

# HEALTH SAVINGS ACCOUNT CUSTODIAL AGREEMENT

The named account owner (the “Member”) is establishing this health savings account (the “Account”) with HealthEquity, Inc. (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, depositing funds in the Account or otherwise using the Account, the Member consents to the terms of this custodial agreement (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. Additional information relating to health savings accounts (“HSAs”) may be found at [www.treasury.gov](http://www.treasury.gov) or in Internal Revenue Service (“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 such contributions at a bank or financial institution where such contributions are eligible for Federal Deposit Insurance Corporation (“FDIC”) insurance. Your account statements will set forth the name of the bank or financial institution where your cash deposits are held as of the end of the statement period.
- 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. ACCOUNT CONTRIBUTION LIMITS

- 2.01 For tax year 2017, the maximum annual contribution limit for the Account is \$3,400 for a Member with self-only coverage and \$6,750 for a Member with family coverage. For tax year 2018, the maximum annual contribution limit for the Account is \$3,450 for a Member with self-only coverage and \$6,900 for a Member with family coverage. These limits are subject to change in subsequent years.
- 2.02 Contributions to Archer MSAs or other HSAs owned by the Member count toward the maximum annual contribution limit for the Account.
- 2.03 Up to an additional \$1,000 of catch-up contributions may be made by or on behalf of a Member who is at least age 55 or older and is not enrolled in Medicare.

## 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-free. 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 Internal Revenue Code (“IRC”) section 213(d) for the Member, his or her spouse, or “tax dependents” (as defined in IRC section 152) but only to the extent that such amounts are not compensated for by insurance or otherwise.
- 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 distribution. 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 Upon the death of the Member, the Custodian will liquidate the Member’s interests in any HSA investment(s) and the Yield Plus annuity (each, as defined below), if applicable, and distribute the proceeds, along with all other cash held in the Member’s Account, to the Member’s designated beneficiaries. If no beneficiary is designated, the distribution will be made to the Member’s estate. 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 the Member’s spouse is designated as the beneficiary, the Account balance can be transferred upon the death of the Member to a new HSA in the name of the spouse. 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 is liable for any overdraft charges imposed by the Custodian. Funds on deposit will generally be available for withdrawal from the Account within two to five business days of deposit. Unless otherwise instructed by the Member, deposits 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).
- 5.02 **Interest**  
The Member’s cash balance and the Member’s Yield Plus annuity balance accrue interest at the rates listed on the Member’s monthly statement and posted on the Custodian’s website. Interest rates are subject to change. Interest accrues no later than one business day after the day the Custodian receives the funds provided the Account has been opened. Interest is 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 paid or accrued for that month. For more information go to: <https://www.healthequity.com/Member/CashInterestRates.aspx> (May require log in).
- 5.03 **Investment Limitations**  
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). The custodial funds in the Account may not be commingled with other property except in a common trust fund or common investment fund. 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).

#### 5.04 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.

#### 5.05 Verification of Accounts

To help the United States government fight the funding of terrorism and money-laundering activities, federal law requires the Custodian 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. INVESTMENT SUB-ACCOUNT

#### 6.01 Generally

The Member may at any time invest any amount of the Account in a non-FDIC insured interest-bearing group annuity instrument ("Yield Plus"). For a description of the terms and conditions applicable to the Yield Plus annuity see: <https://media.healthequity.com/documents/YPTermsAndConditions.pdf>.

In addition, if the Account balance exceeds a certain threshold specified by the Custodian, the Member may invest the balance above that threshold in certain mutual funds and other securities (the "HSA Investments"). Currently, HSA Investments are limited to open-end mutual funds.

The portion of the Member's Account that is comprised of HSA Investments and of interests in the Yield Plus annuity is referred to in this Agreement as the Member's "Investment Sub-Account."

#### 6.02 Custody of HSA Investments

Following the effectiveness of this Agreement, HealthEquity Trust Company ("HETC"), a Wyoming-chartered trust company and wholly-owned subsidiary of the Custodian, will serve as custodian of all HSA Investments and as "qualified custodian" (as such term is defined in Rule 206(4)-2 under the Investment Advisers Act of 1940, as amended) of all HSA Investments as to which HealthEquity Advisors, LLC (the "Advisor") provides investment advice through its automated investment advisory tool. The Advisor is a wholly-owned subsidiary of the Custodian and an investment adviser registered with the U.S. Securities and Exchange Commission. Charles Schwab Bank (together with its affiliates, "Schwab") serves as sub-custodian of all HSA Investments.

6.03 The HSA Investments made available to the Member are selected by the Custodian upon the advice of the Advisor. The Member has the sole authority and responsibility to direct the purchase or sale of the HSA Investments, except to the extent the Member has granted investment discretion to the Advisor pursuant to the Advisor's AutoPilot fee-based advisory program. Income generated by HSA Investments is credited to the Investment Sub-Account in accordance with the applicable prospectuses and other offering documents relating to such HSA Investments. Any income or dividends that accrue in the Investment Sub-Account shall be reinvested in the HSA Investments from which they accrue. Neither the Custodian nor HETC is responsible for any fluctuations in the price of an HSA Investment that may occur during the period between the time that a Member implements a purchase or sale in such HSA Investment via the Custodian's website and the time at which the purchase or sale is executed by the Custodian on the Member's behalf. The price of an HSA Investment that will be applied to the Member's Investment Sub-Account is determined by the closing price on the day that the purchase or sale of such HSA Investment is executed. If a purchase or sale of an HSA Investment is implemented by the Member after the close of the U.S. equity markets, the purchase or sale will generally be executed by the Custodian on the next day in which the U.S. equity markets are open.

6.04 Neither the Custodian nor HETC provides investment advice, or serves as an investment adviser to the Member and neither of them will recommend any HSA Investments made available through the Investment Sub-Account. Neither the Custodian nor HETC shall have a duty to disclose any risks associated with any HSA Investment and shall not have any liability for any loss of principal or income, nor for any expense which the Member may incur relating to any HSA Investment. Assets in the Investment Sub-Account are not FDIC insured, are not deposits or obligations of the Custodian or HETC, are not guaranteed by the Custodian, HETC or Advisor, and are subject to risk of loss. Investment advice may only be obtained from Advisor (fees apply) or another investment adviser selected by the Member. See the Advisor's website for more information about limitations and fees related to the services provided by Advisor. Investment advice is not part of the custodial services provided by the Custodian or HETC and is not covered by this Agreement.

6.05 The Custodian, the Advisor and/or HETC may receive from Schwab or an issuer of HSA Investments certain communications related to HSA Investments held in the Member's Investment Sub-account, including, among others, proxies and information concerning tender offers and proposed mergers (collectively, "Issuer Communications"). Issuer Communications may solicit a voting decision or other action regarding the HSA Investments to which they relate. To the extent the Custodian, the Advisor or HETC receives any Issuer Communications, the Member (i) authorizes the Custodian, the Advisor and/or HETC (as applicable) to exercise all voting decisions and take any other required actions related to such Issuer Communications on the Member's behalf; and (ii) acknowledges and agrees that the Member will not receive any copies of such Issuer Communications. The Custodian, the Advisor and/or HETC may utilize the services

of certain third-party consultants in determining how to vote in response to Issuer Communications. If the Member desires to receive Issuer Communications, the Member must notify the Custodian in writing, in which case the Custodian, the Advisor or HETC will forward the Issuer Communications to the Member's address of record promptly after receipt, and the Member will assume sole responsibility for voting or taking any action in respect of Issuer Communications.

6.06 Paper copies of any prospectuses, statements of additional information, shareholder reports, and other documentation related to HSA Investments may be obtained by the Member at no additional cost by calling the relevant HSA Investment's toll free shareholder service number or visiting the HSA Investment's website contained in its prospectus during normal business hours.

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

7.01 The Custodian may charge 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. 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 equal to the difference between the interest received by the Custodian on cash and/or the Yield Plus annuity balance held in the Account and the amount of interest paid to the Member in respect of such cash and/or the Yield Plus annuity balance (the "Cash Spread"). Cash Spreads vary depending on prevailing interest rates, and the Custodian reserves the right to change the amount of interest it pays to the Member in respect of his or her cash and/or Yield Plus annuity balance.

7.03 The Custodian also 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 Compensation Related to HSA Investments

The Custodian or HETC receives certain administration fees in connection with the Member's HSA Investments. HSA Investments are currently grouped into two categories: "Category 1 Funds" and "Category 2 Funds." Generally speaking: (i) the Category 1 Funds consist of passively-managed mutual funds, and the Category 2 Funds consist of actively managed mutual funds; and (ii) the Category 1 Funds charge shareholders lower overall expense ratios than those charged by the Category 2 Funds.

With respect to the Category 1 Funds, the Member generally pays an administration fee directly to the Custodian or HETC. This fee will be equal to a fixed annual percentage of the value of the Member's investments in Category 1 Funds, which is calculated based on the average daily investment balance, monthly in arrears and is deducted automatically from the Account. The current fee rate is disclosed on the Member's monthly statement. The Custodian and HETC reserve the right to change the fee rate from time to time.

With respect to the Category 2 Funds, the Member generally pays the administration fee indirectly to the Custodian or HETC because the administration fee is included in the expense ratios charged by the Category 2 Funds. Schwab receives compensation directly from the Category 2 Funds for the administrative services it provides in its capacity as the sub-custodian and thereafter shares a portion of such fees with the Custodian or HETC, as the case may be. The compensation that Schwab receives and the portion thereof that Schwab shares with the Custodian or HETC will vary from HSA Investment to HSA Investment.

Schwab may also receive additional fees in connection with the Member's HSA Investments, including, but not limited to: 12b-1 fees and other fees and payments from the HSA Investments or their service providers; credit, interest or other earnings on aggregate cash balances that Schwab has on deposit with any third party bank or other financial institution either with respect to funds (A) awaiting investment or reinvestment or (B) pending distribution; gains that may result from the correction of trade errors as a result of trades placed by Schwab on behalf of the Member.

7.05 Depending on prevailing interest rates, the Cash Spread that the Custodian receives with respect to cash balances and Yield Plus annuity balances may be greater than administration fees it receives on HSA Investments. Accordingly, the Custodian may earn greater fees from the Member's cash balances (or Yield Plus annuity balances) than the fees it earns on the Member's HSA Investments or vice versa.

### 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 The Member is eligible to contribute to the Account; specifically, that the Member: (1) is covered under a qualified high deductible health plan ("qualified HDHP") (2) is not also covered by any other health plan that is not a qualified HDHP (or is not otherwise eligible to be coupled with a HSA); (3) is not enrolled in Medicare; and (4) cannot be claimed as a dependent on another person's tax return; unless the Account is used solely to make rollover contributions. For purposes of this Agreement a qualified HDHP means a health plan that meets the following deductible limits requirements: For tax year 2017, the minimum annual deductible is \$1,300 for a Member with self-only coverage and \$2,600 for a Member with family coverage, and the annual out-of-pocket maximum is \$6,550 for a Member with self-only coverage and \$13,100 for a Member with family coverage. For tax year 2018, the minimum annual deductible is \$1,350 for a Member with self-only coverage and \$2,700 for a Member with family coverage, and the annual out-of-pocket

maximum is \$6,650 for a Member with self-only coverage and \$13,300 for a Member with family coverage. These limits are subject to cost-of-living increases each year; specific guidance for a given tax year can be found at [www.treasury.gov](http://www.treasury.gov). If the Member is unsure whether the Member is covered by a health plan that is considered a Qualified HDHP, the Member should contact its health plan.

- 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 Investment Sub-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 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. The Custodian shall hold such funds in the Account unless the Member has chosen to transfer assets into the Investment Sub-Account pursuant to the terms of this Agreement.
- 9.02 To invest and reinvest the Investment Sub-Account at the Member's direction from the list of available HSA Investments, and to sell such HSA Investments to cover fees or overdrafts without any investment responsibility on the part of the Custodian.
- 9.03 To reinvest all realized earnings and dividends paid from an HSA Investment in the Investment Sub-Account in the same HSA Investment or such other investment.
- 9.04 To collect service fees from the Account or the Investment Sub-Account in accordance with the terms of this Agreement.
- 9.05 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.
- 9.06 Upon the advice of the Advisor to the Custodian, to add, subtract, delete or otherwise modify any list of HSA Investments available for purchase by the Member, including but not limited to, terminating an HSA Investment or prohibiting the Member from making additional purchases of HSA Investments that are currently held in the Member's Investment Sub-Account. If, upon the advice of the Advisor, the Custodian decides to terminate one or more HSA Investments in which the Member is currently invested, the Custodian will notify the Member and offer to automatically transfer the Member's balance in such HSA Investment(s) to similar or comparable HSA Investment(s) (or, if no similar investment is available, to liquidate the existing HSA Investment and contribute the proceeds to the cash balance of the Member's Account). If, within thirty (30) days from the date the Custodian sends the notification to the Member, the Member does not elect to transfer its balance in the current HSA Investment(s) to another available HSA Investment, Member authorizes the Custodian to liquidate the Member's interest

in the current HSA Investment(s) and contribute the proceeds to the cash balance of the Member's Account. Following such liquidation, the terminated HSA Investment will no longer be available to the Member for purchase.

It is anticipated that the Custodian, upon the advice of the Advisor, will eliminate the Category 2 Funds as HSA Investment options during the first quarter of calendar year 2017, and thereafter such funds will not be available for purchase. The Custodian will provide notice to the Member prior to the elimination of the Category 2 Funds.

- 9.07 Member acknowledges that any liquidation of HSA Investments will not result in immediately available proceeds for deposit in the cash balance of the Member's Account and such proceeds will be available only in accordance with the terms and conditions applicable to the specific HSA Investment.
- 9.08 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 feels appropriate without notice to the Member.
- 9.09 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.
- 9.10 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.
- 9.11 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.
- 9.12 To require releases or other related documentation from the taxing authority, beneficiaries or other payee and require indemnification from such payee as may be necessary for the Custodian's protection against tax liability.
- 9.13 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.
- 9.14 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.
- 9.15 To hire third party service providers, such as record keepers, clearing firms or broker-dealers, to provide certain services with respect to the HSA Investments.
- 9.16 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.
- 9.17 In the Custodian's sole discretion, to not permit any withdrawal at a time when there are insufficient funds in the Account. In the event there is an overdraft of the Account, the Member shall be liable for any overdraft or collection fees.

#### ARTICLE X. INDEMNIFICATION

The Member agrees to indemnify, defend and hold harmless the Custodian and its affiliates, successors, assigns, directors, agents and employees 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) arising out of or in connection with (a) the Custodian's good faith performance of this Agreement, except 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; and (b) the Custodian's good faith following any instructions or directions from the Member received in accordance with this Agreement.

#### ARTICLE XI. AMENDMENT; ASSIGNMENT; AND TERMINATION

##### 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 Custodian will, if applicable, promptly liquidate the Member's interests in any HSA Investment(s) and the Yield Plus annuity and contribute the proceeds to the cash balance in the Account. The Member will be provided

an opportunity to 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 Yield Plus annuity balance.

#### 12.02 Termination by Custodian

If this Agreement is terminated by the Custodian, the Custodian will, following notice to the Member, promptly liquidate the Member's interests in any HSA Investment(s) and the Yield Plus annuity and contribute the proceeds to the cash balance in the Account. Following termination and, if applicable, liquidation of the Member's interests in any HSA Investment(s) and the Yield Plus annuity, 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 Yield Plus annuity balance.

#### 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 applicable 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 an Investment Sub-Account, 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 HSA Investments provided on or linked to the website, and makes the information available only as a service and convenience to the Member. The Custodian does not guarantee the accuracy, timeliness, or completeness of 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 this service 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 the Investment Sub-Account, 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 Custodian has policies and procedures in place designed to maintain the confidentiality of the Member's personal information. The Custodian collects, processes, discloses, and safeguards the Member's personal information in accordance with the Custodian's Annual Notice of Privacy Practices, which is provided as part of the Member's welcome kit and can also be viewed online at [http://healthequity.com/doclib/general/gen\\_privacy\\_notice.pdf](http://healthequity.com/doclib/general/gen_privacy_notice.pdf), as well as with the Custodian's Privacy Policy, which can be viewed online at <http://healthequity.com/legal.aspx#privacy>. All personal information furnished by the Member in connection with the Account is subject to the terms of the Custodian's Privacy Policy and Annual Notice of Privacy Practices.

### 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, (i) 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 (ii) 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, overdrafts, 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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