F. In accordance with 45 CFR §164.502(e)(1)(ii), require that any subcontractors that create, receive, maintain, transmit or access PHI on behalf of the Contractor agree through contract to the same restrictions and conditions that apply to Contractor with respect to such PHI and/or ePHI, including the restrictions and conditions pursuant to this Addendum.

G. Make available to County or the Secretary, in the time and manner designated by County or Secretary, Contractor's internal practices, books and records relating to the use, disclosure and privacy protection of PHI received from County, or created or received by Contractor on behalf of County, for purposes of determining, investigating or auditing Contractor's and/or County's compliance with the Privacy Rule.

H. Request, use or disclose only the minimum amount of PHI necessary to accomplish the intended purpose of the request, use or disclosure in accordance with 42 USC §17935(b) and 45 CFR §164.502(b)(1).

I. Comply with requirements of satisfactory assurances under 45 CFR §164.512 relating to notice or qualified protective order in response to a third party's subpoena, discovery request, or other lawful process for the disclosure of PHI, which Contractor shall promptly notify County upon Contractor's receipt of such request from a third party.

J. Not require an individual to provide patient authorization for use or disclosure of PHI as a condition for treatment, payment, enrollment in any health plan (including the health plan administered by County), or eligibility of benefits, unless otherwise excepted under 45 CFR §164.508(b)(4) and authorized in writing by County.

K. Use appropriate administrative, technical and physical safeguards to prevent inappropriate use, disclosure, or access of PHI and/or ePHI.

L. Obtain and maintain knowledge of applicable laws and regulations related to HIPAA and HITECH, as may be amended from time to time.

M. Comply with the requirements of the Privacy Rule that apply to the County to the extent Contractor is to carry out County's obligations under the Privacy Rule.

N. Take reasonable steps to cure or end any pattern of activity or practice of its subcontractor of which Contractor becomes aware that constitute a material breach or violation of the subcontractor's obligations under the business associate contract with Contractor, and if such steps are unsuccessful, Contractor agrees to terminate its contract with the subcontractor if feasible.

6. **Access to PHI, Amendment and Disclosure Accounting.** Contractor agrees to:

A. **Access to PHI, including ePHI.** Provide access to PHI, including ePHI if maintained electronically, in a designated record set to County or an individual as directed by County, within five (5) days of request from County, to satisfy the requirements of 45 CFR §164.524.

B. **Amendment of PHI.** Make PHI available for amendment and incorporate amendments to PHI in a designated record set County directs or agrees to at the request of an individual, within fifteen (15) days of receiving a written request from County, in accordance with 45 CFR §164.526.

C. **Accounting of disclosures of PHI and electronic health record.** Assist County to fulfill its obligations to provide accounting of disclosures of PHI under 45 CFR §164.528 and, where applicable, electronic health records under 42 USC §17935(c) if Contractor uses or maintains electronic health records. Contractor shall:

    (1) Document such disclosures of PHI and/or electronic health records, and information related to such disclosures, as would be required for County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record in accordance with 45 CFR §164.528.

    (2) Within fifteen (15) days of receiving a written request from County, provide to County or any individual as directed by County information collected in accordance with this section to permit County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record.

    (3) Make available for County information required by this Section 6.C for six (6) years preceding the individual's request for accounting of disclosures of PHI, and for three (3) years preceding the individual's request for accounting of disclosures of electronic health record.

7. **Security of ePHI.** In the event County discloses ePHI to Contractor or Contractor needs to create, receive, maintain, transmit or have access to County ePHI, in accordance with 42 USC §17931 and 45 CFR §164.314(a)(2)(i), and §164.306, Contractor shall:

A. Comply with the applicable requirements of the Security Rule, and implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI that Contractor creates, receives, maintains, or transmits on behalf of County in accordance with 45 CFR §164.308, §164.310, and §164.312;

B. Comply with each of the requirements of 45 CFR §164.316 relating to the implementation of policies, procedures and documentation requirements with respect to ePHI;

C. Protect against any reasonably anticipated threats or hazards to the security or integrity of ePHI;

D. Protect against any reasonably anticipated uses or disclosures of ePHI that are not permitted or required under the Privacy Rule;

E. Ensure compliance with the Security Rule by Contractor's workforce;

F. In accordance with 45 CFR §164.308(b)(2), require that any subcontractors that create, receive, maintain, transmit, or access ePHI on behalf of Contractor agree through contract to the same restrictions and requirements contained in this Addendum and comply with the applicable requirements of the Security Rule;

G. Report to County any security incident of which Contractor becomes aware, including breaches of unsecured PHI as required by 45 CFR §164.410; and,

H. Comply with any additional security requirements that are applicable to covered entities in Title 42 (Public Health and Welfare) of the United States Code, as may be amended from time to time, including but not limited to HITECH.

8. **Breach of Unsecured PHI.** In the case of breach of unsecured PHI, Contractor shall comply with the applicable provisions of 42 USC §17932 and 45 CFR Part 164, Subpart D, including but not limited to 45 CFR §164.410.

A. **Discovery and notification.** Following the discovery of a breach of unsecured PHI, Contractor shall notify County in writing of such breach without unreasonable delay and in no case later than 60 calendar days after discovery of a breach, except as provided in 45 CFR §164.412.

(1) **Breaches treated as discovered.** A breach is treated as discovered by Contractor as of the first day on which such breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor, which includes any person, other than the person committing the breach, who is an employee, officer, or other agent of Contractor (determined in accordance with the federal common law of agency).

(2) **Content of notification.** The written notification to County relating to breach of unsecured PHI shall include, to the extent possible, the following information if known (or can be reasonably obtained) by Contractor:

(a) The identification of each individual whose unsecured PHI has been, or is reasonably believed by Contractor to have been accessed, acquired, used or disclosed during the breach;

(b) A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known;

(c) A description of the types of unsecured PHI involved in the breach, such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved;

(d) Any steps individuals should take to protect themselves from potential harm resulting from the breach;

(e) A brief description of what Contractor is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and,

(f) Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.

B. **Cooperation.** With respect to any breach of unsecured PHI reported by Contractor, Contractor shall cooperate with County and shall provide County with any information requested by County to enable County to fulfill in a timely manner its own reporting and notification obligations, including but not limited to providing notice to individuals, prominent media outlets and the Secretary in accordance with 42 USC §17932 and 45 CFR §164.404, §164.406 and §164.408.

C. **Breach log.** To the extent breach of unsecured PHI involves less than 500 individuals, Contractor shall maintain a log or other documentation of such breaches and provide such log or other documentation on an annual basis to County not later than fifteen (15) days after the end of each calendar year for submission to the Secretary.

D. **Delay of notification authorized by law enforcement.** If Contractor delays notification of breach of unsecured PHI pursuant to a law enforcement official's statement that required notification, notice or posting would impede a criminal investigation or cause damage to national security, Contractor shall maintain documentation sufficient to demonstrate its compliance with the requirements of 45 CFR §164.412.

E. **Payment of costs.** With respect to any breach of unsecured PHI caused solely by the Contractor's failure to comply with one or more of its obligations under this Addendum and/or the provisions of HITECH, HIPAA, the Privacy Rule or the Security Rule, Contractor agrees to pay any and all costs associated with providing all legally required notifications to individuals, media outlets, and the Secretary. This provision shall not be construed to limit or diminish Contractor's obligations to indemnify, defend and hold harmless County under Section 9 of this Addendum.

F. **Documentation.** Pursuant to 45 CFR §164.414(b), in the event Contractor's use or disclosure of PHI and/or ePHI violates the Privacy Rule, Contractor shall maintain documentation sufficient to demonstrate that all notifications were made by Contractor as required by 45 CFR Part 164, Subpart D, or that such use or disclosure did not constitute a breach, including Contractor's completed risk assessment and investigation documentation.

G. **Additional State Reporting Requirements.** The parties agree that this Section 8.G applies only if and/or when County, in its capacity as a licensed clinic, health facility, home health agency, or hospice, is required to report unlawful or unauthorized access, use, or disclosure of medical information under the more stringent requirements of California Health & Safety Code §1280.15. For purposes of this Section 8.G, "unauthorized" has the meaning given such term in California Health & Safety Code §1280.15(j)(2).

(1) Contractor agrees to assist County to fulfill its reporting obligations to affected patients and to the California Department of Public Health ("CDPH") in a timely manner under the California Health & Safety Code §1280.15.

(2) Contractor agrees to report to County any unlawful or unauthorized access, use, or disclosure of patient's medical information without unreasonable delay and no later than two (2) business days after Contractor detects such incident. Contractor further agrees such report shall be made in writing, and shall include substantially the same types of information listed above in Section 8.A.2 (Content of Notification) as applicable to the unlawful or unauthorized access, use, or disclosure as defined above in this section, understanding and acknowledging that the term "breach" as used in Section 8.A.2 does not apply to California Health & Safety Code §1280.15.

9. **Hold Harmless/Indemnification.**

A. Contractor agrees to indemnify and hold harmless County, all Agencies, Districts, Special Districts and Departments of County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability whatsoever, based or asserted upon any services of Contractor, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Addendum, including but not limited to property damage, bodily injury, death, or any other element of any kind or nature whatsoever arising from the performance of Contractor, its officers, agents, employees, subcontractors, agents or representatives from this Addendum. Contractor shall defend, at its sole expense, all costs and fees, including but not limited to attorney fees, cost of investigation, defense and settlements or awards, of County, all Agencies, Districts, Special Districts and Departments of County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents or representatives in any claim or action based upon such alleged acts or omissions.

B. With respect to any action or claim subject to indemnification herein by Contractor, Contractor shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Contractor's indemnification to County as set forth herein. Contractor's obligation to defend, indemnify and hold harmless County shall be subject to County having given Contractor written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at Contractor's expense, for the defense or settlement thereof. Contractor's obligation hereunder shall be satisfied when Contractor has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.

C. The specified insurance limits required in the Underlying Agreement of this Addendum shall in no way limit or circumscribe Contractor's obligations to indemnify and hold harmless County herein from third party claims arising from issues of this Addendum.

D. In the event there is conflict between this clause and California Civil Code §2782, this clause shall be interpreted to comply with Civil Code §2782. Such interpretation shall not relieve the Contractor from indemnifying County to the fullest extent allowed by law.

E. In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Addendum, this indemnification shall only apply to the subject issues included within this Addendum.

10. **Term.** This Addendum shall commence upon the Effective Date and shall terminate when all PHI and/or ePHI provided by County to Contractor, or created or received by Contractor on behalf of County, is destroyed or returned to County, or, if it is infeasible to return or destroy PHI and/ePHI, protections are extended to such information, in accordance with section 11.B of this Addendum.

11. **Termination.**

A. **Termination for Breach of Contract.** A breach of any provision of this Addendum by either party shall constitute a material breach of the Underlying Agreement and will provide grounds for terminating this Addendum and the Underlying Agreement with or without an opportunity to cure the breach, notwithstanding any provision in the Underlying Agreement to the contrary. Either party, upon written notice to the other party describing the breach, may take any of the following actions:

(1) Terminate the Underlying Agreement and this Addendum, effective immediately, if the other party breaches a material provision of this Addendum.

(2) Provide the other party with an opportunity to cure the alleged material breach and in the event the other party fails to cure the breach to the satisfaction of the non-breaching party in a timely manner, the non-breaching party has the right to immediately terminate the Underlying Agreement and this Addendum.

(3) If termination of the Underlying Agreement is not feasible, the breaching party, upon the request of the non-breaching party, shall implement, at its own expense, a plan to cure the breach and report regularly on its compliance with such plan to the non-breaching party.

B. **Effect of Termination.**

(1) Upon termination of this Addendum, for any reason, Contractor shall return or, if agreed to in writing by County, destroy all PHI and/or ePHI received from County, or created or received by the Contractor on behalf of County, and, in the event of destruction, Contractor shall certify such destruction, in writing, to County. This provision shall apply to all PHI and/or ePHI which are in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of PHI and/or ePHI, except as provided below in paragraph (2) of this section.

(2) In the event that Contractor determines that returning or destroying the PHI and/or ePHI is not feasible, Contractor shall provide written notification to County of the

conditions that make such return or destruction not feasible. Upon determination by Contractor that return or destruction of PHI and/or ePHI is not feasible, Contractor shall extend the protections of this Addendum to such PHI and/or ePHI and limit further uses and disclosures of such PHI and/or ePHI to those purposes which make the return or destruction not feasible, for so long as Contractor maintains such PHI and/or ePHI.

12. **General Provisions.**

A. **Retention Period.** Whenever Contractor is required to document or maintain documentation pursuant to the terms of this Addendum, Contractor shall retain such documentation for 6 years from the date of its creation or as otherwise prescribed by law, whichever is later.

B. **Amendment.** The parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for County to comply with HITECH, the Privacy Rule, Security Rule, and HIPAA generally.

C. **Survival.** The obligations of Contractor under Sections 3, 5, 6, 7, 8, 9, 11.B and 12.A of this Addendum shall survive the termination or expiration of this Addendum.

D. **Regulatory and Statutory References.** A reference in this Addendum to a section in HITECH, HIPAA, the Privacy Rule and/or Security Rule means the section(s) as in effect or as amended.

E. **Conflicts.** The provisions of this Addendum shall prevail over any provisions in the Underlying Agreement that conflict or appear inconsistent with any provision in this Addendum.

F. **Interpretation of Addendum.**

(1) This Addendum shall be construed to be part of the Underlying Agreement as one document. The purpose is to supplement the Underlying Agreement to include the requirements of the Privacy Rule, Security Rule, HIPAA and HITECH.

(2) Any ambiguity between this Addendum and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, Security Rule, HIPAA and HITECH generally.

G. **Notices to County.** All notifications required to be given by Contractor to County pursuant to the terms of this Addendum shall be made in writing and delivered to the County both by fax and to both of the addresses listed below by either registered or certified mail return receipt requested or guaranteed overnight mail with tracing capability, or at such other address as County may hereafter designate. All notices to County provided by Contractor pursuant to this Section shall be deemed given or made when received by County.

County HIPAA Privacy Officer: HIPAA Privacy Manager

County HIPAA Privacy Officer Address: 4080 Lemon St. 7th floor, Riverside, CA 92502

County HIPAA Privacy Officer Fax: (951) 955-3479

County Departmental Officer: Susan Birch

County Departmental Officer Title: Human Resources Services Manager

County Department Address: 4080 Lemon St. 7th floor, Riverside, CA 92502

County Department Fax Number: (951) 955-3479

ATTACHMENT J
Silver Script Employer Group Waiver Plan Agreement

EMPLOYER GROUP WAIVER PLAN AGREEMENT
BETWEEN
SILVERSCRIPT INSURANCE COMPANY
AND
RIVERSIDE COUNTY

This Employer Group Waiver Plan Agreement ("Agreement") is entered into as of January 1, 2013 ("Effective Date") by and between SilverScript Insurance Company ("SilverScript"), a Tennessee corporation, and Riverside County ("Client"), a political subdivision of the State of California.

RECITALS

WHEREAS, SilverScript is authorized to offer and issue one or more open or individual enrollment Prescription Drug Plans (each a "PDP") as well as employer group waiver plans ("EGWPs") offered exclusively to employer/union group health plan sponsors in accordance with Title I of the Medicare Prescription Drug Improvement and Modernization Act of 2003 and its implementing regulations at 42 C.F.R. Part 423 ("Part D"), issued and enforced by the Centers for Medicare and Medicaid Services ("CMS"), as well as other applicable CMS instructions, requirements, guidance and policies (collectively, "CMS Requirements"); and

WHEREAS, Client is an employer that offers an "employer-sponsored group prescription drug plan" ("Employer Plan") within the meaning of 42 C.F.R. § 423.454 and desires, with assistance from its third-party administrator, Health Net, Inc. ("Health Net"), a Delaware corporation, and pursuant to that certain Administrative Services Agreement by and between Client and Health Net, dated January 1, 2013, to offer such coverage to its Part D eligible beneficiaries ("Client Retirees") through a SilverScript EGWP.

NOW, THEREFORE, in consideration of the mutual premises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Issuance of SilverScript PDP Product.** For purposes of this Agreement, "SilverScript PDP Product" means, individually or collectively, a Part D plan option offered by SilverScript and the "Plan" means an EGWP provided by SilverScript for Client Retirees. SilverScript will make available to Client pre-enrollment materials for the Plan, including, but not limited to, Plan descriptions and Client Retiree communications developed by SilverScript in accordance with applicable CMS Requirements. Pursuant to its obligations as a PDP sponsor, SilverScript will issue a SilverScript Evidence of Coverage ("EOC") and other documents as required by CMS to Client Retirees enrolled in the Plan. Client understands that it is required to make certain communications to its retirees and that SilverScript is required to make certain communications and distribute certain documents to Client Retirees pursuant to CMS Requirements. Client has requested that SilverScript send such required communications on its behalf, and that it will not oppose or interfere with the distribution by SilverScript of those documents and materials required to be distributed by SilverScript. To the extent that SilverScript distributes such communications, documents and materials, Client agrees to provide, within five (5) business days after receipt of SilverScript's written request, all information identified and/or requested by SilverScript which is needed in order for SilverScript to make such communications and to distribute such documents and materials. Except as otherwise agreed in writing by the parties, SilverScript will utilize its standard marketing materials for this purpose. Additional charges may apply in the event that the parties agree upon the development of Client-customized materials.

2. Exclusivity of SilverScript. Client agrees that it shall not provide to Client Retirees financial or other incentives for enrolling in a Part D plan other than the Plan. Notwithstanding the previous sentence, nothing in this Agreement shall be interpreted as prohibiting or otherwise limiting a Client Retiree's choice of a Part D plan or Client from providing information to Client Retirees about another Part D plan.

3. Enrollment.

a. Forty-five (45) days prior to Client's desired effective date of enrollment for Client Retirees and prior to commencement of the first plan year under this Agreement, and thereafter as soon as possible following the date a Client Retiree becomes eligible for Part D, Client shall, or shall require that Health Net, provide, to SilverScript, in a written or electronic format acceptable to SilverScript, all information required by SilverScript to group enroll each Client Retiree in the Plan and to collect premiums under this Agreement (the "Enrollment Information"). The Enrollment Information shall include, at a minimum, Client's tax identification number and each Client Retiree's name, mailing address, Health Information Claim Number or HICN, date of birth, effective date of coverage, signature/application date, and any other information or elements as requested by SilverScript as required to enable SilverScript to submit a complete enrollment request to CMS. SilverScript will review the Enrollment Information for sufficiency and, if sufficient, group enroll the Client Retirees in the Plan in accordance with its group enrollment procedures and submit the Enrollment Information to CMS for enrollment confirmation and receipt of the effective date of the Client Retirees' enrollment. Following CMS confirmation, SilverScript will send to Client via Health Net, a Client Retiree list containing enrollment effective dates and indicating which Client Retirees CMS has notified SilverScript are eligible for the low income subsidy ("LIS"). Client agrees to identify and provide missing Enrollment Information as communicated by SilverScript. Client acknowledges that SilverScript will not submit an enrollment request to CMS and cannot ensure a particular effective date unless and until all Enrollment Information has been provided to, and deemed sufficient by, SilverScript.

b. Client agrees to require Health Net, on behalf of Client, to provide SilverScript, on a monthly basis, distinct and separate enrollment files for (i) additions, (ii) changes, and (iii) deletions to Enrollment Information.

c. Client agrees to follow all applicable CMS Requirements regarding the group enrollment and disenrollment processes in Chapter 3 of CMS' Prescription Drug Benefit Manual (as amended, from time to time, the "CMS Enrollment Guidance"), including the requirements in Section 40.1.6 and, as applicable, Section 50.6.1, each as may be amended from time to time, including providing all required notifications and other information to Client Retirees in a timely manner.

d. In the event Client determines that a Client Retiree is no longer eligible to participate in the Plan, Client understands and agrees that Option 2 of Section 50.6 of the CMS Enrollment Guidance shall apply. Specifically, upon notice from Client and/or Health Net that a Client Retiree is no longer eligible for the Plan, which notice shall be provided not less than forty-five (45) days prior to the desired disenrollment effective date, SilverScript will disenroll the Client Retiree from the Plan and provide prospective notice (at least twenty-one (21) days prior to the disenrollment effective date) to the Client Retiree of the pending termination consistent with the requirements of Section 50.6 of the CMS Enrollment Guidance. Client agrees to comply with the notice and other requirements of Section 50.6 and, specifically, agrees to provide timely notice to SilverScript, through Health Net, of the ineligibility of any individual to participate in the Plan (which notice shall include, among other things, all information necessary for SilverScript to submit a complete disenrollment request to CMS), and to provide timely prospective notice to the Client Retiree of the termination event and of other insurance options that may be available to the Client Retiree through Client as required of

Client by Section 50.6 of the CMS Enrollment Guidance. SilverScript shall be entitled to collect, and Client agrees to pay SilverScript, any portion of the Plan Premium (as defined below) owing for the Client Retiree for any period prior to the effective date of the Client Retiree's disenrollment from the Plan.

e. Client agrees that it will accept, and will direct all Client Retirees to submit to it, any voluntary disenrollment requests from Client Retirees. Client shall determine whether a Client Retiree is eligible to request disenrollment at the time presented pursuant to Client's Employer Plan rules regarding enrollment and disenrollment periods for Client's Employer Plan. Client shall forward disenrollment request to SilverScript, through Health Net, each Monday and Thursday for those Client Retirees deemed eligible to request disenrollment by Client, and shall include with such request its determination of the Client Retiree's eligibility to disenroll from the Plan so that SilverScript has the information necessary to determine whether the Client Retiree qualifies for a Special Enrollment Period Employer Group Health Plan ("SEP EGHP") under Section 30.3.8 of the CMS Enrollment Guidance. Client shall be responsible for the Plan Premiums (as defined below) for such Client Retirees until the effective date of their disenrollment from the Plan pursuant to notice received by SilverScript from CMS.

f. Client agrees to meet the requirements provided in the CMS Enrollment Guidance regarding the timely submission of enrollment and disenrollment requests to SilverScript to reduce the need for retroactivity.

g. Client agrees that enrollment in the Plan is restricted to Part D eligible beneficiaries receiving coverage under an "employer-sponsored group prescription drug plan" within the meaning of 42 C.F.R. § 423.454. Client further acknowledges and agrees that only Client Retirees who permanently reside in the defined service area of the Plan are eligible for coverage hereunder.

h. Client shall be responsible for reimbursing SilverScript in the event that SilverScript is required to perform any reconciliation or related services as a result of incorrect or inaccurate Enrollment Information being provided to SilverScript by Client or its designee.

4. **Responsibility for Premium Payment.**

a. Client agrees that it shall be responsible for payment of the premiums due for Client Retirees enrolled in the Plan ("Plan Premiums") as set forth in Exhibit A, attached hereto and incorporated herein by this reference. SilverScript shall bill Health Net, on behalf of Client, monthly in accordance with Section 6 below for the Plan Premiums. SilverScript will not invoice Client Retirees for premiums and, to the extent that any portion of the Plan Premiums are required by Client to be paid by a Client Retiree, Client or Health Net, as directed by Client, will be responsible for collecting such amount from the Client Retiree.

b. Client acknowledges and agrees that, in the event SilverScript does not receive the full Plan Premium due on behalf of a Client Retiree who has enrolled in the Plan, SilverScript shall notify Client and Health Net in writing and allow an additional ten (10) days to pay the Plan Premium owing. If SilverScript does not receive the Plan Premium within the ten (10) day period, SilverScript may assume that the Client Retiree is no longer eligible to participate in the Plan, and may disenroll the Client Retiree from the Plan in accordance with its disenrollment policies and procedures for EGWPs and the CMS Enrollment Guidance as described in Section 3(d). SilverScript shall be

entitled to collect, and Client agrees to pay, any portion of the Plan Premium owing for the Client Retiree for any period prior to the effective date of the Client Retiree's disenrollment from the Plan.

5. **CMS Subsidies.**

a. <u>Direct Subsidy Payments</u>. Client represents and warrants that it will comply with CMS Requirements regarding the premiums charged to its Client Retirees, including, without limitation, the requirements that: (i) Client may subsidize different amounts for different classes of Client Retirees in the Plan provided such classes are reasonable and based on objective business criteria; (ii) the premium cannot vary for individuals within a given class of Client Retirees; and (iii) a Client Retiree cannot be charged more than the Plan Premium (*i.e.*, the sum of his/her standard Part D premium and one hundred percent (100%) of the premium for his/her supplemental coverage, if any). SilverScript may inspect, or cause to be inspected and audited, the books and records of Client directly relating to premiums charged to Client Retirees and Client's compliance with the requirements of Chapter 12, Section 20.4 of CMS' Prescription Drug Benefit Manual.

b. <u>CMS LIS Premium Subsidy Payments</u>.

i. SilverScript agrees that it will identify in its monthly premium invoices those Client Retirees that it is notified by CMS are Low-Income Subsidy ("LIS") eligible Client Retirees, and the amount of the LIS premium subsidy applicable to these LIS-eligible Client Retirees. SilverScript agrees that it will deduct from Plan Premiums owed by Client any LIS premium subsidies for LIS Client Retirees on a monthly basis as received from CMS, but will show the amount of the deduction on the invoice so that Client can ensure that the value of the subsidy is passed through to Client Retirees as required by Section 5(b)(iii) below.

ii. The parties agree to periodically reconcile premium invoices and payments to take into account any CMS corrections with respect to LIS status.

iii. Client represents and warrants that it will comply with CMS Requirements regarding the LIS premium subsidies, including, without limitation, that any LIS premium subsidy amounts must first be used to reduce the portion of the Plan Premium paid by the Client Retiree, and only the remainder, if any, used to reduce Client's premium contribution. SilverScript may inspect, or cause to be inspected and audited, the books and records of Client directly relating to premiums charged to LIS-eligible Client Retirees and the existence and number of Client Retirees and Client agrees to maintain such books and records in accordance with, and for the ten (10) year period set forth in, applicable CMS Requirements, including, without limitation, Chapter 12, Section 20.12.1 of CMS' Prescription Drug Benefit Manual.

6. **Premium Invoices.** According to the process, and based on the Enrollment Information, set forth above, Client will receive an invoice each month for the Plan Premiums due for Client Retirees enrolled in the Plan for the coming month, and Client agrees to pay such amounts by the 45 day of the month following the month the invoice was received. Client may remit payment to SilverScript through Health Net.

7. **Term and Termination.**

a. <u>Term</u>. The term of this Agreement shall commence on the Effective Date and shall continue through December 31, 2013. Thereafter, this Agreement shall renew for additional twelve (12) month terms ("renewal terms"), upon written confirmation from Client which confirmation shall be received (i) at least forty-five (45) days prior to Client's open enrollment period or (ii) if Client does not have

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an open enrollment period, at least ninety (90) days prior to the termination effective date. The obligations of Client under this Agreement shall not be diminished or affected in any way so long as SilverScript continues to offer the Plan pursuant to this Agreement. The pricing shown in the attached Exhibit A may be subject to change by SilverScript annually in accordance with the last paragraph of Exhibit A.

b. Termination.

i. Either party may terminate this Agreement in the event of a material breach by the other party upon written notice to the other party unless the breach is cured within thirty (30) days of the termination notice.

ii. Either party may terminate this Agreement upon thirty (30) days advance written notice to the other party if, as a result of the enactment of any new law or regulation, or any change in any law or regulation or any interpretation of any law or regulation, the rights or obligations of the requesting party would be materially and adversely affected. Any such termination shall be effective on the day immediately preceding the effective date of such law, regulation or interpretation.

iii. This Agreement shall terminate in the event that CMS withdraws or terminates its approval of SilverScript's authority to offer an EGWP and such termination shall be effective as of the effective date of the CMS termination.

c. Consequences of Termination. In the event that Client terminates this Agreement without cause, or prior to expiration of the cure period set forth in paragraph (b) above, or SilverScript terminates this Agreement for cause, SilverScript shall have the right to disenroll the Client Retirees from the Plan in accordance with SilverScript's policies and procedures and Section 40.6 of the CMS Enrollment Guidance, as more specifically set forth in Section 3(d) above. Client further agrees that SilverScript may continue its relationship with all Client Retirees upon the termination of their enrollment in the Plan and, subject to the requirements of the CMS Enrollment Guidance, Sections 3 and 4 shall continue in effect until the end of the calendar year, or, in the case of non-calendar year plans, the plan year, in which the termination is effective. Termination will not affect any right to offset hereunder.

8. **HIPAA Compliance.** Each of Client and SilverScript agree to comply with the applicable privacy and security rules and regulations of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009 ("HITECH"). Client understands and agrees that, as a HIPAA covered entity, SilverScript may not share claims data or other Protected Health Information (as defined in 45 C.F.R. § 160.103) of Client Retirees enrolled in the Plan with Client, except for Summary Health Information as defined, and for the purpose specified, in 45 C.F.R. § 164.504, and enrollment and disenrollment information as permitted under 45 C.F.R. § 164.504(f)(1)(iii).

9. **General Provisions.**

a. Books and Records. SilverScript shall maintain, for a period of ten (10) years, books, records, documents and other evidence of accounting procedures and practices directly related to the financial and other aspects of its administration of the Plan.

b. Confidential Information.

i. Neither SilverScript, Client, nor any of Client's officers, employees, advisors, agents or representatives shall disclose or make use of any Confidential Information except as permitted under this Agreement without the prior written consent of the non-disclosing party, which consent may, inter alia, be conditioned upon the execution of a confidentiality agreement prior to any disclosure to a third party. Each party will disclose Confidential Information of the other party only to its officers, employees, advisors, agents or representatives, including Health Net (collectively "Authorized Representatives") who have a need to know the Confidential Information in order to accomplish the purpose of this Agreement and who (A) have been informed of the confidential and proprietary nature of the Confidential Information, and (B) have agreed not to disclose it to others and to treat it in accordance with the requirements of this Section. Each party shall advise its Authorized Representatives of the confidentiality provisions set forth in this Agreement.

ii. The foregoing shall not apply to such Confidential Information to the extent: (A) the information is or becomes generally available or known to the public through no fault of the receiving party; (B) the information was already known by or available to the receiving party prior to the disclosure by the other party on a non-confidential basis; (C) the information is subsequently disclosed to the receiving party by a third party who is not under any obligation of confidentiality to the party who disclosed the information; (D) the information has already been or is hereafter independently acquired or developed by the receiving party without violating any confidentiality agreement or other similar obligation; (E) the information is required to be disclosed pursuant to a court order; or (F) the information is required to be disclosed by Client in accordance with the California Public Records Act (Government Code section 6250 et seq.) and/or Brown Act (Government Code section 54950 et seq.) and is not subject to an applicable exemption under such Acts as determined by Client. If either party is required to disclose the Confidential Information of the other party as part of a judicial process, government investigation, legal proceeding, pursuant to the California Public Records Act (Government Code section 6250 et seq.) and/or Brown Act (Government Code section 54950 et seq.), or other similar process, such party, if it is reasonably possible to do so, shall give such prior written notice to the other party to allow the other party to seek an appropriate protective order or modification of any disclosure.

iii. Any unauthorized disclosure or use of Confidential Information with any consulting agents, advisors, brokers, or any other third party, other than Authorized Representatives as permitted under Section 9(b)(i) above, would cause SilverScript or Client immediate and irreparable injury or loss that may not be adequately compensated with money damages. Accordingly, if either party fails to comply with this Section 9(b), the other party will be entitled to specific performance including immediate issuance of a temporary restraining order or preliminary injunction enforcing this Agreement, to judgment for losses caused by the breach, and to any other remedies provided by law.

iv. For purposes of this Agreement, the term "Confidential Information" includes, but is not limited to, any information of either Client or SilverScript (whether oral, written, visual or fixed in any tangible medium of expression) relating to either party's services, operations, systems, programs, inventions, techniques, suppliers, customers and prospective customers, contractors, costs and pricing data, trade secrets, know-how, processes, plans, designs and other information of or relating to either party's business.

c. <u>Tradenames; Trademarks; and Service Marks</u>. Client shall not use any tradenames, trademarks or service marks of SilverScript, or any word or symbol likely to be confused with such tradenames, trademarks or service marks, unless authorized by SilverScript in writing or as expressly permitted by this Agreement.

d. Compliance with Laws.

i. Each party shall comply with the provisions of all applicable laws relating to the performance of its obligations under this Agreement, including, but not limited to, the CMS Requirements. Each party is responsible for obtaining its own legal advice concerning its compliance with applicable laws.

ii. Client shall have complete discretionary, binding and final authority to construe the terms of the Employer Plan, to interpret ambiguous Employer Plan language, to make factual determinations regarding the payment of claims or provision of benefits, to review denied claims and to resolve complaints by participants in the Employer Plan. SilverScript and Client acknowledge and agree that SilverScript shall not be: (A) the administrator of the Employer Plan for any purpose; (B) a named fiduciary with respect to the Employer Plan for purposes of the Employee Retirement Income Security Act of 1974 ("ERISA") or any applicable state law; (C) delegated discretionary authority or responsibility, or exercise discretionary authority or control, with respect to the Employer Plan or its administration; or (D) deemed a fiduciary with respect to the Employer Plan for purposes of ERISA or any applicable state law.

e. Indemnity.

i. SilverScript Indemnification. Subject to Section 9(g)(ii), SilverScript shall defend, indemnify and hold harmless Client, its subsidiaries and affiliates and each of their respective Board of Supervisors, officers, directors, and employees (the "Client Parties") from and against any and all claims, liabilities, demands, damages, losses, costs or expenses of any kind, including, without limitation, reasonable attorneys' fees and expenses ("Losses") incurred by any Client Parties arising out of or relating to SilverScript's negligence or breach of its obligations or warranties set forth in this Agreement, except to the extent such Losses are caused by the negligence or willful misconduct of any Client Parties, or breach of this Agreement by Client.

ii. Client Indemnification. Subject to Section 9(g)(ii), Client shall defend, indemnify and hold harmless SilverScript, its subsidiaries and affiliates and each of their respective officers, directors, and employees (the "SilverScript Parties") from and against any and all Losses incurred by any SilverScript Parties arising out of or relating to Client's negligence or breach of their obligations or warranties set forth in this Agreement, except to the extent such Losses are caused by the negligence or willful misconduct of any SilverScript Parties or breach of this Agreement by SilverScript.

iii. Notice of Claim. The party seeking indemnification shall notify the other party in writing within thirty (30) days of the assertion of any claim or the commencement of any action or proceeding for which indemnity may be sought under this Agreement. Failure to notify the other party shall not result in the waiver of indemnity rights with respect to such claim, suit, action or proceeding unless such failure materially prejudices the ability of the indemnifying party to defend such claim, suit, action or proceeding. The parties shall cooperate with each other in the defense and settlement of any such claim, action or proceeding.

f. No Third Party Beneficiaries. The terms and provisions of this Agreement are intended solely for the benefit of the parties hereto and their permitted successors and assigns, and it is not the intention of the parties to confer rights as a third-party beneficiary to this Agreement upon any other person.

g. <u>Limitations</u>.

i. Except as otherwise expressly set forth in this Agreement, SilverScript and Client make no additional representations or warranties, including, without limitation, warranties of merchantability or fitness for a particular purpose.

ii. In no event shall either party be liable to the other party for any indirect, special, or consequential damages or lost profits, arising out of or related to performance of this Agreement or a breach of this Agreement, even if advised of the possibility of such damages or lost profits.

h. <u>Force Majeure</u>. Except for the payment obligations set forth in this Agreement, the parties are excused from performance under this Agreement to the extent that a party is prevented from performing any obligation, in whole or in part, as a result of causes beyond its reasonable control, including, acts of God, war, civil disturbance, court order, governmental intervention, change in law, nonperformance by the other party or any third party, failures or fluctuations in electrical power, heat, light, air conditioning, or telecommunications equipment. Any nonperformance under this Section 9(h) will not constitute a default or a ground for termination of this Agreement.

i. <u>Entire Agreement; Interpretation; Amendment; Counterparts</u>. This Agreement (including exhibits, schedules, attachments, or any addendum to this Agreement) constitutes the entire understanding and obligation of the parties with respect to the services hereunder and supersedes any prior agreements, writings, or understandings, whether oral or written. The headings in this Agreement are used only for convenience of reference and do not affect the meaning or interpretation of any provision. The parties may amend this Agreement only through a properly executed writing authorized by both parties. This Agreement may be executed in several counterparts, all of which taken together constitute a single Agreement between the parties.

j. <u>Binding Effect; Assignment</u>. This Agreement is binding on the parties and their respective successors and permitted assigns. Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other (which consent will not be unreasonably withheld).

k. <u>Independent Contractor</u>. The parties to this Agreement are independent contractors, and have no other legal relationship under or in connection with this Agreement.

l. <u>Group Plan Sponsor</u>. Client represents and warrants that it is an "employer group plan sponsor" within the meaning of Section B. XVI of the 2008 Part D Sponsor Call Letter and that the Plan constitutes "employment-based retiree health coverage" as defined in 42 C.F.R. § 423.882.

m. <u>Waivers</u>. Any failure by a party to comply with any covenant, agreement, or condition herein or in any other agreements or instruments executed and delivered hereunder may be waived in writing by the party in whose favor such obligation or condition runs; except that failure to insist upon strict compliance with any such covenant, agreement, or condition will not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Any inadvertent error, omission or delay in complying with the terms and conditions of this Agreement shall not be held to relieve either party hereto from the liability that would attach to it hereunder if such error or omission is not prejudicial to the other party and is rectified immediately upon discovery.

n. <u>Severability</u>. In the event any term or provision of this Agreement is declared to be invalid or illegal for any reason, this Agreement will remain in full force and effect and will be interpreted as though such invalid or illegal provision were not a part of this Agreement. The remaining provisions

will be construed to preserve the intent and purpose of this Agreement and the parties will negotiate in good faith to modify any invalidated provisions to preserve each party's anticipated benefits.

o. <u>Enforcement Costs</u>. If either party institutes an action or proceeding to enforce any rights arising under this Agreement, the party prevailing in such action or proceeding will be paid all reasonable attorneys' fees and costs to enforce such rights by the other party, such fees and costs to be set by the court, not by a jury, and to be included in the judgment entered in such proceeding.

p. <u>Governing Law and Venue</u>. This Agreement must be governed by and construed in accordance with the laws of the State of California, without regard to applicable conflict of law rules. All action and proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the state or federal (if permitted by law and a party elects to file an action in federal court) courts located in the County of Riverside, State of California.

q. <u>Government Claims Act</u>. The applicable provisions of the Government Claims Act (Government Code section 900 et seq.) must be followed first for any disputes arising under this Agreement.

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

ATTEST:
Clerk of the Board
Kecia Harper-Ihem

By: _Kecia Harper-Ihem (signature)_
    Deputy

Date: _JUN 0 3 2014_

COUNTY OF RIVERSIDE:

By: _Jeff Stone (signature)_
    Chairman, Board of Supervisors
    JEFF STONE

Date: _JUN 0 3 2014_

Approved as to form and content:

Pamela J Walls
County Counsel

By: _(signature)_
Deputy County Counsel

SILVERSCRIPT INSURANCE COMPANY

By: _(signature)_

Title: _President_

Date: _4/25/14_

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Exhibit A

Payment Obligations

Premiums:

- **Plan Code G68**, Groups N5432R: **$442.11** Per Member Per Month ("PMPM")

    - Based on 8 total Client Retirees

- **Plan Code G68**, Groups N1658R: **$470.07** Per Member Per Month ("PMPM")

    - Based on 1 total Client Retirees

- **Plan Code G66**, Group 69381R: **$286.56** Per Member Per Month ("PMPM")

    - Based on 10 total Client Retirees.

1. The pricing set forth above is contingent upon the following assumptions:

- EGWP's require a premium subsidy of at least thirty-five percent (35%) of full beneficiary premium on a blended basis for each group, with each group member receiving some level of subsidy.

- SilverScript reserves the right to modify or amend the financial provisions in this Exhibit A in the event of a change in the scope of services to be performed by SilverScript or the assumptions upon which the financial provisions included in Exhibit A are based and/or any government imposed or industry wide change that would impede SilverScript's ability to provide the pricing described in this document.

Any change to the pricing pursuant to the above stated circumstances may be made at renewal of this Agreement, provided that Client receives at least a 180 day written notice prior to the date of such change and approves of the new pricing.

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