

**PARTICIPATING ADDENDUM
for
Infant Formula Rebates
Between
The State of Delaware and Abbott Nutrition
Contract #GSS19687-INFANTFORM Cooperative Contract #8327**

Vendor Name: Abbott Nutrition

Delaware Contract Number: GSS19687-INFANTFORM
Infant Formula Rebates

1. SCOPE

- a. This agreement is made between the State of Delaware, Office of Management and Budget, Government Support Services and Abbott Nutrition (Contractor), to establish Infant Formula Rebates for Women, Infants and Children (WIC).
- b. Under Delaware Code, Title 29 §6933 and §6987, the State of Delaware is authorized to participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of materiel or nonprofessional services, or professional services with 1 or more public procurement units either within the State or within another state in accordance with an agreement entered into between the participants.
- c. The requirements herein are in addition to those in the executed NASPO ValuePoint contract and shall continue through January 28, 2022 with the option to extend up to three additional years in 1 –year, 2- year, or 3- year terms, provided that the term including all extensions does not exceed six (6) years from the Commencement Date. At the sole discretion of Government Support Services, this Participating Addendum may further be extended to include any extensions as agreed to, by and between NASPO ValuePoint and Abbott Nutrition.

2. CHANGES

a. MANDATORY INSURANCE REQUIREMENTS

Certificate of Insurance dated April 11, 2019, attached herein as Exhibit A, identifies the mandatory insurance requirements. During the term of this Agreement, the Contractor shall, at its own expense, carry insurance minimum limits as identified in Exhibit A. Before any work is done with the State, a Certificate of Insurance referencing the name and contract number stated herein, shall be filed with the State. The certificate holder is as follows:

**State of Delaware
Government Support Services
Contract # GSS19687-INFANTFORM
100 Enterprise Place, Suite 4
Dover, DE 19904-8202**

Note: The State of Delaware shall not be named as an additional insured.

Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

b. **ELECTRONIC CATALOG – Reserved.**

c. **INTENT TO LOAD CATALOGS IN STATE ePROCUREMENT SOLUTION – Reserved.**

d. **SEVERABILITY**

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

e. **PERMITS AND LICENSES**

All necessary permits, licenses, insurance policies, etc. required by local, State or Federal laws, shall be provided by the Contractor at its own expense.

f. **PATENTED DEVICES, MATERIAL AND PROCESSES – Reserved.**

g. **STATE OF DELAWARE BUSINESS LICENSE**

Prior to commence performance under this agreement, the Contractor shall either furnish Government Support Services with proof of State of Delaware Business Licensure or initiate the process of application, where required. An application may be requested in writing to: Division of Revenue, Carvel State Building, P. O. Box 8750, 820 N. French Street, Wilmington, DE 19899 or by telephone: 302-577-8778.
<http://revenue.delaware.gov/services/BusServices.shtml>

Information regarding the State of Delaware's decision to enter into this participating addendum will be given to the Division of Revenue. Failure to comply with the State of Delaware licensing requirements may subject your organization to applicable fines and/or interest penalties.

h. **EMERGENCY TERMINATION OF AGREEMENT – Reserved.**

i. **INDEMNIFICATION**

1. General Indemnification

By submitting a proposal, the proposing contractor agrees that in the event it is awarded a contract, it will indemnify and otherwise hold harmless the State of Delaware, its agents and employees from any and all liability, suits, actions, or claims, together with all costs, expenses for attorney's fees, arising out of the contractor's its agents and employees' performance work or services in connection with the contract.

2. Proprietary Rights Indemnification

Contractor shall warrant that all elements of its solution, including all equipment, software, documentation, services and deliverables, do not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary rights of any third party. In the event of any claim, suit or action by any third party against the State of Delaware, the State of Delaware shall promptly notify the contractor in writing and contractor shall defend such

claim, suit or action at contractor's expense, and contractor shall indemnify the State of Delaware against any loss, cost, damage, expense or liability arising out of such claim, suit or action (including, without limitation, litigation costs, lost employee time, and counsel fees) whether or not such claim, suit or action is successful.

If any equipment, software, services (including methods) products or other intellectual property used or furnished by the contractor (collectively "Products") is or in contractor's reasonable judgment is likely to be, held to constitute an infringing product, contractor shall at its expense and option either:

- a. Procure the right for the State of Delaware to continue using the Product(s); Replace the product with a non-infringing equivalent that satisfies all the requirements of the contract; or
- b. Modify the Product(s) to make it or them non-infringing, provided that the modification does not materially alter the functionality or efficacy of the product or cause the Product(s) or any part of the work to fail to conform to the requirements of the Contract, or only alters the Product(s) to a degree that the State of Delaware agrees to and accepts in writing.

j. NON-PERFORMANCE – Reserved.

k. OPPORTUNITY BUYS – Reserved.

l. I FOUND IT CHEAPER – Reserved.

m. REQUIRED REPORTS – Reserved.

n. DELAWARE ECONOMIC IMPACT – Reserved.

o. FUNDING OUT or NON-APPROPRIATION – Reserved.

p. INDEPENDENT CONTRACTORS

The parties to any contract from this solicitation shall be independent contractors to one another, and nothing herein shall be deemed to cause the agreement to create an agency, partnership, joint venture or employment relationship between parties. Each party shall be responsible for compliance with all applicable workers compensation, unemployment, disability insurance, social security withholding and all other similar matters. Neither party shall be liable for any debts, accounts, obligations or other liability whatsoever of the other party or any other obligation of the other party to pay on the behalf of its employees or to withhold from any compensation paid to such employees any social benefits, workers compensation insurance premiums or any income or other similar taxes.

q. TEMPORARY PERSONNEL ARE NOT STATE EMPLOYEES UNLESS AND UNTIL THEY ARE DIRECTLY HIRED – Reserved.

r. FAIR BACKGROUND CHECK PRACTICES – Reserved.

s. VENDOR BACKGROUND CHECK REQUIREMENTS – Reserved.

t. DRUG TESTING REQUIREMENTS FOR LARGE PUBLIC WORKS – Reserved.

- u. **SERVICING SUBCONTRACTORS – Reserved.**
- v. **ORDERING PROCEDURE – Reserved.**
- w. **BILLING - Reserved**
- x. **METHOD OF PAYMENT – Reserved.**
- y. **FORMAL CONTRACT AND/OR PURCHASE ORDER – Reserved.**
- z. **MINIMUM WAGE RATES – Reserved.**
- aa. **PREVAILING WAGE – Reserved.**
- bb. **DISPUTE RESOLUTION – Reserved.**
- cc. **TERMINATION OF INDIVIDUAL ORDERS OR PURCHASE ORDERS – Reserved.**
- dd. **TERMINATION OF PARTICIPATING ADDENDUM – Reserved.**
- ee. **PUBLICATON, REPRODUCTION AND USE OF MATERIAL – Reserved.**
- ff. **RIGHTS AND OBLIGATIONS- Reserved.**

gg. ASSIGNMENT OF ANTITRUST CLAIMS

As consideration for the award and execution of this contract by the State, the Contractor hereby grants, conveys, sells, assigns, and transfers to the State of Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, regarding the specific goods or services purchased or acquired for the State pursuant to this contract. Upon either the State's or the Contractor notice of the filing of or reasonable likelihood of filing of an action under the antitrust laws of the United States or the State of Delaware, the State and Contractor shall meet and confer about coordination of representation in such action.

hh. REMEDIES

Except as otherwise provided in this Participating Addendum, all claims, counterclaims, disputes, and other matters in question between the State of Delaware and the Contractor arising out of, or relating to, this addendum, or a breach of it may be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Delaware.

ii. AUDIT ACCESS TO RECORDS

The Contractor shall maintain books, records, documents, and other evidence pertaining to this Contract to the extent and in such detail as shall adequately reflect performance hereunder. The Contractor agrees to preserve and make available to the State, upon request, such records for a period of five (5) years from the date services were rendered by the Contractor. Records involving matters in litigation shall be retained for one (1) year following the termination of such litigation. The Contractor agrees to make such records available for inspection, audit, or reproduction to any official State representative in the performance of their duties under the Contract. Upon notice given to the Contractor,

representatives of the State or other duly authorized State or Federal agency may inspect, monitor, and/or evaluate the cost and billing records or other material relative to this Contract. The cost of any Contract audit disallowances resulting from the examination of the Contractor's financial records will be borne by the Contractor. Reimbursement to the State for disallowances shall be drawn from the Contractor's own resources and not charged to Contract cost or cost pools indirectly charging Contract costs.

jj. SUBCONTRACTS – Reserved.

kk. CONTRACTOR EMERGENCY RESPONSE POINT OF CONTACT – Reserved.

ll. POTENTIAL CONTRACT OVERLAP – Reserved.

mm. CONFIDENTIALITY AND DATA INTEGRITY – Reserved.

nn. SECURITY – Reserved.

oo. TAX EXEMPTION - Reserved.

pp. EQUALITY OF EMPLOYMENT OPPORTUNITY IN PUBLIC WORKS – Reserved.

qq. DOCUMENT EXECUTION– Reserved.

3. PRIMARY CONTACTS

The primary government contact individuals for this Addendum are as follows (or their named successors):

Lead State

Contact: Pam Johnson, CCPB, OCAC, OPBC
Address: 1225 Ferry St, SE, Salem, OR 97301
Phone: 503 – 378 - 4731
Fax: 503 – 373 - 1626_
Email: Pam.Johnson@Oregon.gov

Contractor

Contact: Kori Stenzel
Address: 3300 Stelzer Rd
Phone: 614 – 624 -5816
Fax: 614 – 727 - 5816
Email: Kori.Stenzel@abbott.com

Participating State Delaware, Government Support Services


Contact: Theresa Newman
Address: 100 Enterprise Place, Suite # 4, Dover, DE 19904-8202
Phone: 302-857-4552
Fax: 302-739-3779
Email: Theresa.Newman@state.de.us


4. CONTRACT NUMBER

The contract number for the State of Delaware is: GSS19687-INFANTFORM.

This participating addendum and the Master Price Agreement, Number 8327, (administered by the State of Oregon) together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Master Contract, together with its exhibits, shall not be added to or incorporated into this Addendum or the Master Contract and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Master Contract and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

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

State of Delaware
By: 
Name: PETER KODOLYC
Title: DEPUTY DIRECTOR, GPS
Date: 4-30-2019

Contractor: Abbott Nutrition, Abbott Laboratories Inc.
By: 
Name: Kori Stenzel
Title: Senior Manager, National Contracts
Date: 4/30/19

STATE OF DELAWARE
MONTHLY USAGE REPORT

RESERVED.

Subcontracting (2nd tier) Quarterly Report

RESERVED.

SUBCONTRACTOR INFORMATION FORM

RESERVED.

My Marketplace Document Submission

RESERVED.



CERTIFICATE OF LIABILITY INSURANCE

1/1/2020

DATE (MM/DD/YYYY)
4/11/2019

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

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

PRODUCER Lockton Companies Three City Place Drive, Suite 900 St. Louis MO 63141-7081 (314) 432-0500	CONTACT NAME _____ PHONE (A/C No. Ext) _____ FAX (A/C No.) _____ E-MAIL _____ ADDRESS _____ INSURER(S) AFFORDING COVERAGE _____ NAIC # _____ INSURER A: _____ INSURER B: _____ INSURER C: _____ INSURER D: _____ INSURER E: _____ INSURER F: _____
INSURED 1461915 Abbott Laboratories 100 Abbott Park Road Abbott Park IL 60064	

COVERAGES **ABLA** CERTIFICATE NUMBER: 16017392 REVISION NUMBER: XXXXXX

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

INSTR	TYPE OF INSURANCE	ACC	SUBR	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Retro Date: 1/1/2005 GEN'L AGGREGATE LIMIT APPLIES PER <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJ <input type="checkbox"/> SGT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER	N	N	MWZZ 314337	1/1/2019	1/1/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADM INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/PROPAG \$ 3,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY UMBRELLA LMB <input type="checkbox"/> OCCUR EXCESS LMB <input type="checkbox"/> CLAIMS-MADE UNID <input type="checkbox"/> INTENTION \$	N	N	MWTB 314334	1/1/2019	1/1/2020	COMBINED SINGLE LIMIT (Per accident) \$ 2,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX EACH OCCURRENCE \$ XXXXXXXX AGGREGATE \$ XXXXXXXX
A	WORKERS COMPENSATION AND EMPLOYER'S LIABILITY ANY PROFESSIONAL/EXECUTIVE OFFICERS/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	MWC 314333 000	1/1/2019	1/1/2020	PER STATUTE <input type="checkbox"/> OTHER <input type="checkbox"/> EL EACH ACCIDENT \$ 2,000,000 EL DISEASE - SA EMPLOYER \$ 2,000,000 EL DISEASE - POLICY LIMIT \$ 2,000,000 Professional Liability: \$1,000,000 per occurrence \$3,000,000 aggregate
A	Professional Liability	N	N	MWZZ 314337 Retro Date 5/1/17	1/1/2019	1/1/2020	Professional Liability: \$1,000,000 per occurrence \$3,000,000 aggregate

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

CERTIFICATE HOLDER

16017392
STATE OF DELAWARE
CONTRACT # GSS19687-INFANTFORM
100 ENTERPRISE PLACE, SUITE 4
DOVER DE 19904-8202

CANCELLATION

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

AUTHORIZED REPRESENTATIVE