

**EXCLUSIVE SILVERSCRIPT INSURANCE  
COMPANY (“SILVERSCRIPT”) REFERRAL PROGRAM  
REFERRAL AGENT PARTICIPATION AGREEMENT**

The SilverScript Referral Program is available to \_\_\_\_\_ (“Company”) agents who are not contracted to market or sell SilverScript Prescription Drug Products (“PDPs”) but who identify Medicare-eligible or soon-to-be eligible clients interested in learning more about SilverScript PDP Products (“Referral Agents”). This Agreement between Company and Referral Agent describes the terms and conditions of the SilverScript Referral Program.

**Because of Centers for Medicare and Medicaid Services (“CMS”) requirements with respect to compensation for Referral Agents, Referral Agents participating in the SilverScript Referral Program are not allowed to sell, market, provide literature, or explain the SilverScript PDP Products to potential clients. This means Referral Agents shall provide only a personalized SilverScript referral card to their client which will list the SilverScript Referral Phone Line toll free phone number for further information.**

Subject to the terms and conditions described herein, the Referral Agent shall receive a one-time referral fee (“Referral Fee”) for each new client enrolled in a SilverScript PDP Product as a result.

In order to participate in the SilverScript Referral Program, I agree to the following Terms and Conditions:

1. Within the states (“the Territory”) listed on **Exhibit A**, I will only contract to refer my clients interested in stand-alone PDPs to SilverScript PDP products and will not contract to refer my clients to any other PDP within the same Territory.
2. I will maintain an active license to sell health insurance in each state within the Territory which I am authorized to participate in the SilverScript Referral Program and must be appointed with SilverScript in each state within the Territory.
3. I will not refer any clients to SilverScript until receipt of the referral program description materials and my supply of personalized SilverScript referral cards. Referral cards will be provided individually to a client with whom I have personal contact and will not be mass distributed.
4. I will not engage in “cold calling,” telemarketing, or door-to-door solicitation in pursuit of referrals for the SilverScript Referral Program.
5. I will not engage in any sales or marketing activity as a part of my effort to identify clients to refer as part of the SilverScript Referral Program.
6. As a Referral Agent, I must sign and return a SilverScript Referral Participation Form annually to continue my participation as a Referral Agent.
7. I will have limited access to the SilverScript Agent Portal for the sole purpose of viewing enrollment status and compensation reports. As such, I will comply with the Business Associate Agreement as attached to this Agreement as **Exhibit B**,

a copy of which I will sign and return with this Agreement.

8. This Agreement is subject to change upon written notice to the Referral Agent by SilverScript and may be terminated at any time by the Referral Agent or SilverScript.

I understand that an individual eligible for referral under the SilverScript Referral Program is a client who:

- Is (or will soon be) eligible for Medicare;
- Lives, or will be living, in the SilverScript service area on the effective date of coverage;
- Is a new client for SilverScript, *i.e.*, someone who is not a current SilverScript PDP Product member AND who has not previously contacted SilverScript to request information or an enrollment kit, nor communicated with another Referral Agent about the SilverScript Referral Program; and
- Has accepted a SilverScript Referral Program Card personalized with the dedicated SilverScript Referral Phone Line toll free phone number and my assigned Referral Agent ID.

I understand that a client expressing interest in a SilverScript PDP Product has choices and may decide not to contact SilverScript and that even if the client does contact SilverScript, that not all referrals provided to SilverScript will result in an enrollment in a SilverScript PDP Product. I also understand that SilverScript reserves the right to choose whether or not to accept a referral. Once SilverScript receives a telephone call from my client on the SilverScript Referral Phone Line, a SilverScript representative will be responsible for presenting/discussing the product benefits and either assisting the client with a telephone enrollment. I will not be involved in these presentations or discussion and will not assist with enrollment.

I understand that I will receive a one-time payment of the Referral Fee only after my client remains enrolled in the SilverScript PDP Product for 90 days. If an enrollment request is NOT approved, I will also not be entitled to a payment for the referral. Payment of the Referral Fee will be made within 30 days of all three of the following occurring: (1) after the client enrolls in the SilverScript PDP Product, (2) is confirmed by CMS, and (3) after payment of their third month's premium. If applicable, I will complete the Referral Agent Fee Assignment Agreement attached hereto as **Exhibit C**.

**2011 Referral Payment Schedule:**      \$45.00

**I AGREE TO COMPLY WITH THE TERMS AND CONDITIONS OF THIS PARTICIPATION AGREEMENT AND UNDERSTAND THAT VIOLATION OF ANY PART OF THIS PARTICIPATION MAY RESULT IN TERMINATION OF MY PARTICIPATION AGREEMENT WITH SILVERSCRIPT.**

**REFERRAL AGENT**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

SSN: \_\_\_\_\_ Birth Date: \_\_\_\_\_

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

Mobile Number: \_\_\_\_\_ E-mail Address: \_\_\_\_\_

**Mailing Address:**

Contact Name: \_\_\_\_\_

Street Address 1: \_\_\_\_\_

Street Address 2: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

**Recruiting Information:**

Recruiter Name: Empower Brokerage, Inc. Phone: (817) 306-2334

Recruiting Agency: Empower Brokerage, Inc.

**Contracting Information:**

Contracting identity (circle one) Individual Corporation Partnership

Requesting authorization to refer in the states of:

State: \_\_\_\_\_ License Number: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

State: \_\_\_\_\_ License Number: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

State: \_\_\_\_\_ License Number: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

State: \_\_\_\_\_ License Number: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

State: \_\_\_\_\_ License Number: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

State: \_\_\_\_\_ License Number: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

State: \_\_\_\_\_ License Number: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

State: \_\_\_\_\_ License Number: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

**SEND COMPLETED FORM TO: \_\_\_\_\_**

**Please retain a copy of this form for your records. Upon approval of your Referral Program Participation Agreement, you will receive referral program details. No referrals shall be made until you receive program details from SilverScript.**

**EXHIBIT A**

**AUTHORIZED REFERRAL AGENT TERRITORY**

<input type="checkbox"/> All 50 States and the District of Columbia	<input type="checkbox"/> Missouri
<input type="checkbox"/> Puerto Rico	<input type="checkbox"/> Montana
<input type="checkbox"/> Alabama	<input type="checkbox"/> Nebraska
<input type="checkbox"/> Alaska	<input type="checkbox"/> Nevada
<input type="checkbox"/> Arizona	<input type="checkbox"/> New Hampshire
<input type="checkbox"/> Arkansas	<input type="checkbox"/> New Jersey
<input type="checkbox"/> California	<input type="checkbox"/> New Mexico
<input type="checkbox"/> Colorado	<input type="checkbox"/> New York
<input type="checkbox"/> Connecticut	<input type="checkbox"/> North Carolina
<input type="checkbox"/> Delaware	<input type="checkbox"/> North Dakota
<input type="checkbox"/> District of Columbia	<input type="checkbox"/> Ohio
<input type="checkbox"/> Florida	<input type="checkbox"/> Oklahoma
<input type="checkbox"/> Georgia	<input type="checkbox"/> Oregon
<input type="checkbox"/> Hawaii	<input type="checkbox"/> Pennsylvania
<input type="checkbox"/> Idaho	<input type="checkbox"/> Rhode Island
<input type="checkbox"/> Illinois	<input type="checkbox"/> South Carolina
<input type="checkbox"/> Indiana	<input type="checkbox"/> South Dakota
<input type="checkbox"/> Iowa	<input type="checkbox"/> Tennessee
<input type="checkbox"/> Kansas	<input type="checkbox"/> Texas
<input type="checkbox"/> Kentucky	<input type="checkbox"/> Utah
<input type="checkbox"/> Louisiana	<input type="checkbox"/> Vermont
<input type="checkbox"/> Maine	<input type="checkbox"/> Virginia
<input type="checkbox"/> Maryland	<input type="checkbox"/> Washington
<input type="checkbox"/> Massachusetts	<input type="checkbox"/> West Virginia
<input type="checkbox"/> Michigan	<input type="checkbox"/> Wisconsin
<input type="checkbox"/> Minnesota	<input type="checkbox"/> Wyoming
<input type="checkbox"/> Mississippi	

**EXHIBIT B**  
**Business Associate Agreement**

This Business Associate Agreement (“Business Associate Agreement”) is effective as described below by and between \_\_\_\_\_ (“Company”), together with its affiliates and \_\_\_\_\_ (“Subagent”). Subagent provides services or functions pursuant to one or more service agreements entered into between the parties (“collectively “Service Agreement”) and which are governed by (i) the privacy and security regulations of 45 CFR Parts 160-164 (“the HIPAA Rules”), either because Company is a covered entity or business associate under those Rules, and (ii) any other applicable federal or state privacy laws and standards, including the Payment Card Information Data Security Standards and the Identity Theft Red Flag Rule (16 CFR Part 681) (“Red Flag Rule”) ((i) and (ii) collectively, “Privacy Laws”).

Company and Subagent mutually agree to the terms of this Agreement in order to comply with the HIPAA Rules and other applicable Privacy Laws.

This Agreement is effective as of \_\_\_\_\_ or the effective date of the Services Agreement if earlier (“the Effective Date”).

**1. Definitions**

- a. **Breach.** “Breach” shall mean any acquisition, access, use, or disclosure of Private Information in a manner not permitted by the HIPAA Rules.
- b. **Individual.** “Individual” shall have the same meaning as the term “individual” in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g) or other applicable federal or state law.
- c. **Private Information.** “Private Information” consists of (1) Protected Health Information (“PHI”), as defined by the HIPAA Rules, created or received on behalf of, or received from Company, (2) Nonpublic Personal Financial Information and, as applicable, Nonpublic Personal Health Information, as defined by the Gramm Leach Bliley Act , and (3) any data or information that (i) relates to an individual and (ii) identifies or there is a reasonable basis to believe it can be used to identify the individual (such as, but not limited to, an individual’s name, postal address, email address, telephone number, date of birth, Social Security number, driver’s license number, financial account number, or any other unique identifier).
- d. **Security Incident.** “Security Incident” has the same meaning as the term “security incident” in 45 CFR 164.304, and generally means any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system that stores, transmits or processes Private Information

All terms used in this Agreement and not defined elsewhere herein or in the Services Agreement shall have the same meaning as those terms as used or defined in the HIPAA Rules.

## 2. Permitted Uses and Disclosures of Protected Health Information.

- a. **Permitted Uses and Disclosures.** Subagent agrees not to use or disclose Private Information other than as permitted or required by this Agreement or as Required by Law. Except as otherwise limited by this Agreement, Subagent may use and disclose Private Information in order to provide its services as described in the Services Agreement.
- b. **Use and Disclosure for Subagent's Management and Legal Responsibilities.** Except as otherwise limited in this Agreement, Subagent may use Private Information if necessary for its proper management and administration or to carry out its legal responsibilities. In addition, Subagent may disclose Private Information for its proper management and administration or to carry out its legal responsibilities provided that:
  - i. any such disclosure is Required By Law; or
  - ii. (1) Subagent obtains reasonable assurances, in the form of a written agreement, from the person to whom the Private Information is disclosed that it will be held confidentially and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person; and (2) the person agrees to notify Subagent immediately of any instances of which it is aware in which the confidentiality of the Private Information has been breached.
- c. **De-identified Information.** Subagent may not de-identify Private Information except as necessary to provide its services as described in the Services Agreement. Subagent is prohibited from using or disclosing such de-identified information for its own purpose without the explicit written permission of Company.

## 3. Obligations of Subagent with respect to Private Information

- a. **Safeguards.** Subagent shall maintain a comprehensive written information security program that is consistent with industry best practices and in compliance with applicable Privacy Laws, including implementing appropriate administrative, technical and physical safeguards to maintain the security and confidentiality of Private Information, and the security, confidentiality, integrity and availability of electronic Private Information as required by the HIPAA Rules. Such safeguards shall at least meet the standards described in Schedule A. Without limiting the generality of the foregoing, Subagent shall maintain security policies and procedures, including a Security Incident response plan, data retention and disposal policies, and a policy and procedure for training of Subagent's employees, agents and subcontractors on the proper handling of Private Information. The disposal of any documents containing Private Information shall be by

means of shredding, erasing or some other means that renders the Private Information unreadable or undecipherable. To the extent that Subagent has access to any part of Company's data system, Subagent shall comply with Company's information security policies.

b. **Mitigation.** Subagent agrees to mitigate, to the extent practicable, any harmful effects of any non-permitted use or disclosure or Security Incident involving Private Information of which it becomes aware.

c. **Reporting Breaches and Security Incidents.**

i. Unauthorized Uses and Disclosures and Security Incidents. Immediately, but no later than two (2) business days after learning thereof, Subagent shall report any use or disclosure of Private Information not permitted by this Agreement or any successful Security Incident by email to [privacyoffice@cvs.com](mailto:privacyoffice@cvs.com) and [privacy.officer@caremark.com](mailto:privacy.officer@caremark.com). This report shall at least:

1. Identify the nature of the use, disclosure or Security Incident;
2. Identify the Private Information involved;
3. Identify who made the use or disclosure or caused the Security Incident;
4. Identify what corrective action Subagent took or will take to prevent further such use, disclosure or Security Incidents;
5. Identify what steps Subagent took or will take to mitigate, to the extent practicable, the harmful effects of the use, disclosure or Security Incident; and
6. Provide such other information as Company may reasonably request.

For unsuccessful Security Incidents, the parties agree that Subagent shall provide notice and information on these upon request. A successful Security Incident is defined as any Security Incident that results in the unauthorized use, access, disclosure, modification or destruction of electronic Private Information. The parties consider the following to be illustrative of unsuccessful Security Incidents when they do not result in actual unauthorized access, use, access, disclosure, modification or destruction of electronic Private Information: (i) pings on Subagent's firewall, (ii) port scans, (iii) attempts to log on to a system or enter a database with an invalid password or username, (iv) denial-of-service attacks that do not result in a server being taken off-line, and (v) Malware (worms, viruses, etc.)

ii. Breaches. Subagent agrees to report any Breach to Company immediately, but in no event later than within two (2) business days, after it is discovered (within the meaning of 45 CFR 164.410(a)(2)),



and shall provide such information concerning the Breach as requested by Company to determine whether notifications are required by 45 CFR 164.404, 406 and 408. At a minimum, Subagent shall provide the information concerning the Breach as required under Section 3(c).A above, and for the notifications to individuals under 45 CFR 164.404(c), and any other information that may be relevant for Company to perform a risk assessment to determine whether any notifications should be made. Subagent shall cooperate with and assist Company in preparing and, if so directed by Company, sending, any notifications that Company deems necessary or appropriate. Subagent shall be responsible for all costs incurred to make any and all such notifications and for such related costs as specified in Section 5.

- d. **Agreements with Agents and Subcontractors.** Subagent agrees to ensure, through written agreements, that its agents, including any subcontractors, that receive or create any Private Information, agree to the same terms and conditions that apply to Subagent under this Agreement.
- e. **Limitations on Further Use and Disclosure.** Except as provided in Sections 2 (b), Subagent shall not use or disclose Private Information in any manner that would violate the HIPAA Rules, including the Minimum Necessary standard set forth in 45 CFR §164.514(d), if done by a Covered Entity. Subagent further agrees to comply with applicable state and federal privacy and security requirements.
- f. **Requests for Access to Information.** Within 5 business days of receipt of a request from Company, Subagent shall provide to Company or, at its direction, to an Individual, Protected Health Information relating to that individual held by the Subagent or its agents or subcontractors in a Designated Record Set in accordance with 45 CFR §164.524. In the event any Individual requests access to his or her Protected Health Information directly from Subagent, Subagent shall, within 5 business days of receipt of such request, forward the request to Company. Unless Company directs otherwise, any response to such request shall be the responsibility of Company.
- g. **Requests for Amendment to Information.** Within 5 business days of receipt of a request from Company, Subagent agrees to make any requested amendment(s) to Protected Health Information held by it or any agent or subcontractor in a Designated Record Set in accordance with 45 CFR § 164.526. In the event any individual requests an amendment to his or her Protected Health Information directly from Subagent, Subagent shall within 5 business days of receipt thereof, forward such request to Company. Unless Company directs otherwise, any response to such requests shall be the responsibility of Company.

- h. **Requests for Accounting of Information.** Within 10 days after Subagent, its agents or subcontractors makes any disclosure of Protected Health Information for which an accounting may be required under 45 CFR §164.528, Subagent agrees to provide in writing via email to [privacyoffice@cvs.com](mailto:privacyoffice@cvs.com) and [privacy.officer@caremark.com](mailto:privacy.officer@caremark.com), the information related to such disclosure as would be required for a Covered Entity to respond to a request by an Individual for an accounting in accordance with 45 CFR §164.528. At a minimum, Subagent shall provide Company and SSIC with the information specified in 45 CFR § 164.528(b). In the event any individual requests an accounting of disclosures of Protected Health Information directly from Subagent, Subagent shall within 5 business days of receipt thereof, forward such request to Company. Unless Company directs otherwise, any response to such requests shall be the responsibility of Company.
- i. **Requests for Confidential Communications and Restrictions.** Within 5 business days of receipt of a request from Company, Subagent agrees to comply with any request for confidential communication of, or restriction on the use or disclosure of, Protected Health Information held by it or any agent or subcontractor as requested by Company and in accordance with 45 CFR 164.522. In the event any individual requests a confidential communication or restriction on the use or disclosure of Protected Health Information directly from Subagent, Subagent shall within 5 business days of receipt thereof, forward such request to Company. Unless Company directs otherwise, any response to such requests shall be the responsibility of Company.
- j. **Disclosure of Privacy and Security Practices to Authorities.** Subagent agrees to make its internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the Secretary of Health and Human Services or his designees or other government authorities in a time and manner designated by Company or such governmental authorities, for purposes of determining Company's, its customers' or Subagent's compliance with any Privacy Laws.
- k. **Background Screening.** (i) Subagent warrants and represents that Subagent has obtained, at Subagent's own expense and in a manner compliant with all applicable state, federal and other applicable laws, a "Satisfactory Background Screening," as defined herein below, for all of its employees, agents and subcontractors with access to any Private Information ("Subagent Personnel"). As used herein, a "Satisfactory Background Screening" shall mean, collectively, the following: (1) national federal criminal database check; (2) seven-year county of residence criminal conviction search (i.e., search of all counties in which individual has resided within the preceding seven-year period); and (3) in each of (1) and (2) above, containing no felony or misdemeanor conviction that related to fraud or theft (including but not limited to, shoplifting, larceny,

embezzlement, forgery, credit card fraud, or check fraud), the disposition of which is within seven years, as allowed by law. Subagent agrees to update such background screening upon reasonable request by Company, it being agreed that any request based upon the occurrence of any Security Incident or other illegal activity involving Subagent or Subagent Personnel, or the reasonable suspicion of illegal activity involving Company data, or any regulatory requirements requiring such updates, would be deemed reasonable hereunder.

- l. Documentation.** Subagent shall maintain documentation of its obligations hereunder to the extent and for the period required by the HIPAA Rules or, if longer, other applicable Privacy Laws. This includes documentation required under 45 CFR 164 Part D, such as documentation to demonstrate that an impermissible use or disclosure of Private Information did not constitute a Breach.
- m. Rights to Private Information.** Any Private Information provided by Company, its employees, agents, consultants or contractors to Subagent, or created, obtained, procured, used or accessed by Subagent in Company's name or on Company's behalf, shall, as between the parties to this Agreement, at all times be and remain the sole property of Company, and Subagent shall not have or obtain any rights therein except as stated herein.
- n. Red Flags.** To the extent that Subagent provides services in connection with a "covered account" (as such term is defined in 16 CFR 681.2), it shall develop policies and procedures to detect relevant "red flags" (as such term is defined in 16 CFR 681.2) that may arise in the performance of Subagent's activities. Subagent agrees to report any red flags to Company and to take appropriate steps to prevent or mitigate identity theft.
- o. ARRA.** Subagent shall comply with each and every obligation imposed on business associates under 42 USC 17921-17954 (Subtitle D of Title XIII of the American Recovery and Reinvestment Act of 2009)("ARRA"), and each of those obligations is hereby incorporated by reference into this Agreement, with the understanding that compliance with each of those obligations is required under this Agreement only as of the effective date of each of those obligations under ARRA. Without in any way limiting the foregoing, Subagent agrees to comply with (i) 45 CFR Sections 164.308, 164.310, 164.312 and 164.316, and with the additional requirements of ARRA that relate to security and that are made applicable with respect to covered entities, and which are incorporated by reference herein, and (ii) each applicable requirement of 45 CFR 164.504(e) and the additional requirements of ARRA that relate to privacy and that are made applicable with respect to covered entities, and which are incorporated by reference herein.

- p. **Medicare Beneficiary Data.** Notwithstanding any other provisions of this Agreement, Subagent agrees to comply with:
- i. the requirements specified in the CMS memorandum of December 16, 2008 entitled "Security and Privacy Reminders and Clarification of Reporting Procedures" regarding timely reporting of all security incidents (as defined in the memorandum) involving non-permitted disclosures of personally identifiable information (PII) involving Medicare beneficiaries. Subagent agrees to report such incidents to Company's Privacy Officer in writing via email at [privacyoffice@cvs.com](mailto:privacyoffice@cvs.com) and [privacy.officer@caremark.com](mailto:privacy.officer@caremark.com), within the time frames specified in the CMS memorandum and Attachment, and using the form provided by CMS in the memorandum. Subagent shall be responsible for communicating this reporting requirement to its subcontractors and for reporting any security incidents with respect to PII in the control or possession of such subcontractors.
  - ii. to the extent Company provides written permission for the handling of Private Information by Subagent or its subcontractors outside the United States pursuant to Section 7(e) below, Subagent agrees to comply with the requirements of CMS memorandum of July 23, 2007 entitled " Sponsor Activities Performed Outside of the United States (Offshore Subcontracting)" with respect to Private Information of Medicare beneficiaries, and agrees to incorporate by reference herein the terms specified in the attestation contained in that CMS memorandum.

#### **4. Term and Termination.**

- a. The term of this Agreement shall continue for so long as the Services Agreement remains in effect, except that Section 4(c) shall survive after the termination of the Services Agreement for as long as Subagent retains any Private Information.
- b. Upon Company's determination that Subagent has violated or breached a material term of this Agreement, Company may either: (1) provide an opportunity for Subagent to cure the breach or end the violation, and terminate this Agreement and the Services Agreement if Subagent does not cure the breach or end the violation within the time specified by Company; or (2) immediately terminate this Agreement and the Services Agreement if it determines that Subagent has breached a material term of this Agreement and cure is not possible; or (3) if it determines that neither termination nor cure is feasible, report the violation to the Secretary.

**c. Effect of Termination.**

- i. Except as provided in paragraph (ii) of this Section 4(c), upon termination of the Services Agreement for any reason, Subagent shall, at the election of Company, return to Company or destroy all Private Information in its possession or that of its subcontractors or agents. Subagent and its agents and subcontractors shall retain no copies of the Private Information.
- ii. In the event that returning or destroying the Private Information is infeasible, Subagent shall provide to Company written notification within 10 days after termination of the Services Agreement of the conditions that make return or destruction infeasible. Upon agreement by Company that return or destruction of the Private Information is infeasible, Subagent shall extend the protections of this Agreement to such Private Information, and limit further uses and disclosures of it to those purposes that make the return or destruction infeasible, for so long as Subagent or its agents or subcontractors hold such Private Information.

**5. Damages.** The parties agree that the remedies at law for a breach by it of the terms of this Agreement may be inadequate and that monetary damages resulting from such breach may not be readily measured. Accordingly, in the event of a breach by either party of the terms of this Agreement, the other party shall be entitled to immediate injunctive relief. Nothing herein shall prohibit either party from pursuing any other remedies that may be available to either of them for such breach. In addition, in the event a Breach occurs of Private Information in Subagent's or its agents or subcontractors' control that Company determines requires notification under 45 CFR 164.404, 406 and 408 or applicable state laws, Subagent will to the extent required by Company: (a) provide for such credit monitoring services as deemed appropriate by Company for at least twelve (12) months for individuals whose information may have been subject to the Breach; (b) provide for call center staffing and operations to the extent necessary to respond to inquiries by affected individuals during this period; (c) pay for any printing, mailing, postage and other costs incurred by Company or others to send notifications of the Breach to affected individuals, media, or government authorities; and (d) to the extent reasonably practicable, determine the location of missing information and/or the party or parties that obtained or may have obtained unauthorized access to such information.

**6. Indemnification.** Subagent will indemnify and hold harmless Company and SSIC and any of its officers, directors, employees, or agents from and against any claim, cause of action, liability, damage, cost or expense, including reasonable attorneys' fees and court or proceeding costs, arising out of or in connection with any breach of the terms of this Agreement, any Breach of Private Information under the control of Subagent or its agents or subcontractors that requires notification under the HIPAA Rules or state law, or any failure to perform

its obligations with respect to Private Information by Subagent, its officers, employees, agents or any person or entity under Subagent's direction or control.

## 7. Miscellaneous

- a. **Amendment.** Subagent agrees to take such action as Company or SSIC deems necessary to amend this Agreement from time to time to comply with the requirements of any Privacy Laws. If Subagent disagrees with any such amendment proposed by Company, it shall so notify Company in writing no later than 15 days after receipt of Company's notice of the amendment. If the parties are unable to agree on an amendment, Company may, at its option, terminate the Services Agreement.
- b. **Regulatory References.** A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended, and as of its effective date.
- c. **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit compliance with the Privacy Laws.
- d. **Conflicts.** The terms and conditions of this Agreement shall override and control any conflicting term or condition of the Services Agreement. All non-conflicting terms and conditions of the Services Agreement remain in full force and effect.
- e. **Jurisdiction and Locus of Information.** Subagent agrees that it currently does not, and in the future shall not, perform any of its services that involve the use or disclosure of Private Information outside the United States, and neither has transferred, nor will it in the future, transfer Private Information outside the United States under any circumstances without the explicit prior written permission of Company. Subagent agrees that the above provision shall also apply to Private Information in the possession or control of agents or subcontractors of Subagent, and Subagent shall ensure that its agents and subcontractors agree in writing that they will not transfer Private Information outside the United States without the explicit prior written permission of Company. Irrespective of where it performs its services or is domiciled, or any other factors affecting jurisdiction, Subagent agrees to be subject to the laws of the United States, including the jurisdiction of the Secretary and the courts of the United States. Subagent further agrees that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the United States in a venue in the State whose law governs the Services Agreement, and Subagent waives any available jurisdictional defenses as they pertain to the parties' obligations under this Agreement or applicable law.

f. **Audits.** During normal business hours, and with reasonable prior notice, Company and SSIC or their authorized representatives may audit, monitor and inspect Subagent's and its subcontractors' facilities and equipment and any documents, information or materials in Subagent's or its subcontractors' possession, custody or control; interview Subagent's employees, agents, consultants and subcontractors; and inspect any logs or documentation maintained by Subagent to the extent relating in any way to Subagent's obligations under this Agreement. An inspection performed pursuant to this Agreement shall not unreasonably interfere with the normal conduct of Subagent's business. No such inspection by Company as set forth herein shall relieve Subagent of any of its obligations under this Agreement, all of which shall remain absolute.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers or agents as of the Effective Date.

COMPANY

SUBAGENT

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Typed Name \_\_\_\_\_

Typed Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

**EXHIBIT C**

**REFERRAL AGENT FEE ASSIGNMENT AGREEMENT  
FOR THE  
SILVERSCRIPT  
REFERRAL AGENT PARTICIPATION AGREEMENT**

**Referral Agent has entered into an Referral Agent Participation Agreement for the SilverScript Insurance Company Referral Program (the "Participation Agreement") with \_\_\_\_\_ ("Company"). Referral Agent agrees that any and all applicable Referral Agent Fee earned under the Referral Agent's Participation Agreement shall be assigned to the assignee listed below. Neither SilverScript nor the Company shall have any obligation to pay any Referral Agent Fee, or any other compensation whatsoever, directly to Referral Agent in connection with the services provided under the Participation Agreement.**

For the value received, I \_\_\_\_\_ (Referral Agent) of the city of \_\_\_\_\_, State of \_\_\_\_\_ do hereby assign, transfer and set over to: \_\_\_\_\_ (assignee) \_\_\_\_\_ (TIN or SSN) with address of \_\_\_\_\_ its successors and assigns, my rights, title and interest in the Referral Fees which shall accrue to me under my Participation Agreement. I further certify there is no previous assignment or assignments nor had any bill of sale of these Referral Fees or any part thereof been previously made by me to any other person or persons, nor is there any claim against such Referral Fees outstanding. I do for myself, my executors, or administrators guarantee the validity of the foregoing assignment.

**REFERRAL AGENT**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_