

## Flexible Spending Account Administrative Services Acknowledgement

By **[EMPLOYER]**(hereinafter "Employer")

This Agreement shall be effective as of the Effective Date of the UnitedHealthcare Insurance group policy(s) or upon the acceptance of this Acknowledgement, whichever is later.

WHEREAS, a Flexible Benefit Plan, is to be established by the Employer and designed to comply with Section 125 of the Internal Revenue Code.

WHEREAS, the Employer desires UnitedHealthcare Benefit Services ("UnitedHealthcare") to perform certain services in connection with the Flexible Benefit Plan; and

WHEREAS, UnitedHealthcare is willing to perform such services;

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the parties agree as follows:

### Section I: Definitions

The following definitions apply to this Agreement:

- (a) **"FSA Bank Account"** Bank Account maintained for the payment of FSA Program benefits, expenses, and fees.
- (b) **"Internal Revenue Code"** means the Internal Revenue Code of 1986 as amended.
- (c) **"Expense"** means any treatment amount, service or supply paid or incurred by a Participant and eligible for reimbursement under the FSA Plan and pursuant to applicable sections of the Internal Revenue Code.
- (d) **"FSA Plan"** The FSA Plan to which this Acknowledgement applies.
- (e) **"ERISA"** means the Employee Retirement Income Security Act of 1974 as amended.
- (f) **"Group Policy"** means the medical insurance policy initially issued by UnitedHealthcare to the Employer and/or Plan.
- (g) **"PHI"** means Personal Health Information

### Section II: Services To Be Performed By UnitedHealthcare

#### Claims Reimbursement Processing

- (a) Claims for reimbursement of FSA Plan benefits must be submitted in a form that is satisfactory to UnitedHealthcare. UnitedHealthcare will determine whether a benefit claim is reimbursable under the FSA Plan provisions including a determination as to whether a claim is considered an Expense.
- (b) In applying the FSA Plan's provisions, UnitedHealthcare will use claim procedures and standards that UnitedHealthcare develops for benefit claim determination and reimbursement. Employer delegates to UnitedHealthcare the discretion and authority to use such procedures and standards.
- (c) The rate of accuracy of benefit reimbursement determinations shall be consistent with the accuracy rate that a reasonably prudent administrator of flexible spending account programs would be expected to achieve under similar circumstances.

#### Benefit Claim Determination and Appeals

- (a) Employer appoints UnitedHealthcare a named, ERISA fiduciary with respect to (i) performing the fair and impartial review of initial claim reimbursement determinations, and (ii) performing the fair and impartial review of initial appeals of denied requests for reimbursement in accordance with the Internal Revenue Code and ERISA. If a second appeal is requested, UnitedHealthcare will forward to Employer or its designee documentation necessary for Employer or its designee to conduct the final appeal. With respect to these functions, Employer delegates to UnitedHealthcare the discretionary authority to (i) construe and interpret the

terms of the FSA Plan, and (ii) determine the validity of requests for reimbursement submitted to UnitedHealthcare under the FSA Plan. This delegation is subject to Employer retention of full responsibility as Plan Administrator for the final review of denied claims for reimbursement, and Employer has the discretionary authority to construe and interpret the terms of the FSA Plan and to make final, binding determinations concerning the availability of FSA Plan benefits.

- (b) If it is determined that an Expense is reimbursable under the FSA Plan, UnitedHealthcare will issue reimbursement to the appropriate payee. If UnitedHealthcare determines that all or a part of the benefit is not reimbursable under the FSA Plan, UnitedHealthcare will notify the claimant of the adverse benefit determination and of the claimant's right to appeal the adverse benefit determination. This notification will be designed to comply with the Internal Revenue Code and ERISA requirements for adverse benefit determination notices.
- (c) If UnitedHealthcare denies a request for reimbursement, the claimant shall have the appeal rights set forth in the Summary Plan Description, and/or which are required under applicable law. UnitedHealthcare will process the initial appeal and provide Employer with its assessment as to whether the claim qualifies as an Expense, and should be reimbursed. If, after the review, Employer determines that the claim is reimbursable, Employer will notify UnitedHealthcare and the claimant. If, after the review, Employer determines that the claim for reimbursement does not qualify as an Expense, Employer will notify UnitedHealthcare and the claimant of the adverse benefit determination. This notice will be designed to comply with ERISA and the Internal Revenue Code requirements for final appeal determination notices. Employer determinations will be final and binding on the claimant and all other interested parties.

#### **Assistance with General FSA Plan Administration**

- (a) UnitedHealthcare will provide administrative services including: (a) employer administration kit; (b) claim reimbursement forms; (c) a toll-free customer service telephone line for FSA Plan Participants; (d) enrollment support; (e) account balance statements showing contributions and withdrawals for each account; (f) direct deposit; and (g) web-based services for those FSA Plan Participants who initially elect medical coverage with UnitedHealthcare. The web-based services may include the ability to view: account balances, Plan benefit information, claim summary and detail, frequently asked questions, eligible and ineligible expenses, and print claim reimbursement forms.

#### **FSA Bank Account**

- (a) Employer will provide UnitedHealthcare with correct banking information in order to provide UnitedHealthcare the means to access Employer's FSA Bank Account for the sole purpose of payment of reimbursement of FSA Plan benefits, expenses and fees. UnitedHealthcare will draw funds once a week to cover the payment of reimbursement of FSA Plan benefits, expenses and fees. The FSA Bank Account, and its funds, will belong to Employer.

#### **Balance In Account**

- (a) Employer must have sufficient funds in the FSA Bank Account when notified by UnitedHealthcare for the weekly withdrawal. Any insufficient funds will carry additional fees to the Employer and/or may result in termination of services.

#### **Calls for Funds**

- (a) The withdrawals for FSA Plan benefits, expenses and fees are paid for by the balance Employer maintains in the FSA Bank Account.
- (b) Every seven (7) business days, Employer will transfer to the FSA Bank Account the amount of funds which have been withdrawn from Employer's FSA Bank Account over the past seven (7) business days. Employer will transfer that amount using a method agreed upon by Employer, UnitedHealthcare and the Bank. This transfer will replenish the balance Employer is maintaining in the FSA Bank Account. The number of days between transfers and the method of transfer are based on Employer financial condition as of the Effective Date as viewed by UnitedHealthcare, and Employer compliance with material financial obligations. In the event UnitedHealthcare determines, based on reasonable information and belief, that Employer financial condition has deteriorated, or Employer continues to fail to comply with material financial obligations set forth in this Agreement, UnitedHealthcare reserves the right to increase the frequency of such fund transfers and/or change the method of transfer; or terminate services

## **Run-Out Administration**

- (a) In order to administer run-out claim reimbursement processing services, Employer must terminate the FSA on the Group Policy renewal date or FSA renewal date.
- (b) UnitedHealthcare will provide run-out for a period of three (3) months following the Agreement's termination or the termination of the services in this Acknowledgement. This provision applies only to claims for FSA Plan benefits incurred prior to the termination date. All other terms of the Agreement and this Acknowledgement will apply to these post-termination services. However, UnitedHealthcare will not provide these services after the Agreement terminates or the services described in this Acknowledgement terminate if (1) Employer does not provide the funding required by this Acknowledgement, or (2) if UnitedHealthcare terminates for any other material breach.

## **Section III: Duties and Responsibilities of the Employer**

- (a) Employer will furnish all records and information in its possession and control to UnitedHealthcare needed to perform services under this Agreement.
- (b) Employer will submit fully complete, executable implementation materials within thirty (30) days of the issuance of the Group Policy to UnitedHealthcare to ensure timely implementation. Missing or incomplete implementation materials can result in a change in the plan's effective start date, or termination of the plan.

## **Section IV: Indemnification**

- (a) The Employer agrees to indemnify and hold UnitedHealthcare harmless against any loss, damage, or expense, including reasonable attorneys' fees that UnitedHealthcare may incur or be required to pay as a result of any claim, demand, cause of action, lawsuit or proceeding arising out of or in any way connected with the services provided under this Agreement but only to the extent that such claims are caused by any act or omission on UnitedHealthcare's part, which in the aggregate, constitutes a failure on UnitedHealthcare's part to perform UnitedHealthcare's obligations under this Agreement with reasonable diligence and that degree of skill and judgment possessed by a similar entity experienced in furnishing claim administrative services to plans of similar size and characteristics as the Plan, provided that UnitedHealthcare shall not be liable to you for actions taken in good faith.

## **Section V: Miscellaneous**

### **Scope of Services**

- (a) The services described in the Agreement and this Acknowledgement will be made available to Participants consistent with the Summary Plan Description under which the Participant is covered.
- (b) Employer must have UnitedHealthcare as their medical carrier and their FSA plan design must fit within the UnitedHealthcare FSA standards in order to be administered in accordance with this Acknowledgement.

### **Privacy and Security**

- (a) As directed and authorized by Employer, UnitedHealthcare may receive information from Employer regarding other group health plans for purposes of performing data analysis. UnitedHealthcare may also use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1).
- (b) UnitedHealthcare shall maintain separate records with respect to the services specified herein for seven (7) calendar years following any year in which it performs services hereunder, or longer, if such period is required under ERISA or other applicable law.
- (c) Proprietary Business Information will not be disclosed to any person or entity other than either party's employees, subcontractors, or representatives needing access to such information to administer the Plan or perform services under this Agreement.

**Section VI: General Provisions**

- (a) Employer as Plan Administrator/Plan Sponsor shall retain final authority and ultimate fiduciary responsibility for the Plan and its operations.
- (b) Employer shall provide to UnitedHealthcare, in a timely manner and in a form specified by UnitedHealthcare, any reports or information UnitedHealthcare deems necessary for its effective performance of its obligations under this Agreement. UnitedHealthcare shall not be liable for any delay in UnitedHealthcare's performance which is solely due to the failure of the Employer to furnish required information.
- (c) Amendments to this Agreement may be made by UnitedHealthcare by providing notice to Employer at least thirty (30) days prior to the effective date of any amendment. No waiver of any of the terms and conditions of this Agreement shall be valid unless contained in a written memorandum and signed by a person duly authorized to sign such waiver.
- (d) The services to be performed by UnitedHealthcare under this Agreement may be performed by UnitedHealthcare or by any of its affiliated companies or by any subcontractor selected by it or them.
- (e) This Agreement shall be governed by applicable federal law and the laws of the State of Minnesota.

**Section VII: Termination**

- (a) This Agreement will continue in effect until terminated by the earliest of the occurrence of the following events:
  - (i) upon written notice by either party upon ninety (90) days notice;
  - (ii) Employer's failure to comply with any of the requirements set forth in this Acknowledgement;
  - (iii) Employer's failure to pay any premiums due pursuant to the Employer's group policy; or
  - (iv) discontinuance of Employer's Plan.
- (b) In the event that the Group Policy is discontinued for any reason other than those set forth in Section VII(a), above, this contract shall remain in full force and effect with the following additional provisions:
  - (i) Employer will pay fees to United Healthcare in accordance with its standard fee schedule at the time of the discontinuance of the Group Policy; and
  - (ii) Employer will execute United Healthcare's standard Flexible Spending Account Administrative Service Agreement at the time of the discontinuance of the Group Policy.

Payment of premium for the Group Policy shall be deemed acceptance of this Acknowledgment in the event it is not executed within thirty (30) days of the issuance of the Group Policy.

**EMPLOYER NAME VARIABLE**

By \_\_\_\_\_  
Authorized Signature

Date \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_