

MASTER AGREEMENT # 8327

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



Between

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

And

Abbott Nutrition, Abbott Laboratories Inc. (Contractor)

The parties agree:

Master Agreement Terms and Conditions:

1. Master Agreement and Order of Precedence:

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

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

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

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

(6) Exhibit 4 USDA Debarment Certification.

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

2. Definitions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

with 7 CFR 246, this ITB and the Contract.

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

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

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

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

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

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

Contractor

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

Contractor:

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

Lead State

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

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

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

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

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

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

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

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

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

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

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

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

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

14. **Defaults and Remedies:**

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

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

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

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

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

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

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

15. Insurance:

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

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

- (1) Commercial General Liability covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
- (2) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

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

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

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

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

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

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



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

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

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

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

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

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

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

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

NASPO ValuePoint

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