

## **PARTICIPATION AGREEMENT FOR COMMON GOODS**

This Participation Agreement for Common Goods (the “Agreement”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, between MedAssets Supply Chain Systems, LLC and The Broadlane Group, Inc. (collectively, “MedAssets”) located at 280 South Mount Auburn Road, Cape Girardeau, MO 63703, and

(“Member”).

\_\_\_\_\_  
(Name/City/State)

MedAssets provides MedAssets purchasing programs to senior and other food and meal providers. Member wishes to access MedAssets’ portfolio of vendor contracts (the “Program”) for the procurement of food, dairy, 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 three (3) years (“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. Except in the case of willful misconduct of Member, termination and, as provided in Section 7 herein, equitable relief, shall be the sole and exclusive remedies of MedAssets for breach or violation of any provision of this Agreement.

**2. Conditions to Program Access.** Member agrees to 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). If Member chooses to access the MedAssets’ Pharmacy Program, additional terms apply. Member is not obligated to make any purchase hereunder.

**3. Exclusivity and No Fees for Program Participation.** Member hereby agrees that in lieu of program participation fees, MedAssets will act as Member’s primary Group Purchasing Organization for food products. Nothing contained herein shall be construed to limit or restrict Member from obtaining food products from any non-group purchasing source at any time. The parties agree that no fees of any kind for Program participation shall be charged to any Member who agrees to the conditions of this Agreement. Notwithstanding the foregoing, if the Member has a pre-existing group purchasing relationship, then MedAssets agrees to waive the exclusivity requirement in this Section 3 upon request from the Member. If Member chooses to participate only in the MOWAA/Dean Dairy Program, the exclusivity requirement in this Section shall not apply.

**4. 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 the Social Security Act and the regulations promulgated thereunder 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.

**5. Member Representations and Warranties.** Member represents that: (a) it operates for the purposes of serving seniors and other persons in need; and, (b) it is a tax-exempt organization. Further, Member hereby represents and warrants that purchases of Products through this Program by Member and donations, if any, of Products to Member by a vendor shall be for Member’s Own Use and organizational purposes, and shall not be resold by Member. Only organizations that meet these qualifications may participate in the Program. Violation of any of the applicable restrictions may be grounds for immediate revocation and termination of MedAssets’ acceptance of Member and this Agreement at the sole discretion of MedAssets.

**6. IT Services License.** MedAssets shall grant Member a personal, non-exclusive, non-assignable, and non-transferable license to access CDQuick and MedAssets’ other online member services as offered from time to time by MedAssets in its sole discretion, including, but not limited to, its members’ catalog, the Common Goods website and its members-only executive dashboard, (collectively, the “IT Service(s)”). 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. Upon termination of this Agreement, Member shall no longer access nor use the IT Services, and shall return or delete any software or related IT Services information.

**7. Confidentiality.** The parties agree to keep confidential the terms of this Agreement, the IT Services, Member identity and/or contact information and purchase data and all pricing, vendor information, 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. The parties agree that: title and ownership of the IT Services and User Information remains with MedAssets; they will hold User Information in confidence and not disclose User Information to any third parties without the prior written consent of such other party, except as may be required or provided for by law; and, they will limit disclosure of the User Information and IT Services only to bona fide employees on a need-to-know basis. Each party recognizes that the other party’s remedy at law for any breach of this 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 hereby agrees that Common Goods shall maintain a privacy policy protecting Confidential Information. Violation of any provision of this paragraph will be considered a breach of this Agreement and will be grounds for immediate termination of this Agreement by MedAssets. Member's confidentiality obligations hereunder do not extend to User Information that (a) is known to it prior to disclosure by MedAssets or through the Common Goods website; (b) is now or hereafter comes into the public domain through no fault of Member; or, (c) is required by operation of law to be disclosed.

## 8. Limitation of Warranties.

**8.1 Generally** - Member understands and acknowledges that MedAssets is performing a service and is not effecting a sale between the Member and any vendor. Member acknowledges and agrees that any use of the name "Meals on Wheels Association of America" ("MOWAA") in the title or advertising of Common Goods is merely descriptive and does not impute or imply any responsibilities, obligations or liabilities under this Agreement. Member acknowledges and agrees that neither MedAssets nor MOWAA makes any endorsement, representation or warranty, express or implied, in any manner, including without limitation, any warranty of merchantability, quality or fitness for a particular purpose with respect to any of the Products offered through Common Goods or User Information, and acknowledges and agrees further, that neither MedAssets nor MOWAA handles food items nor shall be liable in any manner or under any theory whatsoever for the safety or quality of food, including but not limited to its nutritional value or freshness, or other items offered on, or purchased or obtained from vendors on, the Common Goods website. Additionally, Member acknowledges and agrees that neither MedAssets nor MOWAA shall have any liability whatsoever, for any personal injury, property or other damages, or lost profits caused by, or related to any Products or service. Member further agrees that any and all claims with respect to any Products or service purchased or obtained pursuant to any vendor agreement, including any warranty or product liability claim, shall be made by Member directly to and against the applicable vendor, and that neither MedAssets nor MOWAA shall be joined in any such claim. Accordingly, Member, pursuant to this Agreement, shall hold MedAssets and MOWAA harmless as respects the provisions contained in this Section 8. MedAssets and MOWAA shall in no event be liable for any general, special, incidental, consequential, punitive, or exemplary damages arising under this Agreement, or arising out of the use of the Common Goods program, the User Information, or Products by Member, including, without limitation, damages for loss of business profits, business interruption, loss of business information, and the like incurred by Member, even if MedAssets or MOWAA have been advised of the possibility of such damages.

**8.2 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 MedAssets or MedAssets' affiliate website is intended to replace the independent medical judgment of a health care professional, the independent nutritional judgment of a food nutrition professional or the User itself and neither MedAssets, its affiliate nor MOWAA shall be liable for any damages arising out of reliance on the information provided by the IT Services or User Information. MedAssets and MOWAA make no warranties regarding the accuracy of the representations made and the information presented by any IT Service, the information presented in any Common Goods website, or of the representations or Products made by it or by its vendors, either express or implied. MedAssets attempts to require vendors to be accurate in the presentation and description of the vendors' Products and pricing information, and attempts to provide accurate information with regard to various other subject matters in the Common Goods Program User Information, but has no duty to Member to do so. MedAssets disclaims all liability based upon reliance upon such information.

**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.

**10. Miscellaneous.** This Agreement (including any addendum attached hereto and identified in such addendum as being a part hereof), together with the on-line User Agreement, is the complete and exclusive agreement by and between MedAssets and Member and supersedes all prior discussions or agreements, whether oral or written between the parties. This Agreement may be modified or supplemented only in a writing signed by representatives authorized by the parties. Neither party may assign this Agreement or any rights or obligations under it without the prior, written consent of the other party, which consent shall not be unreasonably withheld.

The parties have executed this Agreement as of the date first written above.

### MEMBER

\_\_\_\_\_  
Authorized Representative for Member

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Title Date

\_\_\_\_\_  
Address

\_\_\_\_\_  
City/State/Zip

\_\_\_\_\_  
Telephone Number Fax Number

**MEDASSETS SUPPLY CHAIN SYSTEMS, LLC,**  
on behalf of itself and The Broadlane Group, Inc.

\_\_\_\_\_  
Authorized Representative for MedAssets

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Title Date