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Minnesota Department of Administration  
Office of State Procurement  
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Abbott Laboratories Inc., on behalf of its Nutrition division, Abbott Nutrition

MMCAP Infuse Agreement: MMS2100547

Prepared on June 10, 2021

**PREFIX A  
Definitions and Acronyms**

Are attached and incorporated into the Agreement

**Definitions**

1. **Administrative Fee:** Means three percent (3%) of Contract Pricing for Products or as listed on **Attachments A** and **B**, which will supersede Prefix A.
2. **Agreement:** Means the resulting agreement that is reached between MMCAP Infuse and the Vendor.
3. **Authorized Wholesaler(s):** AmerisourceBergen Drug Corporation, Cardinal Health, and Morris & Dickson Co., LLC. Vendor approved chargeback distributors shall also be considered as "Authorized Wholesalers" for the purposes of this Agreement.
4. **Class of Trade:** All Members within the 50 United States which can meet the Own Use requirements set forth in Article 2 below are eligible for contract pricing.
5. **Contract Pricing:** Means the price that the Vendor has agreed to provide the Products to MMCAP Infuse and its Membership as set forth on **Attachments A** and **B** and any subsequent amendment to this Agreement.
  - A. **Fixed Pricing:** Means the Contract Pricing for the Products identified on **Attachments A** and **B** will be fixed for one year from the Effective Date and Vendor can increase the Contract Pricing one time per year on the anniversary date of the Agreement. The Products and Contract Pricing on **Attachments A-1** and **A-2** is reserved for Non-WIC Participating Members, while the Contract Pricing on **Attachments B-1** and **B-2** is reserved for WIC Participating Members. The Contract Pricing on **Attachment A-3** is reserved for all Participating Members.
6. **Contract(ed) Items:**
  - A. **Products:** Means all products offered by the Vendor in this Agreement, which is identified in **Attachments A and B**.
7. **Days:** (Not required to be capitalized) Unless otherwise specified in this Agreement, all references to days will be calendar days.
8. **Government Unit:** Any entity as defined by Minnesota Statute 471.59.
9. **Member:** Means an approved MMCAP Infuse State or other Government Unit that has executed a membership application and Member agreement with MMCAP Infuse.
10. **Membership:** Means the joint power cooperative comprised of the MMCAP Infuse authorized States, Members, and other Government Units.
11. **Non-WIC Members:** Means Members that do not operate Special Supplemental Nutrition Programs for Women, Infants and Children. Non-WIC Members can include but are not limited to the following classes of trade: correctional facilities, psychiatric treatment facilities, student health services, public health services, nursing homes, and public hospitals.
12. **Onboarding Date:** Means the Vendor will use commercially reasonable efforts to allow new Participating Members to access to the Agreement within seven (7) days of completion of the required paperwork on **Attachment C**.
13. **Onboarding Forms:** Means the forms executed by Members to access Contract Pricing under this Agreement. Onboarding Forms are set forth herein as **Attachments C-1** and **C-2**.
14. **Order Form:** Means Vendor's electronic platform Member utilizes to obtain Contracted Items.
15. **Participating Member:** Means Members that have executed and returned Onboarding Forms to Vendor and that Vendor has approved for Contract Pricing under this Agreement or Members that already have approved Onboarding Forms on file with Vendor which Vendor has previously approved for access to Contract Pricing under previous agreements.
16. **Products:** Means all products offered by the Vendor in this Agreement, which are identified in **Attachment A**.
17. **State:** Means one of the recognized fifty (50) states of the United States of America.
18. **WIC Member:** Means Member(s) who operate Special Supplemental Nutrition Programs for Women, Infants, and Children (WIC).

The most current version  
**AGREEMENT FOR MMCAP INFUSE NO. MMS2100547**  
<http://www.mmd.admin.state.mn.us/MMCAP/Contracts/Default.aspx>

THIS Agreement is entered into as of the Effective Date by and between the State of Minnesota acting through its Commissioner of Administration (“**Minnesota**”) on behalf of MMCAP Infuse (“**MMCAP Infuse**”) and Abbott Laboratories Inc., on behalf of its Nutrition division, Abbott Nutrition, a corporation with an address of 3300 Stelzer Rd., Columbus, OH 43219 (“**Vendor**”).

Pursuant to Minnesota Statutes Section 16C.03, the Commissioner of Administration may enter into this Agreement on behalf of MMCAP Infuse for the benefit of its Members.

MMCAP Infuse may be a group purchasing organization as defined in 42 U.S.C. § 1320a-7b(b)(3)(c) and maintains that it is structured to comply with the requirements of the Safe Harbor regulations, as may be applicable, regarding payments to group purchasing organizations set forth in 42 C.F.R. § 1001.952(j). MMCAP Infuse consists of government-run health care facilities/entities and contracts for pharmaceuticals and certain health care products for its Members’ use.

**Agreement Term:**

1. **Effective Date:** July 1, 2021, or the date MMCAP Infuse obtains all required signatures as required under Minnesota Statute, whichever is later.
2. **Expiration Date:** June 30, 2025
3. The Agreement Term may be extended upon mutual agreement of MMCAP Infuse and Vendor.

**AGREEMENT COMPONENTS**

The following components are the Agreement; all referenced Prefix and Attachments, are attached and incorporated into this Agreement.

1. **Prefix A:** Definitions
2. **Attachment A-1:** Non-WIC Products and Pricing – Non-Committed
3. **Attachment A-2:** Non-WIC Products and Pricing - Committed
4. **Attachment A-3:** Non-WIC and WIC Products and Pricing- Metabolic Products
5. **Attachment B-1:** WIC Products and Pricing – Non-Committed
6. **Attachment B-2:** WIC Products and Pricing – Committed
7. **Attachment C:** Required Member Onboarding Forms
  - A. **Attachment C-1:** Non-WIC Letter of Participation (Non-WIC LOP)
  - B. **Attachment C-2:** WIC Letter of Participation (WIC LOP)
8. **Attachment D:** Required Reporting for Direct Sales
9. **Attachment E:** MN Statutory Language
10. **Attachment F:** Vendor's Return Policy

**ARTICLE I**  
**PRICING AND CHANGES**

- 1.1 **Notices.** All notices under this Article must be sent to: [MMCAP\\_Infuse.Contracts@state.mn.us](mailto:MMCAP_Infuse.Contracts@state.mn.us).
- 1.2 **Pricing Structure:** Pricing for Products are listed on **Attachment A** and will remain in effect during the Agreement Term.
- 1.3 **MMCAP Infuse Participating Member Pricing.** MMCAP Infuse Members shall be entitled to access pricing from Vendor as set forth herein. MMCAP Infuse Members who were accessing pricing under previous agreements between MMCAP Infuse and Vendor as of the Effective Date of this Agreement shall be able to access the pricing under this Agreement without the requirement of having to execute Onboarding Forms under this Agreement. Vendor has the right to review Members’ class of trade and access to Pricing as set forth in this Agreement.
  - A. **TIER 1: NON-WIC NON-COMMITTED PRICING.** Non-WIC Members that sign and return to Vendor a Non-WIC LOP electing the non-committed level for contract purchases from Vendor shall be eligible to access the pricing attached hereto as **Attachment A-1 (“Non-WIC Non-Committed Pricing”)**. Non-WIC Members which do not have pricing in place with Vendor under another contract may be allowed, at Vendor’s discretion, to access the Non-WIC Non-Committed Pricing without requirement of executing a Non-WIC LOP.
  - B. **TIER 2: NON-WIC COMMITTED PRICING.** Non-WIC Members that sign and return to Vendor a Non-WIC LOP electing to purchase Products in the product categories set forth below (“**Product Categories**”), and which agree to purchase at least **eighty percent (80%)** of its Product needs in each Product Category

measured on the Participating Member total dollar purchases in such Product Category, shall be eligible to access the pricing attached hereto as **Attachment A-2 ("Non-WIC Committed Pricing")**.  
<http://www.mmd.admin.state.mn.us/MMCAP/Contracts/Default.aspx>

- i. Oral-Fed Nutrition
- ii. Specialty Nutrition
- iii. Critical Care Nutrition
- iv. Tube-Fed Nutrition
- v. Pediatric Nutrition
- vi. Tolerance Nutrition

Vendor may, at its discretion, evaluate the commitment of MMCAP Infuse Members which cannot meet the above commitment requirements and allow MMCAP Infuse Members access to the Non-WIC Committed Pricing. If, in the sole determination of Vendor, a Participating Member accessing Non-WIC Committed Pricing does not comply with the commitment requirements, then Vendor shall notify MMCAP Infuse and the MMCAP Participating Member in writing and within thirty (30) days of such notice the Participating Member may be moved to the Tier 1 Non-WIC Non-Committed Pricing.

- C. **TIER 3: WIC NON-COMMITTED PRICING.** WIC Members that sign and return to Vendor a WIC LOP electing the non-committed level for contract purchases from Vendor shall be eligible to access the pricing attached hereto as **Attachment B-1 ("WIC Non-Committed Pricing")**. WIC Members who do not have pricing in place with Vendor under another contract may be allowed, at Vendor's discretion, to access the WIC Non-Committed Pricing without requirement of executing a WIC LOP.
- D. **TIER 4: WIC COMMITTED PRICING.** WIC Members that sign and return to Vendor a WIC LOP electing to purchase Products and which agree to purchase at least **eighty percent (80%)** of its Product measured on such WIC Member's total dollar purchases, shall be eligible to access the pricing attached hereto as **Attachment B-2 ("WIC Committed Pricing")**. Vendor may, at its discretion, evaluate the commitment of WIC Members which cannot meet the above commitment requirements and allow WIC Members access to the Committed Pricing. If, in the sole determination of Vendor, a WIC Participating Member accessing the WIC Committed Pricing does not comply with the commitment requirements, then Vendor shall notify MMCAP Infuse and the WIC Participating Member in writing and within thirty (30) days of such notice the WIC Participating Member may be moved to the Tier 4 WIC Non-Committed Pricing.
- E. **TIER 5: METABOLIC PRICING.** MMCAP Infuse Participating Members accessing pricing under any Contract Pricing structure identified above shall also access the Contract Pricing attached hereto as **Attachment A-3 ("Metabolic Pricing")**.

- 1.4 **Annual Fixed Pricing.** All Contract Pricing on **Attachments A** and **B** will be considered fixed for a period of one (1) year from the anniversary date of this Agreement and the price may not be increased on those Products unless a Force Majeure condition can be established. Thereafter, Contract Pricing may change one (1) time per year upon the anniversary date and Vendor will provide thirty (30) days' prior written notice of all price changes to MMCAP Infuse. Except as provided for in this Agreement, no fee, percentage, or other cost may be added to the products purchased under this Agreement unless the fee, percentage, or cost is defined and approved in writing by MMCAP Infuse.
- 1.5 **Notice to MMCAP Infuse.** In the event Vendor does not notify MMCAP Infuse of a price increase, Vendor must honor wholesalers' chargebacks for the most recent previous Contract price until such time as MMCAP Infuse receives notice of and approves the price increase. Approval will not be withheld if notice was provided in accordance with Section 1.4 above.
- 1.6 **Notice to Authorized Wholesalers.** The Vendor must notify any and all Authorized Wholesalers of price changes under this Agreement. The pricing communicated to the Authorized Wholesalers will be the fifteen (15) or more cases Contract Pricing listed on **Attachments A-1** and **A-2** the one (1) case Contract Pricing on **Attachment A-3, B-1, and B-2**. If Vendor fails to send price notification(s), Vendor agrees to honor all chargebacks at the lower Contract Pricing until such time the Authorized Wholesalers receive notice of and approves the price change.
- 1.7 **Competitive Pricing.** If MMCAP Infuse is made aware and determines during the Agreement Term that Vendor's overall general market price for Products offered to a Government Unit is better than the Contract Pricing under this Agreement, Vendor and MMCAP Infuse agree to review the situation and work in good-faith towards a resolution. If the situation is not resolved in a manner suitable to MMCAP Infuse, MMCAP Infuse may terminate this Agreement as set forth in Article IV.
- 1.8 **Member Fees.** In the event a Member requires a fee, assessment, and/or additional costs in addition to the Contract Pricing; those fee, assessment, and/or additional costs must be added on top of the Contract Pricing and/or an adjustment to the discounts must be made so Vendor does not absorb the fee. Vendor must not pay a Member levied fee without first collecting the fee through increased Contract Pricing for the applicable Member. The fees

will be set aside and paid to the Member as detailed in a form provided and approved by MMCAP Infuse. Vendor has the right to approve or deny entering into the arrangement as set forth in this section. In the event Vendor does agree to any additional fee, assessment or additional cost to the Contract Pricing for a Member, Admin Fees will not be paid to MMCAP Infuse on the fee, assessment or additional cost added to the Contract Pricing.

- 1.9 **Value-Added Programs.** Participating Members must be offered any programs normally offered to the Vendor's general customer base (e.g., continuing education courses, marketing information, etc.) at the same or lower cost as that offered to the general customer base.
- 1.10 **Product Dating.** The expiration date of Products supplied to Authorized Wholesalers from Vendor are subject to the requirements set forth in the distribution agreements executed between Vendor and Authorized Wholesalers. Vendor will use commercially reasonable efforts to ensure that Products supplied directly by Vendor will have an expiration date at least six (6) months later than the delivery date unless the unique stability characteristics of the Product require a shorter dating period.
- 1.11 **Changes.** Any changes to this Agreement, including but not limited to Product additions/deletions, price changes, NDC changes, changes to terms and conditions, etc., must be made in writing as an amendment and must be fully executed by the effective date of the amendment. With the exception of changes to Contract Pricing which are subject to Paragraph 1.6, Vendor will use commercially reasonable efforts to send confirmation of amendment changes, including but not limited to additions/deletions, NDC changes, Product removals, etc., to the Authorized Wholesalers within two (2) business days of the time that documentation of the change is received by the Vendor from MMCAP Infuse. If MMCAP Infuse's Authorized Wholesalers do not receive the notification(s), Vendor agrees to honor all chargebacks at the Contract Pricing from the effective date indicated on the amendment. Vendor-generated Product offers, and notifications may be used as amendments to **Attachment A** by submitting to MMCAP Infuse a letter on Vendor's letterhead with the following elements (**Offer Letter**):
- Offer Date
  - MMCAP Infuse Contract Number
  - Action (e.g., addition, deletion, price change, NDC conversion)
  - Any of the applicable: NDC Number, UPC Number, Item Number/SKU
  - Product Description
  - Packaging
  - Most recent previous Contract Price
  - New Contract Price
  - Pricing Type
  - Effective Date
  - Signature of an individual authorized to bind Vendor's change to contract.

Upon written acceptance by MMCAP Infuse, Offer Letter will automatically amend **Attachment A** of this Agreement. If MMCAP Infuse indicates that aspects of the Offer Letter conflict with Agreement at that time, Paragraph 11.6 will apply to any subsequent conflicts and/or issues that may arise subsequently. If MMCAP Infuse executes the Offer Letter and provides annotations, the Vendor has fifteen (15) days to object to MMCAP Infuse counter counters before they are deemed as accepted by Vendor. In the event the Vendor is unwilling or unable to provide offers in this format, MMCAP Infuse will draft all amendments. Vendor must countersign the amendments drafted by MMCAP Infuse to be incorporated into the Agreement. Amendments must be countersigned by the Vendor by the earlier of the following (A): fifteen (15) days; or (B) the Expiration Date

## **ARTICLE II**

### **SUPPLYING AND AVAILABILITY**

- 2.1 **Product Availability:** Participating Members may purchase Products directly from Vendor, and Vendor may sell to Participating Members, pursuant to the terms and conditions herein. If a Participating Member purchases Products through an Authorized Wholesaler or another Vendor approved chargeback distributor, then MMCAP Infuse or the Participating Member shall negotiate the final selling price with the distributor. Vendor may extend pricing to Authorized Wholesalers, without a written amendment hereto, upon notification from MMCAP Infuse or a Participating Member, or upon submission of a chargeback claim by an Authorized Wholesaler for Product purchases made by a Participating Member. Vendor will report such distributors' access and activity to MMCAP Infuse with the Administration Fee Data Report.
- 2.2 **Authorized Wholesaler Requirements.** Vendor will notify the Authorized Wholesalers of the initial Products and Contract Pricing and any subsequent changes.
- A. Direct sales to Members are further discussed in *Article III*.
  - B. Vendor will negotiate in good faith to establish and maintain chargeback agreement(s) with the Authorized Wholesalers.
  - C. Vendor must notify MMCAP Infuse immediately of any issues (e.g., failure to negotiate terms, etc.) with Authorized Wholesalers that could affect the Contract Products' availability. Notices must be sent to: [MMCAP\\_Infuse.Contracts@state.mn.us](mailto:MMCAP_Infuse.Contracts@state.mn.us).



2.3 **WIC Participating Member Own Use:** MMCAP Infuse will communicate to each WIC Participating Member the following requirements:

- A. The Products purchased hereunder may only be provided or distributed by a WIC Participating Member for home use by certified participants eligible to utilize Product under the WIC Program ("Eligible Participant") (their "Own Use").
- B. If WIC Participating Member becomes aware that any Product it has purchased hereunder and distributed under the WIC Program is not being used for such Eligible Participants' Own Use then WIC Participating Member will immediately notify Vendor in writing, discontinue distributing the Product to such Eligible Participant, and shall assist Vendor in recovering Product from such Eligible Participant.
- C. If Vendor notifies WIC Participating Member that any Product it has purchased hereunder and distributed under the WIC Program is not being used for such Eligible Participants' Own Use, then WIC Participating Member will immediately discontinue distributing the Product to such Eligible Participant and shall assist Vendor in recovering Product from such Eligible Participant.

For purposes of this Paragraph 2.3, "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. WIC Participating 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 Agreement shall not be resold or provided to any employee of MMCAP Infuse, any employee of any WIC Participating Member or any other entity or person outside of the Own Use requirements defined herein. All items acquired by WIC Participating Members under this Agreement are purchased for consumption in traditional governmental functions and not for the purpose of competing against private enterprise.

2.4 **Non-WIC Participating Member Own Use.** MMCAP Infuse will communicate to each Non-WIC Participating Member the following requirements:

- A. The Products purchased hereunder may only be provided to patients in an institutional or home health care setting for their "Own Use" (as set forth below).
- B. If MMCAP Infuse learns that a Non-WIC Participating Member is purchasing Product under this Agreement for purposes other than for its Own Use, or for any other purpose that would constitute a breach under the Agreement, then MMCAP Infuse will immediately notify Vendor in writing of such activity, and work with Vendor to discontinue such activity by said Non-WIC Participating Member.
- C. If a Non-WIC Participating Member becomes aware that Product it has purchased hereunder is being used for purposes other than for its Own Use, or for any other purpose that would constitute a breach under the Agreement, then Non-WIC Participating Member will immediately notify Vendor in writing of such activity, and work with Vendor to discontinue such activity by said Participating Member.

For purposes of this Paragraph 2.4, "Own Use" means those uses that are part of providing health care services and products directly to patients who are in institutional or home health care settings within the fifty (50) United States. Non-WIC Participating Members shall not include or provide services in the following settings: WIC agencies, physicians or physician 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. Products purchased under this Agreement shall not be resold, provided to any patients at time of discharge, or provided to any employee of MMCAP Infuse or any employee of any Non-WIC Participating Member or any other entity or person outside of the Own Use requirements defined herein. All items acquired by Non-WIC Participating Members under this Agreement will be purchased for consumption in traditional governmental functions and not for the purpose of competing against private enterprise.

2.5 **Own Use Reimbursement.** MMCAP Infuse has communicated, or will communicate upon execution hereof, to each Participating Member that each Participating Member shall reimburse Vendor an amount equal to the difference between the pricing under this Agreement and Vendor's trade price in effect at the time of purchase where applicable by law, for each product purchase in violation of the Own Use provisions of this Agreement. Such Own Use reimbursement shall be managed directly between Vendor and Participating Member.

2.6 **Product Identification:**

- A. All prescription Products must have an 11-digit NDC code that is registered with First DataBank, Inc. All non-prescription Products that do not have an 11-digit NDC code registered with First DataBank, must have an NDC-like substitute code created as follows:
  - i. If NDC codes are not applicable, Vendor must use the product's UPC number to create an 11-digit number by adding a zero to the sixth position (e.g., 5-5 [99999-99999] becomes 5-4-2 [99999-0999-99]). If the Product does not have an NDC number or a UPC code, Vendor must use its product number with leading zeroes (e.g., product #90024 = 00000-0900-24).

- B. Vendor will report Products to Authorized Wholesalers using Vendor's item numbers, the NDC code for each individual container and the case UPC code. The same product identifier formats must also be provided in a clear format to MMCAP Infuse.
- C. Vendor must provide MMCAP Infuse with any additional product identifiers that it provides to Authorized Wholesalers as set forth in this section above.

2.7 **Product Outages.** It is the responsibility of the Vendor to maintain sufficient inventory levels for all Products to meet the foreseeable needs of the Participating Members, whether it is direct sales to Participating Members or through Authorized Wholesalers. The Vendor agrees to utilize the following process in the event of a backorder situation due to a Vendor-created stock outage.

- A. **Notification:** Vendor will provide notice at time of order to Participating Members of any Products covered by this Agreement that the Vendor has placed on backorder. Vendor's backorder notification will include:
- the Products placed on backorder status;
  - the expected timeline of the backorder;
- B. **Substitution:** If Members consents, Vendor may offer like-kind Products at the same or lower price as the out of stock product. If no acceptable substitution can be offered, the Participating Member may purchase the same or equivalent Product from an alternative MMCAP Infuse vendor, or if unavailable through an alternative MMCAP Infuse vendor, Participating Member may purchase an alternative equivalent Product on the open market, including retail, for the period in which the Vendor is unable to provide the Products. Such purchases will not be counted against commitment requirements for Participating Members accessing Committed Pricing under this Agreement.
- Force Majeure:** Any instances of Force Majeure, as identified in Paragraph 4.4, will exempt Vendor from providing a credit to Member.

2.8 **Product Discontinuation.** With the exception of a recall, if the Vendor assigns, discontinues, or deletes a Product during the Agreement, Vendor will use commercially reasonable efforts to provide written notice to MMCAP Infuse and Authorized Wholesaler at least sixty (60) days prior. If the event Vendor removes a Product, the Vendor will honor Contract Pricing until the Authorized Wholesalers' inventories are depleted or a mutually agreed upon removal date if such date is prior to the depletion of Authorized Wholesalers' inventories

2.9 **Products Returned to the Vendor.** Vendor will accept returns in accordance with Vendor's returns policy as seen on **Attachment F**. Vendor's returns policy is subject to change at any time at Vendor's discretion and without the requirement of a written amendment hereto.

2.10 **Product Recalls.** If any Product covered by this Agreement requires modification, is removed, or recalled by the Vendor, then Vendor will use commercially reasonable effort to notify MMCAP Infuse, Participating Members with recent direct purchases from Vendor and Authorized Wholesalers within five (5) days. Vendor agrees to comply with any process mandated by the FDA, or any other regulatory body if applicable, and will address the recall with each Participating Member and Authorized Wholesalers as set forth above. Participating Members and Authorized Wholesalers will not incur costs for Product returns related to recalls Vendor will issue credit for recalled Product.

2.11 **Backorders.** Vendor will use commercially reasonable efforts to provide MMCAP Infuse written notice of all Product backorders expected to last longer than thirty (30) calendar days and/or inability to supply situations to MMCAP Infuse within seventy-two (72) hours of the knowledge of the situation. Notices must include the expected duration of the issue. Notices must be sent to: [MMCAP\\_Infuse.Contracts@state.mn.us](mailto:MMCAP_Infuse.Contracts@state.mn.us).

### **ARTICLE III** **PAYMENT, DIRECT ORDERS, AND DELIVERY**

3.1 **Conditions of Payment.** All Contract Items provided by the Vendor under this Agreement must meet the specification in Contract Items inserts and manuals in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Vendor will not receive payment for Contract Items which do not meet such specifications in Contract Item inserts and manuals, or which violate federal, state, or local law.

3.2 **Payment Method.** Vendor will accept Electronic Funds Transfer (EFT), or credit card as a payment method and Member will initiate this process with its financial institution.

3.3 **Federal Funds.** Payments under this Agreement may be made from federal funds. The Vendor is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the Vendor's failure to comply with federal requirements.

3.4 **Orders.** As a condition for purchasing under this Agreement, purchasers must be Participating Members in good standing with MMCAP Infuse. Vendor may use their own Order Forms. To the extent that the terms of any Order Form(s) conflict with the terms of this Agreement, the terms of this Agreement supersede. Each Participating Member will be responsible for payment for Contracted Items to the Vendor and MMCAP Infuse will not be liable for any unpaid invoice of any Participating Member. Vendor agrees to invoice the Participating Members as established in this Agreement.

- A. All Products shipped to a Participating Member will be subject to inspection and acceptance by the ordering entity after delivery. Any discrepancies must be report to Vendor within three (3) business days of receipt of goods. No substitutions are permitted without prior notification to the Member. Back orders, failure to

meet delivery requirements, or failures to meet specifications in the Agreement authorizes the ordering entity to cancel the order.

- B. Phone Ordering: To place a direct order with Vendor, Participating Members can call Vendor's customer service group at 800-551-5838 between 8:00AM EST and 5:30PM EST Monday through Friday. Participating Member should be prepared to provide their Vendor account number, PO number for the order, Vendor item numbers for the Products ordering, and the quantities of each Product Participating Member is wishing to order from Vendor. Participating Member can also provide special shipping instructions at time of order placement.
- C. E-Abbott: Participating Members that wish to place an order directly with Vendor electronically can register for an account on Vendor's e-Abbott website which allows Participating Members to place on-line orders 24 hours a day, seven days a week. Participating Members can contact Vendor's customer service group if they need assistance in completing registration.
- D. Traditional EDI: If Participating Member wishes to do traditional EDI ordering, Participating Member must contact Vendor's customer service group to initiate that process.

**3.5 Termination of Individual Orders.** Participating Members may terminate, immediately or as identified by Participating Member, orders placed directly with Vendor that have not yet shipped, in whole or in part, upon written notice to Vendor upon the occurrence of any of the following events:

- A. The Participating Member fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Contracted Items to be purchased under the Agreement; or
- B. Federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the purchase of the Contract Items under the Agreement are prohibited, or the Participating Member is prohibited from paying for the Contracted Items from the planned funding source; or
- C. Vendor commits any material breach of this Agreement or Order Form.

Upon receipt of written notice of termination, Vendor will stop performance under the Order Form as directed by the Member. If a standing Order Form is terminated, the Member must pay Vendor in accordance with the terms of this Agreement for goods delivered and accepted by the Member.

**3.6 Jurisdiction and Venue of Orders.** Upon completion of the Dispute Resolution process outlined in this Agreement, and solely with the prior written consent of MMCAP Infuse and the State of Minnesota Attorney General's Office, the Member may bring a claim, action, suit, or proceeding against Vendor. The Member's request to MMCAP Infuse to bring the claim, action, suit, or proceeding must identify the desired jurisdiction, venue, and governing law. As it applies to purchases made by a Member, nothing in the Agreement will be construed to deprive the Member of its sovereign immunity.

**3.7 Shipment for Products.** Vendor must distribute and deliver the Contracted Items covered under this Agreement to all Members, located in the fifty (50) United States. If the Participating Member account is in good standing, the Vendor will at no time, refuse to deliver to the Participating Member without the prior written approval by the Participating Member and MMCAP Infuse. Delivery for Products under this Agreement shall be FOB Destination, freight prepaid is allowed, unless otherwise agreed to by Vendor and Participating Member. Vendor will not add any fuel surcharges to the purchase under this Agreement. Notwithstanding the foregoing, emergency orders, rush orders, orders for products not regularly stocked by Vendor's local servicing distribution center, products dropped shipped from Vendor's contracted supplier, and orders not regularly scheduled are subject to an added shipping and handling charge determined by Vendor and disclosed to Participating Member before a purchase is made.

- A. Delivery Schedule: Upon request from Participating Member, Vendor will work with Participating Member to establish a routine delivery schedule. Delivery for stock items will occur within three (3) to five (5) business days, from the date the Product is ordered. It is understood that deliveries to Alaska or Hawaii may take longer. All expedited deliveries will be made next day, or on the next scheduled delivery day (excluding Alaska and Hawaii), as agreed upon by Vendor and Participating Member.
- B. Hazardous Materials: Vendor will only ship hazardous materials as allowed by the appropriate government regulations.
- C. Damaged Products: All damaged Products will be reported to Vendor's customer service department within three (3) business days of receipt of order and applicable credits will be issued within ten (10) days from date of notification of the damaged item.
- D. Lost Products: All lost Products will be reported to Vendor's customer service department within three (3) business days of receipt of order. Vendor will issue credit within ten (10) days of notification of lost Product; alternatively re-shipment of missing Product will occur immediately after notification.
- E. Minimum Order Requirements: During the Agreement, direct orders placed with Vendor shall be placed in full cases and such orders are subject to the shipping up-charges as set forth in **Attachments A-1 and A-2** based on the size of the order.
- F. Special Conditions for Products: If applicable to the Products offered under this Agreement, Vendor will maintain appropriate temperatures and environmental conditions in accordance with manufacturer requirements for delivery of the Products to Participating Members. Products requiring refrigeration will be clearly marked as such. If Participating Member refuses Products that have been inadequately packaged, the Participating Member will notify Vendor's customer service department to log the complaint. Any costs



associated with the return of Product due to improper packaging or transport, will be at the expense of the Vendor. <http://www.mmd.admin.state.mn.us/MMCAP/Contracts/Default.aspx>

- 3.8 **Invoicing.** Vendor will submit an invoice with each order for purchases made directly from Vendor.
- A. Invoice Fields: At a minimum, Vendor's invoice will contain the following fields:
    - i. Member name and Vendor-assigned account number for the Participating Member;
    - ii. Invoice line number and Participating Member's purchase order number (Participating Member must provide a purchase order number at the time of order for this to appear on Vendor's invoice);
    - iii. Bill to and ship to address;
    - iv. Invoice date;
    - v. Vendor's SKU item number, Contracted Item name/description and packaging as associated with NDC/UNSPSC number (if applicable to this Agreement);
    - vi. Unit price, quantity ordered, quantity shipped, extension (unit price multiplied by the quantity shipped), and total invoice price; and
  - B. Invoice Rounding: Vendor agrees to round down if the third digit after the decimal is four (4) or less. Vendor agrees that any rounding will occur at the Participating Member invoice unit price.
  - C. Invoice Disputes: Participating Member will notify Vendor of any known price dispute with an invoice within fifteen (15) days from receipt of the invoice. If all, or a portion of the disputed invoice is found to be in error, Vendor shall issue a credit and/or adjust the original invoice to the Member appropriately, and provide a corrected invoice. Where the above is prohibited by a Participating Member state's applicable law(s), the Vendor shall comply with requirements of that state's applicable law(s) related to disputed invoices. Vendor will make a good faith effort to resolve known disputes related to Agreement pricing within thirty (30) days of notice of the dispute. This clause will in no way be deemed a limitation on the parties, as it relates to the future auditing and/or correction of invoices.
    - i. In the event that applicable state law mandates set-off by a Participating Member, such set-off rights shall be exercised only to the extent expressly set forth in the applicable statute.
- 3.9 **Payment Terms.** Direct purchases from Vendor are subject to Vendor's published terms and conditions as set forth at <http://www.e-abbott.com>. The payment terms for Participating Members are the following:
- A. Check: Payment is due within thirty (30) days from the date of the invoice; Participating Member will receive a two percent (2%) discount off the invoice total for payment within ten (10) days of date of invoice.
  - B. Electronic Funds Transfer: Payment is due within thirty-five (35) days from the date of the invoice; Participating Member will receive a two percent (2%) discount off the invoice total for payment within fifteen (15) days of date of invoice.
  - C. Credit Card: Payment is due within thirty (30) days from the date of the invoice.
  - D. In addition, all requests for changes or corrections to any invoice must be made within one year of receipt of such invoices. Overdue invoice amounts shall accrue interest at the lower rate of: (i) Participating Member's statutory allowance; or (ii) one and half percent (1.5%) of the original invoice amount per month or part thereof, and shall be payable together with such interest upon demand. Notwithstanding, the terms of this Agreement, each order placed by a Participating Member shall be subject to acceptance by Vendor. If a Participating Member purchases directly from Vendor, it will have an approved credit application on file with Vendor.
- 3.10 **Credits and Rebills.** In the case of an invoice dispute for purchases made directly from Vendor, Vendor will promptly issue credits/rebills, after notifications are received from a Participating Member and after the Dispute Resolution process set forth in this Agreement where Vendor has verified credits and rebills are required.
- A. Vendor credits are valid until they are refunded or the account has used payment.
  - B. In the event of a facility closure, or other extreme event where the Participating Member will not be making another purchase through Vendor, the Participating Member may request a check for a credit balance.
  - C. If directed by a Participating Member, a credit can be transferred from one account to another account provided both accounts are under the same bill to account number.
  - D. The Vendor will take all commercially reasonable steps to ensure that credits that become available close to the end of the Participating Member's fiscal year, are activated for use by the Participating Member no later than five (5) days before the end of the fiscal year.
  - E. Vendor's credit memo will contain, but is not limited to the following information:
    - i. original purchase order number and invoice number;
    - ii. itemized listing of the Contract Items affected;
- 3.11 **Price Audits and Corrections.** In the event of a Contract Pricing error where Vendor acknowledges such error is attributable to the Vendor, Vendor agrees to process credit/rebills for Participating Member orders placed directly with Vendor for the period in which the Contract Pricing error was in place, not to exceed three (3) calendar months. When a Participating Member or MMCAIP Infuse discovers an error in pricing, they will notify Vendor.

**ARTICLE IV****TERMINATION, CANCELLATION, AND REMEDIES**

- 4.1 **Cancellation.** MMCAP Infuse or Vendor may cancel this Agreement any time, without cause, upon sixty (60) days' written notice to the other party.
- 4.2 **Termination for Cause.** Either party may terminate this Agreement in accordance with the Dispute Resolution process set forth in Paragraph 4.6.
- 4.3 **Termination for Insufficient Funding.** MMCAP Infuse may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the Contracted Items covered here. Termination must be by written or electronic mail notice to the Vendor. MMCAP Infuse is not obligated to pay for any Contracted Items that are provided after notice and effective date of termination. However, the Vendor will be entitled to payment, determined on a pro rata basis, for Contracted Items satisfactorily performed to the extent that funds are available. Minnesota will not be assessed any costs, fees, or other charges if the Agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. MMCAP Infuse must provide the Vendor notice of the lack of funding within a reasonable time of MMCAP Infuse receiving that notice.
- A. For orders made by a Participating Member, Vendor agrees to the applicable statutory terms of the applicable Participating Member if the Participating Member fails to receive funding, or appropriations, limitations or other expenditure authority at levels enough to pay for the Contracted Items.
- 4.4 **Force Majeure.** Parties will not be considered in default in the performance of its obligations in the Agreement to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot or other catastrophes beyond the reasonable control of the party. Force majeure will not apply to the extent that the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party claiming excuse of performance under this provision must provide the other party prompt written notice of the failure to perform, take commercially reasonable efforts to mitigate the damages caused to all parties, and take all necessary steps to bring about performance as soon as practicable.
- 4.5 **Breach.** In the event of a breach of this Agreement, each party reserves the right to pursue any other remedy available by law. Vendors may be removed from the Vendors list; suspended; or debarred from receiving a contract for failure to comply with terms and conditions of the Agreement.
- 4.6 **Dispute Resolution.** Vendor and MMCAP Infuse will handle dispute resolution for unresolved issues using the following procedure.
- A. Notification. Parties shall promptly notify each other of any known dispute and work in good faith to resolve such dispute within thirty (30) days.
- B. Escalation. If parties are unable to resolve the issue in a timely manner, as specified above, either MMCAP Infuse or Vendor may escalate the resolution of the issue to a higher level of management. When escalated a teleconference will be scheduled between MMCAP Infuse and the Vendor to review the dispute and develop a proposed resolution and plan of action. The Vendor will have thirty (30) calendar days to cure the issue.
- C. Performance while Dispute is Pending. Notwithstanding the existence of a dispute, the Vendor must continue without delay to carry out all of their responsibilities under the Agreement that are not affected by the dispute. If the Vendor fails to continue without delay to perform its responsibilities under the Agreement, in the accomplishment of all undisputed work, any additional costs incurred by MMCAP Infuse and/or Members as a result of such failure to proceed shall be borne by the Vendor.
- D. Termination. In the event a party cannot resolve a dispute with the other party under this Dispute Resolution process, the party may terminate this Agreement with cause upon sixty (60) days' written notice to the other party.
- E. No Waiver. This clause shall in no way limit or waive either party's right to seek available legal or equitable remedies.

**ARTICLE V****MEMBERSHIP**

- 5.1 **Onboard, Transition, and Implementation.** If the Vendor requires additional paperwork for Members to acquire the Contracted Items, Vendor will work with MMCAP Infuse and Members to determine the appropriate steps and schedule for an onboard and transition. Vendor's documents and/or procedure for implementing and transitioning Members to this Agreement is set forth on **Attachment C-1** and **C-2**. Vendor is responsible for making Authorized Wholesalers aware that the paperwork on **Attachment C** must be collected from Member prior to contract pricing being attached. Vendor will communicate back to MMCAP Infuse any inability or failure to agree on such a process with the Authorized Wholesaler.
- 5.2 **Letter of Participation Modification.** The Letters of Participation (**Attachments C-1** and **C-2**) may be modified by Vendor with a written amendment hereto. Participating Members which previously signed an LOP will not be

required to sign such new document. Vendor reserves the right to review and approve Members' class of trade and access to Contract Pricing under this Agreement, such approval will not be unreasonably withheld.

- 5.3 **Membership Listing.** MMCAP Infuse will provide Vendor a complete listing of the Membership. MMCAP Infuse reserves the right to add and remove Members during the Agreement Term.
- New Members. The Vendor will allow Members to access the Agreement by the Onboarding Date. As new Members are added, MMCAP Infuse will provide Vendor with monthly e-mail notices announcing a new Membership list has been posted.
  - Removing Members. Vendor must provide MMCAP Infuse written notification at least thirty (30) days prior to removing any Member found by Vendor not to be in compliance with the terms of this Agreement. If MMCAP Infuse does not receive notification that a Member has been removed from Contract Pricing, Vendor will honor Contract Pricing for the Member for thirty (30) days after MMCAP Infuse receives the written notice.
  - Upon request from MMCAP Infuse, Vendor will provide a list of Participating Members to [MMCAP\\_Infuse.Contracts@state.mn.us](mailto:MMCAP_Infuse.Contracts@state.mn.us).
- 5.4 **Member Attachment:** Vendor will ensure Members are attached to the Agreement for all Contracted Item purchases made by Member subject to the onboarding requirements set forth in Article 5. Upon request of MMCAP Infuse, Vendor must verify only Participating Members have access to the Contract Pricing and Contracted Items. Failure to do may result in immediate termination.
- 5.5 **Direct Contracts with Members.** Upon notification to MMCAP Infuse, Vendor may, at its discretion, offer reduced pricing to a specific Participating Member without obligation to offer such reduced pricing to any other Participating Member and without requirement of a written amendment hereto. If agreed upon by Vendor, MMCAP Infuse, and Participating Member, the reduced pricing may be offered under the terms and conditions of this Agreement, including payment of Administrative Fees based on the reduced pricing. Any direct contract between Vendor and a Participating Member may not refer to the pricing as "MMCAP Infuse Pricing."
- 5.6 **DEA License/HIN.** Unless the Member purchases a controlled substance, the Vendor may not require that a Member have a Drug Enforcement Administration number assigned to it in order to be eligible for Contract Pricing. The Vendor may require a Health Industry Number from Member.
- 5.7 **Product Use.** All items acquired by Members under this Agreement are purchased for consumption in traditional governmental functions and not for the purpose of competing against private enterprise.
- 5.8 **MPA.** In order to use this Agreement, some Members require jurisdiction-specific paperwork or contract language. Vendor may be required to review an MMCAP Infuse MPA, as an addendum to this Agreement to provide for laws specific to a state or local jurisdiction. If these circumstances exist, the Vendor will work with MMCAP Infuse and Member to prepare an MPA to set forth the additional or altered terms and conditions. An MPA must clearly apply only to the requesting location and will not affect the rights of the other Membership, nor will it modify, derogate, or otherwise diminish the rights and obligations set forth herein, except in regard to the applicable named Member. When the specific terms are agreeable to the Vendor and the Member, the MPA will be presented by MMCAP Infuse to each party for execution. No other mechanism of modifying or "attaching to" the Agreement is authorized. Vendor is not required to agree to any additional terms; however, by not agreeing to the MPA, Vendor may be precluded from doing business with that Member. No verbal or written instructions from Members, or any of their staff or officials, to change any provision of this Agreement will be accepted by Vendor without the prior written approval of MMCAP Infuse.

## **ARTICLE VI AGREEMENT MANAGEMENT**

- 6.1 **Primary Account Representative.** Vendor will assign a primary account representative to MMCAP Infuse for this Agreement and must provide a minimum of seventy-two (72) hours advanced notice to MMCAP Infuse if that person is reassigned. In the event that the primary account representative is unresponsive or does not meet MMCAP Infuse's needs, the Vendor will assign another primary account representative upon MMCAP Infuse's request. The primary account representative will be responsible for:
- Proper maintenance and management of the Agreement, including timely execution of all amendments.
  - Timely response to all MMCAP Infuse inquiries
  - Performance of the business review as described in Paragraph 6.2.
  - Personnel Changes. Vendor will provide MMCAP Infuse with written advance notice of changes to the Primary Account Representative. In the event that an employee is removed pursuant to a written request from MMCAP Infuse, the Vendor will have ten (10) business days in which to fill the role with an acceptable employee.
- 6.2 **Business Reviews.** Vendor will perform at least one business review with MMCAP Infuse annually. The review will be at a time and location that is mutually agreeable to Vendor and MMCAP Infuse and at a minimum address: a review of sales to members, pricing and contract terms, administrative fees and reporting, supply issues, customer issues, and any other necessary information.

**ARTICLE VII****WARRANTS, COVENANTS, AND DUTIES**

- 7.1 **Covenant of Laws.** Vendor shall comply with all applicable state and federal laws in the performance of this Agreement.
- 7.2 **Required Licenses, Permits, and Registration.** Vendor shall have in place prior to the start of the Agreement, and must maintain for the life of the Agreement, all current licenses, permits and registrations required by state and federal agencies in performance of this Agreement. Vendor must make such documentation available upon request by MMCAP Infuse.
- 7.3 **GPO Representation.** MMCAP Infuse represents the following with respect to its qualification as a GPO: (A) MMCAP Infuse may be defined and viewed as a GPO under the requirements of 42 C.F.R. Section 1001.952(j) and MMCAP Infuse's receipt of any Administrative Fees pursuant to this Agreement is in compliance with those requirements as applicable; (B) MMCAP Infuse has a written contract with each Participating Member that indicates the amount of the GPO Administrative Fee that MMCAP Infuse will receive and shall annually disclose to the Participating Member the amount of Administrative Fees received; (C) MMCAP Infuse is authorized to act as a purchasing agent for the Participating Members; and (D) MMCAP Infuse has put into place a mechanism by which to properly allocate, remit, and report discounts earned by each Participating Member (including any portion of the Administrative Fee that is passed through to Participating Members) and to notify each Participating Member of its obligation to report the same on its cost reports to federal and state agencies.
- 7.4 **FDA-Certified.** Vendor must comply with applicable FDA requirements for medical food Products, including the Current Good Manufacturing Practice regulations (21 CFR part 110), Registration of Food Facilities regulations (21 CFR part 1 subpart H) and, if applicable, regulations specific to the product formulation, processing and labeling.
- 7.5 **Debarment.** Vendor warrants and certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota, the United States federal government, or any Member; and has not been convicted of a criminal offense related to the subject of this Agreement. Vendor further warrants that it will provide prompt written notice to MMCAP Infuse if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.
- A. Certification regarding debarment, suspension, ineligibility, and voluntary exclusion: Federal money will be used or may potentially be used to pay for all or part of the work under the Agreement, therefore Vendor certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the solicitation document implementing Executive Order 12549.
- 7.6 **Indemnification.** The Minnesota Attorney General's office has determined that pursuant to the Minnesota Constitution Article XI Section 1, MMCAP Infuse cannot indemnify the Vendor. Vendor will defend and hold harmless MMCAP Infuse, including MMCAP Infuse's Participating Members', agents, directors, employees, attorneys, and other representatives during and after this Agreement from and against all actual third-party claims relating to loss, liability, damage, costs and expenses (including reasonable attorneys' fees and legal costs), causes of action, regulatory proceedings, suits, demands, or judgments, caused by Vendor's (a) intentional, willful, or negligent acts or omissions, (b) fraud and or deceit, (c) breach of this contract, (d) breach of warranties contained herein, (e) violations of federal, state, or local laws, and (f) employees or subcontractors' civil claims. Vendor shall have no obligations pursuant to this paragraph to the extent that the loss, liability, damage, cost and/or expense, cause(s) of action, regulatory proceeding(s), suit(s), demand(s), or judgment(s) was caused by the negligence, recklessness, willful misconduct, or breach of this contract by MMCAP Infuse or any of its Members. This clause will not be construed to bar any legal remedies the Vendor may have for MMCAP Infuse's failure to fulfill its obligations under this Agreement.
- 7.7 **Antitrust.** The Vendor hereby assigns to the State of Minnesota any and all claims for overcharges as to services provided in connection with this Agreement resulting from antitrust violations that arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota.
- 7.8 **Product Warranty.** Vendor warrants that Products delivered to carrier for shipment to Participating Members, at the time of delivery to carrier, or in the case of direct shipment to Participating Members, at the time of delivery to Participating Members, shall: (A) conform to Vendor's standard Product specifications in effect at such time, (B) not be adulterated or misbranded within the meaning of the U.S. Food, Drug and Cosmetic Act in effect at such time, and (C) be of good quality and free from defects in materials and workmanship. The only other warranties made by Vendor with respect to Products shall be those specifically and expressly stated as warranties in Product inserts and Product manuals or as expressly provided within this Agreement. **VENDOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO WARRANTIES AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER MATTER.** Notwithstanding the foregoing, any warranties provided by Vendor shall not apply in the event that any Product delivered pursuant



to this Agreement is misused, altered, damaged or used other than in accordance with Product inserts or other instructions provided by Vendor.

- 7.9 **Limitation of Liability.** IN NO EVENT SHALL VENDOR BE LIABLE WHETHER IN CONTRACT OR TORT OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OR LOSSES OF ANY NATURE OR FOR LOST REVENUE, LOST PROFITS OR LOST BUSINESS ARISING OUT OF THIS AGREEMENT OR THE USE OF PRODUCTS OR VENDOR'S FAILURE TO DELIVER PRODUCTS HEREUNDER.

## **ARTICLE VIII**

### **ADMINISTRATIVE FEE AND REPORTING**

- 8.1 **Administrative Fee.** In consideration for the administrative support and other services provided by MMCAP Infuse in connection to this Agreement, the Vendor agrees to pay an Administrative Fee on all Net Purchases of Products made by Participating Members directly from Vendor or indirectly through an Authorized Wholesaler or another distributor as set forth in Article 2.1 at the Contract Pricing set forth in this Agreement. For purposes of this Agreement, "Net Purchases" shall mean in the case of direct purchases, the amount of purchases reflected in Vendor's invoices, less credits. In the case of indirect purchases, indirect case purchases as captured by Participating Member's Authorized Wholesalers' chargeback claims at the pricing under this Agreement. Net Purchases shall be determined on the basis of Vendor's records.

- A. The Administrative Fee must be paid as soon as is reasonable after the end of each calendar quarter, but no later than forty five (45) calendar days after the end of the calendar quarter. The Vendor will submit a check payable to:

Financial Management & Reporting – MMCAP Infuse  
50 Sherburne Avenue, Suite 309  
St. Paul, MN 55155

- B. Vendor shall not be required to pay the Administrative Fees on tax amounts, returns, or other shipments for which Vendor did not collect payment.

- 8.2 **Reporting.** Vendor must provide Administrative Fee data to MMCAP Infuse within forty-five (45) days after the end of each calendar quarter. The Vendor must submit a quarterly (A) Administrative Fee Data Report that includes both direct (sales made direct from Vendor to Participating Member) and indirect purchases (sales made through an Authorized Wholesaler).

The monthly administrative fee data report must contain the fields detailed below Vendor agrees that for indirect sales or chargeback data received from Authorized Wholesalers will be utilized to create the Administration Fee Data Report and if additional reports are needed to support the creation of the Administration Fee Data Report, Vendor agrees to bear the cost of any special reporting that may be required by the Vendor in its relationship with the Authorized Wholesalers. All administrative fee data reports must be sent to: [mmcap.infuse@state.mn.us](mailto:mmcap.infuse@state.mn.us) at the end of each month, but no later than thirty (30) days after the end of the month.

- A. Administrative Fee Data Report fields:

- i. MMCAP Infuse Assigned Authorized Wholesaler Number (Cardinal Health=0301, AmerisourceBergen=0401, Morris & Dickson=0701, Vendor Authorized Wholesaler = use name)
- ii. MMCAP Infuse Assigned Manufacturer Number (Abbott Nutrition = 3755)
- iii. Direct or Indirect Purchase Indicator (I=Indirect and Vendor Authorized Wholesalers, D=Direct)
- iv. Invoice Date (Point of Sale Date)
- v. Invoice Number
- vi. MMCAP Infuse Participating Member Name
- vii. Vendor's Account Number for the MMCAP Infuse Participating Member
- viii. MMCAP Infuse Member DEA Number, if applicable
- ix. MMCAP Infuse Member HIN Number, if applicable
- x. MMCAP Infuse Member Address
- xi. MMCAP Infuse Member City
- xii. MMCAP Infuse Member State
- xiii. Product's NDC (Use all 11 digits (00076888888)) or NDC-like substitute, per Paragraph 2.2.
- xiv. Product Name (e.g. Acetaminophen with Codeine, Acticin Cream 5%)
- xv. Credit Indicator (C = credit)
- xvi. Contracted Units (The number of units purchased on contract.)
- xvii. MMCAP Infuse Contracted Unit Price
- xviii. Administrative Fee Decimal Percentage (The contracted administrative fee percentage for the NDC number. Report as a decimal (e.g. 0.030))
- xix. Vendor Contracted Net Purchases
- xx. Administrative Fee Payment Amount (Administrative Fee Decimal Percentage \* Vendor Net Purchases amount. Report in dollars)

The most current version

B. Sales Data Usage Reports:

Vendor will provide one report, in duplicate, to incorporate both the Administrative Fee Data Report fields listed in Paragraph 8.2(A), as well as the Sales Data Usage Report fields listed on **Attachment D**.

- 8.3 **Discount Disclosure.** Any discounts, rebates or other price reductions (collectively referred to herein this Paragraph as "discounts") issued by Vendor to MMCAP Infuse or Participating 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). MMCAP Infuse or Participating Member may have an obligation to report such discounts to any State or Federal program that provides reimbursement to MMCAP Infuse or Participating Member for the items to which the discount applies, and, if so, MMCAP Infuse or Participating Member must fully and accurately report such discounts. Further, MMCAP Infuse or Participating Member should retain invoices and other price documentation and make them available to Federal or State officials upon request.

## **ARTICLE IX**

### **INTELLECTUAL PROPERTY**

- 9.1 **MMCAP Infuse Ownership** MMCAP owns all rights, title, and interest in MMCAP Member data, DEA/HIN information (subject to third-party rights), EDI transaction data, and reverse distribution data ("MMCAP Data"). MMCAP grants to Vendor an unlimited, non-revocable, nontransferable, fully paid license, for the term of this Agreement, to: (A) release state specific MMCAP Data to a Member's state primary contact; (B) release any MMCAP Data to product manufacturers, when necessary for the performance of this Agreement or as required by Vendor's agreements with such product manufacturers; (C) release any MMCAP Data to other MMCAP-approved third parties, when necessary for the performance of this Agreement; (D) provide MMCAP Data to aggregators, including IMS Health and NDC Health, subject to Vendor's reasonable efforts to require such data aggregators to protect any identifiable data from discovery by another third party; and (E) provide MMCAP Data to other group purchasing organizations of which the Member is also a member, provided such data will not include MMCAP-identifiable data. Any identifiable MMCAP Data provided hereunder to a third party must identify the data as MMCAP Data and subject to Minnesota Statutes, Chapter 13. To the extent permitted by law, Vendor hereby agrees that in the event that MMCAP or a Member requests in writing that its purchase data be kept confidential, such data will not be provided to third party aggregators.
- 9.2 **Intellectual Property Warranty and Indemnification.** Except as otherwise set forth below, Vendor warrants that any materials, software, or products produced by Vendor will not infringe upon or violate any patent, copyright, trade secret, or any other proprietary right of any third party. In the event of any such claim by any third party against MMCAP, MMCAP will promptly notify Vendor. Vendor, at its own expense, will indemnify; defend to the extent permitted by the Minnesota Attorney General's Office, and hold harmless MMCAP against any loss, cost, expense, or liability (including reasonable legal fees) arising out of such a claim, whether or not such claim is successful against MMCAP to the extent the claim is proximately caused by actual or alleged infringement of any valid patent, copyright, trademark, or other intellectual property right of a third party resulting from MMCAP's use of the Contracted Items in accordance with the procedures, instructions, and uses provided by Vendor with such Contracted Item, including, without limitation, in any labeling, manual, or package insert.
- A. If such a claim has occurred, or in the Vendor's opinion is likely to occur, the Vendor will either procure for MMCAP the right to continue using the materials or products or replacement or modified materials or products. If an option satisfactory to MMCAP is not reasonably available, MMCAP will return the materials or products to the Vendor, upon written request of the Vendor and at the Vendor's expense.
  - B. In the event of a third party claim of infringement by any material, software or product provided by Vendor or utilized by Vendor in the performance of this Agreement, but produced by a third party, Vendor's indemnification obligations set forth in this Article shall apply to the extent that the third party's indemnification obligation to the Vendor is available to MMCAP or Vendor will assist MMCAP in tender of such claim directly to the manufacturer of such material, software or product.
- 9.3 **Publicity and Endorsement.** Any publicity regarding the subject matter of this Agreement must not be released without prior written approval from the authorized representatives of each party. MMCAP Infuse may release notices to its Members regarding the Agreement necessary or appropriate for the internal operations of MMCAP Infuse and its Members. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Vendor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Agreement.
- A. Marketing. Any direct advertising, marketing, or direct offers with Members must be approved by MMCAP Infuse. Violation of this may be cause for immediate cancellation of this Agreement and/or MMCAP Infuse may reject any proposal submitted by the Vendor in any subsequent solicitations for awards.
  - B. Endorsement. The Vendor must not claim that MMCAP Infuse, the State of Minnesota, or any Member State endorses its products or services.

**ARTICLE X  
INSURANCE**

- 10.1 **Notice.** The Vendor is required to submit Certificates of Insurance acceptable to MMCAP Infuse as evidence of insurance coverage requirements prior to commencing work under the Agreement. Vendor will not commence work under the Agreement until they have obtained all the insurance described below and the evidenced insurance meets the requirements herein. Vendor shall maintain such insurance in force and effect throughout the term of the Agreement. The failure of MMCAP Infuse to obtain a Certificate of Insurance, for the policies required under this Agreement or renewals thereof, or failure of the insurance company to notify MMCAP Infuse of the cancellation of policies required under this Agreement shall not constitute a waiver by MMCAP Infuse to the Vendor to provide such insurance. MMCAP Infuse reserves the right to terminate the Agreement, after providing ten (10) business days advance written notice if the Vendor is not in compliance with the insurance requirements and compliance is not met within the notice period. MMCAP Infuse retains all rights to pursue any legal remedies against the Vendor. In the event that a court of competent jurisdiction orders Vendor to disclose its insurance policy(ies) in connection with discovery during litigation brought as a result of a dispute between the parties, Vendor agrees to adhere to such court's order with respect to disclosure of such policy(ies). The Vendor's insurance company(ies) waives its right to assert the immunity of the State as a defense to any claims made under said insurance.
- 10.2 **Additional Insurance Conditions.**
- A. Vendor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to MMCAP Infuse as an additional insured with respect to any claim arising out of Vendor's performance under this Agreement;
  - B. If Vendor receives a cancellation notice from an insurance carrier affording coverage herein, Vendor agrees to notify MMCAP Infuse within five (5) business days with a copy of the cancellation notice, unless Vendor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to MMCAP Infuse;
  - C. Vendor is responsible for payment of Agreement related insurance premiums and deductibles;
  - D. If Vendor is self-insured, a Certificate of Self-Insurance must be attached;
  - E. Vendor's policy(ies) shall include legal defense fees in addition to its liability policy limits;
  - F. Vendor's insurance companies must either (1) have an AM Best rating of A- (minus) and a Financial Size Category of VII or better, and be authorized to do business in the State of Minnesota or (2) be domiciled in the State of Minnesota and have a Certificate of Authority/Compliance from the Minnesota Department of Commerce if they are not rated by AM Best; and
  - G. An Umbrella or Excess Liability insurance policy may be used to supplement the Vendor's policy limits to satisfy the full policy limits required by the Agreement.
- 10.3 **Coverage.** Vendor is required to maintain and furnish satisfactory evidence of the following insurance policies:
- A. Workers' Compensation Insurance: Except as provided below, Vendor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Vendor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Insurance minimum limits are as follows:
    - i. \$100,000 – Bodily Injury by Disease per employee
    - ii. \$500,000 – Bodily Injury by Disease aggregate
    - iii. \$100,000 – Bodily Injury by Accident

If Minnesota Statute 176.041 exempts Vendor from Workers' Compensation insurance or if the Vendor has no employees in the State of Minnesota, Vendor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes Vendor from the Minnesota Workers' Compensation requirements. If during the course of the Agreement the Vendor becomes eligible for Workers' Compensation, the Vendor must comply with the Workers' Compensation Insurance requirements herein and provide MMCAP Infuse with a certificate of insurance.
  - B. Commercial General Liability Insurance: Vendor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Agreement whether the operations are by the Vendor or by a subcontractor or by anyone directly or indirectly employed by the Vendor under the Agreement. Insurance minimum limits are as follows:
    - i. \$5,000,000 – per occurrence
    - ii. \$5,000,000 – annual aggregate
    - iii. \$5,000,000 – annual aggregate – Products/Completed Operations
    - iv. The following coverages shall be included:
      - a. Premises and Operations Bodily Injury and Property Damage
      - b. Personal and Advertising Injury
      - c. Blanket Contractual Liability
      - d. Products and Completed Operations Liability
      - e. MMCAP Infuse included as an Additional Insured, to the extent permitted by law

- C. Network Security and Privacy Liability Insurance, including Ransomware (or equivalent): Vendor will maintain insurance to cover claims which may arise from failure of Vendor's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of not public data including but not limited to confidential or private information, transmission of a computer virus or denial of service. Insurance minimum limits are as follows:
- i. \$2,000,000 – per occurrence or claim
  - ii. \$2,000,000 – annual aggregate

## **ARTICLE XI GENERAL TERMS**

- 11.1 **Notices.** If one party is required to provide legal notice or notice under the terms of the Agreement to the other, such notice will be in writing and will be effective upon dispatch. Delivery shall be by both (A) certified United States mail and (B) by email with a follow-up notice by certified United States mail. Either party must notify the other of a change in address for notification purposes.
- 11.2 **State Audits.** Under Minn. Stat. § 16C.05, subd. 5, the Vendor's books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by the Minnesota, MMCAP Infuse, and/or the Minnesota Auditor or Legislative Auditor, as appropriate, for a minimum of six (6) years from the end of this Agreement. This clause extends to the Membership as it relates to business conducted with and sales a Member.
- A. Invoice and Pricing Audit. MMCAP Infuse and Members served by this Agreement may periodically audit validity of invoice pricing. Such audits may be conducted only during ordinary business hours and upon reasonable notice.
  - B. Costs. Vendor, MMCAP Infuse, and Members shall each be responsible for its own costs associated with any audit, including costs related to the production of records and/or other documents requested by the other party.
- 11.3 **Vendor "Own Use" Audits.** Upon Vendor's request and its own expense, MMCAP Infuse or any Participating Member shall certify that it is in compliance with the Own Use provisions set for in this Agreement and/or permit Vendor or a third party designated by Vendor to audit Participating Member records to verify compliance to the Own Use provisions in this Agreement. Participating Member shall, in a timely manner, provide Vendor 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 Vendor in compliance with all applicable federal and state laws, including but not limited to, the HIPAA Privacy and Security Standards. Vendor will follow any applicable laws of MMCAP Infuse or the Participating Member's pertaining to data practices laws and/or the Freedom of Information Act (**FOIA**), in addition to the Vendor taking all reasonable steps to maintain the confidentiality of the information provided. If MMCAP Infuse refuses to provide such information in a timely manner to enable Vendor or its third party designee to conduct such audits, then Vendor may immediately terminate this Agreement. If any Participating Member refuses to provide such information in a timely manner to enable Vendor or its third party designee to conduct such audits, then Vendor may immediately: (A) terminate the Participating Member LOP and Participating Member's access to pricing under this Agreement; (B) withhold shipments of Product to the Participating Member; and (C) seek reimbursement from the Participating Member for the difference between the pricing under this Agreement and Vendor's trade price in effect at the time of purchase for the period in which Vendor believes Participating Member was in violation of the Own Use provisions..
- 11.4 **Assignment.** Except to an affiliate, the Vendor or MMCAP Infuse may neither assign nor transfer any rights or obligations under this Agreement without the prior consent of the other party and a fully executed assignment agreement.
- 11.5 **Amendments.** Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved this Agreement, or their successors in office.
- 11.6 **Order of Precedence.** Vendor agrees that applicable federal and state law will supersede this Agreement, however this Agreement, including the additional documents referenced specifically herein, including, without limitation, Vendor's return policy, will take precedence over all other the terms, covenants, conditions, commitments, stipulations, Order Forms, website use of terms, Offer Letters, and other legal documents MMCAP Infuse, Vendor, and/or Participating Member may use in the performance of this Agreement. For clarity, in a conflict, the Articles of this Agreement will supersede any Attachments within this Agreement. If the provisions of this Agreement are inconsistent, or are modified, diminished, or derogated with any of the terms and provisions of the aforementioned legal documents in this section, this Agreement will supersede and govern. MMCAP Infuse does not agree to or bound by any additional terms and conditions between the Vendor and Participating Member.
- 11.7 **Counterparts and Electronic Signature.** The Agreement cannot be executed in counterparts and will not be enforceable until MMCAP Infuse has obtained all required signatures. If requested by MMCAP Infuse and Vendor expressly agree to conduct transactions under the Agreement by electronic means (including, without limitation, with respect to execution, delivery, storage, and transfer of this Agreement by electronic means and to the enforceability of this electronic agreement). MMCAP Infuse will be deemed to have control of the authoritative copy



for the electronic transferable record, in each case regardless of whether applicable law recognizes electronic transferable records or control of electronic transferable records and regardless of whether this Agreement is an electronic record or transferable record.

- 11.8 **Severability.** If any provision of the Agreement, including items incorporated by reference, is found to be illegal, unenforceable, or void, then both MMCAP Infuse and the Vendor will be relieved of all obligations arising under such provisions. If the remainder of the Agreement is capable of performance, it will not be affected by such declaration or finding and will be fully performed.
- 11.9 **Waiver.** If either party fails to enforce any provision of this Agreement, that failure does not waive the provision or its right to enforce it.
- 11.10 **Governing Law, Jurisdiction, and Venue.** Minnesota law, without regard to its choice-of-law provisions, governs this Agreement. Venue for all legal proceedings out of this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

**VENDOR: Abbott Laboratories Inc., on behalf of its Nutrition division, Abbott Nutrition**

The Vendor certified that the appropriate person(s) have executed this Agreement on behalf of the Vendor as required and by applicable articles, bylaws, resolutions, or ordinances.

Name: Brent Ames  
Signature: B.A.C.  
Title: Senior Manager  
Date: 6/14/21

**STATE OF MINNESOTA FOR MMCAP INFUSE**

In accordance with Minn. Stat. § 16C.03, subd. 3

Name: DocuSigned by: Michelle Korpela  
Signature: Michelle Korpela  
450F263EFE4D41F...  
Date: 6/14/2021

**COMMISSIONER OF ADMINISTRATION**

In accordance with Minn. Stat. § 16C.05, subd. 2

Name: DocuSigned by: Jennifer vanderplaats  
Signature: Jennifer VanderPlaats  
CD83E8166C064DT...  
Date: 6/14/2021

Attachment C-1: Non-WIC Letter of Participation (Non-WIC LOP)



**MMCAP INFUSE LETTER OF PARTICIPATION – NON-WIC MEMBERS**

Letter of Participation ("Letter of Participation") is entered into between the undersigned facility ("Member") 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 under the agreement between the GPO and Abbott Nutrition ("GPO Agreement") as 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 Letter of Participation. If Member is executing this Letter of Participation on behalf of more than one Member, executing Member must a.) have the authority to execute this Letter of Participation on behalf of such Members; b.) be able to enforce compliance to the requirements of this 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 Letter of Participation. Only Members listed in this 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.

- 1) **Purchase Commitment.** Abbott Nutrition agrees to sell to Member the products available from Abbott Nutrition ("Products") in the following Product Categories (defined hereafter) at the prices set forth in the GPO Agreement. Product Categories shall include Oral-Fed Nutrition, Specialty Nutrition, Critical Care Nutrition, Tube-Fed Nutrition, Pediatric Nutrition, and Tolerance Nutrition ("Product Categories").

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

☐

**Non-Committed Pricing**

☐

**Committed Pricing**

Member agrees to purchase Products from the medical nutritional categories set forth herein ("Nutrition Product Categories"), and to purchase at least **eighty percent (80%)** of its Product needs in each Nutrition Product Category measured on the facility total dollar purchases in such Nutrition Product Categories: a.) Oral-Fed Nutrition; b.) Specialty Nutrition; c.) Critical Care Nutrition; d.) Tube Fed Nutrition; e.) Pediatric Nutrition; f.) Tolerance Nutrition

If Member does not comply with each of these commitments, then Abbott Nutrition shall notify GPO and Member in writing, and within 30 days of the notice, Member will 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 Letter of Participation electing the Committed Pricing. This Letter of Participation does not cover other Abbott Nutrition products, such as pediatric infant formulas and related non-formula items, including Pedialyte; and retail/consumer products.

- 2) **Term and Termination.** This 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 Letter of Participation upon sixty (60) days prior written notice to the other party.
- 3) **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.
- 4) **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 skilled care to its patients in its facility or a home health care setting as an Authorized Health Care Provider (as hereinafter defined). For purposes of this section, "Own Use" shall mean those uses that are part of providing health care services and products directly to patients who are in an institutional or home health care setting within the fifty (50) United States. "Authorized Health Care Provider" shall mean a person or entity that: (a) is licensed to provide health care services directly to its patients in an institutional setting, or (b) provides skilled home health care services and products directly to its patients in a home health care setting and Member must be a licensed health care provider that provides nursing and/or dietician services to its patients, and the patients must be under the care of Member and have a written order for use of products under a plan of care. Examples of Authorized Health Care Providers may include: hospitals and hospital in-patient clinics, skilled nursing facilities, nursing homes, in-patient rehabilitation facilities, prisons and home care agencies. Authorized Health Care Provider shall not include a person or entity that provides services in the following settings: WIC agencies, 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, and other similar entities. Further, Authorized Health care Provider shall not include companies that provide home delivery services, Internet ordering and delivery services, or similar services, unless such services are provided as a part of an Authorized Health Care Provider'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 Agreement shall not be resold, provided to patients at time of discharge, or provided to any employee of Member or any other entity or person outside of the Own Use requirements defined herein.

- 5) **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 Letter of Participation and the GPO Agreement. The mechanism for reimbursement shall be consistent with the manner in which the Product was purchased.
- 6) **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 MMCAIP 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 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.
- 7) **Assignment.** This Letter of Participation shall not be assigned by Member without the prior written consent of Abbott Nutrition.
- 8) **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 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.
- 9) **Miscellaneous.** Noncompliance with the obligations hereunder, except for payments to Abbott Nutrition, for reasons of force majeure shall not constitute a breach of this Letter of Participation. No waiver of any right or remedy by Abbott Nutrition shall constitute a subsequent waiver of the same right or remedy.
- 10) **Acknowledgement.** By execution hereof, Member acknowledges and agrees to be bound by all of the terms and conditions of the GPO Agreement and this Letter of Participation.

**PRINT OR TYPE:      GPO NAME:                      MMCAIP 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 Letter of Participation by Member shall be binding upon Abbott Nutrition. When signed, please email to Karen.Givens@abbott.com.

<http://www.mimd.admin.state.mn.us/MIMCAP/Contracts/Default.aspx>

<http://www.mimd.admin.state.mn.us/MIMCAP/Contracts/Default.aspx>

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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.

<http://www.mimd.admin.state.mn.us/MIMCAP/Contracts/Default.aspx>

<http://www.mimd.admin.state.mn.us/MIMCAP/Contracts/Default.aspx>

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**ATTACHMENT D****Reporting Requirements****Table 1: Required Data Field for Sales Data Report (Direct sales)**

Excel Column	Required Data Field Full Name for Sales Data Report
A	MMCAP Infuse-assigned Member ID
B	MMCAP Infuse Member Name
C	Vendor Distribution Center Code or may be left blank
D	Vendor-assigned Account number for MMCAP Infuse Member (this should be the ship-to account number)
E	Invoice Number
F	Invoice Line Number or may be left blank
G	Purchase Order Number
H	Invoice date (MMDDYYYY)
I	Buyer name or equivalent of buyer ID for person submitting the invoices (if available) or may be left blank
J	Vendor's SKU item number
K	NDC or NDC-like substitute of purchased Product as may be stored in First DataBank, Inc.
L	Label Name/Product Description
M	Unit Dose (Required for pharmaceutical Products)
N	Pack Size
O	Unit
P	Case Size
Q	Dose (Required for pharmaceutical Products).
R	Strength (Required for pharmaceutical Products).
S	Route (Required for pharmaceutical Products).
T	Unit Price (99999.9999)
U	Quantity Ordered (not Vendor repackaged or re-bundled quantity)(99999.9999) or may duplicate (V) Quantity Shipped
V	Quantity Shipped (not Vendor repackaged or re-bundled quantity)(99999.9999)
W	Extension (unit price multiplied by the quantity shipped) EXTENDED PRICE (99999.9999)
X	Type of transaction (MMCAP contract purchase, other contract purchase (340B, PHS), not on contract purchase) 1=contract item, 2=other contract, 3=not on contract
Y	Bill to Address 1



The most current version  
<http://www.mmd.admin.state.mn.us/MMCAP/Contracts/Default.aspx>

Z	Bill to City
AA	Bill to State (2 alpha postal code)
AB	Bill to Zip (standard 5-4 format, no dash necessary)
AC	Ship to Address 1
AD	Ship to City
AE	Ship to State (2 alpha postal code)
AF	Ship to Zip (standard 5-4 format, no dash necessary)
AG	
AH	MMCAP Infuse Contract Number (MMS2100547)
AI	Admin Fee
AJ	Credit Indicator (C for credit)
AK	MMCAP- Infuse Assigned Wholesaler Code (Cardinal Health=0301, AmerisourceBergen=0401, Morris & Dickson=0701, Vendor Authorized Wholesaler = use name)
AL	Manufacturer Name (MFG Name)
AM	Class of Trade or may be left blank
AN	340b Purchase or may be left blank
AO	Nutritionals or may be left blank
AP	Manufacturer Part Number/ SKU
AQ	List Price
AR	UNSPSC Code (XXXXXXXX) or may be left blank
AS	UNSPSC Description or may be left blank
AT	GLN or may be left blank
AU	GTIN or may be left blank

Given this a contract for goods, rather than services, Vendor does not believe this provision 5 applies, and it if determined that provision 5 does apply, Vendor's agreement with each subcontractor requires the subcontractor to comply with all laws which satisfies the State of Minnesota regarding compliance with this section.

1. **Government Data Practices.** The parties to this Agreement must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 (Data Practices Act), as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Vendor under this Agreement. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. Ch. 13, by either the Vendor or MMCAP Infuse.
  - A. Notification. If the Vendor receives a request to release the data referred to in statute, the Vendor must immediately notify and consult with MMCAP Infuse as to how the Vendor should respond to the request.
  - B. Indemnification. Vendor agrees to indemnify, save, and hold Minnesota, its agent and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Data Practices Act, including legal fees and disbursements paid or incurred to enforce this provision of the Agreement.
2. **Data Disclosure.** Under Minn. Stat. § 270C.65, subd. 3 and other applicable law, the Vendor consents to disclosure of its social security number, federal employer tax identification number, and Minnesota tax identification number, already provided to the MMCAP Infuse, to federal and state agencies, and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the Vendor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.
3. **Non-discrimination.** The Vendor will comply with the provisions of Minn. Stat. § 181.59.
4. **Affirmative Action Requirements.**
  - A. Covered contracts and vendors. If the Agreement exceeds \$100,000 and the Vendor employed more than forty (40) full-time employees on a single working day during the previous twelve (12) months in Minnesota or in the state where it has its principal place of business, then the Vendor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600. A contractor covered by Minn. Stat. § 363A.36 because it employed more than forty (40) full-time employees in another state and does not have a certificate of compliance, must certify that it is in compliance with federal affirmative action requirements.
  - B. Minn. Stat. § 363A.36. Minn. Stat. § 363A.36 requires the Vendor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights (**Commissioner**) as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.
  - C. Minn. R. 5000.3400-5000.3600.
    - i. General. Minn. R. 5000.3400-5000.3600 implements Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a Vendor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. 5000.3400-5000.3600 including, but not limited to, Minn. R. 5000.3420-5000.3500 and 5000.3552-5000.3559.
    - ii. Disabled Workers. The Vendor must comply with the following affirmative action requirements for disabled workers.
      - a. The Vendor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Vendor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
      - b. The Vendor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
      - c. In the event of the Vendor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

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- d. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Commissioner. Such notices must state the Vendor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
    - e. The Vendor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Vendor is bound by the terms of Minn. Stat. § 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.
  - iii. Consequences. The consequences for the Vendor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this Agreement by the Commissioner or Minnesota.
  - iv. Certification. The Vendor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance.
5. **E-Verify certification (In accordance with Minn. Stat. § 16C.075)**. For services valued in excess of \$50,000, Vendor certifies that as of the date of services performed on behalf of Minnesota, Vendor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify Program for all newly hired employees in the United States who will perform work on behalf of Minnesota. Vendor is responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at <http://www.mmd.admin.state.mn.us/doc/EveryifySubCertForm.doc>. All subcontractor certifications must be kept on file with Vendor and made available to Minnesota upon request.
6. **Certification of Nondiscrimination (In accordance with Minn. Stat. § 16C.053)**. The following term applies to any contract for which the value, including all extensions, is \$50,000 or more: Vendor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the Vendor's business. For purposes of this section, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.
7. **Contingency Fees Prohibited**. Pursuant to Minn. Statute § 10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.
8. **Diverse Spend Reporting**. If the total value of this Agreement may exceed \$500,000 in Minnesota, including all extension options, the Vendor must track and report, on a quarterly basis, the amount paid to diverse businesses both: (A) directly to subcontractors performing under the Agreement, and (B) indirectly to diverse businesses that provide supplies/services to your company (in proportion to the revenue from this Agreement compared to your company's overall revenue). When this applies, you will be set up in a free portal to help report the Tier 2 diverse spend, and the requirement continues as long as the Agreement is in effect.
9. **Retainage for Minnesota Government Units**. Under Minn. Stat. § 16C.08, subd. 2 (10), no more than ninety percent (90%) of the amount due under this Agreement may be paid until the final product of this Agreement has been reviewed by a Minnesota agency head. The balance due will be paid when the Minnesota agency head determines that the Vendor has satisfactorily fulfilled all the terms of this Agreement.
10. **Payment to Subcontractors**. To the extent applicable, pursuant to Minn. Stat. § 16A.1245, the Vendor must pay all subcontractors, less any retainage, within ten (10) calendar days of the Vendor's receipt of payment from a Member for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one-half percent (1.5%) per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).