

Intalere IDN Group Purchasing Savings Agreement



THIS INTALERE IDN GROUP PURCHASING SAVINGS AGREEMENT (the "Agreement") by and between the County of Ventura ("VENTURA"), for the benefit of those facilities listed on Attachment A hereto, as amended from time to time, and Intalere, Inc. a group purchasing organization ("Intalere"), shall commence on the first day of the month following execution of this Agreement by VENTURA ("Effective Date").

RECITALS

WHEREAS, Intalere is a national group purchasing organization ("GPO") that, among other things, enters into arrangements with numerous suppliers and distributors ("Suppliers") to furnish a variety of products and services ("GPO Products") to institutions or facilities who choose to affiliate with Intalere; and provides support services and access to its group purchasing programs and services (collectively, the "Programs") to its participating member institutions and facilities; and

WHEREAS, In addition to and separate from its GPO Programs, Intalere also offers transformational supply chain consultative fee-based products and services ("Solutions") to assist members and other clients in delivering improved cost, quality and clinical outcomes, which will be available to VENTURA upon the acceptance of terms to be included in a separate agreement; and

WHEREAS, Intalere has entered into a Strategic Account Agreement with BETA Healthcare Group ("BHG") to market Intalere to institutions and entities which may choose to participate in the benefits provided to Intalere members through the Intalere Programs; and

WHEREAS, VENTURA purchases a variety of GPO Products from various Suppliers of the GPO Products needed for health care facilities either operated by VENTURA or for which VENTURA acquires GPO Products; and

WHEREAS, VENTURA enters into this Agreement with Intalere to receive access to Intalere's Programs that may be applicable to VENTURA, and Intalere has committed to provide such Programs to VENTURA; and

WHEREAS, Intalere has agreed to identify for VENTURA savings opportunities in the amount of five million dollars (\$5,000,000.00) over the Term of the Savings Program (as defined below) of this Agreement;

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:

ARTICLE 1 RIGHTS AND OBLIGATIONS OF VENTURA

Section 1.1. VENTURA agrees:

- (a) To utilize the Programs and purchase Solutions under contracts negotiated by Intalere with Suppliers and offered by Intalere to VENTURA under this Agreement.
- (b) To designate Intalere as its exclusive/sole source group purchasing agent for healthcare related supplies and equipment including but not limited to medical/surgical supplies, laboratory, pharmacy, nutrition, diagnostic imaging, environmental services, and workforce solutions (collectively referred to as "GPO Product Groups") for the Initial Term and any Renewal Term (as defined below) of this Agreement and notify Suppliers and other group purchasing organizations of such designation by executing the Sole Source Declaration attached hereto as Attachment B and incorporated herein by this reference. After the effective date of the Sole Source Declaration, VENTURA shall convert all new VENTURA facilities to sole source participation in the Intalere Programs as soon as feasible, but to be completed within three (3) months of the VENTURA facility's addition to Attachment A. VENTURA hereby authorizes Intalere to negotiate and develop contracts on its behalf with Suppliers, and to provide group purchasing services relating to the Programs to furnish GPO Products to VENTURA. Intalere shall not have authority to bind VENTURA without its prior written permission, and Intalere's duties shall be limited to negotiating prices and other terms with Suppliers.
- (c) During the Term of this Agreement, VENTURA shall not contract for the services of any other GPO and shall make a good faith effort to utilize products and services offered by Intalere, and agrees not to contract with alternate GPOs without securing a written release to do so from Intalere.
- (d) VENTURA's eligibility to access specific Intalere Supplier contracts shall be established based on VENTURA's identified class of trade.
- (e) VENTURA is not obligated to make any purchase under this Agreement.

- (f) To execute an Intalere contract designation form (which is the documentation required by a Supplier to know that a member is eligible to purchase pursuant to that specific Intalere contract) and abide by the terms and conditions of individual Programs in which VENTURA chooses to participate.
- (g) To cooperate with Intalere upon reasonable written notice, in the auditing of relevant purchase order data and/or invoice data pertaining to any and all purchases of the types of GPO Products available to VENTURA from Suppliers within the scope of this Agreement so as to ensure compliance with applicable contract terms. Upon receipt of such written notice, VENTURA shall within forty-five (45) days, acknowledge receipt of the request, identify in writing any applicable confidentiality exceptions present in non-Intalere contracts, and establish an audit date. Any such audits 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 VENTURA. Intalere shall bear its own costs of any such audit.
- (h) To purchase GPO Products only for VENTURA's own use, and to abstain from any resale, diversion, or other use of such GPO Products as may be prohibited by applicable law.
- (i) Notwithstanding any contrary GPO designation stated above, VENTURA agrees to execute the Intalere Pharmacy Program Primary GPO Declaration and Own Use Form, attached hereto as Attachment C and incorporated herein by this reference, in order to be eligible to make purchases through the Intalere Pharmacy Program.
- (j) To place its purchase orders directly with Suppliers and to stipulate the contract number that applies. VENTURA agrees that while Intalere shall provide sufficient account representation for VENTURA 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 GPO Products in a timely fashion or of the requisite quality. Further, VENTURA shall be responsible for verifying the accuracy of its invoices, and handling its own claims for lost and/or damaged goods.
- (k) **VENTURA ACKNOWLEDGES THAT INTALERE, NOT BEING THE MANUFACTURER, WHOLESALE OR DISTRIBUTOR OF THE GPO PRODUCTS, MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, CONDITION, OR OTHER ATTRIBUTE OF THE GPO PRODUCTS OFFERED BY SUPPLIERS UNDER THE TERMS OF INTALERE CONTRACTS.**
- (l) To provide to Intalere VENTURA's complete purchase order Data (as defined below in Section 3.4(a) (2)) in various forms. VENTURA acknowledges and agrees that such Data as provided shall be used by Intalere to perform benchmarking, categorization, enhanced analytics and for the general evaluation and enhancement of Intalere's Programs; and may be aggregated, cleaned, and/or reconciled with all Intalere data as enriched into a comprehensive dataset and disclosed as necessary to Intalere Suppliers and other third parties that support Intalere applications. Intalere shall retain the royalty-free right and license to use the Data, solely in anonymous, de-identified form.
- (m) VENTURA understands, and consents, that Intalere may, as part of its promotional and informational activities, work with VENTURA to place VENTURA's name and logo(s), and/or relevant general business information on Intalere's various Internet websites, and/or may also use such information as part of its educational, promotional and informational printed materials. VENTURA will have the right to approve all information and the manner of its use in advance. VENTURA understands it has no rights to any compensation or other consideration as the result of the release or use of such information. VENTURA understands it has the right to rescind its consent at any time by providing written notice to Intalere. In the event this consent and release is rescinded in the future, VENTURA understands that information may remain in circulation until such time that Intalere is able to take the necessary steps to delete such information within a reasonable time.
- (n) To provide a dedicated work environment for a utilization manager as described in Section 2.1 (h) below ("FTE") to work on VENTURA's site, including but not limited to: making adequately configured computers available for the purpose of temporarily loading such tools as Intalere may elect to utilize in connection with the efforts to achieve the savings; allowing interaction with VENTURA's supply chain team; access to VENTURA's building and all appropriate work areas as defined and monitored by VENTURA's onsite contact; access to parking; access to data and information necessary to accomplish proper cost analysis; and the office tools (including access to a computer, training on appropriate information systems, office supplies, office systems, phone access, etc.) necessary to accomplish the requirements of this position.
- (o) During the Term of the Savings Program, neither party shall persuade or otherwise seek to induce any employee of the other party to terminate the employee's status or relationship with such party in any manner or form whatsoever. For the avoidance of doubt, the foregoing does not prohibit either party from employing individuals who were not involved in the Savings Program and who apply for positions in response to internal postings, employment advertisements or other general solicitations of employment, whether such applications are during the Term of the Savings Program or thereafter.

ARTICLE 2

RIGHTS AND OBLIGATIONS OF INTALERE

Section 2.1. Intalere agrees to:

- (a) Provide VENTURA access to those Intalere Programs and Solutions that are applicable to VENTURA from time to time, and to furnish appropriate information to VENTURA to enable it to purchase GPO Products under the Programs and/or Solutions.
- (b) Assist VENTURA in utilizing the Programs and Solutions by providing orientation to key personnel, access to regional member meetings, sharing of information about market conditions and cost trends, and personal service visitation from a designated account representative.

- (c) Conduct periodic pricing analyses or audits to ensure Supplier compliance with contract terms and conditions.
- (d) Respond in a timely manner to all Supplier service problems brought to Intalere's attention by VENTURA.
- (e) Consider VENTURA's input relating to development, evaluation, and/or improvement of the Programs and Solutions.
- (f) Allow VENTURA access to any new or additional programs offered by Intalere outside of the traditional Intalere programs.
- (g) Maintain the confidentiality of information relating to VENTURA's purchasing practices and financial status not available in the public domain; such information as provided by VENTURA shall be solely for the evaluation and enhancement of Intalere's Programs.
- (h) Place an FTE on-site with VENTURA, to provide dedicated services to aid in achieving the Savings Program by assisting with the implementation of Approved Savings Initiatives, recommending additional Identified Savings Opportunities (both as defined below), focusing on eliminating supply channel costs within the facility, facilitating access to Intalere data and initiatives utilizing all relevant purchasing systems and data management tools, and developing custom contracts and identifying revenue generation opportunities. Should VENTURA's Annual Purchasing Volume (as defined below) decrease by more than twenty percent (20%), excluding any decrease resulting from the FTE's direct efforts the parties agree that this obligation to place an FTE on-site may be re-negotiated and/or eliminated at Intalere's sole but reasonable discretion.

If VENTURA determines in good faith that the continued placement of any FTE on-site with VENTURA is not in VENTURA's best interests, then VENTURA may give Intalere written notice to that effect. After receipt of such notice, Intalere will remove the FTE from VENTURA's site and, upon mutual agreement of the parties, will replace that person with another FTE of suitable ability and qualifications. VENTURA retains the sole right to accept or deny the placement of any particular FTE at VENTURA and Intalere retains the sole right to hire and terminate Intalere personnel and will be solely responsible for oversight of Intalere personnel and any decision to terminate any Intalere personnel.

- (i) Waive the participation fees for the facilities listed on Attachment A, attached hereto and incorporated herein by this reference, in consideration of VENTURA designating Intalere as its exclusive group purchasing agent.
- (j) Pay a Shareback (as defined below) in accordance with this Agreement.

Section 2.2. Program Materials. Intalere shall, at its expense, furnish to VENTURA all applicable materials and information (including such rules and regulations as Intalere may publish from time to time) governing the eligibility of facilities to participate in the Programs (collectively the "Program Materials").

Section 2.3. Reports Provided to VENTURA. No less frequently than semi-annually during the Term of this Agreement, Intalere shall provide VENTURA with summaries of reports furnished by Suppliers to Intalere reflecting the purchasing volumes of GPO Products purchased by or on behalf of VENTURA.

Section 2.4. Quarterly Business Reviews. Intalere shall conduct a business review at least once each calendar quarter to evaluate and review the progress of this Agreement with VENTURA. Intalere will identify possible additional cost saving and revenue generating opportunities and/or other benefits available under the Programs and Solutions and obtain VENTURA's input regarding possible improvements to the Programs and Solutions. VENTURA agrees to make the senior leadership of its Health Care Agency available for the business review with Intalere representatives to facilitate collaboration, identify the need for senior leadership support and maintain a continuing dialog to ensure Program success.

Section 2.5. HIPAA. The Parties acknowledge and agrees that information provided by Ventura to Intalere, or otherwise accessible to Intalere, in connection with this Agreement may constitute protected health information as defined in the Health Insurance Portability and Accountability Act ("HIPAA") and that Intalere may therefore be a "Business Associate" of Ventura as defined in HIPAA. Accordingly, Intalere shall execute and comply with the terms of the Business Associate Agreement attached hereto as Attachment G.

ARTICLE 3 SAVINGS PROGRAM

Section 3.1. Definitions:

- (a) Savings Program. "Savings Program" shall mean the program, processes and terms and conditions set forth in this Article 3 pursuant to which Intalere identifies various savings opportunities for VENTURA.
- (b) Start Date. For purposes of this Agreement, the "Start Date" shall be defined as ninety (90) days after the Effective Date, to allow for ramp up time.
- (c) Term of the Savings Program. "Term of the Savings Program" shall mean the period of time commencing on the Start Date and continuing thereafter for three (3) Contract Years.
- (d) Contract Year. "Contract Year" shall mean each continuous twelve (12) calendar month period during the Term of the Savings Program commencing on the Start Date.

- (e) Baseline Amount. "Baseline Amount" shall mean, with respect to each Contract Year, the aggregate purchasing volume of VENTURA with respect to the applicable GPO Products for the twelve (12) month period prior to the commencement date of such Contract Year.
- (f) Identified Savings Opportunities. "Identified Savings Opportunities" ("ISOs") shall mean all savings initiatives or items that when implemented by VENTURA are projected to result in a Savings Amount (as defined below) for VENTURA. ISOs may include, but are not limited to: reduced annual inventory; reduced par levels; reduced overstock; product expiration; obsolete products; opened, not used, damaged, or incomplete orders; consigned product tracking, reconciliation; charge capture; contract management efficiencies (price accuracy, price tier maximization, price leveling); discounts; cost avoidance; medical/surgical/pharmaceutical supply and equipment purchases; purchased services; process improvement initiatives; revenue creation and enhancement; operational enhancement; demand matching; or vendor funding. For the avoidance of doubt, notwithstanding the scope of exclusivity as described in Section 1.1(b), ISOs shall not be limited to the fields of medical supplies and equipment. All ISOs that are presented by or through the efforts of Intalere to VENTURA for further review, following the Effective Date of this Agreement and during the Term of the Savings Program, regardless of the process used for identification of the opportunity or whether a third party also identified the savings opportunity, are considered ISOs. Notwithstanding anything herein to the contrary, no savings opportunity that deliberately reduces or limits health care services provided to patients, impairs the quality of care to be delivered to patients, shifts any costs to any federal health care program, or is not Clinically and Commercially Reasonable (as defined below), shall be determined to be an ISO.
- (g) Clinically and Commercially Reasonable. "Clinically and Commercially Reasonable" shall mean any ISOs which: (i) have been adopted by other health care providers of similar size and scope of services; (ii) meet applicable regulatory guidelines promulgated by the federal Department of Health and Human Services relative to Medicare and/or Medicaid eligible products and services, and (iii) do not require VENTURA to exceed those services reasonably necessary to fulfill its program objectives in order to reach savings targets. These savings may relate to supply, labor, and/or other GPO services. (Examples of savings opportunities recognized as per se Clinically and Commercially Reasonable: 1) limiting the number of suppliers of products of a given class to a reasonable number; 2) requiring Suppliers of products within a given class to accept a price ceiling as quoted by a Supplier of a competitive product; and 3) utilizing products that have been reprocessed under FDA-approved guidelines.)
- (h) Approved Savings Initiatives. "Approved Savings Initiatives" shall mean all ISOs which, after being presented to VENTURA by Intalere, have been approved or deemed approved pursuant to the ISO Approval Process (as defined below).
- (i) Savings Amount. "Savings Amount" shall mean the amount, as identified on the Sign-Off Form (defined below) for an Approved Savings Initiative, that a proposed savings initiative would cause VENTURA's expenses to decrease or revenues to increase compared to the Baseline Amount applicable to the Contract Year in which an ISO is presented, as calculated by Intalere based on any and all savings, rebates, discounts, cost avoidance of budgeted or agreed upon projected expenses, revenue opportunities or enhancements generated. Intalere shall utilize generally accepted principles and procedures to calculate the Savings Amount. The Savings Amount of each Approved Savings Initiative, shall generally be determined by comparing VENTURA's average Data (as defined herein) for the most recent Contract Year against the anticipated Data upon implementation of the Approved Savings Initiative and annualizing such projected savings as a recurring savings for either (i) the term of the vendor contract or two (2) years, whichever is longer or, (ii) for the length of the vendor contract if newly re-negotiated. If VENTURA Data for the most recent Contract Year is not available, then another mutually agreed upon time frame or amount shall be used. The volumes and utilization patterns, such as case mix, case volume, supply spend, labor expense, purchased services, capital budget, and any other factor that is utilized to calculate and estimate savings, will be considered as being held as a constant for purposes of measuring the Savings Amount identified by Intalere, unless otherwise identified in an Approved Savings Initiative. Savings Amounts in the nature of inventory buy-backs and reductions will be considered one-time savings, but will be counted in full. Once ISOs are presented to VENTURA, except as provided below in Section 3.2(b), such calculations will not be adjusted based upon future events or changes to volumes that are created by VENTURA after an ISO has been presented and which changes are outside the control of Intalere. All Savings Amounts for Approved Savings Initiatives shall be identified and tracked by line item on a project savings tracker spreadsheet (the "Project Savings Tracker"). The Project Savings Tracker shall be accessible through the FTE. For purposes of illustration only, the following are hypothetical examples of Savings Amounts:

Ex. 1 Product Purchases. The Baseline Amount for endotracheal tube purchases for the first Contract Year is \$100,000. Intalere pricing results in a 10% price savings yielding a \$10,000 Savings Amount.

Ex. 2 Physician Preference Items. The Baseline Amount on cardiology implants for the first Contract Year is \$1,000,000. Intalere, utilizing its benchmarking pricing catalog, identifies a 15% savings opportunity, negotiates directly with the manufacturer and secures 15% savings over prior spend, yielding a \$150,000 Savings Amount.

Section 3.2. Savings Program. From the Effective Date and through the Term of the Savings Program, Intalere shall identify Approved Savings Initiatives which in the aggregate include Savings Amounts of five million dollars (\$5,000,000.00) or such lesser amount as may be applicable after taking into consideration any reductions to such amount as expressly set forth in this Agreement (the "Savings Guarantee"). Intalere's ability to succeed with the Savings Guarantee is conditioned upon and subject to all parties working collaboratively in a high level of commitment and engagement from both parties and provided:

- (a) VENTURA must designate Intalere as its exclusive/sole source GPO for medical supplies and equipment for the Term of this Agreement.
- (b) The Savings Amount shall be subject to adjustment based only upon economic events outside of Intalere's control, such as future cost of living index increases or supply chain disruptions. Notwithstanding any provision herein to the contrary, any adjustments to

the Savings Amount based on events out of Intalere's control shall be effective upon the provision of written notice of such events, and the Savings Guarantee shall be correspondingly adjusted unless VENTURA can establish that such events were not out of Intalere's control.

- (c) VENTURA shall meet its Contract Year Threshold as defined below. Should VENTURA's Annual Purchasing Volume under this Agreement fall below the Threshold in any Contract Year, the applicable Savings Amounts shall be reduced proportionally and a concurrent proportional dollar reduction in the Savings Guarantee shall be made.
- (d) VENTURA provides complete and accurate Data (as defined below) to Intalere and abides by all of its Savings Program obligations identified herein.
- (e) In the event VENTURA elects not to implement any Approved Savings Initiative, and subject to the ISO Approval Process in Section 3.3, Intalere shall still be given credit for the Savings Amount attributable to such Approved Savings Initiative and that amount shall be added to the aggregate Savings Amount achieved by VENTURA for use in determining whether the Savings Guarantee identified herein has been met.

Section 3.3. ISO Approval Process. From the Effective Date and through the Term of the Savings Program, Intalere shall submit to VENTURA in writing any and all ISOs which shall be accompanied by a savings sign off sheet that identifies the Savings Amount, in a form substantially similar to the one attached hereto as Attachment D (the "Sign-Off Form"). VENTURA shall have fifteen (15) business days following receipt from Intalere of such written ISO ("Review Period") to respond. If VENTURA accepts/approves the ISO as reasonable, which approval shall not be unreasonably withheld, VENTURA shall sign and return the Sign-Off Form marked "Approved", at which time, the ISO shall become an Approved Savings Initiative. VENTURA retains control over which Approved Savings Initiatives it may choose to implement and when. The Savings Amount for an Approved Savings Initiative which VENTURA decides not to implement shall still be counted in the Savings Program Calculation as defined in this Section 3.3.

Only those ISOs that are not reasonable should be rejected and not count towards the Savings Guarantee. If VENTURA rejects the ISO in part or in total, VENTURA shall sign and return the Sign-Off Form, marking the appropriate level of the rejection and identifying in writing the specific reason or reasons for the rejection in detail sufficiently specific to enable Intalere to review and determine if the deficiency can be sufficiently resolved and so that Intalere can respond to each specific rejection. Such Sign-Off Form marked "Rejected" shall be provided to Intalere prior to the end of the Review Period and reasons for reasonably rejecting the ISO shall be limited to one or more of the following:

- (a) Required increased labor expense due to staffing and/or training not accounted for in the ISO;
- (b) The limitations of VENTURA's inventory storage would be exceeded;
- (c) A valid and reasonable trial phase of the proposed ISO results in a negative clinical finding;
- (d) VENTURA disputes the Savings Amount and identifies reasons for such dispute sufficient to allow Intalere to review and respond to each reason;
- (e) Requires VENTURA to incur substantial construction or capital expenditures not accounted for in the ISO to allow implementation, and will exceed the projected Savings Amount;
- (f) Would require VENTURA to violate explicit and non-modifiable preexisting contract obligations; or
- (g) VENTURA demonstrates by objective facts that implementation of the ISO would (i) materially reduce or limit health care services provided to patients, (ii) impair the quality of care to be delivered to patients, (iii) shift any costs to any federal health care program, or (iv) violate or cause VENTURA to be in violation of any applicable governmental law, rule or regulation.

Rejection of an ISO based solely upon VENTURA's desire to avoid converting to a new Product or Supplier shall not constitute a valid basis for rejection unless one of the other reasons identified in subsections a-g exist and are expressly stated in the Sign-Off Form.

Following receipt by Intalere of a timely notice of the properly rejected ISO, the ISO that is the subject of such notice shall not be considered an Approved Savings Initiative nor shall Intalere count the ISO's Savings Amount in the calculation of the Savings Guarantee. However, Intalere may resubmit such proposed ISO with revisions to VENTURA in subsequent months for reconsideration under the ISO Approval Process set forth herein. On resubmission, if Intalere can detail in a return on investment document which identifies expectations for at least a twenty-four (24) month period after implementation that shows the Savings Amount is a net positive, and sufficiently responds to and addresses any valid objections, the ISO shall be deemed an Approved Savings Initiative.

Notwithstanding anything in this Agreement to the contrary, in the event VENTURA fails to deliver to Intalere the completed Sign-Off Form during the Review Period, the ISO shall be automatically deemed an Approved Savings Initiative. The process set forth in this Section 3.3 shall be referred to herein as the "ISO Approval Process."

Section 3.4. Obligations Under Savings Program.

- (a) In addition to the agreements of VENTURA set forth in Article 1, VENTURA hereby agrees as follows:
 - (1) In accordance with Section 1.1(b) above, VENTURA shall designate Intalere as its exclusive GPO for medical supplies and equipment and shall use best efforts to utilize Intalere Programs, GPO Products and Solutions.
 - (2) Beginning on the Start Date, the aggregate annual purchasing volume from Intalere GPO contracts by VENTURA under this Agreement posted and reported by Suppliers ("Annual Purchasing Volume") shall not fall below twenty-nine million (\$29,000,000.00) dollars per year in any Contract Year ("Threshold"). Should VENTURA's Annual Purchasing Volume fall below the Threshold in any Contract Year, the applicable Savings Amounts shall be reduced by the same percentage as the decline in VENTURA's Annual Purchasing Volume below the Threshold for that Contract Year, reducing the Savings

Guarantee by the same amount. However, any increase in VENTURA's Annual Purchasing Volume above the Threshold shall not increase or otherwise affect the amount of the Savings Guarantee. For purposes of illustration only, the following hypothetical example describes the methodology for a reduction in the applicable Savings Guarantee:

Ex. 1. In Contract Years one and two, VENTURA meets the Threshold requirement. In Contract Year three, VENTURA's Annual Purchasing Volume is \$21,750,000, lower than the Threshold by \$7,250,000 (25%). The estimated yearly Savings Amounts of \$1,666,667 are reduced by \$416,667(25%) to \$1,250,000. The Savings Guarantee is also reduced by \$416,667 to \$4,583,333.

VENTURA acknowledges and agrees that the success of the Savings Program is dependent upon VENTURA providing complete and accurate Data (as defined below) to Intalere and that in order for Intalere to be able to submit an ISO for VENTURA's consideration, Intalere must have access to and be able to analyze all VENTURA Data relative to price, volume, and utilization to reasonably determine if the given ISO will be Clinically and Commercially Reasonable. Accordingly, VENTURA shall provide Intalere with access to accurate, timely data reasonably necessary for Intalere to fully identify and validate savings opportunities for VENTURA including, but not limited to, (i) a complete purchasing history detail for pharmacy, med-surg, and purchase service line item data, (ii) data necessary to validate VENTURA's Baseline Amounts including, but not limited to, data from the following sources: general ledger accounts, journal entries, charge master/charges, item masters, contracts, purchase orders, invoices, requisitions, cost centers, division and store room distribution, and (iii) operating and patient care expenses by department, utilization by procedure type, case mix and patient days, number of FTEs by department, inventory data, financials, and operating margin based on revenue (collectively, "Data"). Intalere and VENTURA acknowledge and agree that if Data reasonably necessary to assist Intalere in developing an ISO is not available and Intalere has resources that can assist VENTURA in collecting such data, VENTURA and Intalere shall use best efforts to implement reasonable methods utilizing Intalere's resources to collect and compile such Data. Notwithstanding anything in this Agreement to the contrary, VENTURA shall assist Intalere in the collection of Data pertinent to the purchasing volume, patterns and practices of VENTURA throughout the Term of this Agreement.

- (3) To disclose (i) all VENTURA supply chain savings initiatives in progress prior to execution of this Agreement, regardless of their status or progress; and (ii) all internal and external supply chain consulting groups which VENTURA has engaged prior to the execution of this Agreement, as well as during the Term of this Agreement; and (iii) any explicit or non-modifiable preexisting contract obligations of VENTURA which would limit Intalere's ability to prepare an ISO and/or VENTURA's ability to approve an ISO.
 - (4) To assist Intalere in forming one or more project teams ("Project Team"), if and as needed, to include person(s) representing all affected departments with authority within the organizational hierarchy of VENTURA to approve the ISOs and permit VENTURA to implement the Approved Savings Initiatives. Such Project Teams must use reasonable efforts to include in its review and consideration physician preference items, revenue, labor, pharmacy, and other items identified in Intalere Savings Roadmap® assessments. VENTURA further agrees to utilize Intalere's AccuPrice® and AccuSaveSM tools.
 - (5) To cooperate with and mutually agree upon the process to be utilized by the parties to track savings, responsibilities and, timing of any Approved Savings Initiatives.
 - (6) VENTURA shall be in compliance with all terms and conditions of this Agreement and shall disclose the terms and conditions of this Savings Program as may be required by any and all applicable laws. Additionally, VENTURA shall report any applicable savings to any and all applicable governmental agencies and otherwise comply with any and all laws applicable to the Savings Program.
 - (7) To implement those Approved Savings Initiatives of VENTURA's choice. For the avoidance of doubt, the decision whether or not to implement any particular Approved Savings Initiative shall rest solely and absolutely with VENTURA, and VENTURA may make such decision based on any reason or no reason. If VENTURA decides to implement an Approved Savings Initiative, Intalere shall work with VENTURA to create work plans with regard to how to implement the Approved Savings Initiative. However, to ensure successful implementation VENTURA shall make reasonable efforts to encourage and require all relevant departments to commit to implementing such Approved Savings Initiative and to participate in any applicable project plans mutually developed by VENTURA and Intalere, which departments may include, but are not limited to the following: pharmacy, med-surg, lab, diagnostic imaging, fiscal, executive management, facilities, environmental services program, and/or information technology.
- (b) In addition to the agreements of Intalere set forth in Article 2, Intalere hereby agrees as follows:
- (1) To be in compliance with all terms and conditions of this Agreement.
 - (2) To recommend additional Programs and Solutions to facilitate the Savings Program, contingent upon additional terms and conditions to be negotiated and agreed upon by the parties prior to implementation. If agreed by the parties, Intalere may choose to advance the costs of a Solution itself. If Intalere elects to do so, then all costs that would normally be paid by VENTURA as a Solutions client shall automatically be deemed an Approved Savings Initiative and the applicable Savings Amount resulting from the aggregation of all such advanced costs shall be counted towards satisfaction of the Savings Program.

Similarly, if Intalere determines that a Program or Solution will require the services of an Intalere clinical subject matter expert ("CST") for more than two (2) hours, an appropriate statement of work describing the CST's work will be submitted to VENTURA for approval. If the statement of work is approved by VENTURA, the cost of the CST's services shall be deemed

an Approved Savings Initiative, and the applicable Savings Amount resulting from the aggregation of all such CST costs shall be counted toward satisfaction of the Savings Program.

- (3) To submit ISOs to VENTURA.
- (4) To no less frequently than monthly, provide VENTURA with project savings reports presented to the established Project Team, reflecting the Savings Amounts for each reporting period.
- (5) To conduct quarterly business reviews to (i) evaluate and review the progress of the Savings Program, (ii) identify possible additional ISOs and/or other benefits available under Intalere Programs, and (iii) obtain VENTURA's input regarding possible improvements to Programs.
- (6) Place an Intalere-employed FTE on-site with VENTURA to provide dedicated services to aid in achieving the Savings Guarantee. Said FTE shall assist with VENTURA's request to implement Approved Savings Initiatives, recommend additional ISOs, focus on eliminating supply channel costs within the facility, assist in compiling and accessing VENTURA Data, facilitate access to Intalere data and initiatives utilizing all relevant purchasing systems and data management tools, develop custom contracts and identify revenue generation opportunities. Intalere may, in its sole discretion, add additional FTEs to facilitate attainment of the Savings Guarantee. However, should VENTURA's Annual Purchasing Volume, as defined in Section 3.4(a)(2), decrease more than twenty percent (20%), excluding any decrease resulting from the FTE's direct efforts, Intalere may, in its sole but reasonable discretion, lessen or eliminate the placement of FTEs with VENTURA.

If VENTURA determines in good faith that the continued placement of any FTE on-site with VENTURA is not in VENTURA's best interests, then VENTURA may give Intalere written notice to that effect. After receipt of such notice, Intalere will remove the FTE from VENTURA's site and, upon mutual agreement of the parties, will replace that person with another FTE of suitable ability and qualifications. VENTURA retains the sole right to accept or deny the placement of any particular FTE at VENTURA and Intalere retains the sole right to hire and terminate Intalere personnel and will be solely responsible for oversight of Intalere personnel and any decision to terminate any Intalere personnel.

Section 3.5. Savings Program Calculation. The results of the Savings Program shall be calculated at the end of the Term of the Savings Program by adding together all Savings Amounts identified in all Approved Savings Initiatives.

Section 3.6. Termination and Expiration of the Term of the Savings Program.

- (a) Notwithstanding anything herein to the contrary, the terms and conditions of the Savings Program as set forth in this Article 3 shall no longer apply to either party and shall no longer be in force or effect upon expiration or termination of the Term of the Savings Program pursuant to the terms of this Agreement, regardless of the timing or the reason for such expiration or termination.
- (b) Notwithstanding anything herein to the contrary, during the Term of the Savings Program, if (i) VENTURA is in breach of any provision of this Article 3 including, but not limited to, VENTURA's obligation to provide accurate and complete Data as required by Section 3.4(a)(2) and (ii) VENTURA fails to correct such breach to the satisfaction of Intalere within forty five (45) days after Intalere has provided VENTURA with written notice of such breach, then Intalere may, in its sole discretion and pursuant to written notice provided to VENTURA, delete Article 3 of this Agreement in its entirety and terminate any and all Intalere obligations related to the Savings Program. Such terminated Intalere obligations shall include, but not be limited to, any Intalere obligation to achieve or pay the Savings Program, the Final Savings Shortfall (as defined in Section 3.7 below), and all other financial, contractual, or other obligations arising out of or related to the Savings Program.
- (c) Notwithstanding anything herein to the contrary and commencing fifteen (15) months after the Effective Date, Intalere may, at any time and at its sole and absolute discretion, terminate the Agreement without cause by providing six (6) months' written notice to VENTURA ("Early Termination"). Based upon the effective date of Early Termination, a Final Savings Shortfall, if any, shall be calculated as described in Section 3.7 below, and the Savings Guarantee shall be prorated based on the reduced Term of the Savings Program (including any proportional reduction of the Savings Guarantee as provided in this Agreement, if applicable). Thus, in the event of Early Termination, the dollar amount of the Savings Guarantee will be divided proportionally by the number of calendar months the Savings Program was actually in effect. As a hypothetical example and for illustration purposes only, if Early Termination should occur at the end of Contract Year 2, there would be a one-year (twelve (12) months) reduction in the Term of the Savings Program and the Savings Guarantee would therefore be proportionally reduced by twelve (12) calendar months as follows: Savings Guarantee (\$5,000,000.00 *(assuming no applicable reductions as permitted by this Agreement)* minus one (1) year or twelve (12) calendar months (\$1,666,667) = "Savings Guarantee under Early Termination" (\$3,333,333).

Section 3.7. Final Savings Shortfall.

- (a) Early Termination. For purposes of measuring Intalere's achievement of the Savings Guarantee upon Early Termination, the "Final Savings Shortfall" shall mean the amount equal to (1) the Savings Guarantee under Early Termination, less (2) the sum of the total Savings Amounts for all Approved Savings Initiatives as of the date of Early Termination; provided, however, that if the sum in (2) is greater than the Savings Guarantee under Early Termination, then no Final Savings Shortfall shall exist and Intalere will owe VENTURA no other obligation.

In the event of Final Savings Shortfall as defined in this Section 3.7(a), Intalere shall, at VENTURA's option, i) provide Solutions to VENTURA equal in value to the Final Savings Shortfall at no cost to VENTURA with implementation of the Solution(s) chosen by VENTURA to satisfy this shortfall commencing within ninety (90) days of the date of Early Termination and shall be completed before the end of the Initial Term (as defined below), unless otherwise mutually agreed by the parties; ii) pay VENTURA a dollar amount equal to the Final Savings Shortfall; or (iii) provide a combination of option (i) and (ii) which equals the Final Savings Shortfall.

- (b) Termination at end of Term of Savings Program. For purposes of measuring Intalere's achievement of the Savings Guarantee at the end of the Term of the Savings Program (if not terminated earlier as provided herein), the "Final Savings Shortfall" shall mean the amount equal to (1) the Savings Guarantee, less (2) the sum of the total Savings Amounts for all Approved Savings Initiatives as of the end of the Term of the Savings Program; provided, however, that if the sum in (2) is greater than the Savings Guarantee, then no Final Savings Shortfall shall exist and Intalere will owe VENTURA no other obligation.

In the event of Final Savings Shortfall as defined in this Section 3.7(b), Intalere shall i) provide Solutions to VENTURA equal in value to the Final Savings Shortfall at no cost to VENTURA with implementation of the Solution(s) chosen by VENTURA to satisfy this shortfall commencing within ninety (90) days of the end of the Term of the Savings Program and shall be completed within a mutually agreeable time frame; or ii) pay VENTURA a dollar amount equal to the Final Savings Shortfall; or (iii) provide a combination of option (i) and (ii) which equals the Final Savings Shortfall.

Section 3.8. Renewal of the Savings Program. Should both parties agree to continue this Agreement beyond the Term of the Savings Program in accordance with Section 6.2 below, from the day after the Term of the Savings Program concludes and through the Renewal Term, Intalere shall identify Approved Savings Initiatives which in the aggregate include Savings Amounts of three million dollars (\$3,000,000.00) or such lesser amount as may be applicable after taking into consideration any reductions to such amount as expressly set forth in this Agreement (the "Renewal Term Savings Guarantee"). The Renewal Term Savings Guarantee shall be performed in accordance with the terms of this Article 3 of the Agreement, except that during the Renewal Term:

- (a) "Start Date" shall mean the first day of the Renewal Term;
- (b) "Term of the Savings Program" shall mean the "Renewal Term";
- (c) Sections 3.6(c) and 3.7 (a) shall not apply to the Renewal Term; and
- (d) Any Approved Savings Initiatives in excess of the Savings Guarantee achieved during the Term of the Savings Program shall be applied to the Renewal Term Savings Guarantee. *(Ex. At the end of the Term of the Savings Guarantee, Intalere has identified a total of \$6,500,000.00 in Approved Savings Initiatives, then \$1,500,000.00 in Approved Savings Initiatives shall be credited toward the Renewal Term Savings Guarantee.)*

ARTICLE 4

FINANCIAL MATTERS AND COMPLIANCE WITH LEGAL OBLIGATIONS

Section 4.1. Shareback. Provided VENTURA is not in default* under this Agreement, Intalere shall share with VENTURA a Shareback based on posted annual Contract Administrative Fees ("CAF") revenue that Intalere receives under Intalere Programs as a result of Suppliers' reported purchases attributable to VENTURA. "Shareback" shall be determined by three factors: 1) Intalere GPO contracts (national, regional, or customized) that VENTURA utilizes; 2) the percentage of gross CAF revenue shared under those GPO contracts; and 3) the actual gross CAF revenue (and not other forms of revenue designated by Intalere as non-traditional or non-GPO related revenues or income) reported and actually collected by Intalere from Suppliers, during the semi-annual period, attributed to VENTURA purchases.

Beginning the first day of the next full calendar month following execution of this Agreement, Shareback will begin to accrue and shall be paid to VENTURA on a cash basis within ninety (90) days of the close of the semi-annual calendar reporting period (January through June; July through December). Under this Agreement, Intalere shall share twenty nine percent (29%) of gross CAF revenue with VENTURA.

Intalere shall pay all Shareback relating to VENTURA directly to VENTURA. Any further distribution or remittance of Shareback payments shall be the sole and exclusive responsibility of VENTURA. For purposes of determining eligibility for Shareback, a facility must have been listed as a facility on Attachment A hereto or must have been added as a facility on or before the last day of the semi-annual period in which the Shareback calculation is made. Intalere's obligation to pay Shareback to VENTURA ceases with respect to purchases reported on behalf of VENTURA the day immediately following the effective date of termination pursuant to the terms of this Agreement, regardless of the nature, reason, or timing of such termination. All sums due and owing by Intalere to VENTURA under this Agreement, including Shareback with respect to purchases reported on behalf of VENTURA through and including the effective date of termination, shall be paid to VENTURA within ninety (90) days of the close of the semi-annual period following date of termination.

Notwithstanding the above, VENTURA hereby agrees that Intalere may retain all or a portion of such Shareback accrued to be applied to satisfy any past due debt owed to Intalere. Appropriate documentation shall be forwarded if and when Shareback is retained to offset past due debt, accrued in accordance with the terms of specific agreements.

** For purposes of this Agreement, VENTURA will be considered to be in default if its exclusive GPO Product Groups commitment under Intalere Programs as set forth in this Agreement is effectively reduced to a secondary or non-exclusive GPO level; or if at any time after the first Contract Year of this Agreement, the Annual Purchasing Volume of VENTURA declines by twenty percent (20%) or more during a Contract Year, excluding any decrease resulting from Intalere's direct efforts under this Agreement. While VENTURA is not required to*

make purchases and shall remain a member in good standing, Intalere will provide notice to VENTURA of the default following the year end Shareback calculation, and the Shareback payment will be reduced by a percentage equal to the decline or discontinued at Intalere's sole but reasonable discretion.

Section 4.2. Safe Harbor Notice Regarding Supplier Payments to Intalere. Intalere hereby notifies VENTURA that payments, not to exceed three percent (3%) of all reported purchases made by or on behalf of VENTURA under the Programs, may be made by Suppliers to Intalere. Any GPO contracts with payments above or with the potential to exceed three percent (3%) of all reported purchases made by or on behalf of VENTURA 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 accessible to VENTURA through (a) Intalere's electronic catalog, and (b) Intalere's website, www.intalere.com. Intalere will disclose in writing to VENTURA, 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 VENTURA through GPO contracts.

Section 4.3. BHG Fees. Intalere hereby notifies VENTURA that it has engaged BHG to act as its marketing agent to recruit new members to Intalere. In consideration of these marketing services and the recruitment of VENTURA, Intalere shall pay BHG a percentage of the posted net CAF revenue it collects from Suppliers attributable to purchases of Products made by or on behalf of VENTURA.

Section 4.4. Compliance with Laws. Both parties agree to comply with all applicable federal, state, and local laws. To the extent VENTURA receives discounts, rebates, sharebacks, or any other price reductions or revenues as a result of purchases made under this Agreement, VENTURA 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.

ARTICLE 5 INCLUDED SERVICE OFFERINGS

Section 5.1. Additional Services. Provided VENTURA is not in default* under this Agreement, Intalere shall provide the following additional services during the Term of this Agreement:

- (a) Member Input Groups. VENTURA shall be entitled to one (1) seat on two of Intalere's Member Input Groups. Intalere shall cover the reasonable travel and lodging costs associated with the VENTURA representative's participation in these Member Input Groups.
- (b) Intalere Clinical Advantage ("ICAP"). Intalere will underwrite the cost of performing one (1) ICAP engagement on one implant category as selected by VENTURA, to identify potential savings opportunities by category and supplier. All such underwritten costs shall automatically be deemed an Approved Savings Initiative, and these underwritten costs shall be counted towards satisfaction of the Savings Guarantee. The Statement of Work for ICAP Engagement attached as Attachment F, identifying the scope and cost of this service, shall be executed by the parties prior to Intalere performing this service.

** For purposes of this Agreement, VENTURA will be considered to be in default if its exclusive GPO Product Groups commitment under Intalere Programs as set forth in this Agreement is effectively reduced to a secondary or non-exclusive GPO level; or if at any time after the first Contract Year of this Agreement, the Annual Purchasing Volume of VENTURA declines by twenty percent (20%) or more during a Contract Year, excluding any decrease resulting from Intalere's direct efforts under this Agreement. While VENTURA is not required to make purchases and shall remain a member in good standing, Intalere will provide notice to VENTURA of the default and said additional services may be renegotiated and/or discontinued at Intalere's sole but reasonable discretion.*

ARTICLE 6 TERM AND TERMINATION

Section 6.1. Term of the Agreement. This Agreement shall commence on the Effective Date and continue through the Term of the Savings Program, unless otherwise terminated pursuant to the terms herein ("Initial Term").

Section 6.2. Renewal Term. Unless earlier terminated pursuant to the terms of this Agreement, upon expiration of the Initial Term, this Agreement may be renewed for one additional two (2) year period ("Renewal Term"). The Renewal Term will commence only upon written agreement of both parties in the form of Attachment E hereto, incorporated herein by this reference, and executed within ninety (90) days prior to the end of the Initial Term. The Initial Term and the Renewal Term are individually and collectively referred to herein as the "Term."

Section 6.3. Termination by VENTURA. This Agreement may be terminated by VENTURA as follows:

- (a) Immediately upon a material breach by Intalere of any provision of this Agreement, which material breach has continued for forty-five (45) days following delivery of written notice to Intalere of such material breach; or
- (b) Immediately upon (i) the filing of a petition in bankruptcy by or against Intalere, (ii) an assignment by Intalere for the benefit of its creditors, or (iii) the appointment of a custodian or receiver with respect to the assets of Intalere.

Section 6.4. Termination by Intalere. This Agreement may be terminated by Intalere as follows:

- (a) Immediately upon a material breach by VENTURA of Article 8 of this Agreement;

(b) Immediately upon a material breach by VENTURA of any other provision of this Agreement, which material breach has continued for forty-five (45) days following delivery of written notice to VENTURA of such material breach;

(c) Immediately upon (i) the filing of a petition in bankruptcy by or against VENTURA, (ii) an assignment by VENTURA for the benefit of its creditors, or (iii) the appointment of a custodian or receiver with respect to the assets of VENTURA.

Section 6.5. Effect of Termination. Upon receipt of notice of termination, the parties hereby agree to abide by the terms of this Agreement through the effective date of termination. Upon termination of this Agreement, neither Intalere, nor VENTURA shall have any further liability to any other party, except with respect to (a) the confidentiality provisions of Article 9 below, and (b) causes of action arising prior to the date of such termination.

ARTICLE 7

DISPUTE RESOLUTION/BINDING ARBITRATION

Section 7.1. Negotiation. In the event any dispute should arise between VENTURA, on the one hand, and Intalere, on the other hand, arising out of or in any way related to this Agreement, the parties shall diligently attempt in good faith to resolve such disputes on an amicable basis. If the parties do not, within the next thirty (30) days (the "30 Day Period") settle such disputes, then the unresolved items of disagreement shall be submitted to mediation pursuant to Section 7.2.

Section 7.2. Mediation. If an unresolved dispute cannot be settled through negotiation within the 30 Day Period, the parties agree to first try in good faith to settle the dispute by non-binding mediation administered by the American Arbitration Association ("AAA") under its Commercial Mediation Procedures, before resorting to arbitration. The fees of the mediator shall be shared equally by the parties. Any unresolved items of disagreement remaining following such mediation, shall be finally decided by a panel of three (3) arbiters (the "Arbiters") in conformity with Sections 7.3 and 7.4. Notwithstanding anything to the contrary in the Commercial Mediation Procedures, the parties shall bear their own attorney fees and expenses incurred in connection with the mediation.

Section 7.3. Arbitration. Any dispute remaining following action taken pursuant to sections 7.1 and 7.2 above shall be fully and finally resolved by arbitration conducted in accordance with the Commercial Rules of the AAA (the "AAA Rules"). The panel of Arbiters shall be selected as follows: one Arbiter shall be selected by VENTURA, one shall be selected by Intalere, and the third shall be selected by the two Arbiters so selected. Each Arbiter shall be selected under the AAA Rules from a list provided by the AAA. Such arbitration shall be conducted in Ventura, California, under such rules, and procedures as may be agreed upon by the parties or, failing such agreement, under the AAA Rules; provided, however, that (a) at any oral hearing of evidence in connection with an arbitration pursuant to this section, each party to such hearing or its legal counsel shall have the right to examine its witnesses and to cross-examine the witnesses of an opposing party, and (b) no evidence of any witnesses shall be presented in written form unless the opposing parties shall have the opportunity to cross-examine such witness, except as the parties to the dispute otherwise agree in writing or except under extraordinary circumstances where the interests of justice require a different procedure. All fees and expenses of the AAA incurred in connection with an arbitration under this section, including fees and disbursements of the Arbiters, shall be paid by the party against whom the matter at issue is resolved or prorated, if more than one matter is at issue, in accordance with the dollar value of the issue resolved. Notwithstanding anything to the contrary in the AAA Rules, the parties shall bear their own attorney fees and expenses incurred in connection with the arbitration.

Section 7.4. Judgments. Any decision or award of the Arbiters shall be final and binding upon the parties and their successors and assigns, and the parties shall comply with such award in good faith. The parties agree that such award may be enforced against the parties or their assets wherever they may be found, and that a judgment upon the arbitral award may be entered in any court having jurisdiction thereof.

ARTICLE 8

CONFIDENTIALITY

Section 8.1. Confidentiality. VENTURA acknowledges and agrees that Intalere shall furnish the Program Materials to VENTURA. 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 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. VENTURA acknowledges and agrees that it will treat all Confidential Information with the same degree of care as VENTURA accords to its own Confidential Information, but in no case less than reasonable care. VENTURA 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. If such Confidential Information is required by law to be provided in response to a public request, VENTURA shall, where permitted by law, provide reasonable notice to Intalere prior to the release of any Confidential Information to allow Intalere an opportunity to take all steps available to protect Intalere trade secrets or proprietary information not subject to public disclosure. VENTURA acknowledges that substantial and irreparable harm would be suffered by Intalere in the event that VENTURA should disclose any Confidential Information to any third party in violation of this Agreement, including any competitor of Intalere, either during or after the Term of this Agreement. Upon termination of this Agreement, VENTURA will, upon Intalere's request, return to Intalere all originals and copies of the Program Materials, retaining copies only for evidentiary and legal purposes. Notwithstanding anything herein to the contrary, VENTURA hereby also authorizes Intalere, and its agents and employees, to release to a representative designated by BHG any information and documents (or copies thereof) relating to the purchasing history of VENTURA and authorizes such representative to consult with Intalere relating to such information.

Section 8.2. Intalere and Related Service Marks. VENTURA acknowledges that "Intalere" and certain other terms and marks used by Intalere in its marketing and/or promotion of its Programs are registered service marks of Intalere, and that any use of any such service

marks by VENTURA shall be strictly for purposes of identifying Intalere's Programs under the terms of this Agreement. Upon termination of the Agreement for any reason, VENTURA shall immediately discontinue all use of such service marks and all distribution of any materials containing such service marks. VENTURA shall not acquire any right whatsoever in such service marks under the terms of this Agreement.

Section 8.3. Specific Performance. In the event of any breach of sections 8.1 or 8.2 of this Agreement by VENTURA, Intalere shall have the right to specific performance and/or preliminary and permanent injunctive relief to enjoin such breach. Such remedies shall be in addition to all other remedies at law available to Intalere, including damages.

Section 8.4. Confidentiality Obligations of Intalere. Intalere acknowledges that VENTURA may provide to Intalere information concerning prices previously obtained by VENTURA from Suppliers, purchasing volumes of VENTURA, and information relating to VENTURA's purchasing practices and financial status not available in the public domain. All such information constitutes confidential information of VENTURA, and Intalere shall not disclose such information to any third party. Such information as provided by VENTURA shall be solely for the evaluation and enhancement of Intalere's Products, including those instances where VENTURA may provide Intalere with its Data, as necessary to support the Programs VENTURA chooses to utilize. VENTURA hereby acknowledges that this Data may be aggregated with all Intalere data and disclosed as necessary to Intalere Suppliers and other third parties that support the Programs, whether or not this Agreement remains in effect. Intalere agrees that such third parties shall be held to the same confidentiality requirements included in this paragraph.

ARTICLE 9 MISCELLANEOUS

Section 9.1. Assignment and Binding Effect. This Agreement may not be assigned by either party without the prior written consent of the other party, which may be granted or withheld in its sole discretion. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

Section 9.2. Notices. 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, or when mailed by certified mail, return receipt requested, addressed as follows (or to such other address as the recipient may have notified the sender in such manner):

(a) If to Intalere:

Intalere, Inc.
Two CityPlace Drive, Suite
400 St. Louis, MO 63141
Attn: Chief Executive Officer

(b) If to VENTURA:

County of Ventura General Services Agency
800 South Victoria Avenue,
L#1000 Ventura, CA 93009
Attn: Purchasing

Section 9.3. Waivers. The waiver by any party of any breach or violation of any provision of this Agreement shall not operate as a waiver of any subsequent breach of such provision or any other provision hereof, and the failure of any party to exercise any rights under this Agreement in a particular instance shall not operate as a waiver of such party's right to exercise the same or different rights in subsequent instances.

Section 9.4. Amendments. This Agreement may be amended, supplemented, or modified only by an instrument in writing signed by a duly authorized officer of Intalere and a duly authorized officer of VENTURA.

Section 9.5. No Partnership. This Agreement is not intended and shall not be construed as a joint venture, partnership, or association between VENTURA and Intalere, it being understood that neither party shall, by virtue of this Agreement, have the power to bind the other party hereto nor assume or otherwise become liable for any of the obligations, debts, or liabilities of such other party.

Section 9.6. Force Majeure. Neither Intalere nor VENTURA shall be liable or be deemed to be in default for any delay or failure of performance under this Agreement or for other interruption which is caused by natural disasters, civil or military authorities, acts of public enemy, war, accidents, strikes, earthquakes, interruptions of supply, or any other similar causes beyond the reasonable control of such party.

Section 9.7. Headings. The article and section headings of this Agreement are for the convenience of reference only, and shall not be considered part of this Agreement or used in the interpretation or construction thereof.

Section 9.8. Severability. If any provision of this Agreement is found to be unlawful, invalid, or unenforceable by a court of competent jurisdiction, 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.

Section 9.9. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior written or oral representations, promises, and agreements which are not expressly set forth herein. 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.

Section 9.10. Signatory Authority. 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.

Section 9.11. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the internal laws of the state of California, determined without reference to conflict of laws principles.

[Remainder of page left intentionally blank.]

Section 9.12. Authorization To Sign. VENTURA 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 VENTURA's participation in an Intalere Program. Said authorization does not extend to the execution of bilateral commitments which are beyond the limited purpose described above. This authorization shall be effective as of the Effective Date and shall remain in full force and effect for the Term of this Agreement or until VENTURA delivers written notice to Intalere of its revocation.

THIS AGREEMENT, IN ARTICLE 7 CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

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

COUNTY OF VENTURA:

INTALERE, INC.:

BY: _____
(signature)

Enter signatory
Enter signatory title

BY: _____
(signature)

Julius F. Heil
Chief Executive Officer

DATE: _____

County of Ventura
General Services Agency
800 South Victoria Ave, L#1000
Ventura, CA 93009

DATE: _____

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

"Effective Date" (first day of the month following execution of this Agreement by VENTURA)) _____

Attachment A – Ventura facilities

(attached)

Attachment A--Ventura facilities

Type	Facility No	Facility Search Name	Facility Name	Address 1	City	State	Zip
Parent		COUNTY OF VENTURA	Ventura County Health Care Agency (IDN)	800 S Victoria Ave, L#1000	Ventura	CA	93009
Child	15000	VENTURA COUNTY IDN	Ventura County (IDN)	800 S Victoria Ave	Ventura	CA	93009-0003
Child	75773	LAS POSAS FAMILY MEDICAL GROUP	Las Posas Family Medical Group	3801 Las Posas Rd Ste 214	Camarillo	CA	93010-1426
Child	211727	NORTH OXNARD PUBLIC HEALTH EMS	North Oxnard Public Health EMS	2240 E Gonzales Rd	Oxnard	CA	93036-8210
Child	378712	PROBATION AGENCY/JF	Probation Agency - JF	Juvenile Justice Complex, 4333 E Vineyard Ave # 8000	Oxnard	CA	93036-1013
Child	56700	SANTA PAULA HOSPITAL	Santa Paula Hospital	825 N 10th St	Santa Paula	CA	93060-1309
Child	160622	VENTURA ADULT DIALYSES	Ventura Adult Dialyses	300 Hillmont Ave.	Ventura	CA	93003-3099
Child	160620	VENTURA CARDIOLOGY CLINIC	Ventura Cardiology Clinic	300 Hillmont Ave.	Ventura	CA	93003
Child	15001	VENTURA COUNTY MEDICAL CENTER	Ventura County Medical Center	300 Hillmont Ave	Ventura	CA	93003
Child	309237	VENTURA COUNTY MEDICAL CENTER INFUSION CENTER PHARMACY	Ventura County Medical Center Infusion Center Pharmacy	300 Hillmont Address Ste 501 Bldg 340	Ventura	CA	93003-3099
Child	450260	VENTURA COUNTY PUBLIC HEALTH CLINIC	Ventura County Public Health Clinic	2240 E Gonzales Rd Ste 140	Oxnard	CA	93036-8212
Child	242783	VENTURA COUNTY SHERIFFS OFFICE A/K/A SHERIFF DEPT PRE-TRIAL	Ventura County Sheriff's Office	800 S Victoria Ave	Ventura	CA	93009-0003
Child	242781	VENTURA COUNTY SHERIFFS OFFICE A/K/A SHERIFF DEPT/E COUNTY	Ventura County Sheriff's Office	2101 E Olsen Rd	Thousand Oaks	CA	91360-6861
Child	242780	VENTURA COUNTY SHERIFFS OFFICE A/K/A SHERIFF DEPT-TODD ROAD	Ventura County Sheriff's Office	600 Todd Rd	Santa Paula	CA	93060-9725
Child	160621	VENTURA EMPLOYEE HEALTH SERVICES	Ventura Employee Health Services	800 S Victoria Ave	Ventura	CA	93009-0001
Child	15048	VENTURA/A NEW START FOR MOMS	Ventura/A New Start For Moms	1911 Williams Dr.	Oxnard	CA	93030-4901
Child	15003	VENTURA/ACADEMIC FAMILY MEDICINE CENTER	Ventura/Academic Family Medicine Center	300 Hillmont Ave Bldg 340 Ste 201	Ventura	CA	93003-1651
Child	15026	VENTURA/ADULT RESIDENTIAL PLACEMENT	Ventura/Adult Residential Placement	1911 Williams Dr.	Ventura	CA	93003-3233
Child	417646	VENTURA/AFMC URGENT CARE	AFMC Urgent Care	300 Hillmont Ave Bldg 340 Ste 101	Ventura	CA	93003-1651
Child	417648	VENTURA/ANACAPA SURGICAL GROUP	Anacapa Surgical Group	300 Hillmont Ave Bldg 340 Ste 401	Ventura	CA	93003-1651
Child	15019	VENTURA/BEHAVIORAL HEALTH SERVICES	Ventura/Behavioral Health Services	300 Hillmont Ave	Ventura	CA	93003-1651
Child	15039	VENTURA/CASA PACIFICA	Ventura/Casa Pacifica	1722 S Lewis Rd	Camarillo	CA	93012-8520
Child	15002	VENTURA/CONEJO VALLEY FAMILY MEDICAL GROUP	Ventura/Conejo Valley Family Medical Group	125 W Thousand Oaks Blvd Ste 300	Thousand Oaks	CA	91360-4460
Child	15029	VENTURA/EAST VENTURA ADULT SERVICES	Ventura/East Ventura Adult Servcies	4258 Telegraph	Ventura	CA	93003-1651
Child	160623	VENTURA/FILLMORE FAMILY MEDICAL GROUP	Ventura/Fillmore Family Medical Group	828 W Ventura St, #100	Fillmore	CA	93015-1876
Child	15004	VENTURA/ADULT HEMATOLOGY & ONTOLOGY CLINIC	Ventura/Adult Hematology & Oncology Clinic	300 Hillmont Ave Bldg 340 Ste 503	Ventura	CA	93003-1651
Child	15038	VENTURA/HILLMONT PSYCHIATRIC INPATIENT PSYCHIATRIC SERVICES	Ventura/Hillmont Psychiatric Center Inpatient Psychiatric Services	200 Hillmont Ave	Ventura	CA	93003-1647
Child	15005	VENTURA/IMMUNOLOGY CLINIC	Ventura/Immunology Clinic	300 Hillmont Ave Bldg 340 Ste 502	Ventura	CA	93003-1651
Child	160625	VENTURA/JOHN K. FLYNN COMMUNITY CLINIC	Ventura/John K. Flynn Community Clinic	3100 N Rose Ave	Oxnard	CA	93036-1807
Child	15006	VENTURA/LAS FLORES	Ventura/Las Flores	2500 S C St Ste B	Oxnard	CA	93033-4572
Child	15007	VENTURA/LAS ISLAS FAMILY MEDICAL GROUP	Ventura/Las Islas Family Medical Group	325 W Channel Islands Blvd	Oxnard	CA	93033-4501
Child	160624	VENTURA/MAGNOLIA FAMILY MEDICAL CENTER	Ventura/Magnolia Family Medical Center	2240 E Gonzales Rd Ste 100	Oxnard	CA	93036-8212
Child	15008	VENTURA/MANDALAY BAY WOMEN & CHILDREN'S	Ventura/Mandalay Bay Women & Children's	200 Outlet Center Dr., Ste. 110	Oxnard	CA	93033-4573
Child	417647	VENTURA/MEDICINE SPECIALTY CENTER WEST	Medicine Specialty Center West	300 Hillmont Ave Bldg 340 Ste 502	Ventura	CA	93003-1651
Child	15010	VENTURA/MOORPARK FAMILY MEDICAL CLINIC	Ventura/Moorpark Family Medical Clinic	612 Spring Rd. Bldg A	Moorpark	CA	93021-1498
Child	15031	VENTURA/NORTH OXNARD ADULT SERVICES	Ventura/North Oxnard Adult Services	1911 Williams Dr.	Oxnard	CA	93030-8105
Child	15042	VENTURA/OXNARD CENTER	Ventura/Oxnard Center South	2500 S. C St	Oxnard	CA	93033-3560
Child	15011	VENTURA/PEDIATRIC DIAGNOSTIC CENTER	Ventura/Pediatric Diagnostic Center	300 Hillmont Ave Bldg 340 Ste 301 302	Ventura	CA	93003-1651
Child	160627	VENTURA/PEDIATRIC HEMATOLOGY-ONCOLOGY CLINIC	Ventura/Pediatric Hematology-Oncology Clinic	300 Hillmont Ave Bldg 340 Ste 301	Ventura	CA	93003
Child	15045	VENTURA/PUBLIC HEALTH ADMINISTRATION	Ventura/Public Health Administration	3147 Loma Vista Rd	Ventura	CA	93003-2917
Child	15033	VENTURA/SANTA PAULA ADULT SERVICES	Ventura/Santa Paula Adult Services	725 E. Main St.	Santa Paula	CA	93060-3225
Child	15022	VENTURA/SANTA PAULA CHILDRENS SERVICES	Ventura/Santa Paula Children's Svcs	725 E. Main St.	Santa Paula	CA	93060-3225
Child	15013	VENTURA/SANTA PAULA MEDICAL CLINIC	Ventura/Santa Paula Medical Clinic	1334 E Main St	Santa Paula	CA	93060-2926
Child	160629	VENTURA/SANTA PAULA HOSPITAL CLINIC	Ventura/Santa Paula Hospital Clinic	845 N 10th St., Ste. 3	Santa Paula	CA	93060-1300
Child	160628	VENTURA/SANTA PAULA WEST	Ventura/Santa Paula West	254 W Harvard Blvd., Ste. B	Santa Paula	CA	93060-3919

Type	Facility No	Facility Search Name	Facility Name	Address 1	City	State	Zip
Child	15014	VENTURA/SIERRA VISTA FAMILY-MEDICAL CLINIC	Ventura/Sierra Vista Family-Medical Clinic	1227 E. Los Angeles	Simi Valley	CA	93063-1734
Child	15044	VENTURA/SIMI VALLEY CENTER	Ventura/Simi Valley Center	3150 E. Los Angeles Ave	Simi Valley	CA	93063-2920
Child	15034	VENTURA/SIMI VALLEY ADULT SERVICES	Ventura/Simi Valley Adult Services	1227 E. Los Angeles	Simi Valley	CA	93065-3940
Child	15023	VENTURA/THOUSAND OAKS CHILDREN SERVICES	Ventura/Thousand Oaks Children Services	125 W. Thousand Oaks	Thousand Oaks	CA	91360-3903
Child	15024	VENTURA/VENTURA CHILDRENS SERVICES	Ventura/Ventura Children's Services	5740 Ralston St.	Ventura	CA	93003
Child	15017	VENTURA/WEST VENTURA MEDICAL CLINIC	Ventura/West Ventura Medical Clinic	133 W Santa Clara St	Ventura	CA	93001-2543
Child	284373	VENTURA COUNTY MEDICAL CENTER/NEW BUILDING	Ventura County Medical Center - New Building Job #113239	3291 Loma Vista Rd Bldg 402	Ventura	CA	93003-3099
Child	15025	VENTURA/ACUTE CARE SYSTEM	Ventura/Acute Care System	300 Hillmont Ave	Ventura	CA	93003-1651
Child			County of Ventura Animal Services	600 Aviation Drive	Camarillo	CA	93010
Child			County of Ventura Animal Services	670 W. Los Angeles Ave.	Simi Valley	CA	93065
Child			County of Ventura Medical Examiner's Office	3100 Foothill Rd.	Ventura	CA	93003

Attachment B – Sole Source Declaration



Sole Source Declaration

Dear Intalere Authorized Supplier:

Please accept this letter as notification that Intalere has been declared the SOLE GROUP PURCHASING ORGANIZATION for the undersigned facility and the facilities listed on Attachment A, as amended from time to time, for all purchases of required products, across all divisions of Intalere, as of _____, as described in the Intalere IDN Group Purchasing Savings Agreement between the undersigned and Intalere. Please take the necessary steps to ensure that these facilities are listed in your records as Intalere participants and that they receive correct contract pricing either through direct purchases, or authorized Intalere wholesalers and manufacturers.

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

If these facilities are already listed as Intalere sole group participants, please accept this declaration as written confirmation for your files. If there is a change in this affiliation at some time in the future, we will provide written documentation to that effect. This documentation will remain in effect until written confirmation is executed by us and received by your company, declaring a change in affiliation.

Furthermore, Intalere is authorized to request and receive all detailed sales data from contracted suppliers made by any and all of these facilities in order to audit for price accuracy.

COUNTY OF VENTURA:

BY: _____
(signature)

NAME: _____

TITLE: _____

DATE: _____

County of Ventura
General Services Agency
800 South Victoria Ave, L#1000
Ventura, CA 93009

Attachment C – Intalere Pharmacy Program



Intalere Pharmacy Program Primary GPO Declaration and Own Use Form

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

Intalere #: 15000

Facility Name: **County of Ventura
General Services Agency**

Address: 800 South Victoria Ave, L#1000

City, ST, ZIP: Ventura, CA 93009

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 its Primary GPO Group Affiliation for Pharmacy purchases. Please take the necessary steps to ensure 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 is 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

Attachment D- Sample Sign-Off Form

Savings Sign-Off Form



Facility Name _____

Intalere # _____

Date Opportunity Presented _____

Type of Savings _____

Contract # (if applicable) _____

Generated By _____

Project Name _____

Brief Description _____

Savings Amount _____

☐

Detailed ISO with Supporting Documentation attached

☐ I ACCEPT this ISO.

I REJECT this part of the ISO.

Reasons for rejection* _____

I REJECT this ISO in total.

Reasons for rejection* _____

Signature _____

Printed Name _____

Title _____

Date _____

**Reasons may be detailed on a separate page and attached to this form.*

APPROVED due to lack of response.

Attachment E –Form of Agreement to enter into Renewal Term

The undersigned parties acknowledge that the Initial Term of the IDN Group Purchasing Savings Agreement effective _____ (the "Agreement"), will be completed as of _____, 2022; and that they agree to proceed with the Renewal Term commencing on _____, 2022, in accordance with the terms and conditions set forth in the Agreement.

COUNTY OF VENTURA:

BY: _____
(signature)

PRINTED NAME: _____

TITLE: _____

DATE: _____

County of Ventura
General Services Agency
800 South Victoria Ave, L# 1000
Ventura, CA 93009

INTALERE, INC.:

BY: _____
(signature)

PRINTED NAME: _____

TITLE: _____

DATE: _____

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

Attachment F – Intalere Statement of Work for ICAP Engagement

(attached)

Intalere Statement of Work for ICAP Engagement



This Statement of Work for ICAP Engagement ("SOW"), is entered into as of the first day of the month following execution of this SOW ("SOW Effective Date"), by and between the County of Ventura, with its principal offices located at 800 South Victoria Avenue, L #1000, Ventura, CA 93009 ("Ventura") and Intalere, Inc., a professional supply chain company, with its principal offices located at Two CityPlace Drive, Suite 400, St. Louis, MO 63141 ("Intalere"). Ventura and Intalere are referred to herein individually as a "Party" and collectively as the "Parties."

This SOW relates only to this specific statement of work described below, and does not modify or supersede any agreement between the Parties relating to any product or service other than what is identified in this SOW.

Intalere and Ventura are parties to that certain Intalere IDN Group Purchasing Savings Agreement, with an Effective Date of _____ (the "GPO Agreement"), pursuant to which Ventura appoints and agrees to use Intalere as Ventura's group purchasing agent. Capitalized terms used in this SOW and not otherwise defined shall have the meanings proscribed in the GPO Agreement. The following terms and conditions of the GPO Agreement shall be applied to the subject matter of this SOW and are incorporated herein by this reference: **Sections 8.1 and 8.4 and Article 9.**

Intalere and Ventura hereby further agree as follows:

1. Solution and Fees. All Solutions to be provided by, and Fees to be paid to, Intalere over the term of this SOW shall be provided in accordance with the details on **Attachment A** attached hereto and incorporated by this reference.

2. Additional Terms and Conditions.

A. Location. The Solution provided by Intalere to Ventura under this SOW shall be performed at: Ventura County Medical Center, 300 Hillmont Ave. Ventura, CA 93003

B. Term: The term of this SOW shall be as follows:

SOW start date: Within 30 days of the execution of this SOW

SOW completion date: TBD.

The Parties may extend this term upon mutual written agreement.

C. Termination: This SOW may be terminated as follows:

- i. By either Party upon the failure by the other Party to perform any material obligation hereunder that is not cured within thirty (30) days after receipt of written notice and demand for cure from the affected Party.
- ii. By either Party upon the material violation by the other Party of any applicable state or federal law, rule or regulation in relation to its performance of this SOW; provided that such right to terminate shall only be available for thirty (30) days from the time that the non-violating Party becomes aware of such breach.

D. Referrals. Nothing in this SOW or in any other written or oral agreement between Ventura and Intalere, nor any consideration offered or paid in connection with this SOW, contemplates or requires the admission or referral of any patients or business to the other Party or any related entity of such other Party. The rights of both Parties under this SOW shall not be dependent in any way on the referral of patients or business to the other Party or any other person employed by, contracted with, or otherwise associated with such Party.

- E. Warranties.** Intalere warrants that in accordance with the terms of this SOW, the Solution will be provided in a good and workmanlike manner and that the Solution will be of the kind and quality described in this SOW. **UNDER THE TERMS OF THIS SOW VENTURA ACKNOWLEDGES THAT INTALERE, IN THOSE INSTANCES WHERE IT IS NOT THE MANUFACTURER, WHOLESALE OR DISTRIBUTOR OF A PRODUCT, MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, CONDITION, OR OTHER ATTRIBUTE OF ANY PRODUCTS OFFERED BY THIRD PARTIES UNDER THE TERMS OF THIS SOW.**
- F. Limitation of Liability.** Neither of the Parties will be entitled, in connection with any claimed breach or violation of this SOW, to exemplary or other special damages or any indirect, incidental or consequential damages, including without limitation damages relating to loss of profit, business opportunity or business reputation or a claim or demand by any third party. In the performance of its obligations, Intalere may give advice to Ventura based on information supplied by Ventura or third parties. Intalere shall exercise reasonable care in giving such advice but shall not be responsible for the decisions taken on the basis of the advice given. **VENTURA AGREES THAT ITS SOLE AND EXCLUSIVE REMEDY AND INTALERE'S SOLE AND EXCLUSIVE LIABILITY ARISING OUT OF OR RELATED IN ANY WAY TO THIS SOW, AND ALL RELATED INTALERE WARRANTIES, SOLUTIONS, ACTIONS, OMISSIONS, OR STATEMENTS SHALL BE THE RE-PERFORMANCE OF INTALERE'S SOLUTION.**
- G. Change Orders.** The Parties may change the scope of any Solution, deliverables and other matters specified in this SOW only by a written amendment executed by an authorized representative of each Party (each, a "Change Order"). Changes may result in Ventura incurring additional Fees, which shall be agreed upon in advance and included within the terms of any such Change Order.
- H. Offer Expiration.** Unless otherwise extended in writing, this SOW must be executed during the Term of the GPO Agreement to guarantee the terms herein. Any extension shall be within the sole discretion of Intalere.

IN WITNESS WHEREOF, the undersigned Parties have accepted and caused this SOW to be executed by their duly authorized representatives on and as of the day and year written below.

COUNTY OF VENTURA:

BY: _____
(Signature)

(Printed Name)

TITLE: _____

E-MAIL: _____

DATE: _____

County of Ventura
General Services Agency
800 South Victoria Ave, L#1000
Ventura, CA 93009

INTALERE, INC.:

BY: _____
(Signature)

Steve Kiewiet
Chief Commercial Officer
Steve.Kiewiet@intalere.com

DATE: _____

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

Attachment A – ICAP Engagement

1. **The “Solution”:** Ventura retains Intalere as a consultant to provide “ICAP Services” including an ICAP consulting engagement that will result in recommendations that will identify potential savings and/or cost reduction opportunities through analysis and evaluation of Ventura’s use of physician preference products in the areas of _____. The nature and scope of Intalere’s ICAP Services are set forth below.
2. **Intalere ICAP Services:** To perform the ICAP Services, Intalere will:
 - a. Provide an initial presentation to Ventura’s administration, materials management, and clinical staff to outline the ICAP consulting engagement and its anticipated benefits.
 - b. Assist Ventura in identifying the type of documents and information (such as implant logs, purchase orders, invoices, clinical and financial information, reimbursement/DRG information, etc.) which Intalere will need to receive (electronic or hard copies are preferred) from Ventura in order to perform the ICAP Services.
 - c. Provide a benchmark review to Ventura that describes (i) average discounts being received on specified physician preference products, and (ii) potential savings Ventura may be able to achieve if it implements suggestions made by Intalere during the course of the ICAP Services.
 - d. Provide a project outline to Ventura which details timelines for implementation of various processes identified during the course of the ICAP Services.
 - e. Provide Ventura with on-site assistance appropriate to the scope of the project, including identifying additional facility or other documents and information which Intalere may need to perform the ICAP Services.
 - f. Provide a comprehensive evaluation and recommended savings analysis plan of Ventura’s designated physician preference product area. The savings analysis plan may include, but not be limited to, potential savings opportunities, contracting options, margin improvement, reimbursement trends, and physician practice patterns.
 - g. Present to Ventura’s administration, materials management, and clinical staff a summary of Intalere’s findings and recommendations resulting from the ICAP Services.
 - h. Make available appropriate staff members and/or clinicians for on-site meetings with Ventura to (i) understand Ventura’s cost savings and/or other objectives, and (ii) share with Ventura’s physicians Intalere’s findings and recommendations upon completion of the ICAP Services.
 - i. Assist Ventura in (i) developing a vendor Request for Proposal or Request for Approval, (ii) completing the vendor proposal analysis and (c) conducting contract negotiations with vendors.
3. **Ventura Obligations:** In order for Intalere to successfully complete the ICAP Services, Ventura will:
 - a. Designate one of its staff members to serve as primary liaison to Intalere. Such staff member shall be knowledgeable and suitable for the assignment and will be available to assist Intalere from initiation through completion of the ICAP Services.
 - b. Promptly make available to Intalere all documents and information needed for the ICAP Services (such as implant logs, purchase orders, invoices, clinical and financial information, reimbursement/DRG information, etc.).
 - c. Provide Intalere with the support of its administration of the ICAP Services, including but not limited to attendance at key meetings and/or presentations relating to the ICAP Services.
 - d. Arrange all appropriate meetings relating to the ICAP Services, coordinate the participation and schedules of necessary Ventura’s representatives, and provide access to on-site meeting rooms.
 - e. Provide Intalere with access to Ventura’s physicians and other key personnel to assist in (i) approval of Ventura protocols as agreed upon by all appropriate parties, and (ii) implementation of Intalere’s recommendations and suggestions made during the course of the ICAP Services. Ventura understands that adherence to project timelines is highly dependent on the active participation and support of its physicians and their attendance at meetings relating to the ICAP Services and will use its best efforts to obtain the input and active participation of such physicians.
 - f. Assist Intalere in forming one or more evaluation committees, if and as needed, to facilitate the ICAP Services. Such committees may, among other things, help determine whether clinicians generally perceive different vendors’ products as being clinically acceptable. At the conclusion of such an evaluation process, Ventura will provide Intalere with a list of approved vendors for each product.
 - g. Designate one of its staff members to work with Intalere to develop and negotiate potential vendor agreements identified during the course of the ICAP Services.

- h. Designate one of its staff members to assist in monitoring final outcomes and/or possible savings opportunities identified during the course of the ICAP Services.

- 4. Calculated Savings:** Once Intalere's recommendations are presented to Ventura, Intalere will calculate the projected savings based on the unit volume and the procedure dollar volume established during Intalere's process evaluation. Using a re-pricing method, Intalere will use the historical data collected to demonstrate the savings realizable by comparing Ventura's proposed contract pricing as recommended by Intalere to the previous or current price paid for the items used. Using this method, Intalere will calculate how much Ventura's expenses would be decreased if the proposed contract pricing as recommended by Intalere had been in place (referred to herein as the "Calculated Savings"). If suppliers are eliminated, Intalere will use its best efforts (in consultation with Ventura) to determine savings on comparable products/procedures.
- 5. Major milestones / Completion of the project:** For all purposes related to this SOW, the Parties agree that the ICAP Services will be "completed" upon occurrence of one of the following conditions:
- Vendor negotiations are completed and Ventura has signed agreements in place, or
 - Ventura chooses to disengage from Intalere and proceed with the cost reduction initiative either independently or with any other third party.
- 6. Project Fee:** In consideration of Intalere's ICAP Services as determined by the Calculated Savings provided under this SOW, Intalere estimates that the "Savings Amounts" as defined in the GPO Agreement, shall total approximately _____. The standard project fee for this Service would be _____ dollars (\$XXX), based on estimated savings as identified in the table below.

Category/Product Area	Savings Achieved	Project Fee
TBD	\$0	\$0
	\$101,000 to \$200,000	\$25,000
	\$200,001 to \$300,000	\$35,000
	\$300,001 to \$400,000	\$45,000
	\$400,001 to \$500,000	\$55,000
	\$500,001 to \$600,000	\$70,000
	\$600,001 to \$700,000	\$90,000
	\$700,001 to \$800,000	\$105,000
	\$800,001+	\$125,000

Ventura shall pay no Fee to Intalere for the ICAP Services provided under this SOW. Ventura acknowledges and agrees that the amount of any savings achieved (per the product areas selected), plus the amount of the underwritten project fees shall be considered an Approved Savings Initiative and applied towards satisfaction of the Savings Guarantee identified in the GPO Agreement.

All travel expenses, shipping costs, media charges, and other reasonable out-of-pocket expenses sustained by Intalere in connection with this SOW will be included at no charge to Ventura.

Attachment G – Business Associate Agreement

(attached)

Business Associate Agreement

Health Insurance Portability & Accountability Act ("HIPAA")

This Business Associate Agreement (the "Agreement") is made and entered into as of _____ (hereinafter "Effective Date") by and between County of Ventura (hereinafter "Covered Entity") and Intalere, Inc. (hereinafter "Business Associate"). In consideration of the foregoing and other goods and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

RECITALS

- A. The parties agree that Business Associate must receive, create, maintain and/or use Personal Health Information, including genetic information, obtained from Covered Entity.
- B. The parties desire to bring forth this agreement to comply with the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 CFR Parts 160 and 164) and the applicable provisions of the American Recovery and Reinvestment Act of 2009 ("ARRA") and its implementing regulations, including the Health Information Technology and Economic Clinical Health Act of 2009 ("HITECH").
- C. The HIPAA Privacy rules provide, among other things, that a Covered Entity is permitted to disclose Personal health Information (as defined below) to a Business Associate, who may then use, create, and maintain said Personal Health Information, if the Covered Entity obtains satisfactory assurance in the form of a written contract that the Business Associate will appropriately safeguard the Personal Health Information pursuant to HIPAA.
- D. Business Associate acknowledges that enactment of ARRA (P.L. 111-5) amended certain provisions of HIPAA in ways that directly regulate, or will on future dates directly regulate, Business Associate's obligations and activities under the Privacy Rules.
- E. Any terms not otherwise defined in this agreement will have the meaning prescribed by HIPAA and the HITECH Act, as applicable.

TERMS AND CONDITIONS

1. Definitions

- 1.1 *Business Associate.* "Business Associate" shall mean Intalere, Inc.
- 1.2 *Covered Entity.* "Covered Entity" shall mean County of Ventura.
- 1.3 *C.F.R.* "C.F.R." means the Code of Federal Regulations.
- 1.4 *Individual.* "Individual" shall have the same meaning as the term "individual" in 45 CFR § 164.501 and shall include persons who qualify as a personal representative in accordance with 45 CFR § 164.502(g).
- 1.5 *Privacy Rule.* "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- 1.6 *Personal Health Information.* "Personal Health Information" shall have the same meaning as the term "protected health information" in 45 CFR § 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity, electronically or otherwise

transmitted. Personal Health Information is identifiable and pertains to an individual's past, present or future health information.

- 1.7 *Required By Law.* "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.
- 1.8 *Secretary.* "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- 1.9 *Security Breach.* "Security Breach" shall mean the unauthorized access of unsecured Personal Health Information that could potentially result in an individual's reputational or financial harm.

2. Obligations and Activities of Business Associate

- 2.1 Business Associate agrees to not use or disclose Personal Health Information other than as permitted or required by the Agreement or as Required By Law.
- 2.2 Business Associate agrees to use reasonable and appropriate safeguards to prevent use or disclosure of the Personal Health Information and Electronic Personal Health Information, other than as provided for by this Agreement, in accordance with the applicable requirements of 45 CFR Part 164 and any subsequent legislation or guidance, including, but not limited to, the requirements of Section 13401 of ARRA and the regulations thereunder.
- 2.3 Business Associate shall develop and implement policies and procedures to assure compliance with applicable provisions of the HITECH Act and any implementing regulations in order to safeguard and preserve the integrity, confidentiality and availability of Personal Health Information and to prevent unauthorized acquisition, access, use or disclosure of Personal Health Information. Such safeguards shall be consistent with 45 CFR Part 164 Subpart C and as required by the HITECH Act.
- 2.4 Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Personal Health Information by Business Associate in violation of the requirements of this Agreement. In the event of a Security Breach, as defined in Section 13400(1) of ARRA, by Business Associate or any of its officers, directors, employees, subcontractors, or agents, Business Associates shall cooperate with the Covered Entity and assume the cost associated with the Security Breach in order to notify the affected individuals pursuant to Section 13402 of ARRA.
- 2.5 Business Associate agrees to report to Covered Entity any use or disclosure of the Personal Health Information not provided for by this Agreement of which it becomes aware within 5 business days.
- 2.6 Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Personal Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- 2.7 Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner agreed upon within 21 business days to Personal Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR § 164.524.
- 2.8 Business Associate agrees to make any amendment(s) to Personal Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §

164.526 at the request of Covered Entity or an Individual, and in the time and manner agreed upon within 30 calendar days.

- 2.9 Business Associate agrees to make internal practices, books, and records, including policies and procedures and Personal Health Information, relating to the use and disclosure of Personal Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, in a time and manner agreed upon, within 21 business days, or designated by the Covered Entity, for purposes of determining Covered Entity's compliance with the Privacy Rule.
- 2.10 Business Associate agrees to document such disclosures of Personal Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Personal Health Information in accordance with 45 CFR § 164.528 and any subsequent legislation or guidance regarding an individual's right to an accounting of the disclosures of his or her Personal Health Information, including, but not limited to, the requirements of Sections 13405 of ARRA and the regulations thereunder.
- 2.11 Business Associate agrees to provide to Covered Entity or an Individual, in time and manner agreed upon, within 21 business days, information to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528, and any subsequent legislation or guidance regarding an individual's right to an accounting of the disclosures of his or her Personal Health Information, including, but not limited to, the requirements of Sections 13405 of ARRA and the regulations thereunder. If Covered Entity requests an accounting of an individual's Personal Health Information more than once in any twelve (12) month period, Business Associate may impose a reasonable fee for such accounting in accordance with 45 CFR § 164.528(c).
- 2.12 Business Associate agrees to immediately notify the Covered Entity of any Security Breach. Any such notification is to be made within 5 business days and shall include the following information:
 - a. Identify the nature of the non-permitted access, use or disclosure, including the date of the event and the date of discovery of the event
 - b. Identify the Personal Health Information breached
 - c. Identify who made and who received the non-permitted access, use or disclosure
 - d. Identify corrective action took or will take to prevent further breaches
 - e. Identify mitigating actions to reduce harm
- 2.13 Business Associate agrees to comply with the provisions applicable to Business Associates contained in the HITECH Act of 2009, including: administrative safeguards (45 CFR § 164.308); physical safeguards (45 CFR § 164.310); technical safeguards (45 CFR § 164.312); policies, procedures and documentation requirements (45 CFR § 164.502(e)(2) and 45 CFR § 164.504(e).
- 2.14 Business Associate agrees to comply with Accounting for Disclosure (45 CFR § 164.528) by the effective date prescribed by HIPAA in the event that HITECH Act regulations or guidance clarify that Covered Entity has one or more Electronic Health Records that is created, accessed, used or maintained.
- 2.15 Business Associate acknowledges that it shall request from the Covered Entity and so discloses to its affiliates, subsidiaries, agents, and subcontractors or other third parties, only the minimum Personal Health Information necessary to perform or fulfill a specific function required or

permitted hereunder in accordance with the Privacy Rules and Section 13405(b) of ARRA and any regulations thereunder.

- 2.16 Business Associate acknowledges that if the business associate knows of a “pattern of activity or practice” by a covered entity that breaches this business associate agreement (“BAA”), but fails to cure the breach, terminate the BAA, or report the non-compliance to Department of Health and Human Services (HHS), the Business Associate shall be in violation of HIPAA. (42 USC § 17934(b)).

3. Permitted Uses and Disclosures by Business Associate

- 3.1 *General Use and Disclosure Provisions.* Except as otherwise limited in this Agreement, Business Associate may use or disclose Personal Health Information on behalf of, or to provide services to, Covered Entity for the following purposes, if such use or disclosure of Personal Health Information would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity:
- 3.2 *Specific Use and Disclosure Provisions (Refer to underlying services agreement):*
- a. Except as otherwise limited in this Agreement, Business Associate may use or disclose Personal Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Intalere IDN Group Purchasing Savings Agreement, including the attachments thereto, executed on or around the date of execution of this Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.
 - b. Except as otherwise limited in this Agreement, Business Associate may use Personal Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
 - c. Except as otherwise limited in this Agreement, Business Associate may disclose Personal Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
 - d. Except as otherwise limited in this Agreement, Business Associate may use Personal Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 CFR § 164.504(e)(2)(i)(B).
 - e. Business Associate may use Personal Health Information to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j)(1).

4. Obligations of Covered Entity

- 4.1 *Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions*
- a. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Personal Health Information.

- b. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Personal Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Personal Health Information.
- c. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Personal Health Information that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Personal Health Information.

5. Permissible Requests by Covered Entity

- 5.1 Covered Entity shall not request Business Associate to use or disclose Personal Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity. Covered Entity represents and warrants that it has the right and authority to disclose Personal Health Information to Business Associate in order for Business Associate to perform its obligations and provide services to Covered Entity. Covered Entity warrants Business Associate's use of the Personal Health Information does not violate the Privacy Rules, Covered Entity's privacy notice or any applicable law.

6. Term and Termination

- 6.1 *Term.* The Term of this Agreement shall be effective as of the signing date, and shall terminate when all of the Personal Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.
- 6.2 *Termination for Cause.* Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
 - a. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
 - b. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
 - c. If neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary.
- 6.3 *Effect of Termination.*
 - a. Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
 - b. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon learning that return or destruction of Protected Health Information is infeasible, Business Associate shall

extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

7. Miscellaneous

- 7.1 *Regulatory References.* A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- 7.2 *Amendment.* The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- 7.3 *Survival.* The respective rights and obligations of Business Associate under Section 6.3 of this Agreement shall survive the termination of this Agreement.
- 7.4 *Interpretation.* Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule, as amended by ARRA, and subsequent regulations. In the event of inconsistency or conflict between this agreement and any other agreement between the parties, the terms, provisions and conditions of this Agreement shall govern and control.
- 7.5 *No Third Party Beneficiary.* Nothing express or implied in this Agreement is intended to confer, not shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever.
- 7.6 *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California unless the parties have agreed to a different state's laws in the service agreement governing the services being provided by Business Associate to Covered Entity to which this Agreement relates.

IN THE WITNESS WHEREOF, the parties hereto have executed this Agreement.

County of Ventura

Business Associate

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____