

MTT 37



STATE OF NEW HAMPSHIRE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

29 HAZEN DRIVE, CONCORD, NH 03301-6527
603-271-4546 1-800-852-3345 Ext. 4546
Fax: 603-271-4779 TDD Access: 1-800-735-2964



Nicholas A. Toumpas
Commissioner

José Thier Montero
Director

January 30, 2014

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council
State House
Concord, New Hampshire 03301

retroactive

REQUESTED ACTION

Revenue - 100% Other Funds

Authorize the Department of Health and Human Services, Division of Public Health Services, to enter into an agreement with Hero Group, Inc. d/b/a Beech-Nut Nutrition, (Vendor # 225104), 100 Hero Drive, Amsterdam, New York, 12010, to receive rebates on selected infant foods purchased with food instruments issued by the Special Supplemental Nutrition Program for Women, Infants, and Children, to be effective **retroactive** to January 1, 2014 through December 31, 2016. The estimated revenue of \$250,000 is the amount the Women, Infants, and Children Program anticipates in rebates from Beech-Nut Nutrition for infant food purchased with food instruments issued by the Women, Infants, and Children Program.

05-95-90-902010-2207 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SVS, HHS: DIVISION OF PUBLIC HEALTH, BUREAU OF POPULATION HEALTH AND COMMUNITY SERVICES, WIC FOOD REBATES.

Fiscal Year	Class/Account	Class Title	Job Number	Total Amount
SFY 2014	005-402823	Private Local Funds	90006011	\$42,000.00
SFY 2015	005-402823	Private Local Funds	90006011	\$83,000.00
SFY 2016	005-402823	Private Local Funds	90006011	\$83,000.00
SFY 2017	005-402823	Private Local Funds	90006011	\$42,000.00
			Total	\$250,000.00

EXPLANATION

Retroactive approval is requested, due to a delay in receiving the number of official signatures required for execution of the regional Agreement. State official signatures were required from each of the contracting states, Connecticut, Maine, Massachusetts, New Hampshire, and Rhode Island, as well as from Beech-Nut Nutrition officials.

Infant food rebate revenue, through this agreement, will be used to support the Special Supplemental Program for Women, Infants, and Children. The Women, Infants, and Children Program provides supplemental nutritious food, nutrition education, and related assessment and referral services to pregnant women, new mothers, infants, and preschool children who are at risk due to nutritionally related medical conditions or poor diets. The Women, Infants, and Children Rebate Program controls the cost of infant foods in order to increase the number of women, infants, and children served by the States' Women, Infants, and Children Program.

The United States Department of Agriculture federal regulations governing the Women, Infants, and Children Program require that infant foods be provided on food instruments starting at six months of age. Research has shown that low-income infant and children have less nutritious diets due to limited family income and the Women, Infants, and Children Program offers these infant foods as a way to assure infants grow and develop as recommended by health care providers. Approximately 4,000 infant are enrolled in the New Hampshire Women, Infants, and Children Program, with 50% or 2,000 receiving infant meats, fruits, vegetables, and cereals monthly on food instruments.

Should Governor and Executive Council not authorize this Request, the estimated rebate revenue of \$250,000.00 for a 36 month period will not be available to offset expenditures for the Program's infant foods purchased by participants. This rebate enables New Hampshire to enroll and provide benefits to additional women, infants, and children each year.

Hero Group, Inc. dba Beech-Nut Nutrition was selected for this project through a competitive bid process. The Request for Proposals was posted on The Department of Health and Human Services' and the Massachusetts Women, Infants, and Children (lead agency in administering the regional five-state Request for Proposals) web sites from September 24, 2013 through November 1, 2013. In addition, the Massachusetts Women, Infants, and Children Program notified two major infant food manufacturers on September 24, 2013. Bid questions were received and returned on October 24, 2013 and final bids were due November 1, 2013.

In response to the Request for Proposals to provide rebates on selected infant foods, two proposals were received. Under federal regulation, the only infant food rebate evaluation criterion is the lowest net wholesale cost per unit of Women, Infants, and Children approved containers. Bids were received from the following companies in the following amounts:

1. Nestlé Infant Nutrition, 12 Vreeland Avenue, Post Office Box 697, Florham Park, New Jersey 07932, Infant Cereal \$0.623, Infant Foods - Fruits/Vegetables \$0.029, and Infant Foods – Meats \$0.046.
2. Hero Group Inc., dba Beech-Nut Nutrition, 100 Hero Drive, Amsterdam, New York 12010, Infant Cereal \$0.632, Infant Foods - Fruits/Vegetables \$0.090, and Infant Foods – Meats \$0.148.

The bid was awarded to Hero Group, Inc. dba Beech-Nut Nutrition, which was the lowest wholesale cost.

As referenced in the Request for Proposals, Terms of Agreement; Extension of Agreement Section, this competitively procured Agreement has the option to extend for two (2) additional years, contingent upon satisfactory delivery of services, available funding, agreement of the parties and approval of the Governor and Council.

There are no specific performance measures as this is a revenue agreement and no services are being performed.

Area served: Statewide.

Source of Funds: 100% Other Revenue received from Beech-Nut Nutrition

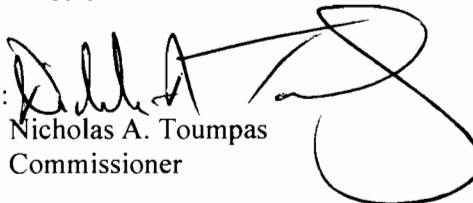
In the event that the Federal Funds become no longer available, General Funds will not be requested to support this program.

Respectfully submitted,



José Thier Montero, MD, MHCDS
Director

Approved by:



Nicholas A. Toumpas
Commissioner

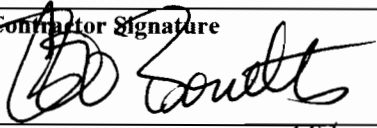
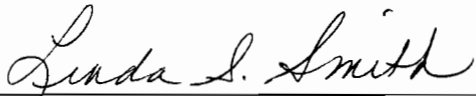
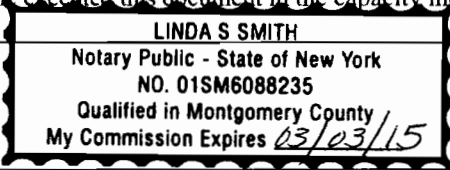

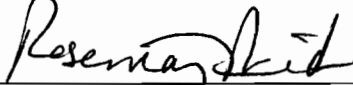
Subject: WIC Retail Infant Food and Infant Cereal Rebate Agreement

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name NH Department of Health and Human Services		1.2 State Agency Address 29 Hazen Drive Concord, NH 03301-6504	
1.3 Contractor Name Hero Group, Inc. DBA Beech-Nut Nutrition		1.4 Contractor Address 100 Hero Drive Amsterdam, NY 12010	
1.5 Contractor Phone Number 518-839-0252	1.6 Account Number 05-95-90-902010-2207-005-402823	1.7 Completion Date December 31, 2016	1.8 Price Limitation
1.9 Contracting Officer for State Agency Brook Dupee, Bureau Chief		1.10 State Agency Telephone Number 603-271-4483	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory Jeff Boutelle, President	
1.13 Acknowledgement: State of <u>NY</u> , County of <u>Montgomery</u> On <u>2/26/14</u> before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace [Seal] 			
1.13.2 Name and Title of Notary or Justice of the Peace			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory Brook Dupee, Bureau Chief	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) By:  On: <u>4-3-14</u>			
1.18 Approval by the Governor and Executive Council By: _____ On: _____			

2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.
3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("Effective Date").
3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.
Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.
5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.
5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.
5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.
6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.
6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.
6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.
7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.
7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.
7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

- 8.1.1 failure to perform the Services satisfactorily or on schedule;
- 8.1.2 failure to submit any report required hereunder; and/or
- 8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

- 8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;
- 8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;
- 8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or
- 8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination

Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. CONTRACTOR'S RELATION TO THE STATE. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS. The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written consent of the State.

13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$2,000,000 per occurrence; and

14.1.2 fire and extended coverage insurance covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each

certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("Workers' Compensation").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

17. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

18. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire.

19. CONSTRUCTION OF AGREEMENT AND TERMS. This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

20. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

SPECIAL SUPPLEMENTAL NUTRITION PROGRAM
FOR WOMEN, INFANTS, AND CHILDREN (WIC PROGRAM)

**WIC RETAIL INFANT FOOD
AND
INFANT CEREAL REBATE AGREEMENT**

FOR THE STATES OF:

Connecticut

Maine

Massachusetts

New Hampshire

Rhode Island

**AGREEMENT with Hero Group, Inc. DBA Beech-Nut Nutrition
Revised and Final
November 7, 2013**

This AGREEMENT is made effective this 1st day of January 2014 and shall be interpreted pursuant to the respective laws of the States as hereinafter detailed, by and between the State of Connecticut, the State of Maine, the Commonwealth of Massachusetts, the State of New Hampshire, and the State of Rhode Island (hereinafter STATES) and Hero Group, Inc. DBA Beech-Nut Nutrition (hereinafter MANUFACTURER).

WHEREAS, the STATES desire to implement a WIC Infant Foods and Cereal Rebate System intended to decrease the cost of infant foods and infant cereal and improve program operations and services through increased participation in the Special Supplemental Nutrition Program for Women, Infants, and Children (hereinafter WIC Program) by eligible participants.

WHEREAS, the MANUFACTURER, through its Sealed Bid submitted on November 1, 2013, which is specifically incorporated herein by reference as part of this agreement, agrees to provide to the STATES a rebate on infant foods and cereal manufactured by the MANUFACTURER and provided to WIC participants through WIC food instruments (WIC checks and vouchers and EBT cards) that specify infant foods and infant cereal products and that are redeemed by WIC participants in accordance with State and Federal rules.

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

1.) **Provision of Infant Foods and Infant Cereals** The MANUFACTURER agrees to provide, for purchase by all authorized Women, Infants, and Children (“WIC”) participants, at authorized food stores, infant foods and infant cereals as specified in paragraphs a-d below. Said infant foods and infant cereals shall be provided by the MANUFACTURER in sufficient supply, through retail outlets, to serve 100% of the WIC eligible caseload, and to meet WIC’s growth needs in the STATES. The MANUFACTURER agrees to remit to each State’s WIC Program a rebate per unit for infant foods and infant cereals purchased as set forth in part 3.a. of this AGREEMENT.

a. Infant Fruits

Allowed

- Any variety of single ingredient commercial infant food fruit without added sugars, starches or salt, in 4-ounce containers (3.5-ounce containers are allowed if produced by the MANUFACTURER and any of the STATES choose to authorize in addition to (not in lieu of) 4-ounce containers).
- Combinations of single ingredients (e.g. apples and bananas).

Not Allowed

- Mixtures with cereal or infant food desserts (e.g. peach cobbler).
- “Organic” or foods with docosahexaenoic acid “DHA” added.

The MANUFACTURER is required to provide at a minimum three varieties/types of the following single ingredient fruits: Applesauce, Banana, and Pear. All varieties must meet United States Department of Agriculture (“USDA”) regulatory requirements for use in the WIC Program. Some special cases may require fruits with further restrictions for documented dietary or religious reasons, e.g. kosher foods. The STATES must be able to provide at least one kosher infant fruit product to participants. If the

MANUFACTURER does not produce a kosher infant fruit, the Manufacturer shall allow the STATES to issue to participants WIC food instruments for another manufacturer's comparable product with no breach of AGREEMENT by any State or State WIC agency being deemed to have occurred and no rebate from the MANUFACTURER being required.

The United States Department of Agriculture regulation governing the WIC Program, Interim Rule 7 C.F.R. § 246.10 (e)(9) allows each participant a monthly maximum of 256 ounces of infant food fruits and vegetables and a monthly maximum of 128 ounces of infant food fruits and vegetables for infants that are partially breastfed or fully formula fed. This is the maximum amount and it is not guaranteed this quantity will be purchased. Each participating State reserves the right to determine its authorized package sizing and product variety.

Any other infant fruit produced by the MANUFACTURER, authorized by a State WIC agency and agreed upon by the MANUFACTURER and the applicable State during the term of this AGREEMENT, including any amendments or extensions thereof, shall be eligible for the MANUFACTURER'S rebate as set forth herein.

b. Infant Vegetables:

Allowed

- Any variety of single ingredient commercial infant food vegetables without added sugars, starches or salt, in 4-ounce containers (3.5-ounce containers are allowed if produced by the MANUFACTURER and any of the STATES choose to authorize in addition to (not in lieu of) 4-ounce containers).
- Combinations of single ingredients (e.g. peas and carrots).

Not Allowed

- "Organic" or foods with docosahexaenoic acid "DHA" added.

The MANUFACTURER is required to provide at a minimum five varieties/types of the following single ingredient vegetables: Sweet Potato, Squash, Peas, Green Beans, and Carrots. All varieties must meet USDA regulatory requirements for use in the WIC Program. Some special cases may require vegetables with further restrictions for documented dietary or religious reasons, e.g. kosher foods. The STATES must be able to provide at least one kosher infant vegetable product to participants. If the MANUFACTURER does not produce a kosher infant vegetable, the MANUFACTURER shall allow the STATES to issue to participants WIC food instruments for another manufacturer's comparable product with no breach of AGREEMENT by a State or State WIC agency being deemed to have occurred and no rebate from the MANUFACTURER being required.

The United States Department of Agriculture regulation governing the WIC Program, Interim Rule 7 C.F.R. § 246.10 (e)(9) allows each participant a monthly maximum of 256 ounces of infant food fruits and vegetables and a monthly maximum of 128 ounces of infant food fruits and vegetables for infants that are partially breastfed or fully formula fed. This is the maximum amount and it is not guaranteed this quantity will be

purchased. Each participating State reserves the right to determine its authorized package sizing and product variety.

Any other infant vegetable produced by the MANUFACTURER, authorized by a State WIC agency and agreed upon by the MANUFACTURER and the applicable State during the term of this AGREEMENT, including any amendments or extensions thereof, shall be eligible for the MANUFACTURER'S rebate as set forth herein.

c. Infant Meats:

Allowed

- Any variety of single ingredient commercial infant food meat or poultry, as a single major ingredient, with added broth or gravy and without added sugars or salt, in 2.5-ounce containers.

Not Allowed

- Infant food combinations (e.g. meat and vegetables) or dinners (e.g. spaghetti and meatballs).
- Graduate or toddler foods.
- Organic" or foods with docosahexaenoic acid "DHA" added.

The MANUFACTURER is required to provide at a minimum three varieties/types of the following meats: Beef, Chicken, and Turkey. All varieties must meet USDA regulatory requirements for use in the WIC Program. Some special cases may require meats with further restrictions for documented dietary or religious reasons, e.g. kosher foods. The STATES must be able to provide at least one kosher infant meat product to participants. If the MANUFACTURER does not produce a kosher infant meat, the MANUFACTURER shall allow the STATES to issue to participants WIC food instruments for another manufacturer's comparable product with no breach of AGREEMENT by any State or State WIC agency being deemed to have occurred and no rebate from the MANUFACTURER being required.

The United States Department of Agriculture regulation governing the WIC Program, Interim Rule 7 C.F.R. § 246.10 (e)(9) allows a monthly maximum of 77.5 ounces of infant food meat for a fully breastfed infant. This is the maximum amount and it is not guaranteed this quantity will be purchased. Each participating state reserves the right to determine their authorized package sizing and product variety.

Any other infant meat produced by the MANUFACTURER, authorized by a State WIC agency and agreed upon by the MANUFACTURER and the applicable State during the term of this AGREEMENT, including any amendments or extensions thereof, shall be eligible for the MANUFACTURER'S rebate as set forth herein.

d. Infant Cereal:

Provide at the retail level infant cereal in 8 ounce containers (16 and 24-ounce is allowed if produced by the MANUFACTURER and any of the STATES choose to authorize in addition to (not in lieu of) 8-ounce containers). The following specifications must be met:

- The MANUFACTURER is required to provide at a minimum three types of cereals, one of which must be Rice. Acceptable types of cereals include: Rice, Barley, Oatmeal, Wheat, and Multigrain/Mixed. Some special cases may require cereals with further restrictions, e.g. kosher foods, for documented dietary or religious reasons. If the MANUFACTURER does not produce a kosher infant cereal, the MANUFACTURER shall allow the STATES to issue to participants WIC food instruments for another manufacturer's comparable product with no breach of AGREEMENT by any State or State WIC agency being deemed to have occurred and no rebate from the MANUFACTURER being required.
 1. Infant cereal shall be manufactured under and comply with all applicable provisions of the Federal Food, Drug and Cosmetic Act, as amended, and all regulations promulgated there under.
 2. Infant cereal shall be nutritionally complete, not requiring the addition of any ingredient other than water.
 3. Infant cereal shall be plain, dry infant cereal, not wet-packed (i.e. jarred) and without added fruit, fruit flakes, infant formula, or yogurt.
 4. Infant cereal shall contain a minimum of 45 milligrams of iron per 100 grams of dry cereal.

The United States Department of Agriculture regulation governing the WIC Program, Interim Rule 7 C.F.R. § 246.10 (e)(9) allows a monthly maximum of 24 ounces of infant cereal for all infants each month. This is a maximum amount and it is not guaranteed this quantity will be purchased. Each participating state reserves the right to determine their authorized package sizing and product variety.

Any other infant cereal produced by the MANUFACTURER, authorized by a State WIC agency and agreed upon by the MANUFACTURER and the applicable State during the term of this AGREEMENT, including any amendments or extensions thereof, shall be eligible for the MANUFACTURER'S rebate as set forth herein.

- 2.) **Restrictions to Manufacturer's Products** The STATES agree to restrict all infant foods and infant cereal products specified on WIC food instruments issued to WIC participants for products manufactured by the MANUFACTURER unless the MANUFACTURER does not produce a kosher/halal product, or if the MANUFACTURER is unable to provide an adequate supply of required infant foods and/or infant cereal products at all authorized WIC vendors in all geographic areas served by the STATES to meet the full maximum monthly allowance that participants are authorized to receive. The STATES shall implement this restriction by (a) creating WIC checks or vouchers that display the brand, type, container size, and quantity of infant foods and infant cereal to be purchased and/or (b) requiring the applicable Universal Product Code (UPC) Number on WIC EBT cards.

- 3.) **Manufacturer's Rebate** The MANUFACTURER shall reimburse (or "rebate") the STATES for part of the price paid by the STATES to authorized WIC vendors for purchase under the WIC Program of commercially sold infant foods and infant cereal. The rebate amount the MANUFACTURER shall reimburse the STATES, effective January 1, 2014 or implementation of the AGREEMENT, whichever is later; the rebate amount shall be determined as follows:
- a. The MANUFACTURER'S rebate for infant foods and infant cereal, beginning January 1, 2014 shall be:
 1. \$ **0.090** per unit of authorized infant fruits/vegetables
 2. \$ **0.148** per unit of authorized infant meats
 3. \$ **0.632** per unit of authorized infant cereal
 - b. Price level adjustments (increase or decrease) in the MANUFACTURER'S national wholesale price per unit for a truckload shall result in an automatic rebate adjustment on a cent-for-cent basis, taking effect for food instruments redeemed, in accordance with State and Federal rules, on or after the first day of the month following any such adjustment in the MANUFACTURER'S per item national wholesale price. Any adjustments in the national wholesale price subsequent to completion of the bid sheet shall be reflected in a cent-for-cent adjustment to the initial bid amount.
 - c. The MANUFACTURER must notify the STATES of any new infant food or infant cereal products at least as early as notification is made to all other customers. Such products must be submitted to and approved for use in each State WIC Program, at the sole discretion of each State. STATES reserve the right to accept or reject the MANUFACTURER'S offer.
 - d. If the MANUFACTURER discontinues production of any authorized food item(s), the MANUFACTURER must provide a rebate(s) that yields the same net cost per ounce for the replacement food item(s).
 - e. The MANUFACTURER shall notify the STATES of any replacement infant foods or infant cereal products introduced by the MANUFACTURER subsequent to the signing of this AGREEMENT.
 - f. Advance notification by the MANUFACTURER to the STATES of at least 90 days for any changes in labels, unit size, reformulation, UPC number, and product discontinuation necessitating food package changes is required so that STATES can make system changes in a timely fashion to meet 100% of participants' nutritional needs. The MANUFACTURER shall provide, within 48 hours thereof, notice of any product recall to each applicable State.
 - g. The MANUFACTURER is not required to provide gratis items, such as product samples, and/or educational material, such as brochures and flyers.
 - h. Neither party in either the STATES or MANUFACTURER shall be liable for delays or performance failures resulting from and caused by acts beyond the control of such party. Such acts shall include, but not be limited to, acts of God, acts of war, epidemics, communication line failures, power failures, shortage of supplies, earthquakes or other

disasters or events, but in every case the delays must be beyond the control, and without the fault or negligence of, the non-performing party. Notwithstanding the above, the MANUFACTURER shall use its best efforts to prevent and/or minimize delays or performance failures. If the MANUFACTURER fails to deliver or make available the specific infant food and infant cereal products as designated herein, then the State may procure other infant food and infant cereal products through the same or another manufacturer and/or may cancel this AGREEMENT.

- i. Any increase in the projected level of infant food and infant cereal to be delivered into a disaster / emergency area shall not be cause for increased pricing by the MANUFACTURER. At the request of the STATES or a State, the MANUFACTURER shall work cooperatively with the STATES or a State, to provide adequate infant food and infant cereal supplies to authorized WIC vendors in the disaster / emergency area within a reasonable response time, given the severity of the situation.
- j. If there is a temporary supply problem of the contract brand infant fruit, infant vegetable, infant meat, and/or infant cereal [i.e., where the product is not available for order or has a factory back-order or delivery failure of seven (7) days or more], and the MANUFACTURER has made its best efforts to alleviate the shortage, the MANUFACTURER shall pay a rebate, which yields the same net wholesale cost per ounce under the terms of this AGREEMENT, on another type and/or size of the MANUFACTURER'S infant fruit, infant vegetable, infant meat, and/or infant cereal that meets the authorized food requirements as specified by Federal nutrition requirements, issued to the participants. If an alternative MANUFACTURER'S product that meets the authorized food requirements as specified by Federal nutrition requirements is not available, the MANUFACTURER shall rebate each State the current rebate amount for another company's (ies') comparable infant fruit, infant vegetable, infant meat, and/or infant cereal.

4.) **Invoices and Billing** The STATES shall designate one of the following methods of invoicing and billing for rebates. For purposes of this Section: "product" means the specified infant food or infant cereal subject to this agreement; "unit" means an individual package of the specified infant food or infant cereal subject to this agreement; "food instrument" means the WIC check, voucher, EBT card issued by the STATES for a participant to obtain the product from an authorized WIC vendor; and "vendor" means the actual authorized WIC food store where the transaction took place.

- a. Each State shall prepare an invoice for the MANUFACTURER'S monthly rebate payment; the invoice shall contain the methodology and data used to calculate the monthly rebate payment. The invoices shall be submitted electronically, by mail, or faxed (per each State's preference) by each State to the MANUFACTURER.
- b. The number of units for each type of product subject to this AGREEMENT and issued to WIC participants via food instruments and redeemed by vendors shall be calculated monthly. In order to improve the integrity of the rebate invoicing process, the States billing strategies are described below (Subsections 4.b.1. through 4.b.2.), these methodologies take into account the number of units of product for which food instruments were issued but not redeemed.

1. **Vendor Price Table Method:** *(based on the actual price for each vendor for each product, resulting in the development of a price reference table.) New Hampshire*

For each issued and redeemed contract food instrument, the State shall identify the type of product listed on the food instrument, the number of units issued, and the name and address of the vendor where the food instruments were redeemed. The redemption price for each food instrument shall be divided by the identified vendor's price per unit that was in effect at the time of the redemption for the relevant type of product. The resulting number of units to be submitted to the MANUFACTURER for rebates shall be rounded either up or down to the nearest whole number. The rounded number of units shall represent the quantity of units redeemed. The quantity of units redeemed shall never exceed the number of units issued on the food instrument. The vendor's price for each type of product shall be obtained from the vendor's price surveys which shall be updated at least annually.

2. **Vendor Class Price Table Method I:** *(based on average retail prices for rebated product by vendor peer group obtained from annual price surveys.) Connecticut, Maine, Massachusetts, & Rhode Island*

For each issued and redeemed contract food instrument, the State shall identify the number of units issued by type of product, and shall identify the relevant vendor peer groups from which purchases were made. The total redemption amount for the food instrument as reported by the vendor shall be divided by the average retail price of the relevant type of product charged by vendors in the relevant peer group. The resulting number of units shall be rounded either up or down to the nearest whole number. The rounded number of units shall represent the quantity of units redeemed for rebates. The quantity of units redeemed shall never exceed the number of units issued on the food instruments. The vendor's price for each type of product shall be obtained from the vendor's price surveys and shall be updated at least annually.

5.) **Rebate Calculations**

- a. In the event that any State experiences a delay in obtaining the data to calculate the monthly rebate payment, and is unable to calculate the monthly rebate payment, the MANUFACTURER shall reimburse the State an estimated amount to equal the lower amount of the two most recent months for which data is available. As requested by the MANUFACTURER, the State shall provide any current data it has available to substantiate the estimated amount.
- b. When rebate calculation data for any month for which an estimated rebate was billed becomes available, the State shall bill the MANUFACTURER for any difference due, or shall deduct from its next invoice any amount of overpayment, or shall reimburse the MANUFACTURER for any overpayment if there are not further invoices due to equal the amount of overpayment.
- c. The MANUFACTURER shall forward reimbursement of the MANUFACTURER'S monthly rebate payment as indicated on the State's invoice within thirty (30) days of receipt of the invoice either by FAX, electronically, or mail, according to each STATE'S preference. The MANUFACTURER shall make payments to each State in

the manner prescribed by each State in Section 6 below. If payment is not forwarded to the State within 30 days of the receipt of the invoice, the MANUFACTURER shall pay the State, in addition to the amount due, interest at a rate of three-quarters of one percent (.75%) per month or portion thereof, on the unpaid balance from the expiration of such 30 days period until such time as payment is received by the State.

- 6.) **Method of Rebate Payment** The MANUFACTURER shall make such rebate payment by wire transfer/electronic funds transfer (EFT), payable to each State, at the determination and request of each State which is a party to this AGREEMENT as follows:
- Treasurer, State of Connecticut (EFT)
 - Treasurer, State of Maine (Wire Transfer)
 - Treasurer, Commonwealth of Massachusetts (Wire Transfer)
 - Treasurer, State of New Hampshire (Wire Transfer)
 - Solutran Designated Bank for Rhode Island (Wire Transfer)
- 7.) **Disputes; Dispute Resolution**
- a. The MANUFACTURER shall provide written notice to a State of any dispute with regards to a rebate invoice within ninety (90) days of receipt of the invoice. All disputes which are timely filed shall be resolved by the end of the Federal fiscal year during which the dispute occurred. The process for such dispute resolution shall be determined by each respective State as may be noted in the APPENDIX applicable to each such State, provided in Section 17 of this AGREEMENT.
 - b. The MANUFACTURER may not withhold any rebate payment or interest, to a State. Any reimbursement due to overpayment of a rebate amount and/or interest payment, if any, or other adjustment shall be deducted from the next rebate invoice from the State or direct payment at the option of the State.
 - c. If a dispute is resolved in favor of the MANUFACTURER and it is determined that, in addition to payment of the full amount of the invoice, the MANUFACTURER had paid interest at the rate of three-quarters of one percent (.75%) per month, reimbursement or adjustment shall include interest payments on that portion of the disputed amount found to have been incorrectly charged to the MANUFACTURER. No reimbursement or adjustment shall be made for the portion of interest paid on that part of the disputed amount found to have been correctly charged to the MANUFACTURER.
- 8.) The STATES are entitled to a rebate payment for all infant foods and infant cereal, pursuant to Section 4 above, specified on WIC food instruments with a “first valid date of use” during the term of this AGREEMENT, issued to WIC participants for infant food and infant cereal products provided by the MANUFACTURER during the term of this AGREEMENT, and redeemed according to State and Federal rules, regardless of the expiration and/or termination date of this AGREEMENT.
- 9.) **Term of Agreement; Extension of Agreement**

- a. This AGREEMENT shall be **effective on January 1, 2014 and shall remain in effect until December 31, 2016** unless terminated sooner or extended in accordance with the terms in this Section 9.
- b. This AGREEMENT may be extended by the STATES, either individually or together, for one (1) two (2) year period, or any portion thereof, under the same terms, conditions and rebate structure; this option is at the sole discretion of the States, individually or together, and is non-negotiable. Notice of such intention to extend must be provided by the STATES to the MANUFACTURER at least six (6) months prior to the expiration of this AGREEMENT. Such notification shall have no effect on the remainder of the AGREEMENT. The STATES also reserve the unilateral right to order changes and/or to delay initiation of the AGREEMENT if necessary and if such changes or delays do not alter the scope of the AGREEMENT.
- c. When a public exigency is determined to exist by one or more STATE(s) under this AGREEMENT, or any amendment or extension thereto, which exigent situation necessitates continuation of the AGREEMENT, this AGREEMENT or any amendment or extension thereto shall be continued for successive one (1) month periods under the same terms, conditions and rebate structure until such STATES(s) determine(s) that the public exigency no longer exists.

10.) **Cancellation of Agreement by Manufacturer**

- a. The MANUFACTURER may cancel the AGREEMENT with any State in material breach of the AGREEMENT or with all the STATES, with cause for breach, as defined in Section 10.b. below, upon two hundred and ten (210) days advance written notification respectively to any affected State or to all the STATES. Any such cancellation may take effect only on the last day of a calendar month.
- b. For the purposes of this AGREEMENT, “breach” shall be defined as a party’s **substantial** failure to carry out one or more of the provisions, responsibilities, duties or obligation of the AGREEMENT.

11.) **Cancellation of Agreement by the STATES** This AGREEMENT may be canceled by the STATES or any State at any time, with or without cause; upon two hundred and ten (210) days advance written notice to the MANUFACTURER. Cancellation under this Section 11 by any State shall apply only to the individual State and shall not apply to any other State.

12.) **Correspondence among Parties** The MANUFACTURER shall address correspondence and communications to each State designee as follows:

Connecticut: Marjorie Chambers
Connecticut Interim State WIC Director
State of Connecticut, Department of Public Health
410 Capitol Avenue, MS #11WIC
Hartford, CT 06106
Phone: 860.509.8084

marjorie.chambers@ct.gov

Maine: Lisa Burgess Hodgkins, Director
Department of Health & Human Services
Maine WIC Nutrition Program
286 Water Street, Key Plaza, 6th Floor
Augusta, ME 04333
Phone: 207. 287.5342
Lisa.hodgkins@maine.gov

New Hampshire: Margaret Murphy, Administrator
Healthy Eating and Physical Activity Section
Department of Health & Human Services
29 Hazen Drive
Concord, NH 03301-6527
Phone: 603.271.4546
mmurphy@dhhs.state.nh.us

Rhode Island: Ann Barone,
Chief, WIC Program
Office of Community, Family Health and Equity
Rhode Island Department of Health
3 Capitol Hill, Room 302
Providence, RI 02909-5097
Phone: 401. 222.4604
FAX: 401.222-1442
Ann.barone@health.ri.gov

Massachusetts Judy Hause, Director
Massachusetts WIC Program
Massachusetts Department of Public Health
250 Washington Street, 6th Floor
Boston, MA 02108-4618
Phone: 617. 624.6145
Judy.hause@state.ma.us

13.) **Amendment to Agreement**

- a. All amendments to this AGREEMENT shall be in writing.
- b. Amendments that affect all STATES shall be executed by the same parties who executed the original AGREEMENT, or their successors in office.
- c. Any amendment to State-specific clauses shall apply only to the respective State and shall be executed by the MANUFACTURER and the affected State.

14.) **No Assignment or Transfer or Subcontracts** The MANUFACTURER shall neither assign nor transfer any rights or obligations under this AGREEMENT without the prior written consent of the STATES. The MANUFACTURER shall not enter into any subcontracts for its performance of this AGREEMENT without express written approval of the STATES.

15.) **Indemnification**

- a. The MANUFACTURER agrees to indemnify and hold harmless the STATES, as well as the officers, agents, and employees of the STATES from all claims, losses or suits accruing or resulting from personal injury allegedly caused by use of MANUFACTURER'S infant foods and infant cereal furnished pursuant to this AGREEMENT, except claims, losses or suits arising from any negligence by the STATES, its officers, agents and employees or if applicable, subcontractors under this AGREEMENT.
- b. The STATES shall give the MANUFACTURER prompt written notice of each claim or suit and full right and opportunity to conduct the defense of such claims or suits thereof, together with full information and all reasonable cooperation, except the MANUFACTURER need not assume the defense of any claims in which the STATES were or any State was negligent. Each of the States(s) shall have full authority to conduct its own respective defense, negotiations and settlements and in such event, each such State(s) shall assume the costs thereof.

16.) **Execution of Agreement; Applicable Laws; Conflict of Terms**

- a. This AGREEMENT shall be deemed to have been executed and entered into separately in the States of Connecticut, Maine, Massachusetts, New Hampshire, and Rhode Island, and shall be construed, performed, and enforced in all respects in the respective jurisdictions in accordance with the respective laws of the States of Connecticut, Maine, Massachusetts, New Hampshire, and Rhode Island.
- b. In Connecticut, Connecticut law shall apply.
- c. In Maine, Maine law shall apply.
- d. In Massachusetts, Massachusetts law shall apply.
- e. In New Hampshire, New Hampshire law shall apply.
- f. In Rhode Island, Rhode Island law shall apply.
- g. Each party shall perform its obligations hereunder in accordance with the terms and conditions of this AGREEMENT.
- h. In the event of a conflict between the terms of this AGREEMENT and the terms of the State-specific clauses in the Appendices, the Appendices applicable to the respective State shall control.

17.) **Appendices**

- a. **Appendix A**, comprises **Federal requirements** for Infant Foods Rebate Agreements and is incorporated herein by reference.
- b. **Appendix B**, standard clauses for **Connecticut** contracts, is attached hereto and is hereby made a part of this AGREEMENT as is set forth fully herein in reference to the AGREEMENT between the MANUFACTURER and Connecticut.
- c. **Appendix C**, standard clauses for **Maine** contracts, is attached hereto and is hereby made a part of this AGREEMENT as is set forth fully herein in reference to the AGREEMENT between the MANUFACTURER and Maine.
- d. **Appendix D**, standard clauses for **Massachusetts** contracts, is attached hereto and is hereby made a part of this AGREEMENT as is set forth fully herein in reference to the AGREEMENT between the MANUFACTURER and Massachusetts.
- e. **Appendix E**, standard clauses for **New Hampshire** contracts, is attached hereto and is hereby made a part of this AGREEMENT as is set forth fully herein in reference to the AGREEMENT between the MANUFACTURER and New Hampshire.
- f. **Appendix F**, standard clauses for **Rhode Island** contracts, is attached hereto and is hereby made a part of this AGREEMENT as is set forth fully herein in reference to the AGREEMENT between the MANUFACTURER and Rhode Island.

18.) **Audit**

- a. Each State shall allow the MANUFACTURER to audit such records or documents necessary to verify the accuracy of monthly invoices during normal business hours subject to time, place and manner requirements established by the State. Any claim arising from such an audit shall not be based on statistical inference. In the event that a claim submitted by the MANUFACTURER for billing errors is disputed by a State, the MANUFACTURER and the State shall agree upon an independent auditor to review the claim and determine its validity. The MANUFACTURER shall be responsible for costs associated with any audit or claim.
- b. Due to confidentiality requirements of State and Federal law, the MANUFACTURER shall not have access to actual or archived documents or other confidential records that identify WIC participants in any way, including by name, address or WIC identification number. Also due to these confidentiality requirements, the MANUFACTURER may not have access to any information about a vendor that individually identifies the vendor except for the vendor's name, address, telephone number, web site/email address, store type, and authorization status.
- c. For records audited for any fiscal year, the MANUFACTURER shall provide to a State a complete report and any management letter related to any audit within one hundred and twenty (120) days following the end of a fiscal year.

d. The MANUFACTURER shall provide a State with its audit standards, guides and audit plan for conducting the audit thirty (30) days prior to conducting the audit.

19.) **Costs for Special Reports** Should the MANUFACTURER request any special reports, data or information from any State, beyond that provided in the monthly invoice or as described below in Section 20, the State reserves the right to charge the MANUFACTURER for all actual costs associated with providing such special reports, data or information. Any charges shall be agreed upon in writing by the State and the MANUFACTURER and pre-payment of a good faith estimate of charges shall be required prior to the State's execution of the requests for such reports. Overpayment of any fees shall be reimbursed. Payment of any actual fees due and owing shall be paid.

20.) **Supporting Data** Each State shall provide the MANUFACTURER with a monthly report specifying the number of units of infant foods or infant cereals authorized on all WIC food instruments redeemed during the month, as well as mutually agreed upon supporting documentation to verify the accuracy of the monthly invoice. Only those records which are directly related to monthly billing and which are for current federal fiscal year at the time of the request shall be provided; client confidentiality must be maintained.

If requested, the STATES shall supply the MANUFACTURER with a list of approved vendors in each State prior to the effective date of the AGREEMENT. The STATES shall also provide their minimum stocking requirements.

21.) **Maintenance of Books and Records** In addition to the provisions of any State's individual, specific or particular requirements, the MANUFACTURER shall maintain all books and records pertaining to performance under this AGREEMENT, or any amendment or extension hereto, until final audit of State(s) records of the funding of this AGREEMENT, or any amendment or extension thereto, or until such time as Federal or State record retention provisions (whichever record retention is longer) permit the records to be discarded.

22.) **Americans with Disabilities Act** The MANUFACTURER shall comply with the Americans with Disabilities Act, Public Law 101-336, as applicable.

23.) **Use Of WIC Acronym and Logo** MANUFACTURER acknowledges that the WIC Acronym and the WIC Logo are service marks owned by the Department of Agriculture (USDA), and that all rights therein and goodwill pertaining thereto belong exclusively to USDA.

MANUFACTURER shall not use these service marks in any manner on its goods or their containers or packaging or on tags or labels affixed thereto. MANUFACTURER also shall not use the WIC Logo in advertising or other promotional materials (collectively: "advertising").

MANUFACTURER shall not use the WIC Acronym in advertising in any manner that is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association of MANUFACTURER with the WIC program, or as to the sponsorship or approval of MANUFACTURER'S goods, services, advertising, or commercial activities, including nutritional message(s), by the WIC Program, USDA, or the State agency.

MANUFACTURER shall include the following statement with any use of the WIC Acronym in advertising: “WIC is a registered service mark of the U.S. Department of Agriculture for USDA’s Special Supplemental Nutrition Program for Women, Infants, and Children.”

24.) **Execution of the Agreement in Parts**

- a. The Commonwealth of MASSACHUSETTS shall assume responsibility for the limited purpose of preparing this AGREEMENT, or any amendment or extension hereto, for execution by signature of each party.
- b. This AGREEMENT shall be executed in parts, as follows:
 1. Six (6) original contracts shall be prepared, one for each party.
 2. Each such original shall contain (6) identical signature pages, containing areas for all six (6) parties to execute by signature of an authorized person or duly authorized designee.
 3. Each party shall execute its respective section in each of the 6 signature pages.
 4. This AGREEMENT shall be executed by each signatory using BLUE INK in all cases.
 5. Each party shall return all originals of the contract, including all signature pages, to the Commonwealth of Massachusetts, which shall collate the executed contracts and distribute a fully executed original to each party. The Massachusetts contact for this limited purpose shall be:

Beth Wilson-Lampro
Massachusetts Department of Public Health
WIC Nutrition Program, 6th floor
Boston, MA 02108
Telephone: 617.624.6107
Beth.wilson@state.ma.us

- c. The Commonwealth of MASSACHUSETTS shall distribute one (1) complete original AGREEMENT containing all provisions and Appendices, together with a complete set of original execution pages from all six (6) parties, to each party, upon receipt of all such signature documentation from each party.
- d. Each such executed original AGREEMENT shall have the same authority as the other six (6) original AGREEMENTS.

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be duly executed by an individual with legal authority to obligate the party:

CONNECTICUT

BY: Connecticut Department of Public Health



Ann Simeone, Contract Specialist

MAINE

BY: Maine Department of Health and Human Services

William Boeschstein, Deputy Commissioner for Finance

MASSACHUSETTS

BY: Massachusetts Department of Public Health

Carol Foltz, Chief Fiscal Officer, Department of Public Health

NEW HAMPSHIRE

BY: New Hampshire Department of Health & Human Services

Brook Dupee, Chief, Bureau of Public Health Statistics and Informatics

RHODE ISLAND

BY: Rhode Island Department of Health

Dr. Michael Fine, Director of Health

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be duly executed by an individual with legal authority to obligate the party:


CONNECTICUT

BY: Connecticut Department of Public Health

Ann Simeone, Contract Specialist

MAINE

BY: Maine Department of Health and Human Services



William Boeschstein, Chief Operating Officer

MASSACHUSETTS

BY: Massachusetts Department of Public Health

Carol Foltz, Chief Fiscal Officer, Department of Public Health

NEW HAMPSHIRE

BY: New Hampshire Department of Health & Human Services

Brook Dupee, Chief, Bureau of Public Health Statistics and Informatics

RHODE ISLAND

BY: Rhode Island Department of Health

Dr. Michael Fine, Director of Health

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Ann Simeone, Contract Specialist

MAINE

BY: Maine Department of Health and Human Services

William Boeschstein, Deputy Commissioner for Finance

MASSACHUSETTS

BY: Massachusetts Department of Public Health



Carol Foltz, Chief Fiscal Officer, Department of Public Health

NEW HAMPSHIRE

BY: New Hampshire Department of Health & Human Services

Brook Dupee, Chief, Bureau of Public Health Statistics and Informatics

RHODE ISLAND

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William Boeschstein, Deputy Commissioner for Finance


MASSACHUSETTS

BY: Massachusetts Department of Public Health

Carol Fo'tz, Chief Fiscal Officer, Department of Public Health

NEW HAMPSHIRE

BY: New Hampshire Department of Health & Human Services



Brook Dupee, Chief, Bureau of Public Health Statistics and Informatics

RHODE ISLAND

BY: Rhode Island Department of Health

Dr. Michael Fine, Director of Health

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BY: Connecticut Department of Public Health

Ann Simeone, Contract Specialist

MAINE

BY: Maine Department of Health and Human Services

William Boeschstein, Deputy Commissioner for Finance

MASSACHUSETTS

BY: Massachusetts Department of Public Health

Carol Foltz, Chief Fiscal Officer, Department of Public Health

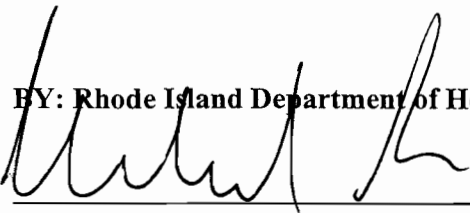
NEW HAMPSHIRE

BY: New Hampshire Department of Health & Human Services

Brook Dupee, Chief, Bureau of Public Health Statistics and Informatics

RHODE ISLAND

BY: Rhode Island Department of Health



Dr. Michael Fine, Director of Health

MANUFACTURER

BY: Hero Group, Inc. DBA Beech-Nut Nutrition



Jeff Boutelle, President

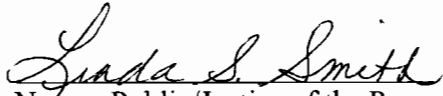
DATE: 2-26-14

STATE OF: New York

COUNTY OF: Montgomery

The foregoing instrument was acknowledged before me this 26th day of February 2014 by
Jeff Boutelle

LINDA S SMITH
Notary Public - State of New York
NO. 01SM6088235
Qualified in Montgomery County
My Commission Expires 03/03/15



Notary Public/Justice of the Peace
My Commission Expires:

Approved as to form, execution and substance:

OFFICE OF THE ATTORNEY GENERAL

By: _____
Attorney

Date: _____

I hereby certify that the foregoing contract was approved by the Governor and Council of the State of New Hampshire at the Meeting on: _____.

OFFICE OF THE SECRETARY OF STATE

By: _____

Title: _____

NH Department of Health and Human Services

**Exhibit C
SPECIAL PROVISIONS**

This is a Rebate Agreement in that the vendor is paying rebate dollars to the Department of Health and Human Services, Division of Public Health Services through its Women, Infant and Children (WIC) Program.

1) Price Limitation

Block 1.8 of the General Provisions, Price Limitation, is hereby deleted.

2) Employment of Contract/Services To be Performed

Paragraph 2 of the General Provisions is deleted and replaced with the following language:

2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED.

The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to provide rebates with respect to goods identified and more particularly described in the attached INFANT FOOD REBATE MASTER AGREEMENT which is incorporated herein by reference.

3) Contract Price/Price Limitation/Payment

Paragraph 5 of the General Provisions, Contract Price/Price Limitation/Payment, is hereby deleted.

4) Termination

Paragraph 10 of the General Provisions, Termination, is hereby deleted and replaced with the following language:

10. TERMINATION.

This agreement may not be terminated except as provided by the terms of the Master Agreement in the attached INFANT FOOD REBATE MASTER AGREEMENT and the SPECIAL PROVISIONS in the attached EXHIBIT C.

5) Insurance

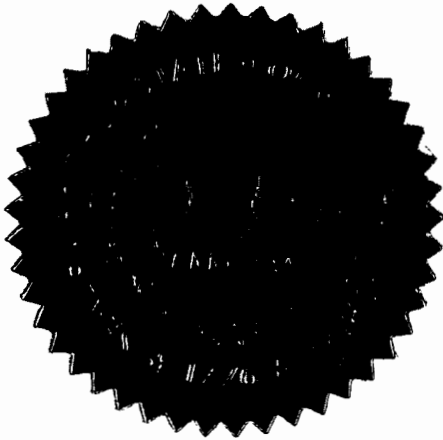
Paragraph 14.1.2 of the General Provisions, Insurance, is hereby deleted.

Contractor Initials: CB.
Date: 2/26/14

State of New Hampshire
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that Beech-Nut Nutrition is a New Hampshire trade name registered on March 31, 2014 and that Hero Group Inc. presently own(s) this trade name. I further certify that it is in good standing as far as this office is concerned, having paid the fees required by law.



In TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 4th day of April, A.D. 2014

A handwritten signature in cursive script, appearing to read "William M. Gardner".

William M. Gardner
Secretary of State

HERO GROUP INC
UNANIMOUS WRITTEN CONSENT OF THE
BOARD OF DIRECTORS
IN LIEU OF SPECIAL MEETING

In lieu of a special meeting of the Board of Directors of Hero Group Inc. d/b/a Beech-Nut Nutrition, a Delaware corporation (the "Corporation"), the undersigned, being a member of the Board of Directors of the Corporation (the "Board"), do hereby, pursuant to Section 141(t) of Delaware General Corporation Law declare that the action hereinafter set forth shall be, and hereby are, taken by the Board this 21st day of January, 2014:

RESOLVED, that this corporation enters into a contract with the State of New Hampshire, acting through its Department of Health and Human Services, Division of Public Health Services.

FURTHER RESOLVED, that Jeffrey C. Boutelle is hereby authorized on behalf of this corporation to enter into said contract with the State and to execute any and all documents, agreements, and other instruments; and any amendments, revisions, or modifications thereto, as he/she may deem necessary, desirable, or appropriate. Jeffrey C Boutelle is a duly elected Board Member of the corporation.

FURTHER RESOLVED, that the foregoing resolutions have not been amended or revoked and remain in full force and effect as of this 26th day of February, 2014.

IN WITNESS WHEREOF, I have hereunto set my hand as a Board Member of the corporation this 26st day of February, 2014



Steve Foster
Board Member

The foregoing instrument was acknowledged before me this 26st day of February, 2014 by Steve Foster.

