

## **INSTRUCTIONS FOR COMPLETING THE SUBAGENT AGREEMENT**

Attached is SilverScript Insurance Company's Subagent Agreement which includes a series of exhibits as follows:

### **Exhibit 1: Commission Schedule to the Subagent Agreement**

#### **Schedule A: 2010 Commission Schedule Addendum**

### **Exhibit 2: Subagent's Contact Information Sheet**

### **Exhibit 3: Enrollment Instructions**

#### **Exhibit 3-A: Appendix 2 of the CMS Final PDP Guidance on Enrollment and Disenrollment**

### **Exhibit 4: Business Associate Agreement**

Please complete the following steps to contract with a Subagent.

- 1.** Fill in the blanks on page SUBAGENT-1.
- 2.** Fill in the first line with effective date, initial commission amount and renewal commission amount on page SUBAGENT-9.
  - a.** The Effective Date on the first line will be the same as the Agreement Effective Date.
  - b.** If commissions are changed during the plan year, an additional effective date with new commission amounts will be added to the grid. The updated addendum will be provided to your marketing services organization.
- 3.** Fill in the blanks on page SUBAGENT-18.
- 4.** Send the entire document to the Subagent for completion, excluding this instruction page.
- 5.** Once the documents are returned by the Subagent, review the returned document for completeness. Make sure copies of the E&O Certificate and state licenses are included.
- 6.** Sign the Subagent Agreement on page SUBAGENT-6 and Business Associate Agreement on page SUBAGENT-25.

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**INSTRUCTIONS FOR THE SUBAGENT  
TO COMPLET THE SUBAGENT AGREEMENT**

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**Exhibit 3-A: Appendix 2 of the CMS Final PDP Guidance on  
Enrollment and Disenrollment**

**Exhibit 4: Business Associate Agreement**

Please complete the following steps to contract as a Subagent.

1. Sign the Subagent Agreement (Subagent signature block) on page SUBAGENT-6.
2. Complete and sign the assignment of commissions on page SUBAGENT-9. This is only completed by the principal of the agency to assign the commissions over to the agency for 1099 purposes.
3. Complete the Contact Information Sheet on pages SUBAGENT-10 and SUBAGENT-11.
4. Sign the Business Associates Agreement (Subagent signature block) on page SUBAGENT-25  
Return the entire document, along with copies of you state licenses and E&O certificate.

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**SUBAGENT AGREEMENT  
(Marketing SilverScript Insurance Company  
Part D Plans to Individuals)**

This SUBAGENT AGREEMENT ("Agreement") is entered into by and between \_\_\_\_\_ ("Company") and \_\_\_\_\_ ("Subagent"), effective on \_\_\_\_\_ (the "Effective Date").

WHEREAS, Company is a marketing services organization that has a contracted with SilverScript Insurance Company ("SilverScript"), an insurance corporation organized and existing under the laws of the State of Tennessee that is authorized to offer one or more Prescription Drug Plans (Prescription Drug Plans offered by Company are referred to as "Part D Plans") in accordance with Title I of the Medicare Modernization Act of 2003 and its implementing regulations and Subagent intends to market said SilverScript Part D Plans under the terms and conditions contained in this Agreement.

WHEREAS, Subagent desires to enter this Agreement with Company to market and solicit sales of SilverScript Part D Plans,

NOW, THEREFORE, in consideration of the mutual covenants in this agreement it is agreed as follows:

**1.0 Relationship and Scope of Authority.** Subject to the terms of this Agreement, the Subagent:

(i) is authorized to market and sell the SilverScript Part D Plans to individuals in any states in which the Subagent is properly licensed (the "Territory"), subject to SilverScript's right to approve or disapprove each sale and to terminate any Subagent's ability to offer, sell or solicit applications for SilverScript's Part D Plans at any time in accordance with the terms of this Agreement; and

(ii) acknowledges and agrees that, subject to applicable law, SilverScript shall have the right, at all times, to not submit, reject or withdraw any application for SilverScript Part D Plans without specifying cause, and to cancel, refuse to renew, or modify any Part D Plan, in accordance with and pursuant to SilverScript's rights under the agreement between SilverScript and Company. Subagent also acknowledges and agrees that SilverScript may discontinue or withdraw, rewrite, replace or convert any Part D Plan now or hereafter made available for sale and that neither Company nor SilverScript shall incur any liability to Subagent as a result thereof. Subagent's authority hereunder shall be limited to marketing, soliciting, and selling SilverScript Part D plans for Company.

**2.0 Compensation.** During the term of, and subject to provisions of this Agreement, Company shall pay to Subagent the commissions specified in the Commission Schedule, attached hereto as **Exhibit 1**, on all business produced by Subagent. Subagent shall be solely responsible for paying all expenses incurred by Subagent in performance of this Agreement.

**3.0 Additional Responsibilities and Representations.**

Subagent represents and warrants that all information provided in this Agreement and in the Contact Information Sheet, attached hereto as **Exhibit 2**, is true, accurate and complete to the best of Subagent's knowledge. As a condition to entering into this Agreement, Subagent agrees

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to fully complete the Contact Information Sheet and provide it to Company and SilverScript.

Subagent shall make no representations, warranties or commitments of any type to applicants as to the issuance of a Part D Plan, nor will Subagent incur any liability or debt on behalf of Company or SilverScript.

Subagent represents and warrants that Subagent has all required licenses, certifications, and/or registrations to perform the services contemplated by this Agreement, including but not limited to current insurance agent license, which is in good standing in the Territory in which the Subagent intends to market, solicit and sell. Subagent agrees to obtain and maintain adequate professional and general liability insurance as determined by Company and SilverScript.

Subagent represents and warrants that all information provided under this Agreement shall be consistent with and shall comply with the contractual provisions imposed upon SilverScript under the contract between SilverScript and the Centers for Medicare and Medicaid Services ("CMS"). Subagent will at times furnish the services required of Subagent by this Agreement in a manner that permits SilverScript to comply with such contract with CMS.

Except as disclosed to Company in this Agreement, Subagent represents and warrants that Subagent has neither been, nor will be during the term of this Agreement: (i) listed as debarred, excluded or otherwise ineligible for participation in federal health care programs; or (ii) convicted of a felony or misdemeanor, excluding traffic violations. If at any time Subagent becomes aware of any violation of this representation and warranty, Subagent agrees to notify Company and SilverScript in writing immediately.

Subagent hereby agrees to become familiar with and to comply fully with:

- a. The rules, guidelines, regulations, policies, and procedures of Company and SilverScript;
- b. Part D of Title XVII of the Social Security Act and all rules and regulations related to Part D that are from time to time adopted by CMS (collectively, "Part D");
- c. All other federal health care laws (including civil monetary penalty laws);
- d. Applicable state laws, including the insurance laws of each state in which Subagent markets, solicits, and sells on behalf of Company and each state's appointment laws including paying the costs of any required filings with the state;
- e. CMS policies, including CMS' marketing guidelines, as may be amended from time to time; and
- f. All other applicable laws, regulations, guidelines, or policies.

### **4.0 Marketing, Enrollment and Training.**

Subagent agrees that all marketing activities shall be undertaken by the Subagent in full compliance with the marketing standards provided by Company, CMS requirements, and any other applicable federal or state law or regulation including the CMS Marketing Guidelines and understands that in marketing, soliciting, and selling SilverScript Part D plans, Subagent is not permitted to and will not:

- a. Claim recommendation or endorsement by the CMS or that CMS recommends that Medicare beneficiaries enroll in the plan.
- b. Make any statement, claim, or promise that conflicts with, materially alters, or erroneously expands upon the information contained in CMS-approved materials.

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- c. Offer or provide cash or other remuneration as an inducement for enrollment or otherwise.
- d. Offer gifts to potential enrollees, unless the gifts are of nominal value (currently defined as an item worth \$15 or less, based on the retail purchase price of the item regardless of the actual cost), are offered to all potential enrollees without regard to whether or not the beneficiary enrolls, and are not in the form of cash or other monetary rebates.
- e. Provide meals for potential enrollees, which are prohibited regardless of value.
- f. Engage in any discriminatory activity such as, for example, attempts to recruit Medicare beneficiaries from higher income areas without making comparable efforts to enroll Medicare beneficiaries from lower income areas.
- g. Solicit door-to-door for Medicare beneficiaries or through other unsolicited means of direct contact, including calling a beneficiary without the beneficiary initiating the contact ("cold calls").
- h. Engaging in activities that could mislead or confuse Medicare beneficiaries, or misrepresent the Part D sponsor or its Part D plan. Neither Agent, nor the Part D organization may claim that it is recommended or endorsed by CMS or Medicare or that CMS or Medicare recommends that the beneficiary enroll in the Part D plan. The Agent may explain that the Part D organization is approved for participation in Medicare.
- i. Market non-health care related products to prospective enrollees during any MA or Part D sales activity or presentation. This is considered cross-selling and is prohibited.
- j. Market any health care related product during a marketing appointment beyond the scope agreed upon by the beneficiary, and documented by the plan, prior to the appointment.
- k. Market additional health related lines of plan business not identified prior to an in-home appointment without a separate appointment that may not be scheduled until 48 hours after the initial appointment unless the beneficiary asks about another health-related product and signs a new appointment listing that health-related product.
- l. Distribute marketing materials for which, before expiration of the 45-day period, the PDP Sponsor receives from CMS written notice of disapproval because it is inaccurate or misleading, or misrepresents the PDP Sponsor, its marketing representatives, or CMS.
- m. Use providers, provider groups, or pharmacies to distribute printed information for beneficiaries to use when comparing the benefits of different Part D plans unless providers, provider groups or pharmacies accept and display materials from all Part D plan sponsors with which the providers, provider groups, or pharmacies contract. The use of publicly available comparison information is permitted if approved by CMS in accordance with the Medicare marketing guidelines.
- n. Conduct sales presentations or distribute and accept Part D plan enrollment forms in provider offices, pharmacies, or other areas where health care is delivered to individuals, except in the case where such activities are conducted in common areas in health care settings.
- o. Conduct sales presentations or distribute and accept plan applications at educational events.
- p. Employ Part D plan names that suggest a plan is not available to all Medicare beneficiaries.
- q. Use a plan name that does not include the plan type. The plan type should be included at the end of the plan name.
- r. Engage in any other marketing activity prohibited by CMS in its marketing guidance.

Subagent may access and print on-demand SilverScript approved materials via the SilverScript agent portal. Materials available via the SilverScript agent portal include, but are not limited to, Summary of Benefits, enrollment applications, and brochures. Subagent shall distribute

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marketing materials at its sole cost and expense. Subagent shall use only SilverScript and Company provided, and CMS approved, materials to market SilverScript products to prospective individuals. Subagent shall not advertise or publish any matter or thing concerning SilverScript or its products that is not provided by SilverScript and Company without filing a proposed copy of such material with SilverScript and obtaining approval, signed by an officer of SilverScript. All printed matter and supplies SilverScript and Company furnish (including the intellectual property rights therein) are property of SilverScript and shall be promptly returned to SilverScript; or destroyed upon request or when this Agreement terminates.

For each individual beneficiary electing coverage under a SilverScript Part D Plan, the Subagent shall obtain a completed and signed application for each prospective beneficiary. Subagent shall deliver each completed application to the appropriate upline entity and enter each enrollment in the SilverScript agent portal, all in accordance with SilverScript's enrollment instructions, which are attached hereto as **Exhibit 3** and may be modified from time to time at SilverScript's sole discretion.

At Subagent's cost and expense, Subagent shall undergo annual training and pass the required annual test in accordance with this Agreement, CMS regulations and guidelines, and SilverScript and Company standards. Company shall at its own cost and expense make available to the Subagent the SilverScript agent portal for Subagent training and testing purposes.

**5.0 Term and Termination.** The initial term of this Agreement shall be effective on the Effective Date first above written and, unless otherwise terminated as set forth below, shall continue through the following coverage year (the "Initial Term"). Upon expiration of the Initial Term, this Agreement shall automatically renew for successive one year terms October 1 of each year thereafter unless either party provides written notice to the other party of its decision not to renew at least thirty (30) days prior to the end of each term. This Agreement may also be terminated at any time without cause by Company upon Company providing Subagent with thirty (30) days prior written notice. Subagent acknowledges that SilverScript may terminate Subagent's right to market, solicit and sell SilverScript Part D plans and products as permitted under and subject to SilverScript's agreement with the Company. Should this Agreement not be renewed or terminated for any or no reason, the parties agree to honor the administration, service and continued payment of commissions associated with the policies produced and in force under this Agreement before the effective date of such termination. In addition, Company, in its sole discretion, may terminate this Agreement for "cause" immediately upon mailing written notice to the Subagent's last known address if Subagent, its officers or any of its employees or agents (i) commits any fraud in connection with the duties, services or actions being performed on behalf of the other party under this Agreement; (ii) violates any of the material terms of this Agreement; or (iii) voluntarily or involuntarily dissolves or becomes insolvent or bankrupt, or makes an assignment for the benefit of creditors.

**6.0 Records and Reports.** Subagent shall maintain, and make available to Company, SilverScript and any appropriate governmental agency, all books and records relating to the Part D Plan, the services provided under this Agreement or those records that may be requested by CMS or a state regulatory agency for the longer of the period required under applicable federal or state law or by CMS.

**7.0 Confidential Information.** In connection with this Agreement, each party may disclose to the other party certain proprietary or confidential technical and business information, databases, trade secrets, and innovations belonging to the disclosing party ("Confidential Information").

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Both during and after the term of this Agreement, Subagent will use diligent efforts to maintain in confidence and use Confidential Information only for the purposes of this Agreement. The proceeding obligations shall not apply to information that (a) has been publicly disclosed through no fault of Subagent, (b) Company agrees in writing may be disclosed, or (c) that either party is required to disclose pursuant to a valid subpoena, judicial or administrative order, or other legal requirement; provided that the party subject to such legal requirement shall give the other party prompt notice of such legal objections to such disclosure. Nothing in this Agreement shall constitute a grant, license, or otherwise provide to the Subagent any proprietary rights, at any time whether during the term of this Agreement or subsequent to its termination. If any party fails to comply with this Section, the infringed party shall be entitled to specific performance including immediate issuance of a temporary restraining order or preliminary injunction enforcing this Agreement, and to judgment for damages (including reasonable attorneys' fees) caused by the breach, and to any other remedies provided by law.

**8.0 Indemnity.** Subagent agrees to indemnify Company and SilverScript and their affiliates, shareholders, directors, officers and employees and to hold Company and SilverScript, and their affiliates, shareholders, directors, officers and employees harmless from any and all expenses, liabilities, costs, cause or causes of action and damages, including attorneys fees and costs of litigation, resulting from or growing out of any breach of this Agreement or any related documents or any unauthorized, fraudulent, negligent or wrongful act, omission, statement or representation by Subagent, its officers or any of its employees. This Section shall survive the termination of this Agreement for any reason.

**9.0 Confidentiality of Protected Health and Financial Information of Consumers.** The Subagent hereby agrees to comply with The Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and The Gramm-Leach Bliley Act of 1999 ("GLB") and their implementing regulations and with other federal and state laws and regulations controlling the use, disclosure, transmission and storage of health and financial information. Subagent further agrees to the terms and conditions contained in the Business Associate Agreement, attached hereto as **Exhibit 4**.

**10.0 General Provisions.** The parties to this Agreement are independent contractors, and have no other legal relationship under or in connection with this Agreement. No term or provision of this Agreement is for the benefit of any person who is not a party hereto and no such party shall have any right or cause of action hereunder.

This Agreement cannot be assigned by any party without the prior written approval of the other parties, which any party may withhold, in its sole discretion. The provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective permitted successors and assigns.

This Agreement constitutes the entire agreement between the parties with respect to the SilverScript Part D Plans, and supersedes any previous written or oral agreements with respect to the Part D Plans. This Agreement shall be amended only by written agreement signed by a duly authorized officer of each of the parties; provided that new Commission Schedules shall become part of the Agreement if provided to Subagent as set forth in **Exhibit 1**.

The waiver by any party of any other party's breach or violation of any provisions of this Agreement shall not be construed as a waiver of any subsequent breach or violation, and the waiver by any party of the right to exercise any remedy that it may possess hereunder shall not be construed as a bar to the exercise of such right or remedy by such party upon the

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occurrence of any subsequent breach or violation. In the event any article, section or provision of this Agreement or related documents is found to be void and unenforceable, the remaining articles, sections and provisions of this Agreement or related documents shall nevertheless be binding upon the parties with the same force and effect as though the void or unenforceable part had not been severed or deleted.

This Agreement shall be governed by and construed in accordance with the laws of the state of Company's domicile, without giving effect to the principles of conflicts of laws thereof. All disputes hereunder shall be brought in the federal and state courts located in the county of the state where the Company is principally domiciled, and the parties hereto hereby consent to jurisdiction and venue in said courts.

All notices, certificates, requests, demands and other communications provided for under this Agreement shall be in writing and shall be (a) personally delivered, (b) sent by first class United States mail, or (c) sent by overnight courier of national reputation, in each case addressed to the party to whom notice is being given at its address as set below or, as to each party, at such other address as may hereafter be designated. All such notices, requests, demands and other communications shall be deemed to have been given on (a) the date received if personally delivered, (b) when deposited in the mail if delivered by mail, or (c) the date sent if sent by overnight courier.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

**COMPANY:** \_\_\_\_\_

By: \_\_\_\_\_

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

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

**SUBAGENT**

By: \_\_\_\_\_

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

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

**LIST OF EXHIBITS**

**Exhibit 1: Commission Schedule to the Subagent Agreement  
Schedule A: 2010 Commission Schedule Addendum**

**Exhibit 2: Subagent's Contact Information Sheet**

**Exhibit 3: Enrollment Instructions**

**Exhibit 3-A: Appendix 2 of the CMS Final PDP Guidance on Enrollment and Disenrollment**

**Exhibit 4: Business Associate Agreement**

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### **EXHIBIT 1**

#### **Commission Schedule to the Subagent Agreement**

Subject to and as limited by this Exhibit 1, Medicare Part D law, regulation and CMS guidance which may be modified from time to time with or without notice to Subagent, for Initial and Renewal Enrollments for the 2010 coverage year Company shall pay, and Subagent agrees to accept, the commissions set forth in the 2010 Commission Schedule Addendum for enrollment and renewal of eligible beneficiaries in a SilverScript PDP plan. Subagent acknowledges that the total compensation paid to Subagent shall be paid in accordance with CMS regulations and CMS implementing guidance regarding the payment of compensation to agents and brokers.

For Initial Enrollments for the 2011 coverage year and each such year beyond, Company shall pay to Subagent, and Subagent agrees to accept, the commissions for Initial and Renewal Enrollments that equal amounts set forth in Company's new Commission Schedule Addendum provided to Subagent prior to Annual Coordinated Election Period (i.e., Open Enrollment) for the next coverage year and documented on a Commission Addendum for that coverage year. The Commission Schedule Addendum, this Exhibit 1 and any commissions payable hereunder also may be modified from time to time by Company, in its sole discretion, upon sixty (60) days' written notice to Subagent. In addition, the Commission Schedule and/or commission payments shall automatically and immediately be amended without notice as necessary at any time to comply with CMS regulations and guidance applicable to agents or brokers and/or commission payments made by SilverScript to the Company.

Subagent acknowledges and agrees that the Company is solely responsible for payment of the commissions under this Agreement and SilverScript has no obligation to make payments hereunder.

As required under Part D regulations, any new member enrollment with SilverScript shall be paid as a Renewal Enrollment if the SilverScript member was previously enrolled in a Like Plan Type within the applicable 6 Year Cycle defined by CMS.

For each coverage year, commissions will be paid only for each SilverScript and CMS approved member, provided that the member remains enrolled as a SilverScript member. When a beneficiary disenrolls from the plan, Company will recover all compensation paid: for months in which the beneficiary is not enrolled; and during months 1 through 3 if the beneficiary disenrolls during the first three months. Company will receive a pro-rated commission chargeback for months in which the member is not enrolled for any member who exits the plan in months 4 through 12 of the coverage year or discontinues payment of premiums. Company will receive a full commission chargeback for any member who exits coverage within the first three months of a given coverage year or discontinues payment of premiums at any point during the first three months. Commissions are payable on each Part D Plan member who is enrolled in a SilverScript plan as a result of the services provided by the Subagent and that is approved by CMS.

Company will pay commissions for Initial Enrollments only after each new enrollee is approved by CMS. Renewal Commissions will be paid by March 1<sup>st</sup> of each coverage year.

Commissions and the process for payment thereof are subject to and limited by Part D regulation and CMS guidance. The parties specifically agree that, if permissible, the amount of commissions will be revised on a pro-rata basis to reflect changes resulting from any such guidance, revisions or modifications. The obligation to pay commissions shall terminate in the event that CMS ceases payments to SilverScript for the Part D Plans covered under this Agreement. If this Agreement is terminated for cause, then all of Subagent's rights to any compensation shall be immediately terminated and forfeited.

No commissions shall be paid on lapsed enrollees. If a lapsed enrollee is reinstated by Subagent, the

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commission to be paid to Subagent shall be the same amount as for the renewal of such Part D Plan. Reinstatement commissions are to be determined in accordance with the Commission Schedule in effect at the time of reinstatement. If SilverScript discontinues an existing Part D insurance product in existence as of the Effective Date of this Agreement, any commissions related to the rewriting, replacement, or conversion of one form of Part D Plan to another new SilverScript Part D product (or on surrendered Part D Plans) are not covered by this Agreement but may be mutually determined by Company and Subagent unless required by law to be determined in different manner, including but not limited to the rules for Like Plans.

Renewal commissions for Subagents will continue to be paid for each renewed enrollee if the Subagent remains in good standing with SilverScript and as required by the Medicare Marketing Guidelines, and has not otherwise breached this Agreement. Good standing is defined by CMS in the Medicare Marketing Guidelines as including State appointment and annual training and testing and the requirements of good standing may be subject to change as CMS sees fit. Training certification must be completed by December 31 to remain in good standing for renewals in effect the following plan year (*e.g., by December 31, 2009 for renewals for the 2010 plan year.*) To remain in good standing with SilverScript, the Subagent must be contracted as either a direct agent or a subagent of SilverScript. Nothing in this Agreement requires SilverScript to contract with the Subagent if the Subagent is no longer contracted with Company. Company shall not pay Subagent commissions for a renewed enrollee if a Subagent is no longer in good standing during the applicable period. If Company has already paid a commission to the Subagent for a renewed enrollee and the Subagent is later discovered to not be in good standing for the applicable period, then the Subagent shall repay Company the full amount of the renewal commission paid for that period.

Company may furnish Subagent with a periodic statement of Subagent's account and will pay any amount due Subagent hereunder. Upon receipt of such statement the Subagent shall immediately examine it, and if not satisfied as to its accuracy, Subagent shall return such statement to Company with details of any discrepancy therein within thirty (30) days of the date of the statement; otherwise the statement shall be deemed accepted by Subagent as true and correct. The account on the books of Company shall be prima facie evidence of such account for all purposes.

Unless otherwise defined herein, any capitalized terms herein shall have the meaning set forth under Part D law, regulations and guidance.

**SCHEDULE A  
2010 COMMISSION SCHEDULE ADDENDUM**

<b>Effective Date</b>	<b>Initial Enrollment</b>	<b>Renewal Enrollment</b>
2010	\$ 53.00	\$26.50

**Subagent/Corporate Information:** This section is to be completed only by a Subagent who is the principal of a wholly owned or controlled agency corporation if the Subagent wants the wholly owned or controlled agency corporation to be included under this Agreement. By completing this section, the Subagent's commissions will be assigned to the wholly owned or controlled agency corporation listed below. Neither SilverScript Insurance Company nor Company shall have any obligation to pay any Commissions, or any other compensation whatsoever, directly to Subagent in connection with the services provided under this Agreement.

Agency/Corporate Name: \_\_\_\_\_

Corporate Tax I.D. Number: \_\_\_\_\_

Agency/Corporate Mailing Address:

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

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

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

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

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

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**EXHIBIT 2**

**Subagent's Contact Information Sheet**

**Subagent Information:**

Subagent Name: LAST: \_\_\_\_\_ FIRST: \_\_\_\_\_

Subagent 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: \_\_\_\_\_

**Resident Address:** ( ) Check here if same as mailing address

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

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

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

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

**Errors and Omission Coverage:**

Name of Carrier: \_\_\_\_\_

Policy #: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

**Recruiting Information:**

Recruiter Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Recruiting Agency: \_\_\_\_\_

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**Contracting Information:**

Contracting identity (circle one)   Individual   Corporation   Partnership

Requesting authorization to sell 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: \_\_\_\_\_

**EXHIBIT 3**  
**ENROLLMENT INSTRUCTIONS**

1. **Dating the Receipt of the Enrollment Request:** The agent must date all enrollment forms on receipt. If the form is complete on receipt, then the date stamp showing the date of receipt becomes the application date for purposes of submitting the enrollment to CMS. If additional documentation is required to complete the enrollment request, this documentation must be dated on receipt. The date on the last additional documentation required to complete the enrollment request will be the application date for purposes of submitting the enrollment to CMS. This date is the one used for determining the enrollment period and effective date of enrollment (see #11 below).

2. **Information Verification:** The agent must verify the following:

- Spelling of the prospective enrollee's complete name;
- Correct recording of sex;
- Health Insurance Claim Number; and
- Date of Birth.

In face-to-face interviews, this verification should be done using the prospective enrollee's Medicare card. For other forms of enrollment (e.g., mail, fax), verification should be done by contacting the prospective enrollee by phone or other means, or by requesting that the prospective enrollee include a copy of his/her Medicare card when mailing in the enrollment request.

3. **Required Data:** The agent must confirm that the enrollment form includes the fields specified in Appendix 2 of the CMS Final PDP Guidance on Enrollment and Disenrollment (the most recent version dated August 19, 2009 is attached for your convenience as **Exhibit 3-A**). An enrollment form must be treated as complete if it contains all these elements, even if the form also requests additional information and that additional information is not provided.

4. **Permanent Residence:** The agent must confirm that that the prospective enrollee's permanent address is in the plan's service area. If a Post Office Box is given, the agent must contact the prospective enrollee to determine their place of permanent residence, unless the person is homeless. For homeless prospective enrollees, a PO Box, address of a shelter or clinic, or the address where the prospective enrollee receives mail may be given instead of a residential address. If there is a dispute about the prospective enrollee's permanent residence, this must be resolved in accordance with State law.

5. **Entitlement to Medicare:** The agent should attempt to verify the prospective enrollee's entitlement to Part A and/or enrollment in Part B by reviewing the prospective enrollee's Medicare ID card or other documentation, such as an SSA award letter.

6. **Legal Representatives:** If someone other than the prospective enrollee signs the enrollment form, the agent must confirm that the person signing has (i) attested that he or she has authority under State law to make the enrollment request on behalf of the prospective enrollee, (ii) attested that a copy of the proof of other authorization required by State law that empowers the individual to effect an enrollment request on behalf of the prospective enrollee (e.g., court-appointed legal guardianship or durable power of attorney) is available upon request by the plan or CMS, and (iii) provided contact information. If the agent is aware that the prospective enrollee has a representative payee designated by SSA to handle the prospective enrollee's finances, the agent

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should contact the representative payee to determine whether he/she is the appropriate person under State law to sign the enrollment form for the prospective enrollee.

7. Date of Enrollment Form: If the date is not filled in on the enrollment form by the prospective enrollee or their legal representative, the date of receipt that the agent stamps on the enrollment form should be treated as the “signature date” of the request.
8. Helping Fill-Out the Form: If the agent helps the prospective enrollee fill out the enrollment form, then the agent must also sign the form and indicate his/her relationship to the prospective enrollee. Merely pre-populating the form, with the prospective enrollee’s name and mailing address (but not phone number) when the prospective enrollee requested that the form be mailed to him/her is not considered helping the prospective enrollee fill out the form, and so does not require that the agent sign the form. Similarly, correcting information on the form after verifying it does not require the agent’s signature.
9. Enrollment by Telephone: Subagents may accept enrollment requests via an incoming (in-bound) telephone call. The following additional guidelines must be followed for telephone enrollments:
  - Enrollment requests may only be accepted from/during an incoming (or inbound) telephone call from a beneficiary;
  - Individuals must be advised that they are completing an enrollment;
  - Each telephonic enrollment request must be recorded and include statements of the individual’s agreement to be recorded, required elements necessary to complete the enrollment (as described in Appendix 2 of the CMS Final PDP Guidance on Enrollment and Disenrollment (“Exhibit 3-A”)), and a verbal attestation of the intent to enroll. All telephonic enrollment recordings must be maintained per CMS requirements for at least 10 years and sent to SilverScript or the appropriate upline entity in a format and timeline agreed to by SilverScript;
  - Collection of financial information is prohibited at any time during the call; and
  - Telephone enrollments may only be performed pursuant to scripts developed for this purpose by SilverScript that contain the required elements for completing an enrollment request as described in Appendix 2 of the CMS Final PDP Guidance on Enrollment and Disenrollment (“Exhibit 3-A”), and that have been approved by CMS. SilverScript MUST approve and submit to CMS for approval all telephone enrollment scripts, unless otherwise agreed to in writing by the parties.
10. Correction of Information: The agent should make any necessary corrections to the enrollment form (e.g. if digits are transposed in a phone number) and place his/her initials and the date next to the correction. Alternately, rather than initialing the correction, the agent may attach a separate “correction” sheet that the agent signs and dates, or an electronic record of a similar nature, and this should become part of the enrollment record.
11. Determining Enrollment Period and Effective Date: The agent must determine the type of enrollment period that applies to the prospective enrollee (e.g. by the prospective enrollee’s date of birth, Medicare card, a letter from SSA, and the date the completed enrollment form is received), and therefore, the effective date of coverage.

There are three valid enrollment periods for which an individual may enroll in a PDP, they are: the Initial Enrollment Period for Part D (“IEP”); the Annual Coordinated Election Period (“AEP”); and Special Enrollment Periods (“SEP”).

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The IEP is the period during which an individual is first eligible to enroll in a Part D plan. The beneficiary has a 7-month period that begins 3 months before the month an individual meets the eligibility requirements to enroll in a Medicare D Plan and ends 3 months after the month of eligibility. A beneficiary who was eligible for Medicare prior to age 65 (such as for disability or renal failure) has a second IEP for Part D based on attaining age 65.

The AEP occurs November 15 through December 31 of every year. During this timeframe an individual can enroll in or change his/her plan for an effective date of January 1st of the following year. Individuals are limited to one AEP enrollment choice during this timeframe.

The SEP is the period that an individual can enroll based on special circumstances. Examples of an SEP are:

- Change in residence to a different region;
- Involuntary loss of creditable coverage;
- Dual eligibility;
- Other low income subsidies;
- Institutionalization; and
- MA “open enrollment periods.”

Unless otherwise required by CMS Guidance, verbal confirmation is acceptable from the beneficiary regarding the conditions that make him or her eligible for the SEP and shall be documented as the SEP reason in the application form and in the portal.

In face-to-face or telephone enrollments, the agent may advise the prospective enrollee of the proposed effective date, but must stress that this is only a proposed effective date, and that the prospective enrollee will hear directly from the plan to confirm the actual effective date of enrollment.

12. Multiple Enrollment Periods: If more than one enrollment period applies, the prospective enrollee must be allowed to choose the enrollment period that applies, and therefore, the effective date of coverage (except that the effective date can never be earlier than the month the prospective enrollee is entitled to Medicare Part A and/or enrollment in Part B).
13. Choosing Enrollment Period: If the prospective enrollee does not choose an effective date when more than one enrollment period applies, the agent must contact the prospective enrollee to obtain his/her preference. If the agent is unsuccessful in obtaining the prospective enrollee's choice, the agent must determine the enrollment period based on the ranking provided by CMS in the Final PDP Guidance on Eligibility, Enrollment and Disenrollment (i.e., first IEP for Part D, then SEP, then AEP).
14. Submitting the hard copy enrollment form: For all enrollments except phone enrollments (see below), Agents MUST send the signed paper copy of the enrollment form directly to SilverScript or to the appropriate upline entity who will then send the copy to SilverScript. Agents must also give a copy of the enrollment form to the beneficiary that they are enrolling into SilverScript. If an enrollment is performed over the phone, a copy of the phone recording MUST be submitted to SilverScript or the appropriate upline entity.
15. Scope of Appointment: Along with the enrollment application, the agent must submit the Scope of Appointment form to SilverScript or the appropriate upline entity in connection with any face-to-face personal/individual marketing appointment including under the following circumstances:

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- In-home sales appointments or personal/individual appointments with an existing member/client in office, coffee shop or other similar location;
  - For appointments with new members/clients (not existing members/clients); and/or
  - When a plan or agent/broker sells more than one type of product.
16. Commissions: To be eligible for commissions, all enrollments MUST be entered via the SilverScript agent portal. In addition, a paper copy of the enrollment and scope of appointment must also be sent to SilverScript or the appropriate upline entity as described in Section 14 and 15 above.

**Exhibit 3-A**

**Appendix 2 of the CMS Final PDP Guidance on Enrollment and Disenrollment  
Summary of Data Elements Required for Plan Enrollment Mechanisms and Completed  
Enrollment Requests**

All data elements with a “Yes” in the “Required before enrollment complete” column are necessary in order for the enrollment request to be considered complete.

	<b>Data Element</b>	<b><i>Required on enrollment mechanism?</i></b>	<b><i>Beneficiary response required on enrollment request?</i></b>
1	PDP Plan name	<i>Yes</i>	Yes
2	PDP plan/product	<i>Yes</i>	Yes
3	Beneficiary name	<i>Yes</i>	Yes
4	Beneficiary Birth Date	<i>Yes</i>	Yes
5	Beneficiary Sex	<i>Yes</i>	Yes
6	Beneficiary Telephone Number	<i>Yes</i>	No
7	Permanent Residence Address	<i>Yes</i>	Yes
8	Mailing Address	<i>Yes</i>	No
9	Name of person to contact in emergency, including phone number and relationship to beneficiary (Optional Field)	<i>No</i>	No
10	E-mail address	<i>No</i>	No
11	Beneficiary Medicare number	<i>Yes</i>	Yes
12	Additional Medicare information contained on sample Medicare card, or copy of card	<i>Yes</i>	No6
13	Plan Premium Payment Option	<i>No</i>	No7
14	Other insurance COB information	<i>No</i>	No8
15	Long term care question	<i>No</i>	No
16	Beneficiary signature and/or Beneficiary Representative Signature	<i>Yes</i>	Yes9
17	Date of signature	<i>Yes</i>	No10

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	<b>Data Element</b>	<b><i>Required on enrollment mechanism?</i></b>	<b><i>Beneficiary response required on enrollment request?</i></b>
18	Authorized Representative contact information (if not signed by beneficiary)	Yes	Yes
19	Information provided under “please read and sign below”  All elements provided in model language must be included on enrollment request mechanisms.  Option -- can be provided as narrative or listed as statements of understanding	Yes	Yes
20	Release of Information  All elements provided in model language must be included on enrollment request mechanisms.	Yes	Yes
21	For enrollments into a Part D Payment Demonstration plan, attestation regarding financial support for purchase of prescription drugs	Yes	Yes
22	Option to request materials in language other than English or in other formats	Yes	No

6. We recognize that the PDP needs, at a minimum, the Medicare number in order to verify entitlement to Part A and/or enrollment in Part B; we have accounted for the need for this data element under data element number 4.

7. Response defaults to direct bill if applicant fails to provide information

8. Refer to CMS COB guidance for additional information

9. Applicable only to requests made using a paper enrollment form. If signature is missing, plan may follow up and document, as described in Section 30.2. F

10. As explained in §30.2, the beneficiary and/or legal representative should provide the date s/he completed the enrollment form; however, if s/he inadvertently fails to include the date on the enrollment request, then the date of receipt that the PDP assigns to the enrollment request may serve as the signature date of the form. Therefore, the signature date is not a necessary element.

**EXHIBIT 4**

**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.

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### 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

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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.

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- 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

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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.

1. **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.

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- 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

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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.

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- 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 \_\_\_\_\_

**AUTHORIZATION AGREEMENT FOR AUTOMATIC DEPOSITS (ACH CREDITS)**

Name \_\_\_\_\_ Social Security Number \_\_\_\_\_

I hereby authorize Senior Market Sales, Inc. ("SMS"), to initiate credit entries and to initiate, if necessary, debit entries and adjustments for any credit entries in error to my account as indicated below and the financial institutions named below, to credit and or debit the same to such accounts.

Name of Financial Institution \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Transit / ABA No. \_\_\_\_\_ Account No. \_\_\_\_\_

This authority is to remain in full force and effect until SMS has received written notification from me of its termination in such time and in such manner as to afford SMS and the Financial Institution a reasonable opportunity to act on it.

Date \_\_\_\_/\_\_\_\_/\_\_\_\_ Signature \_\_\_\_\_

SMS will keep authorization on file throughout the life of the transactions and two years beyond their termination.

**A void check with an account name matching the name shown above must accompany this form.**

VOIDED CHECK

VOIDED CHECK

VOIDED CHECK