



DEPARTMENT OF

Building a Healthy New Mexico!

Bill Richardson, Governor

Katrina Hotrum  
Deputy Secretary

Duffy Rodriguez  
Deputy Secretary

Jessica Sutin  
Deputy Secretary

Alfredo Vigil, MD  
Secretary

Karen Armitage, MD  
Chief Medical Officer

## New Mexico WIC Program Vendor Agreement

### INTRODUCTION:

The New Mexico Department of Health, herein called DEPARTMENT, and the Special Supplemental Nutrition Program for Women, Infants and Children, herein called WIC PROGRAM, enter into this Agreement

With,

Vendor Name, Vendor Number, herein called VENDOR.

### THE PARTIES MUTUALLY AGREE:

#### ARTICLE 1 GENERAL CONDITION:

This Agreement incorporates all the terms, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, terms, and prior understandings have been merged into this written Agreement. No prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement. This Agreement, the WIC Vendor Manual, WIC Approved Food List and the Code of Federal Regulations 7 CFR Part 246 located in the Federal Register embody the whole agreement of the parties and shall supersede all previous communications, representations, or agreements, whether verbal or written, between the parties hereto.

#### ARTICLE 2 SCOPE OF WORK

The VENDOR shall perform the work outlined in the Scope of Work described in the Vendor Manual.

#### ARTICLE 3 TERM

This Agreement shall be effective upon approval of both parties, whichever is later and shall terminate on September 30, 2012 as stated in Article 4, Termination or by mutual agreement of the parties. No commitment of public funds is permitted prior to Agreement approval.

#### ARTICLE 4 TERMINATION

The DEPARTMENT may, by written notice to the VENDOR, terminate the whole or any part of this Agreement in any one of the following circumstances:

1. If the VENDOR fails to comply with any terms, conditions, requirement, or provisions of this Agreement, the DEPARTMENT shall notify the VENDOR in writing, and should the VENDOR not remedy such failure within a period of time specified in writing by the DEPARTMENT, the Agreement may be terminated immediately following the end of the time period for remedial action.
2. If, during the term of this Agreement, the VENDOR or any of its officers, employees or agents commits WIC PROGRAM participant abuse, neglect or exploitation, malpractice, fraud, embezzlement or other serious misuse of federal and/or state funds or providing false information in its application, the DEPARTMENT may terminate this Agreement immediately upon written notice to the VENDOR.
3. The DEPARTMENT may terminate this Agreement pursuant to the **Appropriations Article 5**, of this Agreement.

Either the DEPARTMENT or the VENDOR may terminate this Agreement without cause, upon a minimum of fifteen (15) calendar day's written notice to the other party.

By the methods of termination provided in this subsection neither party may nullify obligations already incurred for the performance or failure to perform prior to the date of termination.

## **ARTICLE 5 APPROPRIATIONS**

The performance of this Agreement is subject to the condition precedent that sufficient funds are appropriated, authorized, and allocated by the Legislature of the State of New Mexico and/or by the federal government. If sufficient appropriations, authorizations, and allocations are not made by the Legislature of the State of New Mexico and/or by the federal government, necessitating a decrease in the amount of Agreement funds available for expenditure by the DEPARTMENT, this Agreement may be terminated or amended to a lower amount of funds upon fifteen (15) calendar day's written notice given by the DEPARTMENT to the VENDOR. If the DEPARTMENT proposes an amendment to unilaterally reduce Agreement funding, the VENDOR shall have the option to terminate the Agreement upon fifteen (15) calendar day's written notice to the WIC PROGRAM.

The decision of the DEPARTMENT as to the amount of Agreement funds available for expenditure from the appropriation, authorization and/or allocation shall be final and binding on the VENDOR.

## **ARTICLE 6 TERMINATION MANAGEMENT**

If this Agreement is terminated pursuant to the provisions of this Agreement, or if the parties mutually agree to discontinue their contractual relationship, if the VENDOR unilaterally requests termination, or upon expiration of the term of the Agreement, immediately upon receipt by either the DEPARTMENT or the VENDOR of written notice of termination, the VENDOR shall:

1. Comply with all directives issued by the DEPARTMENT in the notice of termination as to the performance of work under this Agreement;
2. Take such action as the DEPARTMENT shall direct for the protection, preservation, retention or transfer of all property titled to the DEPARTMENT including all WIC PROGRAM participant records generated under this Agreement.
3. On the date of termination of this Agreement, the VENDOR shall furnish to the DEPARTMENT:
  - a. A preliminary closing of the financial records and books of accounts which were required to be kept by the VENDOR under the provision of this Agreement regarding financial records, and
  - b. Within 10 calendar days provide a final closing of the financial records and books of accounts which were required to be kept by the VENDOR under the provision of this Agreement regarding financial records.

## **ARTICLE 7 ASSIGNMENT**

The VENDOR shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the DEPARTMENT.

## **ARTICLE 8 RECORDS AND FINANCIAL AUDIT**

The parties to this Agreement shall maintain complete financial and inventory records; which indicate the nature of services rendered during the term of the Agreement and retain them for a period of three (3) years from date of final claims payment by the DEPARTMENT to the VENDOR. The records shall be subject to inspection by the DEPARTMENT and other state agencies as the DEPARTMENT may require and shall be sufficient to show that the billed services have been provided. The DEPARTMENT shall have the right to audit billings before and after payment; payment under this Agreement shall not foreclose the right of the DEPARTMENT to recover excessive or illegal payments. Upon request, the VENDOR must make available to representatives of the DEPARTMENT or other designees, the US Department of Agriculture, and the Comptroller General of the United States, at any reasonable time and place for inspection and audit, all food instruments and CVB transaction records in the VENDOR'S possession and all program-related records. The VENDOR must allow the DEPARTMENT access to all necessary WIC PROGRAM food instruments and CVB transaction records and records of sales, inventory, and/or invoices to ascertain whether the VENDOR receives more than 50 percent of their Supplemental Nutrition Assistance Program (SNAP) eligible food sales revenue from the sale of WIC PROGRAM foods obtained with WIC PROGRAM food instruments (FI) and Cash Value Benefit (CVB) transactions. [7 CFR 246.12(h)(3)(xv)]

## **ARTICLE 9 WIC PROGRAM INFORMATION**

The VENDOR shall protect the confidentiality of all WIC PROGRAM participant information and records and shall not release any WIC PROGRAM participant information to any other third party without the express written authorization of the WIC PROGRAM participant and the DEPARTMENT.

The VENDOR shall comply with the federal Health Insurance Portability and Accountability Act of 1996 and applicable regulations and all other applicable confidentiality legal requirements.

## **ARTICLE 10 RELEASE**

The VENDOR, upon receipt of final payment due the VENDOR under this Agreement, releases the DEPARTMENT its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The VENDOR agrees not to purport to bind the State of New Mexico to all obligations not assumed herein by the State of New Mexico, unless the VENDOR has express written authority to do so, and then only within the strict limitations of that authority.

**ARTICLE 11 LIABILITY**

The parties to this Agreement shall maintain professional or general liability insurance, as applicable, for all services provided under this Agreement and shall supply evidence of such coverage upon the DEPARTMENT’S request.

The VENDOR shall defend, indemnify and hold harmless the DEPARTMENT from all actions, proceedings, claims, demands, costs, damages, attorney's fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, if caused by the negligent or tortuous act or failure to act of VENDOR, its officer, employees, servants, or agents, or if caused by actions of any WIC PROGRAM participant resulting in injury or damage to the person or property of another person during any time when the VENDOR or any officer, agency, employee, or subcontractor thereof has undertaken or is furnishing the care and services called for under this Agreement.

**ARTICLE 12 CONFLICT OF INTEREST**

The VENDOR warrants that it presently has no interest, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement.

**ARTICLE 13 AMENDMENT**

This Agreement shall not be altered, changed or amended except by instrument, in writing, executed by the parties hereto.

**ARTICLE 14 NON-DISCRIMINATION**

The VENDOR hereby agrees to comply with the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794, et seq.), Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), the Americans with Disabilities Act of 1990 (42 U.S.C. 12150, et seq.) and all other applicable federal and state laws and regulations. These laws and regulations prohibit discrimination on the grounds of race, color, national origin, sex, age, handicap or disability. [7 CFR 246.12(h)(3)(xxiii)]

**ARTICLE 15 PAYMENT**

For appropriate products purchased by WIC PROGRAM participants and services satisfactorily performed pursuant to the Scope of Work, the VENDOR shall be reimbursed per federal and state policies and regulations and furthermore reimbursed for valid fully payable electronic claims and rejected electronic claims pursuant to the Scope of Work and in accordance with the Vendor Manual based on federal and state regulations. This reimbursement in subsequent fiscal years is subject to availability of funds pursuant to Article 5, Appropriations and to negotiations between parties from year to year pursuant to Article 2, Scope of Work.

The VENDOR shall apply to the WIC PROGRAM for reimbursement of rejected food instruments or CVB’s only for the actual purchase price of the food listed on the food instrument or CVB in accordance with the Vendor Manual and vendor policies concerning rejected food instruments and CVB’s.

**ARTICLE 16 APPLICABLE LAW**

This Agreement shall be governed by, the laws of the State of New Mexico, NMAC 7.31.2, WIC PROGRAM Regulations, and US Department of Agriculture (USDA), Food and Nutrition Service (FNS) 7 CFR Part 246, Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

**ARTICLE 17 NOT A LICENSE/PROPERTY INTEREST**

This vendor agreement does not constitute a license or property interest. If the vendor wishes to continue to be authorized beyond the period of its current agreement, the vendor must reapply for authorization. If a vendor is disqualified, the State agency will terminate the vendor's 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 State agency's vendor selection criteria and any vendor limiting criteria in effect at the time of the reapplication. [7 CFR 246.12 (h) (3)(xxi)]

## **DEFINITIONS:**

“*ABOVE 50% VENDOR*”: A vendor that derives more than 50% of its annual SNAP eligible food sales revenue from WIC PROGRAM food instruments, or new vendor applicants expected to derive more than 50% of its annual SNAP eligible food sales revenue from WIC PROGRAM food instruments.

“*APL*”: Approved product list

“*CASH VALUE BENEFIT*”: Cash Value Benefit (CVB) means a fixed-dollar amount on the client’s smart card used by a participant to obtain authorized fruits and vegetables.

“*CMP*”: Civil Monetary Penalty

“*COMPLIANCE BUY*”: Is a covert, on-site investigation in which a representative of the WIC Program poses as a participant, parent, caretaker of an infant or child participant, or a proxy, who transacts one or more food instruments (FI’s) or CVB, and does not reveal during the visit that he or she is a WIC Program representative.

“*DISQUALIFICATION*”: The act of ending program participation of a participant or authorized food vendor, whether as a punitive sanction or for an administrative reasons. When the State disqualifies a vendor, the State must also terminate the vendor agreement 246.12(L)(9).

“*ECR*”: Electronic cash register

“*FOOD INSTRUMENT*”: A Smart Card with a valid food prescription used by WIC PROGRAM participants to obtain supplemental foods from the VENDOR.

“*PARTICIPANTS*”: are pregnant women, breastfeeding woman, postpartum women, infants and children who are receiving supplemental foods, FI’s or CVB’s , under the WIC Program, and the breastfed infants of participating breastfeeding women.

“*PLU*” : Product Look Up code used for identifying fresh fruits and vegetables

“*REGULAR VENDOR*”: A vendor that derives 50% or less of its annual SNAP eligible food sales revenue from WIC PROGRAM food instruments.

“*RELATIVE OF VENDOR*”: A vendor’s spouse, child, parent, or sibling.

“*SANCTION*”: A penalty imposed by the WIC PROGRAM due to a vendor violation.

“*SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP)*”: USDA program providing benefits to improve the level of nutrition among low-income eligible households.

“*TERMINATION*”: The administrative action to end the vendors WIC authorization under the vendor agreement.

“*VENDOR*”: A sole proprietorship, partnership, corporation, other legal entity, and/or any person who owns or controls more than ten percent interest in the partnership, corporation, or other legal entity operating one or more stores authorized by the WIC Program to provide authorized supplemental foods to participants under a retail food delivery system. Each store operated by a business entity constitutes a separate vendor and must be authorized separately from the other stores operated by the business entity. Each store must have a single fixed location.

“*VENDOR VIOLATION*”: Means any intentional or unintentional action of a vendor’s current owners, officers, managers, agents, or employees (with or without knowledge of management) that violates the Vendor Agreement or federal or state statutes, regulations, policies, or procedures governing the WIC Program.

## **ADMINISTRATIVE REQUIREMENTS**

### **The VENDOR shall:**

1. Redeem WIC PROGRAM food instruments and CVB only for WIC PROGRAM participants, parents or caretakers of infant and child participants, or proxies’ for only:
  - a. Those food items listed on the food instruments and CVB in the quantities specified, without substitution;
  - b. The actual purchase price of the food listed on the food instruments or CVB. [7 CFR 246.12 (h) (3) (i)] [7 CFR 246.12 (h) (3) (ii)] [7 CFR 246.12 (h) (3) (v)] [7 CFR 246.12 (f) (2) (vi)] [7 CFR 246.12 (h) (4)]
2. Scan or manually enter UPC/PLU codes only from WIC authorized items being redeemed; never from UPC/PLU codebooks or reference sheets or from any product not actually purchased by the WIC client.
3. Not exchange WIC PROGRAM food instruments or CVB for cash, credit, refunds, or exchanges including rain checks, or consideration other than set forth herein with the understanding that exchanging WIC PROGRAM food instruments or CVB for cash, credit, (including rain checks) or consideration other than set forth herein is strictly prohibited and constitutes a criminal offense. [7 CFR 246.12 (h) (3) (ii)]
  - a. Permit exchanges of authorized foods obtained with food instruments or CVB only when exchanging for an identical authorized food item when the original authorized food item was 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 food item means the exact brand and size as the original authorized food item returned by the participant. [7 CFR 246.12 (h) (3) (ii)]

4. Make the same services available to WIC PROGRAM participants, parents or caretakers of infant and child participants and proxies as are offered to all other customers, extend the same courtesies to WIC PROGRAM participants as to all other customers, and otherwise comply with all applicable USDA regulations governing nondiscrimination in services offered. [7 CFR 246.12 (h) (3) (iii)] [7 CFR 246.12 (g) (3) (xiii)]
5. Refuse to honor WIC PROGRAM food instruments or CVB presented before the “First Date to Spend”, and after the “Last Date to Spend” as stated on the food instrument or CVB. [7 CFR 246.12 (h) (3) (iv)]
6. Assure that no sales tax is charged to WIC PROGRAM participants for purchases of WIC PROGRAM approved foods using WIC PROGRAM food instruments or CVB’s. [7 CFR 246.12 (h) (3) (vii)]
7. Provide WIC approved foods at prices competitive with those charged by other WIC Vendors with in the vendor’s peer group, for above 50% vendors prices must be competitive with the weighted statewide average, as defined by the WIC PROGRAM in the Vendor Manual Section on Competitive Price Criteria. [7 CFR 246.12 (h)(3)(viii)]
  - a. Accept reimbursement for food instruments or CVB redeemed at or below the vendor’s shelf prices within maximum allowable reimbursement levels established for each peer group and above-50% vendors.
  - b. Submit all claims for food instrument or CVB transactions to the State host for payment within 60 calendar days of the First Day to Spend date. [NMAC 7.31.2.20 B (2) (h)]
  - c. Send a transmission of all daily electronic claim files for food instruments or CVB transactions to the WIC PROGRAM within 48 hours of the close of business or accept penalties imposed by the WIC PROGRAM. Penalties are outlined in the Vendor Manual.
8. Accept denial or delayed payment or assessment against a claim for the full purchase price of a food instrument or CVB claim that contains an overcharge or other error.
9. Have an opportunity to justify or correct errors on food instrument or CVB claims submitted to the state according to established vendor policies. See Vendor Manual Addenda.
10. Promptly refund upon demand by the WIC PROGRAM any and all amounts paid in error. [7 CFR 246.12 (h) (3) (ix)]
  - a. For offenses, face denial of financial claims for WIC PROGRAM food instruments or CVB’s or disqualification from the WIC PROGRAM. [7 CFR 246.12 (h) (3) (ix)] [7 CFR 246.12 (h) (3) (xviii)] (See Vendor Manual Sanction Schedule)
11. Not request or demand reimbursement from WIC PROGRAM participants, parents or caretakers of infant and child participants or proxies for authorized foods obtained with WIC PROGRAM food instruments or CVB’s or for any food instruments or CVB’s which have been dishonored or denied redemption in whole or in part by the WIC PROGRAM. [7 CFR 246.12 (h)(3)(x)]
12. Require at least one representative of the VENDOR’S organization to participate in annual training and provided by the WIC PROGRAM. Require the representative attending the training to provide training to all other managers and employees. The WIC PROGRAM shall have sole discretion to set the date, time, and location of all interactive training and will provide the vendor with at least one alternative date on which to attend the training. Training shall be provided in interactive format prior to or at the start date of the Agreement, and shall be provided annually in a variety of formats. [7 CFR 246.12 (h)(3)(xi)]
13. Provide internal training to employees within their organization concerning all aspects of WIC transaction processing in the lane and all WIC PROGRAM requirements. [7 CFR 246.12 (h) (3) (xii)]
14. Be accountable for their owners, officers, managers, agents, and employees who commit vendor violations. [7 CFR 246.12 (h) (3) (xiii)]
15. Be monitored for compliance with WIC PROGRAM requirements. Follow all requirements of Federal Regulations regarding vendor compliance. [7 CFR 246.12 (h) (3) (xiv)]
16. Make food instruments in the vendor’s possession or CVB transaction records and inventory records available for inspection or audit to the DEPARTMENT, or the Comptroller of the United States, upon demand by the WIC PROGRAM and/or any of its authorized agents. [7 CFR 246.12(h)(3)(xv)]
17. Be subject to immediate termination of the Vendor Agreement if the WIC PROGRAM determines that the VENDOR has provided false information in connection with its application for authorization. [7 CFR 246.12(h)(3)(xvi)]
18. Notify the WIC PROGRAM upon change of ownership, location, or cessation of operation any of which will automatically render this Agreement terminated. Vendors are required to notify the WIC PROGRAM of any circumstance which may impact service to WIC PROGRAM participants. [7 CFR 246.12(h)(3)(xvii)]
19. Be sanctioned for violations of federal regulations and/or state regulations and vendor agreement violations. Sanctions may include administrative fines, disqualifications, and civil monetary penalties in lieu of disqualification. [[7 CFR 246.12(h)(3)(xviii)] [7 CFR 246.12 (h)(5)]and WIC National Policy Memorandum 2005-1]
20. Have no relative of VENDOR employed by the WIC PROGRAM act as their WIC PROGRAM vendor liaison. If the WIC PROGRAM identifies a conflict of interest as defined by State laws, regulations and policies between the VENDOR and the WIC PROGRAM, the VENDOR will be sanctioned or terminated as an authorized WIC PROGRAM food vendor. [7 CFR 246.12 (h) (3) (xix)]
21. Be liable to criminal prosecution under applicable Federal, State or local laws for committing fraud or abuse in the WIC PROGRAM [7 CFR 246.12 (h) (3) (xx)].
22. Perform and abide by the WIC PROGRAM requirements and conditions as stated in Federal Regulations, 7 CFR 246.12, 7 CFR 246.18, and State Regulations NMAC 7.31.2.

23. Abide by all WIC PROGRAM requirements, the Vendor Agreement, Vendor Manual, and all statutes, regulations, policies and procedures governing the WIC PROGRAM, including any changes made during the Agreement period. Vendors are responsible for ensuring that owners, managers, employees or agents acting on behalf of the VENDOR comply with all of the requirements of this Agreement, Vendor Manual, WIC vendor policies, and all state laws governing and regulating the WIC PROGRAM. [7 CFR 246.12 (h)(3)(xxii)]
24. Comply with the vendor selection criteria set forth in the Vendor Manual throughout the Agreement period, including any changes to the selection criteria. Using the current vendor selection criteria, the WIC PROGRAM may reassess the VENDOR at any time during the VENDOR'S agreement period and may terminate the agreement with those vendors that fail to meet them [7 CFR 246.12 (h)(3)(xxiv)]. Vendor selection criteria are defined in the Vendor Manual. {See the Section on Selection Criteria}.
25. Acknowledge that disqualification from any Food and Nutrition Service Program administered by USDA, including but not limited to the federal SNAP Program, shall result in automatic disqualification from the WIC PROGRAM or if the WIC Program determines that disqualification of the vendor would result in inadequate WIC participant access, the WIC Program shall impose a CMP in lieu of WIC disqualification. [7 CFR 246.12(h)(3)(xxv)] The vendor does not have the right to appeal any decision under this section.
26. Acknowledge that disqualification from the WIC PROGRAM may result in disqualification as a retailer in the SNAP Program. [7 CFR 246.12 (h) (3) (xxv)] Such disqualification may not be subject to administrative or judicial review under the SNAP. [7 CFR 278.6(e) (8)] A vendor's previous non-compliance with WIC Program policy and/or procedures will be considered when reauthorizing the vendor and may be used as a selection criterion when determining vendor eligibility during reauthorization.
27. Provide WIC PROGRAM approved foods to WIC PROGRAM participants at prices which are equal to or less than prices charged to all other customers. [7 CFR 246.12(h)(4)]
28. Read and acknowledge the Vendor Manual Appendix Actions Subject to Administrative Review and Review Procedures. [7 CFR 246.12(h)(7)]
29. Notify the WIC PROGRAM of any change in bank account or routing number in a timely manner by submitting a written request to change the banking information, including a voided check showing the new account and routing numbers, to the WIC Program.
30. Apply to the WIC PROGRAM for reimbursement of rejected WIC PROGRAM food instruments or CVB's in accordance with the Vendor Manual and vendor policies concerning reimbursement of rejected food instruments or CVB's. [7 CFR 246.12 (k) (1)]
31. Submit all forms, documents, and information as may be required or requested by the WIC PROGRAM in a timely, complete, and accurate manner including but not limited to quarterly reporting of total gross sales figures excluding gasoline sales. VENDOR may be subject to sanctions for non-submittal of requested documentation if the documents are incomplete or submitted after the requested due date.
32. Display a sign provided by the WIC PROGRAM, which clearly indicates that New Mexico State WIC PROGRAM food instruments may be redeemed at the store.
33. Stock items specified on the WIC PROGRAM authorized food list in the varieties, sizes and quantities indicated for a retail grocer, according to each Vendor's assigned peer group, including but not limited to, at a minimum of two varieties of fresh, canned or frozen fruits, two varieties of fresh, canned or frozen vegetables, and one authorized whole grain cereal. [7 CFR 246.12 (g) (3) (i)]
34. Not issue cash change to a WIC participant for purchases less than the total value of a CVB purchase.
35. Not allow a WIC participant to use alternative tender methods for purchases in excess of the monetary limit for a CVB purchase.
36. Purchase infant formula from a state approved licensed manufacturer, wholesaler, distributor, or retailer only.
37. Abide by all transaction requirements outlined in the Vendor Manual.
38. Maintain a State certified in-store ECR system in a manner necessary to ensure system availability for WIC redemption processing during all hours the store is open. The vendor agrees that its ECR system shall transact CVB for fruit and vegetables as well as FI's. Execution of this Vendor Agreement is conditioned on the vendor maintaining its State certified in-store ECR system. After the execution of this Vendor Agreement, the vendor's failure to maintain a State-Certified ECR system on an ongoing basis ensuring system compliance with WIC policies and procedures, transaction of CVB, and/or ensuring the accuracy of data, will result in Vendor Agreement termination.
39. Agree to upgrade the in-store ECR system to ensure CVB capability is operational; perform and pass a level 3 certification to verify the CVB functionality is viable, prior to October 1, 2009.
40. Ensure the state certified in-lane redemption process allows a reasonable degree of security for protecting the Personal Identification Number (PIN) used by WIC participants. Only the WIC participant may enter the PIN to initiate or complete the transaction. The Vendor must not enter the PIN for the WIC participant.
41. Request State re-certification of the Vendor's in-store ECR system if Vendor alters/revises the system in any manner that impacts the WIC redemption/claims processing system after initial certification in the Vendor's outlet is completed. In the event an in-store ECR system is reconfigured or modified by the vendor and/or other parties in such a way that the in-store system no longer exhibits the required system accuracy, integrity, or performance required, under which requirements the in-store ECR system was certified, the State will not accept a claim file from the system. The Vendor is liable for the costs of all re-certification events needed to return the in-store ECR system for all outlets covered by this agreement to full compliance with the State's

requirements. Failure to seek re-certification when the Vendor's ECR system is altered/ revised, shall subject the Vendor to the financial liabilities described in the sanction schedule in the Vendor Manual and/or disqualification.

42. Have the WIC participant accept/approve or reject the WIC transaction. Store personnel must NOT accept/approve or reject the transaction for the WIC participant.
43. Release the food benefits to the WIC participant any time the clients card is decremented even if the ECR system fails to build a claim file.
44. For the purposes of claim submission, adhere to the International Federation for Produce Standards for product look-up codes (PLU). Any fruit/vegetable PLU reserved for store use must map back to an International Standard PLU for the same produce in the WIC Approved Product List (APL).
45. Connect the Vendor's in-store ECR system for each outlet covered by the Vendor Agreement to the State's Host Server at least once each 48 hour period for the purpose of downloading of the current Invalid PAN "Hot Card" List file, Error file, Auto-Reconciliation (settlement) file, and the authorized Product "UPC/PLU" List file.
46. Accept financial liability for benefit redemptions resulting from hot card transactions if the Vendor has NOT connected to the State Host Server within a contiguous 48 hour period of time and updated the Invalid PAN "Hot Card" List file information for each of the Vendor's outlets.
47. Accept that the following will be considered grounds for immediate termination for cause [7 CFR 246.12(h)(3)]
  - a. Making a false or misleading statement on the WIC Vendor application, agreement or amendment [7 CFR 246.12(h)(3)(xvi)]
    - i. Upon reapplication to the WIC Program after the 90 day termination period is completed vendor will be required to provide documentation for everything the vendor states on the application
  - b. Discovery of a conflict of interest between the Vendor and the WIC Program including a local agency as defined by applicable laws, regulations, and policies [7 CFR 246.12(h)(3)(xix)]
    - i. Upon reapplication to the WIC Program after the 90 day termination period is completed vendor will be required provide proof that the conflict of interest no longer exists
48. Accept that the following activities will be considered grounds for termination for cause:
  - a. Failure to have at least one representative to attend required vendor training
  - b. Failure to provide access to Vendor premises and/or in any manner hinder or impede authorized WIC personnel in the act of conducting on-site education, monitoring, inventorying, auditing or an investigation visit
  - c. Providing false or misleading information on WIC Vendor price verification documentation, stocking level information requests, and annual and/or quarterly sales data information requests
  - d. Suspension, revocation, denial or failure to obtain a Health Code Permit or other licenses, permits or certifications to operate a food store in the state where the store is located
    - i. Upon reapplication to the WIC Program after the 90 day termination period is completed vendor must provide proof that the infraction that resulted in a termination for cause has been corrected
  - e. Threaten or verbally or physically abuse WIC participants and/or WIC personnel while conducting official WIC Program business
  - f. Failure to maintain inventory records or other records required by the WIC Program for a period of 5 years
  - g. Failure to make available to the Department, the State Department of Agriculture, any law enforcement agency, Department of the Attorney General, or the Comptroller of the United States, upon request, at a reasonable time and location for inspection and audit, all pending or previously processed claims in the vendor's possession and all program related records and accounting practices, including failure to provide legible copies within 30 calendar days of the written request
  - h. Allowing the return of food purchased with WIC food instruments in exchange for cash, credit, non WIC allowable foods or non food items
    - i. Discrimination on the basis of race, color, disability (handicap), age, national origin or gender
  - j. Purchase of infant formula from a source that is not listed on the WIC Program list of approved formula manufacturers, wholesalers or distributors
  - k. Failure to maintain the in-store ECR system in good working order resulting in the inability to process WIC Food Instruments.
  - l. Providing incentive items or other free merchandise, except food or merchandise of nominal value (defined as \$1.99 by USDA), to program participants unless the vendor provides the WIC Program proof that the vendor obtained the incentive items or merchandise at no cost.
  - m. Displaying the WIC acronym or logo, including close facsimiles thereof in total or in part, on product labels or packages, signs, pamphlets, brochures, or any proprietary materials except for the WIC Program provided sign.
49. Accept that vendors terminated for cause will not be eligible for reapplication to the WIC Program for a period of 6 months from the date the termination becomes effective.

The WIC PROGRAM will notify vendors of any changes to the Federal or State statutes, regulations, policies, or procedures governing the WIC PROGRAM before the changes are implemented. [7 CFR 246.12 (h)(7)].

**SIGNATURES**

This Agreement shall be between:

New Mexico WIC PROGRAM

And,

Vendor Name, Vendor Number,

Upon the signing of this Agreement both parties hereby agree to and accept all of the provisions within this Agreement. The policies and rules included as addenda to this Agreement and all revisions made to the WIC Program policies are incorporated into this Vendor Agreement by reference. Neither the State nor the Vendor has an obligation to renew this Vendor Agreement.

The VENDOR hereby testifies that the signature on this Agreement is from either the sole owner of the above-named VENDOR or the appropriate corporate entity, and that the person or persons signing the Agreement have full authority to enter into this Agreement for and on behalf of the VENDOR, and that said person(s) have accepted and agree to all of the provisions within this Agreement.

**STATE OF NEW MEXICO**

**NEW MEXICO DEPARTMENT OF HEALTH:**

**VENDOR:**

By: \_\_\_\_\_  
Public Health Division Director Signature

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**CERTIFIED FOR LEGAL SUFFICIENCY:**

By: \_\_\_\_\_  
Department of Health  
Assistant General Counsel

Date: \_\_\_\_\_