

# **TERMS & CONDITIONS FOR THE ORGAIN® HEALTHCARE SAMPLE PROGRAM**

Orgain, LLC. has developed a program for credentialed healthcare professionals to receive select samples of our products, or to have select samples of our products mailed to patients in order to determine if the products can be well tolerated by their patients (the “Sample Program”). This program is offered on an “as available” basis, and Orgain, at its sole discretion, reserves the right to determine who may receive no-cost sample products. The following terms and conditions apply to the Sample Program. By participating in the program, you and your organization agree to be bound by all the following terms and conditions.

## **Qualified Participants**

- The Sample Program is not intended to serve the general population but is intended to allow medical doctors, registered dietitians, and other credentialed healthcare professionals who provide direct patient care to introduce Orgain products to patients who could benefit from the attributes of Orgain products.
- All requests for samples must be made by or approved by a credentialed healthcare professional who provides direct patient care.
- Orgain reserves the right to require written confirmation that its products were recommended by a credentialed healthcare professional.
- Orgain, at its sole discretion, reserves the right to include or exclude any individual, group, or organization in or from the Sample Program.
- Orgain, at its sole discretion, reserves the right to limit the amount of product and/or frequency of product shipments.

## **Sample Program Provisions**

- The Sample Program is intended only for introducing Orgain products to patients of credentialed healthcare providers and should not be used for any other purposes, including but not limited to, providing bulk quantities of samples and/or coupons to individuals or groups who are not likely to purchase the products at retail or on-line.
- Products provided on a sample basis under the Sample Program are intended only for patient use and may not be sold, transferred, or otherwise offered to third parties.
- Healthcare providers must use their medical judgment and experience to determine if Orgain product samples are clinically appropriate to be sampled and used by their patients.
- Orgain products provided via the Sample Program must never be submitted for reimbursement from private, government, or any other third-party insurance payors.

- If required to track items of value provided to patients or providers, it is the sole responsibility of the provider(s) or organization to do so according to the laws and their policies and procedures that govern these requirements.
- Any violation of these provisions, determined by and at the sole discretion of Orgain, may result in the healthcare professional or organization being excluded from the Sample Program.

## Product Shipment

- Orgain uses reasonable efforts to ship products under the Sample Program as requested and on a timely basis, but we cannot guarantee the availability of product, a specific timeline for delivery, or the condition in which the product will arrive under the Sample Program. Further, Orgain reserves the right to deny any request for product for any reason, or to make substitutes to product shipped, at our discretion.

## Limitation of Liability

By participating in the Sample Program, you agree to the following disclaimer of liability by Orgain, LLC.

PLEASE READ THIS SECTION CAREFULLY. IT LIMITS THE LIABILITY OF ORGAIN AND ITS AFFILIATES, RELATED COMPANIES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES, PARTNERS AND LICENSORS. NOTHING IN THIS SECTION IS INTENDED TO LIMIT ANY RIGHTS YOU MAY HAVE THAT MAY NOT BE LAWFULLY LIMITED.

- THE SAMPLE PROGRAM IS PROVIDED ON AN “AS IS”, “AS AVAILABLE” BASIS. WE EXPRESSLY DISCLAIM ALL WARRANTIES, SUCH AS IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, TO THE EXTENT PERMITTED BY APPLICABLE LAW.
- TO THE EXTENT PERMITTED BY APPLICABLE LAW, ORGAIN SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER (INCLUDING WITHOUT LIMITATION, ATTORNEYS’ FEES AND LOST PROFITS OR SAVINGS) IN ANY WAY DUE TO, RESULTING FROM, OR ARISING IN CONNECTION WITH ORGAIN PRODUCTS OR SERVICES, REGARDLESS OF OUR NEGLIGENCE.
- HEALTHCARE PROVIDERS PARTICIPATING IN THE SAMPLE PROGRAM BEAR ALL LIABILITY FOR DISPENSING ORGAIN PRODUCTS TO THEIR PATIENTS. IT’S THE SOLE RESPONSIBILITY OF THE CREDENTIALED HEALTHCARE PROFESSIONAL TO DETERMINE WHETHER OR NOT THE ORGAIN PRODUCTS WOULD BENEFIT THEIR PATIENTS. IF THE ORGAIN PRODUCTS ARE CONTRA-INDICATED FOR A PATIENT OR THEIR CONDITION, IT IS THE RESPONSIBILITY OF THE CREDENTIALED HEALTHCARE PROFESSIONAL TO UNDERSTAND THAT CONTRA-INDICATION AND NOT PROVIDE THE ORGAIN SAMPLES TO THAT PATIENT.
- HEALTHCARE PROVIDERS PARTICIPATING IN THE SAMPLE PROGRAM BEAR ALL LIABILITY FOR OBTAINING THE CONSENT OF THEIR PATIENTS TO PARTICIPATE IN THE SAMPLE PROGRAM. IT’S THE SOLE RESPONSIBILITY OF THE CREDENTIALED HEALTHCARE PROFESSIONAL TO DETERMINE WHETHER OR NOT THE PATIENT HAS CONSENTED TO PARTICIPATE IN THE PROGRAM, INCLUDING THE PATIENT’S CONSENT TO SHARE THE PATIENT’S PERSONAL INFORMATION WHEN APPLICABLE WITH ORGAIN, INCLUDING BUT NOT LIMITED TO THE PATIENT’S NAME, PHONE NUMBER, MAILING ADDRESS AND EMAIL ADDRESS.

- NO PATIENT INFORMATION PROHIBITED BY HIPAA LAWS AND REGULATIONS WILL BE REQUESTED NOR SHOULD BE FORWARDED TO ORGAIN BY ANY HEALTHCARE PROVIDER.
- ORGAIN'S LIABILITY FOR FRAUD, DEATH OR PERSONAL INJURY CAUSED BY OUR NEGLIGENCE OR ANY LIABILITY MAY NOT BE EXCLUDED OR LIMITED UNDER ANY APPLICABLE LAW.

## Applicable Law and Dispute Resolution

- These Terms & Conditions and the Sample Program shall be governed by and construed in accordance with the laws of the State of California.
- You hereby agree to submit to the jurisdiction of, and agree that venue is proper in, the courts in Orange County, California in any such legal action or proceeding.
- You agree that all disputes, actions, and claims relating to the Sample Program and all matters arising out of or related to these Terms and Conditions (except for legal action taken to seek an injunction or other equitable relief related to the site, services, or user generated content, or claims related to the validity or enforceability of your or our intellectual property rights) (collectively “Dispute”) will be governed by the Federal Arbitration Act (FAA), federal arbitration law, and laws of the State of California, without regard to choice of law principles.
- You agree that any dispute will be resolved by binding arbitration, rather than in court, except that you may assert claims in small claims court if your claims qualify, and you are giving up the right to litigate (or participate in as a party or class member) all disputes in court before a judge or jury.
- All disputes will be resolved before a neutral arbitrator, whose decision will be final except for a limited right of appeal under the FAA. Any court with jurisdiction over the parties may enforce the arbitrator’s award.
- In the event of a dispute, either you or Orgain must give the other a Notice of Dispute, which is a written statement that sets forth the name, address and contact information of the party giving it, the facts giving rise to the dispute, and the relief requested. You must send any Notice of Dispute by U.S. Mail to Orgain, Inc., Attention: General Counsel, 16631 Millikan Avenue, Irvine, CA 92606.
- The arbitration will be conducted by the Judicial Arbitration and Mediation Service (“JAMS”) under its rules. Payment of all filing, administration and arbitrator fees will be governed by JAMS’ rules. You agree to commence arbitration only in Irvine, CA.
- Neither party may seek attorneys’ fees or costs in arbitration unless the arbitrator determines the claims are frivolous.
- You may choose to have the arbitration conducted by telephone, based on written submission, or in person by following the JAMS rules.
- In a Dispute involving \$10,000 or less, any hearing will be telephonic unless the arbitrator finds good cause to hold an in-person hearing instead.
- The arbitrator may award the same damages to you individually as a court could.

- You agree that the making of claims or resolution of disputes pursuant to this agreement shall be in your individual capacity, and not as a plaintiff or class member in any purported class, consolidated, or representative proceeding.
- You agree that to the extent permitted by applicable law, that any and all Disputes will be resolved individually in the forum designated in this section, without resort to any form of class action.
- To the extent permitted by law, any Dispute to which this section applies must be filed within one year in small claims court or in arbitration with the JAMS. The one-year period begins when the claim or Notice of Dispute could first be filed. If such a Dispute isn't filed within one year, it's permanently barred.
- If for any reason a claim proceeds in court rather than in arbitration, we each waive any right to a jury trial.

## Acceptance of Terms

Individuals who and Organizations that accept no-cost Orgain sample products agree to the following:

- You agree to accept the terms of this agreement and to provide your email contact information to be included on a list used to disseminate information about Orgain products. Individuals/organizations may opt out of the mailings at any time. Their inclusion in the list could determine whether they are included in or excluded from the Sample Program. Emails sent about Orgain may include, but not be limited to: updates about suggested use of Orgain products, special offers, requests for feedback, information about Sample Program enhancements or changes, and product changes and updates.
- If you provide patient personal information to Orgain, you agree to first obtain your patient's consent for their personal information to be shared with Orgain, including but not limited to sharing the patient's email address to be included on a list used to disseminate information about Orgain products. (Patients can opt out of receiving communication from Orgain at any time.)
- If you provide patient personal information to Orgain, you agree not to provide any patient information prohibited by HIPAA laws and regulations. No patient information prohibited by HIPAA laws and regulations will be requested nor should be forwarded to Orgain by any healthcare provider.
- If you are accepting this agreement on behalf of a credentialed healthcare professional provider, you agree to inform each of the professionals receiving/dispensing Orgain samples as to the requirements and criteria of this program.
- If you agree to these terms on behalf of a group of credentialed healthcare professionals, they accept the same terms with the understanding that all who distribute products and materials provided in the Sample Program to individual patients are governed by this document and are not exempted from any of the requirements and criteria set forth.