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# Health Savings Account

## Custodial Account Agreement and Disclosure Statement

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# Health Savings Account Custodial Account Agreement

Form 5305-C under Section 223(a) of the Internal Revenue Code  
IRS FORM (REV. October 2016)



The Account Owner named on the application is establishing this health savings account (HSA) exclusively for the purpose of paying or reimbursing qualified medical expenses of the Account Owner, his or her spouse, and dependents. The Account Owner represents that, unless this account is used solely to make rollover contributions, he or she is eligible to contribute to this HSA; specifically, that he or she: (1) is covered under a high deductible health plan (HDHP); (2) is not also covered by any other health plan that is not an HDHP (with certain exceptions for plans providing preventive care and limited types of permitted insurance and permitted coverage); (3) is not enrolled in Medicare; and (4) cannot be claimed as a dependent on another person's tax return.

The Account Owner has assigned the custodial account the sum indicated on the Application.

The Account Owner and the Custodian make the following agreement:

## ARTICLE I

- 1.1 The Custodian will accept additional cash contributions for the tax year made by the Account Owner or on behalf of the Account Owner (by an employer, family member, or any other person). No contributions will be accepted by the Custodian for any Account Owner that exceeds the maximum amount for family coverage plus the catch-up contribution.
- 1.2 Contributions for any tax year may be made at any time before the deadline for filing the Account Owner's federal income tax return for that year (without extensions).
- 1.3 Rollover contributions from an HSA or an Archer Medical Savings Account (Archer MSA) (unless prohibited under this agreement) need not be in cash and are not subject to the maximum annual contribution limit set forth in Article II.
- 1.4 Qualified HSA distributions from a health flexible spending arrangement or health reimbursement arrangement must be completed in a trustee-to-trustee transfer and are not subject to the maximum annual contribution limit set forth in Article II.
- 1.5 Qualified HSA funding distributions from an individual retirement account must be completed in a trustee-to-trustee transfer and are subject to the maximum annual contribution limit set forth in Article II.

## ARTICLE II

- 2.1 For calendar year 2020, the maximum annual contribution limit for an Account Owner with single coverage was \$3,550. This amount increased to \$3,600 for 2021. For calendar year 2020, the maximum annual contribution limit for an Account Owner with family coverage was \$7,100. This amount increased to \$7,200 for 2021. The above limits may increase in future years to reflect a cost-of-living adjustment, if any.
- 2.2 Contributions to Archer MSAs or other HSAs count toward the maximum annual contribution limit to this HSA.
- 2.3 If you are age 55 or older and not enrolled in Medicare, you may make an additional contribution to your HSA. The maximum additional contribution to your HSA is \$1,000 per year.
- 2.4 Contributions in excess of the maximum annual contribution limit are subject to an excise tax. However, the catch-up contributions are not subject to an excise tax.

## ARTICLE III

It is the responsibility of the Account Owner to determine whether

contributions to this HSA have exceeded the maximum annual contribution limit described in Article II. If contributions to this HSA exceed the maximum annual contribution limit, the Account Owner shall notify the Custodian that there exist excess contributions to the HSA. It is the responsibility of the Account Owner to request the withdrawal of the excess contribution and any net income attributable to such excess contribution.

## ARTICLE IV

The Account Owner's interest in the balance in this custodial account is nonforfeitable.

## ARTICLE V

- 5.1 No part of the custodial funds in this account may be invested in life insurance contracts or in collectibles as defined in section 408(m).
- 5.2 The assets of this account may not be commingled with other property except in a common trust fund or common investment fund.
- 5.3 Neither the Account Owner nor the Custodian will engage in any prohibited transaction with respect to this account (such as borrowing or pledging the account or engaging in any other prohibited transaction as defined in section 4975).

## ARTICLE VI

- 6.1 Distributions of funds from this HSA may be made upon the direction of the Account Owner.
- 6.2 Distributions from this HSA that are used exclusively to pay or reimburse qualified medical expenses of the Account Owner, his or her spouse, or dependents are tax-free. However, distributions that are not used for qualified medical expenses are included in the Account Owner's gross income and are subject to an additional 20 percent tax on that amount. The additional 20 percent tax does not apply if the distribution is made after the Account Owner's death, disability, or reaching age 65.
- 6.3 The Custodian is not required to determine whether the distribution is for the payment or reimbursement of qualified medical expenses. Only the Account Owner is responsible for substantiating that the distribution is for qualified medical expenses and must maintain records sufficient to show, if required, that the distribution is tax-free.

## ARTICLE VII

If the Account Owner dies before the entire interest in the account is

distributed, the entire account will be disposed of as follows:

- 7.1 If the beneficiary is the Account Owner's spouse, the HSA will become the spouse's HSA as of the date of death.
- 7.2 If the beneficiary is not the Account Owner's spouse, the HSA will cease to be an HSA as of the date of death. If the beneficiary is the Account Owner's estate, the fair market value of the account as of the date of death is taxable on the Account Owner's final return. For other beneficiaries, the fair market value of the account is taxable to that person in the tax year that includes such date.

#### ARTICLE VIII

- 8.1 The Account Owner agrees to provide the Custodian with information necessary for the Custodian to prepare any report or return required by the IRS.
- 8.2 The Custodian agrees to prepare and submit any report or return as prescribed by the IRS.

#### ARTICLE IX

Notwithstanding any other article that may be added or incorporated in this agreement, the provisions of Articles I through VIII and this sentence are controlling. Any additional article in this agreement that is inconsistent with Section 223(a) or IRS published guidance will be void.

#### ARTICLE X

This agreement will be amended from time to time to comply with the provisions of the Code or IRS published guidance. Other amendments may be made with the consent of the persons whose signatures appear on the application.

#### ARTICLE XI – DEFINITIONS

The below words and phrases, when used in this Health Savings Custodial Account Agreement (the "Agreement"), shall have the following meaning:

- 11.1 "You" and "Your" means the Depositor and the Account Owner.
- 11.2 "We", "Us" and "Our" mean the Custodian.
- 11.3 "Code" means the Internal Revenue Code.
- 11.4 "Regulations" means the Treasury Regulations.
- 11.5 "Custodial Account", "Account", "Health Savings Account", or "HSA" means the Account you set up with us under this Agreement.

#### ARTICLE XII – CUSTODIAN RIGHTS AND DUTIES

##### 12.1 Custodian's Limited Duties

- (a) Our duties as custodian of your HSA Account are limited to those set forth in this Agreement. Our duties are limited to (i) receiving funds or investments from you or your designated/appointed representative, (ii) following your directions concerning your HSA, and (iii) carrying out our ministerial duties as custodian as set forth in this Agreement below.
- (b) It shall be our duty to maintain an account in your name and to effect administrative tasks at your direction. Such tasks include the following:
  - (i) holding and/or investing/re-investing any part of your HSA at your direction;
  - (ii) selling, conveying, transferring and otherwise following your directives concerning property held in your HSA;
  - (iii) borrowing and lending money and extending mortgages at your direction;
  - (iv) retaining cash and assets in your HSA Account, which HSA Account shall reflect the amounts contributed by you

- from rollover, transfers, investments and distributions, disbursements and all other transactions directed by you;
- (v) holding any securities or other property which has been properly registered to your HSA Account;
- (vi) filing certain tax forms such as 5498s and 1099s required of us as Custodian;
- (vii) unless otherwise directed by you, depositing all undirected and uninvested cash from any source into the Program as set forth and defined in Article XV, Section 15.1(b) of this Agreement, and then to place such deposited cash into one or more financial institutions as described in those sections;
- (viii) making payments, disbursements or distributions from your HSA at your instruction;
- (ix) furnishing to you, on at least an annual basis, a statement of your assets and transactions in your HSA; and
- (x) making, executing and delivering any and all contracts, waivers, releases and any other document necessary for effecting a transaction directed by you.

##### 12.2 Custodian's Rights

- (a) We have the right to not process or accept a transaction or investments. For example, if we determine that an investment, or transaction poses risk to us is no longer administratively feasible, is inconsistent with internal practices and standards, or is beyond the scope of our administrative responsibilities, capabilities or expertise, we have the right to not process the transaction or investment and we have the right to resign from our role as Custodian of the particular asset and/or HSA. If we choose to resign, we may distribute this asset or the assets in your HSA Account to you at its last known value, which could subject you to fees for us having to re-register the asset and process the transaction. We shall have no liability for any tax, financial, or other consequences related to such distribution.
- (b) The decision to not process or accept an investment should not be interpreted as us endorsing or conducting due diligence on an investment, investment company or investment strategy. Further, the decision to review any documents related to your investment or whether to accept or not accept an investment does not impose any fiduciary duties on us and should not be construed as us making a determination concerning the suitability or legality of the investment. Rather, any review performed by us with respect to an investment shall be solely for our own purposes of determining whether such investment poses administrative burdens on us or whether accepting such investment complies with our internal policies, practices and standards.
- (c) We shall use reasonable efforts to acquire or sell investments in accordance with your directions within a reasonable period of time after we have received an investment direction and we shall make reasonable efforts to notify you if we are unable or unwilling to comply with an investment direction. Subject to the foregoing, we shall remit funds as directed, but have no responsibility to verify or assure that such funds have been invested to purchase or acquire the asset selected by you.
- (d) If we (1) fail to receive directions from you regarding any transaction; (2) receive ambiguous directions regarding any transaction; or (3) believe that any transaction requested is in dispute or is being challenged by a third party, we have the right to take no action and/or freeze your HSA until further clarification acceptable to us is received from you or the appropriate government or judicial authority.
- (e) We have the right to close your HSA if the Account drops

below the minimum balance we establish and/or if your HSA remains inactive with no assets or new investments for a period of time designated under our internal policies.

- (f) We may require that your HSA maintain a minimum balance of cash and assets, and we have the right to distribute the entire balance of your HSA to you or assess a fee if the balance of your HSA drops below a minimum balance we establish.
- (g) We have the right to liquidate assets held in your HSA Account and choose which assets to liquidate in order to pay for overdue fees owed to us or as required in order to comply with state escheatment laws. We also have the right to liquidate assets held in your HSA account and credit your HSA Account for the market value of such assets if we determine that it is administratively burdensome or not feasible to custody such assets or if there are regulatory or legal risks, as determined by us, associated with the custody or investment of such assets.

## ARTICLE XIII – RESPONSIBILITIES OF THE HSA ACCOUNT OWNER

### 13.1 In General

- (a) You represent and warrant to us that any information you have given or will give us with respect to this Agreement, your HSA or the Application is complete, accurate and up to date. Further, you agree that any directions you give us, or action you take will be proper under this Agreement, and that we are entitled to rely and/or act upon any such information or direction upon receipt. We shall not be responsible for losses of any kind that may result from your direction to us or your action or failure to act, and you agree to reimburse and indemnify us for any loss we may incur as a result of such direction, action or failure to act.
- (b) We have the right to assume that any document you submit relative to your HSA is enforceable, authorized and approved by you. You acknowledge that it is your duty to ensure that any documents relating to any investment are signed, recorded, genuine, and legally enforceable to establish legal interest, including but not limited to, title or a security interest. You agree that we are not liable for any damages as a result of us accepting a document that we believe is authorized and approved by you.
- (c) The investment selected by you may lack liquidity, may be speculative and may involve a high degree of risk. You represent to us that any loss sustained in your HSA will not affect your retirement income standard, and if a mandatory distribution arises, you will have the ability through your HSA and/or other retirement accounts to meet any mandatory distribution requirements.
- (d) We are responsible for safekeeping only those documents which are delivered to us by you or your agent. If the original documents are to be held by your agent or another third party, you must ensure that the agent or third party agrees to safeguard the original documents and forward copies of the signed and recorded documents to us as evidence of ownership.

### 13.2 Investment Conforms to All Applicable Regulations and Securities Laws

- (a) You are responsible for ensuring that you are eligible to participate in this HSA and agree to be responsible for determining whether or not the health plan meets the IRS requirements of a High Deductible Health Plan. You are responsible for ensuring that all transactions connected with your HSA comply with the Code, Regulations, rulings and this Agreement. We have no duty to determine whether your contributions or distributions comply with the relevant laws.

- (b) You are responsible for ensuring that the assets within your HSA Account and all transactions connected with your HSA Account comply with South Dakota regulations, other applicable federal and state regulations, rulings and this Agreement. By signing the HSA application and receiving this Agreement, you acknowledge that none of the assets in your HSA violate any federal or state Regulation. We have no duty to determine whether your contributions or distributions comply with the relevant laws.
- (c) You acknowledge that the foregoing representation is being relied upon by us in accepting your investment directions and you agree to indemnify us with respect to all costs, expenses (including attorneys' fees), fines, penalties, liabilities, damages, actions, judgments and claims arising out of such investment and/or a breach of the foregoing representation, including, without limitation, claims asserted by you.

### 13.3 Investment of Accounts in Your HSA – Your Responsibility

- (a) **In General.** You have exclusive responsibility for and control over the investment of the assets of your HSA Account. All transactions shall be subject to any and all restrictions or limitations, direct or indirect, which are imposed by our charter, articles of incorporation, or bylaws; any and all applicable federal and state laws and regulations; the rules, regulations, customs and usages of any exchange, market or clearing house where the transaction is executed; our internal policies, standards and practices; and this Agreement.
- (b) **Selection of Investment and Investment Due Diligence.** You are responsible for conducting any and all due diligence related to your investment, and for the selection of the investment for your HSA assets. We will not select or recommend any investment, nor will we act as a broker dealer or advisor in completing any purchase or sale of an investment for you. However, your selection of investments shall be limited to those types of investments that we are authorized by our charter, articles of incorporation, or bylaws to custody and that comport with our internal policies, practices, and standards and that are deemed administratively feasible by us, as set forth in Article XII, Section 12.2. Cash balances in your HSA for which no investment instructions have been received shall be placed in a financial institution as set forth in Article XIII, Sections 13.3(f) and 13.3(g).
- (c) **Third-Party Due Diligence.** It is your responsibility to perform proper due diligence with regard to any such representative, investment advisor, broker or other third party. We will follow the directions of any such investment advisor, representative, broker or other party authorized by you in a manner acceptable to us, and we will be entitled to all the same protections and indemnities in our reliance upon and execution of the directives of such agent or other party as if such directives were given by you. We may permit you to appoint, through written notice acceptable to us, an authorized agent to act on your behalf with respect to this Agreement (e.g., attorney-in-fact, administrator, advisor or investment manager), however, we have no duty to determine the validity of such appointment or any instrument appointing such authorized agent.
- (d) **Interested Party/Designated Representative.** You may appoint an Interested Party or Designated Representative to your HSA Account in any form or manner that is acceptable to us. Those individuals will have abilities to view your HSA Account, access to your HSA Account information and/or perform the actions as set forth on your account application or other form where you appointed and designated the third party. You shall be responsible for investigating, selecting, instructing, and monitoring the Interested Party and/or Designated Representative and to perform whatever due diligence as may be appropriate before selecting or retaining

that individual. That Interested Party and/or Designated Representative shall be the authorized agent of you and shall not be treated as an affiliate, agent, or employee of the Custodian. The Custodian has no duty to supervise or monitor the Interested Party or Designated Representative. You may remove an Interested Party and/or Designated Representative from your account by providing written notice to us, on a form that is acceptable to us, but that removal shall not have the effect of canceling any notice or direction we received prior to us receiving the written notice of cancellation. You are solely responsible for removing the responsible party/ designated representative once you appoint that person by notifying us of such request to remove that third party through the process we require. We do have the right to remove an Interested Party and/or Designated Representative from your HSA Account at our discretion.

**(e) Custodian Acting in Directed Capacity Only – No Investment or Tax Advice**

- (i) We are acting solely as a directed custodian to hold HSA assets and we have no discretion to direct any investment in your HSA. Accordingly, we are not a fiduciary (as said term is defined in the Internal Revenue Code, ERISA, or any other applicable federal, state or local laws) with respect to your HSA.
- (ii) It is not our responsibility to review the prudence, merits, viability or suitability of any investment directed by you or your agent(s) or to determine whether the investment is suitable for you or acceptable under ERISA, the Internal Revenue Code or any other applicable law.
- (iii) We do not offer any investment advice, nor do we endorse any investment, investment product or investment strategy; and we do not endorse any investment advisor, representative, broker, or other party selected by you. We have no responsibility to question any investment directions given by you or by any representative/ agent appointed by you. By agreeing to custody an asset, such action does not constitute marketing or endorsing that asset by us. It also does not speak to the viability of that asset.
- (iv) We do not provide legal or tax advice with respect to the assets in your HSA Account.
- (v) We have no duty to inform you of any information on an asset held in your HSA which we may have learned in connection with another account or customer or from any source.
- (vi) By performing services under this Agreement, we are acting at your direction and on your behalf. We shall not be required to perform any additional services unless specifically agreed to under the terms and conditions of this Agreement, or as required under the Code and the Regulations promulgated thereunder with respect to HSAs.
- (vii) We shall be under no obligation or duty to investigate, analyze, monitor, verify title to, or otherwise evaluate any investment directed by you or your investment advisor, representative or agent; nor shall we be responsible to notify you or take any action should there be any default with regard to any investment.
- (viii) We are not responsible for communicating, forwarding or notifying you or any third party of any information which we receive pertaining to your investments, HSA or relationships. For example, we have no duty or obligation to notify you with respect to any information, knowledge, irregularities or our concerns relating to your investment or your investment advisor, broker, agent, promoter, or

representative. Any failure of us to communicate such information to you does not result in any liability on us as custodian.

- (ix) We may receive documentation from investment providers or asset holders regarding assets in your IRA. We may, but are not obligated to, forward this information to you. It will remain your sole responsibility to request and ensure that you receive all applicable documentation regarding your investments.

- (f) **Deposit Investments.** The deposit investments available through us may include savings, and/or money market accounts, and certificates of deposit (CDs). Any cash in your HSA shall be invested in accordance with the instructions of the Depositor, or those of its designated representative, subject to the other terms of this Agreement. If you do not instruct us with regard to any uninvested cash, such cash will be deposited into the Program, as defined in Article XV, Section 15.1(b). You may direct us to transfer any uninvested funds to an institution of your choice at any time.

**(g) Uninvested Cash Fund**

- (i) You hereby direct the Custodian, pending further investment instruction, to deposit all undirected and uninvested cash from any source, including, but not limited to contributions, transfers and income from assets held in the HSA, into the Program, as defined in Article XV, Section 15.1(b) of this Agreement, and then place such deposited cash into one or more financial institutions which qualify as well-capitalized under federal bank regulatory agency definitions. The bank accounts in the Program include checking, savings, money market and/or CD accounts. Interest earned on such cash balances net of the Program fee shall be credited to your HSA as of the end of each month, provided your HSA is open on the last business day of the month.
- (ii) You direct us to sweep available free credit balances automatically into the Program utilizing such well-capitalized financial institutions until such time as further direction is received from you or your designated representative(s).
- (iii) You also authorize us to transfer any such funds to a different well-capitalized financial institution without any further approval from you. Information on interest earned net of the Program fee is available online at [www.trustetc.com/interest](http://www.trustetc.com/interest) and reported on your quarterly statement as appropriate, or can be obtained by contacting a Client Service Representative.

**13.4 Investment Documentation**

- (a) In directing us with respect to any investment, you must utilize our Direction of Investment form suitable to such investment or such other form acceptable to us. We may remit funding for your investment upon receipt of such Direction of Investment or other form acceptable to us, without regard to any supporting documentation.
- (b) We shall be fully protected in acting upon any instrument, certificate, paper or transmission believed to be genuine and to be signed or presented by the proper person or persons whether or not by facsimile, email or other form acceptable to the custodian, and the custodian shall be under no duty to make any investigation or inquiry as to any statement contained in any such communication, but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained.
- (c) You authorize and direct us to execute and deliver, on behalf of your HSA Account, any and all documents delivered to us in



connection with your assets in your HSA Account; although we have no duty to deliver such documents and we shall have no responsibility to verify or determine that any such documents are complete, accurate or constitute the documents necessary to comply with your investment direction. You authorize and direct us to correct errors in investment titling without notice to you and to correct other minor clerical errors with telephone or email consent from you upon verification of your identity.

### 13.5 Statement Review

You have sixty (60) days after either: (1) the date of mailing of a paper statement; or (2) the posting of our statement online, if you receive electronic statements, to give us notice of any errors or inaccuracies reflected on the statements. You acknowledge that if you fail to give us notice of any discrepancies on your statements within that time period we have the right to assume that you approve of the statement and you are, therefore, precluded from making future objections to the statement. You agree that if your statement overstates an asset's value or inaccurately includes an asset you will notify us within that sixty (60) day period. We have no obligation to you based on the overvaluation or inaccurate inclusion of an asset in your statement. We shall have no liability for the content reported or not reported on any statement unless you give us notice within that sixty (60) day period.

### 13.6 Prohibited Transactions

- (a) You understand that certain transactions are prohibited in HSAs and qualified retirement plans under Section 4975 of the Internal Revenue Code (a "prohibited transaction"). You further understand that the determination of a prohibited transaction depends on the facts and circumstances that surround the particular transaction. A prohibited transaction can occur with an improper use of the HSA such as a transaction involving a "disqualified person", which is defined in the Code. If your HSA contains a prohibited transaction, the HSA typically loses its non-taxable status and a taxable distribution and penalty may result. We have no responsibility to make a determination as to whether any investment or transaction is a prohibited transaction. Rather, you are responsible for consulting with your own tax or legal professional to ensure that none of your HSA investments constitute a prohibited transaction. We have no duty to inform you that your transaction is or could lead to a prohibited transaction.
- (b) By submitting an investment for processing, you affirm that the investment does not constitute a prohibited transaction and it complies with all applicable federal and state laws, regulations and requirements. We reserve the right, however, to not process a transaction, resign from the Account or issue a distribution if we have a good faith belief that a transaction in your HSA constitutes a prohibited transaction.

### 13.7 Duty to Indemnify

- (a) You agree to release, indemnify, hold harmless and defend us from any and all claims, damages, liability, actions, loss, costs and expenses (including, without limitation, attorneys' fees) resulting to the HSA, against you, any beneficiary or incurred by or asserted against us, in connection with or by reason of any sale or investment made or other action taken (or omitted to be taken) at you or your agent's direction resulting from us serving as the custodian hereunder. This includes claims, damages, liability, actions and losses asserted by you.
- (b) You agree to reimburse or advance to us, on demand, all legal fees, expenses, costs, fines, penalties and obligations incurred or to be incurred in connection with the defense, contest, prosecution or satisfaction of any claims made, threatened or asserted pertaining to any investment or action you or your agent directed through the custodian, including, without limitation, claims asserted by you, any state or federal

regulatory authority or self-regulatory organization.

- (c) You release and indemnify and agree to hold harmless and defend us in the event that any investment or sale of your HSA assets violates any federal or state law or regulation or otherwise results in a loss of tax-exempt status, penalty, fine or tax imposed upon you, your HSA, or us.
- (d) We shall not be responsible for any investment losses or diminution of the HSA assets resulting from the changes in the market value of an asset; or resulting from reliance or action taken in reliance upon notice, instruction, direction or approval received from you or your authorized agent.
- (e) You agree to reimburse and indemnify us for any loss we may incur as a result of such direction, action or failure to act by you or your authorized agent. You release us from liability for any price fluctuations of the asset during the processing of a transaction directed by you. The indemnification provisions will survive the expiration of this Agreement.

### 13.8 Legal Proceedings

- (a) You agree that you are solely responsible for the prosecution or defense, including the retention of legal counsel, of all legal actions ("Legal Proceedings") involving your HSA, which arise or become necessary for the protection of the investments in your HSA, including any actions where we are named as a defendant in any Legal Proceedings, which includes state, federal and local court or arbitration, as a result of the assets in your HSA being the subject of the litigation, you agree to retain legal counsel to represent us, in our custodial capacity, or however named in the Legal Proceedings. If you initiate Legal Proceedings against a third party regarding the assets in your HSA, and your HSA is the plaintiff, you agree to initiate suit by titling the plaintiff as "Equity Trust Company, Custodian FBO (Your Name) HSA." You agree to provide us with copies of all pleadings, motions, discovery, orders and final resolution documents upon request. You also agree that any such legal action will be carried out in a manner that does not cause Custodian to incur any costs or legal exposure.
- (b) As you are the owner of the HSA held with us, you understand that we will not initiate Legal Proceedings on behalf of you or your HSA and will not participate in such Legal Proceedings without direction from you. You understand that you have sole authority to direct and make all decisions related to the Legal Proceedings and you shall defend, indemnify and hold us, our officers, directors and employees harmless from any loss, legal expense and liability that arise out of such Legal Proceedings, including our legal costs, if we deem separate counsel is necessary. Should we incur costs or expenses associated with such Legal Proceedings, we have the right to charge you separately for any fees or expenses, or we may deduct the amount of the fees or expenses from the assets held in your HSA.

### 13.9 Insurance

- (a) It is your duty, as the HSA account owner, to secure or maintain fire, casualty, liability or other insurance coverage on any personal or real property held by your HSA or which serves as collateral under any mortgage or other security instrument held by your HSA with respect to any promissory note or other evidence of indebtedness. It is incumbent upon you to arrange for such insurance as you determine necessary or appropriate to protect your HSA assets and to direct us in writing as to the payment of any premiums therefor. Furthermore, it is your responsibility to determine that payment has been made upon your written request by verifying same with your HSA statements.

- (b) You, as the HSA account owner, are responsible for notification or payments of any insurance premiums, real estate taxes, utilities, or other charges (including penalties) with respect to any investment held in your HSA, unless you specifically direct us to pay the same in writing and sufficient funds are available to pay the same from your HSA. Furthermore, it is your responsibility to determine that payment has been made from your HSA. You must utilize an appropriate payment directive form available from us within a sufficient period of time for such direction to be accomplished in accordance with our normal business practices (without regard to whether we have undertaken efforts to comply with such directive).

#### 13.10 Account Security

- (a) You will be required to establish confidential account security credentials, such as a user name, password, and/or PIN code, to access and conduct transactions in your HSA. It is your duty, as the HSA account owner, to select strong account security credentials that, at a minimum, comply with our security credential requirements, and keep the credentials you select private and inaccessible to unauthorized users. You must select account security credentials that are unique to your HSA, meaning you have not used and will not use the same or similar credentials for other online accounts. We recommend that you also routinely change your account security credentials.
- (b) You are responsible for any access to or transactions conducted in your HSA with your account security credentials, whether or not such access or transactions were authorized by you. You must notify us immediately if you believe any of your account security credentials have been lost, stolen or compromised or if you become aware of any unauthorized access to or activity in your HSA. We shall not be responsible for losses of any kind that may result from unauthorized access to or activity in your HSA using your account security credentials or your other personal information.

#### 13.11 Third Parties

- (a) We may delegate certain administrative, operational or other custodial related services with respect to your HSA Account for which we otherwise have responsibility under this Agreement to affiliated and un-affiliated third parties, including, but not limited to Equity Administrative Services, Inc and ETC Brokerage Services, LLC. The limitations on our duties for you under this Agreement or otherwise shall also apply with respect to each third party so employed or retained on our behalf.
- (b) We may, from time to time, establish independent contractor relationships with third parties whereby HSA Owners can have access to third parties for products and services that may be beneficial to the HSA Owner and whereby we receive a fee paid from the general assets of the third parties pursuant to a services agreement between us and the third party for offering their services. These third parties may be affiliates with whom we have common ownership. You should consult with your financial and legal advisors before purchasing any such product or service, and it is your responsibility to perform proper due diligence with regard to any product or service offered by any such third parties (including without limitations all potential legal and tax consequences), and we make no recommendations and provide no investment advice regarding any such product or services or of the needs of the HSA owner or your HSA Account. HSA Owners are in no way obligated to purchase products or services generally or to purchase products or services from any such third parties. No HSA Owner may rely on any statement made by us or any of our officers, directors, employees, or agents for any decisions regarding the purchase of any product or service from any

such third party.

- (c) We may receive fees from unrelated third parties as a result of an agreement for servicing your HSA Account. We also may, from time to time, offer noncustodial services, such as the right to use our licensed proprietary software and investment platforms to unrelated third parties for a fee (including, without limitation, a transaction-based fee) paid from the general assets of the third parties, to enable HSA Owners the ability to make investment purchases and sales through such platforms or use of these services.
- (d) We may pay unrelated third parties for marketing or other services they provide to us or in connection with the servicing of your HSA Account.

#### 13.12 Investment of the HSA & Financial Disclosure

- (a) We are acting solely as a directed Custodian to assets in your HSA Account and do not offer investment, tax, or legal advice, as that is solely your responsibility. As Custodian, we do not buy or sell investment products without your direction. As part of your self-directed HSA Account, you choose the investments that will fund your HSA Account. The investments available include a wide range of potential assets and you certify that the assets you invest in through your HSA Account are permissible investments under applicable laws. Even if permissible, we have the option to decline accepting an asset if it is not administratively feasible. Given the type of assets that you may invest in, it is impossible to accurately estimate the value of the HSA assets at any given future point in time. Therefore, no projection of the growth of your HSA Account can reasonably be shown, predicted, or guaranteed. Willingness to custody an asset in your HSA Account does not constitute a determination by us of the viability of the investment nor do we provide investment advice or recommend or evaluate the merits or suitability of any investment, for your benefit. Please contact your asset provider for information on how to calculate and allocate earnings on your investment. This method may vary depending on the provider and type of investment you have chosen. There are fees that we may charge in connection with the investments you selected for your HSA Account. Please consult the fee schedule for more information.

### ARTICLE XIV – OTHER TAX CONSIDERATIONS

#### 14.1 Unrelated Business Taxable Income (UBTI)

- (a) Since your HSA is a tax-exempt organization under federal tax law, if your HSA earns income from an investment which utilizes debt-financing or which is derived from a business regarded as not related to the exempt purpose of your HSA, that income is called unrelated business taxable income (“UBTI”) and may be subject to taxation if it is in excess of permitted deductions. We have no responsibility for determining whether an investment made in your HSA earned income that may be considered unrelated business taxable income which is subject to this federal income tax. Rather, it is your responsibility to file the required Form 990-T when such unrelated business taxable income is earned.
- (b) In the event that your HSA earns unrelated business taxable income in excess of the \$1,000 exclusion (as that amount may be adjusted under the Code) for any taxable year, you agree to prepare or have prepared the required Form 990-T tax return, an application for employer identification number (if not previously obtained), any other documents that may be required and to file these forms with the Internal Revenue Service and pay the applicable unrelated business income tax from your HSA. Additionally, if requested by us, you agree to: (i) send us documentation which evidences that the investments in your HSA did not earn unrelated business taxable income;

(ii) provide evidence of the filing of the required Form 990-T for such tax; or (iii) authorize us to prepare the tax for you. Should you fail to provide us with such requested documentation within the time proscribed by us, you may be subject to a Late Documentation Fee as set forth on the Fee Schedule.

## ARTICLE XV – SERVICE FEES

### 15.1 Service Fees

#### (a) Fee Schedule

- (i) We shall charge you fees for our services under this Agreement as is fully set forth in the Fee Schedule as it may be amended from time to time. Our Fee Schedule may be amended upon 30 days' advance written notice to you and in accordance with Section 20.4 hereof.
- (ii) We will charge fees consistent with the direction you specify on your Account Application (credit card, if applicable, deduct from account or invoice you) or as modified by you or your Designated Representative.
- (iii) Any fees that are based upon the fair market value of non-marketable investments or assets that do not have a readily available market value, shall be based upon cost or the estimated fair market value of such assets, whichever is greater. Fees will continue to accrue and be payable even if your HSA Account contains no assets other than uninvested cash. Publicly traded securities shall be valued at their fair market value. If cost is not reflective of fair market value with respect to the assets held in your HSA, you may provide us with a qualified independent valuation of such assets for purposes of determining an appropriate fee; and we will give consideration to such independent valuation. Our determination shall be binding and conclusive for purposes of HSA fees based upon value.
- (iv) As set forth in the Fee Schedule, renewal fees, such as the retail Gold Level Service Fee, will be automatically renewed and withdrawn from your HSA Account, charged to your credit card, or invoiced each year on the anniversary date of your membership, unless you provide written notice of cancellation within 30 days prior to your anniversary date.
- (v) We have the right to select another form of payment for our fees, such as credit card you have on file with us, if your designated form of payment fails when fees are due. Likewise, should you fail to pay an invoice for fees when due, we have the right to select another form of payment.
- (vi) Certain custodial fees may be paid for a limited time under a special fee schedule arrangement with a service provider as a result of a certain type of investment. If that arrangement is modified, that fee schedule may be discontinued, and you will be responsible for payment for fees associated with your Account outside of any special fee schedule. Should that fee arrangement allow for third parties to pay your fees directly to us in exchange for you paying the third party, and you fail to pay the third party fees, you direct us to liquidate your assets to pay for fees due and owing that third party.
- (b) Deposit Management Program Fees. Other fees may be paid to us or our affiliates by third parties for assistance in performing certain transactions with respect to our Deposit Management Program ("Program"). Program fees are associated with cash management activities, such as account maintenance, depository bank selection, transaction processing, sub-accounting, record keeping, and any other services performed for the Program. Program fees for bank accounts maintained by the Custodian for all HSAs shall be deducted solely from interest earned on uninvested Program cash prior to the crediting of such interest to the

individual custodial account. For these services, the Custodian charges each bank account in the Program, a monthly fee at an annualized rate of up to 4.00% on the average assets maintained in the bank accounts, payable solely from interest earned on uninvested cash from the Program. The Program fees will be charged regardless of which bank accounts are being used by your HSA. The Custodian has no obligation to ensure that all such bank account pay the same rate of interest; however, the Custodian has the right, but not an obligation, to reduce (rebate) a portion of this fee to your HSA as to the balances in a specific bank's bank account. The Program fee for administering the bank accounts can change from time to time without notice, but cannot exceed the annualized rate of 4.00% without 30 days prior notice to you and in accordance with Section 20.4 hereof. The Program fee is deducted directly from any interest paid on each bank account in the Program, and the net amount is paid to your HSA monthly.

- (c) Other Fees. We may utilize third party services to obtain data necessary to serve as Custodian regarding the Investments in your HSA Account and you agree that we may charge your HSA Account a fee for utilization of such services. We may charge you and/or your HSA for any reasonable expenses incurred by us in connection with any services that we deem necessary or which are directed by you for the administration of your HSA. These include, but are not limited to, attorney fees and expenses associated with the defense of or on behalf of your HSA or your interest involving your HSA or its assets and in defense of us if we are named in any proceeding involving you or your account.
- (d) Third Party Fees. You may incur third party fees associated with a transaction or investment as a result of your relationship with such third parties and you acknowledge that these third party fees will not be disclosed on our fee schedule. You acknowledge that you are solely responsible for these third party fees.
- (e) Brokerage Commissions. Through our affiliate, we may receive a commission in connection with the unsolicited purchase or sale of a publicly traded security. Any brokerage commissions attributable to the assets in your HSA will be charged to your HSA through your brokerage account. You cannot reimburse your HSA for those commissions. Commissions or other fees may be received by our affiliates from third parties for assistance in performing certain services for your HSA.
- (f) Miscellaneous. If you have provided us with information we consider sufficient to demonstrate that an asset(s) in your HSA is subject to bankruptcy, reorganization, receivership or similar proceedings, or otherwise impaired, or if we receive notice of such information, the fee based upon such asset may be reduced by us at the time we receive notice of this information. However, you understand that any fees accrued and due prior to us receiving notice of information we deem acceptable continue to be owed by you.
- (g) Right to Collect Fees. We have the right to freeze the assets held in your HSA to ensure that we are protected from any loss involving your HSA. We also have the right to liquidate, change dividend options and/or freeze assets for any unpaid fee balance. Should fees or expenses not be collected, we have the right to cease acting as custodian, close your Account and force distribute any assets held in your HSA.

### 15.2 Credit Card

- (a) Upon establishment of your HSA Account or at such time thereafter, you may be required to furnish us with a valid credit card account number and related information. If you select to have your credit card pay fees, you authorize us to charge that credit card for all current and subsequent account-related fees



and expenses unless and until you revoke this authorization in writing. We also have the right to charge a credit card you have on file with us for any fees and expenses due and owing to us that cannot be paid through your designated method of payment, such as if you elected to have fees come from your HSA Account but insufficient cash is in your HSA Account to cover the fees.

- (b) If your credit card on file with us expires or otherwise is or becomes invalid, you shall immediately inform us and provide us with another valid credit card and related information and hereby authorize us to charge that credit card. We have the right, consistent with industry standard practices, to use a third party service to obtain updated credit card details if your credit card on file has expired.

#### ARTICLE XVI – BENEFICIARY(IES) & POWER OF ATTORNEY

- 16.1 If you die before you receive all of the amounts in your HSA, payments from your HSA will be made to your beneficiary(ies). You may designate one or more persons or entities as beneficiary of your HSA. This designation can only be made on a form provided by or acceptable to us, and it will only be effective when it is accepted by us during your lifetime. Unless otherwise specified, each beneficiary designation you provide to us will cancel all previous ones. The consent of a beneficiary(ies) shall not be required for you to revoke a beneficiary designation.
- 16.2 If you have designated both primary and contingent beneficiaries and no primary beneficiary(ies) survives you, the contingent beneficiary(ies) shall acquire the designated share of your HSA. If no beneficiary should survive you, or if all beneficiaries renounce their rights to receive any benefit from the HSA, or if you fail to provide a beneficiary and none is listed on the HSA at the time of your death, we shall distribute the HSA in the following order: (1) to your spouse, but if you have no spouse or if your spouse does not survive you, then to (2) your estate.
- 16.3 If your spouse is the designated beneficiary of your HSA, the Account will be treated as your spouse's HSA after your death. If the named beneficiary of the HSA is not a spouse, the account stops being an HSA and will be distributed to your non-spouse beneficiary in the year in which you die.
- 16.4 After your death, your beneficiary(ies) shall have the right to direct the investment of your HSA assets subject to the same conditions that applied to you during your lifetime under this Agreement. We have no obligation to locate or contact your beneficiaries after your death. If you name multiple beneficiaries, we may require instructions close in time from all the beneficiaries or a court order prior to processing any beneficiary request. To the extent a court order is required, we shall not be named in that proceeding but shall be presented a copy of the court order concerning the handling of the assets in the HSA.
- 16.5 If you sign a power of attorney appointing an attorney or agent to conduct business for your HSA Account, you must do so on a form acceptable to us. We reserve the right to refuse to honor any power of attorney presented to us, as well as to refuse to recognize a successor attorney-in-fact at any time, whether or not the successor attorney-in-fact is specifically identified in the power of attorney. In addition, we reserve the right to refuse to follow the instructions of a power of attorney. The person you appoint will be subject to all the provisions of the Agreement. Any person appointed, is not an owner of your HSA Account. We may honor a power of attorney until we receive written notice from you that you have revoked the power of attorney and have had a reasonable time to act on such notice. You shall be responsible for investigating, selecting, instructing and monitoring the Power of Attorney and to perform whatever due diligence as may be appropriate before selecting or retaining that individual.

#### ARTICLE XVII – VALUATION POLICY

- 17.1 On an annual basis (or more frequently), we will request updated valuation information from you and/or your asset sponsor or third party designated to provide such updated valuation. It is your duty to ensure that the fair market value of the assets in your HSA Account are accurate. We report the value of the assets in your HSA Account on your account statements and we will report the value as accurately as possible using the resources available to us. Where the fair market value of an asset in your HSA Account is readily ascertainable on either an established exchange or generally recognized market used in the financial services industry, we will report such valuations. Where the fair market value of an asset in your HSA Account is not readily ascertainable, you agree that you will provide to us a qualified independent appraisal or other acceptable valuation of the asset. The frequency with which we update valuations depends upon the asset type and the frequency with which we are provided with updated valuation information.
- 17.2 If you do not provide a valuation or appraisal, we may report that asset's value at its last known fair market value, at its acquisition cost, or we may, at our discretion, use a third-party source to value the asset. We may charge your IRA Account a fee if you fail to provide us with a valuation or appraisal and/or if we use a third-party source to value the asset.
- 17.3 We may require that you provide such an appraisal or validation with an updated valuation of the asset for any transaction which results in a taxable event, such as a distribution. You are solely responsible for the tax consequences of asset values reported to the Internal Revenue Service in connection with a distribution of any assets in your HSA Account or any other taxable event.
- 17.4 We have no obligation to conduct appraisals or valuations of assets in your HSA Account and we have no duty to verify the values provided to us. We neither provide a guarantee of value nor an opinion with regard to any independent appraisal and we assume no responsibility for the valuations reported or their accuracy. Valuation information should not be used as a basis for making investment decisions, including but not limited to purchasing, retaining or disposing of an asset. The reported value of any asset may differ materially from its actual value. We reserve the right to reject a valuation change if the information is inconsistent with our procedure or process requirements. For assets that have passed their maturity date, we may require you to provide information to show the current status of the asset.
- 17.5 We may use the value of the asset to determine fees owed to us. If you believe that an asset in your HSA Account should be reported at a different value, or does not have any value, it is your responsibility to provide us with information sufficient to demonstrate that the asset's reported value should be changed. You may provide us with this information through a qualified appraisal or through means we consider acceptable to evidence the new value of the asset. If this is the only asset held in your HSA Account, we have the right to devalue, distribute the asset and close your HSA Account. If you do not provide sufficient information to devalue the asset, we may continue to report the asset at the last known value given to us or use a third-party source to value the asset. If we become aware that an asset has lost value or is no value, we may notify you of such information and may reduce the value of such asset/or distribute the asset to you.

#### ARTICLE XVIII – TERMINATION OF AGREEMENT, RESIGNATION, OR REMOVAL OF CUSTODIAN

- 18.1 Either party may terminate this Agreement at any time by giving written notice to the other party. We can resign as Custodian at any time effective 30 days after we mail written notice of our resignation to you. Upon receipt of that notice, you must

make arrangements to transfer your HSA to another financial organization. If you do not complete a transfer of your HSA within 30 days from the date we mail the notice to you, we have the right to transfer your HSA assets to a successor HSA custodian or trustee that we choose in our sole discretion, or we may pay or distribute your HSA assets to you in a single sum or assignment. If we transfer your HSA, the existing HSA documents will govern your HSA relationship with the new custodian or trustee unless the successor custodian/trustee notifies you in writing of any changes and/or requires new HSA documents to be signed by you. We shall not be liable for any actions or failures to act on the part of any successor custodian or trustee, nor for any tax consequences you may incur that result from the transfer or distribution of your assets pursuant to this section.

18.2 If this Agreement is terminated, we may charge to your HSA a reasonable amount necessary to cover any associated costs, including but not limited to, one or more of the following:

- (a) any fees, expenses or taxes chargeable against your HSA; and
- (b) any penalties or surrender charges associated with the early withdrawal of any savings instrument or other investment in your HSA.

18.3 After your HSA with us is closed, you are responsible for ensuring that all assets previously in your account are properly titled, registered and transferred out of our name.

18.4 If we are required to comply with Regulation Section 1.408-2(e), and we fail to do so, or we are not keeping the records, making the returns or sending the statements as are required by forms or Regulations, the IRS may, after notifying you, require you to substitute another trustee or custodian.

18.5 If our organization changes its name, reorganizes, merges with another organization (or comes under the control of any federal or state agency), or if our entire organization (or any portion which includes your HSA) is bought by another organization, that organization (or agency) shall automatically become the trustee or custodian of your HSA, but only if it is the type of organization authorized to serve as an HSA trustee or custodian.

#### ARTICLE XIX – APPLICABLE LAW; WAIVER; AND VENUE

19.1 This Agreement is subject to all applicable federal laws and regulations and shall be governed by and construed under the applicable laws of the State of South Dakota. The laws of the State of South Dakota shall not govern any procedural matters, including but not limited to any applicable limitation period.

19.2 YOU AGREE THAT ANY CLAIM OR CAUSE OF ACTION AGAINST CUSTODIAN ARISING OUT OF OR RELATING IN ANY WAY TO THIS AGREEMENT, CUSTODIAN'S DUTIES OR RESPONSIBILITIES THEREUNDER, OR YOUR HSA ACCOUNT MUST BE FILED WITHIN ONE (1) YEAR AFTER THE CLAIM OR CAUSE OF ACTION ACCRUED, OR IF THE APPLICABLE LAW REQUIRES A LONGER LIMITATIONS PERIOD, WITHIN THE SHORTEST PERIOD OF TIME PERMITTED BY THAT LAW. YOU AGREE TO WAIVE ANY STATUTE OF LIMITATIONS TO THE CONTRARY.

19.3 **YOU FURTHER AGREE THAT CUSTODIAN SHALL NOT BE LIABLE FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES, AND YOU AGREE TO WAIVE ANY SUCH CLAIMS OR DAMAGES AGAINST CUSTODIAN TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.**

19.4 If any part of this Agreement is held to be illegal or invalid, the remaining parts shall not be affected. No waiver of any part of this Agreement shall be deemed to constitute a waiver of any other part, and any such waiver shall not constitute a continuing waiver and shall not affect you or our ability to thereafter enforce any and all parts of this Agreement.

19.5 YOU AGREE THAT ANY ACTION FILED AGAINST CUSTODIAN ARISING OUT OF OR RELATING IN ANY WAY TO THIS AGREEMENT OR OUR ROLE AS CUSTODIAN, SHALL BE EXCLUSIVELY BROUGHT IN THE COUNTY COURTS OF CUYAHOGA COUNTY, OHIO OR IN THE U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO EASTERN DIVISION-CLEVELAND, AND YOU AGREE TO SUBMIT TO THE JURISDICTION OF THESE COURTS BOTH IN CONNECTION WITH ANY SUCH ACTION YOU MAY FILE AND IN CONNECTION WITH ANY ACTION WHICH CUSTODIAN MAY FILE AGAINST YOU.

#### ARTICLE XX – IMPORTANT MISCELLANEOUS PROVISIONS

20.1 **Security.** We take the protection of your personal information seriously. Access to account information is provided only to authorized parties after proper authentication procedures are successful. It is your responsibility to promptly report any suspected or actual security breach or unauthorized transaction.

20.2 **Confidentiality.** Our Privacy Notice, sent to HSA Account owners annually, sets forth the type of information we collect and whether and how we share your on public personal information. We restrict access to your non public personal information to those employees, third parties and agents who need to know that information to provide services made available under this Agreement and to evaluate business operations and analyze service or process improvements. Your information may also be shared to respond to court orders and subpoenas without prior notice to you.

20.3 **Notices and Change of Address.** Any required notice or communication regarding your HSA will be considered effective when we send it to you at the last known email address we have in our records. If no email address is on file, we will send notices and communication to you at the last mailing address we have in our records. We will presume that you are able to access the email address you provided to us. The notice will direct you to any communication unless you specifically request paper copies of such notice. You must promptly notify us of any change of email or mailing address. Should your mailing address be invalid in any way or if we receive returned mail, we may cease using that address as a means of contact until you update our records to ensure proper delivery. Any notice to be given to us will be considered effective when we actually receive it.

20.4 **Amendments.** We have the right to amend this Agreement at any time. Any amendment we make to comply with the Code and related Regulations does not require your consent. You will be deemed to have consented to any other amendment unless, within 30 days from the date we mail or electronically transmit the amendment, you notify us in writing that you do not consent. If you timely notify us in writing that you do not consent to the amendment, you will have 30 days from the date your notification is received by us to secure a new custodian for your HSA Account and you are responsible for ensuring that all assets in your HSA Account are properly titled, registered, and transferred out of our name and into the name of the new custodian.

20.5 **Withdrawals or Transfers.** All requests for withdrawal or transfer shall be in writing on a form provided by or acceptable to us. The method of distribution must be specified in writing. The tax identification number of the recipient must be provided to us before we are obligated to make a distribution. Withdrawals shall be subject to all applicable tax and other laws and regulations, including possible early withdrawal penalties or surrender charges and withholding requirements.

20.6 **Transfers from Other Plans.** We can receive amounts transferred to this HSA from the Custodian or Trustee of another HSA. In addition, we can accept direct rollovers of eligible rollover distributions from employer-sponsored retirement plans as permitted by the Code. We reserve the right not to accept any transfer or direct rollover.

- 20.7 **Liquidation of Assets.** We have the right to liquidate assets in your HSA if necessary to make distributions, pay our fees, expenses, indemnities, taxes, federal tax levies, and penalties or surrender charges chargeable against your HSA. You agree not to hold us liable for any damages or loss associated with such liquidation of assets.
- 20.8 **Restrictions on the Assets.** Neither you nor any beneficiary may sell, transfer, pledge or place a lien on the assets in your HSA in any manner whatsoever, except as provided by law or this Agreement. The assets in your HSA shall not be responsible for the debts, contracts or torts of any person entitled to distributions under this Agreement.
- 20.9 **Acknowledgment of and Authorization for Telephone Recordings.** We reserve the right to install and/or maintain automatic telephone recording equipment on telephone lines used by personnel servicing the custodial account in connection with trading functions and customer inquiries. By signing this Agreement, you acknowledge our right and expressly authorize us to record and play back any and all such telephone calls.
- 20.10 **HSA Account Not Guaranteed.** We do not guarantee the assets in your HSA Account, nor do we ensure against any loss or depreciation.
- 20.11 **Account Holder Verification.** To help the government fight the funding of terrorism and money laundering activities, Federal law requires us to obtain, verify and record information that identifies who opens an account with us. You acknowledge that, to comply with Federal law, we will require certain information, such as, but not limited to the name, address, date of birth and tax identification number of the Account Holder before an HSA can be opened.
- 20.12 **Dividend Options.** We have the right to change dividend options on investments held in your HSA to pay our fees and/or expenses. We are not liable for the impact of changing dividend options nor required to change the dividend option(s) back to their prior selection. It is the HSA Owner's responsibility to monitor and provide acceptable instructions to update their dividend option(s).
- 20.13 **Unclaimed Property.** Under the laws applicable to your Account, we may be required to turn over to regulatory authorities property that is in your Account and deemed abandoned. To avoid such escheatment of property, you agree to periodically show activity in your Account (by logging in) or otherwise contact us. Before remitting abandoned property, pursuant to applicable law, we will send written notice to your last known address. You agree that we are not liable for any loss arising from or related to escheatment of your Account's property under applicable law.

## GENERAL INSTRUCTIONS

Section references are to the Internal Revenue Code unless otherwise noted.

**Additional Tax Increased** – For tax years beginning after December 31, 2010, the additional tax on distributions not used for qualified medical expenses increases from 10% to 20%.

## PURPOSE OF FORM

Form 5305-C is a model custodial account agreement that has been approved by the IRS. An HSA is established after the form is fully executed by both the Account Owner and the Custodian. The form can be completed at any time during the tax year. This account must be created in the United States for the exclusive benefit of the Account Owner.

Do not file Form 5305-C with the IRS. Instead, keep it with your records. For more information on HSAs, see Notice 2004-2, 2004-2 I.R.B. 269, Notice 2004-50, 2004-33 I.R.B. 196, Pub. 969, Health Savings Accounts

and Other Tax-Favored Health Plans, and other IRS published guidance.

## DEFINITIONS

**Identifying Number.** The Account Owner's social security number will serve as the identification number of this HSA. For married persons, each spouse who is eligible to open an HSA and wants to contribute to an HSA must establish his or her own account. An employer identification number (EIN) is required for an HSA for which a return is filed to report unrelated business taxable income. An EIN is also required for a common fund created for HSAs.

**High Deductible Health Plan (HDHP).** For calendar year 2021, an HDHP for self-only coverage has a minimum annual deductible of \$1,400 and an annual out-of-pocket maximum (deductibles, co-payments and other amounts, but not premiums) of \$7,000. For calendar year 2021, an HDHP for family coverage has a minimum annual deductible of \$2,800 and an annual out-of-pocket maximum of \$14,000. These limits are subject to cost-of-living adjustments.

**Self-only Coverage and Family Coverage Under an HDHP.** Family coverage means coverage that is not self-only coverage.

**Qualified medical expenses.** Qualified medical expenses are amounts paid for medical care as defined in section 213(d) for the Account Owner, his or her spouse, or dependents (as defined in section 152) but only to the extent that such amounts are not compensated for by insurance or otherwise. With certain exceptions, health insurance premiums are not qualified medical expenses.

**Custodian.** A Custodian of an HSA must be a bank, an insurance company, a person previously approved by the IRS to be a Custodian of an individual retirement account (IRA) or Archer MSA, or any other person approved by the IRS.

## SPECIFIC INSTRUCTIONS

**Article XI.** Article XI and any that follow it may incorporate additional provisions that are agreed to by the Account Owner and Custodian. The additional provisions may include, for example, definitions, restrictions on rollover contributions from HSAs or Archer MSAs (requiring a rollover not later than 60 days after receipt of a distribution and limited to one rollover during a one-year period), investment powers, voting rights, exculpatory provisions, amendment and termination, removal of custodian, custodian's fees, state law requirements, treatment of excess contributions, distribution procedures (including frequency or minimum dollar amount), use of debit, credit, or stored-value cards, return of mistaken distributions, and descriptions of prohibited transactions. Attach additional pages if necessary.

This Disclosure Statement sets forth general terms, conditions and requirements related to your HSA with us, including some of the requirements under IRS Form 5305-C. This Disclosure Statement is not to be construed as giving or replacing legal advice. Please consult with a tax professional concerning any tax questions related to your HSA with us.

## GENERAL INFORMATION

Generally, an HSA is a tax-exempt custodial account established exclusively for paying qualified medical expenses in conjunction with a High Deductible Health Plan (HDHP).

## REQUIREMENTS OF AN HSA

- A. **Eligibility Requirements** – You are an eligible individual with respect to establishing an HSA for any month you (1) are covered under a high deductible health plan (HDHP) as of the first day of such month; (2) are not also covered by any other health plan that is not a HDHP and that provides coverage for any benefit covered under the HDHP (with limited exceptions); (3) are not enrolled in Medicare; and (4) are not eligible to be claimed as a dependent on another person's tax return.

The requirement that the individual not be covered by any other health plan does not include coverage for accidents, disability, dental care, vision care or long-term care or coverage for “permitted insurance”, which generally is insurance which relates to liabilities under workers’ compensation laws, tort liabilities, auto insurance, insurance for a specific disease or illness and insurance that pays a fixed amount of hospitalization per day.

- B. **High Deductible Health Plan (HDHP)** – Generally, a HDHP is a health plan that satisfied certain requirements with respect to deductibles and out-of-pocket expenses. For self-only coverage, a HDHP has an annual deductible of at least \$1,650 for 2025, and annual out-of-pocket expenses required to be paid (deductibles, co-payments and other amounts but not premiums) not exceeding \$8,300 for 2025. For family coverage, a HDHP has an annual deductible of at least \$3,300 for 2025, and annual out-of-pocket expenses required to be paid not exceeding \$16,600 for 2025. These amounts may be adjusted annually for cost-of-living increases.
- C. **Non-Forfeitable** – The assets in your HSA are non-forfeitable.
- D. **Eligible Custodians** – The custodian of your HSA must be a bank, savings and loan association, credit union, or a person or entity approved by the Secretary of the Treasury.
- E. **Commingling Assets** – The assets of your HSA cannot be commingled with other property except in a common custodial fund or common investment fund.
- F. **Life Insurance** – None of your assets in your HSA may be invested in life insurance contracts.

## CONTRIBUTIONS

- A. **Cash Contributions** – All regular or annual HSA contributions must be in cash unless it is a rollover contribution.
- B. **Contributors** – If you meet the eligible requirements for an HSA, you, your employer, your family members or any other person may contribute to your HSA.
- C. **Maximum Contribution** – The maximum annual cash contribution is the sum of the limits determined separately for each month that you are an eligible individual. The determination for each month is based on whether, as of the first day of such month, you are eligible to contribute and whether you have self-only or family

coverage under a high deductible health plan (HDHP). If you have self-only coverage, the maximum monthly contribution is 1/12 of \$4,300 for 2025. If you have family coverage, the maximum monthly contribution is 1/12 of \$8,550 for 2025, with possible cost-of-living adjustments in future years. If you are not an eligible individual for all 12 months of a year, the contribution limit may be prorated. However, if you become HSA-eligible after the beginning of the year, you may make a full year's contribution up to the statutory contribution limit as long as you maintain eligibility during the “testing period”. The “testing period” begins the last month of the initial eligibility year and runs for a full 12 months. If you do not remain eligible during the testing period, you must include in your gross income the contributions made for the months that you were not otherwise eligible and pay a 10 percent penalty tax on the amount.

- D. **Catch-Up Contributions** – If you are age 55 or older before the close of the taxable year, you may make an additional contribution to your HSA. The maximum additional contribution to your HSA is \$1,000 per year. It is your obligation to ensure that you are eligible for a catch-up contribution.
- E. **Contribution Deadline** – The deadline for making an HSA contribution is your tax return due date (not including extensions).
- F. **Excess Contributions** – An excess contribution is a contribution made for a taxable year that exceeds the contribution limits. If the excess is not corrected timely, a penalty tax of six percent will be imposed upon the excess amount.
1. **Withdrawing Excess Before Your Tax Filing Deadline.** You can avoid the six percent penalty tax if your excess contribution is corrected by withdrawing the excess amount, along with the earnings attributable to the excess, before your tax filing deadline, including extensions, for the year for which the excess contribution was made. While the excess amount is not taxable, you must include the earnings attributable to the excess in your taxable income in the year in which the contribution was made.
  2. **Withdrawing Excess After Your Tax Filing Deadline.** If you correct an excess contribution after your tax filing deadline, including extensions, the six percent excess contribution penalty tax will be imposed on the excess contribution for each year it remains in the HSA.
  3. **Carry Forward Excess to a Subsequent Year.** Excess contributions made for one taxable year can be carried over to subsequent years, subject to the subsequent year's contribution limit. If you do not withdraw the excess contribution, you may carry forward the contribution for a subsequent tax year. The six percent excess contribution penalty tax will be imposed on the excess amount for each year that it remains as an excess contribution at the end of the year.

Penalty taxes should be reported and filed with the IRS with Form 5329, along with your income tax return.

- G. **Deductibility of Contributions** – Contributions made by you to your HSA, which do not exceed the maximum annual contribution amount, are deductible by you when determining your adjusted gross income. You are not required to itemize your deductions to



get this benefit. The deduction is allowed regardless of whether you itemize deductions. However, employer contributions to your HSA are excludable from your gross income and you cannot deduct such amounts on your tax return as HSA contributions.

## DISTRIBUTIONS

- A. **General** – Distributions from an HSA are permitted at any time. However, there may be custodial fees associated with such distributions.
- B. **Tax-Deferred Earnings** – The investment earnings of your HSA are not subject to federal income tax until distributions are made (or, in certain instances, when distributions are deemed to be made).
- C. **Taxation of Distributions**
  - 1. Distributions taken from your HSA to pay for qualified medical expenses or to reimburse you for qualified medical expenses for which you already paid are excluded from your gross income.
  - 2. Qualified medical expenses include amounts paid for medical care, as defined under IRC Section 213(d), for you, your spouse and your dependents, so long as such expenses were not covered by insurance or otherwise. In addition, these expenses must be incurred only after the HSA has been established.
  - 3. Distributions made for purposes other than qualified medical expenses are included in your gross income and are subject to an additional twenty percent penalty tax. This additional 20 percent penalty tax will apply unless a distribution is made for the following circumstances: (1) after you become eligible for Medicare; (2) your death; or (3) disability.
  - 4. You are solely responsible for determining the taxability or non-taxability of any distribution from your HSA. Please see IRS Publication 502, Medical and Dental Expenses, for detail concerning qualified medical expenses, available at [www.irs.gov](http://www.irs.gov).

## ROLLOVERS

- A. Your HSA may be rolled over to another HSA of yours or may receive rollover contributions, provided that all of the applicable rollover rules are followed. We have discretion on whether we will accept, and how we will process, a rollover or transfer to or from your HSA.
- B. **HSA or Archer MSA to HSA Rollovers** – You are permitted to roll over assets from your HSA to another HSA of yours if the requirements of IRC Section 223(f)(5) are met. For example, the distribution must be rolled over not later than 60 days after the distribution is received to avoid tax consequences and to effect a proper rollover. You may make only one rollover contribution to an HSA during a 12-month period. Assets distributed from your Archer MSA also may be rolled over to your HSA and the 60-day window is a requirement.
- C. **Written Election** – At the time you make a rollover to an HSA, you must designate in writing to the custodian your election to treat that contribution as a rollover. Once made, the rollover election is irrevocable.
- D. **Qualified HSA Funding Distribution** – If you are an eligible HSA individual, you may elect to take a qualified funding distribution from your IRA and directly deposit it into your HSA. The amount of the qualified HSA funding distribution may not exceed the maximum HSA contribution limit that you have at the time of the deposit, and counts toward your HSA contribution limit for that year. If you do not remain HSA-eligible (for reasons other than death or disability) for 12 months following the transaction, the amount of the transaction is subject to taxation and a 10 percent

penalty tax.

## ROLLOVERS

- A. If you die and your beneficiary is your spouse, your HSA (or the relevant portion thereof) will become your spouse's HSA as of the date of your death, subject to the same rules and regulations.
- B. If your beneficiary is not your spouse, the HSA (or the relevant portion thereof) will cease to be an HSA as of the date of your death.
- C. If the beneficiary is your estate, the fair market value of the HSA is taxable on your final tax return as gross income. For other beneficiaries, the fair market value of the account is taxable to that beneficiary as gross income in the tax year that includes the date of death.

## LIMITATIONS AND RESTRICTIONS

- A. **Deduction of Rollovers and Transfers** – A deduction is not allowed for rollover or transfer contributions.
- B. **Prohibited Transactions** – If you or your beneficiary engage in a prohibited transaction with your HSA, as described in Code Section 4975, your HSA will lose its tax exempt status. You would then have to include the fair market value of your HSA as of that first day in your gross income for the year during which the prohibited transaction occurred. Applicable taxes and penalties may apply. Please refer to your tax advisor and Section 4975 of the IRC for guidance.
- C. **No Pledging** – If you pledge any portion of your HSA as collateral for a loan, the amount so pledged will be treated as a distribution and will be included in your gross income for that year.

## OTHER INFORMATION

- A. **IRS Plan Approval** – The agreement used to establish this HSA has been approved by the IRS. The IRS approval is a determination only as to form. It is not an endorsement of the plan in operation or of the investments offered.
- B. **No Tax Advice** – The custodian does not render any tax advice to you and, as such, you should seek the guidance of a tax or legal professional before opening an HSA with us. Section 223 of the Internal Revenue Code and other relevant IRC sections govern your HSA, as well as this Disclosure Statement, the Agreement and any amendments to these documents. For more information on HSAs, please refer to IRS Publication 969 and IRS Publication 502 for a list of qualified medical expenses that may be reimbursed from HSAs or contact the IRS.