

Attachment C-2: WIC Letter of Participation (WIC LOP)**MMCAP INFUSE LETTER OF PARTICIPATION – WIC MEMBERS**

This WIC Letter of Participation ("WIC Letter of Participation") is entered into between the undersigned facility that is an office, agency, or clinic ("Member") that is part of the Special Supplementation Nutrition Program for Women, Infants and Children ("WIC Program") and which purchase product ("Products") for the intended home use by certified participants' ("Eligible Participants") and Abbott Nutrition, a division of Abbott Laboratories Inc. ("Abbott Nutrition"), as of the date below. By execution hereof, Member certifies that it is a participating Member of the group purchasing organization listed below ("GPO") and hereby provides notice of its intent to purchase products at the prices set forth under the agreement between the GPO and Abbott Nutrition ("GPO Agreement") as may be modified, amended or renewed from time to time, and agrees to be bound by all of the terms and conditions set forth therein and the terms of this WIC Letter of Participation. If Member is executing this WIC Letter of Participation on behalf of more than one Member, executing Member must a.) have the authority to execute this WIC Letter of Participation on behalf of such Members; b.) be able to enforce compliance to the requirements of this WIC Letter of Participation with such Members, and c.) provide a listing of all Members with complete address information and MMCAP Infuse Member ID on Schedule 1 of this WIC Letter of Participation. Only Members listed in this WIC Letter of Participation and that are rostered with GPO and have an MMCAP Infuse ID will have access to pricing under the GPO Agreement. Abbott Nutrition has the right to review Member's class of trade and eligibility to participate under the GPO Agreement – such approval will not be unreasonably withheld.

- 11) **Purchase Commitment.** Abbott Nutrition agrees to sell to Member the products available from Abbott Nutrition ("Products") at the prices set forth in the GPO Agreement.

Participation and/or Level of Commitment by Member (Must check one Box)

- Non-Committed Pricing**
- Committed Pricing**

Member agrees to purchase at least **eighty percent (80%)** of its Product needs measured on the Member total dollar purchases. If Member does not comply with the commitment requirement, then Abbott Nutrition shall notify GPO and Member in writing, and within 30 days of the notice, Member may be moved to the Non-Committed Pricing.

Abbott Nutrition's Metabolic Products shall be made available to Members, regardless of commitment level, along with the Committed Pricing and Non-Committed Pricing.

If a selection is not indicated, Abbott Nutrition shall only allow access to the Non-Committed Pricing until such time Member completes or updates the WIC Letter of Participation electing the Committed Pricing. Additionally, only the aforementioned exempt and medical food products that are expressly set forth in the GPO Agreement are covered by this WIC Letter of Participation.

- 12) **Term and Termination.** This WIC Letter of Participation shall be effective as of the date Abbott Nutrition allows Member to access the pricing under the Agreement and shall continue as long as such Agreement with Abbott Nutrition remains in effect. Either party may terminate this WIC Letter of Participation upon sixty (60) days prior written notice to the other party.
- 13) **Discount Disclosure Language.** Any discounts, rebates or other price reductions (collectively referred to herein as "discounts") issued by Abbott Nutrition to the Member are intended to reflect discounts or other reductions in price within the meaning of 42 U.S.C. Section 1320a-7b(b)(3)(A). Member may have an obligation to report such discounts to any State or Federal program that provides reimbursement to the Member for the items to which the discount applies, and, if so, Member must fully and accurately report such discounts. Further, Member should retain invoices and other price documentation and make them available to Federal or State officials upon request.
- 14) **Member Representations.** Member represents, warrants and covenants that whether Member purchases Products directly from Abbott Nutrition or indirectly through a distributor, Member will purchase Products solely for its Own Use (as hereinafter defined) in providing or distributing products to an Eligible Participant in the WIC Program for such Eligible Participant's home use. If Member becomes aware that any Product it has purchased hereunder and distributed under the WIC Program is not being used for such Eligible Participants' home use then Member will immediately notify Abbott Nutrition in writing, discontinue distributing the Product to such Eligible Participant, and shall assist Abbott Nutrition in recovering Product from such Eligible Participant. If Abbott Nutrition notifies Member that any Product it has purchased hereunder and distributed under the WIC Program is not being used for such Eligible Participants' home use then Member will immediately discontinue distributing the Product to such Eligible Participant and shall assist Abbott Nutrition in recovering Product from such Eligible Participant. For purposes of this section, "Own Use" shall mean those uses that are part of providing health care services and products directly to WIC Program Eligible Participants in a home use setting within the 50 United States. Eligible Members shall not include or provide services in the following settings: physicians or physician's offices, senior independent living or retirement facilities, food and drug wholesalers/retailers, distributors and other similar resellers, retail pharmacies, retail stores, companies that provide home delivery services, internet ordering and delivery services, unless such services are provided as a part of a participant's Own Use. Products will not be purchased for distribution in any manner that would compete in the retail marketplace. In addition, Products purchased under this WIC Letter of Participation shall not be resold or provided to any employee of Member or any other entity or person outside of the Own Use requirements defined herein.
- 15) **Own Use Reimbursement.** Member shall reimburse Abbott Nutrition an amount equal to the difference between the pricing under the GPO Agreement and Abbott Nutrition's trade price in effect at the time of purchase for each Product purchase in violation of the Own Use provisions of this WIC Letter of Participation and the GPO Agreement. The mechanism for reimbursement shall be consistent with the manner in which the Product was purchased.
- 16) **Audit.** Upon Abbott Nutrition's request and its own expense, Member shall certify that it is in compliance with the Own Use provisions set forth in this Letter of Participation and/or permit Abbott Nutrition or a third party designated by Abbott Nutrition to audit Member's records to verify

compliance to the Own Use provisions in this Agreement. Member shall, in a timely manner, provide Abbott Nutrition or its third party designee, with all records necessary to perform such audits and shall take all steps necessary to ensure that such records are provided to Abbott Nutrition in compliance with all applicable federal and state laws, including but not limited to, the HIPAA Privacy and Security Standards. Abbott Nutrition will follow any applicable laws of MMCAP Infuse or the Member's pertaining to data practices laws and/or the Freedom of Information Act (FOIA), in addition to the Abbott Nutrition taking all reasonable steps to maintain the confidentiality of the information provided. If Member refuses to provide such information in a timely manner to enable Abbott Nutrition or its third party designee to conduct such audits, then Abbott Nutrition may immediately: (A) terminate this WIC Letter of Participation and Member's access to pricing under this Agreement; (B) withhold shipments of Product to the Member; and (C) seek reimbursement from the Member for the difference between the pricing under this Agreement and Abbott Nutrition's trade price in effect at the time of purchase for the period in which Abbott Nutrition believes Member was in violation of the Own Use provisions.

- 17) **Assignment.** This WIC Letter of Participation shall not be assigned by Member without the prior written consent of Abbott Nutrition.
- 18) **Eligibility.** If Member is eligible under more than one group purchasing organization agreement, Member must purchase Products under only one group purchasing organization agreement and will provide Abbott Nutrition with written notification of which group purchasing organization agreement it is participating under for Product purchases. By execution hereof, Member certifies that it is a participating member of the GPO named below and as such shall purchase Products solely under such GPO Agreement. This WIC Letter of Participation shall supersede any and all pre-existing agreements, letters of participation, letter agreements, or letters of commitment Member has with Abbott Nutrition.
- 19) **Miscellaneous.** Noncompliance with the obligations hereunder, except for payments to Abbott Nutrition, for reasons of force majeure shall not constitute a breach of this WIC Letter of Participation. No waiver of any right or remedy by Abbott Nutrition shall constitute a subsequent waiver of the same right or remedy.
- 20) **Acknowledgement.** By execution hereof, Member acknowledges and agrees to be bound by all of the terms and conditions of the GPO Agreement and this WIC Letter of Participation.

PRINT OR TYPE: GPO NAME: MMCAP INFUSE

Member Name: _____

Member Address: _____

Member City, State, Zip: _____

Member Phone Number: _____

By: _____ **Date:** _____
(Signature)

Print Name/Title: _____

Distributor(s): _____

Abbott Nutrition Account#: _____

GPO Member ID: _____

No changes to or variances from, or any additions to the terms and conditions of this WIC Letter of Participation by Member shall be binding upon Abbott Nutrition. When signed, please email to Karen.Givens@abbott.com.

