

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT & BUDGET
 PROCUREMENT

525 W. ALLEGAN STREET
 LANSING, MI 48933

P.O. BOX 30026
 LANSING, MI 48909

CONTRACT NO. 071B7700003

between

THE STATE OF MICHIGAN

and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Mead Johnson & Company, LLC 2400 West Lloyd Expressway Evansville, IN 47721-0001	Kathy J. Decker	kathy.decker@mjn.com
	PHONE	VENDOR TAX ID # (LAST FOUR DIGITS ONLY)
	812-429-8758	0848

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER	DHHS	Stan Bien	517-335-8448	biens@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Sue Ciecwiwa	517-284-7007	ciecivas@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: WIC Infant Formula Rebate Program – Department of Health and Human Services			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
Five Years	November 1, 2016	October 31, 2021	None
PAYMENT TERMS	F.O.B.	SHIPPED TO	
Refer to Section 6.2	Destination	N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			
MISCELLANEOUS INFORMATION			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			\$0.00

For the Contractor:

**J. Michael Milligan,
Contract Administrator
Mead Johnson & Company, LLC**

Date

For the State:

**Sharon Walenga-Maynard
Sourcing Director
State of Michigan**

Date



STATE OF MICHIGAN

STANDARD CONTRACT TERMS

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and Mead Johnson & Company, LLC (“**Contractor**”), a Delaware limited liability company. This Contract is effective on November 1, 2016 (“**Effective Date**”), and unless terminated, expires on October 31, 2021.

Terms are not to be negotiated with respect to the following: (a) length and (b) rebate amounts that will apply to the contract and any option period(s), or the method by which the rebates will be calculated. (USDA WIC Policy Memo 94-7).

The parties agree as follows:

1. **Definitions.** For the purposes of this Contract, the following terms have the following meanings:

24x7x365 means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).

Acceptance has the meaning set forth in **Section 17**.

Additional Service means any Services within the scope of the Contract, but not specifically provided under any Statement of Work.

Audit Period means the seven year period following Contractor's provision of any work under the Contract.

Authorized WIC Vendor means any vendor contractually authorized to accept Michigan WIC Bridge Cards from WIC clients for reimbursement by the State of Michigan. Michigan currently authorizes approximately 1,826 vendors.

Bidder(s) are those companies that submit a proposal in response to this RFP.

Business Day means any day other than a Saturday, Sunday or State-recognized legal holiday from 8:00am EST through 5:00pm EST unless otherwise stated.

CFR means Code of Federal Regulations.

Contract has the meaning set forth in the preamble.

Contract Brand Infant Formula means all infant formulas (except exempt infant formulas) produced by the manufacturer awarded the infant formula cost containment Contract. If under a single solicitation the manufacturer subcontracts for soy-based infant formulas, then all soy-based infant formulas covered by the subcontract are also considered Contract brand infant formulas. Contract brand infant formulas also include all infant formulas (except exempt infant formulas) introduced after the Contract is awarded.

Contractor has the meaning set forth in the preamble.

Days means calendar days unless otherwise specified.

Deliverable means physical goods and/or services required or identified in a Statement of Work.

Department means the Michigan Department of Health and Human Services (MDHHS).

DHHS means U.S. Department of Health and Human Services.



Dispute Resolution has the meaning set forth in **Section 48**.

DTMB means the Michigan Department of Technology Management and Budget.

Eastern Time means either Eastern Standard Time (EST) or Eastern Daylight Time (EDT), whichever is prevailing in Lansing, Michigan.

EBT means Electronic Benefits Transfer which is the food delivery system that provides benefits using a card (the Michigan WIC Bridge Card) that permits electronic access to program benefits. The WIC client is able to redeem food benefits at authorized WIC vendors via scanning the Michigan WIC Bridge Card and entering their 4-digit PIN to approve the transaction.

EBT Contractor means the Company responsible for processing EBT transactions and payments to Authorized WIC Vendors.

Effective Date has the meaning set forth in the preamble.

Environmentally Preferable Products means a product or service that has a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. Such products or services may include, but are not limited to: those which contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxics either disposed of or consumed.

Exempt Infant Formulas means an infant formula intended for commercial or charitable distribution that is represented and labeled for use by infants who have inborn errors of metabolism or low birth weight or who otherwise have unusual medical or dietary problems (21 CFR 107.3). Infant formulas are classified as exempt infant formulas by the United States Food and Drug Administration.

Expiration means, except where specifically provided for in the Contract, the ending and termination of the Contractual duties and obligations of the parties to the Contract pursuant to a mutually agreed upon date.

FDA means United States Food and Drug Administration.

FTP - The File Transfer Protocol is a standard network protocol used to transfer computer files from one host to another host over a TCP-based network, such as the Internet.

Hazardous Material means any material defined as hazardous under the latest version of federal Emergency Planning and Community Right-to-Know Act of 1986 (including revisions adopted during the term of the Contract).

Incident means any interruption in any function performed for the benefit of a Plan Sponsor.

Infant Formula is defined as any infant formula in the manufacturer's product line that 1) complies with the Infant Formula Act of 1980 as amended which defines "infant formula" as "a food which purports to be or is represented for special dietary use solely as a food for infants by reason of its simulation of human milk or its suitability as a complete or partial substitute for human milk"; and 2) complies with the definition and requirements for "infant formula" under the federal Food, Drug and Cosmetic Act including [sections 201 (z) and 412 of act, 21 U.S.C. 321 (z) and 350a respectively], excluding "exempt infant formulas, [section 412(h) of the act 21 U.S.C. 350a (h)], and with all applicable Food and Drug Administration (FDA), Department of Health and Human Services regulations pursuant to the act, and the regulation at 21 U.S.C part 106 and 107.

Key Personnel means any Contractor personnel identified as Key Personnel in the Statement of Work, Section 3.1.

Manufacturer means a bidder that possesses the manufacturing and marketing capabilities necessary to fulfill all requirements specified in the RFP.

Michigan WIC Bridge Card means debit card onto which WIC food benefits are issued by WIC staff.



Net Price means the difference between an infant formula manufacturer's lowest national wholesale price per unit for a full truckload of infant formula and the rebate level or the discount offered or provided by the manufacturer under an infant formula cost containment Contract.

Non-Contract Brand Infant Formula means all infant formula, including exempt infant formula, that is not covered by an infant formula cost containment Contract awarded by the State agency.

Non-Contract Non-Exempt Infant Formula means infant formulas which are designed for healthy infants but manufactured by a company other than the Contract manufacturer.

Primary Contract Brand Infant Formula means the specific infant formula for which manufacturers submit a bid to a State agency in response to a rebate solicitation and for which a Contract is awarded by the State agency as a result of that bid.

Program Manager means the Director, WIC Division.

Rebate means the amount of money refunded under cost containment procedures to any State agency from the manufacturer of the particular food product as the result of the purchase of the supplemental food with a voucher or other purchase instrument (EBT card) by a client in each State agency's program. Such rebates shall be payments made subsequent to the exchange of a food instrument (Michigan WIC Bridge Card) for food at an authorized WIC vendor.

Recycling means the series of activities by which materials that are no longer useful to the generator are collected, sorted, processed, and converted into raw materials and used in the production of new products. This definition excludes the use of these materials as a fuel substitute or for energy production.

Retail Purchase Food Delivery System is a food delivery system which the State of Michigan WIC Program operates. It enables WIC clients to go to an authorized store of their choice and shop to obtain supplemental WIC foods in exchange for Michigan WIC Bridge Card food benefits in accordance with the terms of a WIC authorized vendor Contract.

Reuse means using a product or component of municipal solid waste in its original form more than once.

RFP means a Request for Proposal designed to solicit proposals for services.

Settled Date is the date the State of Michigan WIC Program makes an electronic payment to an authorized WIC vendor.

Settled Price is the amount of money that the vendor is paid for a WIC authorized food item.

Services means any function performed for the benefit of the State.

SLA means Service Level Agreement.

Source Reduction means any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, energy recovery, treatment, or disposal.

State means the State of Michigan.

Statement of Work means the statement of work attached as **Schedule A** to this Contract, including all attachments and exhibits thereto.

Subcontractor means a company selected by the Contractor to perform a portion of the Services, but does not include independent Contractors engaged by Contractor solely in a staff augmentation role.



Successful Bidder means the bidder who is awarded a Contract as the result of solicitation.

Term has the meaning set forth in the preamble.

Transition Period has the meaning set forth in Section 26.

Transition Responsibilities has the meaning set forth in Section 26.

UPC means Universal Product Code, a number and barcode that identifies an individual product for purchase.

USDA means United States Department of Agriculture.

WIC means the Special Supplemental Nutrition Program for Women, Infants and Children.

WIC State Plan means a plan of Program operation and administration that describes the manner in which the State agency intends to implement and operate all aspects of WIC Program administration within its jurisdiction in accordance with Federal Regulation (CFR 246.4), and as approved by the United States Department of Agriculture.

- 2. **Duties of Contractor.** Contractor must perform the services and provide the deliverables described in **Exhibit A – Statement of Work** (the “**Contract Activities**”). An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities, and meet operational standards, unless otherwise specified in Exhibit A.

Contractor must: (a) perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; (c) provide all Contract Activities in good quality, with no material defects; (d) not interfere with the State’s operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) cooperate with the State, including the State’s quality assurance personnel, and any third party to achieve the objectives of the Contract; (g) return to the State any State-furnished equipment or other resources in the same condition as when provided when no longer required for the Contract; (h) not make any media releases without prior written authorization from the State; (i) assign to the State any claims resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract; (j) comply with all State physical and IT security policies and standards which will be made available upon request; and (k) provide the State priority in performance of the Contract except as mandated by federal disaster response requirements. Any breach under this paragraph is considered a material breach.

Contractor must also be clearly identifiable while on State property by wearing identification issued by the State, and clearly identify themselves whenever making contact with the State.

- 3. **Notices.** All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

<p>If to State: Sue Ciecwiwa, Specialist Buyer State of Michigan : DTMB – Procurement Constitution Hall, 1st Floor NE 525 W. Allegan Lansing, MI 48933 ciecwiwas@michigan.gov 517-284-7007</p>	<p>If to Contractor: J. Michael Milligan Mead Johnson & Company, LLC 2400 W. Lloyd Expressway Evansville, IN 47721-0001 michael.milligan@mjn.com 812-429-5210</p>
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4. **Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms of this Contract, and approve and execute any change under this Contract (each a “**Contract Administrator**”):

State: Sue Ciecwiwa, Specialist Buyer State of Michigan, DTMB – Procurement Constitution Hall, 1 st Floor NE 525 W. Allegan Lansing, MI 48933 cieciwas@michigan.gov 517-284-7007	Contractor: J. Michael Milligan Mead Johnson & Company, LLC 2400 W. Lloyd Expressway Evansville, IN 47721-0001 michael.milligan@mjn.com 812-429-5210
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5. **Program Manager.** The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a “**Program Manager**”):

State: Stan Bien, Director, WIC Division State of Michigan Michigan Department of Health and Human Services 320 S. Walnut Lansing, MI 48913 biens@michigan.gov 517-335-8448	Contractor: Kathy J. Decker Mead Johnson & Company, LLC 2400 W. Lloyd Expressway Evansville, IN 47721-0001 kathy.decker@mjn.com 812-429-8758
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6. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in Exhibit A) if, in the opinion of the State, it will ensure performance of the Contract.

7. **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by a company with an A.M. Best rating of "A" or better, and a financial size of VII or better.

Required Limits	Additional Requirements
Commercial General Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations <u>Deductible Maximum:</u> \$50,000 Each Occurrence	Contractor must have their policy endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 0.
Automobile Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence	Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
Workers' Compensation Insurance	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.



Employers Liability Insurance	
<u>Minimal Limits:</u>	
\$500,000	Each Accident
\$500,000	Each Employee by Disease
\$500,000	Aggregate Disease.

If any of the required policies provide **claims-made** coverage, the Contractor must: (a) provide coverage with a retroactive date before the effective date of the contract or the beginning of Contract Activities; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the Contract Activities; and (c) if coverage is canceled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or purchase order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

This Section is not intended to and is not be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State).

8. Reserved

9. Reserved

10. Independent Contractor. Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.

11. Subcontracting. Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation, and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.

12. Staffing. The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.

13. Background Checks. Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.

14. Assignment. Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under



this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.

15. **Change of Control.** Contractor will notify, at least 90 calendar days before the effective date, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.

16. **Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in Exhibit A, Section 5.
17. **Acceptance.** Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided in Exhibit A. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted, but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 24, Termination for Cause.

Within 10 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

18. **Delivery** Contractor must deliver all Contract Activities F.O.B. destination, within the State premises with transportation and handling charges paid by Contractor, unless otherwise specified in Exhibit A. All containers and packaging becomes the State's exclusive property upon acceptance.
19. **Risk of Loss and Title.** Until final acceptance, title and risk of loss or damage to Contract Activities remains with Contractor. Contractor is responsible for filing, processing, and collecting all damage claims. The State will record and report to Contractor any evidence of visible damage. If the State rejects the Contract Activities, Contractor must remove them from the premises within 10 calendar days after notification of rejection. The risk of loss of rejected or non-conforming Contract Activities remains with Contractor. Rejected Contract Activities not removed by Contractor within 10 calendar days will be deemed abandoned by Contractor, and the State will have the right to dispose of it as its own property. Contractor must reimburse the State for costs and expenses incurred in storing or effecting removal or disposition of rejected Contract Activities.
20. **Warranty Period.** The warranty period, if applicable, for Contract Activities is a fixed period commencing on the date specified in Exhibit A. If the Contract Activities do not function as warranted during the warranty period the State may return such non-conforming Contract Activities to the Contractor for a full refund.



21. **Reserved**

22. **Liquidated Damages** Liquidated damages, if applicable, will be assessed as described in Exhibit A.

23. **Stop Work Order.** The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or purchase order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.

24. **Termination for Cause.** The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 25, Termination for Convenience.

The State will only pay for amounts due to Contractor for Contract Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Contract Activities from other sources.

25. **Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 26, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.

26. **Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 120 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.

27. **General Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims,



losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the State deems necessary. Contractor will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

28. **Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.
29. **Limitation of Liability.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.
30. **Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.
31. **State Data.** All data and information provided to Contractor by or on behalf of the State, and all data and information derived therefrom, is the exclusive property of the State ("**State Data**"); this definition is to be construed as broadly as possible. Upon request, Contractor must provide to the State, or a third party designated by the State, all State Data within 10 calendar days of the request and in the format requested by the State. Contractor will assume all costs incurred in compiling and supplying State Data. No State Data may be used for any marketing purposes.
32. **Reserved**



33. **Non-Disclosure of Confidential Information.** The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.
- a. Meaning of Confidential Information. For the purposes of this Contract, the term “**Confidential Information**” means all information and documentation of a party that: (a) has been marked “confidential” or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked “confidential” or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked “confidential” or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term “Confidential Information” does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party’s proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.
 - b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor’s responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State’s Confidential Information in confidence. At the State’s request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.
 - c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
 - d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
 - e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party’s possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party.



34. **Reserved**

35. **Reserved**

36. **Reserved**

37. **Records Maintenance, Inspection, Examination, and Audit.** The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain, and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension (“**Audit Period**”). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

38. **Warranties and Representations.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; and (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 24, Termination for Cause.

39. **Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

40. **Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.

41. **Reserved**

42. **Reserved**



43. **Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.
44. **Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
45. **Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.
46. **Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
47. **Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
48. **Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.
- Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely, or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.
49. **Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.
50. **Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
51. **Entire Agreement and Order of Precedence.** This Contract, which includes Schedule A – Statement of Work, and expressly incorporated schedules and exhibits, is the entire agreement of the parties related to the Contract Activities. This Contract supersedes and replaces all previous understandings and agreements between the parties for the Contract Activities. If there is a conflict between documents, the order of precedence is: (a) first, this Contract, excluding its schedules, exhibits, and Schedule A – Statement of Work; (b) second, Schedule A – Statement of Work



as of the Effective Date; and (c) third, schedules expressly incorporated into this Contract as of the Effective Date. NO TERMS ON CONTRACTOR'S INVOICES, ORDERING DOCUMENTS, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE, EVEN IF ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

52. **Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
53. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
54. **Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.
55. **Contract Modification.** This Contract may not be amended except by signed agreement between the parties (a "Contract Change Notice"). Notwithstanding the foregoing, no subsequent Statement of Work or Contract Change Notice executed after the Effective Date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended.



STATE OF MICHIGAN

Contract No. 071B7700003
WIC INFANT FORMULA REBATE PROGRAM

EXHIBIT A STATEMENT OF WORK CONTRACT ACTIVITIES

This Contract is for a rebate program on infant formula purchased by the Michigan Special Supplemental Nutrition Program for Women, Infants and Children (WIC) Program through the WIC retail food delivery system for a period of November 1, 2016 through October 31, 2021.

As stated in the Federal Register (CFR 246.16a(c)(5)), the “State agency must award the Contract(s) to the responsive and responsible bidder(s) offering the lowest total monthly net price for infant formula or the highest monthly rebate for a standardized number of units of infant formula. The State agency must calculate the lowest net price using the lowest national wholesale cost per unit for a full truckload of the infant formula on the date of the bid opening.”

The Contractor shall supply and provide a rebate on all infant formulas it produces that the State chooses to issue, except exempt infant formulas. Rebates will be paid by the Contractor to the State of Michigan on a per unit basis. The same percentage discounts applied to the wholesale truckload prices of the iron-fortified milk-based infant formula as bid, will apply to all other Contract Brand Infant Formulas, including new infant formula authorized for issuance by the Michigan WIC Program.

BACKGROUND

In accordance with the “Child Nutrition Act of 1966, as Amended through the “Healthy, Hunger-Free Kids Act of 2010” P.L. 111-296, Dec. 13, 2010, the State of Michigan, Department of Health and Human Services, (herein referred to as the “Department”), Special Supplemental Nutrition Program for Women, Infants, and Children (herein referred to as the “WIC Program”), is seeking infant formula cost-containment systems which will produce the maximum savings and thus allow for the greatest number of clients to benefit from WIC Program services.

The Michigan WIC Program is administered by the United States Department of Agriculture (USDA) through its Food and Nutrition Service Division which has promulgated regulations governing the program at 7 CFR 246.1, et seq. USDA has contracted with the State of Michigan to implement the program through the Department in accordance with these regulations. As required by federal regulations, Michigan has adopted a WIC State Plan of program operation and administration that was submitted to and approved by the USDA. The WIC State Plan, as approved by USDA, establishes and governs the specifics as to how Michigan implements all aspects of the food program, including the administration and implementation of the WIC Infant Formula Rebate Program and this Contract.

The Department is the recipient of federal funds and is responsible for administering the WIC Program in Michigan in accordance with the Michigan WIC State Plan through a network of 48 local agencies, 216 local clinics and approximately 1826 Authorized WIC Vendors, retail food stores and pharmacies, throughout the State.

Eligible WIC clients receive WIC food instruments or Electronic Benefit Transfer (EBT) cards known as Michigan WIC Bridge Cards, which may be redeemed at any of the Authorized WIC Vendors throughout the State.

Michigan WIC Electronic Benefit Transfer (EBT) Cards are issued at clinic sites throughout the State to certified eligible pregnant, non-breastfeeding postpartum and breastfeeding women, and parents/guardians and/or proxies of certified eligible infants and children. These WIC EBT food benefits are specific in quantity and type (by UPC code) of nutritious foods, which may be purchased at an Authorized WIC Vendor, food or pharmacy. Once an Authorized WIC Vendor performs the WIC EBT transaction, it is then redeemed by the Authorized WIC Vendor via electronic submission to the EBT Contractor for electronic payment processing to the Authorized WIC Vendor’s bank account. A series of prepayment



edits are performed on each EBT transaction to ensure that specific redemption requirements are met. If the vendor requested dollar amount exceeds the maximum price for that food item, the Authorized WIC Vendor is only paid up to the maximum price for that food item which has been predetermined by the State of Michigan WIC Program.

The average monthly participation for Federal Fiscal Year 2015 was 242,970, including approximately 60,000 infants. Of these infants, 8,402 were exclusively breastfed, 47,364 were issued Contract Brand Infant Formula and 3,638 were issued exempt infant formula.

Participation and infant formula data does not necessarily reflect actual issuance and redemption that will occur under this Contract.

SCOPE

The Contractor's iron-fortified, milk based 12.1 to 13-ounce liquid concentrate, 12–16 ounce powder, and 32 to 33.8-ounce ready-to-feed iron fortified infant formula meets the requirements under CFR 246.10(e)(1)(iii) & (2)(iii), and is suitable for routine issuance to the majority of generally healthy full-term infants. The Contractor shall rebate to the State a fixed amount per container of any infant formula in the manufacturer's product line that meets the definition described in the Standard Contract Terms, Section 1, Definitions "Contract Brand Infant Formula."

Except for the issuance of the primary Contract iron fortified milk based infant formula as formula of first choice, the State provides no guarantee of the quantity, type, or physical forms that will be used under this Contract.

The primary Contract infant formula will be the formula of first choice for issuance to infants with all other formulas issued as an alternative to the primary Contract Infant Formula. As stated in the Federal Register (CFR 246.16a(c)(7),(8)), the Michigan WIC Program reserves the right to approve for issuance some, none, or all of the winning bidder's other infant formula(s). The Michigan WIC Program may require medical documentation before issuing any Contract Brand Infant Formula other than the primary Contract infant formula (CFR 246.10(d)(2) (ii)).

The Michigan WIC Program will issue infant formula in accordance with CFR 246.10(e)(1) through (e)(3) and (e)(9) of the WIC Program Regulations as described in the WIC State Plan Appendix: Michigan WIC Formula Calculations Worksheet. However, the Michigan WIC Program, in its sole discretion, reserves the right to utilize either the "Monthly Maximum" (CFR 246.10(e)(9) Table 1, Footnote 6) or the "Round Up" (CFR 246.10(h)) methodology for calculating maximum allowable infant formula quantities.

OUT OF SCOPE

Exempt infant formulas issued by the Michigan WIC Program will not be subject to rebate billings. The Michigan WIC Program reserves the right to approve for issuance some, none, or all of the Contractor's exempt infant formulas after the bidding process has been completed.

REQUIREMENTS

1. General Requirements

1.1. Product Specifications

Contractor must provide Deliverables/Services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

1. The Contractor must demonstrate the capability to make available for redemption supplies of the Contractor's iron-fortified milk and soy-based liquid concentrate, powder, and ready-to-feed infant formula in sufficient quantities to serve the Michigan WIC Program caseload. By November 1, 2016, the Contractor must be able to adequately provide Contract infant formulas to supply approximately 60,505 infants at over 1826 Authorized WIC Vendors in 83 counties statewide on a monthly basis for 60 months.



2. The Contractor must demonstrate the capability to remit to the State a rebate per container in accordance with the reporting, billing and payment procedures described in Section 6 of this Exhibit A, Statement of Work.
3. A minimum of one iron-fortified milk based infant formula and one soy based infant formula in liquid concentrate, powder and ready-to-feed must be available.
4. If the Contractor does not produce a soy-based infant formula, they shall be required to subcontract with another manufacturer to supply a soy-based infant formula under this Contract.
5. The Contractor shall pay the State a rebate on the soy-based infant formula supplied by the subcontractor. The rebate must yield the same percentage discount on lowest wholesale price per unit for a full truckload as the same physical form of the iron-fortified milk-based infant formula.
6. Contract Brand Infant Formulas shall be nutritionally complete, not requiring the addition of any ingredients other than water prior to being served in a liquid state.
7. The primary Contract Brand Infant Formula shall contain at least 10 milligrams of iron per liter of infant formula at standard dilution which supplies 67 kilocalories per 100 milliliters; e.g., 20 kilocalories per fluid ounce of infant formula at standard dilution.
8. The Contractor must certify it is registered with the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 USC 301 *et seq*) and must certify that their formulas comply with the Federal Food, Drug, and Cosmetic Act and regulations issued pursuant to the Act. (CFR 246.10 (g)).
9. The Contractor must adhere to provisions set forth in FNS Instruction 800-2, dated 6/21/92 and GAO 06-282, Feb. 2006 (Policy Memo 2009-1):

Use of WIC Service Marks

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

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

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

Manufacturer shall include the following statement with any use of the WIC Acronym in Advertising: "WIC is a registered service mark of the U.S. Department of Agriculture for USDA's Special Supplemental Nutrition Program for Women, Infants and Children."

10. The Contractor must agree to supply and provide a rebate on all physical forms of infant formula it produces that the State agency chooses to issue, except exempt infant formula. This includes any new infant formula products introduced during the Contract term that meet the FDA definition of an "infant formula," as defined in the Infant Formula Act of 1980.
11. As stated in Federal Register (CFR 246.16a(c)(4), "The bid solicitation must require bidders to specify a rebate for each of the types and physical forms of infant formulas specified in the following chart. These rebates apply proportionally to other infant formulas produced by the winning bidder(s)". For purposes of this section, the infant formula on which bids were solicited was the Primary Contract Infant Formula.

Type of Infant Formula	Physical Forms of Infant Formula	Infant Formula Requirements
A single iron fortified milk-based infant formula (primary Contract infant formula); bidders must specify the brand name of the milk-based infant formula for which the rebate is being specified.	Concentrated liquid, powdered, and ready-to-feed.	Meets requirements under 246.10(e)(1)(iii) & (2)(iii), and is suitable for routine issuance to the majority of generally healthy, full-term infants.



12. During the Contract period, the Contractor shall provide to the Department, for any manufacturer increase or decrease in lowest national wholesale truckload prices, a cent-for-cent increase or decrease in the rebate amount effective on the first day of the month following the increase or decrease. The increase or decrease shall apply to all of the EBT benefits issued with the Contractor's brands that are redeemed in the billing month following the increase or decrease. Therefore the net wholesale price for each physical form may not be higher than the initial net wholesale price per container quoted in the Contractor's bid sheet.
13. The Contractor will provide price increase or decrease notification to the Program Manager, in writing via email, at least 30 days in advance of the effective date.
14. Any written communication from the Contractor to local WIC agencies or Authorized WIC Vendors regarding WIC Program policy or guidance will require prior written approval by the Department. In addition, refer to Section 49. Media Releases of the Standard Contract Terms.

1.2. Warranties

Refer to Standard Contract Terms, Section 38, Warranties and Representations

1.3. Recall Requirements and Procedures

The WIC Division Program Manager and Contractor shall maintain immediate communication regarding issues of infant formula production, distribution, quality control issues, recalls, or rebates.

The Contractor must notify the Contract Administrator and Program Manager via email and phone call or message within one (1) business day of any recall or safety notices relating to any and all infant formulas provided under the Rebate Contract. In addition, a hard copy of this notice must be received within two (2) business days, as specified in Standard Contract Terms, Section 3. Notices of the contract.

The Contractor is responsible for picking up and replacing or issuing credit for all products that are subject to recall at no additional charge to the State.

1.4. Quality Assurance Program

By tendering any Deliverable to the State, the Contractor certifies to the State that (a) it has performed reasonable quality assurance activities; (b) it has performed any reasonable testing; and (c) it has corrected all material deficiencies discovered during the quality assurance activities and testing.

2. Services Levels

2.1. Delivery

Unless otherwise specified by the State in Standard Contract Terms, Section 17, Acceptance, the following are applicable to all deliveries:

- (a) The Contractor is responsible for delivering the Deliverable(s) by the applicable delivery date to the ordering location(s).
- (b) The Contractor must ship the Deliverable(s) "F.O.B. Destination."

2.2. Meetings

The State may request a kick-off meeting with the Contractor within thirty (30) days of the award notification. The State may request other meetings as it deems appropriate.

2.3 Confidential Information

The Contractor shall not have access to any records identifying Michigan WIC Program participants by name or address. The Contractor shall not have access to Authorized WIC Vendor information other than Authorized WIC Vendor's name, address, phone number, website, email address, store type, and authorization status. See also Standard Contract Terms, Section 33. Non-Disclosure of Confidential Information.

2.4 Errors

1. The Contractor may be entitled to recoupment of funds paid due to an over-billing error, after demonstration that the billing error has been verified by the Department. The Contractor may only recoup funds in this instance.



2. The Contractor must notify the Department of any dispute or error on rebate invoice in writing within 45 days of receipt.
3. All disputes must be settled by closeout of the fiscal year in which the dispute occurred. If the State has over-billed the Contractor, funds will be reimbursed within 45 days of the final resolution of the dispute.
4. Any review of WIC redemption data by the Contractor shall be for the sole purpose of recoupment in resolving discrepancies of over-billing or for validating infant formula redemption.
5. The Contractor shall not withhold any rebate payment due the State under any circumstances.
6. The Contractor shall reimburse the State for any funds owed the Department for under-billing due to billing errors or adjustments within 45 calendar days.

3. Staffing

3.1. Contractor Representatives

The Contractor must appoint one or more individuals who will be directly responsible for the day to day operations of the Contract, that will respond to State inquiries regarding the Contract Activities, answering questions related to ordering and delivery, etc. (“the Contractor Representatives”).

Contractor Representatives must be specifically assigned to the State account, be knowledgeable on the contractual requirements, and respond to State inquires within 48 hours.

The Contractor must notify the Program Manager in writing by email at least 30 calendar days before removing or assigning a new Contractor Representative.

3.2. Technical Support

The Contractor must be available for calls and service during normal business hours.

4. Pricing

4.1. Price Term

Pricing details are in Exhibit B, Pricing.

Price level increases and decreases in the successful bidder’s wholesale truckload prices after the bid has been received, and before the Contract effective date, will result in an automatic rebate increase or decrease on a cent-for-cent basis. The rebate amount per can will increase or decrease effective the first day of the Contract.

All prices/rates will be firm for the duration of the Contract, except as noted under Section 4.2 of this Statement of Work, for any increase or decrease in the manufacturer’s lowest national wholesale prices for a full truckload of infant formula.

As stated in federal register (CFR 246.16a(c) (7)(i – iv)) “All bids must specify the rebates offered by each bidder for the primary Contract Brand Infant Formula(s). After the Contract is awarded, the State agency must calculate the percentage discount for all other Contract Brand Infant Formulas (i.e., all other infant formulas produced by the bidder other than exempt infant formulas) approved for issuance by the State agency. The State agency must use the following method in calculating the rebates:

- (i) “Rebates for Contract Brand Infant Formulas, other than the primary Contract infant formula(s) for which bids were received, must be calculated by first determining the percentage discount for each physical form (e.g., concentrated liquid, powdered, and ready-to-feed) of the primary Contract infant formula(s). The percentage discount must be calculated by dividing the rebate for the primary Contract infant formula by the manufacturer’s lowest national wholesale price per unit, as of the date of the bid opening, for a full truckload of the primary Contract infant formula. The percentage discounts must be used to determine the rebate for all other Contract Brand Infant Formulas approved for issuance by the State agency.”
- (ii) “The rebate for each type and form of all other Contract Brand Infant Formulas must be calculated by multiplying the percentage discount by the manufacturer’s lowest national wholesale price per unit, as of the date of the bid



opening, for a full truckload of the other Contract Brand Infant Formula. The percentage discount used for each of the other Contract Brand Infant Formulas depends on the physical form of the infant formula. For example, if the percentage discount provided for the primary Contract brand powdered infant formula is 80 percent of its wholesale price, the same percentage discount must be applied to all other Contract brand powdered infant formulas. The rebate for any types or forms of Contract Brand Infant Formulas that are introduced during the Contract period must be calculated using the wholesale truckload prices of these new Contract Brand Infant Formulas at the time the infant formulas are approved for issuance by the State agency.” Approval for issuance occurs when the State adds a Contract Brand Infant Formula or a new size of Contract Brand Infant Formula to their WIC Authorized Formulas list and adds the UPC to its database, which allows clients to begin redeeming said Formula. The same percentage discount bid for each authorized form of the primary Contract infant formula (concentrate, powder, and ready-to-feed) will be applied to all other Contract Brand Infant Formulas approved for issuance by the Michigan WIC Program. Future rebates on all other infant formula including new formula and changed can sizes will be based on the same percentage as the corresponding physical form of the primary Contract formula.

- (iii) “The rebates resulting from the application of the percentage discount must remain the same throughout the Contract period except for the cent-for-cent rebate adjustments required in paragraph (c)(6) (iv) of this section.”
- (iv) “Bid solicitations must require the manufacturer to adjust rebates for price changes subsequent to the bid opening. Price adjustments must reflect any increase and decrease, on a cent-for-cent basis, in the manufacturer’s lowest national wholesale prices for a full truckload of infant formula.”
- (v) If production of the primary contract infant formula is discontinued, Contractor must provide a rebate that yields the same net cost per ounce for the replacement formula.

4.2. Price and Product Changes

Price Changes

1. The Contractor shall notify the Program Manager in writing by email of any price increases or decreases, at least 30 days in advance of the effective date of the price increase or decrease. In addition, the Contractor must submit their revised price sheet to the Program Manager.
2. The Program Manager will verify the price increase or decrease and rebate amount, as specified in paragraph 1. The State will revise the pricing and rebate amount in its database and notify the Contractor via email when this action has been completed.

Product Changes

1. The Contractor shall notify the Program Manager in writing by email of any product changes, at least 30 days in advance of the effective date of the product change. In addition, the Contractor must submit their revised price sheet with the product change to the Program Manager.
2. The Department reserves the right to approve or reject for issuance any new and improved infant formula introduced by the Contractor or any substitution for a similar existing product subsequent to the signing of this Contract. If the Contractor desires to substitute the new infant formula product for any of the Contract Brand Infant Formula products, the Contractor shall pay a rebate that yields the same percentage discount on wholesale cost as the same physical form of the iron-fortified milk-based infant formula when used as a substitute. Refer to Section 4.1 (ii) for additional information regarding price terms.
3. If the Contractor replaces the primary Contract Brand Infant Formula with a ‘new and improved’ formulation of the primary Contract Brand Infant Formula, the manufacturer must either make the original primary Contract brand formula available for the remainder of the Contract period (at the same rebate), or provide a rebate on the newly formulated product that yields the same net cost per can (net wholesale cost per reconstituted ounce of formula if change in can size). In the event that the primary Contract Brand Infant Formula described in the Contract is no longer available, the State may terminate the Contract without further liability and solicit new bids.



4. If the Contractor desires to change unit size, formulation, or artistically change the appearance of the Contract Brand Infant Formula units or labels during the Contract period (changes refer to but are not limited to label, color, shape, UPC Code, material) these anticipated changes shall be reported to the Program Manager no later than when reported to other customers and prior to delivery to wholesalers, clinic, clients, and other health providers.
5. The Program Manager or designee will approve the product change via email to the Contractor. Approval for issuance occurs when the State adds a Contract Brand Infant Formula or a new size of Contract Brand Infant Formula to their WIC Authorized Formulas list and adds the UPC to its database, which allows clients to begin redeeming said formula. The same percentage discount bid for each authorized form of the primary Contract infant formula (concentrate, powder, and ready-to-feed) will be applied to all other Contract Brand Infant Formulas approved for issuance by the Michigan WIC Program. Future rebates on all other infant formula including new formula and changed can sizes will be based on the same percentage as the corresponding physical form of the primary Contract formula.

Accepted modifications due to price changes and product changes specified in Section 4.2 Price and Product Changes will not be documented in a “Contract Change Notice” as specified in Section 55. Entire Contract and Modification of Standard Terms and Conditions.

5. Ordering

5.1. Authorizing Document

The Contract, once it has been executed by the State, constitutes an order for the Deliverable(s). The Contractor shall begin planning activities as specified in Section 7, Project Plan after receipt of an executed Contract and in advance of commencement of the contract term.

6. Invoice and Payment

6.1. Invoice Requirements

Within forty-five (45) days of the end of each Contract period calendar month, the Department will produce a report specifying the number of units of Contract Brand Infant Formula issued by the Department during the Contract period, for which it has paid various retailers under the Michigan WIC Program account in the respective billing month. The Department shall provide the number of units of Contract Brand Infant Formula indicated in the report to the Contractor.

6.2. Payment Methods

The Contractor shall make payment in full to the State within thirty (30) days of the date of the invoice.

6.3. Procedure

1. The number of Contract Brand Infant Formula units reported for rebate billing purposes shall be equal to the total number of Contract Brand Infant Formula cans issued during the Contract period and redeemed according to State and Federal guidelines in the respective billing month. EBT transactions included in the billing month are based on the date payment was made to the Authorized WIC Vendor, also known as the Settled Date. WIC clients may redeem benefits during the issuance month or subsequent month, and thus rebate-eligible redemptions may fall outside the Contract period.
2. The number of units for each product and physical form (powder, concentrate or ready-to-feed) of the Contract Brand Infant Formula shall then be multiplied by the Contract Rebate per Unit dollar amount to determine the total dollar amount due to the Department.
3. Any errors in calculation by the Department shall be rectified as expediently as possible by submitting an adjusted bill to the Contractor no later than forty-five (45) days from the date the error was fixed. Note that data system fixes may require coordination with the Michigan WIC Program data system release/update schedule.
4. The Department will provide to the Contractor monthly invoices and supporting documentation consisting of an electronic file to be transmitted via FTP on a monthly basis. This file will contain information associated with EBT redemptions during the billing month. Each record will contain at a minimum: Authorization Number (the unique ID attached to each EBT card swipe), Benefit Start Date, Redeemed Date, Redeemed Price, Product UPC, and Redeemed Quantity.



6.4 Non-Payment of Rebate

The State and Contractor agree that if the Contractor fails to remit payment in accordance with the Contract requirements the Contractor must remit an additional \$5,000.00 per day for each day the Contractor fails to provide payment of the rebate until the payment is made. The \$5,000.00 per day charge will be invoiced to the Contractor, and the Contractor must remit payment in accordance with the requirements of this Section 6. Invoice and Payment.

7. Project Plan

Within thirty (30) working days of mutual execution of the Contract, the Contractor will submit to the WIC Division Program Manager for final approval of a work plan. This final implementation plan must be in agreement with Exhibit A, Statement of Work and accepted by the Program Manager, and must include the following:

1. The Contractor's staffing table with names and title of personnel assigned to the project. This must be in agreement with staffing of accepted proposal.
2. The Contractor's plan to supply Authorized WIC Vendors with sufficient quantities of the formulas included in the bid before the official agreement start date of November 1, 2016.
3. The Contractor's plan to assist the Department in notifying affected parties of Contract Brand Infant Formula changes, including wholesalers, retail food vendors, hospitals and physicians.
4. The Contractor's plan to assist Authorized WIC Vendors to change their stocking patterns for infant formula if a new brand is selected.
5. Any written communication from the Contractor to local WIC agencies or Authorized WIC Vendors regarding WIC Program policy or guidance will require prior written approval by the Department.

8. Rebate Invoice Billing Credits

The parties acknowledge that widespread unavailability of Contract infant formula exceeding 7 calendar days and affecting 5% or more of WIC participating infants will interfere with the timely and proper completion of the Contract, to the loss of the Department, and that it would be impracticable and extremely difficult to fix the actual loss sustained by the Department as a result of any such delay. Therefore, Contractor and the Department agree that in the case of any such unavailability in respect of which the Department does not elect to exercise its rights under Standard Contract Terms, Section 27. General Indemnification, the Department may assess a Rebate Invoice Billing Credit to the Contractor as specified in this Section.

If widespread unavailability of Contract infant formula exceeding 7 calendar days and affecting 5% or more of WIC participating infants occurs (for example, formula manufacturer inventory shortage prevents distribution centers and thus WIC authorized vendors from procuring infant formula), then the Department shall be entitled to a Rebate Invoice Billing Credit for each day Contractor fails to remedy the unavailability equal to the daily projected lost rebate amount.

The parties acknowledge that non-payment of infant formula rebate on a monthly basis will interfere with the timely and proper completion of the Contract, to the loss of the Department, and that it would be impracticable and extremely difficult to fix the actual loss sustained by the Department as a result of any such delay. Therefore, Contractor and the Department agree that in the case of any such non-payment of infant formula rebate in respect of which the Department does not elect to exercise its rights under Standard Contract Terms, Section 27, General Indemnification, the Department may assess a credit to the Contractor as specified in this Section.

If unavailability of infant formula or non-payment of infant formula rebate occurs, then the Department shall be entitled to a Rebate Invoice Billing Credit in the amount of \$5,000.00 for each day the Contractor fails to remedy either the unavailability of infant formula or non-payment of infant formula rebate.

9. Risk Management

The Contractor must have a risk mitigation plan that assures a high quality product, and consistent availability of formula.

The State of Michigan WIC Program reserves the right to allow client redemption of alternative formulas if there are Contract Brand Infant Formula shortages or outages, or availability/access issues for Authorized WIC Vendors. In the event of a shortage/outage, the first option the State would pursue is to authorize redemption of the same Contract Brand



Infant Formula in a different physical form (liquid concentrate, powder, ready to feed) for the duration of the shortage/outage. If no forms of the Contract brand formula are readily accessible, alternative formula choices for WIC clients may include a different size of the same formula, or a different brand of formula, including a nutritionally comparable formula from another manufacturer (non-contract brand, non-exempt formula). If implementation of any of the alternatives noted in this paragraph are required due to Contract Brand Infant Formula shortages or outages, the Contractor will be responsible for providing a rebate on the alternative product that yields the same net cost per can (net wholesale cost per reconstituted ounce of formula if change in can size), even if it is a different physical form of the same Contract brand of formula. In the event that Contract Brand Infant Formulas are not readily available due to a shortage/outage, the Department may terminate the Contract without further liability and solicit new bids, and may hold the Contractor responsible for any excess costs occasioned thereby.

The Contractor must assist the State with providing Contract Brand Infant Formula to WIC participants on an emergency basis if normal distribution channels are disrupted by such events as acts of God, acts of terrorism or war, epidemics, communication line failures, power failures, earthquakes, contamination of water supplies or other disasters or events. The forms such assistance may take include, but are not limited to, sales of infant formula to the State for direct distribution to WIC participants or efforts to increase the supply of ready-to-feed formula available to Authorized WIC Vendors. In the event of formula purchases by the State, the cost to the State will be the national wholesale price in effect on the purchase date for the weight tier of formula purchased, less the rebate in effect on the purchase date.



STATE OF MICHIGAN
 Contract No. 071B7700003
 WIC Infant Formula Rebate Program

**EXHIBIT B
 PRICING**

1. The pricing schedule for the Contract Activities is listed below.
2. Prices include all costs, including but not limited to, any one-time or set-up charges, fees, and potential costs that Contractor may charge the State (e.g., shipping and handling, per piece pricing, and palletizing).
3. Participation and infant formula data does not necessarily reflect actual issuance and redemption that will occur under this Contract.
4. The Contractor certifies that the prices were arrived at independently, and without consultation, communication, or agreement with any other Contractor.

MICHIGAN WIC PROGRAM

Milk Based Infant Formula Rebate Pricing

Manufacturer: Mead Johnson & Company, LLC

Physical Form	Product Brand Name Being Bid	Unit Size (in ounces)	Reconstituted Oz. Per Unit	Net Wholesale Price per Unit	Rebate Bid per Unit	Net Cost per Unit	Percent Rebate
Liquid Concentrate	Enfamil Infant	13.0	26.0	\$4.330	\$4.222	\$0.108	97.506%
Powder	Enfamil Infant	12.5	90.0	\$15.380	\$14.703	\$0.677	95.598%
Ready-to-Feed	Enfamil Infant	32.0	32.0	\$6.530	\$5.224	\$1.306	80.000%