MODEL DEPOSITORY AGREEMENT

 The parties to this DEPOSITORY AGREEMENT (Agreement”) are \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Bank”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Company”). This Agreement is effective as of \_\_\_\_\_\_\_\_\_\_, 20 \_\_. This form of Agreement has been reviewed by the Oregon Department of Justice and the Oregon Health Authority (“OHA”). These reviews do not constitute legal advice, nor do they create any warranty, guarantee or assurance regarding the legal sufficiency or effect of the Agreement.

RECITALS:

1. The Company is a Contractor with OHA and, pursuant to Health Plan Services Contract, Dental Care Organization Contract #XXXXXX (“DCO Contract”), is required to make certain deposits of cash as specified under OAR 410-141-5185 (“Restricted Reserve Requirement”) with a third-party financial institution.

1. The Company desires to comply with its obligations under the Restricted Reserve Requirement by depositing with the Bank the Required Deposits listed on Schedule A attached hereto (“Company Deposits”), and the Bank is willing to accept such deposits, subject to the terms and conditions of this Agreement.
2. It is the intent of the OHA in approving this depository agreement to (1) assure payment to providers in the event of the Company’s insolvency, and (2) assure payment for other obligations of Contractor in a close-out after termination of the Contract.

AGREEMENT:

 NOW, THEREFORE, in consideration of the foregoing, the parties agree as follows:

1. Company Deposits. The Company has deposited the Company Deposits with the Bank, and the Bank has accepted the same, on the terms and conditions of this Agreement. The Bank has established an account (“Account”) on behalf of the Company in connection with the Company Deposits for the purposes set forth in the Restricted Reserve Requirement. Any additional deposits made to the Account by the Company from time to time will be deemed to be Company Deposits for all purposes of this Agreement. The Company represents that there are currently no liens, encumbrances or charge on or security interest in the Company Deposits. The Company also represents that the Company shall not, directly or indirectly, create, suffer or permit to be created or to remain, and shall promptly discharge, any lien, encumbrance or charge on or security interest in the Company Deposits or any portion thereof. The Bank will provide safekeeping receipts to OHA within three business days following a deposit in the Account with respect to the assets deposited by the Company in the Account, and shall provide copies of such receipts to the Company. The Bank shall have no obligation to determine the genuineness or validity of any Company Deposits or whether there is any alteration or defect on any securities or other instruments (or any endorsements thereon) that are delivered to the Bank hereunder, or to ascertain whether the Company Deposits satisfy the requirements of the DCO Contract or any other requirements to which the Company is subject.
2. Registration of Company Securities. All securities included in the Company Deposits (“Company Securities”) will be registered in the name of the Bank or its nominee.
3. Location of Company Securities. Unless required by law or expressly requested by the Company and agreed to by the Bank, the Bank will hold all Company Securities in book entry form in its own name or in the name of its nominee, including in the book-entry system of a Federal Reserve Bank, the Depository Trust Company, or a similar entity. If the Bank is required by law or agrees to hold Company Securities in physical form, it may keep such securities in its own vault or, unless otherwise required by law or agreed to by the Bank, in accounts the Bank maintains with domestic depositories that provide handling, clearing, or safekeeping services. The Bank’s internal records will indicate the location of all Company Securities and reflect that they are held in the Account.
4. Cash. The Bank will invest cash in the Account (other than Withdrawable Funds) pursuant to Written Instructions of the Company. Cash in the Account will not bear interest until such time as the cash is invested by the Bank in accordance with Company’s Written Instructions.
5. Voting. The Company shall have the sole right to vote and execute consents with respect to Company Deposits, and the Bank shall take no action with respect to such matters except to forward to the Company proxy materials and similar documents that the Bank may receive from time to time with respect to the Company Securities.
6. Withdrawable Funds. For the purpose of this Agreement, the term “Withdrawable Funds” means interest and dividends paid on Company Securities or invested cash, but does not include any principal of Company Deposits whether as a result of maturity, redemption, or otherwise. The Bank shall collect the Withdrawable Funds in the Account and, subject to any written restriction imposed by OHA, promptly send such Withdrawable Funds by check or by wire transfer to the Company in accordance with the section of the Company below as follows:

If transferred by check, sent by U.S. Mail, or other authorized carrier, to:

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

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

City/State/Zip: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_ (To be initialed by Company if payment by check is desired)

 OR

 If transferred by wire, directed to:

 ABA Routing No: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Bank Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Account No: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Beneficiary: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_ (To be initialed by Company if payment by wire transfer is desired)

The Company may modify the method of delivery selected or the Written Instructions given or the method of collection and transmission of the withdrawable funds, above by Written Instructions.

1. Withdrawal or Delivery of Company Deposits. Withdrawal or delivery of Company Deposits (excluding Withdrawable Funds) by the Company shall be permitted or made only upon Written Instructions of the Company, but only if OHA has approved the specific transaction by written instruction that states the amount of withdrawal or delivery method. So long as the Company is in compliance with the DCO Contract, upon Written Instructions from the Company and upon prior written approval by OHA, the Company may exchange or substitute for the Company Deposits, or any part thereof, other eligible assets of equivalent or greater value as shown in Schedule C. The Bank may deliver or cause to be delivered Company Deposits (or any part thereof) to a trustee upon written approval by OHA in the event of Company’s insolvency in order to pay those creditors who have provided approved medical services, or to pay other obligations of Contractor in a close-out after termination of the Contract. The Bank may take any appropriate action in order to effect this intent, and the Bank shall have no liability for action it takes in accordance with any such written directive.
2. Written Instructions. The Bank shall be deemed to have received Written Instructions for the Company upon receipt of written instructions or directions signed by any of the persons listed on Schedule B attached hereto; provided that if the Company desires that Written Instructions be executed by two or more such persons, it shall so specify on Schedule B. The Bank shall be entitled to rely conclusively on any Written Instructions that the Bank reasonably believes to have been signed by the appropriate number of persons listed on Schedule B, and the Bank shall have no liability for acting in accordance with such Written Instructions limited by the need for the OHA’s approval, when appropriate. The Company may add or delete persons who are authorized to give Written Instructions by appropriate Written Instructions or change the number of required signers; such changes to be effective one business day after Bank’s actual receipt of such Written Instructions.
3. Limited Responsibilities.
	1. The Bank’s responsibilities under this Agreement are limited to the safe holding of Company Deposits, collecting dividends and interest thereon, and disbursing Withdrawable Funds as set forth in this Agreement. The Bank shall have no obligation or authority to take any discretionary action with regard to the Company Deposits of the Account or to take any action not expressly provided for hereunder. The Bank will attempt to identify and collect on Company Securities that have been called for payment if the Bank has received written notification from the issuer of such call, but the Bank shall have no responsibility for failure to present such Company Securities that have been called for payment in the absence of such written notification from the issuer. The Bank is authorized to surrender maturing obligations or interest coupons for payment when they mature or are called for payment, without further instructions from the Company. If the Bank is notified of a partial call, absent timely Written Instructions from the Company, the Bank shall have the sole discretion to determine which of the Company Securities will be redeemed. The Bank shall not provide any supervision, recommendations, or advice to the Company relative to the investment, purchase, sale, or retention or other disposition of any Company Deposit.
	2. The Bank shall not be responsible or liable for any failure or delay in performance of its obligation under this Agreement arising solely out of or caused by, directly or indirectly, Written Instructions or written directives from OHA, actions or omissions of the Company or OHA, or circumstances beyond the Bank’s control including, without limitation, loss or malfunctions of utility, transportation, computer (hardware or software), or communication service.
	3. In performing its duties hereunder, the Bank shall give the Company Deposits the same degree of care the Bank gives to its own property of similar character, provided that the Bank shall have no liability to the Company under this Agreement except for an act or omission by the Bank that constitutes negligence or misconduct, and in no event shall the Bank have any liability for incidental, special, or consequential damages, even if the Bank has been advised of the possibility of such damages. Without limiting the generality of the foregoing, although the Bank will collect income and principal with respect to Company Deposits in accordance with the Bank’s customary business practices, the Bank assumes no responsibility regarding such collection unless the Bank acts with negligence or misconduct.
	4. The Bank shall have no obligation to make any disbursement of any Withdrawable Funds (or any other funds) to the Company or any other person until the Bank had received final payment therefor. In the event that the Bank credits the Account in anticipation of the Bank’s collection of Withdrawable Funds (or any other funds) that the Bank is then unable to collect, the Bank may charge such amounts back to the Account and, to the extent there are insufficient funds in the Account to reimburse the Bank, the Company agrees to reimburse the Bank within one business day after demand in immediately available funds.
4. Fees. Company agrees to pay the Bank compensation for its services hereunder to be determined from time to time by the application of the current rates then charged by the Bank, provided that any change in fees or charges will be applicable only after 30 days prior written notice. If the Bank is required by law or agrees to provide safekeeping of physical Company Securities pursuant to Section 3 above, it shall charge an additional fee for such service at its then current rates for such services. Any change in such fees or charges will be applicable only after 30 days prior written notice. In the event that the Bank shall be required to render any extraordinary services, it shall be entitled to additional compensation therefor. The Bank has provided the Company with a list of its current fee schedule. The Bank is hereby authorized to pay and reimburse itself from the income or principal of the Company Deposits, or from any other account of the Company at the Bank.
5. Indemnification. The Company hereby indemnifies and holds harmless the Bank and the Bank’s officers and employees, agents, and independent contractors from and against all claims, losses, liabilities, and expenses including, without limitation, legal fees and expenses, including any legal fees in any appeal or bankruptcy proceeding, arising or resulting from their acts or omissions relating to the Account, the Company Deposits, or performance of this Agreement, except for acts or omissions of the Bank that constitute negligence or misconduct.
6. Termination. This Agreement may be terminated by the Bank upon 30 days’ prior written notice to the other parties. This Agreement may be terminated by the Company if jointly agreed to in writing by the Company and OHA. The party giving notice of its intent to terminate this Agreement shall also concurrently notify OHA in writing. No termination of the Agreement shall relieve a party of its obligations arising, or with respect to matters that occurred, prior to such termination.
7. Attorney Fees. In the event that any action is brought in connection with this Agreement, the prevailing party shall be entitled to recover from the other party court costs and reasonable attorney fees incurred by the prevailing party in such litigation, including at any trial, appeal, or bankruptcy proceeding and for services incurred in obtaining execution on judgment.
8. Notices. Written Instructions and other notices (together, “Notices”) permitted or required to be given hereunder, shall be deemed sufficient if sent by: (a) United States mail, postage prepaid, (b) overnight delivery service, or (c) facsimile with hard copy sent by United States mail, postage prepaid, not later than the next business day after such facsimile is sent. Notices so given shall be effective on the earlier of (i) actual receipt by the party to which such Notice is given, (ii) the third business day following the date such Notice was posted in United States mail, (iii) the next business day following the date of delivery to a service for overnight delivery, or (iv) the date of transmission by facsimile, if followed by mailing of hard copy as provided above. Notices shall be sent to the following respective addresses and facsimile numbers of the parties, or such other addresses of facsimile numbers as a party may designate by like written Notice to the other party from time to time:

Notices to the Company:

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Facsimile: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Notices to the Bank:

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Notices to OHA:

 OHA

 Health Systems Division

 Attn: Actuarial Services Unit

 500 Summer St. NE E-35

 Salem, OR 97301-1077

1. Entire Agreement/Amendments. This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all other communications, proposals, and agreements, whether written or oral, with respect to such subject matter. This Agreement may be amended or modified only in writing signed by both parties with the written consent of OHA.
2. Conflicting Claims. If at any time any uncertainty or dispute exists involving the Company and OHA with respect to the Company Deposits or the Account, the Bank may, at its option, rely on advice of counsel and/or interplead the parties or bring any other appropriate action in any state court of competent jurisdiction in Marion County or federal court of competent jurisdiction located in Portland, Oregon, to resolve such uncertainty or dispute. The Bank shall have no liability if it acts in accordance with the written advice of counsel or a court order in connection with such uncertainty or dispute. In such event, the Company shall reimburse the Bank’s attorney fees and other costs and expenses in connection with such legal advice or court action.
3. Waiver. No failure by either party to take any action or assert any right hereunder shall be deemed to be a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such a right.
4. Governing Law; Venue. This Agreement shall be construed and governed in accordance with the laws of the State of Oregon without reference to principles of conflict of laws of such state. The parties agree to venue in any state court of competent jurisdiction in Marion County or federal court located in Portland, Oregon as to any dispute arising from or relating to this Agreement.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Name of Company)

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

 Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 The Bank: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

 Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Schedule A

# Initial Company Deposits

 Schedule B

# Authorized Signers of Written Instructions\*

\* If more than one signer is required, the number of required signers must be specified.

 Schedule C

# Other Eligible Assets