



----- Canada Prenatal Nutrition Program -----

CONTRIBUTION AGREEMENT

Made in triplicate

BETWEEN: HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the Minister of Health, through the Public Health Agency of Canada (hereinafter referred to as "Canada")

AND: Middlesex-London Health Unit (hereinafter referred to as the "Recipient")

Canada and the Recipient are also referred to individually as a "Party", or collectively as the "Parties".

CONTRIBUTION AGREEMENT

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PREAMBLE:

WHEREAS Canada is responsible for the Program/Initiative entitled Canada Prenatal Nutrition Program;

WHEREAS the Recipient has submitted to Canada a proposal for the funding of a Project called **Smart Set for Babies: Prenatal Advantage Program** under the Canada Prenatal Nutrition Program; and

WHEREAS Canada wishes to provide financial assistance to support the Project;

THEREFORE, the Parties agree as follows:

1. DEFINITIONS

In this Agreement,

- 1.1 "Agency" means the Public Health Agency of Canada;
- 1.2 "Agreement" means this contribution agreement and includes all Appendices, and any amendments made to this Agreement in accordance with section 26;
- 1.3 "Appropriation" means any authority of Parliament to pay money out of the Consolidated Revenue Fund;
- 1.4 "Asset" means any asset(s) acquired by the Recipient with contribution funds provided under this Agreement or under a previous agreement funded by the same Program;
- 1.5 "Budget" means the total forecasted expenditures for the Project, as well as the total amount of funding to be received from all sources for the Project, as set out in Appendix B;
- 1.6 "Eligible Expenditures" means the costs that are eligible for reimbursement as described in Appendix E to this Agreement and that are incurred by the Recipient in carrying out the Project;
- 1.7 "Evaluation" means the systematic collection and analysis of evidence on the outcomes of projects and programs used to make judgements about their relevance, results and cost effectiveness, as well as find alternative ways to deliver them or to achieve the same results;
- 1.8 "Fiscal Year" means the twelve-month period beginning April 1 of any year, and ending March 31 of the following year;
- 1.9 "Material" means anything that is created or developed by the Recipient with funding under this Agreement including designs, reports, photographs, drawings, plans, specifications, documents, tools, resources, computer software, surveys, databases and Web sites;
- 1.10 "Performance Measurement" means the ongoing, systematic process of collecting, analysing and using performance information to assess and report on an organization's progress towards meeting expected results and, if necessary, make adjustments to ensure that these results are achieved;
- 1.11 "Program/Initiative" means Canada Prenatal Nutrition Program; and
- 1.12 "Project" means the activities described in Appendix A to this Agreement.

2. PURPOSE

The Recipient shall use the funding provided under this Agreement solely to carry out the Project in a diligent and professional manner, in accordance with the terms of this Agreement and applicable laws.

3. TERM

This Agreement will commence on April 1, 2010 and will end on March 31, 2012, unless terminated earlier.

4. FINANCIAL CONTRIBUTION AND OBLIGATIONS

4.1 Subject to the terms of this Agreement, Canada will make a contribution to the Recipient of up to **THREE HUNDRED FOUR THOUSAND EIGHT HUNDRED SIXTY SIXTY dollars (\$304,860.00)**. Canada's contribution shall be for Eligible Expenditures incurred by the Recipient in carrying out the Project in accordance with the Budget (Appendix B).

4.2 Payments shall be made in the form of advances to the Recipient within thirty (30) calendar days of receipt and acceptance by Canada of the Cashflow Forecast and Record of Expenditures Form, Appendix D to this Agreement (hereinafter called the "Cashflow"), submitted by the Recipient in accordance with the Reporting Plan (Appendix C).

Where an advance payment is not fully expended in the Fiscal Year for which it was provided, Canada may consider all or part of the remaining balance of such advance as an overpayment that is subject to section 4.8. However, Canada may authorize the Recipient to retain the remainder of any outstanding advance to cover Canada's share of expected Eligible Expenditures to be incurred by the Recipient during the following Fiscal Year.

4.3 Cashflow Forecast and Record of Expenditures

The Cashflow (Appendix D) shall be certified by the Recipient's authorized representative(s) and contain the following information:

- a) a projection of expenditures to be incurred during the agreed upon upcoming reporting period and for the remainder of the Fiscal Year, by category of Eligible Expenditures; and
- b) the actual expenditures incurred during the last reporting period.

4.4 Proceeds or Income

In accordance with the Reporting Plan (Appendix C), the Recipient shall report to Canada all proceeds or any income derived from contribution funding under this Agreement (e.g., interest). Such proceeds or income may be applied to reduce amounts otherwise payable under this Agreement. Where Canada determines that no such reduction is possible, or that any such reduction would only cover part of the proceeds or income derived from the use of the contribution funds, the remainder of the proceeds or income shall constitute an overpayment and be repayable in accordance with section 4.8 or, with the prior written approval from Canada, may be used by the Recipient to enhance the Project.

4.5 Adjustment

Notwithstanding any other provisions of this Agreement, Canada may withhold or reduce any payments to be made to the Recipient pursuant to this Agreement in the event that

- a) any report has not been submitted by the Recipient in accordance with the requirements of Appendix C; or
- b) any such report or any audit conducted under this Agreement indicates that actual expenditures incurred by the Recipient for the Project have been lower than the amount disbursed to the Recipient up to the time of such report or audit.

4.6 Holdback

Canada shall be entitled to withhold up to **THREE THOUSAND FORTY-EIGHT** dollars and **SIXTY cents (\$3,048.60)** from the final year of funding payable under this Agreement. This holdback will be released upon submission by the Recipient and acceptance by Canada of the following items:

- a) the Recipient's final Cashflow;
- b) all reports that the Recipient is required to submit pursuant to the Reporting Plan (Appendix C); and
- c) such other documentation and information that Canada may, at its sole discretion, request from the Recipient.

Canada will be entitled to make any necessary adjustments to the holdback before releasing the final amount.

4.7 Eligible Expenditures after termination or expiration

Canada shall not be obliged to contribute to any Eligible Expenditures claimed by the Recipient more than thirty (30) calendar days after the termination or expiration of this Agreement.

4.8 Overpayments

Any overpayment, unspent advance, or disallowed expenditure shall be repayable to Canada, and until repaid, constitutes a debt due to Canada. Canada may deduct the said amount from any subsequent payments under this Agreement, or if no further payments remain to be made, or the said amount is determined after the termination or expiration of this Agreement, the Recipient shall, unless otherwise agreed, repay the amount within thirty (30) calendar days of written notification from Canada. The repayment shall be by cheque(s) payable to the Receiver General for Canada and shall be sent to Canada's representative identified in section 29. Interest shall be charged on any overdue amounts in accordance with the *Interest and Administrative Charges Regulations*.

4.9 Underspending

The Recipient shall inform Canada in writing of any potential underspending for any given Fiscal Year, on or before December 15th.

4.10 Set-off of debts owed to Canada

The Recipient must declare any amounts owed to Canada under legislation or agreement. The Recipient acknowledges that Canada may deduct these amounts from any amounts payable to the Recipient under this Agreement.

4.11 Funding subject to Appropriation and Program funding authorities

4.11.1 Notwithstanding any other provision of this Agreement, the amount of funding to be provided to the Recipient pursuant to this Agreement is subject to there being an Appropriation of funds by the Parliament of Canada for the Fiscal Year in which any commitment would come due for payment.

4.11.2 In the event that authorities for the Program/Initiative are amended or terminated or if funding levels are reduced or cancelled for any Fiscal Year in which a payment is to be made under this Agreement, Canada may reduce or terminate further payments to be made under this Agreement.

4.11.3 Where funding under this Agreement is to be reduced or terminated under section 4.11.1 or 4.11.2, Canada shall provide the Recipient with sixty (60) calendar days written notice of the reduction or termination and shall reimburse the Recipient for any Eligible Expenditures incurred up to the date upon which the reduction/termination is to take effect.

4.12 Other sources of funds

4.12.1 The Recipient acknowledges having disclosed to Canada, as part of its application for funding under the Program/Initiative, all actual or anticipated sources of funding for carrying out the Project, including cash and/or in-kind contributions from all levels of government or private sources. These actual sources of funding are set out in the Budget (Appendix B). The Recipient further acknowledges that Canada's approval of the funding for this Project was based on the approved Budget.

4.12.2 The Recipient shall

4.12.2.1 provide to Canada an annual declaration signed by its authorized representative(s) confirming the total amount of funding it has received for the Project during the Fiscal Year to date from all other sources, in accordance with the Reporting Plan (Appendix C); and

4.12.2.2 upon completion or termination of the Project, provide to Canada a declaration signed by its authorized representative(s) confirming the total amount of funding it has received from all sources for the Project, in accordance with the Reporting Plan (Appendix C).

4.12.3 If the total amount of funding from all sources (including federal, provincial/territorial and municipal governments, private sector, etc.) exceeds one hundred per cent (100%) of the total cost of carrying out the Project, Canada may, in its discretion and having regard to Canada's proportionate share of the total cost of the Project as set out in the Budget (Appendix B),

- 4.12.3.1 reduce Canada's contribution by such amount as Canada considers appropriate, up to the amount of the additional assistance received; or
- 4.12.3.2 if the full amount of Canada's contribution has already been paid, require the Recipient to repay such amount as Canada considers appropriate. Until repaid, the excess amount constitutes an overpayment within the meaning of section 4.8.

5. RECORDS AND AUDIT

- 5.1 Canada reserves the right to audit or cause to have audited the accounts and records of the Recipient to ensure compliance with the terms of this Agreement. The scope, coverage and timing of such an audit shall be determined by Canada, and may be carried out by employees or agents of Canada at Canada's expense.
- 5.2 The Recipient
 - 5.2.1 acknowledges that Canada may audit any or all records, including financial records of the Recipient or its agents, whether directly or indirectly related to this Agreement as is necessary to satisfy Canada that the objectives and activities of the Project have been carried out and that the funds have been spent in accordance with the terms of this Agreement;
 - 5.2.2 shall keep accounts and records of all financial transactions in accordance with this Agreement and generally accepted accounting principles and practices;
 - 5.2.3 shall make such records available for audit by Canada upon reasonable notice, and permit Canada to inspect the records and make extracts from and/or make copies of the records; and
 - 5.2.4 shall provide reasonable facilities to Canada for such audits and inspections and provide Canada with all information necessary to understand the records.

6. AUDITOR GENERAL OF CANADA

The Recipient acknowledges that the Auditor General of Canada may, at his/her own cost, under the authority of subsection 7.1 of the *Auditor General Act*, conduct an inquiry into the use of funds. The Recipient shall cooperate with the Auditor General and his/her representatives or agents in connection with such inquiry, and shall grant access to the Recipient's documents, records and premises as required by the Auditor General or his/her representatives or agents for purposes of any such inquiry. The Auditor General may, at his/her discretion, discuss any concerns raised in such inquiry with the Parties. The results may be reported to Parliament in a report of the Auditor General.

7. INFORMATION MANAGEMENT

7.1 Access to records

Upon request, the Recipient shall allow representatives of Canada to have access to its staff, premises, Project site, and records (including files, information, databases, reports and invoices for costs for which reimbursements have been claimed) for purposes related to the monitoring of the Recipient's compliance with the Agreement.

7.2 Retention of records

Unless otherwise agreed to by the Parties, the Recipient shall keep all records, information, databases, reports and all other documentation related to the Project and associated expenditures and costs, for a period of six (6) years from the expiration or termination of this Agreement.

7.3 Consent to disclosure

The Recipient consents to the public disclosure by Canada of any information provided by the Recipient to Canada relating to this Agreement.

7.4 Personal and confidential information

The Parties shall comply with applicable laws pertaining to privacy and confidentiality in dealing with information and records related to the Project.

8. PERFORMANCE MEASUREMENT AND EVALUATION

The Recipient shall

- 8.1 carry out a Performance Measurement and/or an Evaluation of the Project as described in Appendix A, and provide a copy of the resulting report(s) in accordance with the Reporting Plan (Appendix C); and
 - 8.2 participate in any Performance Measurement and/or Evaluation activities at a regional, provincial/territorial and/or national scale as directed by the Program/Initiative and led by or on behalf of Canada.
- 9.1 The Recipient shall track the progress of all activities undertaken and completed as part of the Project and, in accordance with the Reporting Plan (Appendix C), provide Canada with reports that include results achieved and/or Materials produced as part of the Project.
 - 9.2 The Recipient shall provide Canada with a copy of its annual financial statements (identifying Canada's funding and related Project expenses separately from any other income or expenses) within thirty (30) calendar days of the completion of such statements.
 - 9.3 The Recipient shall provide Canada with a copy of any audit report (financial or otherwise) prepared by its auditors within thirty (30) calendar days of the release of such report.

10. DEFAULT

10.1 The following constitute events of default:

- 10.1.1 the Recipient fails to perform or comply with any term, condition or obligation contained in this Agreement;
- 10.1.2 the Recipient has made materially false or misleading representations or statements, or provided materially false or misleading information to Canada on any matter related to this Agreement, other than in good faith (the Recipient shall demonstrate good faith);
- 10.1.3 in the opinion of Canada, the Recipient fails to make progress so as to jeopardize the success or outcome of the Project;
- 10.1.4 in the opinion of Canada, there is a detrimental change in the Recipient's ability to carry out its responsibilities under this Agreement;
- 10.1.5 in the opinion of Canada, there is a material change in the risk associated with the Recipient or the Project;
- 10.1.6 the Recipient becomes bankrupt or insolvent, goes into receivership or makes an assignment for the benefit of creditors or takes the benefit of any statute relating to bankrupt or insolvent debtors, ceases to carry on business, or is subject to an order made or a resolution passed for the winding up of its operations.

11. REMEDIES ON DEFAULT

- 11.1 If, in the opinion of Canada, an event of default occurs, Canada may, with prior notice to the Recipient and in addition to any other remedy provided by law or under this Agreement, exercise any of the following remedies:
 - 11.1.1 require that the Recipient take such reasonable action as may be necessary to remedy the event of default;
 - 11.1.2 alter the frequency and/or content of reporting to be provided by the Recipient under the terms of this Agreement and/or impose additional reporting requirements;
 - 11.1.3 suspend or reduce the payment of any amount payable under this Agreement;
 - 11.1.4 direct the Recipient to repay to Canada all or part of the funds paid under this Agreement, with interest calculated in accordance with the *Interest and Administrative Charges Regulations*, from the date of demand for repayment; or

11.1.5 terminate this Agreement.

11.2 The fact that Canada refrains from exercising a remedy or right that it is entitled to exercise under this Agreement will not be considered to be a waiver of such remedy or right and, furthermore, partial or limited exercise of a right conferred on Canada will not prevent it in any way from later exercising any other right or remedy under this Agreement or other applicable law, unless Canada waives such right in writing.

12. ASSETS

12.1 The Recipient shall report to Canada on Assets in accordance with the requirements of the Reporting Plan (Appendix C).

12.2 During the term of this Agreement, the Recipient shall use the Assets for the purpose of the Project, and shall not, except with the prior written consent from Canada and in accordance with such terms and conditions as may be imposed by Canada,

12.2.1 change the use of any such Assets or permit them to be used for activities that are not directly related to the Project;

12.2.2 sell, exchange, transfer or dispose of any Assets; or

12.2.3 pledge, mortgage, or permit the creation of any security interest, claim or lien against the Assets.

12.3 Upon the expiration or termination of this Agreement, the Recipient shall provide an inventory of the Assets it has preserved, and, if so directed by Canada, the Recipient shall

12.3.1 sell the Assets, or any part of them, at fair market value;

12.3.2 transfer the Assets or any part of them to another person or organization designated or approved by Canada; or

12.3.3 dispose of the Assets or any part of them in such other manner as may be determined Canada.

12.4 Canada may direct the Recipient to repay any proceeds realized from the sale or transfer of Assets to offset Canada's contribution to Eligible Expenditures under this Agreement.

13. LIABILITY

13.1 Canada shall not be held liable for any injury, including death, to any person, or for any loss or damage to property belonging to the Recipient or anyone else, or for any obligation of the Recipient incurred or suffered by the Recipient or its agents, employees, contractors or voluntary workers in carrying out the Project, including where the Recipient has entered into loans, capital leases or other long-term obligations in relation to this Agreement.

13.2 The Recipient shall protect itself, through an appropriate policy of insurance, against any liability resulting from anything done or omitted to be done by the Recipient in carrying out the Project under this Agreement, for such coverage limits as a reasonably prudent party carrying out the same or similar activities might obtain.

13.3 The Recipient agrees to be solely responsible for any and all deductions and payments required to be made from or to employees and anyone else, including those for the Canada or Quebec Pension Plans, Employment Insurance, the Worker's Compensation Board, or the Canada Revenue Agency.

14. INDEMNIFICATION

The Recipient shall indemnify and save harmless Canada, its employees and agents from and against all liability, loss, damages, costs and expenses, including reasonable solicitor/client fees, administrative fees and disbursements, and all claims, demands, actions, or any other proceeding whatsoever and by whomsoever made, for personal injury, death, environmental effect or property damage, arising directly or indirectly and whether by reason of anything done or omitted to be done, as a result of negligence or otherwise, from the performance or any default or delay in performance of the Recipient's obligations under this Agreement.

15. LOBBYING

- 15.1 The Recipient warrants and represents that the Recipient and any person lobbying on its behalf to obtain funding under this Agreement, have been, are, and will continue to remain in compliance with the *Lobbying Act*.
- 15.2 The Recipient warrants that it has not and will not, directly or indirectly, make any payment to any individual that is in whole or in part contingent upon the solicitation of funds, negotiating or signing of this Agreement.

16. INTELLECTUAL PROPERTY RIGHTS

- 16.1 Any Material created or developed by the Recipient in carrying out its obligations under this Agreement shall vest in and remain the property of the Recipient, unless otherwise agreed to by the Parties. The Recipient shall report to Canada what Materials, if any, have been created or developed under this Agreement.
- 16.2 Canada will review the list of Materials provided by the Recipient pursuant to section 16.1 for the purpose of determining if Canada wishes to negotiate a licence agreement, separate from this Agreement, for the rights to have and to use any such Materials.

17. MEMBERS OF PARLIAMENT

No Member of the House of Commons or Senate shall be admitted to any share or part of this Agreement or to any benefit arising from it, that is not otherwise available to the general public.

18. OTHER INTERESTS

While this Agreement is in effect, the Recipient will not pursue other activities or interests that are inconsistent with those funded under this Agreement.

19. CONFLICT OF INTEREST

It is a term of this Agreement that no current or former public servant or public office holder to whom the *Conflict of Interest Act*, or the *Values and Ethics Code for the Public Service* apply, shall derive any direct benefit from this Agreement, unless the provision and receipt of such benefit are in compliance with such legislation or code.

20. ASSIGNMENT

The Recipient shall not assign this Agreement or any payment to be made thereunder without the prior written consent of Canada. Any assignment made without that prior written consent is void.

21. RELATIONSHIP OF THE PARTIES

Nothing contained in this Agreement shall be construed to place the Parties in a relationship of principal-agent, employer-employee, partnership, or joint venture, and neither Party shall have the right to obligate or bind the other Party in any manner. The Recipient shall not represent itself as the agent, employee or partner of Canada, including in any agreement with a third party.

22. SUCCESSORS

This Agreement is to the benefit of and binds the Parties and their respective successors and permitted assigns.

23. GOVERNING LAWS

This Agreement shall be governed by, interpreted and enforced in accordance with the laws in force in the province of Ontario and the laws of Canada applicable therein.

24. DISPUTE RESOLUTION

- 24.1 In the event of a dispute under this Agreement, the Parties, or their representatives, agree to meet promptly for the purposes of attempting, in good faith, to negotiate a settlement.
- 24.2 If the Parties are unable to settle the dispute by negotiation within ten (10) business days of such meeting or any other period agreed to, the Parties may agree to refer the dispute to mediation, based on terms agreed to by the Parties and reflected in a written agreement entered into on behalf of the Parties by their duly authorized representatives.
- 24.3 The ability of Canada to take action under this Agreement shall not be prejudiced by this Section or any procedure flowing from it.

25. COMMUNICATIONS

25.1 Acknowledgment

The Recipient shall acknowledge Canada's support in all public communications materials and products (including, but not limited to, information and advertising campaigns, invitations to participate in activities, printed/audio/visual electronic Materials, Web sites and exhibits). Such acknowledgment shall be in a form satisfactory to Canada. The Recipient shall withdraw the acknowledgment upon the written request of Canada.

25.2 Disclaimer

The Recipient shall, unless otherwise directed by Canada, ensure that the following disclaimer appears on any Materials developed for public distribution under this Agreement:

“The views expressed herein do not necessarily represent the views of the Public Health Agency of Canada.”

25.3 Language of communication

The Recipient shall provide its services as well as its oral and written communications to the public in both of Canada's official languages (English and French) as described in Appendix A.

26. AMENDING OR TERMINATING THE AGREEMENT

- 26.1 This Agreement may only be amended, in writing, by mutual consent of the Parties.
- 26.2 This Agreement may be terminated, in writing, by mutual consent of the Parties.
- 26.3 Nothing in section 26.2 limits Canada's ability to terminate this Agreement pursuant to sections 4.11 or 11.

27. ENTIRE AGREEMENT

This Agreement (including all documents referred to herein as well as all Appendices attached hereto) sets forth the entire agreement between the Parties with respect to its subject-matter and supersedes and cancels all prior agreements, understandings, negotiations and discussions, both oral or written, between the Parties with respect to the Project.

28. OBLIGATIONS SURVIVING TERMINATION

All obligations of the Recipient shall expressly, or by their nature, survive termination or expiration of this Agreement until, and unless, they are fulfilled, or by their nature expire.

29. REPRESENTATIVES OF THE PARTIES AND NOTICE

Communications, including reporting and any notice, demand, request or other communication, shall be in writing and deemed to have been received if sent to the coordinates below. Communications that are delivered in person shall be deemed to have been received upon delivery; communications transmitted by facsimile or by e-mail shall be deemed to have been received the day of having been sent; and communications that are sent by mail shall be deemed to have been received eight (8) days after being mailed.

Any Notice to Canada shall be addressed to:

SAM KIROS

180 Queen Street West, 11th Floor

Toronto, ON

M5V 3L7

E-mail Address: sam.kiros@phac-aspc.gc.ca

(416) 973-0006 (work)

(416) 973-0009 (fax)

Any notice to the Recipient shall be addressed to:

Middlesex London Health Unit
Name and Title of Recipient

Dr. Catherine Pettit, M.D. FRCPC
Address

Address

50 King Street, London, ON N6H 5E7

E-mail Address

ghc@mm.pallet.com/ken@phac.ca

Telephone:

519-663-8307 (2444)

Facsimile:

519-663-5200

30. COUNTERPARTS

This Agreement may be signed in counterparts and each counterpart shall constitute an original document; these counterparts taken together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, this Agreement is duly executed by authorized representatives of the Parties.

For the Recipient:

Graham A. Howlett March 1, 2010
Signature of Authorized Representative Date

Graham A. Howlett
Print Name

REGIONAL OFFICER OF HEALTH SERVICES
Print Title

Health Services Medical Unit
Print Organization's Name

WITNESS: John Milson
Signature

John Milson
Print Name

For Canada:

M. Howlett March 12 2010
Signature of Authorized Representative Date

MAURICETTE HOWLETT
Print Name

Regional Director
Print Title

WITNESS: C. Howlett
Signature

CYNTHIA ELA316116
Print Name