



NY Small Group Silver 4 HRA Application

This is a request that MVP Health Care® prepare a resolution to establish a Health Reimbursement Arrangement (HRA). This document ensures that important operational criteria are reviewed, analyzed, and accepted by MVP as the perspective HRA Administrator. This form must be completed in its entirety and submitted to your MVP Sales Representative prior to the plan implementation.

Please complete and return **both** pages of this application. It cannot be processed without your signature.

Check one: New Application Renewal Application

Section 1: Company Information (please print)

Company Name	Group No.	Employer Tax ID No.	Plan Year Effective Date
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Company Street Address	City	State	Zip Code
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Company Contact Name	Phone No. ()	Contact Email
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Financial Contact Name (if different from above)	Phone No. ()	Financial Contact Email
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Broker Agency	MVP Sales Representative	Silver 4 PID
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Will Broker need WealthCare Portal access? <input type="checkbox"/> Yes (If Yes, please provide the Broker's Name and Email below for WealthCare Portal access) <input type="checkbox"/> No		Number of Full-time Employees	Expected Number of HRA Enrollees
Broker Name	Broker Email		

Form of Business

- S Corporation C Corporation (only the owners of a C Corporation are eligible for an HRA)
 Partnership Limited Liability Company Non-Profit Corporation Municipality Other

Name(s) of Owners to exclude:

Owners of businesses that operate as a C-Corp are eligible to receive reimbursements tax free. Sole Proprietors, Partners, or S-Corp shareholders that own more than 2% of the company's shares may participate for tracking purposes only. Speak with your legal or tax advisor for further guidance.

Section 2: NY Small Group Silver 4 Integrated HRA Plan Design (weekly claims settlement only)

The NY Small Group Silver 4 plan from MVP includes an embedded HRA. Plan design is as follows:

- Covers medical expenses only (up to deductible)
- MVP pays the provider directly for claims that are eligible for reimbursement under the HRA
- Must have an \$85 minimum front-end employer contribution
- Pharmacy expenses are not included
- There is no debit card; pre-funding is not required
- There are no additional administrative fees

Coverage Tier	Minimum Employer Contribution	Additional Employer Contribution*
Single	\$85	\$
Family	\$85	\$

*\$85 will be added to the Additional Employer Contribution amount above. Employers can add up to \$2,415 for single/\$4,915 for family for a total maximum annual contribution of \$2,500 for single/\$5,000 for family.

Claims Submission Deadline: 180 days from the end of the plan year or termination.

Continued on page 2.

Company Name	Tax ID No.
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Section 3: COBRA and the Silver 4 Integrated HRA

The Employee Retirement Income Security Act of 1974 (ERISA) requires that members who lose their HRA due to a COBRA qualifying event must be offered the opportunity to continue their HRA coverage under COBRA. Premiums for COBRA under the HRA must be determined actuarially or the applicable premium may be determined by using a “past cost” method. Please contact your MVP Sales Representative if you need assistance determining the HRA/COBRA premium.

Section 4: Banking Information

Name of Financial Institution	Account Type <input type="checkbox"/> Checking <input type="checkbox"/> Savings
Account Routing Number	Bank Account Number

Manual claims will initially settle from an MVP owned bank account. MVP will automatically pull settlement charges from the bank account designated on this document daily or weekly based upon the method chosen on this application.

Monthly Administrative fees related to Ancillary Services that are not paid within 30 days will also be paid via Automated Clearing House (ACH) from the bank account provided.

Please confirm with your financial institution that there are no debit blocks on your account prior to the effective date of services.

_____ (The “Company”) does hereby authorize MVP Health Care® to withdraw at such time as it deems necessary the amount owing for the provision of health reimbursement arrangements (HRA) and other operating costs of the Company’s plan. That in the case of an automatic bank debit form of payment, it shall be Company’s responsibility to verify whether these payments are properly debited to its bank account, and Company will undertake to notify MVP Health Care of any change in information relating to Company’s account for purposes of ensuring the proper application of payments.

Employer Signature _____ *Title* _____ *Date* _____

Section 5: Authorization

I hereby certify that the statements made are true and complete to the best of my knowledge and belief.

Unless otherwise prohibited by law, I consent to the receipt of electronic communications related to my MVP health plan at the email address I provided. I have read and agree to the details outlined in MVP’s *Electronic Communications Disclosure* available at mvphealthcare.com or by calling MVP at 1-800-TALK-MVP (825-5687).

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each violation.

I have read and agree to this authorization, as well as the MVP Ancillary Administrative Services Agreement.

Signature _____ *Name (print)* _____

Title _____ *Date* _____

Please note: MVP FSA administration is available for a Per Contract Per Month (PCPM) fee. Contact your MVP Account Representative for details. This plan cannot be offered in conjunction with an HSA.

Exhibit 1

MVP ANCILLARY
ADMINISTRATIVE SERVICES AGREEMENT

1. INTRODUCTION

- (a) This Administrative Services Agreement Exhibit is entered into as of the Plan Year Effective Date between MVP Health Plan, Inc. and affiliates, a New York corporation with offices at 625 State Street, Schenectady, NY, 12305 (referred to herein as “MVP”), and Company (as such term is defined in the foregoing MVP Spending Account Services Application). MVP and Company are collectively referred to herein as the “Parties,” or singularly as a “Party.”
- (b) These Terms and Conditions herein apply to this Administrative Services Agreement, the Ancillary Services Application, and all other exhibits hereto (collectively, the “Agreement”). If any exhibit provides terms that conflict with these Terms and Conditions, the terms of these Terms and Conditions govern.

2. DEFINITIONS

Defined terms are as follows, unless otherwise defined herein.

MVP Designee – An individual or entity appointed by the MVP from time to time to assist the MVP with the implementation and support of the Ancillary Services Administration System. The current MVP Designee is Alegeus, LLC, the company responsible for the development of the Alegeus Wealthcare Portal Administration System, a software system used to support the Plan’s Card Program.

ACT Provider Remit – (Automatic Claims Transmission) Process by which the HRA pays a provider directly for a Member’s financial responsibility for a service.

Card Transaction – A transaction that occurs when the Plan-issued debit card is presented to a merchant or provider for payment of Eligible Expenses.

Claim – Information submitted by a provider or Participant to establish that an Eligible Expense was incurred by Participant.

COBRA – The Consolidated Omnibus Budget Reconciliation Act of 1985, as amended or replaced from time to time.

Code – The Internal Revenue Code of 1986, as amended or replaced from time to time.

Compensation – The amounts received by the Participant from the Company during a Plan Year.

Dependent – Any individual who qualifies as a dependent under the Plan.

Plan Year Effective Date – The date set forth in the MVP Ancillary Services Application.

Election of Benefit Forms – The forms provided to Employees by Company pursuant to the Plan Document.

Eligible Expenses – Expenses that are covered by the Plan.

Eligibility – Eligibility information prepared by Company and furnished to MVP detailing the individuals eligible to participate in the Plan, the Benefit Options selected by the Participants, the Employer Contribution to each Benefit Option selected and the Employee's Contribution to each Benefit Option selected as amended from time to time.

Employee – The employee of the Company.

ERISA – The Employee Retirement Income Security Act of 1974, as amended from time to time.

Grace Period – The additional time selected by the Company at the end of the Plan Year during which Participants may submit Claims for Eligible Expenses.

HIPAA – The Health Insurance Portability and Accountability Act of 1996, as amended from time to time.

Individual Benefit Statement – The statement provided to Participants with information about Participants' account balances and benefits.

Participant – An Employees set forth on the Eligibility as amended from time to time.

Plan Account – The segregated account(s) that Company must establish, maintain and fund in connection with the funding of Benefit Options under the Plan and in accordance with this Agreement and the Plan Document.

Plan Administrator – The Plan Administrator as defined in ERISA Section 3(16) (A). Company shall be the Plan Administrator.

Plan Benefit Dollars – The cash contributions by Company and Employee to the Benefit Options selected by Employee and verified for eligibility by Company.

Plan Document(s) – The instrument(s), including all amendments, which sets forth the details of the Plan(s) selected by Company, and the Eligibility prepared by Company, which

are incorporated herein by reference.

Plan Sponsor – The Company.

Plan Year – The 12-month period commencing on the Plan Year Effective Date of the Plan.

Prior Reimbursement Claims – Claims incurred prior to the Plan Year Effective Date.

Prior Administration – The administration of Claims prior to the Plan Year Effective Date.

Roll Over (carry over) Medical FSA – The Company, at their option, is permitted to provide for the carryover to the immediately following plan year of up to \$500 of any amount remaining unused as of the end of the plan year in a health FSA. The Company may choose to allow less than the \$500 rollover, but not more than this amount

Roll Over (carry over) HRA – The company, at their option, is permitted to provide for the carryover to the immediately following plan year of unused HRA funds. Maximum amount allowed is determined by Company.

Run Out – Period of time in the new plan year during which account holders can file claims for expenses incurred during the previous plan year. This timeframe is chosen by the Company.

Summary of Material Modification – A summary of changes to the Plan.

Summary Plan Description – The summary of the Plan required to be distributed to Employees.

Transaction Charge – A charge of thirty dollars (\$30.00) for each ACH returned due to insufficient funds

Unclaimed Funds – Any funds remaining in any accounts held by MVP as of 30 days after the end of the Plan Year or Grace Period, if applicable.

3. ADMINISTRATIVE SERVICES

- (a) Relationship of the Parties. MVP is and shall remain an independent contractor with respect to the service being performed hereunder and shall not, for any purpose, be deemed an employee or partner of Company, or a fiduciary of the Plan. MVP is providing certain administrative services for Company and does not assume any final risk or obligation with respect to Claims payable by Company under the Plan. Company has exclusive authority to control and manage the operation of the Plan. MVP does not assume any responsibility for the Plan design, the adequacy of its funding, or any act or omission or breach of duty by Company. Nor is MVP, under the terms of this Agreement, to be deemed an insurer, underwriter or guarantor with respect to any benefits payable

under the Plan. Nothing herein shall be deemed to constitute MVP as a party to the Plan.

- (b) Services. Commencing on the Plan Year Effective Date and continuing for the term of this Agreement, the administrative services to be provided by MVP and the fees to be paid by Company to MVP are set forth in the Administrative Fee Proposal in Exhibit 3. The parties agree that the duties to be performed hereunder by MVP are non-discretionary duties. The parties may agree to additional duties in writing as may be specified in a Statement of Work, a template of which is attached hereto as Exhibit 4.
- (c) Benefits Options, Benefit Reports, Plan Accounts.
 - (i) MVP shall operate under the express terms of this Agreement and in accordance with the Plan Documents. Company shall receive all Election of Benefit Forms from Employees and determine eligibility of Employees to participate in the Benefit Options selected by such Employee. Company also shall furnish to MVP updated Eligibility indicating all Plan Participants, the Benefit Options selected, and the Plan Benefit Dollars allocated to each of the Benefit Options, including whether the Plan Benefit Dollars are Company or Employee contributions. MVP shall, based upon the Eligibility prepared by Company, pay Claims in its usual and customary manner to Participants from the Plan Account(s) established by Company. In the event there is a question concerning coverage of a Claim, MVP shall forward the question to Company, who shall make a coverage determination. MVP will, at Company's direction, either pay or not pay the Claim and communicate that decision to Participant.
 - (ii) Company must submit amended Eligibility to MVP in advance of a permitted change to either the Company or Employee contributions to the Plan. Company shall be responsible for funding its contribution and assuring that the contribution committed to by Employees are funded at the level committed to in the Plan Documents. In the event that the funds in the Plan Account are inconsistent with the funding commitments set forth in the Plan Documents, MVP will notify Company by facsimile transmission, electronic mail, or in writing. Immediately upon such notification, Company promptly will wire additional funds into the Plan Account as necessary to fund all current payable Claims, or immediately amend the Eligibility and submit the amended Eligibility to MVP. After giving Company notice of insufficient funds in the Plan Account, MVP will not pay any Claims until Company has deposited funds in the Plan Account sufficient to cover all current payable Claims.
 - (iii) Company may access plan reports at any time through the Alegeus Wealthcare Portal Administration System, and also will be supplied by MVP with weekly enrollee account balance reports. It shall be Company's sole responsibility and obligation to reconcile Company's Plan Account and to dispose of any excess Plan Account assets in accordance with relevant state and federal laws, rules and regulations.

- (d) Prior Reimbursement Claims. MVP has no duty or obligation with respect to Prior Reimbursement Claims from before the Plan Year Effective Date. Company is responsible for processing Prior Reimbursement Claims, including any run-out claims submitted after the Plan Year Effective Date. Company shall indemnify and hold MVP harmless for any liability, costs and expenses relating to Prior Reimbursement Claims and/or Prior Administration.
- (e) Performance of Obligations. MVP shall perform customary administrative work in connection with each Claim. MVP shall neither be deemed in breach of this Agreement, nor held responsible for, any failure or delay in the performance of its obligations hereunder due to causes beyond its control, including, but not limited to, natural disaster, act of God, labor controversy, civil disturbance, disruption of the public markets, armed conflict, or the inability to obtain sufficient materials or services required in the conduct of its business, including Internet access, or any change in or the adoption of any law, judgment or decree.
- (f) Customized Documents. Upon Company's request, MVP shall furnish to Company: (a) sample documents for the Plan to be reviewed, customized, approved, and executed by Company, including, but not limited to, board resolutions, Summary Plan Descriptions, Plan Documents and Plan amendments (if any); and (b) sample administrative forms needed for MVP to perform its duties under this Agreement.
- (g) Privacy Notices. MVP shall provide its privacy notice to Company as required by State and/or federal law and regulation. The parties agree to amend this Agreement as is necessary to comply with the requirements of the privacy rules under HIPAA. In accordance with the requirements of HIPAA, the parties shall execute a Business Associate Agreement, which will be attached hereto as Exhibit 2 and incorporated herein.
- (h) Recordkeeping. MVP shall maintain, for the duration of this Agreement, the usual and customary books, records and documents, including electronic records, (collectively the "Records") that relate to the Plan and its Participants that MVP has prepared or that has otherwise come within its possession in furtherance of this Agreement. Upon termination of this Agreement, MVP, at Company's request and cost, will deliver the Records to Company, subject to MVP's right to retain copies of the Records, as it deems appropriate.
- (i) Appeals. MVP will refer all Participant appeals for coverage that MVP receives following an initial claim denial to Company, and/or will instruct Participant to contact Company directly in connection with such appeals. Company shall make the final determination of all appeals of Claims for benefits, or other classes of Claims that Company may specify, including but not limited to: (a) questions of eligibility or entitlement of the Participant for coverage under the Plan; and (b) any question with respect to the amount due.

4. COMPANY RESPONSIBILITIES

- (a) Plan. Company has sole authority and responsibility for the Plan and its operation, including making all final determinations thereunder. Company delegates to MVP the authority to act on Company's behalf in connection with the Plan, but only as expressly set forth in this Agreement or as mutually agreed upon in writing by Company and MVP. Company is considered the Plan Administrator and "Named Fiduciary" of the Plan for purposes of ERISA.

Company retains the authority and responsibility to:

- (i) Make and enforce such rules and regulations that the Company deems appropriate for the efficient administration of the Plan;
- (ii) Decide all eligibility questions concerning the Plan;
- (iii) Make election and contribution determinations for certain highly compensated participants in order to avoid discrimination under the Plan in violation of applicable provisions of the Code.
- (iv) Provide Employees with a reasonable notification of their available Benefit Options under the Plan;
- (v) Hire and/or appoint persons required to assist in administering the Plan; and
- (vi) Delegate the authority and/or responsibilities listed in this section or such other tasks as Company shall see fit, to MVP or others.

Company agrees that any action taken or determination made by the Company in connection with the Plan will be done in a nondiscriminatory manner and consistently applied.

- (b) Compliance with Law. Without limiting Company's responsibilities described herein, it shall be Company's sole responsibility (as Plan Sponsor and Plan Administrator) and duty to ensure compliance with COBRA; amend the Plan and Plan Documents as necessary; prepare and file any required tax or governmental returns relating to the Plan, including, but not limited to, Form 5500; determine if and when a valid election change has occurred; execute and retain required Plan and Claims documentation; and take all other steps reasonable and necessary to maintain and operate the Plan in compliance with applicable provisions of the Plan, this Agreement, ERISA, the Code and other applicable state and federal law, regulations and rules. Company shall be solely responsible for any fines or penalties assessed by any governmental agency due to the acts and/or omissions of Company or by previous or successor administrative agents for Company and shall indemnify and hold harmless MVP from any such liability.
- (c) Plan Documents. Company shall provide MVP with all relevant information, including but not limited to, the final Plan Documents, any Plan amendments, Eligibility, and Eligibility amendments. Company shall distribute to employees all necessary forms,

including but not limited to, Summary Plan Description, Summary of Material Modifications to the Plan, if any, Claim forms, the Summary Annual Report, and any other Plan information or Plan documentation requested by a Participant. Company shall notify MVP of any changes to the Plan at least thirty (30) days before the effective date of such changes. Company shall be solely responsible for filing any required documentation to relevant governmental agencies and authorities.

- (d) Eligibility. Company shall furnish to MVP all information requested by MVP to perform MVP's duties under this Agreement, including, but not limited to, accurate Eligibility. Such information shall be provided to MVP in the electronic template provided by MVP and in the time agreed to by Company and MVP. Company shall provide MVP with updated Eligibility. The Eligibility shall specify the information requested by MVP which shall include, but not be limited to, the effective date for each Participant who is added to or terminated from participation in the Plan. Company shall be responsible for ensuring the accuracy of any Eligibility, and MVP may presume Eligibility information is accurate and complete. MVP shall have no liability to Company or any Participant as a consequence of an untimely or inaccurate Eligibility and MVP shall not have any obligation to credit Company for any Claims, expenses or administrative fees incurred or paid to MVP as a consequence of an untimely or inaccurate Eligibility.
- (e) Liability for Claims. Company is solely responsible for the payment of Claims pursuant to the Plan. MVP does not insure or underwrite the liability of Company under the Plan. Except for expenses specifically assumed by MVP in this Agreement, Company is responsible for all costs and expenses incident to the Plan.

5. PLAN ACCOUNT AND BENEFIT PAYMENT

- (a) Plan Account. Upon execution of this Agreement, Company shall establish, maintain and fund a Plan Account. Company shall keep the funds in the Plan Account. All benefits shall be paid from the Plan Account and Company must ensure that the Plan Account is adequately funded at all times to satisfy the payment of all Benefit Options. As Plan Fiduciary, Company is responsible for the Plan Account, including but not limited to, all related reporting requirements and the requirements of relevant state and federal laws, rules, and regulations relating to excess Plan Account assets.
- (b) Reimbursement. In accordance with this Agreement and the Plan Document, Company authorizes MVP to reimburse the Participant or the service provider, if applicable, for Eligible Expenses submitted to MVP by Participant pursuant to the Plan Document. Company shall execute the ACH authorization included in the Ancillary Services Application. MVP shall pay such Claims via a direct ACH from the Plan Account. In the event MVP determines that a Claim does not qualify for payment or reimbursement, or in the event that a Claim is paid but later determined to be unsubstantiated or otherwise made in error, MVP may, in its discretion, assist Company in making the Plan whole by requesting repayment of the improper amount by the Participant and/or by offsetting future claims made to the Participant until the amount is repaid. Alternatively, Company

may, in its discretion, withhold the improper payment from the Participant's wages or other compensation to the extent consistent with applicable state or federal law. If attempts by MVP and/or Company fail to recover the improper payment, Company may, consistent with Company's business practices, treat the amount as any other business indebtedness.

- (c) Debit and Credit Cards. Participants may, subject to MVP standards and procedures, use debit and/or credit cards ("Cards") provided by MVP and supported by the MVP Designee for the payment of Eligible Expenses ("Card Program"). If Company elects to participate in the Card Program, Company shall execute the ACH authorization form in the Ancillary Services Application. Participants shall be subject to the terms and conditions of the cardholder agreement, which will be distributed with the Card. The Benefits Approved for Card Use are those set forth on the Ancillary Services Application.
- (d) Funding of Benefits. Company agrees to accept liability for, and is responsible to provide sufficient funds to satisfy, all payments to Participants under the Plan and all Card Transactions, including payment and reimbursement of Claims for Eligible Expenses, where such expenses are incurred and the Claim is presented for payment or reimbursement during the term of this Agreement.

Company shall be assessed the Transaction Charge for each ACH returned due to insufficient funds in the Plan Account to cover Card Transactions. In addition, MVP and the MVP Designee each reserve the right to terminate access by Company to the Card Program by its Participants. Liability for payment of any Claim shall be the sole responsibility of Company and in no event shall MVP or the MVP Designee be responsible for any Claims or any costs associated with Company's failure to meet its funding obligations under this Agreement.

6. MVP COMPENSATION

- (a) Service Charges. The amounts of MVP's monthly service charges are described in Exhibit 3. MVP may change the amount of such charges by providing at least thirty (30) days' written or electronic notice to Company. MVP may also change the monthly service charges as of the date any change is made in the Plan by Company.
- (b) Billing of Charges. All MVP service charges will be billed separately from the statement for payment of Claims so that proper accounting can be made by Company of the respective amounts paid for Claims and for administrative expenses.
- (c) Payment of Charges. All service charges will be calculated by MVP and billed to Company on a monthly basis for the prior month.

7. TERM AND TERMINATION

- (a) Term. The initial term of the Agreement begins on the Plan Year Effective Date indicated on the Ancillary Services Application and shall continue for a twelve (12) month period unless this Agreement is terminated in accordance with the provisions of this section. After the initial term, the Agreement may be renewed for successive twelve (12) month terms by the Company and MVP executing a renewal Ancillary Services Application and any other required documentation.
- (b) Automatic Termination. This Agreement will automatically terminate on the earliest of the following:
 - (i) the effective date of any legislation that makes the Plan or this Agreement illegal or invalid;
 - (ii) the date Company becomes insolvent, bankrupt, subject to liquidation, receivership or conservatorship; or
 - (iii) the termination date of the Plan, subject to any agreement between Company and MVP regarding payment of benefits after the Plan is terminated.
- (c) Termination Without Cause. Either Party shall have the right to terminate the Agreement without cause upon ninety (90) days' prior written notice to the other Party.
- (d) Termination For Cause. MVP may terminate the Agreement by providing ten (10) business days' advance written notice to Company following the occurrence of any of the following events: (i) Company's failure to pay any charges after the charges are due and payable to MVP; (ii) Company's failure to fund the Plan Account; (iii) Company's material breach of this Agreement. Company may terminate this Agreement upon the material failure of MVP to perform its obligations in accordance with this Agreement following Company's thirty (30)-day written notice to MVP of such material failure and MVP's failure to cure such material failure.
- (e) Continuation After Termination. If the Plan is terminated, Company and MVP may agree in writing that this Agreement shall continue for the purpose of payment of any Claim for benefits incurred prior to the date of Plan termination. If this Agreement is terminated while the Plan continues in effect, Company and MVP may agree in writing that this Agreement shall continue for the purpose of payment of any Claims for which requests for reimbursements have been received by MVP before the date of such termination. For at least one hundred eighty (180) days following the effective date of Termination, Company shall maintain a settlement account with MVP which MVP may charge to settle any run out activity that accrues prior to the effective date of Termination. If this Agreement is terminated and MVP continues to perform in accordance with this Section 7(e), Company must pay the monthly service charges incurred during the continuation period and a final termination fee equal to the final month's service charge. The obligations of Company under this Section shall survive expiration or termination of this Agreement.

8. LIMITATION OF LIABILITY

- (a) Exclusion of Damages. Independent of any other provision of this Agreement, neither party will be liable to the other party (nor any derivative third party) in contract, tort, or otherwise, for incidental, consequential, special, punitive, or exemplary damages of any kind – including injury to property, lost profits or other economic damage – as a result of or relating to this Agreement or the services, including, without limitation, breach of warranty or other contractual term, or failure to perform, regardless of whether the Party allegedly liable was informed of, or had reason to know, the possibility thereof.
- (b) Damages Cap. Notwithstanding any other provision of this Agreement, and for any reason, and regardless of any claim in contract, tort (including negligence) or otherwise, MVP's total, aggregate liability under this Agreement shall not exceed the amount of payments made to MVP by Company for the services to which the claim relates during the five (5) months prior to the act or event giving rise to such claim.
- (c) Statute of Limitations. Neither Party may bring a lawsuit or other action on any claim or controversy relating in any way to this Agreement after one (1) year from the later of the date on which the cause of action arose or the date on which the Party learns of or reasonably should have learned of the cause of action; provided, however, the foregoing limitation shall not apply to the collection of any amounts due MVP under this Agreement.

9. INDEMNIFICATION

- (a) Indemnification. Except to the extent caused by the negligence of MVP or breach by MVP of the terms of this Agreement, Company shall indemnify MVP and its officers, employees, and agents from and hold MVP and its officers, employees, and agents harmless against, any claims, suits, actions, debts, losses, damages, liabilities or expenses (including but not limited to settlement costs and reasonable legal, accounting and other expenses incurred in defense of the same) arising out of or in connection with:
 - i) the acts or omissions of Company in connection with the Plan or any claim, demand, or lawsuit by Participants and beneficiaries against MVP in connection with benefit payments or services performed hereunder;
 - ii) the acts or omissions of Company in connection with Company's obligations specifically set forth in Section 4 of this Agreement;
 - iii) Prior Reimbursement Claims and/or Prior Administration, including any premium charge, tax or similar assessment for which the Plan or Company is liable; and
 - iv) the unauthorized use of Confidential Information to commit identity theft and/or financial fraud that occurs as a result of Company's breach of its security or confidentiality obligations set forth in this Agreement.
- (b) Survival of Obligation. The obligations of Company pursuant to Section 9 of this Agreement shall survive termination or expiration of this Agreement.

10. GENERAL PROVISIONS

- (a) Severability. If any provision of this Agreement is declared invalid, illegal or

unenforceable by a court, such provision shall not affect the validity of any other provision of this Agreement, provided that the Parties are able to perform their respective obligations pursuant to the remaining valid provisions. The headings of sections and subsections contained in this Agreement are for reference purposes only.

- (b) Assignment and Amendment. Neither Company nor MVP may assign this Agreement without the other Party's prior written consent, and such consent shall not unreasonably be withheld. Provided however, MVP may assign this Agreement to any current or future MVP Affiliate without the consent of Company. This Agreement may be amended only by mutual written agreement of a duly authorized officer of Company and an authorized representative of MVP.
- (c) Confidentiality. Company and MVP each acknowledge that in contemplation of entering into this Agreement and as a result of the contractual relationship created hereby, each Party has revealed and/or disclosed, and shall continue to reveal and/or disclose to the other Party, information which is proprietary and/or confidential information ("Confidential Information"). Company and MVP agree that each Party shall: (a) keep such Confidential Information of the other Party in strict confidence; (b) not disclose Confidential Information of the other Party to any third parties or to any of its employees not having a legitimate need to know such information; and (c) not use Confidential Information of the other Party for any purpose not directly related to and necessary for the performance of its obligations under this Agreement (unless required to do so by a court of competent jurisdiction or a regulatory body having authority to require the disclosure). Information revealed or disclosed by a Party for any purpose not necessary for the performance of such Party's obligations under this Agreement shall not be considered Confidential Information: (a) if, when, and to the extent such information is or becomes generally available to the public without the fault or negligence of the Party receiving or disclosing the information; or (b) if the unrestricted use of such information by the Party receiving or disclosing the information has been expressly authorized in writing and in advance by an authorized representative of the other Party.

For purposes of this Section, Confidential Information includes (a) any information in written, human-readable, machine-readable, or electronically recorded form (and labeled as or reasonably understood to be confidential); (b) information disclosed orally in connection with this Agreement and identified as confidential and/or proprietary; and (c) programs, policies, practices, procedures, files, records and correspondence concerning the Parties' respective businesses or finances. The terms and conditions of this Section 10(c) shall survive the termination of this Agreement.

- (d) Notices. All notices provided for herein shall be sent by certified mail, with tracking capability, addressed to the other Party at their respective addresses set forth in the Ancillary Services Application or such other addresses as either Party may designate in writing to the other for such purposes. All notices provided for herein shall be deemed given three (3) business days after the mailing date.
- (e) Waiver. The failure of either Party to insist upon the performance of any of the terms and

conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as waiving any such terms and conditions, and the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

- (f) Entire Agreement; Governing Law. This Agreement, including exhibits, is the entire Agreement of the Parties regarding the subject matter hereof and supersedes all prior agreements between the Parties. This Agreement shall be construed, enforced and governed by the laws of the State of New York.