

# HEALTH SAVINGS ACCOUNT CUSTODIAL AGREEMENT

HealthEquity, Inc. (the “Custodian”) is an Internal Revenue Service (“IRS”) authorized, non-bank trustee (“NBT”) operating as the custodian of health savings accounts (“HSAs”). The Custodian’s IRS NBT Authorization Letter is available online (see Quick Links box at <https://healthequity.com/legal>). The named account owner (the “Member”) is establishing an HSA (the “Account”) with the Custodian for the purpose of paying or reimbursing Qualified Medical Expenses (as defined below) of the Member, his or her spouse, and/or tax dependents.

By instructing the Custodian to open the Account, contributing funds to the Account or otherwise using the Account, the Member consents to the terms of this Health Savings Account Custodial Agreement which includes all cash, investment and other supplements (collectively, this “Agreement”).

The terms of this Agreement shall be binding upon the Custodian and the Member and their respective successors and assigns. Nothing in this Agreement is intended as legal, tax, financial, investment or medical advice or advice in respect of estate planning or the consequences of a change in marital status. Information relating to HSAs may be found at [www.treasury.gov](http://www.treasury.gov) or in IRS Publication 969 — Health Savings Accounts and Other Tax-Favored Health Plans. State-level taxation of HSAs varies from state to state. Always consult a professional when making important or life changing decisions.

**The Member and the Custodian agree as follows:**

## ARTICLE I. CONTRIBUTIONS

**1.01** - The Custodian will accept cash contributions made by or on behalf of the Member and will hold all such contributions in accordance with the terms and conditions of a cash supplement to this Agreement (“Cash Supplement”). The Cash Supplement is a part of, and incorporated into, this Agreement. A copy of the Cash Supplement is included in the Member’s welcome kit and available on the Custodian’s portal (login may be required).

**1.02** - Contributions for any tax year may be made at any time before the deadline for filing the Member’s federal income tax return for that year (without extensions).

**1.03** - 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 limits set forth in Article II.

**1.04** - Qualified transfers from an individual retirement account (“IRA”) to the Account must be completed by a trustee-to-trustee transfer and are subject to the maximum annual contribution limits set forth in Article II.

**1.05** - Incoming contributions made pursuant to external transfers (for example, transfers from an employer) will generally be available within two to five business days after the effective date of the transfer.

**1.06** - The Custodian shall not be liable for any losses, damages, claims, liabilities, penalties, judgments, settlements, litigation, investigations, costs or expenses that the Member incurs as a result of any employer’s failure to make any contributions to the Account. The Custodian is not responsible for monitoring an employer’s contributions to the Account or notifying the Member of employer contributions to the Account. The Member is responsible for contacting his or her employer regarding the employer’s contributions to the Account and for monitoring those contributions. In considering whether contributions to the Account have exceeded the allowable annual contribution limit, the Member must take into account any employer contributions as well as any IRA rollovers or contributions previously made by the Member that also count towards the annual contribution limit.

## ARTICLE II. CONTRIBUTION LIMITS

**2.01** - Except for rollover contributions accepted by Custodian, annual contributions are limited to the statutory maximum allowed under section 223 of the Internal Revenue Code (“IRC”), including any additional contributions permitted for individuals age 55 or over.

See [www.healthequity.com](http://www.healthequity.com), [www.irs.gov](http://www.irs.gov) or IRS Publication 969 for information about current year contribution limits. The Member is solely responsible for determining whether contributions to the Account exceed the Member’s personal maximum annual limit.

**2.02** - Contributions to Archer MSAs or other HSAs owned by the Member count toward the maximum annual contribution limit for the Account.

## ARTICLE III. EXCESS CONTRIBUTIONS

Contributions to the Account in excess of the maximum annual contribution limit (other than catch-up contributions) are subject to a federal excise tax. It is the responsibility of the Member to determine whether contributions to the Account have exceeded the maximum annual contribution limit described in Article II. If contributions to the Account exceed the maximum annual contribution limit, the Member must notify the Custodian that there are excess contributions to the Account. It is the responsibility of the Member to request the withdrawal of the excess contributions and any net income attributable to such excess contributions and to pay any applicable taxes thereon.

## ARTICLE IV. DISTRIBUTIONS

**4.01** - Distributions of funds from the Account may be made at any time upon the direction of the Member. The Member may request a distribution from the Account through the Custodian’s website, by completing an account reimbursement form or by other means acceptable to Custodian. Notwithstanding the foregoing, the Custodian will at all times hold in reserve an amount equal to the Member’s closing fee (as set forth in the Custodian’s written schedule of fees then in effect), which amount may not be distributed by the Member at any time.

**4.02** - The Custodian is not required to determine whether a distribution from the Account is for the payment or reimbursement of Qualified Medical Expenses. The Member 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-advantaged. The Custodian does not calculate the income tax or penalties that may apply, or withhold any part of the distribution to pay for any such income tax or penalties. For purposes of this Agreement, the term “Qualified Medical Expenses” means amounts paid for medical care as defined in IRC section 213(d) for the Member, his or her spouse, or “tax dependents” (within the meaning of IRC section 223(d)(2)) but only to the extent that such amounts are not compensated for by insurance or otherwise. See IRS Publication 969 for more information about Qualified Medical Expenses.

**4.03** - Distributions are reported to the IRS annually by the Custodian. Form 1099-SA will be issued by the Custodian by January 31 of the year following the year of the distribution. Form 5498-SA will be issued by the Custodian by May 31 of the year following the year of the contribution. The Custodian will email a notification to the Member that the Forms are available for download, or if the Member has not opted to receive electronic notification, the Custodian will mail a paper copy of Forms to the Member’s last known mailing address.

**4.04** - The Member may designate one or more beneficiaries on the Custodian’s website or by completing the beneficiary designation form available on the Custodian’s website. If no beneficiary is named, the surviving spouse (if any) will be deemed the beneficiary. If the Member’s spouse is the designated or deemed beneficiary, the Account balance can be transferred upon the death of the Member to a new HSA in the name of the spouse. If no beneficiary is designated and there is no surviving spouse, the Account will be liquidated and a distribution will be made to the Member’s estate, successor in interest, or other party with authority to act on the Account. There are different tax consequences based on who is the designated beneficiary of the Account. See IRS Publication 969.

**4.05** - The Custodian may make any distributions from the Account required or authorized hereunder by mailed check, ACH, Fed wire or other electronic transfer to a payee at the address last furnished to the Custodian.

**4.06** - If check-writing is available in connection with the Account and the Member provides a check as payment to a third party, the Member authorizes the Custodian to either make a one-time electronic funds transfer from the Account, if eligible, or to process the payment as a check transaction.

**4.07** - The Custodian may make a distribution from the Account absent instruction from the Member, if directed to do so pursuant to a court order, garnishment, IRS levy, or other levy. In such event, the Custodian shall not incur any liability for acting in accordance with such court order, garnishment or levy.

**4.08** - The Member may not take distributions in excess of the funds available in the Account, and the Custodian has no obligation to distribute funds, and is not liable for failing to honor any distribution request that

would exceed the available funds in the Account. If the Account becomes overdrawn for any reason, the Member agrees to immediately repay the overdrawn amount or associated collection fees and costs incurred by the Custodian in connection therewith.

**4.09** - Contributions will generally be available for use within two to five business days of the Custodian's receipt thereof. Contributions received during non-business hours will be considered to be made on the next full-banking day.

#### **ARTICLE V. ACCOUNT**

**5.01 - Nonforfeitable.** The Member's interest in the balance of the Account is nonforfeitable as provided in IRC section 223(d)(1)(e), except as otherwise provided by IRS guidance.

**5.02 - Yield Plus Annuity Instrument.** If this option is available, the Member may invest any portion of the Account balance in an interest-bearing group annuity instrument made available by the Custodian ("Yield Plus"). The Custodian receives additional compensation from Yield Plus equal to the difference between the interest received by the Custodian on the Member's Yield Plus annuity balance and the amount of interest paid to the Account in respect of such Yield Plus annuity balance (the "Annuity Spread"). Yield Plus is not available for all Accounts and is not federally insured. For a description of the terms and conditions applicable to the Yield Plus annuity instrument, see <https://media.healthequity.com/documents/YPTermsAndConditions.pdf>.

**5.03 - Interest.** The Member's cash balance shall accrue interest at the interest rates listed on the Member's monthly statement and posted on the Custodian's website (login may be required). Interest rates are subject to change in accordance with the terms and conditions set forth in the Cash Supplement. Interest is generally credited to the Account monthly as of the last day of the statement cycle. If the Account is closed before accrued interest is credited, no interest will be credited for the month during which the Account is closed.

**5.04 - Certain Prohibited Investments.** No part of the custodial funds in the Account may be invested in life insurance contracts or in "collectibles" as defined in IRC section 408(m). Neither the Member nor the Custodian will engage in any "prohibited transaction" as defined in IRC section 4975 with respect to the Account (such as borrowing from or pledging the Account).

**5.05 - No Right of Member to Pledge Assets.** The Member shall have no right to pledge, assign, hypothecate, or in any manner create a lien upon any assets, payments, or benefits while such are held in the Account or cause or allow the assets in the Member's Account to be subject to or responsible for the debts, contracts, or torts of any person whether or not entitled to distributions under this Agreement.

**5.06 - Verification of Accounts.** To help the United States government fight the funding of terrorism and money-laundering activities, the Custodian is required to obtain, verify, and record certain information provided by the Member for identification purposes, including the Member's name, address, taxpayer identification number, and date of birth. Until this information has been verified pursuant to applicable federal laws, the Account may not be used. During such time, the Custodian will charge its customary fees for maintaining the Account; upon request from the Member, the Custodian will close the Account and return funds to the original contributor.

#### **ARTICLE VI. INVESTMENTS**

If the Account balance exceeds a certain threshold specified by the Custodian (which threshold may be adjusted by the Custodian at its sole discretion from time to time), the Member may invest the balance above that threshold in certain mutual funds and other securities (the "HSA Investments"). The Member's investments in HSA Investments, if any, shall be governed by a separate investment supplement to this Agreement (the "Investment Supplement"). The Investment Supplement, if applicable, shall be deemed a part of, and incorporated into, this Agreement. The Member is encouraged to closely review the terms and conditions of the Investment Supplement, a copy of which will be provided on the Custodian's portal prior to effecting any HSA Investments.

#### **ARTICLE VII. SERVICE FEES AND OTHER COMPENSATION TO THE CUSTODIAN**

**7.01** - The Custodian charges maintenance, administration, service, and other designated fees (including, without limitation, transfer, withdrawal and termination fees) and expenses for maintaining the Account as set forth in the Custodian's written schedule of fees from time to time in effect and provided to Member. Fees may be changed upon 30-days' notice to the Member. Monthly administration fees will be charged for each month or portion thereof that the Account remains open. The Custodian may deduct all fees and expenses from the Account or, at its discretion, charge the Member separately for such fees and expenses. The Custodian may also allow fees to be paid from other sources, such as the Member's employer or health plan.

**7.02** - The Custodian receives additional compensation for administering a cash placement program. The program that applies for the Account and the Custodian's compensation with respect to the program is described in the Cash Supplement.

**7.03** - The Custodian earns interchange fees arising from the use of the Visa® Health Account Card that may be issued for the Account ("Visa® Health Account Card"). Interchange fees are paid by the merchants and not by the Member.

**7.04** - The Custodian also earns administration and other fees in connection with the Member's HSA Investments, if any. Details regarding such additional fees are set forth in the Investment Supplement.

#### **ARTICLE VIII. REPRESENTATIONS, WARRANTIES, AND RESPONSIBILITIES OF THE MEMBER**

**The Member hereby represents, warrants, acknowledges and covenants as follows:**

**8.01** - The Member has established the Account voluntarily.

**8.02** - No contributions will be made to the Account unless the member satisfies applicable IRS eligibility requirements; specifically, the Member: (1) is covered under a qualifying high deductible health plan; (2) has no other health coverage except what is permitted; (3) is not enrolled in Medicare; and (4) cannot be claimed as a dependent on someone else's tax return (see IRS Publication 969). If the Member is unsure whether the Member is covered by a qualifying high deductible health plan, please contact the health plan. Eligibility is not required for a rollover or trustee-to-trustee transfer, or to open an account incident to death or divorce.

**8.03** - Any information given or to be given with respect to the Account is and shall be complete and accurate and the Custodian is and shall be entitled to rely upon any such information or directions given by the Member or the Member's authorized agent. The Custodian shall not be required to determine the validity or sufficiency of any receipt, affidavit, notice, or other paper or agreement delivered to the Custodian under this Agreement.

**8.04** - The Member is responsible for reviewing all provided materials and understanding generally how Qualified Medical Expenses may be paid from the Account and how funds are made available for investment within the Account.

**8.05** - The Member agrees that the Custodian may rely on any electronic signature given by the Member for purposes of the Member's authorization of withdrawals or third-party transfers, notices regarding change of name or address, or other instructions to the Custodian, except when closing the Account or when required by law.

**8.06** - The Custodian may choose to request direction from the Member as to any specific action or situation that arises with the Account, and if a request for direction is made, the Custodian shall incur no liability for following the Member's direction or for taking no action if no such direction is furnished to the Custodian.

**8.07** - The Member 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 prepare and submit any report or return as prescribed by the IRS.

**8.08** - Any rollovers into the Account shall be from another HSA or other qualified account.

**8.09** - The Member agrees to make Visa® Health Account Card transactions, issued by The Bancorp Bank (Member FDIC) pursuant to a license from Visa USA Inc., only to the extent there are sufficient available funds on deposit in the Account. The use of any Visa® Health Account Card in connection with the Account may be limited to eligible merchants that provide, among other things, healthcare-related goods and services and supply applicable merchant category codes for verification purposes. The Member is responsible for notifying the Custodian as soon as possible if the Visa® Health Account Card is lost or stolen to avoid potential losses. To the extent permitted by law, the Member is responsible for all uses of the Visa® Health Account Card prior to notifying the Custodian of the loss or theft. Notification must be made by calling the Custodian at the number printed on the back of the Member's Visa® Health Account Card, on the Member's statement, or on the Custodian's website.

**8.10** - If the Member has authorized his or her spouse and/or another third party to write checks and/or use the Visa® Health Account Card, including the issuance of additional Visa® Health Account Cards if requested for the Account, then the Member acknowledges and agrees (a) it is the Member's sole responsibility to inform the authorized individual(s) about the purpose of the Account and the tax consequences of using funds deposited in the Account for items that are not Qualified Medical Expenses, (b) to be bound by, and to have the Account bound by, any action taken by such authorized individual(s), and (c) to indemnify and hold harmless the Custodian from any Losses (as discussed in Article X) resulting from any actions taken by such authorized individual(s).

## ARTICLE IX. CUSTODIAN'S AUTHORIZATION AND EMPOWERMENT

The Member hereby authorizes and empowers the Custodian to administer the Account, including the power:

**9.01** - To hold funds received from time to time from the Member or another source, such as rollovers and HSA transfers, on behalf of the Account.

**9.02** - To collect service fees from the Account in accordance with this Agreement.

**9.03** - To perform any and all other acts, which in its judgment may be necessary or appropriate for the proper administration of the Account and the custodial assets, including correcting errors made by either the Custodian or an employer, or employing such attorneys, agents, and vendors as the Custodian deems appropriate without notice to the Member.

**9.04** - To seek, at the expense of the Account, direction or approval from a court of competent jurisdiction whenever the Custodian shall, in its sole discretion, deem it appropriate.

**9.05** - To request such documentation and certification deemed appropriate within the Custodian's discretion to verify and establish the identity of the beneficiary or the estate upon death of the Member, if the assets are to be distributed to the Member's estate.

**9.06** - To pay any estate, inheritance, income, or other tax or assessment attributable to any property, or interest held in the Account out of the assets of the Account upon such information or direction as the Custodian may require.

**9.07** - To require releases or other related documentation from the taxing authority, the Member, each beneficiary or other payee, and require indemnification from each payee as may be necessary for the Custodian's protection against tax liability.

**9.08** - To make payments, disbursements or distributions from the Account as directed by the Member or his or her authorized agent, in conformity with the terms of this Agreement and applicable law.

**9.09** - In the Custodian's sole discretion, to close the Account if the Account does not have a sufficient balance to pay fees that are due (including in connection with investments in HSA Investments).

**9.10** - In the Custodian's sole discretion, to not accept transfers to the Account from a custodian or trustee of another HSA or certain other type of account.

**9.11** - In the Custodian's sole discretion, to substitute another trustee or custodian if the IRS notifies the Custodian that a substitute custodian is required for the Account.

## ARTICLE X. INDEMNIFICATION

The Member agrees to indemnify, defend and hold harmless the Custodian and its affiliates, successors, assigns, directors, agents and employees (each, an "indemnitee") from and against any and all losses, damages, claims, liabilities, penalties, judgments, settlements, litigation, investigations, costs or expenses (including, without limitation, the reasonable fees and expenses of outside counsel) (collectively, "losses") arising out of or in connection with (a) any actions undertaken by an indemnitee at the instruction or direction of the Member; (b) the Custodian's good faith performance of this Agreement; and (c) the Member's HSA Investments. Notwithstanding the foregoing, with respect to any losses described in clauses (b) and (c) of the preceding sentence, the Member shall not be obligated to indemnify, defend, and hold harmless any of the indemnitees to the extent that such losses are determined by a court of competent jurisdiction through a final, non-appealable order to have been caused by the willful misconduct, bad faith or fraud of such indemnitee.

## ARTICLE XI. AMENDMENT; ASSIGNMENT

**11.01 - Amendment.** This Agreement may be amended from time to time by the Custodian. Each amendment will take effect upon thirty (30) days' notice to the Member made pursuant to Section 13.03 of this Agreement, and the Member will be deemed to have consented to such amendment unless, within thirty (30) days from the date the Custodian provides notice to the Member, the Member notifies the Custodian that Member does not consent to the amendment. In that event, the Account will be closed and the account balance, less any outstanding fees, will be transferred to another custodian designated by the Member or, if none is designated, distributed to the Member. This Agreement may not be amended by the Member without the Custodian's written consent.

**11.02 - Assignment.** The Custodian reserves the right to assign this Agreement without the Member's prior consent, provided that any assignee must be qualified under the IRC to be an HSA custodian or trustee. Upon assignment of this Agreement, the assignee shall automatically become custodian of the Account if it is qualified under the IRC to serve as an HSA custodian or trustee. The Custodian shall not be liable for any actions or failures to act neither on the part of any successor custodian or trustee, nor for any tax consequences that result from the transfer or distribution of the Member's assets.

## ARTICLE XII. TERMINATION

Either the Member or the Custodian may terminate this Agreement for any reason at any time by giving notice to the other.

**12.01 - Termination by Member.** If this Agreement is terminated by the Member, the Member shall make arrangements to transfer the Account balance to another eligible HSA custodian. If the Member does not complete a transfer of the entire Account balance to another eligible HSA custodian within thirty (30) days from the date of the termination notice provided to the Member, the Custodian will have the right, in its sole discretion, to (a) transfer the Account balance to another HSA custodian that the Custodian selects or (b) distribute the Account balance to the Member in a single sum; provided, however, that, in either case, the Custodian may hold back from the Account a reasonable amount of money that the Custodian believes is necessary to cover any fees, expenses, penalties or taxes chargeable against the Account, including any penalties associated with the liquidation of the Member's HSA Investments or annuity contract(s). Prior to any such transfer or distribution, the Custodian shall liquidate the Member's interests in any HSA Investment(s) and annuity contract(s). During the period between liquidation and distribution, the proceeds from such liquidation shall be placed in the cash balance of the Account.

**12.02 - Termination by Custodian.** If this Agreement is terminated by the Custodian, the Custodian, following notice to the Member, will have the right, in its sole discretion, to (a) transfer the Account balance to another HSA custodian that the Custodian selects or (b) distribute the Account balance to the Member in a single sum; provided, however, that, in either case, the Custodian may hold back from the Account a reasonable amount of money that the Custodian believes is necessary to cover any fees, expenses, penalties or taxes chargeable against the Account, including any penalties associated with the liquidation of the Member's HSA Investments or annuity contract(s). Prior to any such transfer or distribution, the Custodian shall liquidate the Member's interests in any HSA Investment(s) and annuity contract(s). During the period between liquidation and distribution, the proceeds from such liquidation shall be placed in the cash balance of the Account.

**12.03 - Other Considerations.** The Member acknowledges that HSA Investments will be liquidated upon Account termination without regard to market conditions or the impact of any contingent deferred sales charges, redemption fees, or other charges associated with the sale of HSA Investments (as provided for in the prospectus applicable to the fund or other investment). Accordingly, the termination of this Agreement could have adverse economic consequences for the Member.

## ARTICLE XIII. STATEMENTS; WEBSITE; NOTICES; AND PRIVACY

**13.01 - Statements and Reporting Written Objections or Exceptions.** The Custodian shall furnish or cause to be furnished to the Member statements concerning the status of the Account at least quarterly. The Member can access and retrieve the statements through the Custodian's website or other Internet portal, or choose to have such statements mailed at an additional cost as provided for on the written schedule of fees provided in the Member's welcome kit.

The Member shall have sixty (60) days after the date of mailing of a paper Account statement or the posting of an Account statement online at the Custodian's website, as the case may be, to file any written or verbal objections or exceptions with the Custodian. Written objections should be sent to HealthEquity, Inc., Attn: Account Inquiry, 15 West Scenic Pointe Drive, Suite 100, Draper, UT 84020; verbal objections should be made by calling the Custodian's Member Services department at 866.346.5800. The failure to file any objections or exceptions concerning errors or transactions within said sixty (60) day period shall signify the Member's approval of the statement and preclude the Member from making future objections or exceptions regarding the statement. Such approval by the Member shall constitute a full release and discharge of the Custodian with respect to such statement and all transactions, deposits, and disbursements disclosed on such statement.

**13.02 - Website.** The Custodian may grant the Member online access to the Account through the Custodian's website. The website may be made available for view access only, or to allow the Member to place trades in HSA Investments, as well as to execute certain other services online. The Custodian does not guarantee and is not liable for the performance, security or privacy of the online system, website, and browser or Internet connection through which Member accesses his or her Account. Website access may be unavailable at times, such as when (a) systems require regular maintenance or upgrades; (b) unforeseen maintenance is necessary; or (c) major unforeseen events occur, such as earthquakes, fires, floods, computer failures, interruption in telephone service, electrical outages, civil unrest or riots, war, or acts or threatened acts of terrorism, or other circumstances beyond the Custodian's control. The Custodian is not under any circumstance liable for the unavailability of access to the website or data entry errors and other errors made by the Member.

The Custodian will provide the Member a user name and password that will allow the Member access to his or her Account online. It shall be the Member's responsibility to keep the user name and password (and other

unique credentials such as social security number) private and secure. The Member shall be responsible for all actions taken by any person using the Member's user name and password (or other credentials) whether or not such use was authorized by the Member.

The Custodian does not approve or endorse information on or linked to the website that is prepared by third parties, including information regarding HSA Investments. The Custodian makes such information available only as a service and convenience to the Member. The Custodian does not guarantee the accuracy, timeliness, or completeness of such information, and does not warrant any results from Member's use or reliance on such information. HSA Investment information may quickly become unreliable for various reasons, including but not limited to, changes in market conditions, economic circumstances, and other events. The Custodian assumes no responsibility to keep content current or to correct inaccuracies or errors, and reserves the right to terminate access to the website at any time. Through the use of the website, Member agrees that the Custodian and its affiliates will not be liable to Member in any way for the termination, interruption, delay, or inaccuracy of any HSA Investment information.

**13.03 - Notice.** The Member consents to and agrees that all notices, and documentation, and other information related to Member's Account, including with respect to investments in HSA Investments, if applicable, will be made available to Member through the Custodian's website and/or delivered to the Member via e-mail and will be considered delivered when so made available or delivered. Any notice given to the Custodian will be considered delivered when the Custodian actually receives it in writing at its place of business. Upon the Member's written request, the Custodian will deliver to the Member any required notice at the most current address the Custodian has in its records. The Member must notify the Custodian in writing of any changes of address by (1) completing the change of address form and mailing it to HealthEquity, Inc., Attn: Account Inquiry, 15 West Scenic Pointe Drive, Suite 100, Draper, UT 84020; or (2) making the change through the Custodian's website.

**13.04 - Privacy.** The Account is subject to the privacy and security protections of the Gramm-Leach-Bliley Act ("GLBA"). The Custodian has policies and procedures in place designed to maintain the confidentiality of the Member's non-public personal information ("NPI", as defined by GLBA). NPI includes all information furnished by the Member, or those acting on behalf of the Member, in connection with the opening or maintenance of the Account, and is considered account information subject to IRS record retention requirements. The Custodian collects, processes, discloses, and safeguards account information in accordance with the (i) Notice of Privacy Practices, which is provided in the Member's welcome kit and available online (see Quick Links box at <https://healthequity.com/legal>), and (ii) Privacy Statement, which is available online (see Quick Links box at <https://healthequity.com/legal>).

#### **ARTICLE XIV. GOVERNING LAW; INVALIDITY; WAIVER**

The terms of this Agreement shall be governed by and construed in accordance with the laws of the State of Utah without giving effect to principles of law regarding conflicts of laws. If any part of this Agreement is held to be illegal or invalid, the remaining parts shall not be affected. Neither the Member's nor the Custodian's 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 of such provisions.

#### **ARTICLE XV. DISPUTE RESOLUTION; BINDING ARBITRATION**

The Members are encouraged to resolve any disputes through the Custodian's toll free line at 866.346.5800, or if not available, by physical mail or encrypted electronic mail. The Custodian does not encourage any disputes to be initiated by unsecured/unencrypted electronic mail because the communication may involve non-public personal information that may be intercepted.

The Member agrees that any claim, dispute or controversy between the Member and the Custodian (or any of their affiliates, successors, assigns, beneficiaries, spouses, directors, agents and employees) and any claim arising from or relating to the subject matter of this Agreement (including but not limited to the relationships which result from this Agreement), no matter against whom made, including the applicability of this arbitration clause and the validity of the entire agreement or any part hereof, shall be resolved by neutral binding arbitration by the American Arbitration Association, under the Arbitration Rules in effect at the time the claim is filed. Any arbitration shall only be brought by the Member individually and not as a group. Any arbitration hearing shall take place in Draper, Utah and the Member irrevocably waives any objection on the grounds of venue, forum non-conveniens or any similar grounds. For disputes under \$10,000, the arbitration may be conducted in person, by telephone, or based on written submissions.

Rules and forms of the American Arbitration Association may be obtained and all claims shall be filed at any office of the American Arbitration

Association or at Corporate Headquarters, 335 Madison Avenue, Floor 10, New York, New York 10017-4605. Telephone: 212.716.5800, Fax: 212.716.5905, Website: [www.adr.org](http://www.adr.org).

This arbitration agreement is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act. The award of the arbitrator will be final and judgment upon the award may be entered in any court having jurisdiction. If the arbitrator finds that the Member's claim is frivolous, then the Member shall pay for its own costs, and the arbitrator's fees and expenses, or such amounts as the arbitrator may decide. All decisions by the arbitrator are final and binding, and not subject to appeal to any court.

Notwithstanding the foregoing, (a) the Member may choose to file a case in small claims court for any dispute that could have been resolved in such a venue in the Member's jurisdiction and (b) the Custodian shall have the right to bring suit against the Member in a court of competent jurisdiction for the recovery of any sums owed to the Custodian under this Agreement, including, but not limited to, fees, costs, overdrawn amounts, expenses, and sums paid by the Custodian in error to or for the benefit of the Account. All court costs, legal expenses, reasonable compensation of time expended by the Custodian in the performance of its duties, and other appropriate and pertinent expenses and costs may be collected by the Custodian from the Account.

THE MEMBER IS HEREBY NOTIFIED THAT BY ACCEPTING THIS AGREEMENT, MEMBER IS WAIVING ALL RIGHTS UNDER STATE OR ANY OTHER LAW TO CLASS OR COLLECTIVE ACTIONS, INCLUDING CLASS ARBITRATION.

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