

## Idaho Division of Purchasing

### Renewal

|                              |  |
|------------------------------|--|
| <b>Purchase Order Name:</b>  | WIC Infant Formula Rebates                 |
| <b>Contract Number:</b>      | PADD19200325                               |
| <b>Parties:</b>              | State of Idaho<br>ABBOTT LABORATORIES INC. |
| <b>This Renewal Value:</b>   | 19,500,000.00 USD                          |
| <b>Total Contract Value:</b> | 39,000,000.00 USD                          |
| <b>Start Date:</b>           | 1/29/2022 12:00 AM                         |
| <b>End Date:</b>             | 1/28/2025 11:59 PM                         |

**Contract Managers:** Patrick Murphy; patrick.murphy@adm.idaho.gov

### Instructions

PADD19200325, WIC Infant Formula Rebates(the "Contract") is extended for the time period, as provided above. All of the terms and conditions contained in the Contract shall remain in effect, except expressly modified herein. Contractor's signed renewal letter and Amendment 2 to PADD19200325 are attached and incorporated herein by reference.

Note: The dollar amount listed in the contract renewal pricing is an estimate and cannot be guaranteed. The actual dollar amount of the Contract may be more or less depending on the orders placed by the State; or may be dependent upon the specific terms of the Contract.

[[ Contact Name (\* ABBOTT  
LABORATORIES INC.) ]]

[[ Contact Phone Number (\* ABBOTT LABORATORIES INC.) ]]  
[[ Contact E-mail (\* ABBOTT LABORATORIES INC.) ]]

**Bill To Address**

As detailed in sourcing  
event or contract  
instructions

**Ship To Address**

As detailed in sourcing  
event or contract  
instructions

**Payment Terms:** Net 30

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**Signed By:**

**Patrick Murphy** Digitally signed by Patrick Murphy  
Date: 2022.01.28 15:31:26 -07'00'

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Patrick Murphy – Purchasing Officer

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Date

**AMENDMENT #2 to  
MASTER AGREEMENT#8327**

This is Amendment #2 to Master Agreement #8327, as amended from time to time (the "Master Agreement"), between the State of Oregon, acting by and through its Department of Administrative Services, Enterprise Goods and Services, Procurement Services ("DAS PS") on behalf of the member states of the NASPO ValuePoint Cooperative Purchasing Program, and Abbott Nutrition, Abbott Laboratories, Inc. ("Contractor"). This Amendment

**Recitals**

Contractor and DAS PS wish to amend the Master Agreement to extend its term.

**Amendment:**

1. The Master Agreement term is extended to January 28, 2025.
1. Except as expressly amended above, all other terms and conditions of original Price Agreement are still in full force and effect. Contractor certifies that the representations, warranties and certifications contained in the original Price Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.
2. **Compliance with Tax Laws. Certifications.** By signature on this Amendment, the individual signing below on behalf of Contractor certifies under penalty of perjury that: a) the undersigned is authorized to act on behalf of Contractor; and b) the representations, warranties and certifications contained in the original Master Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.; and c) the undersigned is authorized to act on behalf of Contractor and that Contractor is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620.

IN WITNESS WHEREOF, the parties have caused this Amendment #2 to be executed by their duly authorized representatives as of the day and year last written below.

**Abbott Nutrition, Abbott Laboratories, Inc.:**

Signature: kori.stenzel@abbott.com Digitally signed by kori.stenzel@abbott.com  
DN: cn=kori.stenzel@abbott.com  
Date: 2021.01.26 11:42:14 -05'00' Date: 1/26/2021

Printed Name and Title: Kori Stenzel, Sr. Manager, WIC Contracts

**State of Oregon, acting by and through the Department of Administrative Services, Enterprise Goods and Services, Procurement Services:**

Signature: Keri Ashford Digitally signed by Keri Ashford  
Date: 2021.01.26 11:35:33 -08'00' Date: \_\_\_\_\_

Printed Name and Title: Keri Ashford, State Procurement Analyst

**Approved for Legal Sufficiency Pursuant to ORS 291.047 and OAR 137-045-0030: N/A**



State of Idaho

Participating Addendum

Purchase Order Summary

**Purchase Order Number:** PADD19200325  
**Account Number:** AC-1  
**Purchase Order Date:** January 16, 2019  
**Service Start Date:** January 29, 2019  
**Service End Date:** January 28, 2022  
**Payment Method:** Invoice  
**Payment Terms:** No Payment Terms specified  
**Currency:** USD  
**FOB Instruction:** Destination  
**Attachment(s):**

Supplier

Daniel Vogelhuber  
ABBOTT LABORATORIES INC.  
624 Cleveland Ave  
Columbus, OH 43215  
**Phone:** 614 624-7660  
**Fax:** 614 624-0068  
**Email:** Daniel.vogelhuber@abbott.com

**Contract Number:**

Bill To Address

DOP - Prog Mgr  
Dept of Administration  
Division of Purchasing  
304 N 8th Street Rm 403  
PO Box 83720  
Boise, Idaho 83720  
**Phone:** 208-332-1600  
**Fax:** 208-327-7320  
**Email:** purchasing@adm.idaho.gov  
**Mail Stop:** DOP Program Manager

Ship To Address

DOP - Prog Mgr  
Dept of Administration  
Division of Purchasing  
304 N 8th Street Rm 403  
PO Box 83720  
Boise, Idaho 83720  
**Phone:** 208-332-1600  
**Fax:** 208-327-7320  
**Email:** purchasing@adm.idaho.gov  
**Mail Stop:** DOP Program Manager

Instructions

This PADD is for Formula Rebates for Women, Infants and Children (WIC) pursuant to NASPO ValuePoint Master Agreement (8327 administered by the State of Oregon). This Contract is for the benefit of State of Idaho agencies, institutions, and departments; as well as eligible political subdivisions or other "Public Agencies" as defined by Idaho Code, Section 67-2327. The Division of Purchasing or the requisitioning agency will issue individual releases (delivery or purchase orders) against this Contract on an as needed basis. This contract is to be drawn upon as requested by Participating Agencies for the period noted above and may be renewed for three (3) additional years, at increments determined by NASPO ValuePoint for a total term not anticipated to exceed six (6) years.

PADD Title: Formula Rebates for Women, Infants and Children (WIC)

PADD Usage Type: Mandatory Use

Public Agency Clause: Yes

PADD Administrator: Chelsea Robillard

Phone Number: 208-332-1607

Fax Number: 208-327-7320

Email: chelsea.robillard@adm.idaho.gov

**Contractors Primary Contacts:**

Kori Stenzel, Abbott Nutrition

Phone Number: 614-624-5816

Email: kori.stenzel@abbott.com

Beatrice Okatch, Abbott Nutrition

Phone Number: 614-624-3443


Email: beatrice.okatch@abbott.com

**CONTRACTOR:** Ship to the FOB DESTINATION point and BILL DIRECTLY to the ORDERING AGENCY. DO NOT MAIL INVOICES TO THE DIVISION OF PURCHASING. Notating the Contract Award Number on any invoices/statement will facilitate the efficient processing of payment.

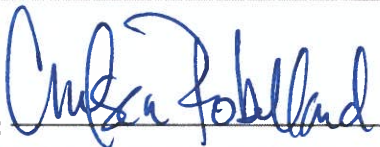
**QUANTITIES:** The State of Idaho, Division of Purchasing, can only give an approximations of quantities and will not be held responsible for figures given in this document.

Original Contract: January 29, 2019 - January 28, 2022 \$6,500,000.00

TOTAL CONTRACT: \$6,500,000.00

| Supplier<br>Part Number       | Quantity  | Items      |  | Unit | Unit Price   | Total           |
|-------------------------------|---|------------|--|------|--------------|-----------------|
|                               |   | Back Order |  |      |              |                 |
|                               | 3.00  | 0          |  | ANN  | 6,500,000.00 | \$19,500,000.00 |
| <b>Item Description</b>       | #1  |            |  |      |              |                 |
|                               | Formula Rebates for Women, Infants and Children (WIC)  |            |  |      |              |                 |
| <b>Delivery Date:</b>         | January 29, 2019  |            |  |      |              |                 |
| <b>Shipping Method:</b>       | Delivery  |            |  |      |              |                 |
| <b>Shipping Instructions:</b> |   |            |  |      |              |                 |
| <b>Ship FOB:</b>              | Destination   |            |  |      |              |                 |
| <b>Attachment(s)</b>          |   |            |  |      |              |                 |
| <b>Special Instructions:</b>  |   |            |  |      |              |                 |
| <b>Sub-Total (USD)</b>        |   |            |  |      |              | \$19,500,000.00 |
| <b>Estimated Tax (USD)</b>    |   |            |  |      |              | \$0.00          |
| <b>TOTAL: (USD)</b>           |   |            |  |      |              | \$19,500,000.00 |

**Note:** If there is a  next to an item's unit price, that indicates that the price has been discounted.



Signature :

Signed By : Chelsea Robillard

NASPO ValuePoint  
**PARTICIPATING ADDENDUM**



**FORMULA REBATES FOR WOMEN,  
INFANTS AND CHILDREN (WIC)**  
Led by the State of Oregon

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Master Agreement #: 8327

Contractor: **ABBOTT NUTRITION**

Participating Entity: **STATE OF IDAHO**

**Master Agreement Terms and Conditions:**

1. **Scope:** This Participating Addendum ("PADD") covers the NASPO ValuePoint Master Agreement for Formula Rebates for Women, Infants and Children (WIC) led by the State of Oregon for use by members of the NASPO ValuePoint/WIC Infant Formula Alliance. Alliance members, unless included in the Tribal Exemption below, must have prior approval from their State's Chief Procurement Official.

This Master Agreement includes both Milk-Based Infant Formula Rebates and Soy-Based Infant Formula Rebates.

2. **Participation:** This ValuePoint Master Agreement is only available to the current members of the NASPO ValuePoint/WIC Infant Formula Alliance listed below. Per federal regulations, no state or eligible organization can be added to this agreement. This requirement shall remain in effect through the lift of the contract.

**NASPO ValuePoint/WIC Infant Formula Alliance:** State of Alaska American Samoa, State of Arizona, Commonwealth of the Northern Mariana Islands (CNMI), State of Delaware, District of Columbia, Guam, State of Hawaii, State of Idaho, Inter Tribal Council of Arizona (ITCA), Inter-Tribal Council of Nevada (ITCN), State of Kansas, State of Maryland, State of Montana, Navajo Nation, State of Nevada, State of Oregon, Osage Nation, Pueblo of Isleta, State of Utah, U.S. Virgin Islands, State of Washington, State of West Virginia and State of Wyoming, hereafter referred to as the Participating Entities.

**Tribal Exemption:** Tribal government and/or Tribal organizations that are part of the Alliance may contract directly with Abbott Nutrition in accordance with their own Tribal procurement policies. They are exempt from state approval requirements.

3. **Term and Renewal:** Per federal regulations governing the Master Agreement term for this contract, the initial term is for three (3) years, beginning **January 29, 2019**, and continuing through January 28, 2022. The contract may be extended for an additional three (3) years in 1-year, 2-year, or 3-year increments, not to exceed six (6) years from the January 29, 2019 start date.

A Participating Addendum may be signed by both parties prior to the initial term but will not go into effect until January 29, 2019.

4. **Participating State Modifications or Additions to Master Agreement:** The following modifications or additions apply only to actions and relationships within the Participating State and supplement and/or add to the Master Agreement ("Contract").

- a. **Parties.** The parties to this PADD are Abbott Nutrition, Abbott Laboratories("Contractor") and



**FORMULA REBATES FOR WOMEN,  
INFANTS AND CHILDREN (WIC)**

Led by the State of Oregon

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the State of Idaho by and through its statutory agent, the Division of Purchasing within the Department of Administration ("State") on behalf of the entities identified in the paragraph titled "Scope" of this PADD (Purchasing Entities).

- b. Restrictions. Purchases under this PADD are restricted to WIC Infant Formula Rebates offered by the Contractor and are listed on the Master Agreement Pricing Sheet provided to and accepted by the State of Idaho.
- c. Governing Law. The State of Idaho's PADD and all purchase orders issued thereunder by Purchasing Entities shall be construed in accordance with and governed by the laws of the State of Idaho, and the parties hereto consent to the jurisdiction and exclusive venue of the state courts of Ada County in the State of Idaho in the event of any dispute with respect to the PADD. In the event any term of this PADD is held to be invalid or unenforceable by a court, the remaining terms of this PADD will remain in full force and effect. Except to the extent the provisions of the PADD are clearly inconsistent therewith, the PADD shall also be governed by the applicable provisions of the Idaho Uniform Commercial Code (IUCC).
- d. Assignment. Contractor shall not assign this PADD, or its rights, obligations, or any other interest arising from this PADD, or delegate any of its performance obligations, without the express written consent of the Administrator of the Division of Purchasing. Transfer without such approval shall cause the annulment of the PADD, at the option of the State. All rights of action, however, for any breach of the PADD are reserved to the State. (I.C. § 67-9230).

Notwithstanding the foregoing, to the extent required by applicable law (including I.C. § 28-9-406), Contractor may assign its right to payment on an account provided that the State shall have no obligation to make payment to an assignee until thirty days after Contractor (not the assignee) has provided the responsible procurement officer with (a) proof of the assignment, (b) the identity of the specific state contract to which the assignment applies, and (c) the name of the assignee and the exact address to which assigned payments should be made. The state may treat violation of the clause as an event of default.

- e. Amendments. Amendments to the Master Agreement (including, but not limited to extensions, renewals, and modifications to the terms, conditions and pricing) will automatically be incorporated in this PADD unless the State of Idaho elects not to incorporate an amendment by providing written notification to Contractor; which notice must be provided within ten (10) business days of the date of the amendment to the Master Agreement, in order to be effective. Failure to provide notice in accordance with this Section 5.g will result in the Master Agreement amendment automatically being incorporated in this PADD.
- f. Priority of Documents. This PADD consists of and precedence is established by the order of the following documents:
  - 1. This PADD; and

**FORMULA REBATES FOR WOMEN,  
INFANTS AND CHILDREN (WIC)**

Led by the State of Oregon

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2. The Master Agreement (including Contract Order of Precedence).

The parties intend to include all items necessary for the proper completion of the scope of work. The documents set forth above are complementary and what is required by one shall be binding as if required by all. However, in the case of any conflict or inconsistency arising under the documents, a lower numbered document shall supersede a higher numbered document to the extent necessary to resolve any such conflict or inconsistency. Provided, however, that in the event an issue is addressed in one of the above-mentioned documents but is not addressed in another of such documents, no conflict or inconsistency shall be deemed to occur.

Where terms and conditions specified in the Contract differ from the terms in this PADD, the terms and conditions of this PADD shall apply.

g. Terms and Conditions in the Master that Do Not Apply to this PADD. Any terms or conditions contained in the Master Agreement that do the following are not applicable to this PADD:

1. Waive the sovereign immunity of the State of Idaho;
2. Subject the state of Idaho, its agencies, or political subdivisions of the state of Idaho to the jurisdiction of the courts of other states;
3. Limit the time in which the state of Idaho, its agencies, or political subdivisions of the State of Idaho may bring a legal claim to a period shorter than that provided in Idaho law;
4. Impose a payment obligation, including a rate of interest for late payments, less favorable than the obligations set forth in Section 67-2302, Idaho Code; or,
5. Require the state of Idaho, its agencies, or political subdivisions of the state of Idaho to accept arbitration or to waive right to a jury trial.
6. Require indemnification not specifically authorized by the Idaho legislature or subject to appropriation (pursuant to Section 67-9213, Idaho Code, and Section 59-1016, Idaho Code).
7. Hold employees or officers of the State of Idaho and of political subdivisions of the State of Idaho personally liable.

h. Product Additions and Deletions. Over the term of the PADD, product needs or volumes may change and products may be added to or deleted from the Master Agreement Pricing Sheet by an amendment(s) to the PADD. Should the State request products to be added, Contractor will contact the Division of Purchasing and advise of any obstructions to adding the product.

**FORMULA REBATES FOR WOMEN,  
INFANTS AND CHILDREN (WIC)**

Led by the State of Oregon

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5. **Primary Contacts:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

**Contractor**

|            |  |
|------------|--|
| Name:      | Kori Stenzel, Manger WIC Contracts   |
| Address:   | Abbott Nutrition, Abbott Laboratories<br>3300 Stelzer Road<br>Columbus, OH 43219 |
| Telephone: | 614-624-5816   |
| Fax:       |  |
| Email:     | <a href="mailto:kori.stenzel@abbott.com">kori.stenzel@abbott.com</a>             |

**Participating Entity**

|            |   |
|------------|---|
| Name:      | Chelsea Robillard   |
| Address:   | State of Idaho, Division of Purchasing<br>304 N. 8 <sup>th</sup> Street, Room 403 Boise, ID 83709 |
| Telephone: | 208-332-1607  |
| Fax:       | 208-327-7320  |
| Email:     | <a href="mailto:Chelsea.Robillard@adm.idaho.gov">Chelsea.Robillard@adm.idaho.gov</a>              |

6. **Applicable Terms:** The State agrees to the terms of the Master Agreement only to the extent the terms are not in conflict with this PADD or with State law.
7. **Records Maintenance:** The Contractor shall maintain or supervise the maintenance of all financial records necessary to properly account for all payments made to the Contractor for the costs authorized by the PADD. These financial records shall be retained by the Contractor for at least three (3) years after the PADD terminates, or until all audits initiated within the three (3) years have been completed, whichever is later.
8. **Entire Agreement:** This PADD and the Master Agreement together with their exhibits and attachments, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this PADD and the Master Agreement, together with their exhibits and attachments, shall not be added to or incorporated into this PADD or the Master Agreement or their exhibits and attachments, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this

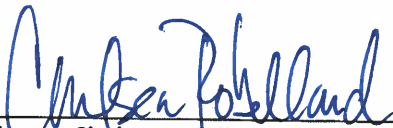


NASPO ValuePoint  
**PARTICIPATING ADDENDUM**



**FORMULA REBATES FOR WOMEN,  
INFANTS AND CHILDREN (WIC)**  
Led by the State of Oregon

PADD and the Master Agreement and their exhibits and attachments shall prevail and govern in the case of any such inconsistent or additional terms.

IN WITNESS, WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

|   |  |
|---|--|
| Participating Entity: State of Idaho  | Contractor:<br>Abbott Nutrition, Abbott Laboratories   |
| Signature:<br> | Signature:<br> |
| Name: Chelsea Robillard   | Name:<br>Kori Stenzel  |
| Title: Purchasing Officer   | Title:<br>Manager, WIC Contracts   |
| Date:<br>    | Date:<br>1/11/2019   |

*[Additional signatures may be added if required by the Participating Entity]*

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

|                                      |  |
|--------------------------------------|--|
| Cooperative Development Coordinator: | Ted Fosket   |
| Telephone:                           | (907) 723-3360   |
| Email:                               | <a href="mailto:tfosket@naspovaluepoint.org">tfosket@naspovaluepoint.org</a> |

***[Please email fully executed PDF copy of this document to  
[PA@naspovaluepoint.org](mailto:PA@naspovaluepoint.org)  
to support documentation of participation and posting in  
appropriate data bases.]***

**MASTER AGREEMENT # 8327**

**NASPO ValuePoint  
Master Agreement for  
Formula Rebates for Women,  
Infants and Children (WIC)**



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**Between**

**The State of OREGON, acting by and through the Department of Administrative Services ("Lead State")**

**And**

**Abbott Nutrition, Abbott Laboratories Inc. (Contractor)**

**The parties agree:**

**Master Agreement Terms and Conditions:**

**1. Master Agreement and Order of Precedence:**

**(a) This Master Agreement consists of the following documents:**

- (1) Master Agreement;**
- (2) Exhibit 1, Specifications and Additional Terms;**
- (3) Exhibit 2 A-Milk Based Price Sheet**
- (4) Exhibit 2 B-Soy Based Price Sheet**
- (5) Exhibit 3, Sample Participating Addendum**
- (6) Exhibit 4 USDA Debarment Certification**
- (7) Exhibit 5, Certified Disadvantaged Business Outreach Plan**

**(b) Order of Precedence: Any order or request for participation in the WIC program under this Master Agreement consists of the following documents:**

- (1) Applicable Federal and State statutes and regulations;**
  - (2) Exhibit No. 1 to this Master Agreement, Specifications and Additional Terms;**
  - (3) A Participating Entity's Participating Addendum ("PA");**
  - (4) These NASPO ValuePoint Master Agreement Terms and Conditions;**
  - (5) Exhibit 2 A-Milk Based Price Sheet and Exhibit 2 B-Soy Based Price Sheet;**
- and**

(6) Exhibit 4 USDA Debarment Certification.

In the event of a conflict in the terms of the above documents, the parties will resolve the conflict starting with applicable federal and state statutes and regulations, followed by the terms and conditions set forth in Exhibit No. 1 to this Master Agreement and then in descending order.

2. Definitions:

**Acceptance** is defined by the applicable commercial code, except Acceptance shall not occur before the completion of delivery in accordance with the Order, installation if required, and a reasonable time for inspection of the Product.

**Alliance:** means the alliance of States, Indian Tribal Organizations, U.S. Territories and U.S. Commonwealths contracting for WIC infant formula rebates. The Alliance is comprised of Alaska, American Samoa, Arizona, Commonwealth of the Northern Mariana Islands (CNMI), Delaware, District of Columbia, Guam, Hawaii, Idaho, Inter Tribal Council of Arizona (ITCA), Inter-Tribal Council of Nevada (ITCN), Kansas, Maryland, Montana, Navajo Nation, Nevada, Oregon, Osage Nation, Pueblo of Isleta, Utah, U.S. Virgin Islands, Washington, West Virginia and Wyoming.

**Contractor** means the person or entity delivering Products or performing services under the terms and conditions set forth in this Master Agreement.

**Exempt Infant Formula** means an infant formula that meets the exempt specifications under section 412(h) of the federal Food, Drug and Cosmetic Act (21 U.S.C. 350 a(h)) and the regulations of 21 CFR parts 106 and 107.

**Food Instruments (FI)** means documents such as checks, drafts, vouchers, coupons or electronic benefits transfer cards (EBT), used by WIC participants to obtain WIC supplemental foods. Federal regulations allow a WIC FI to be valid up to ninety (90) days after the date the FI was issued to a WIC participant. Some Participating Entities use a shortened time period (e.g. 60 days).

**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 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 of 21 CFR parts 106 and 107.

**Lead State** means the State centrally administering any resulting Master Agreement(s).

**Master Agreement or Primary Contract** means this agreement and its exhibits executed by and between the Lead State, acting on behalf of the NASPO ValuePoint program, and the Contractor, as now or hereafter amended.

**Milk-Based Contract Infant Formula** means all milk-based infant formulas (except exempt infant formulas) produced by the manufacturer awarded this rebate contract. This includes lactose reduced and protein modified formulas.

**NASPO ValuePoint** is the NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, a 501(c)(3) limited liability company that is a subsidiary organization the National Association of State Procurement Officials (NASPO), the sole member of NASPO ValuePoint. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports as well as other contract administration functions as assigned by the Lead State.

**Participating Addendum** means an agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any other additional Participating Entity specific language or other requirements, e.g. ordering procedures specific to the Participating Entity, other terms and conditions.

**Participating Entity** means a state or other legal entity that is a member of the Alliance, properly authorized to enter into a Participating Addendum.

**Percent Discount** means the percent discount is the "rebate per unit" divided by the "wholesale price" as displayed in Exhibits 2A and 2B.. A percent discount is established for each physical form of the Master Agreement Infant Formulas. The percent discount is then applied to the bidder's milk-based contract infant formulas and/or soy-based contract infant formulas (except exempt infant formulas) by physical form to establish the rebate amount for each of the bidder's products.

**Master Agreement Infant Formula** means the milk-based infant formula and/or the soy-based infant formula for which a bid was submitted and a contract awarded. There is one primary milk-based contract infant formula and one primary soy-based contract infant formula under the contract. They are the first choice for issuance to WIC infants.

**Product** means any good, equipment, documentation, service or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Products, supplies and services, and products and services are used interchangeably in these terms and conditions.

**Rebate** means the amount of money refunded under cost containment procedures to a Participating State Entity from the infant formula manufacturer in accordance



with 7 CFR 246, this ITB and the Contract.

**Total Net Cost Per Month** equals the sum of the Bidder's individual Monthly Net Cost for each unit size and physical form of the Bidders Milk-Based and/or Soy-Based Master Agreement Infant Formula as specified in Exhibits 2A and 2B.

**Lowest net cost** is based on the manufacturers' lowest national wholesale price per unit for a full truckload on the date of bid submittal and opening.

**Unit** means a container, generally a can or bottle, which holds liquid concentrate, powdered concentrate and/or ready-to-feed infant formula.

**WIC-Eligible Medical Foods** are enteral products that are formulated to provide nutritional support for individuals with a diagnosed medical condition, when the use of conventional foods is precluded, restricted or inadequate. WIC-Eligible Medical Foods may be nutritionally complete or incomplete, but they must serve the purpose of a food, provide a source of calories and one or more nutrients, and be designed for enteral digestion via an oral or tube feeding. WIC-Eligible Medical Foods include many, but not all, products that meet the definition of medical food in section 5(b)(3) of the Orphan Drug Act (21 U.S.C. 360 ee (b)(3)).

3. **Scope:** This Master Agreement covers the Formula Rebates for Women, Infants and Children (WIC) led by the State of Oregon for use by member states of the NASPO ValuePoint Cooperative Purchasing Program and other Participating Entities including state agencies, federally recognized Tribes, political subdivisions and other entities who are members of the Alliance as defined herein and are authorized to participate in contracts ("Participating Entities"). Issues of interpretation and eligibility for participation are solely within the authority of the Participating Entity's Chief Procurement Official.
4. **Participation:** An eligible Participating Entity may enter into a Participating Addendum with Contractor adopting the terms and conditions of this Master Agreement, as modified by the requirements of the Participating Entity's state law; by way of illustration and not limitation, this authority may apply to unique confidentiality requirements, defaults, governing law and venue, indemnification, and insurance requirements, or other statutory or constitutional requirements relating to availability of funds. Contractor may not issue Rebates under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed.
5. **Term and Renewal:**
  - 5.1. The initial term of this Master Agreement is for three (3) years, beginning on January 29, 2019 ("Commencement Date") through January 28, 2022.
  - 5.2. The Lead State may extend the term up to three additional years in 1-year, 2-year or 3-year terms, provided that the term including all extensions does not exceed six (6) years from the Commencement Date.



10. NASPO ValuePoint Summary and Detailed Usage Reports: In addition to other reports that may be required under this Master Agreement, Contractor shall submit quarterly reports of rebates issued directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Excel Spreadsheet Reporting Tool found at <http://calculator.naspovaluepoint.org>. Any rebates provided under this Master Agreement will be reported as cumulative totals by Participating Entity. Contractor shall submit reports even if there is no activity during a calendar quarter. Reports are due no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).

Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports has exclusive ownership of the media containing the reports. Contractor grants the Lead State and NASPO ValuePoint a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.

11. NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review: Contractor shall work cooperatively with NASPO ValuePoint personnel. Contractor shall present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement, Participating Addenda and the rebate program. Contractor also shall assist Participating Entities in training their personnel to launch the program within the participating state. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the contract offer as available in the participating state.

Contractor agrees to participate in an annual contract performance review at a location selected by the Lead State and NASPO ValuePoint, which may include a discussion of marketing action plans, target strategies, marketing materials, as well as Contractor reporting and timeliness of payment of administration fees.

12. Governing Law and Venue: This Master Agreement is governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement and contract. The construction and effect of any Participating Addendum under the Master Agreement is governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.

Venue for any claim, dispute or action concerning the terms of the Master Agreement is in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Participating Addendum is in the Purchasing Entity's State.

If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; a Participating

5.3. Extensions are subject to mutual agreement by the Lead State, Participating Entities and the Contractor.

6. Additions To The Master Agreement: Attached hereto as Exhibit No. 1 are the Specifications and Additional Terms for participation in the WIC Program under this Master Agreement.
7. Amendments: The terms of this Master Agreement may not be waived, altered, modified, unless in writing and agreed to by the parties.
8. Primary Contacts; Key Persons: The primary contact individuals and key administrative personnel for this Master Agreement are as follows (or their named successors):

Contractor

|            |                         |
|------------|-------------------------|
| Name:      | Kori Stenzel            |
| Address:   | 3300 Stelzer Rd.        |
| Telephone: | (614) 624-5816          |
| Fax:       | (614) 727-5816          |
| Email:     | Kori.stenzel@abbott.com |

Contractor:

|            |                            |
|------------|----------------------------|
| Name:      | Beatrice Okatch            |
| Address:   | 3300 Stelzer Rd.           |
| Telephone: | (614) 624-3443             |
| Fax:       | (614) 624-9805             |
| Email:     | Beatrice.okatch@abbott.com |

Lead State

|            |                                    |
|------------|------------------------------------|
| Name:      | Pam Johnson, CPPB, OCAC, OPBC      |
| Address:   | 1225 Ferry St, SE, Salem, OR 97301 |
| Telephone: | (503) 378-4731                     |
| Fax:       | (503) 373-1626                     |
| Email:     | Pam.johnson@oregon.gov             |

Contractor shall notify the Lead State of changes in the Contractor's contact or key administrative personnel in writing within 10 calendar days of the change.

9. Subcontractors: Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State.

The Lead State may assign any rights or duties, including written assignment of contract administration duties to NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint and other third parties.

State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

13. Independent Contractor: Contractor shall be an independent contractor. Contractor shall have no authorization, express or implied, to bind the Lead State, Participating States, or other Participating Entities to any agreements, settlements, liability or understanding whatsoever, and agrees not to hold itself out as agent except as expressly set forth herein or as expressly agreed in this Master Agreement or any Participating Addendum.

14. Defaults and Remedies:

14.1. The occurrence of any of the following events shall be an event of default under this Master Agreement:

- (1) Nonperformance of contractual requirements; or
- (2) A material breach of any term or condition of this Master Agreement; or
- (3) Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading; or
- (4) Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
- (5) Any default specified in another section of this Master Agreement.

14.2. Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of 15 calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

14.3. If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:

- (1) Exercise any remedy provided by law; and
- (2) Terminate this Master Agreement and any related contracts or portions thereof; and
- (3) Impose liquidated damages as provided in this Master Agreement; and

- (4) Suspend Contractor from being able to respond to future bid solicitations; and
- (5) Suspend Contractor's performance; and
- (6) Withhold payment until the default is remedied.

14.4. Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum.

**15. Insurance:**

15.1. Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.

15.2. Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below:

- (1) Commercial General Liability covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;

- (2) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

15.3. Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to the Lead State and a Participating Entity within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.

15.4. Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) names NASPO ValuePoint, the Lead State and the Participating Entities as additional insureds, (2) provides that written notice of cancellation shall be delivered in accordance with the policy provisions, and (3) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating Entity as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, other state Participating Entities' rights and Contractor's obligations are the same as those specified in the first sentence of this subsection except the endorsement is provided to the applicable state.

15.5. Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

15.6 Contractor may, instead of complying with the above insurance policy requirements, at its own cost and expense, maintain a program of insurance, self-insurance or risk-assumption or any combination thereof if Contractor does so generally, and not only with respect to the Master Agreement. In such case, Contractor shall not be required to obtain the liability insurance referred to above, provided Contractor shall provide Lead State with a letter evidencing the existence of such program or programs that shall be sufficient to enable Contractor to fulfill all of its obligations under this Master Agreement.

15.7. Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order. Laws and Regulations: Any and all products, services or rebates offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

15.8. Participating Entities may require additional insurance or other coverages in a Participating Addendum.

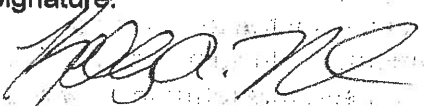

16. Waiver of Breach: Failure of the Lead State or Participating Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State or Participating Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or breach of any terms or requirements of this Master Agreement or a Participating Addendum will not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement or any Participating Addendum.

17. Debarment: Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

18. Public Information: This Master Agreement and all related documents are subject to disclosure pursuant to the Lead State's and a Purchasing Entity's public information laws.

19. Merger: This Master Agreement and its attachments set forth the entire agreement of the parties relative to the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Master Agreement.

IN WITNESS WHEREOF, the parties have executed this Master Agreement as of the date of execution by both parties below.

|   |  |
|---|--|
| Lead State:   | Contractor: Abbott Nutrition, Abbott Laboratories Inc  |
| Signature:<br> | Signature:<br> |
| Name: Kelly R. Mix  | Name: Chris Calamari   |
| Title: Deputy State CPO   | Title: Vice President, US Pediatric Nutrition  |
| Date: 11/26/18  | Date: 11/26/2018   |

|  |  |
|--|--|
| Approved pursuant to ORS 291.047 by the Oregon Department of Justice |  |
| Signature:<br>See approval Email Dated:<br>Nov 20, 2018              |  |
| Name:<br>Janet Bonth   |  |
| Title: Assistant Attorney General                                    |  |
| Date:  |  |

For questions on this on executing a Participating Addendum, please contact:

NASPO ValuePoint

|                                      |                             |
|--------------------------------------|-----------------------------|
| Cooperative Development Coordinator: | Ted Fosket                  |
| Telephone:                           | (907) 723-3360              |
| Email:                               | tfosket@naspovaluepoint.org |



## EXECUTIVE SUMMARY – AWARD RECOMMENDATION

October 11, 2018



To: NASPO ValuePoint Management Board

From: Ted Fosket for WIC Formula

RE: Evaluation/Award Summary and Recommendation for NASPO ValuePoint ITB DASPS-2205-18

This award recommendation was prepared by NASPO ValuePoint staff for use by the Management Board. The official award documents are maintained by the Lead State in accordance with its procurement laws.

**Background:** The NASPO ValuePoint Management Board authorized the State of Oregon to conduct a solicitation to establish a multistate contract for WIC Infant Formula. The Invitation to Bid (ITB) and review are completed. The sourcing team has one award recommendation that is being brought to the Management Board for approval. The resulting contract portfolio will be established for the Master Agreement initial term of three (3) years. The Master Agreements may be extended up to three additional years in either 1-year, 2-year or 3-year increments. The total Master Agreement period with extensions will not exceed six (6) years.

**Sourcing Team:** The ITB was led by the State of Oregon and included a subject matter expert from the State of Washington, and the NASPO ValuePoint staff provided project oversight. We also received consulting support from the USDA Food and Nutrition Services.

**ITB Information:** The ITB was issued on May 24, 2018. It was amended nine (9) times and closed on October 2, 2018.

**Bid Information:** We received bids from three (3) suppliers. The Sourcing Team met via conference calls to complete the review of each bidder and to verify that all required documents were submitted.

**Bid Opening:** All the bids were responsive and received on time in accordance to ITB Section 1.2. The bids were opened at the DAS PS, General Service Building in the Neahkahnie Conference Room on the First Floor of, 1225 Ferry Street SE, Salem, Oregon. The pertinent information read at the bid opening included the: *Offeror's Name; Product Name Being Bid; Physical Form; Unit Size; Manufacturer's Lowest Wholesale Full Truckload Price; Rebate Bid Per Unit; Net Cost Per Unit; and Total Net Cost Per Month.*

**Award Summary:** The Intent to Award is shown in the following summary:

| Milk-Based   | Physical Form            | Formula Name             | Total Net Cost per Physical Form |
|--------------|--------------------------|--------------------------|----------------------------------|
| Abbott       | Powder                   | Similac Advance          | -\$3,122,744.570                 |
|              | Liquid Concentrate       | Similac Advance          | -\$24,578.400                    |
|              | Ready-to-Feed            | Similac Advance          | -\$75,944.960                    |
|              | Total Net Cost Per Month |                          | -\$3,071,378.010                 |
| Mead Johnson | Powder                   | Enfamil Infant           | -\$1,619,159.729                 |
|              | Liquid Concentrate       | Enfamil Infant           | -\$11,085.360                    |
|              | Ready-to-Feed            | Enfamil Infant           | -\$22,491.392                    |
|              | Total Net Cost Per Month |                          | -\$1,652,736.481                 |
| Gerber       | Powder                   | Gerber Good Start Gentle | \$2,747,197.726                  |
|              | Liquid Concentrate       | Gerber Good Start Gentle | \$2,963.950                      |

|  |                          |                          |                        |
|--|--------------------------|--------------------------|------------------------|
|  | Ready-to-Feed            | Gerber Good Start Gentle | \$2,523.391            |
|  | Total Net Cost Per Month |                          | <b>\$2,752,685.067</b> |

Notes: Bidder with the lowest total net cost per month for milk-based is highlighted in green.

| Soy-Based | Physical Form            | Formula Name       | Total Net Cost per Physical Form |
|-----------|--------------------------|--------------------|----------------------------------|
| Abbott    | Powder                   | Similac Soy Isomil | \$102,159.000                    |
|           | Liquid Concentrate       | Similac Soy Isomil | \$261,900                        |
|           | Ready-to-Feed            | Similac Soy Isomil | \$2,667.040                      |
|           | Total Net Cost Per Month |                    | <b>\$105,087.940</b>             |

|        |                          |                       |                      |
|--------|--------------------------|-----------------------|----------------------|
| Gerber | Powder                   | Gerber Good Start Soy | \$105,503.508        |
|        | Liquid Concentrate       | Gerber Good Start Soy | \$2,349.690          |
|        | Ready-to-Feed            | Gerber Good Start Soy | \$578.476            |
|        | Total Net Cost Per Month |                       | <b>\$108,431.674</b> |

|              |                          |                  |                      |
|--------------|--------------------------|------------------|----------------------|
| Mead Johnson | Powder                   | Enfamil ProSobee | \$152,645.244        |
|              | Liquid Concentrate       | Enfamil ProSobee | \$2,470.590          |
|              | Ready-to-Feed            | Enfamil ProSobee | \$909.808            |
|              | Total Net Cost Per Month |                  | <b>\$156,025.642</b> |

Notes: Bidder with the lowest total net cost per month for milk-based is highlighted in green.

#### Key benefits available in this award:

1. This award provides a vehicle for State and Local WIC administrators to continue using rebate programs established by the USDA, Food and Nutrition Services (FNS) Agency. Access to the contracts is limited to agencies that currently participate in the NASPO ValuePoint Infant Formula Rebate Alliance.
2. Under the new contract, the discount for the Milk-Based Formula is approximately 21% higher than the current contract, and the discount for Soy-Based Formula is approximately 36% higher than the current contract.

**Conclusion:** The State of Oregon, Department of Administrative Services, Procurement Services, and Department of Justice have reviewed and approved these award recommendations. I applaud the excellent work and analysis of the sourcing team and recommend your approval of the proposed awards and ask that we permit the State of Oregon to move ahead with establishing a Master Agreement.