

**Deposit Account
Instructions and Service
Agreement (DAISA)
Section 232**

**U.S. Department of Housing
and Urban Development**
Office of Healthcare Programs

OMB Approval No. 9999-9999
(exp. mm/dd/yyyy)

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DEPOSIT ACCOUNT INSTRUCTIONS AND SERVICE AGREEMENT

(GOVERNMENT HEALTHCARE RECEIVABLES)

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This Agreement is entered into as of _____, 20____, among _____ ("Company"), _____ ("Lender") and Bank of _____, N.A. ("Bank") with respect to the following:

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A. Bank has agreed to establish and maintain for Company deposit account number _____ (the "Account"). Under this Agreement, the Company will deposit into the Account payments received from government health insurance programs only; no other funds from any other source will be deposited in the Account, however, Bank shall have no obligation to monitor Company's compliance with any such agreement.

B. The Company hereby informs the Bank that the Company has granted to the Lender, as Secured Party, to the extent provided in its loan documents, a security interest in the following (collectively, the "Account Collateral"): (a) the Account(s), and (b) the Items Collateral. The term "Items Collateral" means, collectively, all checks, drafts, instruments, cash and other items at any time received for deposit in the Account, and any and all automated clearing house ("ACH") entries, and other electronic funds transfers, cash or other funds deposited in, credited to, or held for deposit in or credit to, the Account.

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Deleted: payment instructions ("Checks") deposited in the Account.¶
C. Company, Lender and Bank are entering into this Agreement to evidence Lender's security interest

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C. By this Agreement, the parties intend, notwithstanding anything to the contrary in any other document executed by Bank and Company in connection with the Account,

Deleted: provide for the disposition of net proceeds of Checks deposited

Deleted: Accordingly, Company, Lender and Bank agree as follows:¶

that the Account shall be subject only to the control and instructions of the Company as the provider under the Medicare and Medicaid programs.

The parties desire to enter into this Agreement in order to set forth their relative rights and duties with respect to the Account Collateral. In consideration of the mutual covenants herein as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company, Lender and Bank agree as follows:

1. (a) Company hereby instructs Bank, commencing in a reasonable period of time, not to exceed two Business Days (defined below), following the date of this Agreement, and notwithstanding anything to the contrary in the agreement between Bank and Company governing the Account (the "Deposit Agreement"), to comply with the instructions set forth in Section 2 hereof directing the disposition of funds in the Account, even if such instructions result in Bank dishonoring items which might be presented for payment.

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- Deleted: Bank shall prevent Company from making any withdrawals from the Account except as set forth in Section 2 hereof,
- Deleted: Bank will
- Deleted: without further consent of the Company
- Deleted: are contrary to any of Company's instructions or demands or
- Deleted: Check

(b) Company represents and warrants to Lender and Bank that it has not assigned or granted a security interest in the Account or any Items Collateral deposited in the Account, except to Lender to the extent set forth in its loan documents.

(c) Bank confirms that, as of the date of this Agreement, Bank has not entered into any agreement (other than the Deposit Agreement) with any person pursuant to which Bank is obligated to comply with instructions from such person as to the disposition of funds in the Account. During the term of this Agreement, Bank will not enter into any agreement with any person pursuant to which Bank will be obligated to comply with instructions from such person as to the disposition of funds in the Account.

Deleted: (c) Company will not permit the Account to become subject to any other pledge, assignment, lien, charge or encumbrance of any kind, other than Lender's security interest referred to herein.¶
(d)

2. A reasonable period of time following the date of this Agreement, not to exceed two Business Days, and continuing on each Business Day thereafter, Bank shall transfer all available balances in the Account to Company at its account specified below.

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Bank Name:
Bank Address:
ABA No.:
Account Name: _____
Account No.: _____
Beneficiary's Name: _____

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A "Business Day" is each day except Saturdays, Sundays and Bank holidays. Funds are not available if, in the reasonable determination of Bank, they are subject to a hold, dispute or legal process preventing their withdrawal. Company may revoke these instructions, upon 20 Business Days prior notice to Bank and Secured Party.

3. Bank agrees it shall not offset, charge, deduct or otherwise withdraw funds from the Account, except as permitted by Section 4, until it has been advised in writing by Lender that all of Company's obligations to Lender are paid in full. Lender shall notify Bank promptly in writing upon payment in full of Company's obligations by means of a letter substantially in the form of the Termination Notice (defined below).

4. Bank is permitted to charge the Account:

(a) for its fees and charges relating to the Account or associated with this Agreement; and

(b) in the event any Items Collateral deposited into the Account are returned unpaid for any reason or for any breach of warranty claim; and

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(c) for any ACH credit entries that may have been originated by Company but that have not settled on the date of this Agreement or for any entries, whether credit or debit, that are subsequently returned thereafter.

5. (a) If the balances in the Account are not sufficient to compensate Bank for any fees or charges due Bank in connection with the Account or this Agreement, Company agrees to pay Bank on demand the amount due Bank. Company will have breached this Agreement if it has not paid Bank, within five days after such demand, the amount due Bank.

(b) Company hereby authorizes Bank, without prior notice, from time to time to debit any other account Company may have with Bank for the amount or amounts due Bank under subsection 5(a).

Deleted: (b) If the balances in the Account are not sufficient to compensate Bank for any returned Check, Company agrees to pay Bank on demand the amount due Bank. If Company fails to so pay Bank immediately upon demand, Lender agrees to pay Bank within five days after Bank's demand to Lender to pay any amount received by Lender with respect to such returned Check. The failure to so pay Bank shall constitute a breach of this Agreement. ¶
(c)

Deleted:) or 5(b)

Deleted: or consent

6. In addition to the original Bank statement provided to Company, upon Lender's request (which need be made only once and not on a recurring basis), Bank will provide to Lender a copy of each periodic account statement relating to the Account ordinarily furnished by Bank to Company. Company hereby agrees to the foregoing without any further notice.

7. (a) Bank will not be liable to Company or Lender for any expense, claim, loss, damage or cost ("Damages") arising out of or relating to its performance under this Agreement other than those Damages which result directly from its acts or omissions constituting negligence or intentional misconduct.

(b) In no event will Bank be liable for any special, indirect, exemplary or consequential damages, including but not limited to lost profits.

(c) Bank will be excused from failing to act or delay in acting, and no such failure or delay shall constitute a breach of this Agreement or otherwise give rise to any liability of Bank, if (i) such failure or delay is caused by circumstances beyond Bank's reasonable control, including but not limited to legal constraint, emergency conditions, action or inaction of governmental, civil or military authority, fire, strike, lockout or other labor dispute, war, riot, theft, flood, earthquake or other natural disaster, breakdown of public or private or common carrier communications or transmission facilities, equipment failure, or negligence or default of Company or Lender or (ii) such failure or delay resulted from Bank's reasonable belief that the action would have violated any guideline, rule or regulation of any governmental authority.

(d) Bank may rely on notices and communications it believes in good faith to be genuine and given by the appropriate party.

Deleted: (d) Bank shall have no duty to inquire or determine whether Company's obligations to Lender are in default.

(e) Notwithstanding any of the other provisions in this Agreement, in the event of the commencement of a case pursuant to Title 11, United States Code, filed by or against Company, or in the event of the commencement of any similar case under then applicable federal or state law providing for the relief of debtors or the protection of creditors by or against Company, Bank may act as Bank deems necessary to comply with all applicable provisions of governing statutes and shall not be in violation of this Agreement as a result.

(f) Bank shall be permitted to comply with any writ, levy order or other similar judicial or regulatory order or process concerning the Account or any Items Collateral and shall not be in violation of this Agreement for so doing. Bank agrees to notify Lender of any such order or process within 10 days of receipt thereof.

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8. (a) Company shall indemnify Bank against, and hold it harmless from, any and all liabilities, claims, costs, expenses and damages of any nature (including but not limited to allocated costs of staff counsel, other reasonable attorney's fees and any fees and expenses) in any way arising out of or relating to disputes or legal actions concerning Bank's provision of the services described in this Agreement. This section and Section 9 do not apply to any cost, expense or damage attributable to the gross negligence or intentional misconduct of Bank. Company's obligations under this section shall survive termination of this Agreement.

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(b) In the event of an assignment of Lender's rights under this Agreement to the Secretary of Housing and Urban Development ("HUD") or the Federal Housing Commissioner ("FHA"), neither HUD nor FHA shall have any indemnification obligations under this Agreement.

Deleted: Lender hereby agrees to indemnify, defend and hold harmless Bank against any loss, liability or expense (including but not limited to allocated costs of staff counsel, other reasonable attorney's fees and any fees and expenses) arising from Bank complying with any written instructions of Lender pursuant to this Agreement other than if related to Bank's gross negligence, bad faith, or willful misconduct. Lender's obligations under this section shall survive termination of this Agreement.

9. Company shall pay to Bank, upon receipt of Bank's invoice, all costs, expenses and attorneys' fees (including allocated costs for in-house legal services) incurred by Bank in connection with the enforcement of this Agreement and any instrument or agreement required hereunder, including but not limited to any such costs, expenses and fees arising out of the resolution of any conflict, dispute, motion regarding entitlement to rights or rights of action, or other action to enforce Bank's rights in a case arising under Title 11, United States Code. Company agrees to pay Bank, upon receipt of Bank's invoice, all costs, expenses and attorneys' fees (including allocated costs for in-house legal services) incurred by Bank in the preparation and administration of this Agreement (including any amendments hereto or instruments or agreements required hereunder).

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10. Termination and Assignment of this Agreement shall be as follows:

(a) Lender may terminate this Agreement by providing notice substantially in the form of Attachment I ("Termination Notice") to Company and Bank that all of Company's obligations to Lender are paid in full. Lender may assign this Agreement. Bank may terminate this Agreement upon 60 days prior written notice to Company and Lender. Company may terminate this Agreement upon not less than 15 days prior written notice to Lender and Bank.

Deleted: (b) Lender shall pay to Bank, upon receipt of Bank's invoice, all costs, expenses and attorneys' fees (including allocated costs for in-house legal services) incurred by Bank in connection with the enforcement against Lender of this Agreement and any instrument or agreement required hereunder to the extent that Bank is the prevailing party in such enforcement action.¶

(b) Notwithstanding subsection 10(a), Bank may terminate this Agreement at any time upon five (5) days' written notice to Company and Lender if either Company or Lender breaches any of the terms of this Agreement.

(c) Bank shall pay to Lender, upon receipt of Lender's invoice, all costs, expenses and attorneys' fees (including allocated costs for in-house legal services) incurred by Lender in connection with the enforcement against Bank of this Agreement and any instrument or agreement required hereunder to the extent that Lender is the prevailing party in such enforcement action.¶

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11. (a) Bank and Company represents and warrants that (i) this Agreement constitutes its duly authorized, legal, valid, binding and enforceable obligation; (ii) the performance of its obligations under this Agreement and the consummation of the transactions contemplated hereunder will not (A) constitute or result in a breach of its certificate or articles of incorporation, by-laws or partnership agreement, as applicable, or the provisions of any material contract to which it is a party or by which it is bound or (B) result in the violation of any law, regulation, judgment, decree or governmental order applicable to it; and (iii) all approvals and authorizations required to permit the execution, delivery, performance and consummation of this Agreement and the transactions contemplated hereunder have been obtained.

Deleted: Each party

Deleted: to the other parties

(b) Bank and Company each agree that it shall be deemed to make and renew each representation and warranty in subsection 11(a) on and as of each day on which Company uses the services set forth in this Agreement.

Deleted: The parties

12. (a) This Agreement may be amended only by a writing signed by Company, Lender and Bank; except that Bank's charges are subject to change by Bank upon 30 days' prior written notice to Company.

(b) This Agreement may be executed in counterparts; all such counterparts shall constitute but one and the same agreement.

(c) This Agreement controls in the event of any conflict between this Agreement and any other document or written or oral statement. This Agreement supersedes all prior understandings, writings, proposals, representations and communications, oral or written, of any party relating to the subject matter hereof.

(d) This Agreement shall be interpreted in accordance with _____ law without reference to that state's principles of conflicts of law.

13. Any written notice or other written communication to be given under this Agreement shall be addressed to each party at its address set forth on the signature page of this Agreement or to such other address as a party may specify in writing. Except as otherwise expressly provided herein, any such notice shall be effective upon receipt.

14. Nothing contained in the Agreement shall create any agency, fiduciary, joint venture or partnership relationship between Bank and Company or Lender. Company and Lender agree that nothing contained in this Agreement, nor any course of dealing among the parties to this Agreement, shall constitute a commitment or other obligation on the part of Bank to extend credit to Company or Lender.

The remainder of this page is intentionally left blank.

In Witness Whereof, the parties hereto have executed this Agreement by their duly authorized officers as of the day and year first above written.

("Company")

By: _____
Name: _____
Title: _____

Address for notices:

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("Lender")

By: _____
Name: _____
Title: _____

Address for notices:

Deleted: _____ ¶

("Bank")

By: _____
Name: _____
Title: _____

Address for notices:

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Facsimile: ¶

ATTACHMENT I

**GOVERNMENT HEALTHCARE RECEIVABLES DEPOSIT
ACCOUNT INSTRUCTIONS AND SERVICE AGREEMENT**

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Letterhead of Secured Party

_____, 200_

Bank of _____, N.A.

Attn: _____

Re: **Termination of Government Healthcare Receivables Deposit Account
Instructions and Service Agreement**

Account: _____

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Ladies and Gentlemen:

Reference is made to that certain Government Healthcare Receivables Deposit Account Instructions and Service Agreement dated as of _____, 20__ (as amended, supplemented, amended and restated, or otherwise modified from time to time, the "Agreement") among you, _____ (the "Company"), and us as ("Lender"). You are hereby notified that the Agreement is terminated with respect to the undersigned. This notice terminates any obligations you may have to the undersigned with respect to the Account.

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Very truly yours,

as Lender

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By: _____

By: _____
Name: _____
Title: _____

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ACKNOWLEDGED AND AGREED:

BANK OF _____, as Bank

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By: _____
Name: _____
Title: _____

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By: _____

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