

Intalere Group Purchasing Participation Agreement



MEMBER NAME: _____

ADDRESS: _____

THIS THREE PARTY PARTICIPATION AGREEMENT ("Agreement") is made and entered into as of the ___ day of _____, 201__, by and between (1) the undersigned facility and its related entities if applicable, as listed on Attachment A hereto, and as amended from time to time, (collectively "Member"), (2) Amerinet, Inc. d/b/a Intalere ("Intalere"), and (3) Health Resource Services ("HRS").

Member operates a health care or other facility that purchases a variety of products and services ("Products") needed for Member's business from various suppliers and distributors ("Suppliers") of such Products; and Intalere is a national GPO with a mission focused on elevating the operational health of America's healthcare providers by designing tailored, smart solutions that deliver optimal cost, quality and clinical outcomes. Intalere enters into arrangements with numerous Suppliers to furnish Products and provide support services and access to its group purchasing programs and services (collectively, the "Programs") to institutions or facilities who choose to affiliate with Intalere.

- 1. GROUP PURCHASING AGENT.** Member designates Intalere as one of its national group purchasing agents, and authorizes Intalere to negotiate and enter into agreements with Suppliers in order to make Products available to Member. As such group purchasing agent, Intalere shall not have authority to bind Member without its prior written permission, and Intalere's duties shall be limited to negotiating prices and other terms with Suppliers. Member's eligibility to access specific Intalere Supplier contracts shall be established based on Member's identified class of trade. Member is not obligated to make any purchase under this Agreement.
- 2. MEMBER AGREES:**
 - a. To purchase Products only for Member's own use, and to abstain from any resale, diversion, or other use of such Products as may be prohibited by applicable law. Notwithstanding any contrary GPO designation stated above, should Member desire to access the Intalere Pharmacy Program, they agree to execute the Intalere Pharmacy Program Primary GPO Declaration and Own Use Form in addition to this Agreement.
 - b. To execute an Intalere contract designation form and abide by the terms and conditions of individual programs in which Member chooses to participate.
 - c. Member agrees to work collaboratively with Intalere and specifically agrees not to seek or accept price reductions or other changes to the terms of the contracts negotiated by Intalere with any Suppliers, unless Intalere expressly consents to such changes in advance and in writing.
 - d. Member agrees that while Intalere shall provide sufficient account representation for Member to ensure Supplier compliance with all contract terms and conditions, Intalere shall not be liable for any denied pricing, chargeback, refusal of Suppliers to honor contract pricing, or failure of Suppliers to deliver Products in a timely fashion or of the requisite quality.
 - e. To ensure Supplier compliance with applicable contract terms, Member agrees to cooperate with Intalere upon written notice of a reasonable request to audit, by providing all relevant purchase order data and/or Supplier invoice data pertaining to purchases from Suppliers for which Member has signed a relevant designation or commitment form. Any such reviews shall be conducted during normal business hours and in a manner that, as much as reasonably possible, minimizes disruption to the business and operations of the Member. Intalere shall bear its own costs of any such audit.
 - f. **MEMBER ACKNOWLEDGES THAT INTALERE, NOT BEING THE MANUFACTURER, WHOLESALE OR DISTRIBUTOR OF THE PRODUCTS, MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, CONDITION, OR OTHER ATTRIBUTE OF THE PRODUCTS OFFERED BY SUPPLIERS UNDER THE TERMS OF INTALERE CONTRACTS.** Therefore, Member agrees to indemnify and hold harmless Intalere upon demand from and against any and all suits, claims, damages and expenses (including but not limited to reasonable attorneys' fees) arising out of or resulting from damage to property or injury to persons that is caused by or arises out of any of the Products purchased under Intalere's contracts, or the use of such Products.
- 3. SAFE HARBOR NOTICE REGARDING SUPPLIER PAYMENTS TO INTALERE.** Intalere hereby notifies Member that payments, not to exceed three (3) percent of all reported purchases made by or on behalf of Member under the Programs, may be made by Suppliers to Intalere. Any contracts with payments above or with the potential to exceed three (3) percent of all reported purchases made by or on behalf of Member shall be identified as such on the Intalere Contract Data Sheets. All such Intalere Contract Data Sheets are incorporated herein by reference, and shall be in substantially the form set forth and accessible to Member through (a) Intalere's electronic catalog, and/or (b) Intalere's website, www.Intalere.com. Intalere will disclose in writing to Member, at least annually, and to the Secretary of the Department of Health and Human Services upon request, the amounts received by Intalere from Suppliers based upon reported purchases made by or on behalf of Member.
- 4. CONFIDENTIALITY.** For purposes of this Agreement, "Confidential Information" means any information exchanged from time to time during the term of this Agreement which is proprietary to or maintained in confidence by Intalere, including without limitation, the Intalere Program Materials, Supplier pricing terms and conditions, any computer software, access to any database, and any other type of information, regardless of the form in which it is stored or transmitted. Member acknowledges and agrees that it will treat all Confidential Information with the same degree of care as Member accords to its own Confidential Information, but in no case less than reasonable care. Member will not use, disseminate, or disclose to third parties any Confidential Information, without the prior written consent of Intalere, except to the extent required by law. Member acknowledges that substantial and irreparable harm would be suffered by Intalere in the event that Member should disclose any Confidential Information to any third party, including any competitor of Intalere, either during or after the term of this Agreement. Upon termination of this Agreement, Member will return to Intalere all originals and copies of the Confidential Information, retaining no copies. Intalere agrees to maintain the confidentiality of information relating to Member's purchasing practices and financial status not available in the public domain. Such information as provided by Member shall be solely for the evaluation and enhancement of Intalere's Products. Neither party to this Agreement shall disclose the contents of this Agreement to any third party, except as may be required by law or as necessary to carry out the terms and conditions of this Agreement, without the express written consent of the other party.
- 5. TERM & TERMINATION.** This agreement shall be for an initial term of three (3) years from its effective date and shall be automatically renewed for one (1) year periods. Either party may cancel this Agreement after the initial term by providing ninety (90) days written notice.

6. **COMPLIANCE WITH LAWS.** The parties agree that each will comply with all applicable federal, state, and local laws. To the extent Member receives discounts, rebates, sharebacks, or any other price reductions or revenues as a result of purchases made under this Agreement, Member acknowledges that it may have an obligation under federal or state law to report such discounts, rebates, sharebacks, price reductions, or revenues to federal or state healthcare programs or other payors, and agrees to comply with such laws. This Agreement shall be governed by and construed and enforced in accordance with the internal laws of the state of Missouri, determined without reference to conflict of laws principles.
7. **CONSENT TO CONNECT.** Member appoints Intalere as its agent to act on its behalf solely for the limited purpose of the execution of all contract access forms deemed reasonably necessary to inform any manufacturers, distributors or vendors, of the Member's participation in an Intalere Program. Said consent does not extend to the execution of bilateral commitments which are beyond the limited purpose described above. This Consent to Connect shall be effective as of the Agreement Date and shall remain in full force and effect for the length of the Agreement or until the undersigned Member delivers written notice to Intalere of its revocation.
8. **MISCELLANEOUS.** Intalere hereby notifies Member that it has engaged HRS to act as its marketing agent to recruit new Members to Intalere. In consideration of these marketing services and the recruitment of Member, Intalere shall pay HRS a percentage of the posted gross contract administrative fees it collects from Suppliers attributable to purchases of Products made by or on behalf of Member. All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed given when delivered in person, sent via e-mail, or when mailed by certified mail, return receipt requested, addressed to the parties at their respective business addresses set forth below (or to such other business address or e-mail address as the recipient may have notified the sender in such manner). If any provision of this Agreement is found to be unlawful, invalid, or unenforceable, then the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect so long as no party is deprived of the material benefits afforded to such party under this Agreement. Member warrants that it has legal authority to enter into this Agreement on behalf of each of the entities listed on the Attachment A. This Agreement shall apply collectively to the entities identified above and in Attachment A of this Agreement. Member shall provide prompt written notice to Intalere of all additions and changes to Attachment A. Each signatory to this Agreement represents and warrants that he or she has all necessary capacity and authority to act for, sign on behalf of and bind the respective entity. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which shall together be deemed to constitute one agreement. This Agreement may be amended in writing signed by both Parties. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and constitutes and supersedes all prior agreements, representations and understandings of the parties, written or oral.

IN WITNESS WHEREOF, the undersigned parties have caused this Agreement to be executed by their duly authorized representatives on and as of the day and year first above written.

MEMBER:

BY: _____
(Signature)

(Printed Name)

TITLE: _____

E-MAIL: _____

DATE: _____

FACILITY NAME: _____

ADDRESS: _____

AMERINET, INC. D/B/A INTALERE:

BY: _____
(Signature)

Susanne Leasure
Director, Membership Services
sue.leasure@Intalere.com

DATE: _____

Intalere
Two CityPlace Drive, Suite 400
St. Louis, MO 63141

HEALTH RESOURCE SERVICES:

BY: _____
(Signature)

(Printed Name)

TITLE: _____

E-MAIL: _____

DATE: _____

Health Resource Services
1100 Olive Way Suite 1030
Seattle, WA 98101

Attachment A - Member locations and related entities as amended from time to time



Sole Source Declaration

Dear Intalere Authorized Supplier:

As an authorized representative of the facility listed below, I am requesting that our facility be considered a sole group member of Intalere for all purchases of required products, across all divisions of Intalere.

Pursuant to this sole group declaration, all sales under contract must be reported to Intalere and our facility should be removed from any other group purchasing organization's membership roster.

Thank you for your support of our facility.

Facility Name

Address

City / State / ZIP Code

DEA #

Authorized

Representative *(signature)*

Authorized

Representative

(printed)

Title

Projected Start Date



Intalere Pharmacy Program Primary GPO Declaration and Own Use Form

Dear Intalere Pharmacy Program Contracted Supplier,
Please accept this Declaration as notification that:

Intalere #:

Facility Name:

Address:

City, ST, ZIP:

Phone:

Facility GLN #:

Please fax completed form to Intalere
Attn. Membership Team
Fax: (724) 772-8356

(here-after referred to as the "Facility") is declaring that effective as of this date, Intalere is their Primary GPO Group Affiliation for Pharmacy purchases. Please take the necessary steps to insure that this Facility is listed in your records as a primary Intalere Pharmacy Program member, and that this Facility will receive correct contract pricing either on a direct basis or through authorized distribution channels as set forth in your Intalere Pharmacy Program agreement. Please insure that all contract item purchases by this Facility are properly and completely credited and reported to Intalere per the terms of your agreement with Intalere. If this is an IDN/IHN/System, this Declaration applies to all licensed sites within the organization (see attached list).

In executing this Declaration, Facility is authorizing you to remove them from all GPO contracts other than Intalere with your company that covers product(s) included in the Intalere program. If Facility is already listed in your records as an Intalere Pharmacy Program participant, please accept this Declaration as updated written confirmation. If there is a change in this affiliation at some future time, Facility will provide written documentation to you. This document shall remain in effect until such time as written documentation is executed by this Facility and received by your company declaring a change away from Intalere.

Additionally, Facility acknowledges and agrees that participation in the Intalere Pharmacy program requires that all products (drugs and pharmaceuticals) purchased under Intalere Pharmacy Contracts will be **"for its own use"** as defined by the United States Supreme Court in the case of Abbott Laboratories et al vs. Portland Retail Druggists Association, Inc., 425 US (1976). Further, the facility agrees not to buy, distribute, sell, transfer or use contract priced pharmaceutical products in any manner contrary to the requirements of **"own use"**. Intalere and its Affiliate Organizations are completely and totally indemnified from Facility's failure to adhere to this "own use" requirement. Facility understands it may take up to 45 days for vendor recognition and attachment to the Intalere contract. Intalere and its Affiliate Organizations are not liable for any delayed pricing, denied pricing, chargebacks or refusal of suppliers from honoring contract pricing to Facility.

The above identified Facility qualifies for the Intalere Pharmacy Program as a:

Acute/Non-Acute Care Facility operating under a DEA#; Address of DEA Certificate must match the 'ship to' address of Facility.

Non-Acute Care Facility without a DEA# which qualifies for a HIN#; Vendors that subscribe to HIBCC can reference the HIN.
If no HIN number known, one can be obtained for qualifying facilities.

Print Name

DEA # or HIN # used for Ordering Pharmaceuticals (as applicable)

Signature

Full Wholesaler or Distributor Name

Title

Wholesaler or Distributor Account Number

Date

Estimated Annual Purchasing Volume