promotional materials or request that WIC clinic staff distribute any fliers or promotional materials provided by Vendors. Vendor acknowledges and agrees that the use of the “WIC” abbreviation and logo are trademarks of the FNS and the term “WIC” is restricted for other purposes by for-profit entities.
- CC. Accept eWIC/Summer EBTC transactions only from WIC authorized clients.
- DD. Charge the WIC Program the current shelf price for each WIC food item. The current shelf price is the price marked on the item, shelf, or nearby sign and includes the sale price of an item.
- EE. Charge the WIC Program for only those food items actually received by the WIC client.
- FF. Not allow the purchase of alcohol, alcoholic beverages, tobacco or tobacco products with eWIC/Summer EBTC.
- GG. Not allow the return of food purchased with eWIC/Summer EBTC in exchange for cash, credit, non-food items or unauthorized food items.
- HH. Not allow the sale of firearms, ammunition, explosives or controlled substances as defined in 21 U.S.C. §802 in exchange for eWIC/Summer EBTC.
- II. Maintain competitive prices for WIC authorized food items.

- JJ. Permit announced and unannounced visits by ITCA or USDA representatives to review compliance with WIC program requirements.

**6. ITCA RESPONSIBILITIES**

- A. In addition to the other responsibilities described in this Agreement and subject to ITCA's discretion under applicable law, ITCA will:
1. Provide the Vendor with a copy of the ITCA Vendor Manual and the WIC Policy and Procedure Manual, which shall be applicable to Summer EBTC in addition to the WIC program.
  2. Train WIC clients regarding program procedures for the use of eWIC/Summer EBTC.
  3. Make available daily the most current Approved Product Listing (APL) containing a complete listing of products that are approved for redemption by the WIC and, if applicable, Summer EBTC program, through its eWIC processor.
  4. Reimburse the Vendor for all approved eWIC/Summer EBTC redemptions that are made in accordance with applicable state and federal requirements, and the WIC Vendor Agreement.
  5. Provide single function equipment at no cost to authorized WIC vendors that are determined to be a participant access store, according to 7 C.F.R. § 246.12, now or as amended.
  6. Follow and demonstrate compliance with WIC EBT Operating Rules, standard and technical requirements and other industry standards that may be identified by FNS from time to time.
  7. For stores using stand-beside devices only, assume reasonable third party processing costs and fees and operational and maintenance costs.
  8. Provide the Vendor with all required training as described further herein and in the EBT Operating Rules, including one (1) face-to-face training as during the Agreement Period as required by 7 C.F.R. § 246.12 and applicable provisions of law.
  9. Notify Vendors of changes to federal statutes, regulations, and ITCA policies or procedures governing the WIC Program before the changes are implemented. This includes notifying the Vendor of any changes in the WIC approved foods and changes which affect WIC redemption or program requirements.
  10. Monitor the Vendor for compliance with federal and state statutes, regulations, rules, policies and procedures. ITCA Vendor Monitoring may include, but is not limited to, routine monitoring visits, undercover compliance buys, investigations, and inventory audits to ensure Vendor's continued compliance with WIC and

Summer EBTC program requirements.

11. Enforce compliance with this Agreement, federal statutes, rules, regulations, and ITCA policies and procedures. For purposes of this Agreement, Vendor understands and agrees that ITCA may apply the same standards and requirements to the Summer EBTC program as it does to the WIC program.
12. Issue, from time to time, revisions to this Agreement to conform with amendments to applicable federal and state laws, regulations, rules and policies.
13. Pursue any and all legal remedies in the event that Vendor refuses to promptly pay any sums owed to ITCA under this Agreement.
14. Follow and comply with minimum lane coverage requirements set forth in 7 C.F.R. § 246.12, now or as amended, for integrated and single function equipment. ITCA may remove excess terminals if actual redemption activity warrants a reduction consistent with the redemption levels outlined in §246.12(z)(2)(i) and (z)(2)(ii).

## **7. MULTIPLE LOCATIONS**

- A. The location of Vendor's store outlets that have been authorized as "vendors" under this Agreement are listed on Appendix A.
- B. Vendor must attach to this Agreement as Appendix A the information from the Vendor application for each store outlet that has been authorized as a Vendor pursuant to the ITCA authorization procedures. This must include the outlet location, email address to be used for administration of this Agreement, manager, bookkeeper and the individual responsible for WIC oversight and training. Each store location may be treated as a separate Vendor for compliance with this Agreement.
- C. If this Agreement is terminated as to any store outlet, the remaining store outlets will be treated as Vendors under this Agreement. The Vendor may add a store outlet only if the Vendor applies for authorization and the authorization is approved by ITCA. If the initial list of store outlets as set forth in Appendix A changes due to termination or addition of a store outlet, Vendor and ITCA agree to prepare a revised Appendix A, which shall not necessitate a formal amendment to this Agreement.

## **8. CHANGE OF VENDOR NAME, CONTACT INFORMATION, OR HOURS OF OPERATION OR STORE FACILITIES**

- A. Vendor must notify ITCA within thirty (30) days of a change in management or hours of operation, change in store name, the store's mailing address, or the store's telephone or email address. A change in Vendor location is not a change in mailing address.
- B. The Vendor shall notify ITCA, by no later than 5 p.m. the next business day, following any temporary change in store facilities affecting participation, such as remodeling, closure for health code violations or suspension of sale of dairy products while a new

refrigeration unit is being installed.

- C. ITCA may terminate this Agreement in the event that a change in a store's facilities adversely impacts the ability of WIC clients to perform eWIC, or if applicable, Summer EBTC transactions, (including, but not limited, due to store remodel, building damage, and equipment failure).

**9. CHANGE IN OWNERSHIP**

- A. The Vendor must provide ITCA thirty (30) days advance written notification of any change in Vendor ownership, store or outlet location, store closure or other cessation of operations, including bankruptcy. This Agreement is not transferable, and, in such instances, this Agreement may be terminated. ITCA has the discretion to determine whether a change in business structure constitutes a change in ownership.
- B. If notice is not given, Vendor is liable to ITCA for all eWIC/Summer EBTC transactions and/or checks/FVBs paid after the change in ownership. ITCA may pursue all remedies available to collect, including establishing a claim against the Vendor.

**10. CHANGE IN LOCATION**

- A. Vendors shall notify ITCA in writing at least thirty (30) days before changing locations. This Agreement is not transferable between locations. In such instances, ITCA may terminate this Agreement, except that ITCA may permit Vendors to move short distances without terminating this Agreement. ITCA has the discretion to determine whether a change in location qualifies as a short distance.
- B. Vendors who change the location of their business will not be authorized at their new location unless the Vendor has received advanced approval from ITCA, have met all selection criteria, and have received a Vendor agreement for the new location.

**11. RECORD KEEPING REQUIREMENTS**

- A. The Vendor shall maintain, for a period of three years, purchase and receiving records, including, but not limited to, inventory records showing all wholesale and retail purchases, state and federal tax returns, and other pertinent records that are necessary to substantiate the volume and prices charged for eWIC/Summer EBTC foods. These records shall be made available to ITCA upon its request.
- B. ITCA or the federal government may audit Vendor's financial records to determine if violations of this Agreement have occurred and to identify amounts due to ITCA for improper eWIC/Summer EBTC transactions.
- C. Vendor shall provide ITCA's authorized representative or federal government official access to the Vendor's facilities, books, records and documents at all reasonable times. The Vendor shall provide the above entities and individuals access to all EBT records of transactions and checks/FVCs or other food instruments in Vendor's possession and all program-related records or records relating to eWIC/Summer EBTC transactions negotiated on the day of review including, but not limited to, shelf price records, financial

records and other documents that are pertinent to determining a Vendor's compliance with WIC rules and regulations. The Vendor shall, within forty-eight (48) hours of a written request, furnish a written verification to ITCA of the total Vendor purchases of specific items in order to justify amounts claimed as WIC Program purchases.

- D. Vendors are required to develop and keep a record keeping system and documentation of Vendor's annual (SNAP) eligible food sales and be able to provide annual documentation at any time when requested by ITCA.
- E. The Vendor shall retain records related to disputes, litigation, and settlements of claims arising out of the performance of this Agreement until such time as these matters have been finally resolved or for 3 years, whichever is later.
- F. The Vendor shall, at its own expense, provide a legible copy of all such records to ITCA within thirty (30) calendar days of the written request of ITCA or USDA.
- G. The Vendor shall retain and produce for inspection and audit the original of all such records when needed to verify the authenticity of a copy.

## **12. PURCHASE AND INVENTORY RECORD REQUIREMENT**

- A. Vendor purchase records 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 (Handwritten invoices are not acceptable).
- B. Vendors shall only purchase authorized infant formula from sources on ITCA's list of infant formula manufacturers, wholesalers or distributors.
- C. 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 oz. box of Total Cereal), the unit price of the items, and the total amount purchased.
  - 1. 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.
  - 2. All receipts from purchases at retail establishments must be machine dated by the establishment. Hand or manually dated retail store receipts are not acceptable.
  - 3. 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.

## **13. RELEASE OF VENDOR RECORDS**

- A. ITCA has the right to coordinate Vendor monitoring with the Arizona Department of Health Services 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.

- B. ITCA 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.

#### **14. CONFLICT OF INTEREST**

If ITCA determines that a conflict of interest exists between the Vendor and ITCA, ITCA may terminate this Agreement or take such other actions within ITCA's sole discretion to resolve the conflict. Such cancellation shall occur without any further obligation to Vendor.

#### **15. PRICING**

- A. The Vendor must submit to ITCA the Price Stock Survey when requested by ITCA.
- B. All prices charged to the ITCA WIC Program shall be comparable to the prices charged by other stores of a similar type and in similar geographic locations. ITCA will determine the reasonableness of the price and will ensure prices are competitive with other stores in the vendor's peer group.
- C. Any change in the prices must be reported to ITCA within ten (10) days of the change. Failure of Vendor to report changes in pricing may result in partial reimbursement for eWIC/Summer EBTC transactions or such other actions by ITCA as may be permitted under this Agreement.

ITCA may make price adjustments to the purchase price of eWIC/Summer EBTC transactions, or other food instruments submitted by the Vendor for redemption to ensure compliance with prices as set forth in price limitations applicable to the Vendor. ITCA may also make price adjustments to ensure compliance with maximum allowable reimbursement levels by peer group.

In setting allowable reimbursement levels, ITCA shall consider participant access in a geographic area and may include a factor to reflect fluctuations in wholesale prices. In establishing allowable reimbursement levels for above-50-percent Vendors (calculated solely based on WIC purchases and not Summer EBTC purchases), ITCA will ensure that reimbursements do not result in higher food costs than if participants transacted eWIC benefits/ FVBs at Vendors that are not above-50-percent Vendors, or in higher average payments per eWIC benefits/FVB to above-50-percent Vendors than average payments to comparable Vendors. ITCA may, within its sole discretion, choose to exempt Vendors that supply only exempt infant formula and/or WIC-eligible medical foods and non-profit above-50-percent Vendors from the allowable reimbursement limits. Above-50-percent Vendors will be terminated unless such Vendor qualifies as a Participant Access store as defined in the Vendor Manual.

- D. ITCA may make price adjustments to the payment amount for food items within an eWIC/Summer EBTC transaction submitted by Vendor for redemption to ensure compliance with the allowable reimbursement level applicable to the Vendor. A vendor's failure to remain price competitive is cause for termination of the Vendor agreement, even if actual payments to the Vendor are within the maximum reimbursement amount.
- E. Vendor must clearly mark the price of the WIC approved foods either on the product's container or on the shelf with the product.
- F. Vendor shall comply with the requirements for the application of discounts and coupons, including but not limited to manufacturer coupons, quantity and price discounts and promotions, added ounces, transaction discounts and other discounts, and loyalty card savings, as set forth in the WIC EBT Operating Rules and applicable law.

## **16. PAYMENT TO VENDORS AND DISPUTE RESOLUTION FOR CLAIMS**

- A. ITCA will establish procedures to assure, and will provide for, prompt reimbursement of Vendors through normal banking channels for all valid eWIC transactions as required. For purposes of this Agreement, procedures established by ITCA for eWIC transactions shall be applicable to Summer EBTC transactions to the extent permitted by applicable law or any ITCA WIC policy.
- B. As part of the redemption procedure, ITCA may make price adjustments to the requested amount on eligible WIC foods to ensure compliance with the competitive pricing selection criteria. ITCA may deny payment to the Vendor for improper eWIC/Summer EBTC transactions, may offset future payments to the Vendor, or require and receive reimbursement from the Vendor for the amounts paid by ITCA to the Vendor on improper eWIC/Summer EBTC transactions and for unsubstantiated quantities of WIC food items. In addition to denying payment or assessing a claim for reimbursement, ITCA may sanction the Vendor for overcharges and other errors in accordance with ITCA's Vendor Manual and WIC Policy and Procedure Manual and applicable law.
- C. When ITCA determines that the Vendor has committed a violation that affects payment to the Vendor, ITCA will delay payment or establish a claim. ITCA may delay payment or establish a claim in the amount of the full purchase of each eWIC/Summer EBTC transaction that contained the Vendor overcharge or other error. The Vendor shall have an opportunity to provide justification or correction when ITCA denies reimbursement for a transaction or requests payment for an improper transaction.
- D. Vendor may dispute a payment in writing up to forty-five (45) days after the date of the transaction.
- E. Supporting documentation must be received within ten (10) business days of the Vendor's submission of the written dispute, or ITCA will deny the claim.
- F. ITCA shall research and provide a response within ten (10) business days of the receipt of the notification of a payment dispute from a Vendor.

- G. All payment disputes shall be resolved within forty-five (45) business days of the first notification by either party. Resolution of a dispute completed within the dispute timeframe is final or the initiating party shall be deemed entitled to the claim and the disputed item will be settled in their favor.
- H. In addition to denying payment or assessing a claim, the ITCA may sanction the Vendor for Vendor overcharges or other errors in conformance with this Agreement and the Sanction Schedule found in the Vendor Manual. Sanctions may include termination, disqualification, administrative fines, and civil money penalties in lieu of disqualification, or any combination thereof as may be permitted by law. In conformance with the Vendor Manual, ITCA will notify the Vendor in writing when an investigation reveals an initial incidence of a violation for which a pattern of incidences must be established in order to impose a sanction, before another such incidence is documented, unless ITCA determines, in its discretion, on a case-by-case basis, that notifying the Vendor would compromise an investigation. ITCA reserves the right to assess WIC Summer EBTC violations consistent with the WIC Sanction Schedule.
- I. A Vendor may be subject to actions in addition to the sanctions, such as claims by ITCA for reimbursement of improper eWIC/Summer EBTC transactions.
- J. Every payment obligation of ITCA under this Agreement 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 Agreement, this Agreement or any program authorized by this Agreement, may be terminated by ITCA at the end of the period for which funds are available or the Agreement may be modified to accommodate a reductions of funds. No liability shall accrue to ITCA in the event this provision is exercised, and ITCA shall not be obligated or liable for any future payments or for any damages as a result of termination under this subsection.

**17. MONITORING/AUDIT AND VIOLATIONS**

- A. ITCA will conduct routine monitoring visits of Vendor in accordance with the criteria established in the ITCA Policy and Procedure Manual and Vendor Manual.
- B. ITCA may conduct compliance buys at the Vendor's location at times that are unannounced.
- C. ITCA may use its staff or investigators retained for the sole purpose of conducting covert compliance investigations.
- D. Violations that are discovered through monitoring or compliance investigations may be reported by ITCA to other WIC state agencies, SNAP and USDA.
- E. During monitoring visits, the Vendor shall provide access, during normal business hours, to all lanes and checkout areas, shelf prices, shelf price records, purchase records of WIC/Summer EBTC authorized foods, and food storage areas. Monitoring may include, but is not limited to the following:

1. Unannounced monitoring visits by ITCA personnel or persons authorized by ITCA; representatives from the USDA or other federal agencies; federal, state or local law enforcement agencies; or authorized personnel from local WIC agencies.
2. Compliance buys, which are undercover investigations to determine compliance with all applicable requirements.
3. Inventory audits, which are an examination of stock and food invoices or other proofs of purchase to determine whether a Vendor has purchased sufficient quantities of WIC authorized foods to meet the needs of ITCA clients during any given period of time.

**18. CRIMINAL PENALTIES**

ITCA may report Vendor violations, which it determines constitute fraud or abuse, to the appropriate federal, state or local law enforcement agencies for criminal prosecution. All violations which appear to be fraud, willful misappropriation, use of stolen or fraudulently obtained program funds or trafficking will be reported for prosecution. The Vendor may be subject to a fine of not more than \$25,000, imprisonment of not more than five years, or both, if the value of funds is \$100 or more. If the value is less than \$100, the vendor may be subject to a fine of not more than \$1,000, or imprisonment for not more than one year, or both. ITCA will use all information related to this Agreement to assist law enforcement with a prosecution.

**19. VIOLATIONS – CARRYOVER**

Violations of the WIC Program that would result in federally mandated sanctions, which occurred during the previous Agreement Period, may be carried over and used as a basis for termination and/or disqualification or other sanctions (including monetary claims) under any subsequent Agreement in accordance with the most recent Sanction Schedule prescribed by the ITCA Vendor Manual.

**20. TERMINATION**

- A. In addition to the grounds for termination set forth herein, ITCA may immediately terminate the Agreement if it determines that the Vendor has provided false or misleading information in connection with its application for authorization.
- B. The Vendor or ITCA may terminate this Agreement only for cause, after providing at least thirty (30) days advance written notice.
- C. ITCA may terminate a Vendor with or without cause with at least thirty (30) days advance written notice.
- D. ITCA may terminate this Agreement without notice and/or disqualify the Vendor for, but not limited to, the reasons stated below:
  1. Failure of the Vendor to comply with the conditions and responsibilities set forth in this Agreement; the most recent federal regulations at 7 C.F.R., Part 246; the WIC EBT Operating Rules; the ITCA WIC Vendor Manual and ITCA's WIC

Policies and Procedures; and any subsequent amendments and revisions to these documents or any other applicable requirement of law.

2. Low volume of WIC sales (*See Vendor Manual*).
  3. Failure to meet the selection criteria.
  4. Termination of the WIC Program or the non-availability of funds.
  5. Non-competitive prices.
  6. Providing false information in its application to participate in the WIC Program.
  7. Has been convicted of a felony related to the operation of the Vendor's business.
  8. Is currently disqualified from SNAP or another state agency's WIC Program.
  9. Has been assessed a civil money penalty in lieu of disqualification from SNAP or another state agency's WIC Program.
  10. Failure to pay claims.
  11. Failure to maintain business integrity.
  12. Fraud.
  13. A-50 Vendors will be terminated, unless such Vendor is determined to qualify as a participant access Vendor.
- E. Disqualification from the WIC Program will result in an automatic disqualification as a Summer EBTC Vendor, and may result in disqualification as a retailer in SNAP. Such disqualification may not be subject to administrative or judicial review under SNAP.
- F. ITCA will not accept or process an application from a Vendor during any period of disqualification.
- G. Disqualification from the WIC Program within 2 years of eWIC statewide rollout, will result in recoupment of integration funds in full, if vendor accepted integration grant funds from the ITCA WIC Program.

## **21. APPEALS AND ADMINISTRATIVE REVIEWS**

Vendors may appeal certain adverse actions by ITCA according to the administrative review process set forth in the ITCA Policy and Procedure Manual. Adverse actions may include denial of the Vendor's application for authorization, early termination of this Agreement for cause, disqualification, or imposition of a fine or a civil money penalty in lieu of disqualification. Administrative review procedures will be available upon request and will be provided along with any notice of adverse action that is subject to review.

The time period for an appeal is set forth in the ITCA Policy and Procedure Manual and shall begin upon receipt of notification of the adverse action.

**22. PROHIBITION AGAINST DISCRIMINATION**

- A. The Vendor shall comply with the nondiscrimination provisions of USDA regulations 7 C.F.R. §§ 15, 15a, and 15b, as may be amended.
- B. Both the Vendor and ITCA agree to comply with all aspects of anti-discrimination legislation, including all federal legislation and A.R.S. § 41-1463.
- C. The Vendor shall not discriminate based on race, color, disability, age, national origin, gender or any other category protected by law in any interactions with WIC clients, representatives of ITCA, or suppliers;
- D. The Vendor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990, and its amendments.

**VENDOR**

**INTER TRIBAL COUNCIL OF ARIZONA, INC.**

BY:

BY:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name and Title of Authorized Person

Maria Dadgar, MBA, Executive Director  
\_\_\_\_\_  
Printed Name and Title of Authorized Person

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Store Name

Inter Tribal Council of Arizona, Inc.  
\_\_\_\_\_  
Name

\_\_\_\_\_  
Street Address

2214 N. Central Avenue, Suite 100  
\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City State Zip Code

Phoenix, Arizona 85004  
\_\_\_\_\_  
City State Zip Code

\_\_\_\_\_  
Telephone Number

(602) 258-4822  
\_\_\_\_\_  
Telephone Number

**VENDOR'S AUTHORIZED STORE LOCATIONS**

Store name:		
SNAP Number:		
Mailing Address:		
City:	State:	Zip Code
Telephone Number:		Fax Number:
Manager Name:		
Electronic mail address:		

Individual responsible for Vendor compliance at this location:

Name:	Phone Number:
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