

AFFILIATE SUPPLIES AGREEMENT

This Affiliate Supplies Agreement (the “**Agreement**”) is entered into between Premier Orthodontic Practices LLC, a Utah limited liability company (“**Premier**”), and (“**Affiliate**”). Each of Premier and Affiliate are sometimes referred to individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

WHEREAS, Premier is an organization made up of several dental and orthodontic practices and providers, that, among other things, negotiates vendor, supplier, and distribution agreements (the “**Supply Contracts**”) with various vendors, suppliers, distributors, and manufacturers (each, a “**Supplier**”) on behalf of participating affiliates for various dental and orthodontic products and services (the “**Premier Program**”).

WHEREAS, Affiliate desires to participate in the Premier Program, pursuant to which the Affiliate would be able to purchase products and supplies (collectively, the “**Products**”) under the Supply Contracts and purchasing arrangements that Premier operates.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

AGREEMENT

1. **Purchasing.** Subject to the terms and conditions set forth in this Agreement, Affiliate hereby engages Premier to act as its purchasing organization, and Premier hereby grants access to the Supply Contracts, pursuant to which Affiliate may purchase Products available thereunder for use by Affiliate to provide dental and orthodontic services. Affiliate hereby authorizes Premier, as its agent for such purposes, to (a) negotiate the terms of and enter into Supply Contracts, and to cancel or modify any Supply Contracts as it deems necessary, advisable or appropriate; and (b) to receive from Suppliers data relating to purchases of Products under Supply Contracts by Affiliates. Premier may update the list of Suppliers by providing written notice thereof to Affiliate or notice on an online platform that Affiliate can access. Affiliate shall participate in the Premier Program throughout the Term of this Agreement in compliance with the Premier policies provided to Affiliate in writing.

2. **Participation Fee.** Affiliate shall pay to Premier a participation fee in the amount of \$1,200 for the first Term. This Agreement shall not become effective, and the Effective Date shall not occur, until Premier has received both a signed copy of this Agreement from Affiliate and the \$1,200 participation fee. After the first Term of twelve (12) months, Affiliates may, with written notification to Premier, select between a monthly or full-year pricing option:

- a. Option 1: For each successive month of all terms of this Agreement thereafter, Affiliate shall pay to Premier a participation fee in the amount of \$166.00, which will be due and payable no later than the 5th day after the commencement of each successive month.

- b. Option 2: For each successive year after the Term, Affiliate shall pay to Premier a participation fee in the amount of \$1,992.00, which will be due and payable no later than the 15th day after the commencement of each successive year.

If Affiliate fails to pay Premier any participation fee or any other amount due under the terms of this Agreement, in addition to all other rights and remedies, Premier may, in its sole discretion, terminate this Agreement and Affiliate's participation in the Premier Program, or require future payments from Affiliate to be made in cash. The participation fee described herein reflects current pricing. Premier may change the amount of the participation fee at any time. **Notwithstanding anything to the contrary in this Agreement, during the first ninety (90) days of the initial Term, Affiliate may opt out of this Agreement and receive a full refund of the \$1,200 initial Term fee by providing written notice of termination to Premier.**

3. **Supply Contract Terms.** Affiliate acknowledges and agrees that before it may purchase through the Supply Contracts, Premier may need to ensure that the Suppliers are willing to do business with Affiliate. Affiliate further acknowledges and agrees that, in the event that Affiliate purchases Products pursuant to a Supply Contract, Affiliate shall comply with any and all applicable terms and conditions set forth in such Supply Contract.

4. **Own Use; Not For Resale.** If Affiliate is a nonprofit organization, Affiliate represents and warrants that all goods purchased through the Supply Contracts will be for Affiliate's "own use," within the meaning of the Nonprofit Institutions Act as interpreted by the U.S. Supreme Court in *Abbott Laboratories v. Portland Retail Druggist Association Inc.*, 425 U.S. 1 (1976), and subsequent case law. Notwithstanding, in no event shall Affiliate sell, resell, lease or otherwise transfer goods purchased through the Supply Contracts to a third party unless expressly permitted by the terms of the applicable Supply Contract. Any breach of the foregoing representation and warranty may result in immediate termination of this Agreement.

5. **Supplier Lists; Supplier Fees.** Affiliate acknowledges and agrees that, pursuant to the terms of the Supply Contracts, Premier may receive fees from Suppliers (the "**Supplier Fees**") during the term of this Agreement for Premier's provision of certain administrative and other services to Suppliers based on Products purchased by Affiliate. If Affiliate has any questions concerning Supplier Fees in general or the Supplier Fee provisions of any Supply Contract in particular, Affiliate may contact Premier.

6. **Premier Disclosures.** Notwithstanding anything in this Agreement to the contrary, Premier may disclose the terms and conditions of this Agreement to Suppliers with whom Premier has Supply Contracts and federal, state, and local governmental regulatory entities.

7. **Supplier Acts and Omissions.** Premier, and its respective managers, officers, employees, and agents shall not be liable to Affiliate, or to any other entity or person, for the acts or omissions of Suppliers; further, Premier, and its respective managers, officers, employees, and agents shall not be liable to Affiliate, or to any other entity or person, for any breach of any expressed or implied representation or warranty regarding any Products that may be the subject of any Supply Contract under or concerning the Premier Program.

8. **No Membership in Premier.** This Agreement shall not be construed to give Affiliate any ownership, equity, or membership rights in Premier. It is hereby understood and agreed that nothing contained in this Agreement is intended, or shall constitute or be construed, to be or to create or to establish a partnership, joint venture, or lease between or among Affiliate, or its respective successors or assignees, on the one hand, and Premier, or its respective successors or assignees, on the other hand, or as constituting either Party as the general representative or general agent of the other Party or its affiliates for any purpose whatsoever, except as expressly set forth herein. In entering into this Agreement and in acting in compliance herewith, each Party shall at all times be deemed to be acting and performing as an independent contractor duly authorized to perform only as provided for in this Agreement.

9. **Reporting Price Reductions; Compliance with Law.** Affiliate represents, warrants and guarantees that at all times during the Term of this Agreement, Affiliate shall comply with all applicable federal, state and local laws. To the extent Affiliate receives discounts or any other price reductions as a result of purchases under a Supply Contract, or any other remuneration under this Agreement or any Supply Contract, Affiliate may have an obligation under federal or state law to disclose such price reductions or remuneration to federal or state health care programs or other payors, and Affiliate agrees to comply with all such laws.

10. **Data.** Premier shall be the exclusive owner of the compilation of pricing data related to the Products and Supply Contracts. Premier shall own all purchasing transaction data (other than pricing data related to Products and Supply Contracts) resulting from Affiliate's purchase of Products. Affiliate hereby authorizes Premier to have access to Affiliates' purchasing transaction data. Affiliate further authorizes Premier to aggregate Affiliate purchasing transaction data with purchasing transaction data from other Affiliates of Premier for statistical analysis and other similar purposes, and to provide such aggregate data to third parties provided no portion of the data contains any patient identification information or information that can be specifically traced to Affiliate.

11. Confidentiality.

a. **"Confidential Information"** means all non-public or proprietary information that either Party treats as confidential, whether or not marked, designated or otherwise identified as "confidential." For Premier, Confidential Information includes but is not limited to this Agreement, the Premier Program, information about suppliers for the Premier Program, information about other affiliates in the Premier Program, and all information Affiliate may receive from Premier concerning the Premier Program, whether such information is conveyed orally or in written form (including without limitation by e-mail or other electronic communication) or by observation or in any other manner. For Affiliate, Confidential Information includes but is not limited to Affiliate's purchasing data, financial data, purchasing volume, vendor relationships, and practice-specific operational information disclosed to Premier in connection with this Agreement. Each Party's Confidential Information shall remain the exclusive and sole property of the disclosing Party.

b. Each Party shall treat the other Party's Confidential Information as confidential, proprietary, and trade secret information, shall keep all such Confidential Information strictly confidential and secret, and shall not divulge, communicate, or transmit it to third parties nor use it in any commercial manner. Each Party shall restrict disclosure of the other Party's Confidential Information only to such managers, officers, employees, and advisors who need such information in order to perform the

obligations imposed by this Agreement. These obligations of confidentiality and limits on use of said information shall survive the termination or expiration of this Agreement for a period of thirty-six (36) months. Upon termination or expiration of this Agreement, each Party shall return or certify to the destruction of the other Party's Confidential Information. In the event that either Party is required by applicable law to disclose all or any part of the other Party's Confidential Information, the disclosing Party shall provide the other Party with prompt notice of such request so that the other Party may seek an appropriate protective order. If such a protective order is not obtained, the disclosing Party shall furnish only that portion of the Confidential Information that its counsel determines is legally required and will provide a copy of any such Confidential Information to the other Party prior to disclosing it to a third party.

c. Notwithstanding Section 11(b) or any other provision of this Agreement to the contrary, Premier may: (i) share Affiliate's Confidential Information with Suppliers under Supply Contracts to the extent necessary to facilitate Affiliate's participation and procurement within the Premier Program; and (ii) notify other affiliates, practices, and providers participating in the Premier Program when a new Affiliate has joined the Premier Program, provided that, when providing such notification, Premier shall not disclose or share any Confidential Information of the joining Affiliate other than its name and contact information.

d. The obligations of this Section 11 shall not apply to any information which (i) was generally available to the public at the time of disclosure to the receiving party, (ii) becomes generally available to the public other than as a result of an action of the receiving party subsequent to the disclosure to the receiving party, (iii) was available to the receiving party on a non-confidential basis prior to its disclosure by the disclosing party as demonstrated by the receiving party's written records, (iv) becomes available to the receiving party from a source other than the disclosing party without violating any obligation of confidentiality, or (v) is independently developed by the receiving party without reference to the confidential information.

e. Each Party acknowledges and agrees that money damages might not be a sufficient remedy for any breach or threatened breach of this Section 11 by it or its representatives. Therefore, in addition to all other remedies available at law (which neither party waives by exercising any rights hereunder), either Party shall be entitled to seek specific performance and injunctive and other equitable relief as a remedy for any such breach or threatened breach, and each Party hereby waives any requirement for the securing or posting of any bond or the showing of actual monetary damages in connection with such claim.

12. HIPAA Requirements. The Parties acknowledge that many affiliates are "covered entities" as that term is defined at 45 C.F.R. § 160.103. To the extent applicable, the Parties agree to comply with the Administrative Simplification Provisions of the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. § 1320d et seq. ("**HIPAA**") and any current and future regulations promulgated thereunder, including without limitation the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 (the "**Federal Privacy Regulations**"), the federal security standards contained in 45 C.F.R. Parts 160, 162 and 164 (the "**Federal Security Regulations**") and the federal standards for electronic transactions contained in 45 C.F.R. Parts 160 and 162 (the "**Federal Electronic Transaction Regulations**"), and the Health Information Technology for Economic and Clinical Health Act and its implementing regulations, all as amended from time to time and collectively referred to herein as the "**HIPAA Requirements**." The Parties agree not to use or further disclose any Protected Health

Information (as defined in the Federal Privacy Regulations) or EPHI (as defined in the Federal Security Regulations) other than as permitted by the HIPAA Requirements.

13. Affiliate Professional Licensure and Ownership. Affiliate represents, warrants, and covenants to Premier that: (i) Affiliate is an orthodontist duly licensed and in good standing to practice orthodontics in each state and jurisdiction in which Affiliate conducts business or provides orthodontic services; (ii) Affiliate owns their orthodontic practice; and (iii) such orthodontic practice is not part of a dental service or orthodontic service organization where non-dental professionals have ownership interest. Affiliate agrees to maintain such licensure and ownership at all times during the Term of this Agreement, and shall notify Premier in writing of any change to its licensing status or practice ownership structure.

14. DISCLAIMER AND RELEASE. PREMIER DOES NOT MAKE, AND EXPRESSLY DISCLAIMS, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER WARRANTY, EXPRESSED OR IMPLIED, AS TO ANY PRODUCTS SOLD BY ANY SUPPLIER; AND AFFILIATE AND ITS LOCATIONS HEREBY EXPRESSLY RELEASE PREMIER FROM ANY AND ALL LIABILITY AND CLAIMS RELATING TO THE PRODUCTS, AND ANY BREACH OR ALLEGED BREACH OF WARRANTY IN CONNECTION WITH THE PRODUCTS.

15. Limitation of Liability. Premier, and its parent, subsidiaries, affiliates, managers, officers, agents and employees shall not be liable to Affiliate for any act, or failure to act, in connection with any Supply Contract or the Premier Program, including, but not limited to, any failure of a Supplier to furnish the Product that the Supplier has agreed to furnish under any Supply Contract.

16. Term. The Term of this Agreement will be for twelve (12) months, beginning on the Effective Date (the “**Term**”). The Term shall be automatically renewed for further successive terms of twelve (12) months each, unless notice of termination is given by either Party to the other at least sixty (60) days before the end of the current twelve-month term, whereupon this Agreement shall terminate at the end of said term.

17. Termination. Either Party may terminate this Agreement for any or no reason upon sixty (60) days’ written notice. Either Party may terminate this Agreement with immediate effect if: (a) the other Party breaches or is in default of any material obligations and does not cure such breach within fifteen (15) days after receipt of notice of such default or within such additional cure periods as the non-defaulting Party may authorize in writing, or (b) the other Party has breached this Agreement three or more times within a consecutive 6-month period, regardless of whether such Party has cured such breaches in accordance with subsection (a) above.

18. Waivers. No waiver of any right under this Agreement shall be deemed effective unless contained in a writing signed by the party charged with such waiver, and no waiver of any right arising from any breach or failure to perform shall be deemed to be a waiver of any future such right or of any other right arising under this Agreement.

19. Assignment. Affiliate may not assign this Agreement or any of its rights or duties set forth herein, without the prior written consent of Premier; no assignment in violation of the provisions of this Agreement, shall vest any rights in any purported assignee unless approved by Premier.

20. Indemnification. Affiliate shall defend, indemnify, and hold harmless Premier from and against any and all claims, actions, causes of action, verdicts, demands, orders, judgments, settlements, liabilities, losses, costs, obligations, damages, expenses, offsets, deductions, refunds, recoupments, or penalties (including court costs and attorney and other consultancy fees) incurred by or assessed against Premier that, directly or indirectly, in any way arise out of, result from, or relate to Affiliate's negligence, gross negligence, omission, or misconduct to the extent caused, in whole or in part, by Affiliate, including, without limitation, any claims resulting from a failure to pay for any Products that Affiliate purchases, or use of Products provided under the Supply Contracts.

21. Non-Disparagement. Each Party agrees and covenants that it will not at any time make, publish, or communicate to any person or entity or in any public forum any defamatory or disparaging remarks, comments, or statements concerning the other Party or its businesses, or any of its employees, or officers.

22. Entire Agreement. This Agreement together with any attachments, addendums, or amendments, constitutes the entire agreement between the Parties and supersedes all prior agreements between the Parties whether written or oral. Any terms and conditions of any invoice or purchase order that are inconsistent with the terms of this Agreement shall have no effect. This Agreement may not be amended or modified, and no provision of this Agreement may be discharged or waived, except by a writing that Premier and Affiliate sign. A waiver of any particular provision will not be deemed a waiver of any other provision, nor will a waiver given on one occasion be deemed to apply to any other occasion. Section headings contained in this agreement are included for convenience only and form no part of the Agreement between the Parties.

23. Governing Law and Consent to Venue and Jurisdiction. This Agreement shall be governed by and interpreted, construed, and enforced in accordance with the laws of the State of Utah, without regard to conflict of law provisions thereof. The parties hereby consent to venue and jurisdiction of any Utah state court or United States District Court located in Salt Lake County, Utah, with respect to any legal proceedings arising out of or relating to this Agreement.

24. Severability. In the event any provision of this Agreement is for any reason deemed to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other term or provision of this Agreement, and this Agreement will be construed by limiting or invalidating such provision to the minimum extent necessary to make such provision valid, legal and enforceable.

25. Counterparts. This Agreement and any amendments hereto may be executed by the parties hereto individually or in any combination, in one or more counterparts, each of which shall be an original and all of which shall together constitute one and the same agreement. Execution and delivery of this Agreement and any amendments by the parties shall be legally valid and effective through: (a) executing and delivering the paper copy of the document; (b) transmitting the executed paper copy of the document by facsimile transmission, or electronic mail in "portable document format" (".pdf") or other electronically scanned format; or (c) creating, generating, sending, receiving or storing by electronic means this Agreement and any amendments, the execution of which is accomplished through use of an electronic process associated with this Agreement, and executed or adopted by a Party with the intent to execute this Agreement (i.e., "electronic signature" through a process such as DocuSign®/Jotform).