

PARTICIPATION AGREEMENT

This Participation Agreement (“Agreement”) is made as of the _____ day of _____ 200____ between MedAssets® Supply Chain Systems, LLC (“MedAssets”) located at 280 South Mount Auburn Road, Cape Girardeau, MO 63703 and

 (“Member”).

Name/City/State

MedAssets provides group purchasing programs to healthcare providers and has entered into an affiliation agreement with Excel Rx GSO, LLC to market the program to healthcare providers. Member wishes to access MedAssets’ portfolio of vendor contracts (the “Program”) for the procurement of supplies, services, and equipment (collectively, “Products”). Accordingly, the parties agree as follows:

- 1. Term and Termination.** The effective date of this Agreement shall be the date on which an Officer of MedAssets signs it (the “Effective Date”). The initial term of this Agreement is for one (1) year (“Initial Term”), and shall be automatically renewed for successive one-year periods (collectively, the “Term”). Either party may terminate this Agreement without cause upon ninety (90) days prior written notice to the other party.
- 2. Conditions to Program Access.** Member agrees to: (i) comply with the applicable terms and conditions of any vendor agreement pursuant to which it elects to make any purchase (the actual terms to be received from vendors under the Program are dependent upon Member’s eligibility under such vendor’s program); and (ii) in the event that Member elects to access the Pharmacy Program to: (a) provide its DEA number; and (b) execute a Group Program Designation Form verifying such purchases are for Member’s “Own Use”. Notwithstanding the foregoing, Member is not obligated to make any purchase hereunder.
- 3. Administrative Fees.** MedAssets discloses to Member that it receives administrative fees from vendors based on purchases made by Member; that this administrative fee is not fixed at the same amount in each vendor agreement; and that the administrative fee paid by vendors to MedAssets is three percent (3%) or less of the purchase price of the covered goods or services.

MedAssets will report at least annually to Member, in writing, and to the Secretary of Health and Human Services on request, the amount received from each vendor with respect to purchases made by or on behalf of Member. Member understands that the discounted pricing provided as part of the Program, as well as the value of any services provided at less than full price including but not limited to the IT Services, may be regarded as a “discount” within the meaning of 42 U.S.C. Section 1320a-7b(b)(3)(A) of the Social Security Act and the regulations promulgated hereunder at 42 C.F.R. Section 1001.952(h) and that Member may have an obligation to report this discount to any state or federal program which provides cost or charge-based reimbursement to Member, as the case may be, for the items to which the discount applies.

- 4. Own Use.** Member represents that every purchase made by Member through any vendor agreement shall be for the Member’s ultimate consumption or “Own Use”, and not for resale, as defined by Abbott Labs et al v. Portland Retail Druggist Association, Inc. (425 US 1, 1976), its successor line of cases (Own Use), and the Prescription Drug Marketing Act of 1987.
- 5. IT Services.** MedAssets shall grant Member a personal, non-exclusive, non-assignable, and non-transferable license to access CDQuick® and such other online member services as offered from time to time by MedAssets in its sole discretion, (collectively, the “IT Services”). Member may not download, upload, copy, print, display, reproduce, publish, post, distribute, or transmit any IT Service, IT Service properties or User Information (as defined below) for purposes outside the scope of this Agreement. MedAssets may terminate this license at any time, with or without cause; unless otherwise specified, all other terms and conditions of this Agreement will remain in full force and effect.
- 6. Confidentiality.** The parties agree to keep confidential the terms of this Agreement, the IT Services, Member purchase data and all pricing and other terms and conditions of MedAssets’ vendor agreements (collectively, “User Information”). Member shall only use the User Information in connection with Member’s use of MedAssets’ vendor agreements pursuant to this Agreement. Member agrees that title and ownership of the IT Services and User Information remains with MedAssets, and will limit disclosure to bona fide employees of Member on a need-to-know basis. Each party recognizes that the other party’s remedy at law for breach of this

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Section would be inadequate, and agrees that such party shall be entitled to appropriate equitable relief, including but not limited to, injunctive relief which remedy shall be non-exclusive. MedAssets may immediately terminate this Agreement upon breach of this Section at the sole discretion of MedAssets.

7. Limitation of Warranties.

7.1 Generally - Member understands and acknowledges that MedAssets is performing a service and is not effecting a sale between the Member and any vendor. Accordingly, Member acknowledges and agrees that MedAssets makes no representation or warranty, express or implied, including without limitation, any warranty of merchantability or fitness for a particular purpose with respect to any of the Products. Member acknowledges and agrees that MedAssets shall have no liability whatsoever for any personal injury, property damage, or lost profits caused by, or related to, the Products. MedAssets shall in no event be liable for any general, special, incidental, consequential, punitive, or exemplary damages arising under this Agreement. In no event shall MedAssets' liability to Member for any cause whatsoever exceed the lesser of the total Program Fees paid by the Member to MedAssets pursuant to this Agreement, or One Thousand Dollars (\$1000.00).

7.2 IT Services - Member acknowledges and agrees that the User Information, any IT Service, or the information presented in any IT Service are provided "as is" and with all faults whether caused by MedAssets or any third party. MedAssets expressly disclaims the warranties of title and non-infringement, and the implied warranties of merchantability and fitness for use for a particular purpose with regard to all IT Services or any information derived therefrom. Nothing contained in any MedAssets or MedAssets' affiliate website is intended to replace the independent medical judgment of a health care professional, and they shall not be liable for any damages arising out of reliance on the information provided by the IT Services.

8. Taxes. All taxes, duties, fees and other governmental charges of any kind (including sales and use taxes, but excluding taxes based on the gross revenues or net income of MedAssets) which are imposed by or under the authority of any government or any political subdivision thereof on the fees for the Services provided by MedAssets under this Agreement shall be borne by Member and shall not be considered a part of, a deduction from or an offset against such fees.

9. Compliance with Law. The parties mutually represent that throughout the term of this Agreement their respective performance under this Agreement shall be, and shall remain, in compliance with all applicable federal, state and local laws and regulations.

Total Beds or Physicians _____

RD _____

MEMBER

MEDASSETS SUPPLY CHAIN SYSTEMS, LLC

Authorized Representative for Member

MedAssets Supply Chain Systems, LLC Corporate Officer

Print or Type Name

Print or Type Name

Title

Date

Title

Date