



### Abbott's Provider and Reseller Certificate

This Provider and Reseller Certification (“**Certification**”) is made by the undersigned entity (“**Customer**”) to Abbott Laboratories Inc., on behalf of its Nutrition division, Abbott Nutrition (“**Abbott Nutrition**”) regarding Customer’s purchases of Abbott Nutrition products (“**Products**”), and shall apply to Customer’s purchases of Products, whether purchases are made directly from Abbott Nutrition, indirectly through an Abbott Nutrition authorized distributor or wholesaler, durable medical equipment dealer, or medical supply distributor.

1. **Own Use.** Customer represents, warrants and covenants that:
  - a. Products purchased hereunder are either: (i) for its Own Use (defined below) in providing home health care to its patients as an Authorized Health Care Provider (defined below); or (ii) for resale by Customer either directly to an Authorized Health Care Provider solely for such Authorized Health Care Provider’s Own Use, or for resale by Customer to a durable medical equipment dealer, home medical equipment dealer or medical supply distributor for their customer’s Own Use (“**Reseller**”). Resellers may only sell and distribute Products within the 50 United States and the District of Columbia and Resellers may not sell or distribute to a distributor or wholesaler authorized by Abbott Nutrition to submit Chargeback Claims.
  - b. “**Own Use**” shall mean the use of Products that are part of Customer’s provision of health care services and Products directly to admitted patients in an institution or in such patients’ homes within the 50 United States and the District of Columbia.
  - c. “**Authorized Health Care Provider**” shall mean an entity that: (a) is licensed to provide health care services and Products or any other products directly to its patients in an institutional setting; (b) provides Products or any other products to a patient beneficiary and bills under the entity’s own provider number to a third party payor; or (c) provides healthcare Products or any other products and services directly to its patients in the patients’ homes, where such patients are under the care of a licensed health care professional and have received a written order issued by the professional for use of Products or any other products under a plan of care, and the entity has been designated in writing as the authorized agent to supply Products or any other products pursuant to the plan of care. Authorized Health Care Provider does not mean a person or entity that provides services in the following settings: physicians or physician’s offices, senior independent living or retirement centers, assisted living residences without skilled care, food and drug wholesalers/retailers, distributors and other similar resellers, retail pharmacies, retail stores, and companies that provide home delivery services, e-commerce/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.
  - d. If Customer becomes aware or upon notice from Abbott Nutrition or Customer’s distributor: (i) that any Product it has purchased hereunder and resold to an Authorized Health Care Provider is not being used for such provider’s Own Use, or (ii) a Reseller that has purchased Product from Customer is reselling the Product to an Authorized Health Care Provider that is not using the Product for such provider’s Own Use, then Customer will immediately notify it’s distributor and Abbott Nutrition in writing, discontinue selling Product to the Authorized Health Care Provider or Reseller, and assist it’s distributor and/or Abbott Nutrition in recovering Product from the Authorized Health Care Provider or Reseller.
  - e. Products purchased under this Certification shall not be distributed in any manner that would compete with Abbott Nutrition’s products in the retail marketplace, including, but not limited to, insurer benefit programs such as over the counter (“**OTC**”) benefits or meal service programs. Products purchased under this Certification shall not be distributed or resold to WIC, WIC clinics or WIC participants. Products purchased under this Certification shall not be resold, provided to patients at time of discharge, or provided to any employee of Customer, or to any other entity or person, beyond the restrictions and permissions already specified in this Section.
2. **Sales Reports.**
  - a. Upon Abbott Nutrition’s request, Customer shall provide a report with regard to Products purchased that indicates: (a) the name, address and zip code of each purchaser, and (b) the date the Product shipped, invoice number, item number, item description, and quantities (including unit of measure) of Products purchased during each month by each purchaser from Customer.

- b. If the report includes purchases shipped directly to Customer's patients, then the sales information regarding such purchases shall include only: (a) the zip code of the point of delivery, and (b) the date the Product shipped, invoice number, item number, item description, and quantities (including unit of measure) of Products supplied to the point of delivery.
- c. If Customer fails to submit a report that evidences sales within Customer's permitted channel of trade, Customer shall reimburse Abbott Nutrition based on the Own Use Reimbursement provision as defined herein.

3. **Own Use Reimbursement.**

Customer must reimburse Abbott Nutrition an amount equal to the difference between the pricing under any applicable agreement between Abbott Nutrition and Customer ("**Agreement**") and Abbott Nutrition's trade list price plus a 15% administrative charge for each Product purchased in violation of the Own Use and Sales Reports provision of this Certification. For Resellers, specific Own Use violations shall include, but are not limited to, the following:

- a. Sales of Products to an individual or entity that is not an Authorized Health Care Provider or to a(n) Dealer/entity that does not resell Products to an Authorized Health Care Provider;
- b. Continuing to sell Products to an Authorized Health Care Provider or entity after notice from Abbott Nutrition that Reseller must stop shipments to the Authorized Health Care Provider or said Dealer/entity;
- c. Negligently reselling Products to an Authorized Health Care Provider that does not use the Product for its Own Use, or to a(n) Dealer/entity that resells the Products to an Authorized Health Care Provider that does not use the Product for such provider's Own Use; and/or
- d. Failing to obtain a Provider and Reseller Certificate from an Authorized Health Care Provider or other Dealer/entity prior to supplying Product to such Authorized Health Care Provider or said entity and provide such certificates to Abbott Nutrition upon request.

4. **Audit.**

Upon Abbott Nutrition's request, Customer shall, within thirty (30) days, provide Abbott Nutrition or its third-party designee, access to all records that are necessary to determine Customer's compliance with the terms and conditions of this Certification. Customer shall 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 take all reasonable steps to maintain the confidentiality of the information provided.

If Customer fails or refuses to provide such information within thirty (30) days to enable Abbott Nutrition or its third party designee to conduct such audit, then Abbott Nutrition may immediately: (a) terminate any Agreement with Customer; (b) notify Customer's distributor to terminate any agreement to supply Product to Customer; (c) withhold shipments of Product to Customer; and/or (d) seek such records from Customer's distributor(s) to verify compliance to the terms and conditions of this Certification

5. **Termination.**

This Certification may be immediately terminated by Abbott Nutrition, without cause, upon giving Customer written notice. Abbott shall also notify distributors that they are not authorized to sell Abbott products to Customer.

6. **e-Abbott.**

The terms and conditions published on e-Abbott, including, but not limited to, Abbott Nutrition's Return of Goods and Claims Policy, applicable to Products are hereby incorporated into this Certification as if fully written herein. Abbott Nutrition may change the e-Abbott terms and conditions without notification or written amendment to this

Certification. For the most recent published terms and conditions Customer must access <http://www.e-abbott.com>. In the event of a conflict between the terms and conditions on e-Abbott and this Certification, this Certification will control. In no event will the terms or conditions of any purchase order or other document submitted by Customer be effective or supersede this Certification or the e-Abbott terms and conditions.

7. **Dispute Resolution.**

Any dispute or claim arising out of or in connection with this Certification initiated by either party shall be exclusively resolved by binding Alternative Dispute Resolution in accordance with the provisions set forth below:

If a dispute arises between the parties regarding this Certification, the parties will attempt to resolve such dispute in good faith by direct negotiation by representatives of each party. If such negotiation does not resolve the matter within twenty-eight (28) days after notice of the dispute is given, the matter will be resolved by the following alternative dispute resolution ("**ADR**") procedure.

To begin an ADR proceeding, a party shall provide written notice to the other party of the issues to be resolved by ADR. Within fourteen (14) days after its receipt of notice of ADR, the other party may, by written notice, add additional issues to be resolved. Within twenty-one (21) days following receipt of the original ADR notice, the parties shall select a mutually acceptable independent, impartial and conflicts-free neutral to preside over the proceeding. If the parties are unable to agree on a mutually acceptable neutral within such period, each party will select one independent, impartial and conflicts-free neutral and those two neutrals will select a third independent, impartial and conflicts-free neutral within ten (10) days thereafter. None of the neutrals selected may be current or former employees, officers or directors of either party. The parties shall convene in a location mutually agreed upon to conduct a hearing before the neutral no later than fifty-six (56) days after selection of the neutral (unless otherwise agreed upon by the parties).

The ADR Process shall include a pre-hearing exchange of exhibits and summary of witness testimony upon which each party is relying, proposed rulings and remedies on each issue, and a brief in support of each party's proposed rulings and remedies not to exceed twenty (20) pages. The pre-hearing exchange must be completed no later than ten (10) days prior to the hearing date. Any disputes relating to the pre-hearing exchange shall be resolved by the neutral. No discovery shall be permitted by any means, including depositions, interrogatories, requests for admissions, or production of documents.

The hearing shall be conducted on two (2) consecutive days, with each party entitled to five (5) hours of hearing time to present its case, including cross-examination. The neutral shall adopt in its entirety the proposed ruling and remedy of one of the parties on each disputed issue but may adopt one party's proposed rulings and remedies on some issues and the other party's proposed rulings and remedies on other issues. The neutral shall rule within fourteen (14) days of the hearing, shall not issue any written opinion, and shall not refer any portion of the dispute to mediation without the parties prior, written consent. The rulings of the neutral shall be binding, and non-appealable and may be entered as a final judgment in any court having jurisdiction. The neutral(s) shall be paid a reasonable fee plus expenses. These fees and expenses, along with the reasonable legal fees and expenses of the prevailing party (including all expert witness fees and expenses), the fees and expenses of a court reporter, and any expenses for a hearing room, shall be paid as follows:

- (a) If the neutral(s) rule(s) in favor of one party on all disputed issues in the ADR, the losing party shall pay 100% of such fees and expenses.
- (b) If the neutral(s) rule(s) in favor of one party on some issues and the other party on other issues, the neutral(s) shall issue with the rulings a written determination as to how such fees and expenses shall be allocated between the parties. The neutral(s) shall allocate fees and expenses in a way that bears a reasonable relationship to the outcome of the ADR, with the party prevailing on more issues, or on issues of greater value or gravity, recovering a relatively larger share of its legal fees and expenses.

Except as necessary to enforce in a court of competent jurisdiction or otherwise required by law, the existence of the dispute, any settlement negotiations, the ADR hearing, any submissions (including exhibits, testimony, proposed rulings, and briefs), and the rulings shall be deemed confidential information. The neutral(s) shall have the authority to impose sanctions for unauthorized disclosure of confidential information.

8. **Miscellaneous.**

This Certification shall be governed by and construed under the laws of the State of Illinois, not including its conflicts of laws provisions.

If Customer purchases Products indirectly through a distributor, then Customer acknowledges that Abbott Nutrition is an intended beneficiary under this Certification. The name and address of Customer's distributor(s) for Product purchases follows:

**Distributor Name and Address:** \_\_\_\_\_  
\_\_\_\_\_

**Acknowledged and agreed:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Abbott Account #: \_\_\_\_\_ DEA/HIN#: \_\_\_\_\_

By (Signature): \_\_\_\_\_ Date: \_\_\_\_\_

Print Name/Title: \_\_\_\_\_