

A MANAGED PRESCRIPTION DRUG PROGRAM AGREEMENT  
MANAGED BY SCRIPT CARE, LTD. FOR  
NUECES COUNTY

THIS AGREEMENT made by and between **Script Care, Ltd.**, a third party administrator (“SCL”) and **Nueces County** (“Sponsor”):

WHEREAS, Sponsor desires to provide a prescription drug benefit program (“the Program”) for certain of its duly qualified and enrolled employees retirees and dependents (“Participants”); and

WHEREAS, SCL desires to provide contract administration and management of the Program for Sponsor through the network of Script Care Pharmacy Providers (each a “Participating Pharmacy”)

NOW, THEREFORE, in consideration of the premises and the mutual covenants and undertakings herein contained, the parties agree as follows:

I. DEFINITION OF TERMS

“Administrative Fees” means those fees payable to SCL as set forth in Schedule B to this Agreement.

“Authorized Physician” shall mean any licensed doctor of medicine, doctor of osteopathy, doctor of podiatry, or doctor of dentistry.

“AWP” is the average wholesale price as determined by Medispan.

“Blended” is the average annual discount from AWP and average dispensing fee billed to the Sponsor for brand and/or generic prescriptions. This rate may or may not be applicable to Sponsor’s plan.

“Brand Effective Rate” or “BER” means the total ingredient cost for brand drugs prescribed pursuant to the Program divided by AWP as determined by Medispan for each calendar period.

“Business Associate Agreement” as required by HIPAA to outline the privacy compliance provisions between SCL and Sponsor concerning covered participants PHI.

“Clearview” means SCL’s exclusive full disclosure Network Program Pricing as set forth in schedule D of this Agreement.

“Consultant” or “Broker” means any individual or firm selected by the Sponsor to perform certain duties pursuant to a contract or agreement between the Sponsor and Consultant or Broker.

“Covered Prescription Benefits, Participant Contributions and Limitations” means those categories of drugs or items identified as being covered under the Program in Schedule A of this Agreement, subject to the participant contributions and limitations described therein.

“Custom Computer Services” means any type of electronic or hard copy data files that Sponsor may request SCL to furnish to a Recipient as provided in this Agreement.

“Eligibility File Maintenance Data” means that form of data supplied by Sponsor so as to identify Participants as well as other eligibility information necessary to enable SCL to administer the Program and process prescription drug claims.

“Generic Effective Rate” or “GER” means the total ingredient cost for generic drugs prescribed pursuant to the Program divided by AWP as determined by Medispan for each calendar period.

“HIPAA” means Health Insurance Portability and Accountability Act of 1996, as amended and in effect from time to time.

“Legend Drug” means any medicinal substance which bears the legend "Caution, Federal law prohibits dispensing without a prescription" and, for the purposes of this Agreement, shall include State Restricted Drugs (any non-federal Legend Drug which, according to state law, may not be dispensed without a prescription) and compounded prescriptions containing at least one Legend Drug as herein described in a therapeutic amount.

“MAC” or “Maximum Allowable Cost” means a list of drugs developed by SCL that are subject to maximum allowable cost payment schedules which specify the maximum unit ingredient cost payable by Sponsor for drugs on the MAC list. The SCL MAC list and schedules are subject to change as determined by SCL from time to time.

“Maintenance Drug” means any Legend Drug that is prescribed for the purpose of treating or preventing a chronic illness. “Maintenance Drug List” means a list of such drugs prepared by and on file at SCL, as modified and updated by SCL from time to time.

“Minimum Enrollment” means not less than 80% of the total number of Primary Cardholders eligible and active on the effective date of the Agreement.

“Other Vendor(s)” means any individual or firm selected by the Sponsor to perform certain duties pursuant to a contract or agreement between Sponsor and Vendor.

“Plan Design” means the covered prescription benefits, participant contributions and limitations adopted by the Sponsor as outlined in Schedule A of this Agreement.

“Participant” means any individual for whom Sponsor requests prescription benefit coverage. Participants will be specified by Sponsor in the then current Eligibility File Maintenance Data incorporated by reference in this Agreement.

“Participant Contribution” means that amount of money which the Participant must pay for each prescription filled or refilled under the terms of the Program as specified in Schedule A of this Agreement.

“Plan” or “The Plan” means the Sponsor’s actual prescription drug benefit provided to its eligible members.

“Prescription Drug Management Pricing” means the agreed upon discount rate, the pharmacy dispensing fee, and other terms and conditions applicable to eligible prescription drugs processed by SCL as set forth in Schedule A of this Agreement.

“Primary Cardholder” means an actual employee or retiree of the Sponsor.

“Protected Health Information (PHI)” means individually identifiable participant health information as governed by HIPAA.

“Rebates” means retrospective rebates or discounts which are paid to SCL pursuant to the terms of a contract with a pharmaceutical manufacturer and directly attributable to the Standard SCL Formulary (as defined herein) and utilization of certain pharmaceuticals by participants.

“Rebate Program” means SCL’s manufacturer rebate program under which SCL contracts with pharmaceutical manufacturers for rebates payable on selected covered drugs, as such program may be modified from time to time.

“Recipient” means any individual or firm designated by Sponsor that SCL is authorized to provide Custom Computer Services as provided in this Agreement.

“Schedule II Drugs” means substances that have a high abuse potential with severe psychological or physical dependence liability but have an accepted medical use in the U.S. and are available for practitioners to prescribe, dispense and administer. (i.e. amphetamines, barbiturates, etc.).

“Service Fee” means the amount of compensation agreed upon by Sponsor payable to a TPA designated by Sponsor in accordance with the provisions contained in Schedule “B” of this Agreement.

“Specialty Pharmacy Medications” means biopharmaceuticals (bio-engineered proteins), blood- derived products and other complex molecules used to treat and manage specific chronic or genetic conditions.

“Standard SCL Formulary” means a list of preferred drugs by therapeutic class consisting of FDA approved brand name drugs and generic drugs. The drugs on the formulary may be modified from time to time as determined by SCL as a result of various factors such as, but not limited to, brand drug patent expirations, OTC availability, medical appropriateness, manufacturer rebate arrangements, and other issues as determined by SCL.

“Third Party Administrator (TPA)” means any individual or firm appointed by Sponsor to perform certain administrative services pursuant to a contract or agreement between Sponsor and TPA. These contracted services may include, but are not limited to:

- a) those duties outlined in Sections 7(a) and (b) of this Agreement.
- b) set up Sponsor plan provisions and documentation for new and renewal occurrences in accordance with SCL requirements.
- c) process SCL invoices for all billed charges through the Sponsor program and issue payments to SCL drafted on Sponsor bank account in accordance with SCL requirements.

“Usual & Customary” (U&C) is the lowest price a pharmacy would charge if the customer were paying cash, including senior citizen discounts and frequent shopper discounts.

2. DRUG COVERAGE AND EXCLUSIONS

Coverage for Participants will be provided pursuant to Schedule A of this Agreement.

Exclusions:

Medications for which the cost is recoverable under any workers compensation or occupational disease law or any state or governmental agency, or medication furnished by any other drug or medical service where no charge is made to the Participant.

Any Legend Drug for which the intended use has not been approved by the Food and Drug Administration and is therefore termed "Investigational."

Any experimental drug even though a charge is made to the Participant.

Any charge for the administration of any Legend Drug.

Legend Drugs which are to be taken or administered to the Participant, in part or in whole, while Participant is a patient in a licensed hospital, rest home, sanitarium, extended care facility, convalescent hospital, nursing home, or similar institution which requires special unit-dose type packaging of Legend Drugs for its patients.

Drug charges exceeding the cost for the same drug in conventional packaging.

3. QUANTITIES DISPENSED

The quantity dispensed for each covered prescription or refill of a covered prescription will be the quantity prescribed, up to the limits set forth in Schedule A of this Agreement.

4. REFILLS

A covered prescription may be refilled up to one year from the time it was issued by the Authorized Physician if the Authorized Physician so authorizes and if allowed by state and federal laws. In any case, all applicable pharmacy laws shall take precedence over the terms of this Agreement.

5. PARTICIPANT COVERAGE

Coverage for Participants will be only as specified by Sponsor in the then current Eligibility File Maintenance Data which is hereby incorporated by reference into this Agreement for all purposes.

6. SCL agrees to:

- a. Provide Sponsor with a current list of all Participating Pharmacies eligible to provide prescription services to Participants of the Program.

- b. Allow Participants of the Program to obtain and charge Covered Prescription Benefits at any Participating Pharmacy after paying the Participant Contribution, if one is required by the Program.
- c. Collect the full amount of the Participant Contribution, if any, from Participants for each new or refilled prescription at the time of the purchase.
- d. Bill Sponsor on or about the first and the fifteenth of each month for Covered Prescription Benefits provided by all Participating Pharmacies according to the pricing formula set forth in Schedule A of this Agreement and for all applicable administrative fees set forth in Schedule B of this Agreement. Such invoices shall provide a detailed summary of the claims, the amount due for said claims, the administrative fees due, and such other information which Sponsor reasonably requests.
- e. Send all materials related to the administration of the Plan, including the contracts, employee handouts, provider lists, and reports to the appropriate party via regular US Mail. Any charges incurred for special delivery will be billed to the Sponsor.
- f. Implement the Standard SCL Formulary and provide formulary management services that may include cost containment initiatives, communications with eligible members, network pharmacies and/or physicians for generic and formulary substitution as may be deemed appropriate.
- g. It is understood and agreed that SCL may receive formulary rebates from certain drug manufacturers as a result of utilization of certain brand drug products that are included on the Standard SCL Formulary. SCL will provide Sponsor with a formulary rebate payment on the formulary drugs dispensed under the Sponsor's Program provided Sponsor complies fully with the terms of the SCL standard formulary and with the formulary management programs implemented by SCL. Formulary rebates payments will be made by SCL within sixty (60) days following the end of each calendar quarter. Notwithstanding any other provisions in the Agreement, the formulary rebate payment is contingent upon the Sponsor implementing and maintaining a qualified formulary plan design. Under Clearview as set forth in Schedule D of this Agreement, the plan sponsor is eligible to receive 100% of returned manufacturer rebates. Upon termination of the Plan, Sponsor must comply with Section 26 of this Agreement, and if Sponsor fails to do so, SCL may retain all unpaid manufacturers' rebates. SCL may receive and retain other additional rebates and/or fees from certain drug manufacturers as a result of utilization of their products in aggregate on the entire block of SCL business.
- h. SCL at its sole discretion may modify the pricing and formulary rebate provisions if it determines that any government action, change in/or interpretation of any law or regulation or any action by a drug manufacturer(s) has a material adverse effect on the availability of formulary rebates under this Agreement by giving the Sponsor thirty (30) days' advance notice. Notwithstanding any other terms of this Agreement, if SCL determines that any direct action taken by Sponsor has a material adverse effect on the availability of formulary rebates under this Agreement, SCL may modify the pricing and formulary rebate provisions without advance notice.

- i. SCL shall provide Sponsor or its designee access to ongoing utilization reports available through the SCL standard report package. The SCL standard report package includes monthly, quarterly and annual statistical data elements captured during the online claims adjudication process. The standard reporting package shall be in a hard copy format and unless otherwise expressly stated is provided at no additional charge. At the request of the sponsor, SCL may develop special reports not included in the standard report package at an hourly rate determined by SCL based on the scope of the project. It is also understood and agreed that if the Sponsor requests any type of electronic data files SCL will provide such electronic data file in an approved file layout and approved hourly rate determined by SCL based on the scope of the project.

7. SPONSOR agrees to:

- a. Provide SCL, or its agent, with complete Eligibility File Maintenance Data, listing those Participants that Sponsor wishes to enroll in the Program. Sponsor shall be totally responsible for the correctness, completeness and accuracy of all data submitted to SCL or its agent, concerning the Eligibility File Maintenance Data and any updates thereof. If any such data submitted to SCL, or its agent, is incorrect, incomplete, not in good condition, or not submitted on time, Sponsor shall be responsible for any charges that may result from the use of said information in the verification of eligibility and the provision of services by Participating Pharmacies.
- b. Inform SCL, or its agent, using the appropriate data forms, of all changes in the status of Participants (e.g., additions, terminations, etc.) no less often than once a month.
- c. Adopt the Standard SCL Formulary and implement the plan provisions outlined in Schedule A of this Agreement. It is understood and agreed that although the Sponsor at its discretion may modify the SCL standard formulary by either adding or removing certain drugs from the formulary list, such changes may have an effect on the pricing and formulary rebates covered in the Agreement.
- d. Pay in full, upon receipt of billing, all invoices submitted to Sponsor by SCL for charges made by Participants, including those invoices made for related administrative fees. SCL shall bill subscriber twice a month (on or about the first and fifteenth of each month). All invoices shall be paid in United States dollars by check or electronic payment, within ten (10) working days of the receipt of each invoice. Sponsor shall pay a late payment charge of the lesser of (1) the maximum legally permitted rate, or (2) one percent (1%) per month on the amount of the unpaid balance of each invoice not paid in full by the due date. If payment for any billing cycle is not received by the close of the next billing cycle, the invoice will be deemed past due. All Prescription transactions will be suspended by SCL when at any time, an outstanding invoice is thirty (30) days past due and upon written notice to Sponsor prior to suspension. The Plan may be reinstated if payment of all past due amounts is received within ten (10) working days of the suspension. Thereafter, a written request to reinstate, and full payment of any amounts due, must be received by SCL before reinstatement will occur.
- e. If any change in Federal or applicable state law or regulation increases payments for Covered Drugs to Participating Pharmacies, the Prescription Drug Program fees set forth in Schedule A of this Agreement will be increased by the same amount.

8. CUSTOM COMPUTER SERVICES

Sponsor may contract with Consultants or Brokers, TPAs or other Vendors as defined in this agreement to perform certain duties pursuant to a contract or agreement between Sponsor and the designated individual or firm (each a "Recipient"). It is understood and agreed that SCL is not a party to any such contracts or agreements with a Recipient and SCL will not be bound by any terms or conditions contained in such contracts or agreements. If required and at the written direction of Sponsor, SCL will provide custom computer services including electronic data files to designated Recipient(s), subject to the following conditions:

- a. Custom Computer Services and electronic data files will be provided to the Recipient(s) in a standard SCL format; if Sponsor requests Custom Computer Services or electronic data files in non-standard SCL format, then Sponsor shall pay SCL for such services or files at SCL's then prevailing rates based on the scope of the project. Such costs for such services will include, if needed, special computer programming, analytical services or other ad hoc services that may be required to support such custom computer services.
- b. Sponsor will be responsible for securing any required "Business Associate Agreement" with the Recipient that may be required under HIPAA. Sponsor will provide SCL with a copy of any such agreement prior to any PHI being released to the Recipient.

9. REBATE PROGRAM (if applicable).

- a. SCL will negotiate with pharmaceutical manufacturers regarding the terms of the Rebate Program. Sponsor shall be eligible to participate in the Rebate Program and receive Rebates for eligible transactions in the amounts set forth on Schedule C upon meeting the following requirements:

**Three Tier Rebate guarantees are contingent upon the following terms:**

- Plan's adoption of Script Care's formulary
- 3-Tier plans require adoption of Script Care's formulary management, and utilization management
- Rebate ineligible paid claims such as those from 340B pharmacies or entities eligible for federal supply schedule prices (e.g., Dept. of Veterans Affairs, US Public Health Service, Dept. of Defense), Invalid service provider identification, invalid prescription number, stale dated claims over 180 days old, manufacturer discount products not listed on Script Care's formulary, cash discount claims, re-packaged NDCs, and products that can be dispensed without a prescription, and devices without a drug component are excluded from rebate guarantees
- Incentivized is defined as a 3-Tier formulary with a minimum of \$10 difference in copayment or 20% difference in coinsurance between preferred and non-preferred branded drugs

- Non-Incentivized is defined as a 3-Tier formulary without a minimum of \$10 difference in copayment or 20% difference in coinsurance between preferred and non-preferred branded drugs
- Plan is accountable for at least half of the aggregate drug costs annually
- Any deviations to the Script Care Formulary and Utilization Management Programs that adversely impacts rebates will result in a proportional adjustment to the corresponding rebate guarantees

**Two Tier Rebate guarantees are contingent upon the following terms:**

- Rebate ineligible paid claims such as those from 340B pharmacies or entities eligible for federal supply schedule prices (e.g., Dept. of Veterans Affairs, US Public Health Service, Dept. of Defense), Invalid service provider identification, invalid prescription number, stale dated claims over 180 days old, manufacturer discount products not listed on Script Care's formulary, cash discount claims, re-packaged NDCs, and products that can be dispensed without a prescription, and devices without a drug component are excluded from rebate guarantees
- Plan is accountable for at least half of the aggregate drug costs annually

**Worker's Comp Rebate guarantees are contingent upon the following terms:**

- Plan's adoption of Script Care's formulary
- 2-Tier Closed plans require adoption of Script Care's formulary management, and utilization management
- Rebate ineligible paid claims such as those from 340B pharmacies or entities eligible for federal supply schedule prices (e.g., Dept. of Veterans Affairs, US Public Health Service, Dept. of Defense) are excluded from rebate guarantees adjustment to the corresponding rebate guarantees
- Plan is accountable for at least half of the aggregate drug costs annually Programs that adversely impacts rebates will result in a proportional
- Any deviations to the Script Care Formulary and Utilization Management

- b. Sponsor understands that its eligibility to receive payments for Rebates may change due to changes in its formulary and benefit design changes in SCL contracts with pharmaceutical manufacturers, changes in laws governing prescription drug pricing (including rebates), or the selection of certain services, such as prior authorization or open formulary management. Sponsor further acknowledges that direct reimbursement claims, compounds, Specialty Pharmacy Medications, Schedule II drugs and claims funded less than 50% by the health plan benefit may not be eligible for rebates.
- c. SCL will pay to, or apply against other administrative fees of Sponsor, an amount calculated as the percentage or per prescription drug claim amount of the rebates which it receives from drug manufacturers and attributable to prescription drugs utilized by Participants. Such payment shall be made on a quarterly basis within sixty (60) days following the end of each quarterly period; provided, however, that SCL shall make quarterly payments as provided herein only to the extent of the allocable rebate payments which it receives within sixty (60) days following the end of the quarterly period. Payments equal to allocable rebate amounts that SCL receives later than sixty (60) days following the end of a quarter shall be included by SCL in the next quarterly payment. Sponsor acknowledges and agrees that neither it nor its clients shall have a right to interest on, or



the time value of, any rebate payments received by SCL or moneys payable under this Section. In addition to any deposit required under any other Section of this Agreement, SCL may delay payment of rebates to allow for final adjustments upon termination of this Agreement. It is understood and agreed that any rebates which have not been paid to Sponsor as of the effective date of termination shall be payable only if the Sponsor complies with all of the provisions contained in Section 26 of this Agreement.

- d. Sponsor acknowledges that it may be eligible for rebates under this Agreement only so long as Sponsor, its affiliates, or its agents do not contract directly or indirectly with anyone else for discounts or rebates on pharmaceutical products or programs for claims processed by SCL pursuant to this Agreement, without the prior written consent of SCL. In the event that Sponsor negotiates or arranges with a pharmaceutical manufacturer for rebates or similar discounts, but without limiting SCL's right to other remedies, SCL may terminate this Agreement pursuant to Section 26(a) of this Agreement. In the event of such termination, under this Section 9(d) SCL shall be entitled to retain 100% of any and all rebates to Sponsor which have not been paid to Sponsor as of the effective date of termination.
- e. Rebates are only eligible for payment under the signed client service agreement. Rebates will not be paid for any time period for which the Agreement has not been signed.

#### 10. SUBCONTRACTING

SCL, with Sponsor's consent not unreasonably withheld, reserves the right to subcontract its functions and services to be provided pursuant to this Agreement, including, but not limited to, claims processing, marketing, formulary management and pharmacy services

#### 11. EXCLUSIVE PARTICIPATION BY PHARMACIES

Both parties agree that the terms of this Agreement shall be exclusive with respect to the providing of prescription services by Participating Pharmacies for Participants covered under the Program. Only those Participating Pharmacies which have been certified by SCL and whose name appears in the Pharmacy Provider Directory provided to Sponsor by SCL shall be allowed and authorized to provide prescription services under the terms of the Program.

Mail order dispensing fee is subject to change from time to time for increases in postage and delivery charges, upon written notice to Sponsor.

If SCL pays a Pharmacy a higher rate because Sponsor has requested such Pharmacy be included in the network, the rate charged to Sponsor shall be the net ingredient cost plus the dispensing fee paid by SCL to such Pharmacy, plus applicable sales or excise tax or other governmental surcharge, or any preferred product dispensing fees.

#### 12. RELATIONSHIP BETWEEN SPONSOR AND SCL

With respect to each other, Sponsor and SCL are independent contractors, and this Agreement shall not be construed to create any other relationship between the parties.

13. RENDERING OF SERVICE

Nothing contained in this Agreement shall be construed to require the Participating Pharmacy to render any pharmaceutical service or dispense any prescription medication if, in the dispensing pharmacist's professional judgment, such service should not be rendered or such medication should not be dispensed.

14. AMENDMENT AND MODIFICATION

This Agreement shall not be amended or modified in any manner whatsoever except by a written instrument signed by the parties hereto. Any handwritten changes to this Agreement are void.

15. SCHEDULES

Schedules mean the attached documents setting out certain particulars of this Agreement, or any replacement documents thereof. All Schedules, Sponsor's RFP no. 2933-13, SCI's Proposal Response are incorporated herein by reference and are made part of this Agreement for all purposes.

16. PROGRAM PRICING

The Program Pricing set forth in Schedule A is based on the Plan Design, Minimum Enrollment, Standard SCL Formulary and other plan provisions included in this Agreement. Actual rates may vary by Participating Pharmacy. Clearview network pricing set forth in Schedule D of this Agreement is equivalent to the direct pharmacy contract rate reimbursed to the pharmacy for ingredient cost and dispensing fee. No markup, spread pricing or negative billing is included in the billed charges. The Program Pricing terms are also based on the Sponsor funding 50% or greater of the cost of covered drugs for eligible members. Any modification of the Plan Design, failure to meet minimum enrollment, modification of the Standard SCL Formulary or other plan provisions by the Sponsor may result in retroactive modification to the SCL Program Pricing. Sponsor will provide SCL with at least thirty (30) days prior written notice of any changes desired for approval by SCL. Ingredient cost discounts may be aggregated for the purposes of calculating GER. Such calculations shall be made within 60 days following the Sponsor's contract anniversary date.

17. INTERPRETATION OF THE PLAN

It is expressly understood and agreed that SCL is not a fiduciary or Plan Administrator as those terms are used in the Employee Retiree Income Security Act of 1974 (ERISA), 29 U.C.S. 1001 et seq., and the regulations promulgated there under. Sponsor will have full, binding and final authority to interpret benefits and eligibility provisions and shall make the final determination regarding the payment of questionable claims and to resolve complaints or issues with Participants.

18. NOTICES

All notices to be furnished pursuant to the terms and provisions of this Agreement shall be personally delivered or sent by certified mail, return receipt requested, to the address stated set forth at the end of this Agreement.

19. CAPTIONS AND HEADINGS

The captions and headings set forth in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

20. SEVERABILITY

The invalidity or unenforceability of any term or provision hereof shall in no way affect the validity or enforceability of any other term or provision.

21. ADVERTISING AND PROMOTIONAL CONTROL

SCL reserves the right to control the use of the words "Script Care" and all service marks presently existing or hereafter established in connection with the Program. Sponsor agrees that it will not use such words, symbols, trademarks or service marks in advertising or promotional materials or otherwise, and that it will not advertise or publicly display such words, symbols, trademarks or service marks without the prior written consent of SCL, and will cease any and all usage immediately upon termination of this Agreement.

22. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. All disputes arising under this Agreement shall be resolved in Nueces County, Texas.

23. FORCE MAJEURE

Neither party shall be liable for failure to perform its obligation under this Agreement if prevented from doing so by a cause or causes beyond its commercially reasonable control, including, but not limited to, acts of God or nature, fires, storms, floods, hurricanes, earthquakes, riots, strikes, wars, or restraints of government.

24. ENTIRE AGREEMENT

This Agreement, including any Sponsor's RFP NO. 2933-13 and Addendums, SCL's Proposal Response, Schedules attached hereto and authorized amendments, shall constitute the entire understanding between the parties hereto and shall supersede any and all prior or contemporaneous representations, statements, understandings, negotiations, or agreements, whether oral or written between the parties.

25. WAIVER

No delay or failure of SCL or Sponsor in exercising any right hereunder and no partial or single exercise thereof shall be deemed of itself to constitute a waiver of such rights or any other right hereunder.

26. TERM

The Initial Term of this Agreement shall be one (1) year, commencing October 1, 2013, with an option to renew. Each renewal, if mutually acceptable to SCL and Sponsor ninety (90) days prior to the end of the initial term or renewal term, will be in twelve (12) month increments, not to exceed three (3) years of additional renewals past the initial term. However, this Agreement may be terminated earlier or extended in accordance with the provisions of this Agreement as follows:

- a. Either party may terminate this agreement on five (5) days' prior written notice to the other party if the other party is in default under any of the terms and provisions of this Agreement or under the terms and provisions of any other Agreement entered into by the parties in connection with the Program and has failed to cure default within ten (10) days following written notice of such default.
- b. If this Agreement has any affect whatsoever on the level of reimbursement that the Participating Pharmacies received from any applicable state Medicaid program, this Agreement may be immediately terminated by SCL. Notwithstanding the preceding this Agreement may be terminated at any time by either party without cause upon sixty (60) days written notice.
- c. SCL may terminate this Agreement or suspend processing prescription transactions upon five (5) days written notice to Sponsor prior to said action when, at any time, an outstanding invoice is thirty (30) days past due.
- d. Either party in accordance with applicable law may terminate this agreement upon five (5) days written notice upon the insolvency of the other party. Insolvency shall mean the filing of a bankruptcy petition, either voluntary or involuntary, under the United States Bankruptcy Code, inability to pay debts as they become due, appointment of trustees to liquidate any material part of its property or holdings, proceedings under any receivership, composition, readjustment, liquidation, insolvency, dissolution or any like law or statute.
- e. If the pricing methodology, pricing calculation by SCL's pricing source vendor, or pricing source vendor used by SCL changes in a manner that causes a material change in the financial arrangement between the parties, a party may request, and both parties will engage in, good faith renegotiations of the financial terms of this Agreement and such agreed renegotiated terms will be effective beginning the renewal term.

## 27. POWER AND AUTHORITY

Each of the individuals who has executed this Agreement on behalf of one of the parties hereto represents and warrants that he or she has the power and authority to execute this Agreement on behalf of such party and to bind such party to the terms and provisions of this Agreement.

## 28. RIGHT TO AUDITS

Sponsor or its designee shall have the right to perform an audit of charges submitted to Sponsor by SCL for services provided under the terms of this Agreement for a maximum period of twenty-four (24) months prior to the agreed upon audit date. Such audit report will be subject to the Texas Public Information Act. Any audit requested by Sponsor may only be conducted once annually and requires sixty (60) days' prior written notice. The audit will be performed at the SCL corporate offices during

regular business hours and all costs for such audits will be entirely the responsibility of Sponsor and will be due and payable upon completion of such audits.

Any agreements between SCL and pharmaceutical manufacturers or any subcontracted formulary management company are subject to confidentiality agreements. Any audits conducted by Sponsor in accordance with the above will not include any such agreements.

SCL may in its discretion require Sponsor to furnish SCL copies of its most recent audited financial statements, or other applicable financial records if audited financial statements are not available, prior to the effective date of this Agreement or at any time during the term. These financial records are available and accessible to SCL in the Nueces County Auditor's website.

#### 29. FINANCIAL RESPONSIBILITY

Notwithstanding any other provisions of this Agreement, if SCL determines at any time based on reasonable grounds that Sponsor may not fulfill its payment obligations under this Agreement as they become due, SCL may request any information deemed necessary to evaluate the financial responsibility of the Sponsor. If the information is not provided to SCL within five (5) days, or if the information provided by Sponsor is not satisfactory in SCL's reasonable judgment, SCL may terminate this Agreement by giving Sponsor prior written notice.

#### 30. CONFIDENTIALITY OF INFORMATION

Pursuant to this Agreement, SCL shall take all reasonable precautions to prevent disclosure or misuse of any PHI except as reasonably necessary to implement and operate the program and fulfill its obligations under the terms of the Agreement as required by applicable law. SCL shall disclose such information only:

- a. in response to a court order;
- b. for an examination conducted by the Commissioner of Insurance of the State of Texas;
- c. at the written request of Sponsor; or
- d. with the written consent of Participant or his/her legal representative.

#### 31. INDEMNIFICATION

SCL covenants and agrees to indemnify, defend, and save harmless Sponsor from any costs, expenses, losses, claims, damages, and liabilities incurred or suffered directly or indirectly, including reasonable legal fees and expenses, resulting from or attributable to (i) the acts or omissions of Participating Pharmacy in connection with the Program, including, but not limited to, dispensing errors or omissions, incorrect labeling or acts in violation of any applicable law, rule or regulation, and (ii) the breach by SCL or its Representatives of any of SCL's covenants, obligations, representations or warranties under this Agreement, and (iii) the acts or omissions of any Consultant, Agent, Employee, Representative, Subcontractor, Subcontractor's employees, Assignee, Assignee's employees or agents, selected by SCL in connection with this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date(s) noted below.

NUECES COUNTY

901 Leopard Street, Suite 304

Corpus Christi, TX 78401

Phone: 361-888-0444

Fax: 361-888-0445

\_\_\_\_\_  
Samuel L. Neal Jr.  
Nueces County Judge

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

SCRIPT CARE, LTD

6380 Folsom Drive

Beaumont, TX 77706

Phone: 409-833-9061

Fax: 409-832-3109

\_\_\_\_\_  
James F. Brown, R.Ph.  
President

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