

CONTRACT NO.

**STATE OF NEW MEXICO
NEW MEXICO DEPARTMENT OF HEALTH
Public Health Division**

**SPECIAL SUPPLEMENTAL NUTRITION PROGRAM
FOR WOMEN, INFANTS AND CHILDREN (WIC)**

WIC Program Infant Formula Rebate Contract

This contract is entered into between the New Mexico Department Of Health (DEPARTMENT) and _____ (CONTRACTOR).

ARTICLE 1. SCOPE OF WORK

The CONTRACTOR shall:

- A. Provide contract brand infant formulas specified herein, through vendors authorized by the New Mexico Women, Infants and Children Program, in sufficient supply to service 100% of the WIC caseload; and remit to the DEPARTMENT a rebate for each unit of the CONTRACTOR's contract brand infant formula as specified herein.
- B. Rebate to the DEPARTMENT a price per unit of contract brand infant formula as specified in Attachment 1. Attachment 1 may be amended as necessary by written agreement of the parties at any time during the term of this contract.

The rebate amount per unit for the primary contract brand infant formula is the amount specified by the CONTRACTOR on the WIC Infant Formula Rebate Initiative Quote Sheet on March 23, 2018, identified as Attachment III to the DEPARTMENT's WIC Infant Formula Rebate Initiative Request for Proposals, issued January 5, 2018, in conjunction with the North Carolina Department of Health and Human Services and the Arkansas Department of Health (Request for Proposals) incorporated as part of this contract. The rebate amounts per unit for the other contract brand infant formulas specified herein are calculated in accordance with Section III.A.7. of the Request for Proposals.

- C. Payment

In order to comply with the requirements of (U.S.) Treasury Circular 1075 and the Cash Management Improvement Act, as amended, the three states WIC Programs

desire to receive rebate payments in installments. The CONTRACTOR shall remit payments as described below for each calendar month as indicated.

Payment is due within thirty (30) calendar days of receipt of the DEPARTMENT's invoice. Each invoice shall reflect the total units of the contract brand, physical form and size of infant formula redeemed during the preceding calendar month or upon receipt of completed data for the most recent month by the DEPARTMENT. In the event that any due date occurs on a Saturday, Sunday, or legal holiday, the rebate payment will be due on the last business day preceding the due date.

The DEPARTMENT reserves the right to implement the following alternative payment method. Each month the due date of the initial payment will be the fifteenth day of the month. The payment shall be no less than 50% of the total payment for the most recent closed out month for which data is available. The State(s) will submit an invoice to the successful offeror for the remaining rebate balance which will be based on the total number of contract brand, physical form and size of infant formula redeemed for that billing month. Payment by the successful offeror is due within thirty (30) calendar days of receipt of the State(s) invoice

Payments will be made to the DEPARTMENT by Electronic Funds Transfer (EFT) or Automated Clearing House (ACH) wire transfer.

The CONTRACTOR shall make advance payment, if requested by any of the States. The requested advance payment may not exceed the number of units issued, by brand, physical form and size, less the number of units issued but not redeemed, for the most recent closed-out month for which data is available. A State may request a partial advance payment.

The CONTRACTOR agrees to pay interest penalties to the DEPARTMENT in the amount of 1 percent per month or any portion thereof calculated on the installment amount due or invoice total for any properly delivered invoice for which funds have not been transferred to the DEPARTMENT by the CONTRACTOR by the close of business on the due date for the payment. Late interest penalties will not be applicable by the DEPARTMENT or the DEPARTMENT's bank or data processing center that have been identified and validated prior to the due date of the invoice payment.

Advance payment is due upon receipt of the request and becomes delinquent after (20) calendar days. A late payment charge of one-half of one percent of per month accrued on a daily basis (6% annual percentage rate) shall be assessed on any advance payment request that has not been paid within twenty (20) calendar days of its receipt. Late payment penalties will begin on the twenty-first day.

The CONTRACTOR shall be entitled to a non-refundable discount of one-half of one percent, accrued on a daily basis (6 % annual percentage rate), for each month

that payment is in advance of its original due date, with such discounts applies against the actual amount of advance payment made. Any amount in excess of actual rebates due to the DIVISION shall be deducted from the next payment due to the DIVISION.

Automatically increase rebates on a cent-for-cent basis for any one or all of the contract brand infant formulas listed herein that are subject to any price level increases in the CONTRACTOR's lowest national wholesale price per unit for a full truckload. The price per unit rebate will increase effective the first day of the month in which the wholesale price per unit increased. The CONTRACTOR shall notify the DEPARTMENT in writing no less than 30 calendar days prior to any changes in wholesale prices. The notification shall include both the date and amount of the increase.

Automatically decrease rebates on a cent-for-cent basis for any one or all of the contract brand infant formulas listed herein, that are subject to any price level decreases in the CONTRACTOR's lowest national wholesale price per unit for a full truckload. The price per unit rebate will decrease effective the first day of the month in which the wholesale price per unit decreased. The CONTRACTOR shall notify the DEPARTMENT in writing no less than 30 calendar days prior to any changes in wholesale prices. The notification shall include both the date and amount of the decrease.

Notwithstanding any other provisions of this contract, the CONTRACTOR shall pay a rebate yielding the same net price per reconstituted fluid ounce as the primary contract brand infant formula if the primary contract brand infant formula is replaced during the term of the contract, including, but not limited to, replacement by change in formulation or unit size. The lowest national wholesale price per unit for a full truckload of the replacement infant formula at the time the replacement formula is approved for issuance by the State will be used to calculate the rebate.

Agree that if a new contract brand infant formula introduced into the CONTRACTOR's product line is approved for issuance by the DEPARTMENT or the DEPARTMENT decides to add more contract brand infant formulas to its approved list, the CONTRACTOR shall pay a rebate amount per unit for the additional infant formula calculated in accordance with Section III.A.7.c. of the Request for Proposals. The DEPARTMENT will notify the affected parties in the WIC community and bill the CONTRACTOR accordingly if and when that infant formula is issued.

Agree that in the event of a natural disaster, the DEPARTMENT may issue a contract brand infant formula that is currently not approved for issuance by the DEPARTMENT or a non-contract brand infant formula, except exempt infant formula. The CONTRACTOR shall pay a rebate amount per unit calculated in accordance with Section III.A.7.b. of the Request for Proposals, except that the

lowest national wholesale price per unit for a full truckload at the time the infant formula is issued by the DEPARTMENT will be used to calculate the rebate.

The CONTRACTOR agrees to pay rebates to the DEPARTMENT on any redeemed units of primary contract brand infant formula and any other contract brand infant formulas approved for issuance by the DEPARTMENT that are issued with a food instrument having a "first date to use" on or between October 1, 2018 and September 30, 2021. The rebate amount applied to the redeemed units shall be the rebate amount as of the first day of the month of redemption, except as provided in Paragraph 1 (C) for an increase or decrease in wholesale price. Rebate payment shall be made even though the Contract may have expired at the time the units are redeemed and payment of the rebate is due. For validly redeemed food instruments after expiration of the Contract, the rebate amount applied to the redeemed units shall be the rebate amount effective on the last day of the contract term.

Agree not to withhold any rebate payments due the DEPARTMENT under any circumstances. Any adjustments owed the CONTRACTOR by the DEPARTMENT shall be made by the DEPARTMENT in subsequent invoices.

Accept reconciliation invoices from the DEPARTMENT every six (6) months during the contractual period and within ninety (90) days of the termination of the Contract to include unreported claims. Payment from the CONTRACTOR is due upon receipt of the invoice, and becomes delinquent after thirty (30) calendar days of receipt of the DEPARTMENT's invoice. A late payment charge of 1 percent per month shall be assessed on past due amounts at the time the subsequent invoice is calculated.

Agree to timely notify the DEPARTMENT of any known or suspected deterioration, alteration, adulteration, damage, falsification, or tainting to any of the contract brand infant formulas provided through vendors authorized by the New Mexico Women, Infants and Children Program, as specified herein, if harmful to life or health, hazardous or do not comply with the regulations on manufacturing.

D. Payment Disputes

1. Notify the DEPARTMENT of any dispute or error in any rebate invoice within sixty (60) calendar days of the receipt of the invoice. The CONTRACTOR waives its right to challenge any invoice or request the return of any funds after sixty (60) calendar days of the CONTRACTOR's receipt of the invoice for the funds in question.
2. Agree that late penalties will accrue against the CONTRACTOR during the period of time any invoiced amounts are in dispute and will accrue at a rate of 1.5% per month accrued on a daily basis (18% annual percentage rate). In the event such dispute is settled in favor of the CONTRACTOR, such penalties will not be owed. All disputes will be settled within thirty

(30) calendar days from the date written notice of a dispute is received by the DEPARTMENT, or by closeout of the federal fiscal year in which the dispute has occurred, whichever is earlier. Any payment or late penalties due to the DEPARTMENT shall be received within ten (10) calendar days from the date of resolution.

3. Agree that disputes regarding invoiced amounts shall be limited to the accuracy of the invoice. Policy issues, such as the DEPARTMENT's eligibility criteria, shall not be subject to challenge or dispute. Supporting documentation provided by the DEPARTMENT in the event of a dispute shall be limited to the food instrument number, Electronic Benefit Transfer (EBT) transaction number, its issue date, redemption date, unit count, brand name and size. No client identifying information will be provided.

Agree that the DEPARTMENT shall make adjustments in invoiced amounts only when an actual error in any disputed invoice is found. Statistical inference or sampling shall not be the basis for any dispute by the CONTRACTOR or any adjustment in an invoice by the DEPARTMENT. Supporting documentation provided by the DEPARTMENT in the event of a dispute shall be limited to the documentation identified in Article 1.G of this contract.

E. Audits and Records

1. Maintain books, records and documents in accordance with New Mexico laws and regulations and generally accepted accounting procedures and practices.
2. Assure that these records created solely for this contract shall be subject at all times to inspection, review or audit by state or federal personnel and others authorized by the DEPARTMENT, as well as by the federal personnel. Routine inspections, review or audits will be performed upon reasonable notice and during normal business hours.
3. Maintain and file progress, fiscal, inventory and other reports with the DEPARTMENT as required.
4. Retain all financial records, supporting documents, statistical records and all other documents created for this contract for a period of five (5) years after termination of the contract, or if an audit has been initiated and audit findings have not been resolved at the end of the five (5) years, the records shall be retained until resolution of the audit findings. Any routine audits of such records or documents shall be upon reasonable notice and during normal business hours.

5. Provide authorized representatives of the DEPARTMENT and federal auditors pursuant to 45 CFR, Section 74.26 to full access to records and documents and permit the right to examine any of those records and documents during the retention period. Such access shall occur during normal business hours.
6. Monitoring
 - a. Provide access to information necessary to monitor this contract.
 - b. Permit the DEPARTMENT to monitor the contract according to applicable regulations of the state and federal governments.

The DEPARTMENT shall:

- F. Provide the CONTRACTOR with a monthly invoice specifying the number of units of each contract brand, physical form and size of infant formula redeemed during the preceding calendar month. The rebate due shall be calculated by the DEPARTMENT based on these figures.
- G. Provide the calculations and the supporting documentation upon request. The supporting documentation is limited to the food instrument number, EBT transaction number, redeemed amount, redemption date, issue date, can count, brand name, physical form and size. No identifiable participant information will be provided. Should vendor information be requested, no identifiable vendor information can be provided other than vendor number and authorization status.
- H. The CONTRACTOR may audit the records that directly support the volume of units reported as purchased by the DEPARTMENT on each rebate invoice, including applicable policies and procedures, upon sixty (60) days prior written notice to the DEPARTMENT. Any CONTRACTOR audit shall be conducted by qualified auditors and conform to Generally Accepted Auditing Standards. CONTRACTOR audit findings shall be documented with specific data and not based on extrapolations of data. The DEPARTMENT shall retain all records supporting this contract for a minimum of five (5) years. Individual applicant and/or participant records, as well as individual vendor records, are confidential and exempt from audit by the CONTRACTOR in accordance with 7 CFR Part 246 of the Federal Regulations for the Special Supplemental Nutrition Program for Women, Infants and Children. The costs of any audits by the CONTRACTOR shall be borne solely by the CONTRACTOR and are not recoverable from the DEPARTMENT.
- I. Notify the Contractor 90 days, or less if mutually agreed upon, prior to the approval of a new or additional formula for issuance.

ARTICLE 2. TERM

This contract shall be effective on October 1, 2018 and shall terminate on September 30, 2021, unless extended by amendment to September 30, 2023. No commitment of public funds is permitted prior to contract approval.

ARTICLE 3. INDEMNIFICATION

- A. The CONTRACTOR shall defend, indemnify and hold harmless the DEPARTMENT, its officers, agents and employees from all claims, actions, demands, costs, damages, attorney fees and all other liabilities and expenses of any kind from any source arising out of any act or omission of the CONTRACTOR, its agents and employees in performance of this contract as well as from all claims accruing and resulting from personal injury allegedly caused by a defect in the product furnished pursuant to this contract. Claims, losses or suites arising from any negligence to the DEPARTMENT, its officers, agents, employees, contractors or subcontractors are subject in all cases to the New Mexico Tort Claims Act. The DEPARTMENT shall provide the CONTRACTOR written notice of each such claim or suit and the right and opportunity to conduct the CONTRACTOR's own defense thereof.
- B. Notwithstanding any indemnification clause, the DEPARTMENT shall have full authority to conduct its own defense, negotiations, and settlements without affecting the CONTRACTOR's indemnification herein.

ARTICLE 4. FEDERAL LAW

- A. The CONTRACTOR shall abide by all applicable federal laws and regulations.
- B. In the event that a state law conflicts with federal law, federal law shall supersede state law.

ARTICLE 5. COMPLIANCE

The DEPARTMENT shall monitor WIC authorized retailers for compliance with New Mexico WIC Program rules, regulations, policies, and procedures. The DEPARTMENT shall employ sanctions, as necessary to enforce compliance, as outlined in state and federal regulations.

ARTICLE 6. CONTACT AND NOTICE

The name and address of the DEPARTMENT's administrator for this contract is

Sarah Flores-Sievers, MPA
WIC Program Director

Family Health Bureau
2040 S. Pacheco, Suite 124
Santa Fe, New Mexico 87505

The representative of the CONTRACTOR responsible for the administration of services under this contract is:

Any notice which is required or permitted to be given under this contract shall be given by personal delivery, certified U.S. mail/return receipt requested, email or express delivery and directed to the respective party at the address shown below:

For the DEPARTMENT:

Sarah Flores-Sievers, MPA
WIC Program Director
Family Health Bureau
2040 S. Pacheco, Suite 124
Santa Fe, New Mexico 87505

For the CONTRACTOR:

In the event that either party designates a different representative after execution of this contract, notice of the name and address of the new representative written notice of the change shall be provided to the other party and attached to originals of this contract.

ARTICLE 7. CONTRACT MONITORING

The DEPARTMENT and the CONTRACTOR agree to meet on annually to review the parties' performance of the contract and to address all concerns regarding invoice procedures, subject at all times to the terms of the contract. During these meetings any concerns regarding billing procedures must be addressed.

ARTICLE 8. AMENDMENT

This contract shall not be altered, changed or amended except by instrument in writing executed by the parties hereto. The parties agree to amend this contract to comply with all revisions of applicable state and federal laws or regulations.

ARTICLE 9. GOVERNING LAW

This contract shall be governed in accordance with the laws and regulations of the State of New Mexico.

ARTICLE 10. CONFIDENTIALITY

In no event shall confidential participant and vendor information be made available to the CONTRACTOR. The use of any participant or vendor information that may be inadvertently provided to the CONTRACTOR is prohibited by state and federal law. It is the responsibility of the CONTRACTOR to protect the identity of any participant receiving services through this contract in the event of inadvertent disclosure.

ARTICLE 11. ASSIGNMENT

The CONTRACTOR shall not assign, sublicense or otherwise transfer its rights, duties and/or obligations under this contract without the express written consent of the DEPARTMENT, which shall not be unreasonably withheld. The DEPARTMENT shall at all times be entitled to assign or transfer its rights, duties and/or obligations under this contract to another governmental agency in the State of New Mexico without the CONTRACTOR's consent.

ARTICLE 12. FORCE MAJEURE

- A. The CONTRACTOR shall not be liable for delay, failure of performance, loss or damage due to fire, earthquake, volcanic action, flood, war, civil or military authority, acts of God or other causes beyond its reasonable control.

- B. Notwithstanding the preceding paragraph, the CONTRACTOR shall pay rebates to the DEPARTMENT for contract brand infant formula that is currently not approved for issuance by the DEPARTMENT or non-contract brand infant formulas, except exempt infant formulas, when the CONTRACTOR's product is not available in any area in the State for 72 hours or more. The DEPARTMENT shall have the right to substitute a contract brand infant formula that is currently not approved for issuance by the DEPARTMENT or a non-contract brand infant formula and to invoice the CONTRACTOR for the units issued during the period when the CONTRACTOR's formula was not available, notwithstanding that food instruments issued during a shortage may be redeemed after a shortage is remedied. The rebate paid for a contract brand infant formula that is currently not approved for issuance by the DEPARTMENT or a non-contract brand infant formula must yield the same net price per reconstituted fluid ounce as the rebate for the contract brand infant formula that is substituted with the contract brand infant formula that is currently not approved for issuance by the DEPARTMENT or a non-contract brand. The lowest national wholesale price per unit at the time of issuance for a full truckload of the contract brand infant formula that is currently not approved for issuance by the DEPARTMENT or a non-contract brand infant formula will be used to calculate the rebate amount. At any time after the CONTRACTOR's product is not available for 72 hours or more, the

DEPARTMENT may declare the CONTRACTOR in breach and may terminate the contract for cause pursuant to ARTICLE 15.A. Termination for Cause.

ARTICLE 13. DISASTER RELIEF

In the event of a natural disaster the DEPARTMENT may issue a contract brand infant formula that is currently not approved for issuance by the DEPARTMENT or a non-contract brand infant formula except exempt infant formula. The CONTRACTOR shall pay a rebate amount per unit calculated in accordance with Section III.A.7.b. of the Request for Proposals, except that the lowest national wholesale price per unit for a full truckload at the time the infant formula is issued by the DEPARTMENT will be used to calculate the rebate.

ARTICLE 14. FORMULAS

The CONTRACTOR shall give the DEPARTMENT no less than 120 calendar days advance written notice prior to the following:

1. The introduction of any new contract brand infant formula into the CONTRACTOR's product line and when it will become available in the State's market;
2. A change in the label of the primary contract brand infant formula or any other contract brand infant formula approved for issuance by the DEPARTMENT;
3. The replacement of the primary contract brand infant formula or any other contract brand infant formula approved for issuance by the DEPARTMENT, including, but not limited to, replacement by change in formulation and/or unit size;
4. A change in the name of the primary contract brand infant formula or any other contract brand infant formula approved for issuance by the DEPARTMENT; and
5. A change in size of the product which impacts the amount of yield and the amount of product issued per month. Due to the impact on an EBT system, products that change both size and yield must change the Universal Product Code (UPC) or the contractor must work with the DEPARTMENT to reset the authorized WIC vendors' shelves and the wholesalers' inventory.

The 120 calendar days advance written notice shall not begin prior to the date of any required Food and Drug Administration approval for the action.

ARTICLE 15. TERMINATION

Termination shall not nullify or otherwise excuse any obligation owed by the CONTRACTOR to the DEPARTMENT prior to the effective date of the termination or as provided otherwise herein.

A. Termination for Cause

Unless the CONTRACTOR's material breach of any provision of this contract is waived by the DEPARTMENT in writing, the DEPARTMENT may, by written notice to the CONTRACTOR specifying CONTRACTOR's failure, terminate this contract upon no less than twenty-four (24) hours notice unless the CONTRACTOR has cured the breach within time frames agreed upon by both parties. Said notice shall be delivered by certified mail, receipt requested, or in person with proof of delivery. If applicable, the DEPARTMENT may employ the default provision of the New Mexico Procurement Code.

1. Waiver of breach of any provision of the contract shall not be deemed to be a waiver of any other breach and shall not be construed to be modification of the terms of this contract. The provisions herein do not limit the DEPARTMENT's right to remedies at law or to damages.
2. The DEPARTMENT may terminate this contract for cause upon the filing of a bankruptcy action or insolvency by or against the CONTRACTOR.
3. If the contract is terminated pursuant to this provision, the CONTRACTOR shall provide to the DEPARTMENT the same rebate payment for formula that would have been paid until a new contract is executed.

B. Termination Without Cause

1. Either party may terminate this contract with a minimum of 270 calendar days written notice delivered to the contract representatives specified herein.
2. In the event of termination of the contract by either party pursuant to this provision, any payment or obligation incurred during the 270 calendar days between issuance of notice and termination will be made or satisfied within 30 calendar days of the receipt of the invoice.
3. If the contract is terminated pursuant to this provision, the contractor shall continue to pay rebates from the date notice is given until the end of the notice period or until a new contract is executed, whichever occurs first.

ARTICLE 16. ENTIRE AGREEMENT

- A. This contract and its attachment contain all the terms and conditions agreed upon by the parties and contain the entire understanding of the parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements.
- B. All terms and conditions of the DEPARTMENT'S WIC Infant Formula Rebate Initiative Request for Proposals as amended, the States' Answers to Prebid Questions and the CONTRACTOR'S accepted response to the RFP are hereby incorporated, and are a part of the contract. Also incorporated in the contract are the New Mexico Formulas Approved for Issuance (Attachment 1), the CONTRACTOR'S Quote Sheet (Attachment 2), and the CONTRACTOR'S Certification, (Attachment 3).

ARTICLE 17. SEVERABILITY

If any provision of this contract is found to be unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision. The remaining terms and provisions of this contract shall remain in full force and effect in the same manner as if the invalid or illegal provisions had not been contained herein.

ARTICLE 18. APPROPRIATION

The DEPARTMENT's obligation under this contract is subject to the condition precedent that sufficient funds are appropriated, authorized and allotted by the Legislature of the State of New Mexico and/or by the Federal government, specifically the United States Department of Agriculture.

ARTICLE 19. COMPUTATION OF TIME

In computing any period of time stated in this contract, the day from which the period of time begins to run shall not be included. The last calendar day of the time period shall be included in the computation unless it is a Saturday, Sunday or a day on which a legal holiday is observed. In such a case, the period of time runs to the close of business on the next regular workday.

ARTICLE 20. USE OF WIC ACRONYM AND LOGO

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

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

The CONTRACTOR 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 the CONTRACTOR with the WIC Program, or as to the sponsorship or approval of the CONTRACTOR'S goods, services, advertising, or commercial activities, including nutrition message(s), by the WIC Program, USDA, or the DEPARTMENT.

The CONTRACTOR 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."

IN WITNESS WHEREOF the parties have executed this Contract at Santa Fe, New Mexico. The effective date is the date as executed by signature of both parties.

**STATE OF NEW MEXICO
NEW MEXICO DEPARTMENT OF HEALTH:**

CONTRACTOR: _____

By: _____
Lynn Gallagher
Cabinet Secretary

By: _____

Title: _____

Date: _____

Date: _____

By: _____
Public Health Division

Date: _____

CERTIFIED FOR LEGAL SUFFICIENCY:

By: _____
Department of Health
Assistant General Counsel

Date: _____

TAXATION AND REVENUE:

The CONTRACTOR is registered for the payment of gross receipts taxes to the State of New Mexico.

N.M. Tax Identification #:

By: _____
Taxation and Revenue Department

Date: _____

Instructions: Offeror to complete columns A, B, E, and F, and name of offeror, authorized signature, title and date.

Attachment 2									
New Mexico Department of Health, Arkansas Department of Health and North Carolina Department of Health and Human Services									
WIC Infant Formula Rebate Initiative									
QUOTE SHEET 2018									
(for a single milk-based infant formula)									
A	B	C	D	E	F	G	H	I	
Physical Form, Product Brand Name, and Unit Size	Reconstituted Fluid Ounces per Unit	Total Monthly Reconstituted Ounces for Bid by Physical Form*	Total Monthly Units C/B	Wholesale Price per Unit**	Rebate per Unit	Net price per unit E-F	Monthly net price D*G	% rebate F/E	
Powder (12.4 oz. - 12.7 oz.) Brand Name / Unit Size		Total Powder 47,782,850	#DIV/0!			0.000	#DIV/0!	#DIV/0!	
Concentrate (12.1 oz. - 13 oz.) Brand Name / Unit Size		Total Concentrate 710,851	#DIV/0!			0.000	#DIV/0!	#DIV/0!	
Ready-to-Feed (32 oz. - 48 oz.) Brand Name / Unit Size		Total Ready-to-Feed 119,290	#DIV/0!			0.000	#DIV/0!	#DIV/0!	
						Total Monthly Net Price	#DIV/0!		
* From Attachment II of the RFP, Standardized Number of Reconstituted Fluid Ounces by Physical Form, Column (E)									
** Lowest national wholesale price per unit for a full truckload as of March 23, 2018									
The signature below certifies:									
a) that the infant formula manufacturer is registered with the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 et. seq.);									
b) that the infant formula manufacturer's milk-based and soy-based infant formulas comply with the Federal Food, Drug, and Cosmetic Act and regulations issued pursuant to the Act;									
c) that as of March 23, 2018, the manufacturer's lowest national wholesale prices per unit for a full truckload are as specified in Column (E) above; and									
d) that the offeror agrees to pay a rebate on all milk-based and soy-based infant formula products subject to this RFP and issued by the States.									
Name of Offeror _____									
Authorized Signature _____									
Title _____									
Date _____									

ATTACHMENT 3

**NEW MEXICO DEPARTMENT OF HEALTH (NMDOH),
ARKANSAS DEPARTMENT OF HEALTH (ADH)
AND NORTH CAROLINA DEPARTMENT OF
HEALTH AND HUMAN SERVICES (NCDHHS)**

**SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN,
INFANTS AND CHILDREN (WIC)
WIC INFANT FORMULA REBATE INITIATIVE
CONTRACTOR CERTIFICATION**

CONTRACTOR _____

The undersigned authorized official of the above listed infant formula manufacturer (contractor) certifies:

1. That the contractor has read and understands all requirements and specifications of the Request for Proposals, all attachments and the State's sample contracts, including any amendments made by the States prior to the deadline for the submission of proposals.
2. That the contractor agrees to all requirements, specifications, terms and conditions of the Request for Proposals, all attachments and the State's sample contracts, including any amendments made by the States prior to the deadline for the submission of proposals.
3. That the contractor, its principals, officers and employees have not been debarred or otherwise sanctioned by any governmental entity (federal, state, territory, tribal, county or municipality) for misconduct, breach of contract, tortious acts or omissions or criminal acts or omissions relating to the production, sale or distribution of infant formula or WIC rebate contractual compliance in the past 10 years. (The facts, circumstances and agreements or findings relating to any sanction or debarment must be provided for the States' consideration).
4. That the contractor shall provide infant formula and rebates to the States pursuant to the terms specified in the Request for Proposals, all attachments and the State's sample contracts.
5. That the contractor is registered with the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 *et seq.*) and that the products shall comply with all applicable regulations relevant to infant formulas, including 7 CFR Section 246.10 (g) and 21 CFR Parts 106 and 107, as well as the provisions of the Federal Food, Drug and Cosmetic Act.
6. That the contractor will give the States, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and shall establish a proper accounting system in accordance with generally accepted accounting standards.

7. That the contractor will comply with the provisions of the Federal Certification Regarding Lobbying.

8. That the contractor will comply with the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 6101, et seq.), the Americans With Disabilities Act (42 U.S.C. 12150 et seq.) the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and all other applicable federal and state laws and regulations. These laws and regulations prohibit discrimination on the grounds of race, color, national origin, sex, disability, and age.

9. That the contractor will comply with the provisions of the Federal Certification Regarding Debarment and Suspension.

10. That the contractor will comply with the provisions of the Federal Certification Regarding Drug-Free Workplace Requirements.

11. That the contractor will comply with the Energy Policy and Conservation Act (Public Law 94-163), the Commodity Distribution Reform Act and the WIC Amendment of 1987 (Public Law 100-237).

12. That the contractor will obey all applicable federal regulations in the performance of its duties, including applicable standards, orders or requirements issued under the Clean Air Act (42 U.S.C 1857), the Clean Water Act (33 U.S.C. 1368), Executive Order 11738 and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use under non-exempt federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to the States and the EPA Assistant Administrator for Enforcement.

13. That the contractor will carry adequate public liability insurance and other appropriate forms of insurance as well as pay all taxes incident hereto.

Signature of Authorized Certifying Official

Date

Printed Name of Certifying Official

Title