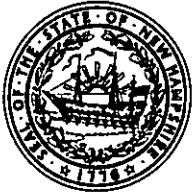


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STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC HEALTH SERVICES

Jeffrey A. Meyers
Commissioner

Lisa M. Morris
Director

29 HAZEN DRIVE, CONCORD, NH 03301
603-271-4501 1-800-852-3345 Ext. 4501
Fax: 603-271-4827 TDD Access: 1-800-735-2964
www.dhhs.nh.gov

April 22, 2019

His Excellency, Governor Christopher T. Sununu
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 renewal option to an existing agreement with Abbott Laboratories, (Vendor # 268653), 3300 Stelzer Road, Columbus, OH 43219, to continue receiving rebates on select infant formulas purchased with food instruments issued by the Special Supplemental Nutrition Program for Women, Infants, and Children, by increasing the projected revenue from \$9,202,779 by \$6,195,646 to \$15,398,425 and by extending the contract completion date from October 1, 2019 to September 30, 2021 effective upon Governor and Executive Council approval.

This agreement was originally approved by the Governor and Executive Council on September 7, 2016 (Item #13).

Funds received to support this request will be deposited into the following account for State Fiscal Years 2020 through 2022.

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

State Fiscal Year	Title	Revenue Code	Projected Revenue	Increased (Decreased) Revenue	Revised Projected Revenue
2017	Private & Local Funds	005-402823	2,300,695		2,300,695
2018	Private & Local Funds	005-402823	3,067,593		3,067,593
2019	Private & Local Funds	005-402823	3,067,593		3,067,593
2020	Private & Local Funds	005-402823	766,898	2,327,566	3,094,464
2021	Private & Local Funds	005-402823		3,094,464	3,094,464
2022	Private & Local Funds	005-402823		773,616	773,616
		Total	\$9,202,779	\$6,195,646	\$15,398,425

EXPLANATION

The purpose of this request is to continue supporting the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) through rebate revenue. The WIC 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 WIC Infant Formula Rebate Program complies with federal rule 7CFR246.16(a) and controls the cost of infant formula in order to increase the number of women, infants, and children served by the New Hampshire WIC Program. Unless medically contraindicated, the selected manufacturer's products are issued to WIC Program participants.

The original agreement, approved by the Governor and Executive Council on September 7, 2016 (Item #13), included a provision Section 7, Term of Agreement; Extension of Agreement, Subsection b. to extend the WIC Retail Infant Formula Rebate Agreement for up to 2 years.

Continuing the agreement will allow the Department to receive revenue from the Contractor through rebates on all standard milk and soy infant formula. Eligible individuals of the WIC Program purchase infant formula at participating retailers. The State reimburses the retailers and then submits a detailed invoice to the Contractor. The Contractor reimburses the State at 100% of the wholesale price of the formula. The revenue is then used to provide additional individuals with services and products available through the WIC Program.

The Department is a member of the New England and Tribal Organizations (NEATO), which includes the States of Connecticut, Maine, Rhode Island, the Commonwealth of Massachusetts, the Cherokee Nation of Oklahoma, and the Seneca Nation of New York. The Commonwealth of Massachusetts acted as the lead state during the NEATO consortium selection of the Contractor.

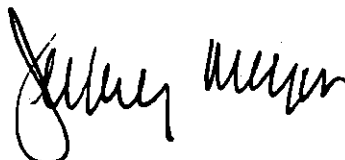
Under federal regulation, the infant formula rebate evaluation criterion was ranked by the lowest total net cost, which is the wholesale price minus the rebate amount. The lowest monthly wholesale cost for all formulas continues to be Abbott Laboratories, Inc, which offers at 100% rebate.

Should the 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 WIC to contract with an infant formula company for rebates on infant formulas. Additionally, the rebate revenue of \$6,195,646 will not be available to offset food expenditures for the WIC Program's infant formula purchased by participants, which will result in the WIC program not being able to serve as many women, infants and children each early as would otherwise be possible.

Area served: Statewide

Source of Funds: 100% Other Revenue received from Abbott Laboratories, Inc.

Respectfully Submitted

A handwritten signature in black ink, appearing to read "Jeffrey Meyers". The signature is written in a cursive style with a large initial "J".

Jeffrey A. Meyers
Commissioner

AMENDMENT & MODIFICATION

To the Agreement made the 1st day of October, 2016, and amended the 23rd day of January, 2019 by and between the Cherokee Nation, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and the Seneca Nation {hereinafter NEATO} and Abbott Laboratories Inc. {hereinafter MANUFACTURER}:

WHEREAS, NEATO 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};

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

WHEREAS, pursuant to section 11(a) of the Agreement, all amendments must be in writing;

WHEREAS, NEATO wishes to exercise their option to extend the Agreement in accordance with section 7(b); and

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; Extension of Term

This Agreement shall be extended for two (2) years. Section 7(a) of the Agreement is hereby modified to reflect the change in the Agreement's term end date from September 30, 2019 to September 30, 2021, under the same terms, conditions, and rebate structure.

2. Effective Date of Amendment

This amendment shall be effective on October 1, 2019 and shall remain in effect until September 30, 2021.

3. Continuance of Agreement

Except as specifically amended herein, all other terms, conditions, and provisions of the Agreement shall remain in full force and effect.

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

CONNECTICUT

BY: Connecticut Department of Public Health

Raul Pino MD, MPH, Commissioner

MAINE

BY: Maine Department of Health and Human Services

Jeff Wiley, Budget Director

MASSACHUSETTS

BY: Massachusetts Department of Public Health

Eileen Sullivan, Chief Operating Officer

RHODE ISLAND

BY: Rhode Island Department of Health

Dr. Nicole Alexander-Scott, Director of Health

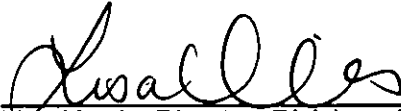
SENECA NATION

BY: The Seneca Nation

Mark Halftown, Acting Chief Executive Officer

NEW HAMPSHIRE

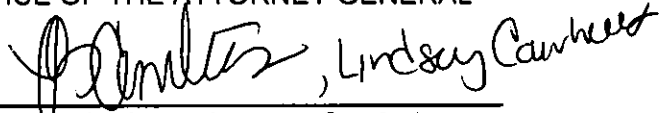
BY: New Hampshire Department of Health & Human Services



Lisa Morris, Director, Division of Public Health Services

Approved as to form, execution and substance:

OFFICE OF THE ATTORNEY GENERAL

By:  Lindsey Canfield
Assistant Attorney General

Date: 4/24/19

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: _____

MANUFACTURER

BY: Abbott Laboratories Inc

Kori Stenzel
Kori Stenzel, Manager, WIC Contracts, Abbott Nutrition

STATE OF Ohio

COUNTY OF Franklin

The foregoing instrument was acknowledged before me this 28th day of January, 2019
by Kori Stenzel

Hannah M.
Notary Public/Justice of the Peace
My Commission Expires: 04-29-2019



KAREN WEBER
Notary Public, State of Ohio
My Commission Expires 4-29-2019

State of New Hampshire

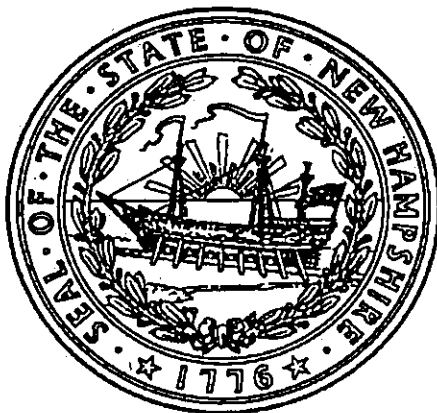
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that ABBOTT LABORATORIES INC is a Delaware Profit Corporation registered to transact business in New Hampshire on April 11, 2016. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 741958

Certificate Number: 0004492324



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 9th day of April A.D. 2019.

A handwritten signature in black ink, appearing to read "Wm Gardner".

William M. Gardner
Secretary of State

CERTIFICATE OF VOTE

I, Jessica H. Paik do hereby certify that:
(Name of the elected Officer of the Agency; cannot be contract signatory)

1. I am a duly elected Officer of Abbott Laboratories
(Agency Name)

2. The following is a true copy of the resolution duly adopted at a meeting of the Board of Directors of
Abbott Laboratories duly held on September 17, 2015
(Date)

RESOLVED, that the Chairman of the Board; the Chief Executive Officer; any President; the Executive Vice President, Finance and Administration; the Chief Financial Officer; the Chief Operating Officer; a Senior Vice President; a Vice President; the Secretary; the Treasurer; an Assistant Treasurer; A Divisional Vice President or Controller; a Divisional Director, Manager or Administrator of Contracts, Pricing or Marketing; a Divisional Government Sales Manager; and a Business Unit Controller, Manager or Administrator of Contracts or Pricing, or any of them, be and hereby are authorized on behalf of this corporation, to quote prices and tender bids, and to enter into contracts for the sale of any products or services of this Corporation to and with any and all customers of this Corporation, including specifically that United States and any of its offices, agencies or departments, and any state of the United States or political subdivision thereof, and any of their offices, agencies or departments, having full authority in their discretion as to prices, terms, conditions, warranties or any other provisions necessarily relating to said bids and contracts.

3. The forgoing resolution has not been amended or revoked, and remains in full force and effect as of
the 11th day of April, 2019.
(Date Contract Signed)

4. Chris Calamari is the Vice President, Pediatric Nutrition,
(Name of Contract Signatory)
US Pediatric Nutrition, for Abbott Nutrition, a division of Abbott Laboratories.
(Title of Contract Signatory)

Jessica H. Paik
Jessica H. Paik
(Signature of the Elected Officer)

STATE OF ILLINOIS

County of Lake

The forgoing instrument was acknowledged before me this 11th day of April, 2019.

By Jessica H. Paik
(Name of Elected Officer of the Agency)

Heather A. Teliga
(Notary Public)
Commission Expires: 10/8/2019

(NOTARY SEAL)



CERTIFICATE OF VOTE

I, Jessica H. Paik do hereby certify that:
(Name of the elected Officer of the Agency; cannot be contract signatory)

1. I am a duly elected Officer of Abbott Laboratories
(Agency Name)

2. The following is a true copy of the resolution duly adopted at a meeting of the Board of Directors of
Abbott Laboratories duly held on September 17, 2015 :
(Date)

RESOLVED, that the Chairman of the Board; the Chief Executive Officer; any President; the Executive Vice President, Finance and Administration; the Chief Financial Officer; the Chief Operating Officer; a Senior Vice President; a Vice President; the Secretary; the Treasurer; an Assistant Treasurer; A Divisional Vice President or Controller; a Divisional Director, Manager or Administrator of Contracts, Pricing or Marketing; a Divisional Government Sales Manager; and a Business Unit Controller, Manager or Administrator of Contracts or Pricing, or any of them, be and hereby are authorized on behalf of this corporation, to quote prices and tender bids, and to enter into contracts for the sale of any products or services of this Corporation to and with any and all customers of this Corporation, including specifically that United States and any of its offices, agencies or departments, and any state of the United States or political subdivision thereof, and any of their offices, agencies or departments, having full authority in their discretion as to prices, terms, conditions, warranties or any other provisions necessarily relating to said bids and contracts.

3. The forgoing resolution has not been amended or revoked, and remains in full force and effect as of
the 11th day of April, 2019.
(Date Contract Signed)

4. Kori E. Stenzel is the Sr. Manager, WIC Contracts.
(Name of Contract Signatory)
for Abbott Nutrition, a division of Abbott Laboratories.
(Title of Contract Signatory)

Jessica H. Paik
(Signature of the Elected Officer)

STATE OF ILLINOIS

County of Lake

The forgoing instrument was acknowledged before me this 11th day of April, 2019.

By Jessica H. Paik
(Name of Elected Officer of the Agency)

Heather A. Teliga
(Notary Public)
Commission Expires: 10/8/2019

(NOTARY SEAL)





CERTIFICATE OF LIABILITY INSURANCE

1/1/2020

DATE (MM/DD/YYYY)

4/8/2019

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 have ADDITIONAL INSURED provisions or 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 Lockton Companies Three City Place Drive, Suite 900 St. Louis MO 63141-7081 (314) 432-0500	CONTACT NAME: _____
	PHONE (A/C, No, Ext): _____ FAX (A/C, No): _____ E-MAIL ADDRESS: _____
INSURER(S) AFFORDING COVERAGE	
INSURER A: Old Republic Insurance Company	NAIC # 24147
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	
INSURER F:	

COVERAGES ABBLA **CERTIFICATE NUMBER:** 16010033 **REVISION NUMBER:** XXXXXXXX

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 INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR Retro Date: 1/1/05 GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: _____	N	N	MWZZ 314337	1/1/2019	1/1/2020	EACH OCCURRENCE \$ 10,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 10,000,000 GENERAL AGGREGATE \$ 10,000,000 PRODUCTS - COMPIOP AGG \$ 10,000,000 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	N	N	MWTB 314334	1/1/2019	1/1/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$			NOT APPLICABLE			EACH OCCURRENCE \$ XXXXXXXX AGGREGATE \$ XXXXXXXX \$ XXXXXXXX
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y <input checked="" type="checkbox"/> N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	N	MWC 314333 000	1/1/2019	1/1/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 2,000,000 E.L. DISEASE - EA EMPLOYEE \$ 2,000,000 E.L. DISEASE - POLICY LIMIT \$ 2,000,000

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

CERTIFICATE HOLDER 16010033 DEPARTMENT OF HEALTH AND HUMAN SERVICES 129 PLEASANT STREET CONCORD NH 03301-3857	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 
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STATE OF NEW HAMPSHIRE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

29 HAZEN DRIVE, CONCORD, NH 03301-6503
603-271-4612 1-800-852-3345 Ext. 4612
Fax: 603-271-4827 TDD Access: 1-800-735-2964



Jeffrey A. Meyers
Commissioner

Marcella Jordan Bobinsky
Acting Director

June 23, 2016

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, Bureau of Population Health and Community Services, Nutrition Services Section, Special Supplemental Program for Women, Infants, and Children to enter into an agreement with Abbott Laboratories, Inc. (Vendor #TBD) 3300 Stelzer Road, Columbus, OH 43219 to provide rebates on select infant formulas purchased with food instruments issued by the Special Supplemental Nutrition Program for Women, Infants, and Children effective October 1, 2016 or upon Governor and Executive Council approval, whichever is later through October 1, 2019. The projected revenue for this contract is approximated at \$9,202,779

Funds received to support this request will be deposited into the following account for State Fiscal Year 2017, State Fiscal Year 2018, State Fiscal Year 2019 and State Fiscal Year 2020.

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	Title	Revenue Code	Projected Revenue
2017	Private and Local Funds	005-402823	2,300,695
2018	Private and Local Funds	005-402823	3,067,593
2019	Private and Local Funds	005-402823	3,067,593
2018	Private and Local Funds	005-402823	766,898
Total:			\$9,202,779

EXPLANATION

The purpose of this agreement 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 Infant Formula Rebate Program complies with federal rule 7CFR 246.16(a) and controls the cost of infant formula in order to increase the number of women, infants, and children served by the New Hampshire Women, Infants, and Children Program. Unless medically contraindicated, the selected manufacturer's products are issued to Women, Infants, and Children Program participants.

This agreement will allow the Department to receive revenue from the Contractor through rebates on all standard milk and soy infant formula. Eligible individuals of the Women, Infants and Children Program purchase infant formula at participating retailers. The State reimburses the retailers and then submits a detailed invoice to the Contractor. The Contractor reimburses the State at 100% of the wholesale price of the formula. This revenue is then used to provide additional individuals with services and products available through the Women, Infants and Children Program.

The New Hampshire Department of Health and Human Services is a member of the New England and Tribal Organizations (NEATO), which include the States of Connecticut, Maine, the Commonwealth of Massachusetts and Rhode Island, the Cherokee Nation of Oklahoma, and the Seneca Nation of New York. The NEATO consortium issued a competitive bid for the infant formula rebate contract beginning October 1, 2016 to September 30, 2019. Invitations to Bid were publically posted on the Massachusetts' official procurement system website, COMMBUYS (<http://www.commbuys.com>), and emailed to all three (3) Food and Drug Administration-qualified infant formula manufacturers with the bid number and link.

No legal notice was published due to the limited number of qualified bidders. Bid questions were due on February 23, 2016 and responded to on March 25, 2016. Final bids were due on April 20, 2016.

The New England and Tribal Organizations (NEATO) shall have the option to extend this agreement for one additional two-year period, or any portion thereof, under the same terms, conditions and rebate structure; this is non-negotiable and has been included in the contract.

The Commonwealth of Massachusetts acted as the lead state for the review of this procurement. A team of individuals with program specific experience reviewed the proposals. A public bid opening was conducted on April 20, 2016 in Massachusetts. Three proposals were received. Abbott Laboratories, Inc. offered the highest bid at 100%. Abbott Laboratories, Inc. was the selected vendor.

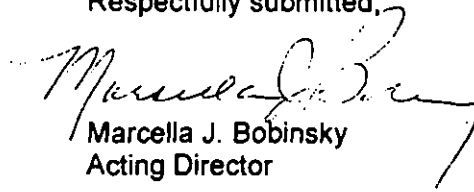
Under federal regulation, the infant formula rebate evaluation criterion is a ranking by the lowest total net costs which is the wholesale price minus rebate amount. The monthly new wholesale cost for all formulas was determined for each bidder, and the single lowest bidder was determined to be Abbott Laboratories, Inc. offering 100% rebate.

Should the Governor and Executive Council not approve 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. In addition, the rebate revenue of \$9,202,779 will not be available to offset expenditures for the program's infant formula purchased by participants. This rebate revenue enables New Hampshire to enroll and provide benefits to additional women, infants, and children each year.

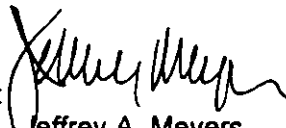
Area Served: Statewide

Source of Funds: 100% Other Revenue received from Abbott Laboratories, Inc.

Respectfully submitted,



Marcella J. Bobinsky
Acting Director

Approved by: 
Jeffrey A. Meyers
Commissioner

Subject: Infant Formula Rebate

Notice This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name Department of Health and Human Services		1.2 State Agency Address 129 Pleasant Street, Concord, NH 03301-3857	
1.3 Contractor Name Abbott Laboratories, Inc.		1.4 Contractor Address 3300 Stelzer Rd, dept 106711, RFP2-2 Columbus, OH 43219	
1.5 Contractor Phone Number 614-624-5816	1.6 Account Number: 010-090-2207-521-500362	1.7 Completion Date October 1, 2019	1.8 Price Limitation N/A - REBATE
1.9 Contracting Officer for State Agency Eric D. Borrin		1.10 State Agency Telephone Number 603-271-9558	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory Chris Calamari, DVP, GM, U.S. Pediatric Nutrition	
1.13 Acknowledgement: State of <u>OHIO</u> , County of <u>FRANKLIN</u> On <u>6/10/16</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 Wendy L. Detwiler Notary Public, State of Ohio My Commission Expires 07-26-2017			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory Actina Director, DHHS	
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:  Megan A. Fode - Attorney On: <u>8/8/16</u>			
1.18 Approval by the Governor and Executive Council By: _____ On: _____			

Subject: **Infant Formula Rebate**

Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name Department of Health and Human Services		1.2 State Agency Address 129 Pleasant Street, Concord, NH 03301-3857	
1.3 Contractor Name Abbott Laboratories, Inc.		1.4 Contractor Address 3300 Stelzer Rd, dept 106711,RFP2-2 Columbus, OH 43219	
1.5 Contractor Phone Number 614-624-5816	1.6 Account Number: 010-090-2207-005-402823 <i>cc mjs</i>	1.7 Completion Date October 1, 2019	1.8 Price Limitation N/A - REBATE
1.9 Contracting Officer for State Agency Eric D. Borrin		1.10 State Agency Telephone Number 603-271-9558	
1.11 Contractor Signature		1.12 Name and Title of Contractor Signatory	
1.13 Acknowledgement: State of _____, County of _____ On _____, 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	
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: _____			
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, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.18, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.14 ("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. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the contractor. 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 notice and consent of the State. 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 \$1,000,000 per occurrence and \$2,000,000 aggregate; and

14.1.2 special cause of loss coverage form 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 thirty (30) 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 provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) 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 unless no

such approval is required under the circumstances pursuant to State law, rule or policy.

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.



REVISIONS TO GENERAL 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 the Women, Infant and Children (WIC) Program.

1. General Provisions, Paragraph 2 shall read:

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 good identified and described in the Contract.

2. General Provisions, Paragraph 5 is hereby deleted.
3. General Provisions, Paragraph 10 is hereby deleted.
4. General Provisions, Paragraph 14 is hereby deleted.

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

NEW ENGLAND AND TRIBAL ORGANIZATIONS (NEATO)

Cherokee Nation

Connecticut

Maine

Massachusetts

New Hampshire

Rhode Island

Seneca Nation

WIC RETAIL INFANT FORMULA REBATE AGREEMENT

WITH ABBOTT LABORATORIES INC.

Revised & Final
Effective October 1, 2016

This AGREEMENT is made effective this 1st day of October 2016 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 NEATO) and Abbott Laboratories Inc. (hereinafter MANUFACTURER).

WHEREAS, NEATO desires 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 20, 2016, which is specifically incorporated herein by reference as part of this agreement, agrees to provide to NEATO 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” or “NEATO” refers to the five (5) states and the two (2) tribes acting as a single entity.

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

“Infant formula” means a food that meets the definition of an infant formula in section 201(z) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(z)) and that meets the requirements for an infant formula under section 412 of the Federal, Food, Drug, and Cosmetic Act (21 U.S.C. 350a) and the regulations at 21 CFR parts 106 and 107.

“Contract brand infant formula” means all infant formulas (except exempt infant formulas) produced by the 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 infant formulas. Contract brand infant formulas also include all infant formulas (except exempt infant formulas) introduced by the MANUFACTURER after the award.

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

“Non-contract infant formula” means all infant formula (including exempt infant formula) that is not covered by the infant formula contract awarded by NEATO.

“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.

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** NEATO agrees 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 is unable to make enough formula available for purchase by WIC vendors. NEATO shall implement this restriction by creating WIC food instruments that include the brand, form, and container size of infant formula to be purchased. EBT states shall require the Universal Product Code (UPC).
- 2.) **Manufacturer's Rebate** Subject to provisions below, the MANUFACTURER shall make available for purchase by all authorized WIC grocery 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 NEATO for part of the price paid by NEATO 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 NEATO, effective October 1, 2016 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 (**Similac Advance**), beginning October 1, 2016 shall be:
 1. \$ 4.430 per 13.0-ounce can of iron-fortified liquid concentrate milk formula (Representing a 100.0% percentage discount on liquid concentrate formulas)
 2. \$ 14.380 per 12.4-ounce can of iron-fortified powder milk formula (Representing a 100.0% percentage discount on powdered cans of formula)
 3. \$ 6.230 per 32-ounce can of iron-fortified liquid ready-to-feed milk formula (Representing a 100.0% 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 NEATO chooses 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 NEATO. 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 NEATO 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 NEATO of any

replacement infant formula products introduced by the MANUFACTURER subsequent to the signing of this AGREEMENT.

- d. Advance notification by the MANUFACTURER to NEATO of at least 90 days for any changes in labels, unit size, reformulation, UPC, and product discontinuation necessitating food package changes is required so that system changes can be made by NEATO in time.
- e. The MANUFACTURER shall make new products, excluding exempt formulas, available for rebate under this AGREEMENT. However, NEATO is not obligated to negotiate or add products to the rebate list. If NEATO (or a tribe or state) 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. Any such rebate 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 NEATO 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 NEATO (any state or tribe) or the 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 NEATO or a state or tribe, the MANUFACTURER shall work cooperatively with NEATO to provide adequate formula supplies by type, form, container size, and UPC 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, NEATO shall first substitute alternate forms (i.e., powder, concentrate, ready-to-feed) of the primary contract brand, or, 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.4), 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 tribe's capability to analyze the retailer information) Seneca Nation*

For each issued and redeemed contract formula food instrument/EBT, the 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 Class Price Method I:** *(based on the actual price for each vendor for each formula, resulting in the development of a price reference table.) 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 Method II:** *(based on average retail prices for rebated formula by vendor peer group obtained from annual price surveys.) Maine & Rhode Island*

For each issued and redeemed contract formula food instrument, the state 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. **eWIC Method** (based on the actual total number of formula cans redeemed)
Massachusetts, Cherokee Nation, & Connecticut

For each issued and redeemed formula eligible for rebate, the state or tribe shall identify the number of cans by type and form that were redeemed in the appropriate billing month. The eWIC transactions included in the billing month are based on the date purchases were made, also known as the Redeemed Date. Adjustments are made for any voided cans in the billing month. The redeemed quantities are multiplied by the rebate rates in effect when the eligible formula was redeemed. Monthly supporting data will be provided that shows the infant formula eligible for rebate, that has been redeemed, for a given date range, by each formula type (category/subcategory). For Massachusetts, this report will include: WIC Host Generated Trace Number (a unique Transaction number); the Subcategory Product Name (item description); First Use Date; Redeemed Date; Redeemed Amount; and Redeemed Quantity.

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. Each state and tribe shall submit its invoice by mid-month. 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. 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)

Commonwealth of Massachusetts, Department of Public Health (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 closeout 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 15 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 20, 2016 (which was the bid opening date) and the ending date as noted in section 7 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 NEATO concurrently with its notification to any trade customers of such commercial wholesale price adjustment.

6.) NEATO is 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.) **Term of Agreement; Extension of Agreement**

- a. This AGREEMENT shall be **effective on October 1, 2016 and shall remain in effect until September 30, 2019** unless terminated sooner or extended in accordance with the terms in this section 7.
- 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 by January 31, 2019. NEATO reserves the unilateral right to order changes and/or to delay initiation of the AGREEMENT if NEATO deems necessary and if such changes or delays do not alter the scope of the AGREEMENT. When a public exigency is determined to exist by one or more states(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, not to exceed three (3) periods, under the same terms, conditions and rebate structure.

8.) **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 NEATO with cause for breach, as defined in section 8.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 9 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 NEATO, upon providing two hundred and ten (210) days advance written notice.

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.

9.) **Cancellation of Agreement by State or Tribe** This AGREEMENT may be canceled by NEATO 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 9 by any state or tribe shall apply only to the individual state or tribe and shall not apply to any other state or tribe.

10.) **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: Marjorie Chamber, Director
Connecticut State WIC
State of Connecticut, Department of Public Health
PO Box 340308
410 Capitol Avenue, MS #11WIC
Hartford, CT 06134-0308
Phone: 860.509.8101 FAX: 860. 509.8391
Marjorie.chambers@ct.gov

Maine: Grace Fecteau, WIC Financial Manager
Department of Health & Human Services
Maine WIC Nutrition Program
286 Water Street, Key Plaza, 6th Floor
Augusta, ME 04333
Phone: 207. 287.1469
FAX: 207. 287.3993
Grace.fecteau@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: Frances McLaughlin, Nutrition Services Manager
Nutrition Services Section
Department of Health & Human Services
29 Hazen Drive
Concord, NH 03301-6527
Phone: 603.271.4546
FAX: 603.271.4779
Frances.mclaughlin@dhhs.nh.gov

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: Natasha Souter, Coordinator
Seneca Nation WIC Program
36 Thomas Indian School Drive
Irving, NY 14081
Phone: 716.532.8223
FAX: 716.532.2501
Natasha.souter@senecahealth.org

11.) **Amendment to Agreement**

- a. All amendments to this AGREEMENT shall be in writing.
- b. Amendments that affect NEATO 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.

12.) **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 NEATO. The MANUFACTURER shall not enter into any subcontracts for its performance of this AGREEMENT without express written approval of NEATO.

13.) **Indemnification**

- a. The MANUFACTURER agrees to indemnify and hold harmless NEATO, 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 NEATO, its officers, agents and employees or if applicable, subcontractors under this AGREEMENT.
- b. NEATO 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.

14.) **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 tribe-specific clauses in the Appendices, the Appendices applicable to the respective state or tribe shall control.

15.) **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.

16.) **Audit**

- a. Each state and 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, address, or WIC identification number. Also due to these confidentiality requirements, the MANUFACTURER shall not have access to any information about a vendor that individually identifies the vendor, except for the vendor's name, address, website, email, store type, and authorization status.
- 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.
- 17.) **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 18, 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.
- 18.) **Supporting Data** Each state and tribe shall provide the MANUFACTURER with a monthly report specifying the number of units of infant formula authorized on all WIC food instruments/EBT 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, NEATO shall supply the MANUFACTURER with a list of approved vendors in each state and tribe prior to the effective date of the AGREEMENT.
- 19.) **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.
- 20.) **Americans with Disabilities Act** The MANUFACTURER shall comply with the Americans with Disabilities Act, Public Law 101-336, as applicable.
- 21.) **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.
- 22.) **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."

23.) **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 eight (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 eight (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 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 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

Bill John Baker, Principal Chief

DATE: _____

CONNECTICUT

BY: Connecticut Department of Public Health

Raul Pino MD, MPH, Commissioner

DATE: _____

MAINE

BY: Maine Department of Health and Human Services

Sam Adolphsen, Chief Operating Officer

DATE: _____

MASSACHUSETTS


BY: Massachusetts Department of Public Health

Eileen Sullivan, Chief Operating Officer

DATE: _____

NEW HAMPSHIRE

BY: New Hampshire Department of Health & Human Services



Marcella Jordan Bobinsky, Acting Director, Division of
Public Health Services

DATE: 6/27/16

RHODE ISLAND

BY: Rhode Island Department of Health

Dr. Nicole Alexander-Scott, Director of Health

DATE: _____

SENECA NATION

BY: The Seneca Nation

Tim Waterman, Acting Chief Executive Officer

DATE: _____

MANUFACTURER

BY: Abbott Laboratories Inc.

Chris Calamari

Chris Calamari, Division Vice President, General Manager
U.S. Pediatric Nutrition

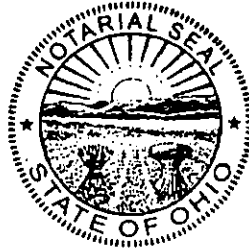
DATE: 6/10/16

STATE OF: OHIO

COUNTY OF: FRANKLIN

The foregoing instrument was acknowledged before me this 10TH day of JUNE, 2016 by

Wendy L. Detwiler



Wendy L. Detwiler
Notary Public, State of Ohio
My Commission Expires 07-26-2017

7-26-2017
Notary Public/Justice of the Peace
My Commission Expires:

STATE OF NH
DEPT OF JUSTICE
2019 APR 23 PM 12:43