

Special Supplemental Nutrition Program
for Women, Infants and Children
of the States of Maine, Connecticut, New Hampshire, Rhode Island and the
Commonwealth of Massachusetts

INFANT FOODS REBATE MASTER AGREEMENT

This Infant Foods Rebate Master Agreement, hereinafter referred to as the “Contract”, is entered into by the Department of Health and Human Services of the State of Maine on behalf of the States of Connecticut, New Hampshire, Rhode Island, and the Commonwealth of Massachusetts, hereinafter referred to as “the State” or “States”; and Hero Group, Inc DBA Beech Nut Nutrition, hereinafter referred to as the “Manufacturer”.

This Contract shall be effective for thirty-six (36) months effective October 1, 2009, with a unilateral option of the States, either individually or together, to continue the Contract for two additional periods of twelve (12) months each. Due to the administrative burden necessary to rebid this Contract, the States will notify the manufacturer six months prior to the end of the initial Contract, of any renewals, if the extension option will be exercised. Such notification shall have no effect on the remainder of the Contract or extension in effect at that time. The States also reserve the unilateral right to order changes and/or to delay initiation of the Contract if necessary and if such changes or delays do not alter the scope of the Contract.

I. THE MANUFACTURER AGREES TO THE FOLLOWING PROVISIONS:

A. PROVISION OF INFANT FOODS AND INFANT CEREALS

The Manufacturer agrees to provide, for purchase by all authorized WIC food stores and pharmacies, infant foods and cereals as specified in paragraphs 1-3 below. Said infant foods and cereals shall be provided by the Manufacturer in sufficient supply, through retail outlets, to serve 100% of the WIC eligible caseload, and to meet WIC’s growth needs in the States. The Manufacturer agrees to remit to the States’ WIC Programs a rebate per ounce of infant foods and infant cereals purchased as set forth in part I.B of this Contract.

1. Infant Fruits

Allowed

- Any variety of single ingredient commercial infant food fruit without added sugars, starches or salt, in 4 ounce containers.
- Combinations of single ingredients (e.g. apples and bananas).

Infant Fruits (con't.)

Not Allowed

- Mixtures with cereal or infant food desserts (e.g. peach cobbler).
- Due to current cost differences, organic or foods with DHA added are not allowed.

The Manufacturer is required to provide at least three varieties/types of single ingredient fruits. The three single ingredient fruits must include (at a minimum) Applesauce, Banana, and Pear. All varieties must meet United States Department of Agriculture (USDA) regulatory requirements for use in the WIC Program. If the Manufacturer cannot supply such products, then it shall allow the states to issue to participants drafts, checks or vouchers for another manufacturer's comparable product(s) with no state agency breach of Contract occurring. Some special cases may require fruits with further restrictions for documented dietary or religious reasons, e.g. kosher foods. The states must be able to provide at least one kosher infant fruit product to participants. If the Manufacturer does not produce a kosher infant fruit, the Manufacturer shall allow the States to issue to participants drafts, checks or vouchers for another manufacturer's comparable product with no State or State Agency breach of contract occurring and no rebate being required.

Any other infant fruit produced by the Manufacturer, authorized by the State WIC agency and agreed upon by both parties during the contract, including any extensions, shall receive rebate.

2. Infant Vegetables:

Allowed

- Any variety of single ingredient commercial infant food vegetables without added sugars, starches or salt, in 4 ounce containers.
- Combinations of single ingredients (e.g., peas and carrots).

Not Allowed

- Due to current cost differences, organic or foods with DHA added are not allowed.

The Manufacturer is required to provide at least five varieties/types of single ingredient vegetables. The five single ingredient vegetables must include (at a minimum) Sweet Potato, Squash, Peas, Green Beans, and Carrots. All varieties must meet United States Department of Agriculture (USDA) regulatory requirements for use in the WIC Program. If the Manufacturer cannot supply such products, then it shall allow the states to issue to participants drafts, checks or vouchers for another manufacturer's comparable product(s) with no state agency breach of Contract occurring. Some special cases may require vegetables with further restrictions for documented dietary or religious reasons, e.g. kosher foods. The states must be able to provide at least one kosher infant vegetable product to participants. If the Manufacturer does not produce a kosher infant vegetable, the Manufacturer shall allow the States to issue to participants drafts, checks or vouchers for another manufacturer's comparable product

with no State or State Agency breach of contract occurring and no rebate being required.

Any other infant vegetable produced by the Manufacturer, authorized by the State WIC agency and agreed upon by both parties during the contract, including any extensions, shall receive rebate.

3. Infant Meats:

Allowed

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

Not Allowed

- Infant food combinations (e.g. meat and vegetables) or dinners (e.g. spaghetti and meatballs).
- Graduate or toddler foods.
- Due to current cost differences, organic or foods with DHA added are not allowed.

The Manufacturer must provide at least three varieties/types of meats. The three single major ingredient meats must include (at a minimum) Beef, Chicken, and Turkey. All varieties must meet USDA regulatory requirements for use in the WIC Program. If the Manufacturer cannot supply such products, then it shall allow the states to issue to participants drafts, checks or vouchers for another manufacturer's comparable product(s) with no state agency breach of Contract occurring. Some special cases may require meats with further restrictions for documented dietary or religious reasons, e.g. kosher foods. The states must be able to provide at least one kosher infant meat product to participants. If the Manufacturer does not produce a kosher infant meat, the Manufacturer shall allow the States to issue to participants drafts, checks or vouchers for another manufacturer's comparable product with no State or State Agency breach of contract occurring and no rebate being required.

Any other infant meat produced by the Manufacturer, authorized by the State WIC agency and agreed upon by both parties during the contract, including any extensions, shall receive rebate.

4. Infant Cereal:

Provide at the retail level infant cereal in 8 oz, 16 oz, and 24 oz container. The following specifications must be met:

- a. The contractor shall provide a rebate for 8 oz, 16 oz and 24 oz container (if manufactured by the contractor) of infant cereal redeemed by WIC retail vendors. The contractor must offer at least three types of cereals, one of which must be Rice. Acceptable types of cereals include Rice, Barley, Oatmeal,

Wheat, and Mixed. Any other infant cereal produced by the Contractor and authorized by the State WIC agency during the contract, including any extensions, shall receive rebate. Some special cases may require cereals with further restrictions, e.g. kosher foods, for documented dietary or religious reasons.

- b. Infant cereal shall be manufactured under and comply with all applicable provisions of the Federal Food, Drug and Cosmetic Act, as amended, and all regulations promulgated there under.
- c. Infant cereal shall be nutritionally complete, not requiring the addition of any ingredient other than water.
 - Infant cereal shall be a dry type without added fruit, fruit flakes, infant formula, or yogurt.
 - The cereal must be plain, dry infant cereal, not wet-packed (i.e. jarred).
 - Cereal shall contain a minimum of 45 milligrams of iron per 100 grams of dry cereal (i.e. iron content per 1/2 dry ounces = 45% of US RDA for infants.)

All infants are eligible to receive 24 oz of infant cereal each month. This is a maximum amount and it is not guaranteed this quantity will be purchased. Each participating state reserves the right to determine their authorized package sizing and product variety.

B. CONTRACT PAYMENT AMOUNT

The Manufacturer agrees to pay each of the States' WIC Programs a rebate amount for Infant Foods (fruits/vegetables/meats), and Infant Cereal as specified in the bid as follows:

Rebate Amount		Product
\$ 0.037	Per Ounce Authorized	Infant Fruits/Vegetables
\$ 0.059	Per Ounce Authorized	Infant Meats
\$ 0.069	Per Ounce Authorized	Infant Cereal

C. METHOD OF PAYMENT

The Manufacturer(s) shall make such rebate payment by check/wire transfer/EFT (electronic fund transfer), payable to each State, at the determination and request of each State which is a party to the agreement as follows:

<p>Treasurer - State of Connecticut Department of Public Health WIC Program 410 Capitol Avenue MS # 11 WIC PO Box 340308 Hartford CT 06134-0308</p>	<p>Treasurer- State of Maine Maine WIC Nutrition Program Key Plaza, 6th Floor 11 SHS 286 Water St, Augusta, ME 04330</p>
<p>Treasurer - Commonwealth of Massachusetts Massachusetts Department of Public Health WIC Program 250 Washington Street, 6th Floor Boston, MA 02108-4619</p>	<p>Treasurer State of New Hampshire Department of Health and Human Services Nutrition & Health Promotion Section 29 Hazen Drive Concord, NH 03301</p>
<p>FSMC Security State Bank PO BOX 280 Phone:320-664-7122 Howard Lake, MN 55349</p>	

STATE CONTACT INFORMATION:

<p>John D. Frassinelli, MS, RD Connecticut State Director 410 Capitol Avenue, MS #11HLS Hartford CT 06134 Phone: 860.509.8084 Fax: 860.509.8391 John.Frassinelli@ct.gov</p>	<p>Lisa Burgess Hodgkins, Director Department of Health and Human Services Maine WIC Nutrition Program 286 Water St, Key Plaza, 6th Floor Augusta, ME 04330 Phone: 207-287-5342 Fax: 207-287-3993 lisa.hodgkins@maine.gov</p>
<p>Beverly Andrew-Simon Director, Fiscal & Administration WIC Nutrition Program Massachusetts Department of Public Health 250 Washington Street, 6th Floor Boston, MA 02108-4619 Phone: 617-624-6109 Fax: 617-624-6179 beverly.andrew@state.ma.us</p>	<p>Margaret Murphy, Administrator Nutrition and Health Promotion Section Department of Health and Human Services 29 Hazen Drive, Concord NH 03301 Phone: 603-271-4545 Fax: 603-271-4779 mmurphy@dhhs.state.nh.us</p>
<p>Ann Barone Chief, WIC Program Division of Family Health Rhode Island Department of Health-Cannon Building 3 Capitol Hill, Room 302 Providence, RI 02909-5097 Phone: 401-222-4604 Fax: 401-222-1442 Ann.Barone@health.ri.gov</p>	

D. PAYMENT AND INTEREST PENALTIES

The Manufacturer shall submit payment to the States within thirty (30) days of the date of the receipt of the States' invoices which will either be transmitted to the Manufacturer by FAX or E-Mail, with the time and date of the transmission documented on the invoice, or by express or certified mail, return receipt requested. If the Manufacturer does not mail, as evidenced by a postmark or receipt, or authorize a funds transfer payment within 30 days of the receipt as evidenced by receipt or transmission data, of the invoice, the Manufacturer will pay the State submitting the invoice, in addition to the amount due, interest at a rate of 0.8 percent per month or portion thereof on the unpaid balance from the

expiration of such 30 day period until such time as the check is mailed to the State.

E. DISPUTE RESOLUTION

1. The parties agree that each State shall be responsible for implementation of The Infant Foods Rebate Contract and The Infant Cereals Contract within the State. Disputes between a State and the Manufacturer arising out of this Contract shall be resolved between the State and the Manufacturer in accordance with terms of this paragraph.
2. Each State agrees to resolve promptly any billing errors that the State identifies.
3. The Manufacturer shall notify the State(s) of any dispute concerning a rebate invoice within 90 days of receipt of the invoice. Each State shall respond to the Manufacturer within 90 days of receipt of the billing dispute. All billing disputes must be raised no later than December 31 following the fiscal year to which the dispute applies. Failure to notify a State of a billing dispute by December 31 shall result in waiver of the dispute.
4. Manufacturer shall have no right of offset against future invoices for billing errors without advance approval from the State(s).
5. Manufacturer shall not withhold any rebate payments under any circumstances.

F. COVENANT AGAINST CONTINGENT FEES

The Manufacturer warrants that no commissions, percentages, brokerage, gratuities, kickback, or contingency fees were paid in connection with the Contract, nor exchanged for substantial consideration by the Manufacturer for the purpose of securing this Contract.

G. AUDITS AND RECORDS

1. The Manufacturer shall maintain books, records, and documents in accordance with generally accepted accounting procedures and practices.
2. The Manufacturer assures that these records created solely for this Contract shall be subject, during normal business hours, to inspection, review, or audit by States' personnel and other personnel duly authorized by the States, as well as by Federal personnel also duly authorized.
3. The Manufacturer shall maintain and file with the States the progress, fiscal, inventory, and other reports as the States may require within the period of this Contract.

4. The Manufacturer shall allow public access to all documents, papers, letters, or other material made, or received by the Manufacturer in conjunction with this Contract. It is expressly understood that receipt of substantial evidence of the Manufacturer's refusal to comply with this provision shall constitute a breach of this Contract. In addition to termination of this Contract, the Manufacturer shall be barred from bidding in the solicitation to replace the Contract.

H. RETENTION OF RECORDS

1. The Manufacturer shall retain all financial records, supporting documents, statistical records, and any other documents created solely for this Contract for a period of four (4) years after termination of this Contract including any option year. If an audit or litigation has been initiated and has not been resolved at the end of the four (4) years including any option year, the records shall be retained until resolution of the audit or litigation.
2. The Manufacturer shall allow persons duly authorized by state or federal WIC Program personnel to have full access to, and the right to examine any of the records and documents in G.1 above, during the retention period.

I. MONITORING

1. The Manufacturer shall provide to the States access to or furnish to the States whatever information is necessary to effect monitoring of this Contract.
2. The Manufacturer shall permit the States to monitor the Contract according to applicable regulations of state and federal governments.

J. NONDISCRIMINATION

The Manufacturer shall operate under this Contract so that no person, otherwise qualified, is denied employment or other benefits on the grounds of race, color, sex, creed, national origin, age, marital status, religion, ancestry, or physical or mental handicap which would not reasonably preclude the required performance. Except in subcontracts for standard commercial supplies or raw materials, the Manufacturer shall include a clause similar to this clause in all subcontracts. The Manufacturer and each subcontractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

K. FEDERAL LOBBYING PROHIBITION

1. In accordance with Section 1352 of Title 31 of the United States Code, the States and all subgrantees, subcontractors, etc. of the States are prohibited from using any federal funds for the purpose of lobbying Congress or any

federal agency in connection with the awarding of a particular contract, grant, cooperative agreement or loan.

2. Further, any recipient of such federal funds including subgrantees, subcontractors, etc., which receives over \$100,000 in federal monies must also file a Disclosure of Lobbying Activities form (Federal Form SF LLL), which requires the disclosure of any and all such lobbying activities, even those funded with non-federal monies.
3. By entering into this Contract with the States the Manufacturer hereby specifically agrees to abide by all applicable requirements of 31 United States Code, Section 1352.

L. NON-HIRING OF EMPLOYEES

1. The Manufacturer warrants that it has not paid, directly or indirectly, any officer or employee of the States any wages, compensation, or gifts in exchange for acting as officer, agency, employee, subcontractor, or consultant to the Manufacturer in connection with this Contract.
2. The Manufacturer further agrees that no employee of the States, whose duties as such employee include matters relating to or affecting the subject matter of this Contract shall while such employee, become or be an employee of the Manufacturer.

M. DRUG-FREE WORKPLACE

By signing this agreement, the Provider certifies that it shall provide a drug-free workplace by: publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition; establishing a drug-free awareness program to inform employees about the dangers of drug abuse in the workplace, the grantee's policy of maintaining a drug-free workplace, available drug counseling and rehabilitation programs, employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace; providing a copy of the drug-free workplace statement to each employee to be engaged in the performance of this agreement; notifying the employees that as a condition of employment under the agreement the employee will abide by the terms of the statement and notify the employer of any criminal drug conviction for a violation occurring in the workplace no later than five days after such conviction.

The provider shall notify the state agency within ten days after receiving notice of criminal drug convictions occurring in the workplace from an employee, or otherwise receiving actual notice of such conviction, and will take one of the following actions within 30 days of receiving such notice with respect to any

employee who is so convicted: take appropriate personnel action against the employee, up to and including termination, or requiring the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

N. DEBARMENT AND SUSPENSION

The Manufacturer certifies by execution of this Contract that it is eligible for participation in federal-sponsored programs under Executive Order 12549, Debarment and Suspension. A false statement regarding the Manufacturer's status will be treated as a material breach of this Contract and may be grounds for termination at the option of the States. The manufacturer also certifies that it is in compliance with 7 C.F.R. Part 3017 regarding debarment and suspension.

O. OFFICIAL USE

Use of the acronym "WIC" and the WIC logo, including close facsimiles thereof, in total or in part, is reserved for the official use of the WIC Program. Such official use is restricted to purposes consistent with the WIC Program regulations, FNS Instructions, and policies. Materials which display WIC identifies will be used primarily for identification, public notification, and outreach purposes.

P. NOTIFICATIONS

The manufacturer will provide advance notification of 120 days to the States at the same time retailers/wholesalers/customers are notified of any changes in the label, unit size and product reformulation of the infant foods. The manufacturer will provide within 48 hours such notice of any product recall to each state named in this Contract.

II. THE STATES AGREE TO THE FOLLOWING PROVISIONS:

A. REPORTS

Each of the States' WIC Programs shall provide to the Manufacturer an invoice that indicates the total number of ounces of infant foods or total number of ounces of infant cereal authorized on all drafts redeemed by the State's WIC Program participants in a calendar month. The invoices will be transmitted to the Manufacturer by FAX or E-MAIL system, documenting time and dates on the invoice, or by express or certified mail, return receipt requested, by each State's WIC Program and shall specify the total products authorized on redeemed drafts for a one-month period. Invoices for each month will be sent by FAX or e-mailed within 45 days after the last day of the month. The WIC Program recognizes that we cannot guarantee that all authorized product has

been purchased nor that we can provide an accurate estimate of percentage not purchased. Bidders are expected to take this into consideration when submitting their bids.

B. INVOICES AND BILLING

States will designate one of the following methods of invoicing and billing for rebates. States may change the option chosen with 120 days notice to contractor, unless a shorter period is required by either state law or federal rule. For purposes of this Section: "State(s)" means States or Commonwealths or Tribes; "product" means the appropriate infant food or cereal being considered; "unit" means an individual package of the appropriate infant food or cereal being considered; "food instrument/EBT" means the voucher, check, draft, coupon, or other document issued by the States for a Participant to obtain the product from a vendor; "vendor" means the actual business where the transaction took place; and "manufacturer" means the contractor whose product was a part of the transaction.

1. Each State shall prepare an invoice for the MANUFACTURER'S monthly rebate payment; the invoice shall contain the methodology and data used to calculate the monthly rebate payment. The invoice shall be FAXED or electronically submitted by e-mail (per each State's preference) by each State to the MANUFACTURER, to be followed with a hard copy by mail.
2. The number of units for each type and size of product included in this AGREEMENT and issued to participants on the food instrument/EBT redeemed by WIC participants shall be calculated monthly. Each State shall select a billing strategy from the menu of options below (Subsections a through e) to take into account the number of units of product for which food instruments were issued but not redeemed.
 - a. Retail Quantity Capture Method: (based on retailer capture of the number of units purchased per food instrument and the State's capability to analyze the retailer information)

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

- b. Vendor Price Table Method: (based on the actual purchase price as captured by each vendor for each product, resulting in the development of a price reference table)

For each issued and redeemed contract food instrument/EBT, the State shall identify the type of product listed on the food instrument/EBT, the number of units issued, and the name and address of the vendor where the food instruments were redeemed. The redemption amount for each

food instrument will be divided by the vendor's price per unit that was in effect at the time of the redemption for the relevant type of product. The resulting number of units to be submitted to the MANUFACTURER for rebates will be rounded either up or down to the nearest whole number. The rounded number of units will represent the quantity of units redeemed. The quantity of units redeemed will never exceed the number of units issued on the food instrument. The vendor's price for each type of product will be obtained from the vendor's price surveys which will be updated at least annually.

- c. Vendor Class Price Table Method I: (based on average retail prices for rebated product by vendor peer group obtained from annual price surveys)

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

- d. Vendor Class Price Table Method II: (based on average retail prices for rebated product by vendor peer group obtained from statistically valid samples of annual price surveys)

For each issued and redeemed contract food instrument, the State shall identify the number of units issued by type, and shall identify the relevant vendor peer groups from which purchases were made. The sum of redemption amount for the food instrument will be divided by the average retail price of the relevant type of product and the relevant peer group. The resulting number of units will be rounded either up or down to the nearest whole number. The rounded number of units will represent the quantity of units redeemed for rebates. The quantity of units redeemed will never exceed the number of units issued on the food instruments. The average price for each type of product and vendor peer group will be calculated annually from a statistically valid sample of vendors within each peer group. The States will provide copies of the information contained in the surveys constituting the statistically valid sample vendors, including the statistical analysis.

- e. Calculated Discount Based on Vendor Price Tables Method: (based on annual determination of partial redemption rate)

The State shall use individual vendor price tables to annually compare actual purchase amounts for food instruments (one month volume) against the average price for the type and size of product specified on those food instruments. The average price for each type and size of product for each vendor will be obtained from the vendor price surveys. This data will be used to calculate a partial redemption rate to be used as a calculated discount to all units of product present for rebate reimbursement. The rounded number of units will be used as the quantity of units redeemed for rebates.

C. AUDITS AND RECORDS

The States' WIC Programs will each provide to the Manufacturer, upon request, a monthly report specifying the number of ounces of infant foods or infant cereals authorized on all drafts redeemed during the month, as well as 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.

D. LIST OF VENDORS

If requested, the States will supply the Manufacturer with a list of approved retail vendors in each state prior to the effective date of the Contract. The States will also provide their minimum stocking requirements.

E. DESIGNATION OF SOLE SOURCE

The States will designate the Manufacturer's infant foods as the only infant foods and infant cereals that can be purchased with WIC food instruments by WIC participants in the States, with the exceptions for documented availability, dietary or religious reasons stated in III. A. 1-3, of the IFB.

F. MONITORING OF RETAIL VENDORS

The States shall monitor all authorized WIC retail vendors for compliance with the designation of the Manufacturer's product as being the only such products that can be purchased with WIC food instruments

III. THE MANUFACTURER AND THE STATES MUTUALLY AGREE:

A. TERMINATION

1. Termination for Breach

Unless the Manufacturer's breach of a material provision of this Contract is waived by the States in writing, the States may individually or as a group, by

written notice to the Manufacturer specifying Manufacturer's breach, terminate its Contract upon no less than twenty-four (24) hours notice unless the Manufacturer has cured the breach within time frames agreed upon by both parties. This notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. The provisions herein do not limit the States' right to remedies at law or to damages.

2. Termination due to Non-availability of Funds

If the Congress of the United States or the U. S. Department of Agriculture fails to make funds available for continued performance for any fiscal period of this Contract, this Contract shall be cancelled automatically as of the beginning of the fiscal period for which funds are not available; provided, however, that this will not affect either the States' rights or the Manufacturer's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Manufacturer and the States from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The States shall notify the Manufacturer as soon as they have knowledge that funds may not be available for the continuation of this Contract.

B. NOTICE AND CONTACT

The representative of the Manufacturer responsible for administration of the services under this Contract is Tim Kennedy, 13 British American Blvd., Latham, NY 12110; (518)595-6612. In the event that different representatives are designated by either party after execution of this Contract, notice of the name and address of the new representative shall be provided immediately, in writing, to the other party and this notification attached to the originals of this Contract.

C. RENEGOTIATION OR MODIFICATION

1. Modifications of the provisions of this Contract shall only be valid when they have been reduced to writing and duly signed and approved by all involved parties. The parties agree to renegotiate this Contract if federal and/or state revisions of any applicable laws or regulations make changes in this Contract necessary.
2. Price increases in the Manufacturer's wholesale price of any forms of the product listed in Section I.B. shall result in an automatic rebate increase on a cent-for-cent basis. The States' WIC Programs shall be notified in writing of any increase in the wholesale prices at least thirty (30) days in advance of the time of any such increase or at the same time as wholesalers, if less than thirty days notice is given. The per ounce rebate shall increase effective the first day of the month in which prices were increased. Any decrease in the wholesale price shall result in a cent for cent rebate decrease.

D. GOVERNING LAW

This Contract shall be deemed to have been executed and entered into separately in the State of Connecticut, the State of Maine, the State of the Commonwealth of Massachusetts, the State of New Hampshire, the State of Rhode Island, and shall be construed, performed, and enforced in all respects in the respective jurisdiction in accordance with the laws each state. Each party shall perform its obligations hereunder in accordance with the terms and conditions of this Contract.

E. NON-ASSIGNMENT

No party shall assign, sublicense, or otherwise transfer its rights, duties, and/or obligations under this Contract without the prior written consent of the other party, which consent shall not unreasonably be withheld. Any sublicense, assignment, or transfer otherwise occurring shall be null and void, provided, however, that each of the States shall at all times be entitled to assign or transfer its rights, duties, and/or obligations under this Contract to another governmental agency within each State upon giving prior written notice to the Manufacturer.

F. RELEASE OF PARTICIPANT INFORMATION

Due to federal confidentiality requirements, the Manufacturer may not have access to actual or microfilmed food instruments or other client records which identify WIC participants.

G. CONFIDENTIALITY OF VENDOR INFORMATION

States are prohibited from disclosing confidential Vendor information to the Manufacturer, per 7 C.F.R. § 246.26(e).

H. ALL TERMS AND CONDITIONS INCLUDED

All conditions of the States' Invitation to Bid for a WIC Infant Foods Rebate System and WIC Infant Cereal Rebate System and the Manufacturer's accepted responses to the bid as well as the Bid/Proposal and Contract Affidavit are hereby incorporated herein and are a part of this Contract. This Contract contains all of the terms and conditions agreed upon by the parties.

I. INDEMNITY CLAUSE

The Manufacturer, being an independent contractor and not an employee of the States, agrees to carry adequate public liability insurance of not less than \$1,000,000 per occurrence and other appropriate forms of insurance. The Manufacturer agrees to hold the States harmless, for all claims, losses, or suits accruing from or resulting from defects in the contracted products. The States

shall give the Manufacturer written notice of each such claim or suit and full right and opportunity to conduct the Manufacturer's own defense thereof, together with full information and all reasonable cooperation.

J. APPENDICES

1. **Appendix A** - standard clauses for **Maine** contracts is attached hereto and is hereby made a part of the AGREEMENT as is set forth fully herein in reference to the AGREEMENT between the MANUFACTURER and Maine.
2. **Appendix B** - standard clauses for **Connecticut** contracts is attached hereto and is hereby made a part of the AGREEMENT as is set forth fully herein in reference to the AGREEMENT between the MANUFACTURER and Connecticut.
3. **Appendix C** - standard clauses for **Massachusetts** contracts is attached hereto and is hereby made a part of the AGREEMENT as is set forth fully herein in reference to the AGREEMENT between the MANUFACTURER and Massachusetts.
4. **Appendix D** - standard clauses for **New Hampshire** contracts is attached hereto and is hereby made a part of the AGREEMENT as is set forth fully herein in reference to the AGREEMENT between the MANUFACTURER and New Hampshire.
5. **Appendix E** – standard clauses for **Rhode Island** contracts is attached hereto and is hereby made a part of the AGREEMENT as is set forth fully herein in reference to the AGREEMENT between the MANUFACTURER and Rhode Island.
6. **Appendix F** – Beech Nut Nutrition National Price List for WIC bid items

Appendix A
Maine
INFANT FOODS REBATE MASTER AGREEMENT

Appendix A -State Standard Contract Clauses -Maine contracts

RIDER B
METHOD OF PAYMENT AND OTHER PROVISIONS

1. **AGREEMENT AMOUNT** \$ _____ N/A _____

2. **INVOICES AND PAYMENTS** The Department will pay the provider as follows:

_____ N/A _____

Payments are subject to the Provider's compliance with all items set forth in this Agreement and subject to the availability of funds.

3. **BENEFITS AND DEDUCTIONS** If the Provider is an individual, the Provider understands and agrees that he/she is an independent contractor for whom no Federal or State Income Tax will be deducted by the Department, and for whom no retirement benefits, survivor benefit insurance, group life insurance, vacation and sick leave, and similar benefits available to State employees will accrue. The Provider further understands that annual information returns, as required by the Internal Revenue Code or State of Maine Income Tax Law, will be filed by the State Controller with the Internal Revenue Service and the State of Maine Bureau of Revenue Services, copies of which will be furnished to the Provider for his/her Income Tax records.

4. **INDEPENDENT CAPACITY** In the performance of this Agreement, the parties hereto agree that the Provider, and any agents and employees of the Provider shall act in the capacity of an independent contractor and not as officers or employees or agents of the State.

5. **DEPARTMENT'S REPRESENTATIVE** The Agreement Administrator shall be the Department's representative during the period of this Agreement. He/she has authority to curtail services if necessary to ensure proper execution. He/she shall certify to the Department when payments under the Agreement are due and the amounts to be paid. He/she shall make decisions on all claims of the Provider, subject to the approval of the Commissioner of the Department.

6. **AGREEMENT ADMINISTRATOR** All progress reports, correspondence and related submissions from the Provider shall be submitted to:

Name: Dena Darveau
Title: Financial Manager, Maine WIC Nutrition Program
Address: SHS 11
286 Water St 6th Floor
Augusta ME 04330

who is designated as the Agreement Administrator on behalf of the Department for this Agreement, except where specified otherwise in this Agreement

The following is designated as the Program Administrator for this Agreement and shall be responsible for oversight of the programmatic aspects of this Agreement.

Name and Title:	Lisa Burgess Hodgkins, Director Maine WIC Nutrition Program
Address:	286 Water St, 6 th Floor Augusta ME 04330
Telephone:	207-287-5342
E-mail address	lisa.hodgkins@maine.gov

7. **CHANGES IN THE WORK** The Department may order changes in the work, the Agreement Amount being adjusted accordingly. Any monetary adjustment or any substantive change in the work shall be in the form of an amendment, signed by both parties and approved by the State Purchases Review Committee. Said amendment must be effective prior to execution of the work.

8. **SUB-AGREEMENTS** Unless provided for in this Agreement, no arrangement shall be made by the Provider with any other party for furnishing any of the services herein contracted for without the consent and approval of the Agreement Administrator. Any sub-agreement hereunder entered into subsequent to the execution of this Agreement must be annotated "approved" by the Agreement Administrator before it is reimbursable hereunder. This provision will not be taken as requiring the approval of contracts of employment between the Provider and its employees assigned for services thereunder.

9. **SUBLETTING, ASSIGNMENT OR TRANSFER** The Provider shall not sublet, sell, transfer, assign or otherwise dispose of this Agreement or any portion thereof, or of its right, title or interest therein, without written request to and written consent of the Agreement Administrator. No subcontracts or transfer of agreement shall in any case release the Provider of its liability under this Agreement.

10. **EQUAL EMPLOYMENT OPPORTUNITY** During the performance of this Agreement, the Provider agrees as follows:

a. The Provider shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a bona fide occupational qualification. The Provider shall take affirmative action to ensure that applicants are employed and employees are treated during

employment, without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation.

Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Provider agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.

b. The Provider shall, in all solicitations or advertising for employees placed by or on behalf of the Provider relating to this Agreement, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.

c. The Provider shall send to each labor union or representative of the workers with which it has a collective bargaining agreement, or other agreement or understanding, whereby it is furnished with labor for the performance of this Agreement a notice to be provided by the contracting agency, advising the said labor union or workers' representative of the Provider's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Provider shall inform the contracting Department's Equal Employment Opportunity Coordinator of any discrimination complaints brought to an external regulatory body (Maine Human Rights Commission, EEOC, Office of Civil Rights) against their agency by any individual as well as any lawsuit regarding alleged discriminatory practice.

e. The Provider shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment and in the provision of service to include accessibility and reasonable accommodations for employees and clients.

f. Contractors and subcontractors with contracts in excess of \$50,000 shall also pursue in good faith affirmative action programs.

g. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

11. **EMPLOYMENT AND PERSONNEL** The Provider shall not engage any person in the employ of any State Department or Agency in a position that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. The Contractor shall not engage on a full-time, part-time or other basis during the period of this Agreement, any other personnel who are or have been at any time during the period of this Agreement in the employ of any State Department or Agency, except regularly retired employees, without the written consent of the State Purchases Review Committee. Further, the Provider shall not engage on this project on a full-time, part-time or other basis during the period of this Agreement any retired employee of the Department who has not been retired for at least one year, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

12. **STATE EMPLOYEES NOT TO BENEFIT** No individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom directly or indirectly that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. No other individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom directly or indirectly due to his employment by or financial interest in the Provider or any affiliate of the Provider, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

13. **WARRANTY** The Provider warrants that it has not employed or contracted with any company or person, other than for assistance with the normal study and preparation of a proposal, to solicit or secure this Agreement and that it has not paid, or agreed to pay, any company or person, other than a bona fide employee working solely for the Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Agreement. For breach or violation of this warranty, the Department shall have the right to annul this Agreement without liability or, in its discretion to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

14. **ACCESS TO RECORDS** The Provider shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this Agreement and make such materials available at its offices at all reasonable times during the period of this Agreement and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) rules. The Provider shall allow inspection of pertinent documents by the Department or any

authorized representative of the State of Maine or Federal Government, and shall furnish copies thereof, if requested.

15. **TERMINATION** The performance of work under the Agreement may be terminated by the Department in whole, or in part, whenever for any reason the Agreement Administrator shall determine that such termination is in the best interest of the Department. Any such termination shall be effected by delivery to the Provider of a Notice of Termination specifying the extent to which performance of the work under the Agreement is terminated and the date on which such termination becomes effective. The Agreement shall be equitably adjusted to compensate for such termination, and modified accordingly.

16. **GOVERNMENTAL REQUIREMENTS** The Provider warrants and represents that it will comply with all governmental ordinances, laws and regulations.

17. **GOVERNING LAW** This Agreement shall be governed in all respects by the laws, statutes, and regulations of the United States of America and of the State of Maine. Any legal proceeding against the State regarding this Agreement shall be brought in State of Maine administrative or judicial forums. The Provider consents to personal jurisdiction in the State of Maine.

18. **STATE HELD HARMLESS** The Provider agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims, costs, expenses, injuries, liabilities, losses and damages of every kind and description (hereinafter in this paragraph referred to as "claims") resulting from or arising out of the performance of this Agreement by the Provider, its employees, agents, or subcontractors. Claims to which this indemnification applies include, but without limitation, the following: (i) claims suffered or incurred by any contractor, subcontractor, materialman, laborer and any other person, firm, corporation or other legal entity (hereinafter in this paragraph referred to as "person") providing work, services, materials, equipment or supplies in connection with the performance of this Agreement; (ii) claims arising out of a violation or infringement of any proprietary right, copyright, trademark, right of privacy or other right arising out of publication, translation, development, reproduction, delivery, use, or disposition of any data, information or other matter furnished or used in connection with this Agreement; (iii) Claims arising out of a libelous or other unlawful matter used or developed in connection with this Agreement; (iv) claims suffered or incurred by any person who may be otherwise injured or damaged in the performance of this Agreement; and (v) all legal costs and other expenses of defense against any asserted claims to which this indemnification applies. This indemnification does not extend to a claim that results solely and directly from (i) the Department's negligence or unlawful act, or (ii) action by the Provider taken in reasonable reliance upon an instruction or direction given by an authorized person acting on behalf of the Department in accordance with this Agreement.

19. **NOTICE OF CLAIMS** The Provider shall give the Contract Administrator immediate notice in writing of any legal action or suit filed related in any way to the Agreement or which may affect the performance of duties under the Agreement, and

prompt notice of any claim made against the Provider by any subcontractor which may result in litigation related in any way to the Agreement or which may affect the performance of duties under the Agreement.

20. **APPROVAL** This Agreement must have the approval of the State Controller and the State Purchases Review Committee before it can be considered a valid, enforceable document.

21. **LIABILITY INSURANCE** The Provider shall keep in force a liability policy issued by a company fully licensed or designated as an eligible surplus line insurer to do business in this State by the Maine Department of Professional & Financial Regulation, Bureau of Insurance, which policy includes the activity to be covered by this Agreement with adequate liability coverage to protect itself and the Department from suits. Providers insured through a “risk retention group” insurer prior to July 1, 1991 may continue under that arrangement. Prior to or upon execution of this Agreement, the Provider shall furnish the Department with written or photocopied verification of the existence of such liability insurance policy.

22. **NON-APPROPRIATION** Notwithstanding any other provision of this Agreement, if the State does not receive sufficient funds to fund this Agreement and other obligations of the State, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Agreement.

23. **SEVERABILITY** The invalidity or unenforceability of any particular provision or part thereof of this Agreement shall not affect the remainder of said provision or any other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

24. **INTEGRATION** All terms of this Agreement are to be interpreted in such a way as to be consistent at all times with the terms of Rider B (except for expressed exceptions to Rider B included in Rider C), followed in precedence by Rider A, and any remaining Riders in alphabetical order.

25. **FORCE MAJEURE** The Department may, at its discretion, excuse the performance of an obligation by a party under this Agreement in the event that performance of that obligation by that party is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, or strike or labor dispute, provided that any such event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party. The Department may, at its discretion, extend the time period for performance of the obligation excused under this section by the period of the excused delay together with a reasonable period to reinstate compliance with the terms of this Agreement.

26. **SET-OFF RIGHTS** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State’s option to withhold for the purposes of set-off any monies due to the Provider under

this Agreement up to any amounts due and owing to the State with regard to this Agreement, any other Agreement, any other Agreement with any State department or agency, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Controller.

27. **ENTIRE AGREEMENT** This document contains the entire Agreement of the parties, and neither party shall be bound by any statement or representation not contained herein. No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving party. The parties expressly agree that they shall not assert in any action relating to the Agreement that any implied waiver occurred between the parties which is not expressed in writing. The failure of any party to insist in any one or more instances upon strict performance of any of the terms or provisions of the Agreement, or to exercise an option or election under the Agreement, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the same shall continue in full force and effect, and no waiver by any party of any one or more of its rights or remedies under the Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedy under the Agreement or at law.

Rider D

Additional Requirements

1. Confidentiality. The provider shall comply with Federal and State statutes and regulations for the protection of information of a confidential nature regarding all persons served under the terms of this Agreement. In addition, the provider shall comply with Title II, Subtitle F, Section 261-264 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, titled "Administrative Simplification" and the rules and regulations promulgated thereunder.

To the extent the Provider is considered a Business Associate under HIPAA, the Provider shall execute and deliver in form acceptable to the Department a Business Associate agreement (BA agreement). The terms of the BA agreement shall be incorporated into this Agreement by reference. The Department shall have recourse to such remedies as are provided for in this Agreement for breach of contract, in the event the Provider either fails to execute and deliver such BA agreement to the Department or fails to adhere to the terms of the BA Agreement.

2. Lobbying. No Federal or State appropriated funds shall be expended by the Provider for influencing or attempting to influence, as prohibited by state or federal law, an officer or employee of any Federal or State agency, a member of Congress or a State Legislature, or an officer or employee of Congress or a State Legislature in connection with any of the following covered actions: the awarding of any agreement; the making of any grant; the entering into of any cooperative agreement; or the extension, continuation, renewal, amendment, or modification of any agreement, grant, or cooperative agreement. The signing of this Agreement fulfills the requirement that providers receiving over \$100,000 in Federal or State funds file with the Department with respect to this provision.

If any other funds have been or will be paid to any person in connection with any of the covered actions specified in this provision, the Provider shall complete and submit a "Disclosure of Lobbying Activities" form available at <http://www.whitehouse.gov/omb/grants/#forms>.

3. Drug-Free Workplace. By signing this agreement, the Provider certifies that it shall provide a drug-free workplace by: publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition; establishing a drug-free awareness program to inform employees about the dangers of drug abuse in the workplace, the grantee's policy of maintaining a drug-free workplace, available drug counseling and rehabilitation programs, employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace; providing a copy of the drug-free workplace statement to each employee to be engaged in the performance of this agreement; notifying the employees that as a condition of employment under the agreement the employee will abide by the terms of the statement and notify the employer of any criminal drug conviction for a violation occurring in the workplace no later than five days after such conviction.

The provider shall notify the state agency within ten days after receiving notice of criminal drug convictions occurring in the workplace from an employee, or otherwise receiving actual notice of such conviction, and will take one of the following actions within 30 days of receiving such notice with respect to any employee who is so convicted: take appropriate personnel action against the employee, up to and including termination, or requiring the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

4. Debarment and Suspension. By signing this agreement, the Provider certifies to the best of its knowledge and belief that it and all persons associated with the agreement, including persons or corporations who have critical influence on or control over the agreement, are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

The Provider further agrees that the Debarment and Suspension Provision shall be included, without modification, in all sub-agreements.

5. Environment Tobacco Smoke. By signing this agreement, the Provider certifies that it shall comply with the Pro-Children Act of 1994, P.L. 103-227, Part C, which requires that smoking not be permitted in any portion of any indoor facility owned, leased, or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or MaineCare funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.

Also, the provider of foster care services agrees that it will comply with Resolve 2003, c. 134, which prohibits smoking in the homes and vehicles operated by foster parents.

6. Medicare and MaineCare Anti-Kickback. By signing this agreement, the Provider agrees that it shall comply with the dictates of 42 U.S.C. 1320a-7b(b), which prohibits the solicitation or receipt of any direct or indirect remuneration in return for referring or arranging for the referral of an individual to a provider of goods or services that may be paid for with Medicare, MaineCare, or state health program funds.

<http://www.gpoaccess.gov/uscode/index.html>

7. Publications. When issuing reports, brochures, or other documents describing programs funded in whole or in part with funds provided through this agreement, the Provider agrees to clearly acknowledge the participation of the Department of Health and Human Services in the program. In addition, when issuing press releases and requests for proposals, the Provider shall clearly state the percentage of the total cost

of the project or program to be financed with agreement funds and the dollar amount of agreement funds for the project or program.

8. Ownership. All notebooks, plans, working papers, or other work produced in the performance of this Agreement, that are related to specific deliverables under this Agreement, are the property of the Department and upon request shall be turned over to the Department.

9. Software Ownership. Upon request, the State and all appropriate federal agencies shall receive a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to do so, all application software produced in the performance of this Agreement, including, but not limited to, all source, object, and executable code, data files, and job control language, or other system instructions. This requirement applies only to software that is a specific deliverable under this Agreement, or is integral to the program or service funded under this Agreement, and is primarily financed with funding provided under this Agreement.

10. Provider Responsibilities/Sub agreements. The Provider is solely responsible for fulfillment of this Agreement with the Department. The Provider assumes responsibility for all services offered and products to be delivered whether or not the Provider is the manufacturer or producer of said services.

a. Sub-agreements

1. All sub-agreements must contain the assurances enumerated in Sections 10, 11, and 12 of Rider B and Sections 4, 5, 6, 7 of Rider D;
2. All sub-agreements must be signed and delivered to the Department's Agreement Administrator within five (5) business days following the execution date of the sub-agreement.

b. Relationship between Provider, Subcontractor and Department: The Provider shall be wholly responsible for performance of the entire agreement whether or not subcontractors are used. Any sub-agreement into which the Provider enters with respect to performance under this Agreement shall not relieve the Provider in any way of responsibility for performance of its duties. Further, the Department will consider the Provider to be the sole point of contact with regard to any matters related to this Agreement, including payment of any and all charges resulting from this Agreement. The Department shall bear no liability for paying the claims of any subcontractors, whether or not those claims are valid.

c. Liability to Subcontractor: The requirement of prior approval of any sub-agreement under this Agreement shall not make the Department a party to any sub-agreement or create any right, claim or interest in the subcontractor or proposed subcontractor against the Department. The Provider agrees to defend (subject to the approval of the Attorney General) and indemnify and hold harmless the Department against any claim, loss, damage, or liability against the Department based upon the requirements of Rider B, Section 18.

11. Renewals. This Agreement may be renewed at the discretion of the Department.

12. No Rule of Construction. The parties acknowledge that this Agreement was initially prepared by the Department solely as a convenience and that all parties hereto, and their counsel, have read and fully negotiated all the language used in the Agreement. The parties acknowledge that, because all parties and their counsel participated in negotiating and drafting this Agreement, no rule of construction shall apply to this Agreement that construes ambiguous or unclear language in favor of or against any party because such party drafted this Agreement.

13. Conflict of Interest. The Provider covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Provider further covenants that in the performance of this Agreement, no person having any such known interests shall be employed. **[See also Rider B, #11 and #12]**

RIDER G
IDENTIFICATION OF COUNTRY
IN WHICH CONTRACTED WORK WILL BE PERFORMED

Please identify the country in which the services purchased through this contract will be performed:

United States. Please identify state: ME

Other. Please identify country: _____

Notification of Changes to the Information

The Provider agrees to notify the Division of Purchases of any changes to the information provided above.

RIDER I
MAINE STATE DEPARTMENT OF HEALTH AND HUMAN SERVICES
ASSURANCE OF COMPLIANCE

ASSURANCE OF COMPLIANCE WITH TITLES VI OF THE CIVIL RIGHTS ACT OF 1964, SECTION 504 OF THE REHABILITATION ACT OF 1973, TITLE IX OF THE EDUCATION AMENDMENTS OF 1972, THE AGE DISCRIMINATION ACT OF 1975, THE CODE OF FAIR PRACTICES AND AFFIRMATIVE ACTION AND STATE OF MAINE EXECUTIVE ORDER 17/FY 04/05.

The Provider/Contractor provides this assurance in consideration of and for the purpose of obtaining Federal/State grants, loans, contracts, property, discounts or other Federal/State financial assistance from the U.S./State Departments of Health and Human Services.

By signing this contract, Rider I Assurance of Compliance is by agreement fully incorporated into the contract.

THE PROVIDER/CONTRACTOR HEREBY AGREES THAT IT WILL COMPLY WITH:

1. Titles VI of the Civil Rights Act of 1964 (Pub. L. 88-352), as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Service (45 C.F.R. Part 80), to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States, shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity for which the Provider/Contractor receives Federal/State financial assistance from the Department. Specifically, providers of client services shall develop clear, written communication plans, provide and document training in order to ensure that staff can communicate meaningfully with applicants/clients and/or family members who are limited English proficient (LEP); determine the primary language of applicants/clients and/or family members, and ensure that bi-lingual workers or qualified interpreters will be provided at no cost to the applicant/client.

2. Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 84), to the end that, in accordance with Section 504 of that Act and the Regulation, no otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap be excluded from participation in, be denied the benefits of, or subjected to discrimination under any program or activity for which the Provider/Contractor receives Federal/State financial assistance from the Department. Specifically, providers shall develop clear, written communication plans, provide and document training in order to ensure that staff can communicate meaningfully with applicants/clients and/or family members who are deaf, hard or hearing, late deafened, speech impaired and/or nonverbal. The Provider will provide visible or tactile alarms for safety and privacy, telecommunications device for the deaf (TTY), amplified phone or fax machine, and train staff in the use of adaptive equipment. The Provider shall obtain the services of a qualified, licensed sign language interpreter or other adaptive service such as CART or C-Print at no expense to the applicant/client or family member.

3. Title IX of the Educational Amendments of 1972 (Pub. L. 92-318), as amended, and all requirements imposed by for pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 86), to the end that, in accordance with Title IX and the Regulation, no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of /or be otherwise subjected to discrimination under any education program or activity for which the Provider/Contractor receives Federal/State financial assistance from the Department.

4. The Age Discrimination Act of 1975 (Pub. L. 94-135), as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 91), to the end that, in accordance with the Act and the Regulation, no person in the United States shall, on the basis of age, be denied the benefits of, be excluded from participation in or be subjected to discrimination under any program or activity for which the Provider/Contractor receives Federal/State financial assistance from the Department.

5. The Code of Fair Practices and Affirmative Action, 5 M.R.S.A. § 781 *et. seq.*, to the end that, in accordance with the Code of Fair Practices and Affirmative Action, no state or state related agency contractor, subcontractor, or labor union or representative of the workers with which the contractor has an agreement will discriminate because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability while providing any function or service to the public, in enforcing any regulation, or in any education, counseling, vocational guidance, apprenticeship and on the job training programs, unless based upon a bona fide occupational qualification. During the performance of this contract, the Provider/Contractor agrees as follows:

- A. That it will not discriminate against any employee or applicant for employment because of race, color, religious creed, sex, national origin, ancestry, age physical or mental disability. Such action shall include, but not be limited to the following: Employment, upgrading, demotions, transfers, recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- B. The Provider/Contractor will, in all solicitations or advertisements for employees place by or on behalf of the Provider/Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability.
- C. The Provider/Contractor will send to each labor union or representative of the workers with which it has a collective or bargaining agreement, or other contract or understanding, whereby he is furnished with labor for the performances of his contract, a notice, to be provided by the contracting department or agency, advising the said labor union or workers' representative of the contractor's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- D. The Provider/Contractor will cause the foregoing provisions to be inserted in all contracts for any work covered by this agreement so that such provisions will be binding upon each subcontractor.
- E. Provider/Contractors and subcontractors with contracts in excess of \$50,000 will also pursue in good faith affirmative action programs.

6. State of Maine Executive Order 17 FY 04/05 which provides that all contractors entering into contracts for services to be provided to or on behalf of the State of Maine not discriminate against any employee or applicant for employment because of that employee's or applicant's sexual orientation. Solicitations or advertisements for employment by the contractor or subcontractor shall state that all qualified applicants will receive consideration for employment without regard to sexual orientation. Contractor will notify each labor union or workers' representative of the contractor's obligations under State of Maine Executive Order 17 FY 04/05 and post such notice in conspicuous places available to employees and applicants for employment. The contractor will cause the requirement of State of Maine Executive Order 17 FY 04/05 to be inserted in all contracts for work covered by a State contract for services such that the requirements will be binding on any and all subcontractors. The Provider further stipulates that services will be provided in a culturally sensitive and age appropriate manner.

The Provider/Contractor agrees that compliance with this assurance constitutes a condition of continued receipt of Federal/State financial assistance, and that it is binding upon the Provider/Contractor, its successors, transferees and assignees for the period during which such assistance is provided. The Provider/Contractor also agrees that the Department may withhold financial assistance to any recipient found to be in violation of the Maine Human Rights Act, 5 M.R.S.A. § 4551 *et. seq.* or the Federal Civil Rights Act, 42 U.S.C. § 1981 *et. seq.* in accordance with 5 M.R.S.A. § 783. If any real property or structure thereon is provided or improved with the aid of Federal/State financial assistance extended to the Provider/Contractor by the Department, this assurance shall obligate the Provider/Contractor, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal/State financial assistance is extended or for another purpose involving the provision of similar service or benefits. If any personal property is so provided, this assurance shall obligate the Provider/Contractor for the period during which it retains ownership or possession of the property. The Provider/Contractor further recognizes and agrees that the United States shall have the right to seek judicial enforcement of the assurance.

* Technical assistance and information relating to the requirements associated with sections 1 through 5 can be found at U.S. Health and Human Services Website: www.hhs.gov/ocr/pregrant/indexpg.html. Technical assistance and information regarding section 1 can also be found at the U.S. Equal Employment Opportunity Commission website: www.eeoc.gov. Technical assistance and information relating to the requirements associated with section 6 can be found at www.state.me.us/mhrc/laws.htm. For technical assistance and information relating to section 6 above, please refer to www.jan.wvu.edu/links/adalinks.html. Information relating to section 6 can be found at <http://janus.state.me.us/legis/statutes/search.asp>.

Appendix B
Connecticut
INFANT FOODS REBATE MASTER AGREEMENT

Appendix B -State Standard Contract Clauses -Connecticut contracts

Appendix B - Connecticut

State of Connecticut, Department of Administrative Services (DAS)
Connecticut Unique Provisions
NASPO Cooperative
A WIC Infant Foods Rebate System
And
WIC Infant Cereal Rebate System
CT 08PSX0323

E-Commerce (Electronic Commerce)

On July 1, 2003, the State of Connecticut began utilizing an internet-based E-Procurement ordering system (PeopleSoft), known as Core-CT. With Core-CT, companies receiving awards from this bid/proposal will receive purchase orders from the State of Connecticut through this system. Companies may be required to provide the State of Connecticut with functional data files including detailed product and pricing information. These files will then be loaded into a catalog on this system for ordering purposes.

For additional detailed information on E-Commerce/Data File Requirements and CoreCT, please go to http://www.das.state.ct.us/Purchase/Info/supplier_kit.asp or contact the Contract Specialist referenced on this bid package.

P-Card (Purchasing Credit Card)

The State of Connecticut uses a purchasing card for order placement and payment in many instances. Suppliers should anticipate that some or all orders issued as a result of this bid may be paid by using the purchasing card. The Supplier shall be aware that he/she is responsible for the credit card user handling fee associated with credit card purchases. Suppliers should only charge to the State of Connecticut's Mastercard when the goods are delivered (physical receipt of goods, at store), or are shipped. Questions regarding the State of Connecticut Purchasing Card Program should be directed to Ms. Kerry DiMatteo, Procurement Card Program Administrator at (860) 713-5072.

Whistleblowing

This Agreement is subject to the provisions of §4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, the Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of this Agreement. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

Tangible Personal Property

The Contractor on its behalf and on behalf of its Affiliates, as defined below, shall comply with the provisions of Conn. Gen. Stat. §12-411b, as follows:

- (a) For the term of the Contract, the Contractor and its Affiliates shall collect and remit to the State of Connecticut, Department of Revenue Services, any Connecticut use tax due under the provisions of Chapter 219 of the Connecticut General Statutes for items of tangible personal property sold by the Contractor or by any of its Affiliates in the same manner as if the Contractor and such Affiliates were engaged in the business of selling tangible personal property for use in Connecticut and had sufficient nexus under the provisions of Chapter 219 to be required to collect Connecticut use tax;

- (b) A customer's payment of a use tax to the Contractor or its Affiliates relieves the customer of liability for the use tax;
- (c) The Contractor and its Affiliates shall remit all use taxes they collect from customers on or before the due date specified in the Contract, which may not be later than the last day of the month next succeeding the end of a calendar quarter or other tax collection period during which the tax was collected;
- (d) The Contractor and its Affiliates are not liable for use tax billed by them but not paid to them by a customer; and
- (e) Any Contractor or Affiliate who fails to remit use taxes collected on behalf of its customers by the due date specified in the Contract shall be subject to the interest and penalties provided for persons required to collect sales tax under chapter 219 of the general statutes.

For purposes of this section of the Contract, the word "Affiliate" means any person, as defined in section 12-1 of the general statutes, that controls, is controlled by, or is under common control with another person. A person controls another person if the person owns, directly or indirectly, more than ten per cent of the voting securities of the other person. The word "voting security" means a security that confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business, or that is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. "Voting security" includes a general partnership interest.

The Contractor represents and warrants that each of its Affiliates has vested in the Contractor plenary authority to so bind the Affiliates in any agreement with the State of Connecticut. The Contractor on its own behalf and on behalf of its Affiliates shall also provide, no later than 30 days after receiving a request by the State's contracting authority, such information as the State may require to ensure, in the State's sole determination, compliance with the provisions of the Act.

Summary of State Ethics Laws

Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes, the summary of State ethics laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes is incorporated by reference into and made a part of the Contract as if the summary had been fully set forth in the Contract.

Consulting Agreements: The chief official of the vendor awarded a contract described in subsection (a) of this section or the individual awarded such contract who is authorized to execute such contract, shall attest in an affidavit as to whether any consulting agreement has been entered into in connection with such contract. Such affidavit shall be required if any duties of the consultant included communications concerning business of such state agency, whether or not direct contact with a state agency, state or public official or state employee was expected or made. "Consulting agreement" means any written or oral agreement to retain the services, for a fee, of a consultant for the purposes of (A) providing counsel to a contractor, vendor, consultant or other entity seeking to conduct, or conducting, business with the State, (B) contacting, whether in writing or orally, any executive, judicial, or administrative office of the state, including any department, institution, bureau, board, commission, authority, official or employee for the purpose of solicitation, dispute resolution, introduction or requests for information or (C) any other similar activity related to such contract. "Consulting agreement" does not include any agreements entered into with a consultant who is registered under the provisions of Chapter 10 of the Connecticut General Statutes concerning the State's Codes of Ethics, as of the date such affidavit is submitted. (2) Such affidavit shall be sworn as true to the best knowledge and belief of the person signing the certification on the affidavit and shall be subject to the penalties of false statement. (3) Such affidavit shall include the name of the consultant, the consultant's firm, the basic terms of the consulting agreement, a brief description of the services provided, and an indication as to whether the consultant is a former state employee or public official. If the consultant is a former state employee or public official, such affidavit shall indicate his or her former agency and the date such employment terminated. (4) Such affidavit shall be amended whenever the vendor awarded the contract enters into any new consulting agreement during the term of the contract. (c) If a vendor refuses to submit the affidavit

required under subsection (b) of this section, then the state agency shall not award the Contract to such vendor and shall award the contract to the next highest ranked vendor or the next lowest responsible qualified bidder or seek new bids or proposals

Certification Requirements

Conn. Gen. Stat. § 4-252 (the "Statute") requires that the Request for Proposal, include a notice of the vendor certification requirements described in the Statute. Accordingly, pursuant to the Statute, vendors are notified as follows:

(a) The terms "gift," "quasi-public agency," "state agency," "large state contract," "principals and key personnel" and "participated substantially" as used in this section shall have the meanings set forth in the Statute.

(b) No state agency or quasi-public agency shall execute a large state contract unless the state agency or quasi-public agency obtains the written certifications described in this section. Each such certification shall be sworn as true to the best knowledge and belief of the person signing the certification, subject to the penalties of false statement.

(c) The official of the person, firm or corporation awarded the contract, who is authorized to execute the contract, shall certify on such forms as the State shall provide: (1) That no gifts were made between the date that the state agency or quasi-public agency began planning the project, services, procurement, lease or licensing arrangement covered by the contract and the date of execution of the contract, by (A) such person, firm, corporation, (B) any principals and key personnel of the person, firm or corporation, who participated substantially in preparing the bid or proposal or the negotiation of the contract, or (C) any agent of such person, firm, corporation or principals and key personnel, who participated substantially in preparing the bid or proposal or the negotiation of the contract, to (i) any public official or state employee of the state agency or quasi-public agency soliciting bids or proposals for the contract, who participated substantially in the preparation of the bid solicitation or request for proposals for the contract or the negotiation or award of the contract, or (ii) any public official or state employee of any other state agency, who has supervisory or appointing authority over such state agency or quasi-public agency; (2) That no such principals and key personnel of the person, firm or corporation, or agent of such person, firm or corporation or principals and key personnel, knows of any action by the person, firm or corporation to circumvent such prohibition on gifts by providing for any other principals and key personnel, official, employee or agent of the person, firm or corporation to provide a gift to any such public official or state employee; and (3) That the person, firm or corporation made the bid or proposal without fraud or collusion with any person. (d) Any bidder or proposer that does not make the certifications required under subsection (c) of this section shall be disqualified and the state agency or quasi-public agency shall award the contract to the next highest ranked proposer or the next lowest responsible qualified bidder or seek new bids or proposals. (e) The date that the state agency or quasi-public agency began planning the project, services procurement, lease or licensing arrangement to be covered by the contract is November 1, 2006.

Executive Orders

The Contract is subject to the provisions of Executive Order No. 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms, Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17th, 2006, concerning procurement of cleaning products and services, Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, all of which are incorporated into and are made a part of the Contract as if they had been fully set forth in it. At the Contractor's request, the Client Agency shall provide a copy of these orders to the Contractor.

Non-discrimination

References in this section to "contract" shall mean this Contract and references to "contractor" shall mean the Contractor.

(a) The following subsections are set forth here as required by section 4a-60 of the Connecticut General Statutes:

(1)The contractor agrees and warrants that in the performance of the contract such contractor will not discriminate or permit discrimination against any person or group of persons on the

grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation or physical disability, including, but not limited to, blindness, unless it is shown by such contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the state of Connecticut. The contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation, or physical disability, including, but not limited to, blindness, unless it is shown by such contractor that such disability prevents performance of the work involved;

(2) the contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the commission;

(3) the contractor agrees to provide each labor union or representative of workers with which such contractor has a collective bargaining agreement or other contract or understanding and each vendor with which such contractor has a contract or understanding, a notice to be provided by the commission advising the labor union or workers' representative of the contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment;

(4) the contractor agrees to comply with each provision of this section and sections 46a-68e and 46a-68f and with each regulation or relevant order issued by said commission pursuant to sections 46a-56, 46a-68e and 46a-68f;

(5) the contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the contractor as relate to the provisions of this section and section 46a-56.

- (b) If the contract is a public works contract, the contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works project.
- (c) "Minority business enterprise" means any small contractor or supplier of materials fifty-one per cent or more of the capital stock, if any, or assets of which is owned by a person or persons:
- (1) Who are active in the daily affairs of the enterprise,
 - (2) who have the power to direct the management and policies of the enterprise and
 - (3) who are members of a minority, as such term is defined in subsection (a) of section 32-9n;
- and "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations. "Good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements.
- (d) Determination of the contractor's good faith efforts shall include but shall not be limited to the following factors: The contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.
- (e) The contractor shall develop and maintain adequate documentation, in a manner prescribed by the commission, of its good faith efforts.
- (f) The contractor shall include the provisions of section A above in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the state and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the commission. The contractor shall take such action with respect to any such subcontract or purchase order as the commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with section 46a-56; provided, if such contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the commission, the contractor may request the state of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the state and the state may so enter.

- (g) The following subsections are set forth here as required by section 4a-60a of the Connecticut General Statutes:
- (1) The contractor agrees and warrants that in the performance of the contract such contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or of the state of Connecticut, and that employees are treated when employed without regard to their sexual orientation;
 - (2) the contractor agrees to provide each labor union or representative of workers with which such contractor has a collective bargaining agreement or other contract or understanding and each vendor with which such contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment;
 - (3) the contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said commission pursuant to section 46a-56;
 - (4) the contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the contractor which relate to the provisions of this section and section 46a-56.
- (h) The contractor shall include the provisions of section G above in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the state and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the commission. The contractor shall take such action with respect to any such subcontract or purchase order as the commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with section 46a-56; provided, if such contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the commission, the contractor may request the state of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the state and the state may so enter.

Insurance

Before commencing Performance, the Contractor shall obtain and maintain at its own cost and expense for the duration of the Contract, the following insurance:

- (a) Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. Coverage shall include, Premises and Operations, Independent Contractors, Products and Completed Operations, Contractual Liability and Broad Form Property Damage coverage. If a general aggregate is used, the general aggregate limit shall apply separately to the project or the general aggregate limit shall be twice the occurrence limit.
- (b) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury. Coverage extends to owned, hired and non-owned automobiles. If the vendor/contractor does not own an automobile, but one is used in the execution of the contract, then only hired and non-owned coverage is required. If a vehicle is not used in the execution of the contract then automobile coverage is not required.
- (c) Workers' Compensation and Employers Liability: Statutory coverage in compliance with the Compensation laws of the State of Connecticut. Coverage shall include Employer's Liability with minimum limits of \$100,000 each accident, \$500,000 Disease – Policy limit, \$100,000 each employee.

Disclosure of Records

The Contract may be subject to the provisions of section 1-218 of the Connecticut General Statutes. In accordance with this section, each contract in excess of two million five hundred thousand dollars between a public agency and a person for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to FOIA and may be disclosed by the public agency pursuant to FOIA. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with FOIA. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of sections 1-205 and 1-206 of the Connecticut General Statutes.

Appendix C
Massachusetts

INFANT FOODS REBATE MASTER AGREEMENT

Appendix C -State Standard Contract Clauses -Massachusetts contracts

MASSACHUSETTS

APPENDIX C

1. The Manufacturer shall assure that the Manufacturer's products continually comply with all applicable Federal and State laws and regulations.
2. The conduct of all parties is governed by the Massachusetts Conflict of Interest Law (M.G.L.c.268A).
3. The Manufacturer shall abide by Executive Order 346, entitled "Establishing a Policy Governing the of State Employees by State Contractors in Connection with Privatization Initiatives," dated December 2, 1992, which prohibits the Manufacturer from hiring at any time during the term of a particular service contract for the privatization of services, and for any position in the Manufacturer's agency, any Commonwealth management employee who is, was, or will be involved in the preparation of the Invitation To Bid or Request For Proposal leading to the Agreement, the decision to award; the supervision or oversight of performance under the Agreement. This prohibition is in addition to the requirements imposed by the Commonwealth's Conflict of Interest Law (M.G.L.c.268A).
4. The Manufacturer shall obey all applicable Federal and State licensing and certification requirements.
5. In the event governmental restrictions are imposed on the Manufacturer which necessitate alteration of any item offered on this bid, it shall be the responsibility of the Manufacturer to notify the Massachusetts WIC Program of these changes, in writing, with specific reference to the reasons.
6. The offer of an enhancement by the Manufacturer is voluntary, and is in no way a payment of concessions or services by the Massachusetts WIC Program. However, once an Agreement is entered into, it is a binding contractual agreement.
7. The Manufacturer warrants that no commission, percentages, brokerage, gratuities, kickbacks, or contingency fees were paid in connection with the Agreement, nor exchange for substantial consideration by the Manufacturer for the purpose of securing this Agreement.
8. The Manufacturer must have a corporate Affirmative Action Plan describing the Manufacturer's action with regard to using minority and business enterprises and employment of minorities, women, people with disabilities and Vietnam Era Veterans. Services provided under Massachusetts Department of Public Health auspices must be provided in compliance with applicable disability related State and Federal non-discrimination and access laws, including Section 504 of the Rehabilitation Act, the Americans with Disabilities Act and Executive Order 478 entitled "Non-Discrimination, Diversity, Equal Opportunity and Affirmative Action."
9. This Agreement shall be construed under, and governed by, the laws of the Commonwealth of Massachusetts. The Manufacturer, and the agent thereof, agree to bring any Federal or State legal proceedings arising under this Agreement, in which either the Commonwealth of Massachusetts or the Massachusetts WIC Program is a party, in a court of competent jurisdiction within the Commonwealth of Massachusetts. This paragraph shall not be construed to limit any rights a party may have to intervene in an action, wherever pending, in which the other is a party.

10. The Commonwealth of Massachusetts may, at reasonable times, examine/audit the books and/or records of the Manufacturer, where such books and/or records relate to the performance and payments due thereunder for any Agreement entered into with the Massachusetts WIC Program. Such books and records shall be kept in conformity with generally accepted accounting principles, and shall be maintained by the Manufacturer for a period of seven (7) years from the date of final payment under the Agreement. Said examination/audit may be performed at any reasonable time by the Governor, the State Auditor, the Executive Office of Administration and Finance, the Executive Office of Health and Human Services, the Commissioner of the Massachusetts Department of Public Health, or their duly appointed representative(s).

11. The representative of the Manufacturer responsible for the administration of this Agreement is:

_____	(____)_____
Name	Phone

Title	

Address	

City, State, Zip Code	

In the event that different representatives are designated by either party after execution of this Agreement, notice of the name and address of the new representative will be rendered in writing to the other party, and said notification attached to the originals of this Agreement.

12. The Manufacturer shall address correspondence and communications to:

Director, Fiscal and Administration
Massachusetts WIC Nutrition Program
Massachusetts Department of Public Health
250 Washington Street, 6th Floor
Boston, MA 02108-4619

13. If any provision of this Agreement is declared or found to be illegal, unenforceable, or void, then all parties shall be relieved of all obligations under the provision. The remainder of the Agreement shall be enforced to the fullest extent permitted by law.

14. The Manufacturer's failure to return this signed Agreement within fourteen (14) calendar days of receipt may, at the option of the Massachusetts WIC Program, result in the cancellation of this Agreement.

15. The Department of Public Health shall maintain all records associated with the procurement, ITB, proposals and evaluations and copies of all Agreement documents including justification statements and waivers for a period to be determined by the Records Conservation Board pursuant to M.G.L. c.30, USC 42.

16. The Department of Public Health shall not award an Agreement for the purpose of defraying expenses of services rendered by individuals hired or appointed to the classified service of the Commonwealth or to Commonwealth Boards and Commissions.
17. The Massachusetts WIC Program shall have the option to negotiate continuance of the Agreement for one (1) month periods, not to exceed three (3) periods, when there is a public exigency that requires the contracted services to continue. Thirty (30) days notice shall be given by the Massachusetts WIC Program before exercising this option, which shall be under the same conditions and pricing structure.
18. The Massachusetts WIC Program shall have the option to extend the Agreement for one (1) year periods, or any portion thereof, upon mutual agreement with the contractor under the same terms, conditions and pricing structure.
19. In the event that a claim for billing errors submitted by the Manufacturer is disputed by the Massachusetts WIC Program, the Manufacturer and the Massachusetts WIC Program shall agree upon an independent auditor to review the claim and determine its validity.
20. The Manufacturer shall be responsible for costs associated with any audit or claim.
21. Should the Manufacturer request any special reports, data or information from the Massachusetts WIC Program beyond that provided in the monthly invoice, the Massachusetts WIC Program 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 Massachusetts WIC Program and the Manufacturer prior to the State's execution of requests.
22. For records audited for any fiscal year, the Manufacturer shall provide to the Massachusetts WIC Program a complete report and any management letter relate to any audit within one hundred and twenty (120) days following the end of the fiscal year.
23. The Manufacturer shall provide the Massachusetts WIC Program, with its audit standards, guides and audit plan for conducting the audit thirty (30) days prior to conducting the audit.
24. For purposes of this Contract, "breach" shall be defined as a party's substantial failure to carry out one or more of the provisions, responsibilities, duties, or obligations of the Contract.
25. The Manufacturer may terminate the Contract with the Massachusetts WIC Program in material breach of the Contract, with or without cause, upon two hundred and ten (210) days advance written notification to the Massachusetts WIC Program. Any such termination may take effect only on the last day of a calendar month.
26. In the event of any cancellation by another State, the Manufacturer shall have the option to continue the Contract for the specified term with the Massachusetts WIC Program, or to cancel the Contract, upon two hundred and ten (210) days advance written notice.

Appendix D New Hampshire

INFANT FOODS REBATE MASTER AGREEMENT

Appendix D -State Standard Contract Clauses - New Hampshire contracts

NH Department of Health and Human Services

Special Provisions

1. Section 1.8 is not applicable because this is a rebate agreement.
2. Section 5 of the Agreement General Provisions of the New Hampshire Standard Contract is deleted.

Subject: Infant foods Rebate Agreement

AGREEMENT

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

GENERAL PROVISIONS

I. IDENTIFICATION.

1.1 State Agency Name NH Department of Health and Human Services Division of Public Health Services		1.2 State Agency Address 29 Hazen Drive Concord, NH 03301-6504	
1.3 Contractor Name Hero Group, Inc DBA Beech Nut Nutrition		1.4 Contractor Address 13 British American Blvd. Latham, NY 12110	
1.5 Contractor Phone Number (518)595-6612	1.6 Account Number 010-090-5260-521	1.7 Completion Date September 30, 2012	1.8 Price Limitation
1.9 Contracting Officer for State Agency José Montero, MD		1.10 State Agency Telephone Number 603-271-4501	
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 José Montero, MD, Director	
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, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("Effective Date").
3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

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

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

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

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

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

Contractor Initials: _____
Date: _____

8. EVENT OF DEFAULT/REMEDIES.

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

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

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

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

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

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

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

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

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

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

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

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

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

14. INSURANCE.

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

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

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

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

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

Contractor Initials: _____
Date: _____

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

15. WORKERS' COMPENSATION.

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

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

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

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

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

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

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

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

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

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

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

Appendix E Rhode Island

INFANT FOODS REBATE MASTER AGREEMENT

Appendix E -State Standard Contract Clauses – Rhode Island contracts

APPENDIX I (continued)

Article 1

Parties to Agreement. This Agreement is made by and between the Rhode Island Department of Health (HEALTH) and the party specified in APPENDIX I A1 (the Contractor).

Article 2

Period of Performance. This Agreement will be effective beginning on the start date in APPENDIX I A2 and unless renewed or extended, will expire on the termination date as stated in APPENDIX I A2. It is understood and agreed by and between the parties that this Agreement covers work and services to be provided by the Contractor for the period specified in APPENDIX I A2.

Article 3

Modification of Agreement. This Agreement may be amended in accordance with Article II herein and/or may be amended or extended by mutual written consent provided that such consent may not be unreasonably withheld, and further provided, that there is a fiscal appropriation for any extension.

Article 4

Contract Officer. The Contractor agrees to maintain close and continuing communication with HEALTH's contract officer as specified in APPENDIX I A3, throughout the performance of work and services undertaken under the terms of the Agreement. The contract officer is responsible for authorizing all payments made by HEALTH to the Contractor under this Agreement.

Article 5

Project Officer. The project officer, as specified in APPENDIX I A4, is responsible for coordinating and reporting work performed by the Contractor under this agreement.

Article 6

Delays. Whenever the Contractor has knowledge that any actual or potential situation is delaying, or tends to delay the timely performance of work under this Agreement, the Contractor shall immediately give written notice thereof, including all relevant information with respect thereof to HEALTH.

Article 7

Funding. This is a cost reimbursement Agreement. In consideration of work and services performed by the Contractor in accordance with APPENDIX II of this Agreement, HEALTH agrees to reimburse the Contractor for allowable costs incurred by the Contractor under this Agreement in an amount not to exceed the amount specified in APPENDIX I A5 and in accordance with estimated expenditures as set forth in APPENDIX III Budget. Payments shall be made under this Agreement after costs have been incurred. The Contractor shall submit requests for reimbursement for expenditures, supported by valid invoices, to HEALTH not more often than once per month throughout the duration of this Agreement.

All payments are provisional pending final audit by appropriate state and/or federal officials.

Article 8

Federal Funding Provisions. Funds made available to the Contractor under this Agreement are or may be derived from federal funds made available to HEALTH. The provisions of Article 7 and APPENDIX III notwithstanding, the Contractor agrees to make claims for reimbursement under this Agreement in accordance with federal policies governing allowable costs to be charged against federal grants. The Contractor agrees that no expenditures claimed for reimbursement under this Agreement will be claimed for reimbursement under any other agreement, grant, or contract that the Contractor may hold which provides funding from state or federal sources. The Contractor further agrees to be liable for audit exceptions that may arise from examination of expenditures: (a) claimed by the Contractor for reimbursement under this Agreement, and/or (b) submitted by the Contractor in meeting any cost participation requirements.

In executing this Agreement the Contractor is serving as a grantee or independent contractor under federal grant or contract between the federal government and HEALTH. The master grant, award or cooperative agreement made to HEALTH by the federal government governing activities under this Agreement is, therefore, made a part of this agreement. The Contractor specifically agrees to abide by all applicable federal requirements for grantees, contractors, or independent contractors receiving federal funds including, but not limited to, those requirements set forth or referenced in the master grant or contract relating to this Agreement and in the following documents which are incorporated by reference hereto: 45CFR Part 74 (Administration of Grants); DHHS Publication OASH 90-50,000 (Grants Policy Statement) Rev. 4/94; OMB Circular A-110 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Nonprofit organizations); and A-133 (Audits of Institutions of Higher Education and Other Nonprofit Organizations).

It is understood and agreed in the event less than full federal funding or other funding is received by HEALTH due to failure of the Contractor to comply with the terms of this agreement, the Contractor is liable to the State of Rhode Island for an amount equal to the amount of the denied funding. The amount of the denied funding shall be payable upon demand of HEALTH.

Article 9

Prepayment. Articles 7 and 8 notwithstanding, prepayment will be allowed provided that it is requested and approved under the appropriate mechanism and subsequently accounted for with proper documentation.

Article 10

Withholding of Payments. The Contractor shall, in a satisfactory and proper manner as determined in the sole and exclusive discretion of HEALTH, complete all obligations and duties as stipulated in this Agreement. Failure of the Contractor to perform or deliver required work, services, or reports under this Agreement could result in the withholding of payments by HEALTH to the Contractor.

The Contractor understands and agrees that failure to meet its requirements under this Agreement may result in withdrawal of other state or federal funds that may have been made available to the Contractor, at the option of HEALTH.

Article 11

Termination of Agreement. This Agreement may be terminated upon fifteen (15) days written notice by either party. In the event of termination by either party, all property and finished or unfinished documents, data, studies, and reports prepared by the Contractor under this Agreement, shall, at the option of HEALTH, become its property. Notwithstanding the above, the Contractor shall not be relieved of liability to HEALTH for damages sustained by HEALTH by virtue of any breach of this Agreement by the Contractor; and HEALTH may withhold payment to the Contractor for the purpose of setoff until such time as the exact amount of damages due to HEALTH from the Contractor is determined. Notice of the effective date of termination will include the reports that must be completed. The above mentioned fifteen (15) day written notice notwithstanding, HEALTH expressly reserves the unilateral right to terminate, amend and/or reduce services and payments under this Agreement, effective immediately upon notice to the Contractor, in the event that the funding underlying the participation of HEALTH is limited or curtailed. Further, the Contractor agrees to hold HEALTH harmless from any and all liability that may arise under this Agreement.

In the event of termination by either party, final payment by HEALTH to the Contractor for work and services provided by the Contractor under this Agreement up to the effective date of termination shall be made in proportion to work completed and allowable expenses incurred, in accordance with the principles of cost reimbursement, agreements and contracts.

Article 12

Recordkeeping/Inspection of Records and Reports. The Contractor agrees to keep discrete financial records of expenditures made under this Agreement, including time records of employees whose work is to be charged in whole or in part to this Agreement; to maintain such records in accordance with standard accounting practices; to make such records available on request to appropriate state and/or federal officials for examination or audit, ensure that audits are conducted in accordance with OMB Circulars A-110 and A-133 if applicable, and to keep such records on file until final audit of HEALTH records under the federal grant funding of this Agreement, or until such time as federal provisions permit the records to be discarded. All management correspondences that accompany audit reports must be sent to HEALTH. If a client served by this contract is charged for service, the contractor must report this income.

Article 13

On-Site Inspection. The Contractor agrees to permit on-site monitoring, evaluation, and inspection of all activities related to this Agreement by officials of HEALTH, its designee, and where appropriate, the federal government.

Article 14

Partnership. It is understood and agreed that nothing herein is intended or should be construed in any manner as creating or establishing the legal relation of partnership between the parties hereto, or as constituting an employment relationship. Contractor is an independent contractor at all times for purposes of performance pursuant to this Agreement.

Article 15

Nonliability for Personal Injuries. The Contractor will indemnify and hold the State of Rhode Island, HEALTH, and its officials harmless against any claims for injury or damage of any kind to persons or property occurring or arising during the period of this Agreement.

Article 16

Severability. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements applicable law.

Article 17

Proprietorship. All equipment, property, finished or unfinished documents, computer software, data studies, and reports prepared or acquired by the Contractor under this Agreement and for which reimbursement was claimed under this Agreement shall, at the option of HEALTH, become the property of HEALTH. The Contractor further understands and agrees to abide by federal regulations, requirements, and policies governing the disposition of equipment or property purchased with funds made available to the Contractor under this Agreement or with funds identified by the Contractor as matching expenditures under this Agreement. The Contractor agrees to maintain an equipment inventory list under this Agreement and to identify related equipment properly for inspection.

Article 18

Copyright. No reports or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Contractor.

Article 19

Publicity. The Contractor will give due credit to HEALTH and the appropriate state and/or federal agencies. HEALTH will be credited on all media announcements, billboards, and educational materials produced or developed under the scope of this Agreement.

Article 20

Interest of the Contractor. The Contractor covenants that it presently has no pecuniary interest and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Contractor further covenants that no person having any such interest shall be employed by the Contractor for the performance of any work associated with this Agreement.

Article 21

Civil Rights. The Contractor agrees to abide by applicable provisions of Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975 (P.L. 94-135, Title III); the Americans with Disability Act of 1990 (P.L. 101-336); all other applicable federal and state laws relating to equal employment opportunities; State Executive Order No. 19 dated 15 December 1977, State Executive Order No. 80-9 dated 24 March 1980, and State Executive Order No. 85-11. The Contractor asserts that no person shall, on the grounds of race, color,

national origin, religion, sex, age, political belief, sexual preference, or handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activities undertaken in behalf of this Agreement. In addition, the Contractor agrees to establish a procedure for complaint from any person who believes that such discrimination is being practiced in any activity relating to this Agreement.

Article 22

Drug Free Workplace Policy. The Contractor agrees to comply with the requirements of the Governor's Executive Order No. 91-14, the State's Drug Free Workplace Policy, and the Federal Omnibus Drug Abuse Act of 1988. The Contractor acknowledges that a violation of the Drug Free Workplace Policy may, at HEALTH's option, result in termination of this Agreement.

Article 23

Environmental Tobacco Smoke. The Contractor agrees to comply with Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), which requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by the entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by federal grant, contract, loan or loan guarantee. The law also applies to children's services that are constructed, operated or maintained with such funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable Federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed.

Article 24

Subcontracts. Any proposed subcontract under this Agreement shall be submitted to the Rhode Island Department of Health contract officer for approval prior to execution. Failure to comply with the provisions of this article could result in denial of reimbursement for such nonapproved subcontractual services.

Article 25

Confidentiality of Department of Health Records. The Contractor agrees to abide all federal and state laws and regulations governing the confidentiality of information to which he/she may have access pursuant to the terms of this Agreement. In addition, the contractor agrees to comply with the Department of Health Confidentiality Policy recognizing a person's basic right to privacy and confidentiality of personal information. ("Confidential records" are the records as defined in Section 38-2-3-(d) (1)-(1-19) of the General Laws, entitled "Access to Public Records" and described in "Access to Department of Health Records.") Failure to abide by the Department's Confidentiality Policy will result in termination of the Agreement.

Article 26

Lobbying. All Contractors must comply with all federal laws restricting end/or limiting lobbying activities of recipients of federal funds including but not limited to 31 U.S.C. Section 1352 and Section 503 of the Departments of Labor, Health and Human

Services, and Education, and Related Agencies Appropriations Act (Public Law 104-209).

Article 27

Controller's Approval. This Agreement shall take effect upon the issuance of a purchase order or miscellaneous encumbrance by the State Controller.

Article 28

Church and State. Organizations funded by HEALTH must abide by HEALTH's policies and regulations regarding the separation of church and state as described below.

- HEALTH grant funds cannot be used in any way, or in any forum with either the direct or indirect purpose or effect of promoting religion or of proselytizing persons who attend such workshops or activities.
- HEALTH grantees may not promote religion or religious means in conjunction with the implementation of HEALTH grants.
- HEALTH grantees may not combine health initiatives funded by HEALTH with existing religious programming.
- HEALTH grantees may not use funds provided by HEALTH to pay for literature, materials, music and other materials promoting religions.
- HEALTH grantees may not use funds to pay for honorariums, choirs and other professionals to promote religion in the context of health initiatives funded by HEALTH.

Article 29

Licensure/Certification

The Contractor shall have any and all licenses necessary to operate their facility in place prior to the start date of this Agreement and for the duration of the contract period. Further, all personnel delivering health care services shall be licensed/certified and/or registered as required by law.

Article 30

Debarment/Suspension

1. The prospective contractor certifies to the best of his/her knowledge and belief, that it and its principals:
 - a. Are not presently debarred, suspended proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
 - b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - d. Have not within three-year period preceding this application/proposal had one or more public transactions (Federal, State, local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Revised March 1, 2005

Appendix F



Beech-Nut Nutrition National Price List for WIC bid items

BEECH-NUT - PRODUCT NAME	Case Pack	Size	GTIN / UPC Case Code (14 Digit)	Unit UPC Code (12 Digit)	Suppressed UPC	PRICE IN US \$		
						40,000 & Over	30,000 - 39,999	5,000 - 29,999
4.0 oz Single Fruits Infant Food								
Stg. 2 Applesauce	12	4 oz	1 00 52200 02502 1	0 52200 00502 6	0-525022-6	\$6.48	\$6.61	\$6.74
Stg. 2 Chiquita® Bananas	12	4 oz	1 00 52200 02507 6	0 52200 00507 1	0-525072-1	\$6.48	\$6.61	\$6.74
Stg. 2 Pears	12	4 oz	1 00 52200 02705 6	0 52200 00705 1	0-527052-1	\$6.48	\$6.61	\$6.74
4.0 oz Single Vegetables Infant Food								
Stg. 2 Butternut Squash	12	4 oz	1 00 52200 02712 4	0 52200 00712 9	0-527122-9	\$6.48	\$6.61	\$6.74
Stg. 2 Tender Sweet Carrots	12	4 oz	1 00 52200 02714 8	0 52200 00714 3	0-527142-3	\$6.48	\$6.61	\$6.74
Stg. 2 Tender Golden Sweet Potatoes	12	4 oz	1 00 52200 02589 2	0 52200 00589 7	0-525892-7	\$6.48	\$6.61	\$6.74
Stg. 2 Tender Young Green Beans	12	4 oz	1 00 52200 02715 5	0 52200 00715 0	0-527152-0	\$6.48	\$6.61	\$6.74
Stg. 2 Tender Sweet Peas	12	4 oz	1 00 52200 02716 2	0 52200 00716 7	0-527162-7	\$6.48	\$6.61	\$6.74
2.5 oz Single Meats Infant Food								
Stg.1 Turkey and Broth	12	2.5 oz	1 00 52200 02792 6	0 52200 00792 1	0-527922-1	\$10.20	\$10.32	\$10.44
Stg. 1 Chicken and Broth	12	2.5 oz	1 00 52200 02795 7	0 52200 00795 2	0-527952-2	\$10.20	\$10.32	\$10.44
Stg.1 Beef and Broth	12	2.5 oz	1 00 52200 02797 1	0 52200 00797 6	0-527972-6	\$10.20	\$10.32	\$10.44
8 oz and 16 oz Infant Cereal								
Easy Pour Rice Cereal	8	8 oz.	1 00 52200 02445 1	0 52200 00445 6	0 524452 6	\$13.12	\$13.28	\$13.44
Easy Pour Oatmeal Cereal	8	8 oz.	1 00 52200 02415 4	0 52200 00415 9	0-524152-9	\$13.12	\$13.28	\$13.44
Easy Pour Multigrain Cereal	8	8 oz.	1 00 52200 02405 5	0 52200 00405 0	0-524052-0	\$13.12	\$13.28	\$13.44
Easy Pour Barley Cereal	8	8 oz.	1 00 52200 02410 9	0 52200 00410 4	0-524102-4	\$13.12	\$13.28	\$13.44
Easy Pour Rice Cereal 16 oz	8	16 oz	1 00 52200 02431 4	0 52200 00431 9	0-524312-9	\$22.88	\$23.12	\$23.68
Easy Pour Oatmeal Cereal 16 oz	8	16 oz	1 00 52200 02432 1	0 52200 00432 6	0-524322-6	\$22.88	\$23.12	\$23.68

These prices are subject to the corresponding terms of sale, and are subject to change without notice.

Terms: 2% 10 days, Net 30 days from date of invoice

*Order Processing Lead Times: Full Truckload - 3 calendar days from date of order

LTL - 3 calendar days from date of order

Customer Pick-Up - 3 calendar days from date of order

*** Does not include transit time**

* Freight: FOB Shipping point Canajoharie, N.Y. U.S.A. Beech-Nut pays for freight (Line Haul Charges Only)

* Charges of carrier for sorting, delay in unloading, re-delivery or other services are the customer's responsibility.

* Order Changes: No product mix changes to an order 48 hours prior to shipment.