

CUSTODIAL AND DEPOSIT AGREEMENT

CUSTODIAL AND DEPOSIT AGREEMENT (“Agreement”)

The person whose name appears on the Application is establishing with us a Health Savings Account (HSA) qualified under Section 223 of the Code. Funds on deposit in the Account at the Bank are insured by the FDIC up to the limits specified in the Federal Deposit Insurance Act and applicable regulations adopted by the FDIC from time to time.

DEFINITIONS

Defined terms are italicized. As used in this Agreement:

- *Account* means the HSA deposit account you have established with us.
- *Application* means the HSA application.
- *Bank* means OptumHealth Bank, Inc., a Utah state-chartered bank and member of the FDIC, or its successors or assigns.
- *Beneficiary* means the person you have chosen to receive the proceeds of your Account, as shown in the Application or any other form provided by us.
- *Check* means the checks which may be provided to you in connection with your Account.
- *Code* means the Internal Revenue Code of 1986, as amended as of the date of and during the term of this Agreement, and all the rules and regulations in effect or adopted by the United States Internal Revenue Service during the term of this Agreement.
- *Debit Card* means the authorized third party provider access card which may be issued to you, and to an authorized user of your Account, if applicable, by the Bank in connection with your HSA.
- *Disclosure Statement* means the statement provided by us to you describing how you can obtain Investments for your Account.
- *ERISA* is the federal Employee Retirement Income Security Act of 1974, as amended as of the date of and during the term of this Agreement.
- *FDIC* is the Federal Deposit Insurance Corporation.
- *Investments* shall mean such mutual funds as have been accepted by us and made available to you for purchase using funds within the Account as directed by you either through arrangements directly with the mutual fund or through a service provider as provided under the terms of this Agreement, the Disclosure Statement, and the separate terms and conditions contained within the prospectus and statement of additional information relating to the purchase of any specific mutual fund.
 - Investments are not insured by the FDIC.
 - Investments are not guaranteed by us.
 - Investments may lose value.
- *You, your or yours* means the owner of the Account, any spouse beneficiary upon the death of the Account owner, or any third party authorized or appointed to access and use the Account, which third party will be considered the agent of the Account owner.
- *We, us or our* means the Bank, its parent, affiliates, officers, employees, agents and representatives, including but not limited to, subagents, subcustodians and subcontractors.

OUR RIGHTS AND OBLIGATIONS

As custodian of the *Account*, *our* sole duties are to:

- Keep accurate and complete records of contributions to, *Investments* made within, and distributions from *your HSA*;
- File any returns and reports imposed by the *Code* upon *us* as HSA custodian; and
- Use ordinary care and reasonable diligence in maintaining *your HSA*.

Upon any assignment of this Agreement or the HSA by *us*, the assignee automatically shall become the custodian of the *Account*. Upon *your* death, *we* will pay any balance in *your Account* (after deducting the amount of any *Debit Card* or other transactions made and related adjustments and chargebacks and any other *Account* fees and charges which may be owing) to the *Beneficiary(ies)* designated by *you* on the *Application*, or as amended by *you* in a written notice to the *Bank*. Notify *us* immediately if *you* wish to change the *Beneficiary*, such as in the case of a change in *your* marital status.

All materials provided by *us* are designed and distributed with the understanding that they do not constitute or include legal, tax, or other professional advice. *We* assume no responsibility for tax or other consequences to anyone arising from the establishment or use of the HSAs. *You* may wish to consult with an attorney or other qualified tax professional. By using the *Account*, *you* acknowledge and agree that nothing in this Agreement is construed to confer fiduciary status upon *us* for any purpose. *We* are not required to perform any additional services or undertake any fiduciary responsibility unless specifically agreed to under the terms and conditions of this Agreement or a separate agreement entered into by and between *you* and the *Bank*.

YOUR RESPONSIBILITIES

You acknowledge and agree that *you* are solely responsible for (i) determining whether *you* are eligible to have an *Account*, and whether distributions from *your Account*, including *Check*, *Debit Card* purchases and other *Account* withdrawals, constitute qualified medical expenses, as defined in the *Code*, (ii) keeping appropriate records for these purposes, (iii) ensuring that all contributions and *Investments* *you* make are permitted under applicable law, (iv) determining the tax consequences of any contributions (including rollover contributions) and distributions *you* make, and any taxes, interest, penalties and other expenses which may be payable under law in connection with *your Account*. *You* agree that *we* are a custodian of *your Account*, and *you* authorize *us* to act without further inquiry in accordance with the instructions given to *us* by *you* or any third party authorized or appointed to act on the *Account*, including any instructions that specify a particular tax year for contributions.

The HSA is self-administered by *you*. *You* cannot assign *your Account*, and *your* interest in *your HSA* is nonforfeitable. Only *you* can authorize withdrawals from *your HSA*. *We* reserve the right to correct errors (whether made by *us* or *your* employer, if applicable) including the right to withdraw any funds that should not have been placed in *your HSA* and to withdraw *Account* administrative fees. *You* may not use the HSA or the assets in it as security for any loan. Neither *you* nor any *Beneficiary* may transfer or pledge any interest in *your HSA* in any manner whatsoever, except as provided by law or this Agreement. *You* are responsible for complying with all laws governing withdrawals,

transfers and taxes. All transfers or distributions from the *Account* must be made in accordance with the *Code*.

If *you* have *your HSA* through *your* employer, *your* employer has permitted *us* to offer *our* services through *your* workplace. The HSA is established pursuant to federal tax law, and is neither endorsed by nor sponsored by *your* employer. Rather, it is an individual *account* arrangement between *you* and *us*. As a result, the HSA is not part of *your* employer’s *ERISA* benefit plan, even if *your* employer contributes to it or *you* make pre-tax contributions under *your* employer’s cafeteria plan.

By written notice to *us*, *you* can name a *Beneficiary* who will receive any *Investments* held in *our* name or in a nominee name for *your HSA* and any funds on deposit in *your Account* upon *your* death. Upon satisfactory proof of *your* death, *we* will transfer or distribute the entire balance (as required by the *Code*) to *your Beneficiary* or, if none, to *your* estate.

DEPOSITS AND AVAILABILITY OF FUNDS

Funds on deposit in *your Account* will be available for withdrawal from *your Account* in accordance with *our* standard funds availability schedule. *We* reserve the right to require at least seven (7) days written notice prior to withdrawal of funds from the *Account*. Unless otherwise instructed by *you*, deposits received by *us* during non-business hours will be considered to be made on the next full banking day and *we* may refuse, limit or return any funds received for deposit. *We* accept only funds in U.S. dollars. Funds received in other currencies will be returned to *you*. *You* agree to pay the *Bank’s* standard *Account* fees, as in effect from time to time.

INTEREST AND FEES

You will earn interest on the funds on deposit in *your Account* at the rate established by *us*. Interest will accrue daily based on the balance of funds on deposit in *your Account* and will be credited monthly. The interest rate and annual percentage yield on the full balance in *your Account* will be on a tiered basis, as described in a table in the Truth in Savings Disclosure. *Your* interest rate and annual percentage yield (in any or all categories in the table) may change at any time thereafter at *our* discretion, and without notice.

You will pay *us* fees for the services *we* perform for *you* in connection with *your HSA*. *You* have acknowledged receipt of *our* schedule of fees as an attachment to this Agreement. *You* authorize *us* to withdraw all fees from the balance in *your Account*. *We* can adjust the amount or type of the fees, or add new fees, from time to time.

OPERATIONAL ACCOUNTS

In *our* capacity as custodian of the *Account*, *we* may establish and maintain certain record-keeping sub *accounts* for the efficient administration and management of the *Account*. The *Account* may consist of a NOW sub *account* and a savings sub *account* and *we* may periodically transfer funds between these two sub *accounts*. *Your* bank statement will show a single balance representing the total funds in the two sub *accounts*. The same interest rate will apply to both sub *accounts* and interest will be paid on the total *account* balance regardless of how funds are distributed between the sub *accounts*.

SELF-DIRECTED INVESTMENT PROVISIONS

Investment of Contributions: *You* may invest any portion of the contributions to *your Account* in excess of the minimum amount established by *us* as described within the *Disclosure Statement*, including any earnings of such *Investments*, in such amounts as *you* specifically select and direct (or as directed by the *Beneficiary* upon *your* death), in orders to *us* in such form as may be acceptable to *us*, without any duty to diversify and without regard to whether such property is authorized by the laws of any jurisdiction as a trust investment. *We* shall direct all orders received to such service provider as *we* may select for the execution of such orders and *we* shall maintain adequate records thereof. If any such orders are not received as required, or, if received, are unclear in *our* opinion, all or a portion of the contribution may continue to be held as funds on deposit in *your Account* without liability for loss of income or appreciation, and without liability pending receipt of an acceptable order or clarification. *You* acknowledge and agree that prior to submitting an order, *you* shall have received, read and understood the prospectus describing the *Investments* and all fees and expenses relating to such purchase. All purchases of the *Investments* shall be made according to the terms and conditions of the then-effective prospectus relating to the *Investments* and any statement of additional information as such documents may be amended and updated in accordance with applicable law. *We* shall have no duty other than to follow *your investment* directions and shall be under no duty to question said instructions and shall not be liable for any *investment* losses sustained by *you*. *We* shall not make any *investment* or dispose of any *investment* except upon the express verbal or written direction from *you*, except as provided in this Agreement. *You* acknowledge that any liquidation of *Investments* will not result in immediately available funds for deposit to *your Account* and such funds will be available only in accordance with the terms and conditions applicable to the specific *investment* made by *you* and the terms and conditions of the *Account* regarding availability of funds.

Registration: All *Investments* shall be registered in *our* nominee name or a suitable nominee. The same nominee name may be used with respect to assets of other HSA *accounts* whether or not held under agreements similar to this one or in any capacity whatsoever. However, *we* shall maintain a separate accounting of the *Investments* registered in *our* nominee name for the benefit of *your Account*.

No Investment Advice: *We* do not assume any responsibility for rendering advice with respect to the *investment* and reinvestment of the funds on deposit within *your Account* and shall not be liable for any loss which results from *your* exercise of *investment* control over *your Account*. *You* (or as directed by the *Beneficiary* upon *your* death) shall have and exercise exclusive responsibility for control over the *investment* of any funds within the *Account*, and *we* have no duty to question the *investment* directives provided by *you*.

Disclosures and Voting: *We* shall deliver, or cause to be executed and delivered, to *you* all notices, prospectuses, financial statements, proxies and proxy soliciting materials relating to *Investments* held for the benefit of the *Account*. *We* shall not vote any *Investments* or take any other action, pursuant to such documents, with respect to such

assets except only in accordance with such directions *you* provide to *us* regarding any such vote.

Miscellaneous Expenses: *You* agree to pay any and all expenses incurred in connection with any *Investments* made for the benefit of the *Account* and any transfer taxes incurred in connection with the *investment* or reinvestment of the assets of the *Account*. *The Bank* will not charge *you* a fee for placing and administering an *investment you* direct *us* to make in a mutual fund. However, the mutual fund will charge fees for management, administrative services, and other expenses of the fund, which are disclosed in the prospectus. *The Bank* may receive a portion of the shareholder servicing fee from a mutual fund for recordkeeping and other services provided in connection with *your investment*, but such shareholder servicing fee does not represent an additional fee or charge to *you*.

WITHDRAWALS

You may withdraw all or any part of the balance of *your Account* at any time. *You* are solely responsible for the tax treatment of any withdrawals from the *Account*, whether made by *Check*, *Debit Card* or third party transfer from *your Account*.

If available on *your Account*, *we* may provide *you* or an authorized user with *Checks* to enable *you* or an authorized user to make withdrawals. *You* understand that *we* will not return original *Checks* to *you*. Processed *Check* images will be made available to *you* on *our* Web site. *We* are not responsible for actions taken by other banks, or for the loss or destruction of any *Checks*, drafts or other instruments in the possession of other banks or in transit. *We* may return unpaid any *Check* on *your Account* which is not on a form *we* provided to *you* or an authorized user, or which is presented to *us* before its date. *We* will not be responsible for paying or certifying postdated *Checks* on *Accounts*. *You* may ask *us* in writing to stop payment on a *Check* drawn on *your Account* which has not yet been paid by *us*. *We* will honor any written stop payment request from *you* which is received by *us* at least two business days before the *Check* is presented to *us* for payment. The stop payment order must specify the exact amount of the *Check*, the payee, the date of the *Check*, the number of the *Check* and *your Account* number. *We* will honor the stop payment request for six months.

If available on *your Account*, *you* also may request *us* to issue a *Debit Card* to *you* and to any authorized user on the *Account*, which will enable *you* and such authorized user to pay for purchases from *your Account*. *You* authorize *us* to debit *your Account* to pay for transactions made with *your Debit Card* or a *Debit Card* issued to an authorized user on *your Account*. *You* agree that in addition to this Agreement, the use of a *Debit Card* by *you* or any authorized user on *your Account* is subject to the terms and conditions of the Card Agreement which has been provided to *you* and which is incorporated herein by reference.

Unless otherwise directed by *you* in accordance with the notice provisions herein below, *we* will, where applicable, withdraw required payment amounts from the balance in *your Account* and apply such amounts to any line of credit granted to *you* by *us* in accordance with *your* election under such line of credit agreement. This authorization shall remain in effect until revoked at any time by *you* by giving ten (10) days prior written notice to *Bank* at OptumHealth Bank, PO Box 271629, Salt Lake City, Utah 84127-1629. *You* understand that *we* may continue to make required line of credit payments pursuant to this authorization until expiration of said ten (10) day notice period.

THIRD-PARTY TRANSFERS

You may authorize *us*, from time to time, on *your* behalf, to make transfers of funds to third parties in the amounts specified by *you*, and to debit *your Account* for the amount of each such payment *we* make. *You* understand *we* will also debit *your Account* for the applicable service charge which is then in effect, and which *we* may change from time to time. *You* understand that in performing this service, *we* will make these payments by *Check* or draft, and that *we* will be acting as *your* agent in making such payments. *We* will not be liable for any errors or delays in making any such payment, except for errors or delays caused by *our* gross negligence, or for *our* inability to make any payment due to circumstances beyond *our* control or if there are insufficient funds in *your Account* with which to make the payment.

INSUFFICIENT BALANCE

You must maintain a balance in *your Account* which is sufficient to cover all *Checks you* write, *Debit Card* transactions *you* make, and transfers *you* authorize *us* to make on *your* behalf. If there are insufficient funds in *your Account* to cover any such *Check* or *Debit Card* transaction or transfer, *we* may refuse to honor the *Debit Card* transaction or transfer, or return the *Check* without paying it, as the case may be. If *we* make a transfer or pay a *Check* or *Debit Card* transactions against insufficient funds or uncollected balances, *you* agree, promptly on demand, to pay to *us* the amount by which the *Check* exceeds the funds in *your Account*. *You* may be charged interest at *our* rates in effect from time to time on the insufficient balance for each day it is outstanding, and the fee specified on *our* Schedule of Fees. *You* authorize *us* to liquidate *Investments*, at *our* discretion, to cover any insufficient funds in *your Account*.

ELECTRONIC SIGNATURES

In the event that *we* have received *your* electronic signature in connection with *your Account Application*, *we* may rely on such electronic signature for purposes of *your* authorization of withdrawals or third party transfers, *your* notices to change *your* name or address or *your* other instructions to *us*. *We* are not required to obtain *your* physical signature for such purposes or any other purpose, except as may be required by law.

OTHER INFORMATION AND CHANGE OF NAME OR ADDRESS

Subject to ordinary care and usual practices, *we* are entitled to rely upon information *we* receive with respect to *your* HSA, including the information contained in the *Application*, and have no obligation to make further investigation, except as required by law.

You agree to notify *us* promptly, in writing, if *you* change *your* name or address by calling customer service and requesting an address change form.

You agree to immediately notify *us* of any changes in the information provided to *us* that *we* rely on in connection with *your Account*. *You* agree to provide *us* with any necessary information *we* may need to prepare reports required by the *Code* or other laws and regulations.

CHANGES IN THIS AGREEMENT

The rights, duties and obligations of both *you* and *us* with regard to *your* HSA are governed by this Agreement and the Card Agreement, as they may be amended from time to time. *We* may amend this Agreement at any time. *We* will provide prior notice of any amendments when *we* are required to do so by law. Additionally, the *Bank*, reserves the right to assign *your* HSA without *your* prior consent, provided that such assignee is qualified under the *Code* to be an HSA custodian or trustee. Upon any assignment of this Agreement, the assignee shall automatically become custodian of the *Account* if it is qualified under the *Code*, to serve as an HSA custodian or trustee. *You* acknowledge that such assignment may result in loss of *FDIC* insurance coverage for any HSA balances for which such assignee becomes a custodian or trustee.

NOTICES

Any notice required by this Agreement to be given by *us* to *you* will be effective upon *our* deposit of the notice with the United States Postal Service with proper postage affixed and directed to the last address *you* provided *us*. Any notice required by this Agreement to be given by *you* to *us* will be effective upon receipt of the notice at OptumHealth Bank, P.O. Box 271629, Salt Lake City, UT 84127-1629.

ARBITRATION

Any claim or controversy that is not resolved by the parties shall, at the request of a party, be resolved by binding arbitration in accordance with the applicable commercial arbitration rules of the American Arbitration Association. In no event may arbitration be initiated more than one year following the date the dispute arose. Any arbitration proceeding under this Agreement shall be conducted in Salt Lake City, Utah. The arbitrators may construe or interpret, but shall not vary or ignore the terms of this Agreement, shall have no authority to award extra contractual damages of any kind, including punitive or exemplary damages, and shall be bound by controlling law. Judgment upon an arbitration award may be entered in any court of competent jurisdiction. The parties acknowledge that because this Agreement affects interstate commerce, the Federal Arbitration Act applies.

STATEMENTS

Upon receipt of a signed *Application* or other *bank* approved affirmation from *you*, *we* will make available electronically for *you* a monthly statement or statements summarizing each transaction in *your Account* during the preceding month. *We* will mail or deliver a statement or notice to *you* upon request. *You* agree to examine each statement or notice after it is posted on the Web site or sent to *you*. If *you* discover any unauthorized transactions, or signatures or alterations, or other discrepancies on *Checks* or *Debit Card* transactions, *you* must promptly notify *us* in writing of the relevant facts. *You* agree that if *you* do not report any discrepancies within sixty (60) days of when *we* first send the statement or make it available to *you*, the statement will be deemed correct and *you* will not be able to assert a claim against *us*.

DEFAULTS

You will be in default if *you* fail to meet any of *your* obligations under this Agreement or any other agreement with *us*. In the event of a default, *we* may exercise any legal rights *we* may have. If *we* are required to take any legal action under this Agreement, *you* agree to pay *our* court and collection costs and any attorney's fees and disbursements. If *you* are in default of this Agreement, or upon the closure of the HSA, whether such closure was made by *you* or by *us*, *we* shall not be obligated to continue to provide services under this Agreement.

ACCOUNT CANCELLATION AND SUSPENSION

We may close the *Account* at any time. *You* may close the *Account* by notifying *us* in writing. No closure of the *Account* will affect *our* right to debit the *Account* for any withdrawals or charges made by *you*, or made by an authorized user of *your Debit Card*, or to honor any adjustments or chargebacks related to such transactions.

As soon as practical after termination, *we* will distribute the balance in *your Account* in accordance with the *Code*. After distribution of all funds, this Agreement will end and *we* will have no further duties, obligations, or liabilities to *you* or anyone, except as required by law.

LIMITATION OF LIABILITY/HOLD HARMLESS

In connection with this Agreement and *your* HSA, *we* are not responsible for any act or failure to act by *us* that is reasonable under the circumstances or that is consistent with the rules and regulations of the Board of Governors of the Federal Reserve System and other federal regulatory agencies, or any applicable laws, rules or regulations of the State of Utah, or with general commercial practices of banks. *We* are not responsible for any act or failure to act of any service provider or mutual fund relating to the *Investments*. *You* agree to indemnify *us* and hold *us* harmless against any claims, damages, expenses and losses, including attorney's fees, incurred by *us* resulting from (i) any action *we* take in honoring *your* instructions, including but not limited to all verbal or facsimile instructions received with respect to *your* HSA, (ii) in connection with *our* honoring of any subpoena or court order relating to *your* HSA or (iii) other costs, expenses or liabilities arising under this Agreement except costs, expenses or liabilities that arise from *our* breach of any duty under this Agreement.

MISCELLANEOUS

We can choose not to exercise or to delay enforcement of any of *our* rights under this Agreement without compromising them. Each party's rights and obligations under this Agreement will be binding upon its heirs, executors, legal representatives, successors and permitted assigns. If any provision of this Agreement is held invalid or unenforceable, all other provisions of this Agreement shall remain in full force and effect. This Agreement becomes effective upon the opening and funding of *your Account*. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah and applicable federal law.