



## HEALTH SAVINGS ACCOUNT CUSTODIAL AGREEMENT

The account holder whose name appears on the attached Application ("Depositor") is establishing a Health Savings Account ("HSA") under Section 223(a) of the Internal Revenue Code ("Code") exclusively for the purpose of paying or reimbursing qualified medical expenses of the Depositor and his or her spouse and dependents. The Depositor has assigned to the custodial account the sum indicated on the Application. The Depositor 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 (or as of the effective date as set forth in the Application will be) covered under a high deductible health plan ("HDHP"); is not also covered by any other health plan that is not an HDHP (with certain exceptions for plans providing preventative 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 Depositor, by submitting the signed Application, and the Custodian, by acceptance of the application and delivery of account items to the Depositor for the Depositor's HSA, make the following agreement:

**ARTICLE I:** The Custodian may accept additional cash contributions for the tax year made by or on behalf of the Depositor (by an employer, family member or any other person). No contributions will be accepted by the Custodian for the Depositor that exceed the maximum amount for family coverage plus the catch-up contribution. Contributions for any tax year may be made at any time before the deadline for filing the Depositor's federal income tax return for that year (without extensions). Rollover contributions from an HSA or an Archer Medical Savings Account (Archer MSA) need not be in cash and are not subject to the maximum annual contribution limit set forth in Article II.

**ARTICLE II:** For calendar year 2005, the maximum annual contribution limit for a Depositor with single coverage is the lesser of the amount of the HDHP deductible or \$2,650. For calendar year 2005, the maximum annual contribution limit for a Depositor with family coverage is the lesser of the amount of the HDHP deductible or \$5,250. These limits are subject to cost-of-living adjustments after 2005. Eligibility and contribution limits are determined on a month-to-month basis. Contributions to Archer MSAs or other HSAs count toward the maximum annual contribution limit to this HSA. For calendar year 2005, an additional \$600 catch-up contribution may be made for a Depositor who is at least age 55 or older and not enrolled in Medicare. The catch-up contribution increases to \$700 in 2006, \$800 in 2007, \$900 in 2008, and \$1,000 in 2009 and later years. Contributions in excess of the maximum annual contribution limit (other than catch-up or rollover contributions) are subject to a 6% excise tax. This tax will apply each year in which an excess remains in your HSA.

**ARTICLE III:** It is the responsibility of the Depositor 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 Depositor shall notify the Custodian that there exist excess contributions to the HSA. It is the responsibility of the Depositor to request the withdrawal of the excess contribution and any net income attributable to such excess contribution.

**ARTICLE IV:** The Depositor's interest in this custodial account is non-forfeitable.

**ARTICLE V:** No part of the custodial funds may be invested in life insurance contracts or in collectibles as defined in Code Section 408(m). The assets of this account may not be commingled with other property except in a common trust fund or common investment fund. Neither the Depositor 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 Code Section 4975).

**ARTICLE VI:** Distributions of funds from this HSA may be made upon the direction of the Depositor. Distributions from this HSA that are used exclusively to pay or reimburse qualified medical expenses of the Depositor, his or her spouse, or dependents are tax-free. However, distributions that are not used for qualified medical expenses are included in the Depositor's gross income and are subject to an additional 10 percent tax on that amount. The additional 10 percent tax does not apply if the distribution is made after the Depositor's death, disability, or reaching age 65. The Custodian is not required to determine whether the distribution is for the payment or reimbursement of qualified medical expenses. Only the Depositor 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 Depositor dies before the entire interest in the account is distributed, the entire remaining interest will be disposed of as follows:

1. If the beneficiary is the Depositor's spouse, the HSA shall become the spouse's HSA as of the date of death.
2. If the beneficiary is not the Depositor's spouse, the HSA shall cease to be an HSA account as of the date of death. If the beneficiary is the Depositor's estate, the fair market value of the account as of the date of death is taxable on the Depositor'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:** The Depositor agrees to provide the Custodian with information necessary for the Custodian to prepare any report or return required by the IRS. The Custodian agrees to 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 Code Section 223 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 Depositor and the Custodian.

### ARTICLE XI

**11.01 Definitions:** In this part of the Agreement (Article XI), the words "you" and "your" refer to the Depositor. The Depositor is the person who establishes the custodial account. The words "we," "our," and "us" refer to the Custodian, HSA Bank.

**11.02 Notices and Changes of Address:** Any required notice regarding this HSA will be considered effective when we mail it to the last address of the intended recipient which we have in our records. Any notice to be given to us will be considered effective when we actually receive it. You must notify us of any changes of address.

**11.03 Representations and Responsibilities:** You represent and warrant to us that any information you have given or will give us with respect to this Agreement is complete and accurate. Further, you agree that any directions you give us, or any action you take will be proper under this Agreement and that we are entitled to rely upon any such information or directions. We shall not be responsible for losses of any kind that may result from your directions to us or your actions or failures to act, and you agree to reimburse us for any losses we may incur as a result of such directions, actions or failures to act. We shall not be responsible for any penalties, taxes, judgments or expenses you incur in connection with your HSA. We have no duty to determine whether your contributions or distributions comply with the Code, regulations, rulings or this Agreement.

**11.04 Service Fees:** We have the right to charge an annual service fee or other designated fees (for example, a transfer, withdrawal or termination fee) for maintaining your HSA. In addition, we have the right to be reimbursed for all reasonable expenses we incur in connection with the administration of your HSA. We may charge you separately for any fees or expenses, or we may deduct the amount of the fees or expenses from the assets in your HSA, at our discretion. We reserve the right to charge any additional fee upon 30 days notice to you that the fee will be effective. Any brokerage commissions attributable to the assets in your HSA will be charged to your HSA. You cannot reimburse your HSA for those commissions.

**11.05 Investment of Amounts in the HSA:** You will select the type of investment for your HSA assets; provided, however, that your selection of investments shall be limited to those types of investments that we are authorized by our charter to offer and do in fact offer for investment in HSAs. Any investment you select for your HSA shall be subject to any and all restrictions or limitations, direct or indirect, which are imposed by or flow from the bylaws of our organization and all Federal and State laws and regulations which apply to us.

**11.06 Beneficiaries:** You may designate one or more persons or entities as beneficiary of your HSA. This designation can only be made on a form prescribed by us and will only be effective when filed with us during your lifetime. Unless specified otherwise in writing by you, each beneficiary designation you file with us will cancel all previous ones. The consent of a beneficiary shall not be required for you to revoke a beneficiary designation. If you do not designate a beneficiary, your estate will be the beneficiary.

**11.07 Termination:** Either party may terminate this Agreement at any time by giving written notice to the other. 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 to 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 your HSA to you in a single sum. 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.

If this Agreement is terminated, we may hold back from your HSA a reasonable amount that we believe is necessary to cover any one or more of the following:

- Any fees, expenses or taxes chargeable against your HSA;
- Any penalties associated with the early withdrawal of any savings instrument or other investment in your HSA.

If our organization is merged 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.

If we fail to comply with certain Treasury regulations, 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 custodian or trustee.

**11.08 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 amendments unless, within 30 days from the date we mailed the amendment, you notify us in writing that you do not consent.

**11.09 Withdrawals:** All requests for withdrawal 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. Any withdrawals shall be subject to all applicable tax and other laws and regulations including possible early withdrawal penalties and withholding requirements. We reserve the right to reasonably restrict the frequency and/or minimum amount of distributions.

**11.10 Transfer from Other Plans:** We can receive amounts transferred to this HSA from the custodian or trustee of another HSA or MSA. However, we also reserve the right not to accept any transfer.

**11.11 Liquidation of assets:** We have the right to liquidate assets in your HSA if necessary to make distributions or to pay fees, expenses or taxes properly chargeable against your HSA. If you fail to direct us to which assets to liquidate, we will decide in our complete and sole discretion and you agree not to hold us liable for any adverse consequences that result from our decision.

**11.12 Restrictions On The Fund:** Neither you nor any beneficiary may sell, transfer or pledge any interest 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.

**11.13 What Law Applies:** This Agreement is subject to all applicable Federal and State laws and regulations. If it is necessary to apply any State law to interpret and administer this Agreement, the law of our domicile shall govern. If any part of this Agreement is held to be illegal or invalid, the remaining parts shall not be affected. Neither your nor our failure to enforce at any time or for any period of time any of the provisions of the Agreement shall be construed as a waiver either of such provisions of your or our right thereafter to enforce each and every such provision.

**11.14 Identifying Number:** The Depositor'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 is required only for an HSA for which a return is filed to report unrelated business taxable income. An employer identification number is required for a common fund created for HSAs.

We shall not be liable to you for any losses, damages, costs, penalties or expenses you incur as a result of your employer's failure to make any employer contributions to your HSA. We are not responsible for monitoring or notifying you of your employer's contributions to your HSA. You are responsible for contacting your employer regarding its contributions and monitoring those contributions. We will provide monthly statements to you.

We shall not be liable to you for any statements, representations, actions or inactions of any insurance agent or agency that sold you an insurance plan in connection with your HSA. The insurance agent or agency is not our partner, agent, affiliate, representative or co-venture.

## **DISCLOSURE STATEMENT**

The following is a general explanation of the laws and IRS guidance governing HSAs. Refer to the Code or a competent tax advisor for more detailed information.

### **REQUIREMENTS OF AN HSA**

- A. CASH CONTRIBUTION** – Your contribution must be in cash, unless it is a rollover contribution.
- B. MAXIMUM CONTRIBUTION** – The maximum amount of contributions in any one-year that can be made is the lesser of: the annual deductible or \$2,650 for single coverage, and \$5,250 for family coverage. Additional catch-up contributions can be made by or on behalf of individuals who are 55 years old or older and younger than 65. Depositor is responsible for determining whether contributions exceed the maximum annual contributions. If contributions exceed the maximum annual contribution limit, the Depositor is responsible for notifying the Custodian and requesting a withdrawal of funds.
- C. NON-FORFEITABILITY** – Your interest in your HSA is non-forfeitable.
- D. ELIGIBLE CUSTODIANS** – The Custodian of your HSA must be a bank, as defined in Section 408(n) of the Code, insurance company, as defined in Section 816 of the Code, or other person who has the approval of the Secretary of the Treasury to act as Custodian.
- E. COMMINGLING ASSETS** – The assets of your HSA cannot be commingled with other property except in a common trust fund or common investment fund.
- F. LIFE INSURANCE** – No portion of your HSA may be invested in life insurance contracts.

### **INCOME TAX CONSEQUENCES OF ESTABLISHING AN HSA**

- A. HSA DEDUCTIBILITY** – If you or your employer establishes a high deductible health plan, you may be eligible to establish an HSA. If eligible, you, your employer, a family member, or any other person can make contributions to your HSA. Amounts contributed to an eligible Depositor's HSA are excluded from federal tax unless they exceed the maximum contribution limits described above. Tax treatments concerning state law may vary by state.
- B. TAX-DEFERRED EARNINGS** – The investment earnings of your HSA are not subject to federal income tax while they remain in your HSA.
- C. TAXATION OF DISTRIBUTIONS** – As discussed above, the taxation of HSA distributions depends on whether the distribution is for a qualifying medical expense. Qualifying medical expenses are amounts you pay for medical care (as defined in Code Section 213(d)) for yourself, your spouse and your dependents (as defined in Code Section 152), but only to the extent that such amounts are not compensated for by insurance or otherwise.
- D. ROLLOVERS** – Your HSA may be rolled over to another HSA of yours, or your HSA account with us may receive rollover contributions, provided that applicable rollover rules including the requirements of Code Section 223(f)(5) are followed. Rollovers from a qualified MSA to an HSA account are permitted if made in accordance with applicable MSA rollover laws and regulations. Rollover is a term used to describe a tax-free movement of cash or other property between any of your HSAs. These transactions are often complex. If you have any questions regarding a rollover, please see a competent tax advisor. Certain rollover rules are generally summarized as follows: Rollovers may be made directly from one trustee/custodian to another, or you may have the HSA funds distributed to you to rollover to another HSA. If the funds are distributed to you, 1) to avoid being taxed on the amount, you must rollover the entire distribution not later than 60 days after the distribution is received, and 2) you may roll over the same dollars or assets only once every 12 months. At the time you make a proper rollover contribution to an HSA with us, you must designate to us in writing your election to treat that contribution as a rollover. Once made, the rollover election is irrevocable.
- E. CARRYBACK CONTRIBUTIONS** – A contribution is deemed to have been made on the last day of the preceding taxable year if made by the deadline for filing your income tax return (not including extensions), and you designate the contribution as a contribution for the preceding taxable year. For example, if you are a calendar year taxpayer and you make your HSA contribution on or before April 15, your contribution is considered to have been made for the previous tax year if you designated it as such.
- F. TAX AND SAVINGS CONSEQUENCES** – We make no guarantees of any tax or savings consequences.

### **LIMITATIONS AND RESTRICTIONS**

- A. DEDUCTION OF ROLLOVERS AND TRANSFERS** – A deduction is not allowed for rollover or transfer contributions.
- B. SPECIAL TAX TREATMENT** – Capital gains treatment and the favorable five or ten-year forward averaging tax under Code Section 402 do not apply to HSA distributions.
- C. 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 and you must include the value of your account in your gross income for the taxable year.
- D. PLEDGING** – If you pledge any portion of your HSA as collateral for a loan, that portion will be treated as a distribution and included in your gross income for that year.