

**HEALTH SAVINGS ACCOUNT
ENROLLMENT AND CONTRIBUTION AGREEMENT**

This Health Savings Account Enrollment and Contribution Agreement (the "Agreement") is entered into by and between _____ (the "Employer"), and Optum Bank, Inc., a Utah chartered FDIC insured financial institution (the "Bank") (collectively, the "Parties") and shall be effective as of the date of last signature (the "Effective Date").

RECITALS

WHEREAS, Employer sponsors a qualified High Deductible Health Plan ("HDHP") as defined in Section 223 of the Internal Revenue Code of 1986, as amended (the "Code") and would like to open and contribute funds to Health Savings Accounts (each an "HSA") for eligible employees; and

WHEREAS, Bank is qualified to serve as a custodian of HSAs in accordance with the provisions of Section 223(d)(1)(B) of the Code and willing to provide custodial services to eligible employees;

NOW, THEREFORE, in consideration of their mutual promises herein contained and other valuable consideration, the Parties covenant and agree as follows:

AGREEMENT

1. **Scope and Purpose.** This Agreement is limited in scope and purpose to establishing the terms and conditions under which Bank may assist Employer with HSA enrollment and accept contributions from Employer on behalf of eligible employees.
2. **Custodial Services Provided to Employees.**
 - 2.1 Bank provides custodial services to Account Holders pursuant to an individual custodial agreement (the "Deposit and Custodial Agreement") between the individual employee and the Bank (together with other HSA notices, disclosures or information, the "HSA Documentation"). The HSA Documentation governs the rights and obligations of the Account Holder and Bank with regard to the HSA custodial services. Employer is not a party to any of the HSA Documentation. In accordance with applicable banking statutes, rules, regulations, mandates and Bank policy ("Bank Regulations"), the Bank may modify the HSA Documentation at any time as deemed necessary and appropriate by Bank.
 - 2.2 Bank is under no obligation under this Agreement or the HSA Documentation to ensure that: (i) distributions from an HSA are for qualified medical expenses as defined in Code Section 223; (ii) contributions to an HSA do not exceed the maximum annual contribution limit applicable to such Account Holder; (iii) employees are eligible to establish HSAs in accordance with the requirements of Code Section 223.
3. **Bank's Obligations to Employer.**
 - 3.1 Open and maintain HSAs in the name of Bank, as custodian, for the benefit of each eligible employee who is approved by the Bank to establish an HSA (each an "Account Holder"). Bank has sole discretion to approve the opening of an HSA and to the termination of an HSA if necessary and nothing in this Agreement shall modify or amend the terms of any agreement between the Bank and Account Holders related to the Bank's custodial services.
 - 3.2 Employer may forward payroll deduction contributions and other contributions (as applicable) to Bank in a manner and form acceptable to Bank. Unless otherwise required by Bank Regulations, all contributions will be applied in a commercially reasonable time period directly to HSAs of Account Holders pursuant to the contribution instructions provided to the Bank.
 - 3.3 Designate a contact to be responsible for responding to inquiries and requests made by Employer

with respect to HSAs.

- 3.4 Upon Employer's request, prepare and deliver standard bank reports to Employer, subject to each Account Holder's right to opt out of sharing information. Such reports may be delivered electronically to the extent permitted by law.

4. **Obligations for All Employers.**

- 4.1 Employer will advise eligible employees that they may open an HSA with Bank.
- 4.2 Employer represents and warrants that, to the best of its knowledge, (i) the HDHP sponsored and maintained by Employer pursuant to which medical coverage is provided to its employees electing to open an HSA with Bank will be, at all times relevant to this Agreement, an HDHP in accordance with Section 223 of the Code; and (ii) no Account Holder for which HSA deposits are being made is entitled to benefits under Medicare.
- 4.3 Employer acknowledges and agrees that the HSAs owned by its employees and held by Bank shall not be employee benefit plans and the assets held in the HSAs shall not be plan assets subject to the provisions of the Employee Retirement Income Security Act of 1974, or any rules or regulations issued thereunder (collectively, "ERISA") or the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Employer agrees that it will advise Bank as soon as practicable in the event that it becomes aware of any facts or has reason to believe that the HSAs may be subject to ERISA.
- 4.4 Employer agrees to transfer payroll deduction HSA contributions to Bank as soon as administratively feasible and in a manner acceptable to Bank. Employer shall simultaneously transmit data to Bank that indicates how contributions should be allocated to HSAs and will cooperate fully with the Bank in connection with any required reconciliations. Bank shall have no liability for any file or funds not received by Bank or for any error in crediting contributions to HSAs in reliance on data provided by Employer.
- 4.5 Employer acknowledges and agrees that contributions of Employer to an HSA are non-forfeitable and subject to the rules restricting recoupment by employers described in IRS Notice 2008-59, Q&A 23-25 or any future guidance issued by the IRS on the nonforfeitability of Employer contributions.
- 4.6 Employer agrees to transmit to Bank, as soon as administratively feasible and in a manner acceptable to Bank, notification of an Account Holder's termination of employment, notification of an Account Holder's cessation of participation in Employer's HDHP and any other information requested by Bank from time to time to comply with the Code and the regulations thereunder.

5. **Additional Obligations for Employers Using Batch Enrollment.** In addition to the obligations set forth in Section 3 of this Agreement, if Employer assists employees in opening and administering HSAs, the following additional provisions apply:

- 5.1 Employer represents and warrants that it will: (i) verify the identity of each eligible employee in accordance with applicable federal and state laws, including the I-9 employment eligibility verification process; (ii) design its benefits enrollment systems to prevent fraud in the enrollment process; (iii) secure an agency designation during enrollment (either written or electronic) from each eligible employee authorizing Employer ("Authorized Agent") to open and administer an HSA with Bank, to request an HSA Debit MasterCard® and to otherwise maintain the HSA; (iv) maintain copies of agency designations, authorizations, enrollments and other information and documents related hereto for a period of seven (7) years; (v) provide each eligible employee with the Patriot Act Notice set forth in Section 5.2.1 below during enrollment; (vi) ensure that all information sent to Bank is true and complete and only transmit enrollment files and contributions for eligible employees that have designated Employer as their Authorized Agent; (vii) provide eligible employees with the hardware and software requirements for access to and retention of electronic records and confirm that each employee has represented to Employer that they have ability to access such electronic records in accordance with applicable law or Bank Regulation, and (viii) inform each eligible employee that if he/she desires to have HSA statements mailed to his/her home, that the eligible employee must notify

the Bank directly.

5.2 Acting in its capacity as Authorized Agent, on behalf of each eligible employee who designates Employer as his/her Authorized Agent, Employer hereby:

5.2.1 Accepts the following Patriot Act Notice: **“IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT — To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver’s license or other identifying documents.”**

5.2.2 Requests Bank to open an HSA for each eligible employee and issue an HSA Debit MasterCard® to each eligible employee and instructs Bank that unless otherwise notified by Account Holder, monthly account statements will be made available electronically. Additionally, all other HSA Documentation will be delivered to each Account Holder electronically unless otherwise received in paper form.

5.2.3 Agrees to take such actions and provide any information and documentation requested by the Bank in order to open and maintain an HSA and comply with any statute, regulation or governmental mandate as deemed necessary and appropriate by Bank.

6. **Indemnification and Limitation of Liability.** Employer agrees to indemnify and hold harmless Bank, its agents, affiliates, successors and assigns from and against any liability, claim, loss or expense, including reasonable attorney’s fees and expenses, Bank may directly or indirectly incur as a result of: (i) any failure by the Employer to comply with its obligations under this Agreement; and (ii) Bank’s acts or omissions in reliance on information, data or authorizations received from Employer or its authorized agents, employees and representatives, or in reliance upon the authenticity or accuracy of any representation or warranty purporting to be from, or signature purporting to be of Employer or an authorized representative. Bank will not be responsible for claims, damages or liabilities resulting from:

6.1 Acts or omissions based on instructions or directions received from Employer and its agents, representatives or employees.

6.2 Errors caused by incomplete, inaccurate or untimely information provided by Employer and its agents, representatives or employees, or failure of Employer to perform its obligations as required by this Agreement.

6.3 EXCEPT FOR LIABILITIES RESULTING FROM INTELLECTUAL PROPERTY INFRINGEMENT AND/OR EMPLOYER’S BREACH OF ITS PRIVACY OBLIGATIONS UNDER THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IN THE EVENT THAT IT IS ADVISED OF THE POSSIBILITY THAT SUCH DAMAGES MAY ARISE, OCCUR OR RESULT.

7. **Communications.** Employer will provide the Bank a list of all personnel authorized by Employer to receive and furnish information under this Agreement and Employer hereby authorizes Bank, without further review or verification, to honor or act upon any facsimile, electronic direction/data transmission, mail and other order, instruction, action or transmission from Employer or authorized personnel (“Employer Communication”). Employer is responsible for the accuracy and completeness of any Employer Communication and is solely responsible for any adverse consequences that may result from errors or inaccuracies in reliance upon Employer Communications. Employer understands the risk associated with communicating time sensitive matters by facsimile, electronic means or mail and other transmission and acknowledges that, if it elects to communicate in such a manner, Bank will act within a reasonable time after receipt. Bank will not be liable for any loss of directions or data prior to receipt by Bank. Employer shall be responsible for all costs and expenses incurred by Bank for error correction undertaken by Bank as a result of an erroneous Employer Communication to Bank.

8. **Confidentiality.** The Bank is not receiving Employer's Confidential Information pursuant to this Agreement. Confidential Information about an Account Holder that is provided to the Bank, by either the Account Holder, or the Employer as an Authorized Agent, is being provided pursuant to the HSA Documentation between Account Holders and the Bank. The Bank's confidentiality obligations to the Account Holder are contained in the HSA Documentation.
9. **Privacy.** To the extent Employer has or receives information about HSAs and Account Holders, Employer will implement appropriate measures designed to ensure the security and confidentiality of Account Holder information in connection with the HSAs and Account Holders, protect against reasonably foreseeable threats or hazards to the security or integrity of such information, protect against unauthorized access to or use of such information and ensure the proper disposal of Account Holder information. Employer understands that Bank is not a "covered entity", "business associate" or "plan sponsor" as those terms are defined by the Health Insurance Portability and Accountability Act of 1996, and the amendments and regulations related thereto.
10. **Term and Termination.** The term of this Agreement shall begin on the Effective Date and shall continue in full force and effect for a period of twelve (12) months. This Agreement shall automatically renew thereafter for additional twelve (12) month periods on the anniversary of the Effective Date. Subject to providing ninety (90) days prior written notice, either Party hereto may terminate this Agreement at any time. Bank may terminate this agreement immediately if at any time Employer fails to comply with any of its material obligations, Employer is appointed a receiver, a general assignment is made for the benefit of Employer's creditors, a bankruptcy proceeding has been commenced, or any representation made or information provided is false or misleading in any material respect when made or provided. Bank may, in its sole discretion, continue to provide HSA services to Account Holders if this Agreement is terminated for any reason.
11. **Intellectual Property.** Bank may provide to Employer material related to the Bank's HSAs or custodial services. Any materials provided by Bank to Employer are copyrighted property of Bank and shall not be reproduced or modified by Employer without the prior written consent of Bank. Employer recognizes that Bank owns certain trademarks, service marks, logos and trade names ("Marks") that identify its products. Employer acknowledges that it has no ownership right or interest in the Marks and that it will not use the Marks without prior written permission.
12. **General Provisions.**
- 12.1 **Entire Agreement.** This Agreement supersedes any and all other agreements, either oral or written, between the parties with respect to the subject matter hereof, and no other agreement, statement or promise relating to the subject matter of this Agreement will be valid or binding.
- 12.2 **Authorization.** The undersigned hereby represents and warrants that he or she is duly authorized to sign this Agreement.
- 12.3 **Beneficiaries.** No third parties shall have the benefit of or any rights under any of the provisions of this Agreement.
- 12.4 **Amendments.** The Bank may unilaterally amend this Agreement as it may determine, in its reasonable discretion, is necessary for the Agreement to comply with applicable laws, rules and regulations (including without limitation, HIPAA) by providing written notice of such amendment to Employer (an "Amendment Notice"). Such amendment shall be effective upon receipt of the Amendment Notice or such other date specified in the Amendment Notice. All other amendments shall be by mutual written agreement by an authorized officer of each of the parties.
- 12.5 **Waiver.** Failure to insist upon strict compliance with any of the terms herein (by way of waiver or breach) by either Party hereto shall not be deemed to be a continuous waiver in the event of any future breach or waiver of any condition hereunder.
- 12.6 **Assignment.** This Agreement will be freely assignable by Bank to any affiliate, which will mean any entity that controls, is controlled by, or is under common control with Bank. Employer may not assign this Agreement without the express written consent of the Bank, which will not be unreasonably withheld.
- 12.7 **Severability.** If any portions of this Agreement shall, for any reason, be invalid or unenforceable, such portions shall be ineffective only to the extent of such invalidity or unenforceability, and the

- remaining portion or portions shall nevertheless be valid, enforceable and of full force and effect.
- 12.8 Regulatory Audits. Employer shall make its facilities, systems, personnel, and records, related to Employer's performance under this Agreement available for audit when required by applicable law or by state or federal bank regulatory authorities with jurisdiction over Bank.
- 12.9 Survival. The provisions of this Agreement that by their operation or effect apply after the expiration or termination of this Agreement will apply after such expiration or termination, including but not limited to Sections 6, 10, 11 and 13.10
- 12.10 Governing Law. The Bank is chartered and located in the State of Utah and as such, the HSAs are governed by Utah laws and regulations. Accordingly, this Agreement shall be governed by laws of the state of Utah without giving effect to its conflicts of law provisions.
- 12.11 Advice. Employer understands that Bank is not giving Employer or the Account Holder any legal, tax or financial advice concerning any of the matters relating to this Agreement. Employer acknowledges that it has had the opportunity to consult with its independent legal, tax and financial advisors and is not relying on Bank or any of its affiliates for any such advice and is not expecting Bank to provide any such advice to an Account Holder.
- 12.12 Counterparts. This Agreement may be signed electronically or in multiple counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one instrument.

IN WITNESS WHEREOF, Employer and Bank have caused this Agreement to be duly executed as of the Effective Date.

Employer

1 Test Company for Samples
6300 Olson Memorial Highway
Golden Valley, MN 55427

Bank

Optum Bank, Inc.
2525 Lake Park Boulevard
West Valley City, UT 84120

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

Date: _____

Date: _____

**Investment Addendum to
HSA Enrollment and Contribution Agreement**
[to be added for e-saver and e-investor accounts only]

In the event Employer elects to offer eligible employees the ability to invest HSA funds, this Addendum will supplement the employer's obligations under Section 4 of the Agreement.

Account Holders may invest any portion of the funds deposited to their HSAs in excess of the minimum amount established by Bank as described within the HSA Documentation provided to Account Holders. Employer understands and acknowledges the following with respect to any HSA investment options made available to Account Holders in accordance with the HSA Documentation:

1. The Bank has engaged the services of a registered investment advisory firm that recommends a variety of mutual funds for acceptance by Bank to be made available to Account Holders. The registered investment adviser recommends such mutual funds to the Bank in accordance with an established investment policy. The funds may change from time to time in accordance with a recommendation from the investment adviser and acceptance by the Bank. The Bank expressly disclaims any and all fiduciary responsibility for mutual funds selected by the investment adviser.
2. The Bank is under no obligation to and will not substitute, replace and/or delete any mutual funds offered through the HSA at the request of Employer. The Bank may agree in its sole discretion to make additional or alternative mutual funds available as requested by Employer. Employer acknowledges that it can exercise only limited discretion over the selection of mutual funds offered to Account Holders by the Bank without causing its arrangement to be considered part of an ERISA plan. In accordance with Department of Labor Field Assistance Bulletin 2006-2, such discretion by Employer is limited to selecting a subset of mutual fund investments offered under Employer's 401(k) plan, and Employer represents and warrants that its mutual fund menu selections will be so restricted. In the event Bank allows additional or alternative mutual funds available to Account Holders at Employer's request, Employer acknowledges and agrees that Bank is not a fiduciary in any capacity and expressly disclaims any and all fiduciary responsibility for said funds, including any duty to determine whether Account Holders are afforded a reasonable choice of investment options, any duty to monitor the mutual funds, or any determination as to the suitability of said funds. No investment policy formulated for the Bank shall apply to the selection of mutual funds added at the request of Employer. Employer will be liable to and will defend, indemnify and hold harmless the Bank, its Affiliates and their respective officers, directors, employees, successors and permitted assigns from and against any and all liability, damages, costs, losses and expenses, penalties or excise taxes, including attorneys' fees, disbursements and court costs, imposed upon or reasonably incurred by the Bank in connection with any threatened, pending, or adjudicated claim, demand, action, suit or proceeding arising in connection with any mutual fund added at the request of the Employer.
3. Employer acknowledges and agrees that:
 - The HSA investment options made available to Account Holders are "self-directed" products, i.e., the Account Holder has sole discretion whether to invest in one or more of the mutual funds offered through the HSA;
 - Neither the Bank nor its registered investment adviser will provide any investment advice to the Account Holder and neither have any obligation to Employer or the Account Holder to review or monitor the Account Holder's investment choices.
 - Investments in mutual funds are not **FDIC-insured, not bank issued or guaranteed, and are subject to investment risks, including fluctuations in value and the possible loss of the principal amount invested.**
 - Neither the Bank nor its registered investment adviser shall have liability or responsibility for the Account Holder's investment decisions.

Hardware and Software Requirements for Access to and Retention of Electronic Health Savings Account (HSA) Records

Hardware and Software Requirements

In order to access documents related to your Optum Bank HSA electronically, you must have a personal computer or other access device capable of accessing the Internet using one of the following Internet web browsers:

- Windows 7, Vista and Windows XP Mac OS X 10.3 or higher
- Internet Explorer 6.0 or higher Firefox 2.0 or higher
- Firefox 2.0 or higher Safari 2.0 or higher
- Opera 8.0 or higher Camino 1.5.3 or higher
- Google Chrome Opera 8.0 or higher

You will need the appropriate hardware to support the software identified above.

Viewing / Downloading Copies of Electronic Documents

In order to view, print, or retain HSA documentation, you will need Adobe Acrobat Reader® version 7.0 or higher, and the ability to download to your computer or print Adobe Acrobat files. If you do not have Adobe Acrobat Reader, you can download it from our website. You may keep copies of your HSA documentation for future reference by saving them to your computer in the PDF format, by clicking on "File" and then "Save As" in your browser or Adobe Acrobat Reader window.

Updating Your Email Address

Please notify Optum Bank whenever you change your email address by logging in to the HSA web site and updating your email address.

If Optum Bank receives an electronic notice that an email is undeliverable due to an incorrect or inoperative email address, Optum Bank will resend any information that is required by law to be sent to you via U.S. Postal Service. However, any information that is not required by law to be sent to you will not be resent by regular mail.