

# Optum Bank

## HSA Enrollment Process – Common Questions

This document answers the most common questions that employers have when selecting Optum Bank (the “Bank”), Member FDIC, as the preferred custodian for their employees’ health savings accounts (HSAs). We are happy to answer any additional questions you may have and look forward to working with you to ensure that your employees’ HSA enrollment process is easy and rewarding and that they can make the most of their HSAs.

### 1. Is the Bank a trustee or a custodian of HSA funds?

The Bank is a custodian of individual employee HSAs, not a trustee or a plan administrator. As such, the Bank holds and ensures the safekeeping of HSA funds, maintains accurate records, responds to account holder instructions and other responsibilities. The Bank offers a self-directed HSA product and as such does not have any discretionary authority over the funds in an account nor does it act in a fiduciary capacity with respect to an account or any investments.

In providing HSA custodial services, the Bank enters into a deposit and custodial agreement with each individual employee. The deposit and custodial agreement establishes a contractual banking relationship directly between the bank and each employee and is supervised by the state of Utah and the FDIC.

The Bank complies with all federal and state laws and regulations applicable to financial institutions and HSAs, most notably: the Right to Financial Privacy Act, the USA Patriot Act, the Gramm-Leach-Bliley Act (GLBA), and the Internal Revenue Code. The Bank’s policies and procedures, including the contracting and enrollment process, are designed to fulfill the Bank’s legal obligations to each individual account holder.

### 2. Are HSAs employee welfare benefit plans subject to ERISA?

HSAs are not considered employee welfare benefit plans under the Employee Retirement Income Security Act of 1974 (ERISA). However, certain actions by employers can trigger ERISA applicability. If an employer triggers ERISA, HSAs change from voluntary employee individual bank accounts to employee welfare benefit plans and the HSAs become group health plans under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Consolidated Omnibus Budget Reconciliation Act (COBRA) as well. The consequences of triggering ERISA impact both the employer and the Bank and may include extensive reporting and bookkeeping, plan documents for HSAs, HIPAA application, fiduciary responsibilities, COBRA requirements and exposure to class action ERISA litigation.

Department of Labor guidance explains what employers may or may not do with regard to HSAs to avoid triggering ERISA. In sum, employer involvement with HSAs must be very limited. Employers are permitted to open HSAs for their employees and deposit funds only because the employees will still have exclusive responsibility for spending and controlling funds. Employers may also limit the HSA providers it allows to market products in the workplace or select a single provider. However, employers may not:

- Limit the ability of eligible individuals to move their funds to another HSA
- Impose impermissible conditions on using HSA funds
- Make or influence the investment decisions for funds contributed to an HSA
- Define the HSAs as an employee welfare benefit plan established or maintained by the employer
- Receive any payment or compensation in connection with an HSA

- Contribute to an HSA by means of a salary reduction to which the employee does not consent
- Limit the number of HSA providers and receive discounts on other products

### **3. Is the Bank a vendor / service provider to the employer or health plan?**

In providing HSA custodial services, the Bank enters into a deposit and custodial agreement with each individual employee. The agreement establishes a contractual banking relationship directly between the bank and each account holder and is supervised by the state of Utah and the FDIC. As a result, the Bank is a service provider to each individual account holder. To ensure that the Bank complies with all applicable statutes and regulations, including compliance with customer privacy and data and security standards, the Bank is audited annually by the state of Utah and the FDIC.

Since the HSAs offered by the Bank are not employee welfare benefit plans or components of such plans, they are not subject to ERISA or HIPAA. While an employer may act as an agent on behalf of its employees to open and contribute to an HSA, to avoid the unnecessary and costly applicability of ERISA to employers and the Bank, employer involvement must be limited and any perception or implication that the HSA is maintained or controlled by the employer must be avoided. Consequently, the Bank is unable to agree with any requirement that the Bank enter into a vendor relationship with an employer or assume any liability or obligation that could be perceived as the employer maintaining and controlling the HSA with the Bank.

### **4. Why does the Bank require an HSA Enrollment and Contribution Agreement?**

Typically, the Bank interacts with each individual account holder to obtain all of the information and documentation needed by the Bank to open an HSA in accordance with applicable banking laws and regulations. The Department of Labor has issued guidance that states that an employer may act as an employee's agent to open an HSA and to make contributions without implicating ERISA.

The primary purpose of the HSA Enrollment and Contribution Agreement is to allow the Bank to rely on the agency relationship between the employer and its employees to obtain the information and documentation needed by the Bank to open an HSA. When an employer chooses to open accounts for its employees, the Bank must rely on the employer instead of the account holder to meet the legal requirements necessary to open an account with a financial institution.

To help ensure that there are no ERISA or HIPAA implications that attach to the employer opening accounts and making contributions, the Bank carefully limits the scope of its legal agreement with the employer to merely ensure the employer is authorized to act as an agent for its employees and that the requirements of the USA Patriot Act and GLBA are satisfied.

### **5. Is a Business Associate Agreement needed in connection with the Bank's HSA custodial service?**

HIPAA imposes strict privacy and security regulations on "covered entities" (including health providers, health plans, and health care clearinghouses) and their business associates. Covered entities and business associates are required to have business associate agreements (BAAs) with service providers where Protected Health Information (PHI) or Electronic PHI (EPHI) is involved. The Bank does not need to sign a BAA because it is not a covered entity or business associate. It is not a covered entity because it is not a health provider, health plan or health care clearinghouse and it is not a business associate because it does not send or receive the type of information that would classify it as a business associate.

Furthermore, the Bank is not subject to HIPAA because section 1179 of HIPAA excludes financial institutions when they are engaged in authorizing, processing, clearing, settling, billing, transferring, reconciling or collecting, a payment for, or related to, health plan premiums or health care, where such payment is made by any means including a credit, debit, or other payment card, an account check, or electronic funds transfer for itself or on behalf of a financial institution.

## **6. What information or data is passed back and forth between the Bank and an employer?**

Employers that choose to open HSAs for employees are merely acting as agents for their employees in this process. As their agent, an employer must send employee information to the Bank on behalf of their employees which includes names and social security numbers. The Bank opens the HSAs and sends a report back to the employer as an "HSA Account Detail Report" with account open dates, and account status notes. The HSA Account Detail Report (including name, social, and account data) is considered non-public personal information (NPPI) under GLBA. Once received, the employer can begin to make contributions to the HSAs and with each contribution file, will send contribution instructions to the Bank.

## **7. In the HSA Enrollment and Contribution Agreement, why does the Bank require that a non-bank employer be subject to GLBA?**

The Bank, as a financial institution, is subject to and compliant with the requirements of GLBA and is audited for compliance by the state of Utah and FDIC. GLBA governs how financial institutions deal with the private information of individuals and regulates the collection and disclosure of private financial information and NPPI. Under GLBA, financial institutions must, among other requirements, implement data security programs to protect the NPPI of its account holders. The Bank's GLBA obligations are to the account holder, not the employer, since the NPPI is owned by the account holder.

Employers that open HSAs for employees receive an HSA Account Detail Report from the Bank that contains account names, social security numbers, open dates, account numbers, and account status notes. Even though some of the data contained in files is originated with the employer, the employee data sent to the Bank is owned by the employee, not the employer. Furthermore, the employee data is not NPPI while it is in the possession of the employer, it is confidential information governed by the agency relationship between the employer and the employee.

Once the Bank receives information for the purpose of opening an HSA, either from an employee or an employer, under GLBA that information is now owned by the Bank and the employee/account holder. When the Bank sends a file back to the employer with account open dates, account numbers, and account status notes, that file now contains NPPI under GLBA. Since the Bank is sharing NPPI with a non-affiliated third party of the Bank, the recipient of the NPPI is required to comply with GLBA. Therefore, in order to comply with the provisions of GLBA, before the Bank shares NPPI with an employer it ensures in its HSA Enrollment and Confidentiality Agreement that each employer that receives NPPI from the Bank will comply with GLBA.

## **8. Does the Bank sign data security agreements with employers?**

The Bank, as a financial institution, is subject to and compliant with the requirements of GLBA and is audited for compliance by the state of Utah and FDIC. GLBA governs how financial institutions deal with the private information of individuals and regulates the collection and disclosure of private financial information and NPPI.

Under GLBA, financial institutions must, among other requirements, implement data security programs to protect the NPPI of its account holders. The Bank's GLBA obligations are to the account holder, not the employer, since the NPPI is owned by the account holder.

The only information that employers send to the Bank is employee enrollment data and contribution instructions. That data is confidential information, but it is not NPPI. Once it is received by the Bank and used to open an account, the data becomes NPPI owned by a financial institution and the account holder, and the Bank is obligated to the account holder to protect it under GLBA. To protect that data under GLBA, an employer that receives an HSA Account Detail Report from the Bank must agree to comply with GLBA in the HSA Enrollment and Contribution Agreement. This is not a mutual obligation because the Bank's obligations under GLBA are not to the employer; they are to the account holder. All of the Bank's obligations to the account holder are governed by the deposit and custodial agreement.

### **9. Are there advantages to opening an HSA in Utah?**

According to the IRS, qualified medical expenses may be paid or reimbursed from an HSA starting on the date the account is actually “established” under state trust law. Many states require that an account be opened *and funded* in order to be established. This means that if an HSA is opened on January 1st, but not funded until the first paycheck is received or even six months later, then the account holder may not use the account to reimburse medical expenses incurred before the account was funded.

The Bank is a Utah state chartered financial institution. Utah trust law has closed the funding gap, allowing an account to be established before funding. This is administratively easier and also ensures that HSA holders get the maximum tax benefit with regard to the reimbursement of qualified medical expenses.

**HEALTH SAVINGS ACCOUNT  
ENROLLMENT AND CONTRIBUTION AGREEMENT**

This Health Savings Account Enrollment and Contribution Agreement (the “Agreement”) is entered into by and between Port of San Diego (the “Employer”), and Optum Bank, Inc., a Utah chartered FDIC insured financial institution, (the “Bank”) (collectively, the “Parties”), and shall be effective as of January 1, 2018 (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 HSA Establishment.**
  - 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 Opening HSAs on Behalf of Employees.** In addition to the obligations set forth in Section 4 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/maintain 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 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 12.10
- 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.
- 12.13 Single Sign-On Access. Employer may request that Bank develop a process to effect single sign-on access to allow HSA Account Holder access to their HSA as well as the ability to effect transactions within their HSA once logged into Employer's health care benefit portal ("Website") without having to input an additional separate password or take security steps separate from that required by the Website ("SSO"). Employer agrees that Bank shall retain the right to terminate, revoke, suspend, disable, or otherwise cease SSO access at any time at the Bank's sole discretion, without notice. Without limiting the foregoing, the Bank may, without notice, suspend or terminate SSO access to one or more Account Holder or to Employer for purposes of and to allow the Bank to test, shield, or mitigate suspected fraud or data security risks.

Bank provides SSO at no additional cost and solely as an accommodation and for purposes of convenience. The SSO is not an essential purpose of HSA. Access to SSO is dependent on technology beyond the control of Bank, including but not limited to computer systems, computer equipment and third party services with which the Bank may not have a direct contractual relationship. Bank continuously monitors the working condition of its computer systems and servers, and third party providers and is committed to attempting to resolve any issues that may arise. Employer understands, and has informed its employees that Bank is not liable and is not responsible for any interoperability or connectivity which may be terminated either temporarily or permanently. Furthermore, Bank has no commitments to ensuring the working condition of the SSO.

The SSO is controlled from and operated by the Bank in its offices in the United States. The Bank makes no representations that the SSO is appropriate or available for use in any specific location. Those who access or use the SSO do so at their own risk of their own volition and are entirely responsible for all unauthorized access.

Employer shall ensure that Account Holder not share any SSO password and protect and secure it for reasons other than its intended purpose. Employer is responsible for maintaining the security of its computer equipment and account access passwords, and will use reasonable efforts to prevent any unauthorized use of the SSO. Employer is responsible for all individuals who access the SSO through Employer's computer systems including those who are not authorized. Employer agrees to immediately notify Bank in writing of any and all unauthorized use that comes to Employer's attention. If there is unauthorized use by anyone who obtained access to the SSO directly or indirectly through Employer or Employer's systems or servers, then Employer will take all steps necessary to terminate the unauthorized use. Employer is and will be responsible and liable for all activity conducted through its users' accounts. Employer will cooperate and assist with any actions taken by Bank to prevent or terminate unauthorized use of the SSO.

Notwithstanding any term in the Agreement and to the maximum extent permitted by applicable law, if Bank grants HSA Account Holder single sign-on access to the Bank's systems via the Website provided or made available by Employer, Employer agrees to indemnify, defend and hold harmless the Bank, its officers, directors, employees, agents affiliates and contractors from and against all loss, liabilities, demands, claims, actions, and expenses (including, without limitation, any attorney fees and taxes) arising out of, or in connection with: (i) unauthorized access to or use of the SSO, the Bank's servers, systems or other computer equipment or any and all information stored therein, specifically

including non-public personal information and any password and login information whether used for the SSO or any other computer system or account with like login and password; (ii) any party gaining unauthorized access to a Bank account and/or any unauthorized transactions occurring as a result of or attributable to the SSO; (iii) interruption or cessation of transmission to or from the SSO; (iv) any viruses, hacks or attacks of any nature, including but not limited to bugs, Trojan horses, malware, or the like that may be transmitted to or through the SSO from any source whatsoever; and (v) information, errors, mistakes, or inaccuracies of content of the SSO.

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

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

**Port of San Diego**  
3165 Pacific Highway  
San Diego, CA 92101

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_

Internal Control No.: 00409015.0

**\* S A M P L E \***

**Appointment of Employer as Authorized Agent to Open an HSA**

**Employee Information**

\_\_\_\_\_  
*First Name*

\_\_\_\_\_  
*Middle Initial*

\_\_\_\_\_  
*Last Name*

\_\_\_\_\_  
*Residential Street Address (Not P.O. Box)*

\_\_\_\_\_  
*City*

\_\_\_\_\_  
*State*

\_\_\_\_\_  
*Zip Code*

\_\_\_\_\_  
*Home Phone Number*

\_\_\_\_\_  
*Date of Birth (mm/dd/yyyy)*

\_\_\_\_\_  
*Social Security Number*

\_\_\_\_\_  
*Country of Citizenship*

\_\_\_\_\_  
*Residency Status*  
*(US Citizen or Permanent / Resident Alien*  
*or Non-Permanent/Non-Resident Alien)*

**Appointment and Certification**

By signing below, I appoint Port of San Diego (“Employer”) as my agent for the purpose of opening and administering/maintaining an Optum Bank, Inc. (“Bank”) Health Savings Account (“HSA”) on my behalf and authorize Employer to send and receive information to and from the Bank on my behalf (including account number) in order to accomplish this purpose. I authorize the Bank to make any inquiries that it considers appropriate to determine if it should open and maintain my HSA, and I acknowledge that I have received the Bank’s USA PATRIOT Act Notice provided below.

**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.

I certify that I am eligible to contribute to an HSA under Internal Revenue Code Section 223. I authorize and direct the Bank to issue a Debit MasterCard® to me. I certify that I have received the Bank’s statement of the hardware and software requirements for access to and retention of electronic records and that I have the ability to access the Bank’s website where electronic statements and other documentation are stored. I instruct the Bank, unless otherwise notified and instructed by me, to provide the Custodial and Deposit Agreement and all other HSA notices, disclosures and information related to and governing my HSA to me online at [www.optumbank.com](http://www.optumbank.com). I understand that monthly account statements and other documentation and notices will be delivered or made available electronically. If I want HSA statements mailed to my home, I must notify the Bank directly.

I agree that Employer will remain my agent unless and until Employer and the Bank receive notice that the appointment of Employer as my agent has been terminated, that I am no longer employed by Employer, or that I am no longer an HSA eligible individual; or I receive a notice from the Bank that my application for an HSA has been declined.

\_\_\_\_\_  
*Employee Signature*

\_\_\_\_\_  
*Date*

**\* Please return this completed and signed form to your Employer \*  
Do not send to Optum Bank**

## **Optum Bank 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.