



Letter of Participation (AOAExcel GPO)



THIS LETTER OF PARTICIPATION ("LOP") is entered into as of the ____ day of _____, 201__ ("LOP Date") by and between the undersigned provider and its related entities if applicable, as listed on Attachment A hereto, as amended from time to time (collectively "Member"), and Intalere, Inc. ("Intalere").

WHEREAS, Intalere is a national group purchasing organization 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. Specifically, Intalere enters into arrangements with numerous suppliers and distributors ("Suppliers") to furnish a variety of products and services ("Products") to institutions or facilities which choose to affiliate with Intalere;

WHEREAS, Intalere provides access to these group purchasing programs and services, along with support services (collectively, the "Intalere Programs"), to its participating member institutions and facilities;

WHEREAS, Intalere has entered into an Intalere Group Purchasing Agreement with AOAExcel GPO, LLC to coordinate the offering to Members who participate in Intalere Programs ("AOAExcel GPO Agreement"); and

WHEREAS, Member provides healthcare services and desires to access the Intalere Programs in order to purchase Products from Suppliers.

NOW, THEREFORE, and in consideration of these premises, the covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

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 and the AOAExcel GPO Agreement. Member is not obligated to make any purchase under this LOP.
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 except as may be expressly permitted by Intalere and the Intalere Supplier contracts as specifically identified in writing to Member by Intalere. Notwithstanding any contrary GPO designation stated above, should Member desire to access the Intalere Pharmacy Program, Member shall be required to execute the Intalere Pharmacy Program Primary GPO Declaration and Own Use Form in addition to this LOP and Member acknowledges that its participation in the Intalere Pharmacy Program may be limited to purchasing only from those Pharmacy Program Suppliers that do not prohibit Sharebacks (as defined below).
 - b. To execute an Intalere contract designation form pertaining to, and abide by the terms and conditions of, individual Intalere Programs in which Member chooses to participate.
 - c. 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. 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. Upon reasonable notice from Intalere, to provide Intalere with access to all relevant purchase order data and/or Supplier invoice data pertaining to Member's purchases of Products from a Supplier for which Member has signed a relevant designation or commitment form in connection with Intalere's audit of such Supplier to ensure the Supplier's compliance with applicable contract terms. Any such audits by Intalere shall be conducted during Member's 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. Without limitation, the Parties shall observe all applicable privacy laws in connection with such audits.
 - 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 shall 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 by Member 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 Intalere Programs, may be made by Suppliers to Intalere (the "CAFs"). Any contracts with a CAF 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. SHAREBACKS.** Subject to and in accordance with the terms of the AOAExcel GPO Agreement, as negotiated between and as may be amended by Intalere and AOAExcel GPO, LLC from time to time, Member may earn a Shareback (as defined in the AOAExcel GPO Agreement) based on the aggregate purchase volume through Intalere Programs of all Eligible Joint Members (as defined in the AOAExcel GPO Agreement). Member acknowledges and agrees that any such Shareback payment earned by Member shall be paid by Intalere directly to AOAExcel GPO, LLC. Any further distribution or remittal of the Shareback payments shall be the sole and exclusive responsibility of AOAExcel GPO, LLC. Upon Member's written request, Intalere shall provide Member with a copy of any Shareback calculation performed and amount provided by Intalere with respect to such Member. Notwithstanding anything herein to the contrary, in order for Member to be eligible for the Shareback, (a) Member must be a member in AOAExcel GPO, LLC, (b) Member must not be in default under this LOP, (c) the AOAExcel GPO Agreement must be in effect, and (d) AOAExcel GPO, LLC must not be in default under the AOAExcel GPO Agreement. Upon leaving AOAExcel GPO, LLC, Member may remain an Intalere Member pursuant to the terms of this LOP even though Member may no longer be eligible to receive the Shareback.
- 5. CONFIDENTIALITY.** For purposes of this LOP, "Confidential Information" means any information of a party exchanged from time to time during the term of this LOP to the other party which is proprietary to or maintained in confidence by the disclosing party, including without limitation, the Intalere Program materials, Supplier pricing terms and conditions, any information about Member's operations learned in the course of an audit, any computer software, access to any database, and any other type of information, regardless of the form in which it is stored or transmitted. Each party acknowledges and agrees that it will treat all Confidential Information of the other party with the same degree of care as it accords to its own Confidential Information, but in no case less than reasonable care. Neither party will use, disseminate, or disclose to third parties any Confidential Information of the other party, without the prior written consent of the disclosing party, except to the extent required by law; provided, however, Intalere, and its agents and employees, may use, disseminate or disclose the Confidential Information of Member as necessary to fulfill its obligations under this LOP, the AOAExcel GPO Agreement and as a national group purchasing agent of Member. Each party acknowledges that substantial and irreparable harm would be suffered by the other in the event that the receiving party should disclose any Confidential Information of the disclosing party to any third party, including any competitor of the disclosing party, either during or after the term of this LOP. Upon termination of this LOP, Member will return to Intalere all originals and copies of the Confidential Information of Intalere, retaining no copies and Intalere shall continue to maintain Member's Confidential Information in confidence in accordance with the terms and conditions of this Agreement. Neither party to this LOP shall disclose the contents of this LOP to any third party without the express written consent of the other party, except as may be required by law or as necessary to carry out the terms and conditions of this LOP.
- 6. TERM & TERMINATION.** The initial term of this LOP will be for one year commencing on the date it is signed by Intalere. This LOP will renew annually for an additional period of one year upon expiration of the initial and any subsequent renewal terms of the LOP. Either party may cancel this LOP after the initial term by providing ninety (90)-days written notice to the other Party.
- 7. COMPLIANCE WITH LAWS.** Both Parties agree to 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 LOP, 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 and, without limitation, that the Shareback should be treated as a discount or rebate. This LOP 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.

8. **CONSENT TO CONNECT.** Member appoints Intalere and/or Intalere's designee as Member's 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 LOP Date and shall remain in full force and effect for the length of the LOP or until the undersigned Member delivers written notice to Intalere of its revocation.
9. **MISCELLANEOUS.** All notices and other communications required or permitted to be given under this LOP 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 LOP is found to be unlawful, invalid, or unenforceable, then the remainder of this LOP 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 LOP. Member warrants that it has legal authority to enter into this LOP on behalf of each of the entities, if any, listed on the Attachment A to this LOP, attached hereto and incorporated herein by this reference. This LOP shall apply collectively to the entities identified above and in Attachment A of this LOP. Member shall provide prompt written notice to Intalere of all additions and changes to Attachment A. Each signatory to this LOP 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 LOP 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 LOP may be amended in writing signed by both Parties. This LOP 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 agrees to participate in the Intalere Programs as outlined above.

MEMBER:

BY: _____
(Signature)

(Printed Name)

TITLE: _____

E-MAIL: _____

DATE: _____

FACILITY NAME: _____

ADDRESS: _____

INTALERE, INC.:

BY: _____
(Signature)

Joe Tibbs
Vice President, Sales Operations
Joe.tibbs@Intalere.com

DATE: _____

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

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

AOAEXCEL GPO MEMBERSHIP LETTER

THIS AOAEXCEL GPO MEMBERSHIP LETTER (“**Membership Letter**”) is entered into, by and between the undersigned optometry services provider and its related entities, if applicable, as amended from time to time (collectively “**Member**”), and AOAExcel GPO, LLC, a subsidiary of AOAExcel, Inc., a Missouri LLC, with offices located at 243 N. Lindbergh Blvd. Floor 1, St. Louis, MO (“**AOAExcel GPO**”). The effective date shall be the date the Member agreed to the membership terms and conditions online. This date is shown in the signature line of this letter and in your welcome materials. It shall hereinafter be referred to as the “**Letter Date**”.

A. AOAExcel GPO is a group purchasing organization, as defined in 42 C.F.R. 1001.952(j) that contracts directly and indirectly (i.e., through Intalere) to arrange discounts and rebates for its Members from vendors and Suppliers. (“**Suppliers**”) to furnish a variety of products and services (“**Products**”) to entities that choose to affiliate with AOAExcel GPO;

B. AOAExcel GPO provides access to these group purchasing programs and services, along with support services (collectively, the “**Programs**”), to its participating Members;

C. Member provides optometry and related services and desires to enter into an agreement pursuant to which Member will participate in the Program(s) through AOAExcel.

NOW, THEREFORE, and in consideration of these premises, the covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. MEMBER AGREES:

- g. To remain a Member so long as this Membership Letter shall be in effect.
- h. To, and it hereby does, authorize AOAExcel GPO to act on its behalf as a purchasing agent to select a Supplier and negotiate on behalf of Member competitive pricing and other benefits, and enter into agreements with a Supplier on Member's behalf in order to make Products available to Member. Member agrees that, as such group purchasing agent, AOAExcel GPO shall not have authority to bind Member except as other explicitly stated herein. For clarity, Member is not obligated to make any purchases under this Membership Letter
- i. That Member may earn rebates, sharebacks, or other price reductions not reflected in the price extended at the time of purchase (together, “**Rebates**”) based on the Member's purchase volume through its participation in the Program(s), and authorizes AOAExcel GPO on behalf of such Member to directly receive from a Supplier any such Rebates earned by Member. Notwithstanding anything herein to the contrary, in order for Member to be eligible for a Rebate Member must not be in default under this Membership Letter.
- j. That as payment for AOAExcel GPO's services to Member hereunder, including, without limitation, acting as Member's purchasing agent hereunder in order to facilitate access to favorable Product pricing, Member agrees to pay to AOAExcel GPO a quarterly membership fee not to exceed 2.5% of the purchases made by Member hereunder (“**Membership Fee**”), Member hereby authorizes AOAExcel GPO

to offset the Membership Fee against Rebate amounts paid directly to AOAExcel GPO pursuant to Section 1(f) during that same quarter.

- k. That agreements b-f made by Member in the Letter of Participation between Member and Intalere, Inc. will apply to Member with respect to AOAExcel GPO, as if "AOAExcel GPO" was substituted for "Intalere" for such agreements.

2. AOAEXCEL GPO AGREES:

- a. To disclose in writing to Member at least annually, and to the Secretary of the Department of Health and Human Services upon request, the amount received (i) by AOAExcel GPO as a Rebate from each Supplier with respect to purchases made by or on behalf of each Member; and (ii) the amount of any Membership Fee set-off from such Rebate. AOAExcel GPO will not, without providing prior written notice to Member, receive for its own account any "Vendor" fee from a Supplier with respect to the purchases made by or on behalf of Member.
- b. Upon Member's request, to provide Member with a copy of any Rebate calculation performed and amount provided by a Supplier with respect to such Member.

3. THE PARTIES AGREE:

- a. Member is not wholly owned by AOAExcel GPO, nor is it a subsidiary or affiliate of a parent corporation that wholly owns AOAExcel GPO, either directly or through another wholly-owned entity.
- b. With respect to a Supplier arrangement in which Member is eligible to participate, AOAExcel GPO shall communicate the material terms of sale negotiated with the Supplier to Member. Member shall be solely responsible for payment to the Supplier for any and all purchases made. The Supplier may require Members to sign agreements with it, and Members are solely responsible for the negotiation of the terms thereof and performance thereunder. Member is not obligated to purchase product through an AOAExcel GPO approved Supplier.
- c. Each party is and at all times acting as an independent contractor. Neither party shall have nor exercise any control or direction over the methods by which the other party shall perform their duties and obligations arising hereunder. This Membership Letter is not, and shall not be considered, an employer-employee relationship, joint venture, or partnership of any kind, and neither party shall represent to any third persons that any such relationship exists.
- d. A Supplier from which the Member purchases Products will pay a fee to AOAExcel GPO of zero (0) percent of the purchase price of the Products provided by the Supplier, and any fees for services provided by AOAExcel GPO to Member will be paid as part of the Membership Fee provided for in Section 1(g).

4. AOAEXCEL GPO MEMBER SUPPORT SERVICES. As reasonably requested during the term of this Membership Letter, from time to time, AOAExcel GPO will provide basic support services to Member in connection with Member's participation in the Program(s) provided, however, Member shall retain ultimate and primary responsibility for its participation in the Program and for managing its relationship with Suppliers, including, without limitation, resolving any pricing or operational issues that may arise in connection with Member's participation in the Program.

5. CONFIDENTIALITY. For purposes of this Membership Letter, "Confidential Information" means any information of a party exchanged from time to time during the term of this Membership Letter to the other party which is proprietary to or maintained in confidence by the disclosing party, including without limitation, the terms of this Membership Letter, AOAExcel GPO services and associated pricing, Program materials, Supplier pricing terms and conditions, any information about Member's operations learned pursuant to this Membership Letter, any computer software, access to any database, and any other type of information, regardless of the form in which it is stored or transmitted. Each party acknowledges and agrees that it will treat all Confidential Information of the other party with the same degree of care as it accords to its own Confidential Information,

but in no case less than reasonable care. Except as otherwise stated herein, neither party will use, disseminate, or disclose to third parties any Confidential Information of the other party, without the prior written consent of the disclosing party, except to the extent required by law; provided, however, AOAExcel GPO, and its agents and employees, may use, disseminate or disclose the Confidential Information of Member as necessary to fulfill its obligations under this Membership Letter and the AOAExcel GPO Agreement. Each party acknowledges that substantial and irreparable harm would be suffered by the other in the event that the receiving party should disclose any Confidential Information of the disclosing party to any third party, including any competitor of the disclosing party, either during or after the term of this Membership Letter. Notwithstanding anything herein to the contrary, Member agrees and acknowledges that AOAExcel GPO may use or disclose Member purchase history and other associated Program information and data from Member for purposes of negotiating or otherwise facilitating the purchase of items and services by participating Members, without Member's prior consent.

6. **TERM & TERMINATION.** The initial term of this Membership Letter will be for one (1) year commencing on the Letter Date. This Membership Letter shall renew annually for an additional period of one year upon expiration of the initial and any subsequent renewal terms of the Membership Letter. Either party may cancel this Membership Letter after the initial terms by providing ninety (90) days written notice to the other party. No termination of the Participation Agreement shall affect the obligations of either party arising prior or subsequent to the effective date of termination
7. **COMPLIANCE WITH LAWS.** Both parties agree to comply with all applicable federal, state, and local laws. To the extent Member receives Rebates or revenues as a result of purchases made under this Membership Letter, Member acknowledges that it may have an obligation under federal or state law to report such Rebates to federal or state healthcare programs or other payors, and agrees to comply with such laws and, without limitation, that the Rebate should be treated as a discount or rebate. This Membership Letter 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.
8. **MISCELLANEOUS.**
 - a. All notices and other communications required or permitted to be given under this Membership Letter 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 Membership Letter is found to be unlawful, invalid, or unenforceable, then the remainder of this Membership Letter 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 Membership Letter. Member warrants that it has legal authority to enter into this Membership Letter on behalf of each of the entities, if any, listed on Attachment A to the Letter of Participation between Member and Intalere, Inc. (hereinafter "Attachment A"). This Membership Letter shall apply collectively to the entities identified above and in Attachment A. Member shall provide prompt written notice to AOAExcel GPO of all additions and changes to Attachment A. Each signatory to this Membership Letter 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 Membership Letter 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. This Membership Letter shall be construed and interpreted in accordance with the laws of the state of Missouri as to any dispute which may arise hereunder. This Membership Letter may be signed in any number of counterparts, each constituting a duplicate original.

IN WITNESS WHEREOF, the undersigned agrees to participate in the AOAExcel GPO as outlined above.

MEMBER:

NAME: _____

TITLE: _____

DATE: _____

AOAEXCEL GPO, LLC:

BY: _____

DATE: _____

Robert Kehm
Managing Director
rkehm@aoa.org