

## VENDOR PARTNERSHIP AGREEMENT

This Agreement is entered into this 15 day of April, 2017, by and between the ORTHOPAEDIC SECTION, APTA, INC (“Ortho Section”) and Vendor Product, a subsidiary of Vendor Corp, an employee-owned physical therapy corporation (“Vendor Product”).

WHEREAS, the Ortho Section desires to monetize the investment made into developing and publishing clinical practice guidelines for common musculoskeletal conditions as well as to transform society by facilitating implementation of the current best evidence-based practice of orthopaedic physical therapy, and Vendor Product has indicated 1) a willingness to share revenue from sales of its product, which has its foundation in the Orthopaedic Section, APTA / JOSPT's ICF-based Clinical Practice Guidelines for common musculoskeletal conditions, 2) a capability to sell this product, named Vendor Product Musculoskeletal Platform Plugin, on the open market, and 3) an ability to comply with the terms of this Agreement.

WHEREAS, Vendor Product is a corporation that created a Vendor Product, is owned by Vendor Corp, and encourages the effort to financially support and sustain the CPG-related work of the Orthopaedic Section, APTA and the Journal of Orthopaedic and Sports Physical Therapy (JOSPT).

The Ortho Section and Vendor Product agree as follows:

### 1. Obligations of Vendor Product

- a. Vendor Corp will continually update the product, Vendor Product, to provide Vendor's guideline implementation efforts of the physical therapy management of common musculoskeletal conditions consistent with recommendations in the Orthopaedic Section, APTA / JOSPT's ICF-based Clinical Practice Guidelines (CPGs), as judged by the Orthopaedic Section Board of Director nominated CPGs' workgroup leaders, who are Peter Blanpied (neck), Lori Michener (shoulder), Ann Lucado (elbow/wrist), Tony Delitto (low back), Mike Cibulka (hip), Lynn Snyder-Mackler (knee), and RobRoy Martin (ankle/foot).
- b. Vendor Corp will continually ensure that Vendor Product complies with all requirements to be available on the open market.
- c. Vendor Product will continually monitor for and correct any other system malfunctions that limit the product from functioning at its full capacity - consistent with industry standards.
- d. Vendor Product did not and will not infringe any patent, copyright, trade secret or other proprietary right of any person or entity in the development and updating of the product.
- e. Vendor Product shall remain owned by private entities, independent from the Ortho Section, and will obtain all licenses and permits and pay all fees and taxes

required to comply with the laws and regulations for corporations operating in the USA.

- f. Vendor Product will be responsible for the maintenance, updating, or daily operational costs of the Vendor Product's guideline implementation tools.
- g. Vendor Product shall comply with any request for financial or performance reports requested by the Orthopaedic Section.
- h. Vendor Product will provide the Ortho Section, via the CPG Coordinator, examples of how it is using the Ortho Section name and logo on the Vendor Product guideline implementation tool. The CPG Coordinator will have final approval of Section name and logo and its use to ensure compliance with Orthopaedic Section brand standards.

## 2. Obligations of Ortho Section

- a. The Ortho Section will maintain the value of evidence-based practice and the Ortho Section / JOSPT Clinical Practice Guidelines – consistent with its vision and mission.
- b. The Ortho Section will develop and maintain the value and appearance of its logo and marketing material to the best of its abilities.
- c. The Ortho Section will grant use of the Section's logo to the Vendor Product for promoting and marketing the Vendor Product's CPG implementation tool.
- d. Where appropriate and applicable, the Ortho Section will promote the sales of Vendor Product's on line and print media in order to maximize the revenue that the Vendor Product and the Ortho Section will receive from the Vendor Product's CPG implementation tool. Any decisions to market or promote the partnership or Vendor Product and method in doing so will be at the sole discretion of the Orthopaedic Section.
- e. The Ortho Section will have approval right over all use of the Section logo's and marketing copy to ensure accuracy, and consistency with Ortho Section policy, branding, and credibility.

## 3. Financial Obligations

- a. Vendor Product agrees to pay the Ortho Section an initial application processing and review fee of \$10,000 for evaluation of the Vendor Product's product for fidelity to the CPGs and utility as a guideline implementation tool; and a fee of \$5,000 annually thereafter for a yearly review of the Vendor Product guideline implementation tool for accuracy and utility with the CPGs
- b. Vendor Product will make an additional annual payment to the Ortho Section according to the following schedule, based upon the reported income on Vendor Product's annual federal tax return:
  - i. \$1,000 if Vendor Product's gross receipts are less than \$1,000,000
  - ii. \$10,000 if Vendor Product's gross receipts are from \$1,000,000 to 1,999,999

- iii. \$20,000 if Vendor Product's gross receipts are from \$2,000,000 to 2,999,999
- iv. \$30,000 if Vendor Product's gross receipts are from \$3,000,000 to 3,999,999
- v. \$40,000 if Vendor Product's gross receipts are from \$4,000,000 to 4,999,999
- vi. \$50,000 if Vendor Product's gross receipts are from \$5,000,000 to 5,999,999
- vii. \$60,000 if Vendor Product's gross receipts are from \$6,000,000 to 6,999,999
- viii. \$70,000 if Vendor Product's gross receipts are from \$7,000,000 to 7,999,999
- ix. \$80,000 if Vendor Product's gross receipts are from \$8,000,000 to 8,999,999
- x. \$90,000 if Vendor Product's gross receipts are from \$9,000,000 to 9,999,999
- xi. \$100,000 if Vendor Product's gross receipts are \$10,000,000 or more

4. Works - All property or software development works prepared or deliverable under the terms of this Agreement, in whatever stage of completion, shall remain the property of Vendor Product, except in the instance of previously copyrighted materials used in the work that are known to be the property of another party or property of the Orthopaedic Section, APTA and JOSPT, such as the content of the Clinical Practice Guidelines and other Ortho Section or JOSPT publications.

5. Exclusivity - This Agreement is not exclusive in that the Ortho Section retains the right to have agreements with other vendors to develop, market, or distribute other implementation tools / products similar to the Vendor Product's implementation tools / products.

6. Indemnification

To the fullest extent allowable by law, the Vendor's Product and entities hereby indemnifies and shall defend and hold harmless, at Vendor's Product and entity's expense, Orthopaedic Section, its elected and appointed officials, committee members, officers, employees or authorized representatives or volunteers, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, losses, interest, attorney's fees (including in-house counsel legal fees), costs and expenses of whatsoever kind, character or nature whether arising before, during, or after completion of the Vendor Partnership Agreement and in any manner caused or contributed to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive of Vendor's Product or entities, or of anyone acting under the direction or control or on behalf of or in connection with or incident to the performance of Vendor's Product or entities, regardless of fault, if liability is sought to be imposed on Orthopaedic Section. Vendor's Product and entities obligation to indemnify and hold harmless in this paragraph shall not apply if damages are caused solely by the negligent or willful misconduct of Orthopaedic Section, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Nothing in this Vendor Partnership Agreement shall be construed as Orthopaedic Section waiving its statutory limitation and/or immunities as set forth in the applicable Wisconsin Statutes or other

applicable law. This indemnity provision shall survive the termination or expiration of this agreement.

Vendor's Product and entities shall reimburse Orthopaedic Section, its elected and appointed officials, officers, employees or authorized representatives or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Vendors Product's and entities obligation to indemnify shall not be restricted to or by insurance proceeds, if any, received by Orthopaedic section, its elected and appointed officials, officers, employees or authorized representatives or volunteers.

- a. The Ortho Section will be covered in the Vendor Corp's insurance policy.
- b. A valid reproduction of the Vendor Corp's insurance policy that provides indemnification will be included with the initial application and yearly review of Vendor Product's guideline implementation tool.

7. Independent Parties:

- a. The Vendor Partnership Agreement in no way indicates any form of joint venture being created.
- b. Vendor Product is an independent contractor, to whom the Ortho Section shall have no obligation as an employer. The Ortho Section will not pay or withhold, and Vendor Product, will hold the Ortho Section harmless from costs for employee benefits, employee taxes, insurance, and other costs typically arising from an employee-employer relationship.
- c. Vendor Product, shall pay its own expenses, including but not limited to all salaries and commissions to Vendor Corp employees, occupational taxes in the form of licenses to engage in or to conduct business, and all taxes including, but not limited to taxes that may be assessed on the personal property and equipment of used in the conduct of Vendor Product's business.
- d. Any reference that Vendor Product makes in reference to the Ortho Section and the business relation between the Ortho Section and Vendor Product, must be approved by the Executive Director of the Ortho Section. Likewise, any reference that the Ortho Section makes in reference to Vendor Product and the business relation between Vendor Product and the Ortho Section must be approved by the Owners of Vendor Product.
- e. Neither party is authorized by the other under this Agreement to act on behalf of or in the name of the other party or any of their affiliates or subsidiaries. Neither party shall have the authority to bind the other in contract, debt or otherwise, other than the provisions stated in this Agreement
  - o By entering into this Partnership Agreement, the Orthopaedic Section, in no way, is making any claim or warranty of or relating to Vendor Product or performance of the Vendor Product.

8. Conflicts of Interest – Vendor Product represents and warrants that it has no business, professional, personal or other interest, including but not limited to the representation of other clients, that would conflict in any manner with the performance of its obligations under this Agreement. Vendor Product agrees immediately to inform the Ortho Section in writing if any such conflict of interest arises during the term of this Agreement, and the Ortho Section may immediately terminate this Agreement upon receiving such notice.

9. Agreement Execution and Agreement Term and Termination - This Agreement must be reviewed and approved by the Board of Directors of the Ortho Section. Likewise, the Majority Owner(s) of Vendor Product must approve this Agreement. Signatures of the Treasurer of the Ortho Section, Executive Director of the Ortho Section, and the Majority Owner of Vendor Product are required for initiation of this agreement. The initial term of this agreement is from the date of signing until December 31<sup>st</sup> of that same year of the signing. This agreement must be renewed each year by the Finance Committee and Board of Directors of the Ortho Section and continuance of the agreement will be made through the Ortho Section's normal budget review process, where revenue (or expenses, if any) related to the Ortho Section / Vendor CPG implementation tools will be designated in the Ortho Section's annual budget development processes of the Ortho Section's Finance Committee and Board of Directors. This Agreement may fail to pass the Ortho Section's Finance Committee review and the Ortho Section's annual budget vote and approval/rejecting processes. Likewise, the Vendor Product Owners can request the Ortho Section's Executive Director to terminate the Agreement during the month of June of each year. Thus, the revenue sharing arrangement will be terminated on December 31<sup>st</sup> of that same year. If a member of the Ortho Section's Finance Committee or Board of Directors has a conflict of interest with the Vendor Product, then he/she must state that conflict and reclude him/herself from the initial and annual Agreement review and budget processes related to the Vendor Product.

- a. upon termination, Vendor Product must immediately cease use of the Orthopaedic Section name, logo, or any other associated branding or reference to any form of a partnership or relationship.
- b. if vendor fails to comply with terms in this agreement or requests for reports or documentation, or is found to be unethical in practice, the Orthopaedic Section reserves the right to terminate this agreement with or without notice to vendor.

10. Successors and Assigns - This Agreement shall be binding on the parties, and on their successors and assigns, without regard to whether it is expressly acknowledged in any instrument of succession or assignment.

11. Assignment – This Agreement may not be assigned by Vendor Product or the rights

granted to or obligations imposed upon Vendor Product transferred or sublicensed by Vendor Product, without the express prior written consent of the Ortho Section.

12. Amendment - This Agreement constitutes the entire agreement between the parties, and supersedes all prior writings or oral agreements with respect to the subject matter hereof. This Agreement may be amended or modified only by a written agreement signed by an authorized representative of each party hereto.

13. Waiver - Waiver by either party of any term or condition of the Agreement with respect to the subject matter hereof or any breach shall not constitute a waiver of any other term or condition or breach of the Agreement.

14. Subsequent Invalidity - If any provision of the Agreement is held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall in no way be impaired or affected thereby.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed on the day and date first written above.

**MAJORITY OWNER, VENDOR PRODUCT**

Print: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**PRESIDENT, ORTHOPAEDIC SECTION, APTA, INC**

Print: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**TREASURER, ORTHOPAEDIC SECTION, APTA, INC**

Print: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**EXECUTIVE DIRECTOR, ORTHOPAEDIC SECTION, APTA, INC**

Print: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_