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21

STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES



SA

Nicholas A. Toumpas
Commissioner

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

José Thier Montero
Director

July 9, 2014

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

REQUESTED ACTION

Authorize the Department of Health and Human Services, Division of Public Health Services, to exercise a two year renewal agreement with Mead Johnson and Company, LLC, vendor #175399, 2400 West Lloyd Expressway, Evansville, IL 47721-0001, by increasing the additional rebate revenue by \$9,720,000 from \$14,580,000 to \$24,300,000 to provide rebates on select infant formulas purchased with food instruments issued by the Special Supplemental Nutrition Program for Women, Infants, and Children, and extend the Completion Date from September 30, 2014 to September 30, 2016, to be effective October 1, 2014, or date of Governor and Council approval whichever is later. This agreement was originally approved by Governor and Council on November 11, 2011, item # 106.

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/Object	Class Title	Current Contract Budget	Increased (Decreased) Amount	Revised Contract Budget
SFY 2012	005-402823	Food Rebate	\$3,645,000	\$0	\$3,645,000
SFY 2013	005-402823	Food Rebate	\$4,860,000	\$0	\$4,860,000
SFY 2014	005-402823	Food Rebate	\$4,860,000	\$0	\$4,860,000
SFY 2015	005-402823	Food Rebate	\$1,215,000	\$3,645,000	\$4,860,000
SFY 2016	005-402823	Food Rebate	\$0	\$4,860,000	\$4,860,000
SFY 2017	005-402823	Food Rebate	\$0	\$1,215,000	\$1,215,000
		Total	\$14,580,000	\$9,720,000	\$24,300,000

EXPLANATION

The purpose of this amendment is to support the Special Supplemental Nutrition Program for Women, Infants, and Children through rebate revenue. 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 complies with federal rule and controls the cost of infant formula in order to increase the number of women, infants, and children served by the States' Women, Infants, and Children Program. Unless medically contraindicated the selected manufacturer's products are issued to Women, Infants, and Children Program participants and the manufacturer pays a rebate to the Women, Infants, and Children Program on all standard milk and soy infant formula purchased with Women, Infants, and Children Program food instruments.

Should Governor and Executive Council not authorize this Request, New Hampshire will not be in compliance with the United States Department of Agriculture federal regulations requiring State Special Supplemental Nutrition Programs for Women, Infants and Children to contract with an infant formula company for rebates on infant formulas. Also, the additional rebate revenue of \$9,720,000 will not be available to offset expenditures for the Program's infant formula purchased by participants. This rebate enables New Hampshire to enroll and provide benefits to additional women, infants, and children each year.

The New Hampshire Department of Health and Human Services, in conjunction with the States of Connecticut, Maine, the Commonwealth of Massachusetts, and Rhode Island, the Cherokee Nation of Oklahoma, and the Seneca Nation of New York, issued a competitive bid for the infant formula rebate contract beginning October 1, 2011 through September 30, 2014. Invitations to Bid were mailed to all three (3) Food and Drug Administration-qualified infant formula manufacturers on February 9, 2011. No legal notice was published due to the limited number of qualified bidders. Bid questions were received and returned on March 23, 2011, and final bids were due on April 5, 2011.

Under federal regulation, the infant formula rebate evaluation criterion is a ranking by the lowest total net costs which is wholesale price minus rebate amount. The monthly net wholesale cost for all formulas was determined for each bidder, and the single lowest bidder was determined to be Mead Johnson and Company, LLC, which had the lowest net wholesale cost.

1. Mead Johnson and Company, LLC, 2400 W. Lloyd Expressway, Evansville, IN 47221, \$495,972,870.
2. Nestle Nutrition, 12 Vreeland Road, Florham Park, NJ 07932, \$637,620,623.
3. Abbott Nutrition, 3300 Stelzer Road, Columbus, OH 43219, \$864,516,246.

As referenced in the original letter approved by Governor and Council on November 9, 2011, Item #106, and in the Request for Proposal, Renewals Section, this Agreement has the option to extend for one (1) two (2) year period, in an amount not to exceed an increase in the net wholesale cost as contained in the original bid, agreement of the parties and approval of the Governor and Council. The Division is exercising this renewal option.

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 Mead Johnson and Company, LLC.

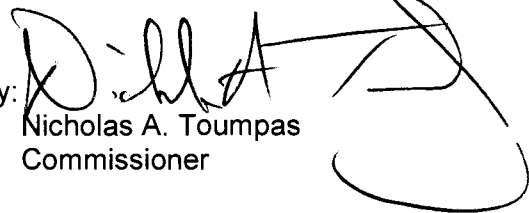
In the event that the Other Funds become no longer available, General Funds will not be requested to support this program.

Respectfully submitted,



José Thier Montero, MD, MHCDS
Director

Approved by:



Nicholas A. Toumpas
Commissioner

AMENDMENT & MODIFICATION

To the Agreement made the 1st day of October, 2011, and amended the 16th day of January, 2014 by and between the Cherokee Nation, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and the Seneca Nation {hereinafter STATES} and Mead Johnson & Company, LLC. {hereinafter MANUFACTURER};

WHEREAS, the STATES implemented a WIC Infant Formula Rebate System intended to decrease the cost of infant formula and improve program operations and services through increased participation in the Special Supplemental Nutrition Program for Women, Infants, and Children {hereinafter WIC}; and

WHEREAS, the MANUFACTURER agreed to provide to the STATES a rebate on infant formula manufactured by the MANUFACTURER and issued to WIC participants;

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

1. Amendment and Modification of Agreement

This AGREEMENT shall be extended for two years; the end date of the Agreement changed from September 30, 2014 to September 30, 2016, and shall remain in effect until September 30, 2016 under the same terms, conditions, and rebate structure.

2. Effective Date of Amendment

This amendment shall be effective on the 1st day of October, 2014, or date of Governor and Council approval whichever is later.

3. Continuance of Agreement

Except as specifically amended and modified by the terms and conditions of this Amendment, the AGREEMENT and the obligations of the parties thereunder shall remain in full force and effect in accordance with the terms and conditions set forth therein.

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be duly executed intending to be bound thereby:

CHEROKEE NATION

BY: Cherokee Nation



Bill John Baker, Principal Chief

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

NEW HAMPSHIRE

BY: New Hampshire Department of Health & Human Services



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

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be duly executed intending to be bound thereby:

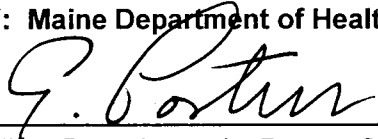
CHEROKEE NATION

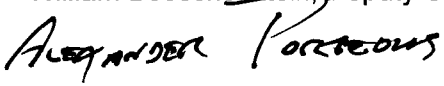
BY: Cherokee Nation

Bill John Baker, Principal Chief

MAINE

BY: Maine Department of Health and Human Services



~~William Boeschstein, Deputy Commissioner for Finance~~


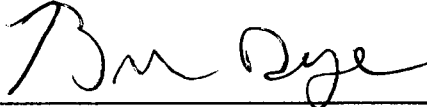
MASSACHUSETTS

BY: Massachusetts Department of Public Health

Carol Foltz, Chief Fiscal Officer

NEW HAMPSHIRE

BY: New Hampshire Department of Health & Human Services



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

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NEW HAMPSHIRE

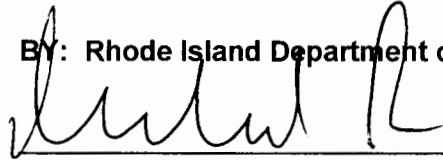
BY: New Hampshire Department of Health & Human Services



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

RHODE ISLAND

BY: Rhode Island Department of Health



Dr. Michael Fine, Director of Health

SENECA NATION

BY: The Seneca Nation

Alan Barlow, Chief Executive Officer

CONNECTICUT

BY: Connecticut Department of Public Health

Ann Simeone, Contract Specialist

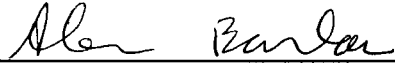
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BY: Rhode Island Department of Health

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SENECA NATION

BY: The Seneca Nation

Alan Barlow, Chief Executive Officer

CONNECTICUT

BY: Connecticut Department of Public Health



Ann Simeone, Contract Specialist

MANUFACTURER

BY: Mead Johnson & Company, LLC



J. Michael Milligan, Director, WIC Business Team

DATE: 1/17/14

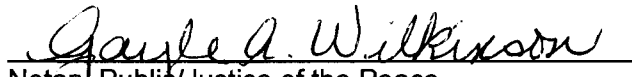
STATE OF Indiana

COUNTY OF Vanderburgh

The foregoing instrument was acknowledged before me this 17th day of January 2014

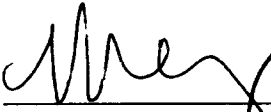
by Gayle A. Wilkinson

Gayle A. Wilkinson


Notary Public/Justice of the Peace
My Commission Expires: May 15, 2016

Approved as to form, execution and substance:

OFFICE OF THE ATTORNEY GENERAL

By: 
~~Assistant Attorney General~~ Megan A. Yip
Date: 7/29/14 Attorney NH Attorney General's Office

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: _____

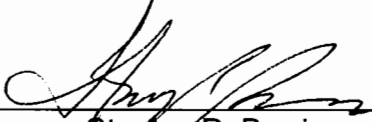
SECRETARY'S CERTIFICATE

The undersigned hereby certifies that:

The undersigned is a duly appointed Assistant Secretary of Mead Johnson & Company, LLC (the "Company"), a Delaware limited liability company; and that

J. Michael Milligan, who holds the title and position of Director, WIC Business Team of the Company, is duly authorized by the Company to sign on behalf of the Company all bids, contracts and other documents between the Company and third parties for sales and rebates of products of the Company in the Women, Infants and Children Program.

IT WITNESS WHEREOF, the undersigned has executed this certificate as of the 10th day of July, 2014.


Name: Stanley P. Barringer

CERTIFICATE

I, Stanley P. Barringer, Assistant Secretary of Mead Johnson & Company, LLC, and a Delaware limited liability company (the "Company") hereby certify that the following is a true and correct copy of a resolution duly adopted in a written Consent of the Sole Member in Lieu of a Meeting on December 10, 2009.

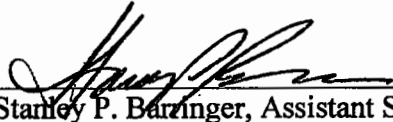
RESOLVED, that effective immediately, the following employees of the Company be, and each of them hereby is, authorized to execute contracts and other documents committing the Company to legally enforceable obligations, with individuals and corporations and the United States government, and state governments, and to execute contracts, performance and bid bonds relating to said contracts:

J. Michael Milligan
Title: Director, WIC Business

I further certify that J. Michael Milligan holds the position of Director, WIC Business of the Company and remains authorized to execute contracts on behalf of the Company as of today.

IN WITNESS WHEREOF, this Certificate has been signed and sealed this 8th day of July, 2011.

MEAD JOHNSON & COMPANY, LLC

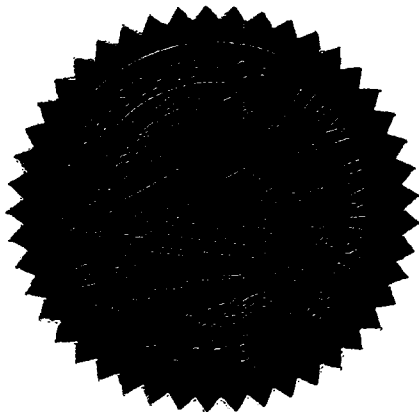


Stanley P. Barringer, Assistant Secretary

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 Mead Johnson & Company, LLC, a(n) Delaware limited liability company registered to do business in New Hampshire on June 7, 2011. I further certify that it is in good standing as far as this office is concerned, having filed the annual report(s) and 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 10th day of July, A.D. 2014

A handwritten signature in cursive script, reading "William M. Gardner".

William M. Gardner
Secretary of State



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
07-10-2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER MARSH USA INC. 540 W. MADISON CHICAGO, IL 60661 Attn: chicago.CertRequest@marsh.com	CONTACT NAME: PHONE (A/C, No, Ext): _____ FAX (A/C, No): _____ E-MAIL ADDRESS: _____																					
	<table border="1"> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A : Old Republic Insurance Company</td> <td></td> <td>24147</td> </tr> <tr> <td>INSURER B : The Travelers Indemnity Company of America</td> <td></td> <td>25666</td> </tr> <tr> <td>INSURER C : N/A</td> <td></td> <td>N/A</td> </tr> <tr> <td>INSURER D :</td> <td></td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> <td></td> </tr> </table>		INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A : Old Republic Insurance Company		24147	INSURER B : The Travelers Indemnity Company of America		25666	INSURER C : N/A		N/A	INSURER D :			INSURER E :			INSURER F :	
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INSURER F :																						
INSURED Mead Johnson Nutrition Company 2701 Patriot Boulevard Glenview, IL 60026	INSURER B : The Travelers Indemnity Company of America																					
	INSURER C : N/A																					
	INSURER D :																					
	INSURER E :																					
	INSURER F :																					

COVERAGES **CERTIFICATE NUMBER:** CHI-004378253-09 **REVISION NUMBER:** 3

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR VVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS					
A	GENERAL LIABILITY			MWZY 302443	06-01-2014	06-01-2015	EACH OCCURRENCE	\$ 2,000,000				
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000				
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person)	\$ 10,000				
							PERSONAL & ADV INJURY	\$ 2,000,000				
							GENERAL AGGREGATE	\$ 2,000,000				
							PRODUCTS - COMP/OP AGG	\$ 5,000,000				
							SIR (PRODUCTS ONLY)	\$ 3,000,000				
	GEN'L AGGREGATE LIMIT APPLIES PER:											
	<input checked="" type="checkbox"/> POLICY	<input type="checkbox"/> PRO-JECT	<input type="checkbox"/> LOC									
	AUTOMOBILE LIABILITY											
	<input type="checkbox"/> ANY AUTO						COMBINED SINGLE LIMIT (Ea accident)	\$				
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per person)	\$				
	<input type="checkbox"/> HIRED AUTOS	<input type="checkbox"/> NON-OWNED AUTOS					BODILY INJURY (Per accident)	\$				
							PROPERTY DAMAGE (Per accident)	\$				
								\$				
UMBRELLA LIAB												
	<input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> OCCUR					EACH OCCURRENCE	\$				
		<input type="checkbox"/> CLAIMS-MADE					AGGREGATE	\$				
	<input type="checkbox"/> DED	<input type="checkbox"/> RETENTION \$						\$				
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			TRH-UB-1105L 390-14	06-01-2014	06-01-2015	<input checked="" type="checkbox"/> WC STATUTORY LIMITS	<input type="checkbox"/> OTHER				
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N	N/A				E.L. EACH ACCIDENT	\$ 1,000,000				
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000				
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Re: NEATO WIC Contract

CERTIFICATE HOLDER

New Hampshire, DHHS
 129 Pleasant Street
 Concord, NH 03301

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
 of Marsh USA Inc.
 Manashi Mukherjee *Manashi Mukherjee*

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STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC HEALTH SERVICES

29 HAZEN DRIVE, CONCORD, NH 03301-6504
603-271-4546 1-800-852-3345 Ext. 4546
Fax: 603-271-4779 TDD Access: 1-800-735-2964

Nicholas Toumpas
Commissioner

Jose Thier Montero
Director

August 29, 2011

His Excellency, Governor John H. Lynch
and the Honorable Executive Council
State House
Concord, New Hampshire 03301

APPROVED BY _____
DATE 11/9/11
PAGE 12
ITEM # 106

REQUESTED ACTION

Authorize the Division of Public Health Services, Bureau of Population Health and Community Services, Healthy Eating and Physical Activity Section, Special Supplemental Program for Women, Infants, and Children to enter into an agreement with Mead Johnson and Company, LLC, vendor #175399, 2400 West Lloyd Expressway, Evansville, IL 47721-0001, to accept cash rebates from Mead Johnson and Company, LLC, on infant formula purchased with food vouchers issued by the Special Supplemental Program for Women, Infants and Children, to be effective retroactive to October 1, 2011 through September 30, 2014.

Revenue Account	Description	SFY 2012 Amount	SFY 2013 Amount	SFY 2014 Amount	SFY 2015 Amount	Total Amount
05-95-90-902010-2207-005-402823	Food Rebate	\$3,645,000	\$4,860,000	\$4,860,000	\$1,215,000	\$14,580,000

EXPLANATION

This is a retroactive contract as the contract documents required signatures and approvals by five State Special Supplemental Nutrition Program for Women, Infants and Children agencies and three Indian Tribal Organizations, before each State was permitted to formalize the contract in their own state. Each State or Indian Tribal Organization Special Supplemental Nutrition Program for Women, Infants and Children Agency required at least one business week in order to obtain the necessary approvals and signatures, which delayed New Hampshire receiving the signed documents until August 23, 2011.

Funds in this agreement will be used to support the Special Supplemental Program for Women, Infants, and Children which 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 Special Supplemental Program for Women, Infants, and Children Rebate Program is a mandatory federal requirement for States to enter into competitively bid agreements with infant formula providers as preferred providers. The selected manufacturer's products are issued to Special Supplemental Program for Women, Infants, and Children participants unless medically contraindicated and the manufacturer pays a rebate on all infant formula purchased with vouchers. Failure to implement this program will result in federal Special Supplemental Program for Women, Infants, and Children grant reductions and subsequent reductions of New Hampshire participants who may be served.

His Excellency, Governor John H. Lynch
and the Honorable Executive Council
August 29, 2011
Page 2

Should the Governor and Council not authorize this request, New Hampshire will not be in compliance with United States Department of Agriculture federal regulations requiring State Special Supplemental Nutrition Programs for Women, Infants and Children to contract with an infant formula company for rebates on infant formulas.

The Department, in conjunction with the States of Connecticut, Maine, Massachusetts, and Rhode Island, the Cherokee Nation of Oklahoma, the Chickasaw Nation of Oklahoma, and the Seneca Nation of New York, issued a competitive bid for the infant formula rebate contract beginning October 1, 2011 through September 30, 2014. Invitations to Bid were mailed to all three (3) FDA-qualified infant formula manufacturers on February 9, 2011. ~~No legal advertisements were published~~ due to the limited number of qualified bidders. Bid questions were received and returned on March 23, 2011, and final Bids were due on April 5, 2011.

Under federal regulation, the infant formula rebate evaluation criterion is a ranking by the lowest total net costs which is wholesale price minus rebate amount. The monthly net wholesale cost for all formulas was determined for each bidder, and the single lowest bidder was determined to be Mead Johnson and Company, LLC, which had the lowest net wholesale cost.

Bids were received from the following companies in the following total net cost amounts, which represent a cumulative total for all States in the consortium:

1. Mead Johnson and Company, LLC, 2400 W. Lloyd Expressway, Evansville, IN 47221, \$495,972,870.00
2. Nestle Nutrition, 12 Vreeland Road, Florham Park, NJ 07932, \$637,620,623.00
3. Abbott Nutrition, 3300 Stelzer Road, Columbus, OH 43219, \$864,516,246.00

The estimated rebate revenue is \$4,860,000 for each of the three years of the contract. Funds under this agreement will be used to offset expenditures for the Special Supplemental Program for Women, Infants, and Children infant formula purchased by participants. This rebate enables New Hampshire to enroll and provide benefits to approximately 2,000 additional lower risk pregnant and postpartum women, infants and children each year.

As referenced in the Request for Proposal, Renewals Section, this Agreement has the option to extend for one (1) two (2) year period, in an amount not to exceed an increase in the net wholesale cost as contained in the original bid, with the agreement of the parties and approval by the Governor and Executive 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 Mead Johnson and Company, LLC.

His Excellency, Governor John H. Lynch
and the Honorable Executive Council
August 29, 2011
Page 3

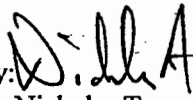
As this agreement provides for payments to New Hampshire, no Federal or General Funds will be requested to support this program.

Respectfully submitted,



Jose Thier Montero, MD
Director

Approved by:



Nicholas Toumpas
Commissioner



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

**NEW ENGLAND AND TRIBAL ORGANIZATIONS (NEATO)
WIC RETAIL INFANT FORMULA REBATE AGREEMENT**

Cherokee Nation

Connecticut

Maine

Massachusetts

New Hampshire

Rhode Island

Seneca Nation

**AGREEMENT with MEAD JOHNSON & COMPANY, LLC
Revised and Final
July 6, 2011**

This AGREEMENT is made effective this 1st day of October 2011 and shall be interpreted pursuant to the respective laws of the States and Tribes as hereinafter detailed, by and between the Cherokee Nation, the State of Connecticut, the State of Maine, the Commonwealth of Massachusetts, the State of New Hampshire, the State of Rhode Island and the Seneca Nation (hereinafter STATES or NEATO) and Mead Johnson & Company, LLC (hereinafter MANUFACTURER).

WHEREAS, the STATES desire to implement a WIC Infant Formula Rebate System intended to decrease the cost of infant formula 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 April 5, 2011, which is specifically incorporated herein by reference as part of this agreement, agrees to provide to the STATES a rebate on infant formula manufactured by the MANUFACTURER and provided to WIC participants through WIC food instruments or Electronic Benefits Transfer (EBT) that specify infant formula products and that are redeemed by WIC participants in accordance with State, Tribal and Federal rules.

WHEREAS, the following terms shall have the following meanings for purposes of this Agreement

“NEW ENGLAND AND TRIBAL ORGANIZATIONS”, “NEATO” and “STATES” refers to the five (5) States and the two (2) Tribes acting as a single entity.

“WIC vendor” refers to authorized WIC retail food, grocery, and pharmaceutical stores.

“Contract brand infant formula” means all infant formulas (except exempt infant formulas) produced by the MANUFACTURER at the time of the award and MANUFACTURER awarded the infant formula contract. If the MANUFACTURER subcontracts for soy-based infant formula, then all soy-based infant formulas covered by the subcontract are considered contract brand. Contract brand infant formulas also include all infant formulas (except exempt infant formulas) introduced by the MANUFACTURER after the award.

“Exempt Formula” means an infant formula that meets the requirements for an exempt infant formula under section 412(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350a(h)) and the regulations at 21 CFR parts 106 and 107.

“Primary contract infant formula” means the specific milk-based infant formula for which the MANUFACTURER submits a bid to the STATES in response to a rebate solicitation and for which a contract is awarded by the STATES as a result of that bid.

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

- 1.) **Restrictions to Manufacturer’s Products** The STATES agree to restrict all infant formula products specified on WIC food instruments/EBT issued to WIC participants for products manufactured by the MANUFACTURER unless the participant’s physician or health care provider determines that the participant has a medical condition which contraindicates the use of products

manufactured by the MANUFACTURER, or if the MANUFACTURER does not produce a Kosher/Halal milk-based formula, or if the MANUFACTURER is unable to make enough formula available for purchase by WIC vendors. The STATES shall implement this restriction by creating WIC food instruments/EBT that include the brand, form, and container size of infant formula to be purchased. EBT states shall require the Universal Product Code (UPC) Number.

2.) **Manufacturer's Rebate** Subject to provisions below, the MANUFACTURER shall make available for purchase by all authorized WIC food stores and pharmacies (vendors) specified infant formula products in sufficient supply to serve one hundred percent (100%) of the WIC caseload, and meet WIC's growth needs, and the MANUFACTURER shall reimburse the STATES for part of the price paid by the STATES to approved WIC vendors for purchase under the WIC Program of commercially sold infant formula in liquid concentrate, powdered, and ready-to-feed forms. The amount the MANUFACTURER shall reimburse the STATES, effective October 1, 2011 or implementation of the AGREEMENT, whichever is later, shall be determined as follows:

- a. The rebate amount per can for the MANUFACTURER'S primary contract brand of infant formula (Enfamil PREMIUM® Infant), beginning October 1, 2011 shall be:
 1. \$ 3.869 per 13-ounce can of iron-fortified liquid concentrate milk formula (Representing a 93.0% percentage discount on liquid concentrate formulas)
 2. \$ 11.394 per 12.5 oz. can of iron-fortified powder milk formula (Representing a 90.0% percentage discount on powdered cans of formula)
 3. \$ 2.202 per 32-ounce can of iron-fortified liquid ready-to-feed milk formula (Representing a 37.0% percentage discount on ready-to-feed formulas)

Such rebate shall be paid on any infant formula in the MANUFACTURER'S infant formula product line (with the exception of exempt infant formula) that the STATES choose to approve for issuance under this AGREEMENT, in addition to the primary contract brand specified in the bids received.

- b. A percentage discount shall be calculated for each physical form (concentrated liquid, powdered, ready-to-feed) by dividing the rebate by the MANUFACTURER'S lowest national wholesale price per unit for a full truckload as of the bid opening date. These percentage discounts shall be used to determine the rebate for all other contract brand infant formulas approved for issuance by the state/STATES. Rebates shall be paid at the same percentage discount for the same physical form of formula being provided.
- c. If the MANUFACTURER replaces the primary contract brand infant formula with a new product, the MANUFACTURER shall supply the replacement product(s) to the STATES at the same net cost per ounce for the alternative formula, which shall be considered the new primary contract infant formula. The MANUFACTURER shall notify the STATES of any replacement infant formula products introduced by the MANUFACTURER subsequent to the signing of this AGREEMENT.
- d. 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 system changes can be made by the STATES in time.

- e. The MANUFACTURER shall make new products, excluding exempt formulas, available for rebate under this AGREEMENT. However, the STATES are not obligated to negotiate or add products to the rebate list. If the STATES (or a Tribe or State) do (does) approve any such new or existing products for issuance during the term of this AGREEMENT, the MANUFACTURER shall pay a rebate that yields the same percentage discount as the corresponding physical form of formula, as defined in applicable federal regulations (Appendix A to this AGREEMENT). Any such rebate under this Section shall be calculated using the lowest national wholesale price per unit for a full truckload of this new formula at the time the new formula is approved for issuance by the STATES or a Tribe or State.
- f. The MANUFACTURER is not required to provide gratis items, such as sample units of infant formula, and/or educational material, such as brochures and flyers.
- g. Neither party in either the STATES (any State or Tribe) 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 formula products as designated herein, then the State or Tribe may procure the usage of other formula products through the same or another and/or may cancel this AGREEMENT.
- h. Any increase in the projected level of formula type 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 or Tribe, the MANUFACTURER shall work cooperatively with the STATES to provide adequate formula supplies by type, form, container size, and UPC number to retailers in the disaster / emergency area within a reasonable response time, given the severity of the situation.
- i. If there is a temporary supply problem of a particular contract brand infant formula issued to WIC participants [i.e., where the product is not available for order or has a factory back-order or delivery failure of three (3) days or more], and the MANUFACTURER has made its best efforts to alleviate the shortage, the STATES shall first substitute alternate forms (i.e, powder, concentrate, ready-to-feed) of the primary contract brand, or in the alternate, shall first provide an alternate brand of the MANUFACTURER's formula to relieve any temporary supply problems, before resorting to the use of non-contract brand formula. If this is not possible, the MANUFACTURER shall rebate each State or Tribe the current rebate amount for another company's (ies') comparable infant formula product. Furthermore, if the MANUFACTURER can only supply one form of formula (i.e, powder, concentrate, or ready-to-feed) to WIC participants, the MANUFACTURER must rebate the available formula form at the highest discount rate. For example, if the MANUFACTURER only has liquid concentrate available, and the rebate discount is higher for powder, the MANUFACTURER would be obligated to provide the liquid concentrate at the powder percentage discount.

3.) **Invoices and Billing**

- a. Each State and Tribe 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 by each State and Tribe to the MANUFACTURER.
- b. The number of cans for each type and size of infant formula product included in this AGREEMENT and issued to participants on food instruments/EBT redeemed by WIC participants shall be calculated monthly. In order to improve the integrity of the rebate invoicing process, the States and Tribes billing strategies are described below (Subsections 3.b.1. through 3.b.3), these methodologies take into account the number of cans of infant formula for which food instruments were issued but not redeemed.

1. **Retail Quantity Capture Method:** *(based on retailer capture of the number of cans purchased per food instrument and State's or Tribe's capability to analyze the retailer information) Seneca Nation*

For each issued and redeemed contract formula food instrument/EBT, the State or Tribe shall make adjustments for partial redemptions based on the number of cans recorded on cash register or EBT receipts accompanying each food instrument/EBT presented for payment.

2. **Vendor Price Table Method:** *(based on the actual price for each vendor for each formula, resulting in the development of a price reference table.) Cherokee Nation & New Hampshire*

For each issued and redeemed contract formula food instrument/EBT, the State or Tribe shall identify the type and form of formula listed on the food instrument/EBT, the number of cans 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 can that was in effect at the time of the redemption for the relevant type and form of formula. The resulting number of cans to be submitted to the MANUFACTURER for rebates shall be rounded either up or down to the nearest whole number. The rounded number of cans shall represent the quantity of cans redeemed. The quantity of cans redeemed shall never exceed the number of cans issued on the food instrument. The vendor's price for each type of formula shall be obtained from the vendor's price surveys which shall be updated at least annually.

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

For each issued and redeemed contract formula food instrument, the State or Tribe shall identify the number of cans issued by type and form, 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 and form of formula charged by vendors in the relevant peer group. The resulting number of cans shall be rounded either up or down to the nearest whole number. The rounded number of cans shall represent the quantity of cans redeemed for rebates. The quantity of cans redeemed shall never exceed the number of cans issued on the food instruments. The vendor's price for each type of formula shall be obtained from the vendor's price surveys and shall be updated at least annually.

4.) **Rebate Calculations**

- a. In the event that any State or Tribe 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 or Tribe 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 or Tribe 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 or Tribe 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.

- 5.)
- a. The MANUFACTURER shall forward reimbursement of the MANUFACTURER'S monthly rebate payment as indicated on the State or Tribe'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 or Tribe in the manner prescribed by each State or Tribe in this Section 5.b below. If payment is not forwarded to the State or Tribe within 30 days of the receipt of the invoice, the MANUFACTURER shall pay the State or Tribe, 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 or Tribe.

- b. **State or Tribe Instructions on Rebate Payment** The MANUFACTURER shall make such rebate payment by check/wire transfer/EFT (electronic funds transfer), payable to each State and Tribe, at the determination and request of each State or Tribe which is a party to this AGREEMENT as follows:

Cherokee Nation (Wire Transfer)

Treasurer, State of Connecticut (EFT)

Treasurer, State of Maine (Wire Transfer)

Treasurer, Commonwealth of Massachusetts (Wire Transfer)

Treasurer, State of New Hampshire (Wire Transfer)

General Treasurer, State of Rhode Island (Wire Transfer)

Seneca Nation (Wire Transfer)

c. **Disputes; Dispute Resolution**

1. The MANUFACTURER shall provide written notice to a State or Tribe of any dispute with regards to a rebate invoice within ninety (90) days of receipt of the invoice per Section 3 above. 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 or Tribe as may be noted in the APPENDIX applicable to each such State or Tribe, provided in Section 16 of this AGREEMENT.
2. The MANUFACTURER may not withhold any rebate payment or interest, to a State or Tribe. 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 Tribe or direct payment at the option of the State or Tribe.
3. 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.

d. **Adjustment of Rebate Amount** Per-can national wholesale price level adjustments (increase or decrease) shall result in an automatic rebate adjustment on a cent-for-cent basis. The MANUFACTURER'S rebate amount (subject to the provisions of Section 2, above) shall be adjusted during the term of this AGREEMENT, between April 5, 2011 (which was the BID OPENING DATE) and the ending date as noted in Section 8 of this AGREEMENT. For purposes of this Section 5(d), the national wholesale price shall be the full truckload size used by the MANUFACTURER in preparing its response to the competitive Invitation to Bid leading to this AGREEMENT. Any such adjustment to the MANUFACTURER'S rebate amount under this Section 5(d) shall be effective for food instruments/EBT redeemed under this AGREEMENT, in accordance with State, Tribal and Federal rules, on or after the first day of the month following such adjustment in the MANUFACTURER'S per-can national wholesale price, or the first day of the term that this AGREEMENT is effective. Any adjustments in the national wholesale price subsequent to completion of the bid shall be reflected in a cent-for-cent adjustment. The MANUFACTURER shall notify the STATES or Tribe(s) concurrently with its notification to any trade customers of such commercial wholesale price adjustment.

- 6.) The STATES are entitled to a rebate payment for all cans of infant formula, pursuant to Section 3 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 formula products manufactured by the MANUFACTURER during the term of this AGREEMENT, and

redeemed according to State, Tribal and Federal rules, regardless of the expiration and/or termination date of this AGREEMENT.

- 7.) The MANUFACTURER shall make up to a maximum of one (1) advance rebate payment per year, at least during the 4th quarter of each Federal fiscal year, if requested by a State or Tribe. Such request may be made no sooner than thirty (30) days prior to the beginning of the month for which advance payment is requested. If a State or Tribe makes a timely request for such advance payment, the MANUFACTURER shall make advance payment within thirty (30) days from the date of the request. The advance payment request may not exceed the number of cans by the type and size specified on food instruments issued to WIC participants less the number of cans specified on food instruments issued but not redeemed for the most recent month for which data is available for the State or Tribe and may be less at the discretion of the State or Tribe. The MANUFACTURER shall be entitled to a non-refundable discount of three-quarters of one percent (.75%) for the month, or portion thereof, that payment is in advance of its original due date with such discount applied against the actual payment made. Any amounts in excess of actual rebates due to the State or Tribe shall be deducted from the next payment due to the State or Tribe.

8.) **Term of Agreement; Extension of Agreement**

- a. This AGREEMENT shall be effective on **October 1, 2011** and shall remain in effect until **September 30, 2014** unless terminated sooner or extended in accordance with the terms in this Section 8.
- b. This AGREEMENT may be extended by NEATO for one (1) two (2) year period, or any portion thereof, under the same terms, conditions and rebate structure. Notice of such intention to extend must be provided by NEATO to the MANUFACTURER at least 120 days prior to the expiration of the current contract (or extension period). Any such extension shall be executed within thirty (30) days after receipt of such notice of intent to extend. When a public exigency is determined to exist by one or more STATE(s) or TRIBE(s) under this AGREEMENT, which exigent situation necessitates continuation of the AGREEMENT, this AGREEMENT shall be continued for successive one (1) month periods under the same terms, conditions and rebate structure until the public exigency no longer exists.

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

- a. The MANUFACTURER may cancel the AGREEMENT with any State or Tribe in material breach of the AGREEMENT or with all the STATES, including the Tribes, with cause for breach, as defined in Section 9(c.) below, upon two hundred and ten (210) days advance written notification to any affected State or Tribe. Any such cancellation may take effect only on the last day of a calendar month.
- b. In the event of cancellation by any State or Tribe under Section 10 below, the MANUFACTURER shall have the option to continue the AGREEMENT for the specified term with the remaining States and Tribes, or to cancel the AGREEMENT with all STATES, upon providing two hundred and ten (210) days advance written.

c. 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 contract.

10.) **Cancellation of Agreement by State or Tribe** This AGREEMENT may be canceled by the STATES or any State or Tribe at any time, with or without cause; upon two hundred and ten (210) days advance written notice to the MANUFACTURER. Cancellation under this Section 10 by any State or Tribe shall apply only to the individual State or Tribe and shall not apply to any other State or Tribe.

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

Cherokee Nation: Brenda Carter, Director
Cherokee Nation WIC Program
If by regular mail:
P.O. Box 948
Tahlequah, OK 74465
If through delivery service:
22361 Bald Hill Road
Tahlequah, OK 74464
Phone: (918) 453-5291
FAX: (918) 458-4460
brenda-carter@cherokee.org

Connecticut: John D. Frassinelli, MS, RD
Connecticut State WIC Director
State of Connecticut, Department of Public Health
410 Capitol Avenue, MS #11 WIC
Hartford, CT 06134-0308
Phone: 860.509.8084
FAX: 860.509.8391
John.Frassinelli@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
FAX: 207.287.3993
Lisa.hodgkins@maine.gov

Massachusetts Judy Hause, Director
Massachusetts WIC Program Director
Massachusetts Department of Public Health
250 Washington Street, 6th Floor
Boston, MA 02108-4618

Phone: 617. 624.6145
FAX: 617.624.6179
Judy.hause@state.ma.us

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
FAX: 603. 271.4779
mmurphy@dhhs.state.nh.us

Rhode Island:

Ann Barone,
Chief, WIC Program
Division of Family Health
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

Seneca Nation:

Anita Seneca, Coordinator
Seneca Nation WIC Program
36 Thomas Indian School Drive
Irving, NY 14081
Phone: 716.532.8223
FAX: 716. 532.2501
Anita.Seneca@senecahealth.org

12.) 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 or Tribe-specific clauses shall apply only to the respective State or Tribe and shall be executed by the MANUFACTURER and the affected State or Tribe.

13.) 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.

14.) Indemnification

- a. The MANUFACTURER agrees to indemnify and hold harmless the STATES, as well as the officers, agents, and employees of the States and Tribes from all claims, losses or suits accruing or resulting from personal injury allegedly caused by use of MANUFACTURER'S formula 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 State(s) or Tribe(s) was negligent. The States(s) or Tribe(s) shall have full authority to conduct their own respective defense, negotiations and settlements and in such event, such State(s) or Tribe(s) shall assume the costs thereof.

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

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

16.) **Appendices**

- a. Appendix A, comprises **Federal requirements** for Infant Formula Rebate Agreements and is incorporated herein by reference.
- b. Appendix B, standard clauses for the **Cherokee Nation** contracts, is attached hereto and is hereby made part of this AGREEMENT as is set forth fully herein in reference to the AGREEMENT between the MANUFACTURER and the Cherokee Nation.
- c. Appendix C, 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.
- d. Appendix D, 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.
- e. Appendix E, 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.
- f. Appendix F, 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.
- g. Appendix G, 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.

17.) **Audit**

- a. Each State or Tribe 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 or Tribe. 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 or Tribe, the MANUFACTURER and the State or Tribe 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, Tribal 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 or WIC identification number. Also due to these confidentiality requirements, certain WIC vendor information may also not be provided.
- c. For records audited for any fiscal year, the MANUFACTURER shall provide to a State or Tribe 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 or Tribe with its audit standards, guides and audit plan for conducting the audit thirty (30) days prior to conducting the audit.
- 18.) **Costs for Special Reports** Should the MANUFACTURER request any special reports, data or information from any State or Tribe, beyond that provided in the monthly invoice or as described below in Section 19, the State or Tribe reserves the right to charge the MANUFACTURER for all costs associated with providing such special reports, data or information. Any charges shall be agreed upon in writing by the State or Tribe and the MANUFACTURER prior to the State's or Tribe's execution of the requests for such reports.
- 19.) **Statistical Information**
- Each State and Tribe shall provide the MANUFACTURER with:
- a. the number of current infant participants, if available;
 - b. the number of fully breastfed infants and partially breastfed infants, if available and if requested, two (2) times per fiscal year;
 - c. aggregate information on prescription non-contract formula on a periodic basis not to exceed two times a year per data elements, if requested, and as decided by individual States or Tribes; and
 - d. a list of authorized WIC vendors every six months, if requested.
- 20.) **Maintenance of Books and Records** In addition to the provisions of any Tribe's or State's individual, specific or particular requirements, the MANUFACTURER shall maintain all books and records pertaining to performance under this AGREEMENT until final audit of State(s) and Tribe(s) records of the funding of this AGREEMENT, or until such time as Federal provisions permit the records to be discarded.
- 21.) **Americans with Disabilities Act** The MANUFACTURER shall comply with the Americans with Disabilities Act, Public Law 101-336, as applicable.
- 22.) **Review of Progress and Performance** One or more State and/or Tribes and the MANUFACTURER shall meet, as requested by either party, to review progress and performance of AGREEMENT. Any request for meeting more than once in a three (3) month period must be agreed to by the State and/or Tribe.
- 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 for execution by signature of each party.
- b. This AGREEMENT shall be executed in parts, as follows:
 1. Eight (8) original contracts shall be prepared, one for each party.
 2. Each such original shall contain (8) identical signature pages, containing areas for all eight (8) 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 8 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 State 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:

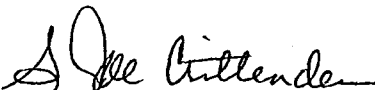
Beth Wilson-Lampro
Massachusetts Department of Public Health
WIC Nutrition Program, 6th floor
Boston, MA 02108
Telephone: 617.624.6107
Beth.wilson@state.ma.us

- c. The State 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 eight (8) 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 seven (7) 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:

CHEROKEE NATION

BY: Cherokee Nation



S. Joe Crittenden, Acting Principal Chief

DATE: 8/25/11

CONNECTICUT

BY: Connecticut Department of Public Health

Jewel Mullen, MD, MPH, MPA, Commissioner

DATE: _____

MAINE

BY: Maine Department of Health and Human Services

William Boeschstein, Deputy Commissioner for Finance

DATE: _____

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

CHEROKEE NATION

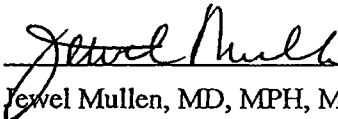
BY: Cherokee Nation

Chadwick Smith, Principal Chief

DATE: _____

CONNECTICUT

BY: Connecticut Department of Public Health



Jewel Mullen, MD, MPH, MPA, Commissioner

DATE: 7/28/11

MAINE

BY: Maine Department of Health and Human Services

William Boeschstein, Deputy Commissioner for Finance

DATE: _____

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

CHEROKEE NATION

BY: Cherokee Nation

Chadwick Smith, Principal Chief

DATE: _____

CONNECTICUT

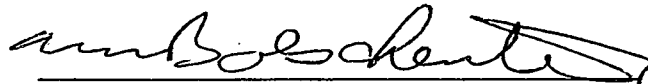
BY: Connecticut Department of Public Health

Jewel Mullen, MD, MPH, MPA, Commissioner

DATE: _____

MAINE

BY: Maine Department of Health and Human Services



William Boeschstein, Deputy Commissioner for Finance

COO

DATE: 7/19/11

MASSACHUSETTS

BY: Massachusetts Department of Public Health

Carol E. Foltz
Carol Foltz, Chief Fiscal Officer, Department of Public Health

DATE: 7-19-11

NEW HAMPSHIRE

BY: New Hampshire Department of Health & Human Services

Jose Thier Montero, Director, Division of Public Health Services

DATE: _____

RHODE ISLAND

BY: Rhode Island Department of Health

Dr. Michael Fine, Director of Health

DATE: _____

SENECA NATION

BY: The Seneca Nation

Darlene Miller, Acting Tribal Health Director

DATE: _____

MASSACHUSETTS

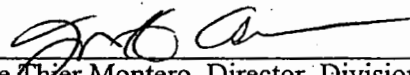
BY: Massachusetts Department of Public Health

Carol Foltz, Chief Fiscal Officer, Department of Public Health

DATE: _____

NEW HAMPSHIRE

BY: New Hampshire Department of Health & Human Services



Jose Thier Montero, Director, Division of Public Health Services

DATE: 7/15/11

RHODE ISLAND

BY: Rhode Island Department of Health

Dr. Michael Fine, Director of Health

DATE: _____

SENECA NATION

BY: The Seneca Nation

Darlene Miller, Acting Tribal Health Director

DATE: _____

MASSACHUSETTS

BY: Massachusetts Department of Public Health

Carol Foltz, Chief Fiscal Officer, Department of Public Health

DATE: _____

NEW HAMPSHIRE

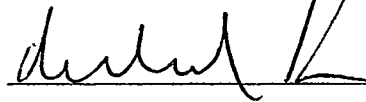
BY: New Hampshire Department of Health & Human Services

Jose Thier Montero, Director, Division of Public Health Services

DATE: _____

RHODE ISLAND

BY: Rhode Island Department of Health



Dr. Michael Fine, Director of Health

DATE: 7/26/11

SENECA NATION

BY: The Seneca Nation

Darlene Miller, Acting Tribal Health Director

DATE: _____

MASSACHUSETTS

BY: Massachusetts Department of Public Health

Carol Foltz, Chief Fiscal Officer, Department of Public Health

DATE: _____

NEW HAMPSHIRE

BY: New Hampshire Department of Health & Human Services

Jose Thier Montero, Director, Division of Public Health Services

DATE: _____

RHODE ISLAND

BY: Rhode Island Department of Health

Dr. Michael Fine, Director of Health

DATE: _____

SENECA NATION

BY: The Seneca Nation

Darlene Miller
Darlene Miller, Acting Tribal Health Director

DATE: 7.18.11

MANUFACTURER

BY: Mead Johnson & Company, LLC


J. Michael Milligan, Director, WIC Business Team

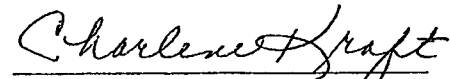
DATE: 7/8/11

STATE OF: INDIANA

COUNTY OF: VANDERBURGH

The foregoing instrument was acknowledged before me this 8TH day of JULY, 2011 by

CHARLENE KRAFT


Notary Public/Justice of the Peace
My Commission Expires: AUG. 24, 2013