



# Health Savings Account Custodial Agreement

All HSA Consumers are required to accept the HSA Custodial Agreement. EMPOWER offers this form to Consumers who are unable to accept the agreement electronically. If you are unable to sign the Agreement online, follow the below instructions.

## Instructions:

1. Read the following Agreement.
2. Sign and date the last page.
3. Email the last page only to [customerservice@empowerflex.com](mailto:customerservice@empowerflex.com) or return it to your Employer to send to EMPOWER.

# Health Savings Account Custodial Agreement

The account owner (the “Owner”) is establishing this health savings account (an “HSA,” and, with respect to the Owner, the “Account”) with WEX Inc. (the “Custodian”) for the purpose of paying or reimbursing Qualified Medical Expenses (as defined below) of the Owner, the Owner’s spouse, and the Owner’s dependents. The Owner represents that, unless this account is used solely to make rollover contributions, the Owner is eligible to contribute to the Account; specifically, that the Owner: (a) is covered under a high deductible health plan as defined in Section 223(c)(2) of the Internal Revenue Code (the “Code”) (an “HDHP”); (b) is not also covered by any other health plan that is not an HDHP (with certain exceptions for plans providing preventive care and limited types of permitted insurance and permitted coverage); (c) is not enrolled in Medicare; and (d) cannot be claimed as a dependent on another person’s tax return. The Custodian represents that it is an approved nonbank trustee operating as a passive custodian of HSAs. The Custodian’s IRS Approval Letter is posted on [www.wexinc.com/wex-custodian-services](http://www.wexinc.com/wex-custodian-services).

The Owner and the Custodian agree as follows:

## 1. Definitions

In addition to the definitions set forth in the introductory paragraph above, the following terms are defined in this Agreement:

**1.1 “Agreement”** means this HSA Custodial Agreement.

**1.2 “Archer MSA”** means an Archer Medical Savings Account.

**1.3 “Business Day”** means any day that the Federal Reserve and the New York Stock Exchange are open.

**1.4 “Brokerage Account”** means an account established at an Exchange Member Firm to hold the Investment Portion of the Account.

**1.5 “Cash Portion of the Account”** means the cash balance of the funds in the Account, which is held at a Depository Institution and which the Owner has not directed to an investment or other asset deployment option offered by the Custodian.

**1.6 “Catch-up Contribution”** means an additional cash contribution that may be made by an Owner who is at least age 55 by the end of the taxable year and not enrolled in Medicare.

**1.7 “Code”** means the Internal Revenue Code.

**1.8 “Deposit Arrangement”** means the arrangement between the Custodian and the Depository Institution(s) by which the Custodian deposits the Cash Portion of the Account in Depository Institutions.

**1.9 “Depository Account”** means each deposit account at a Depository institution in which the Cash Portion of the Account are held on behalf of Custodian as custodian of the Account.

**1.10 “Depository Institution”** means the financial institution to which the Custodian may deposit the Cash Portion of the Account pursuant to the Deposit Arrangement.

**1.11 “Depository Interest Rate”** means the interest rate set by and payable by a Depository Institution on Custodian’s HSA deposits.

**1.12 “EIN”** means an employer identification number.

**1.13 “ERISA”** means the Employee Retirement Income Security Act of 1974.

**1.14 “Exchange Member Firm”** means a brokerage firm that holds at least one membership on a major U.S. stock exchange and is a member of a self-regulatory organization.

# Health Savings Account Custodial Agreement

**1.15 “Financial Advisor”** means Custodian's independent registered investment advisor or a financial advisor retained by the HSA Administrator. The Financial Advisor may be a registered investment advisor, a bank or similar financial institution, or a registered broker dealer, and may be affiliated with the HSA Administrator.

**1.16 “FDIC”** means the Federal Deposit Insurance Corporation, an independent agency of the U.S. government.

**1.17 “FINRA”** means Financial Industry Regulatory Authority.

**1.18 “HIPAA”** means the Health Insurance Portability and Accountability Act of 1996.

**1.19 “HSA Administrator”** means the third party or affiliate under contract with Custodian to provide certain administrative and record keeping services for HSAs.

**1.20 “Institution Designation”** means an instruction from an employer, health plan, health insurance company, or other third party through whom the Account is opened or with whom the Owner is associated that the Cash Portion of the Account shall be held at a specific Depository Institution.

**1.21 “Investment Fee Rebate”** means any compensation (direct or indirect) the Custodian receives from mutual funds for shareholder and recordkeeping services.

**1.22 “Investment Portion of the Account”** means the Owner's investment account.

**1.23 “IRS”** means Internal Revenue Service.

**1.24 “Large Deposit”** means an amount of a cash contribution established by the Custodian as a fraud prevention tool.

**1.25 “Maximum Annual Contribution Limit”** means the statutory maximum allowed under Section 223 of the Code.

**1.26 “NCUA”** means the National Credit Union Administration, an independent agency of the U.S. government.

**1.27 “Owner Net Interest”** means the amount of interest paid by the Depository Institution(s) and credited to the Depository Account after the deduction of the Program Fee.

**1.28 “Portfolio”** means the offering of mutual funds made available for investment through the Owner's Account.

**1.29 “Program Fee”** means an amount retained by Custodian in payment for its services that is subtracted from interest paid by each Depository Institution in connection with the Deposit Arrangement.

**1.30 “Qualified Medical Expenses”** means amounts paid for medical care as defined in Section 213(d) of the Code for the Owner, his or her spouse, or his or her dependents (as defined in Section 152 of the Code), but only to the extent that such amounts are not compensated for by insurance or otherwise. With certain exceptions, such as to pay premiums under COBRA, health insurance premiums are not Qualified Medical Expenses. See IRS Publication 969 for more information about Qualified Medical Expenses.

**1.31 “Separate Account”** means other deposit account(s) with a Depository Institution that the Owner, on behalf of the Account, opens and maintains directly or through an intermediary and that is not established pursuant to the Deposit Arrangement described herein.

**1.32 “SIPC”** means the Securities Investor Protection Corporation, a federally mandated, non-profit, member-funded, United States corporation created under the Securities Investor Protection Act of 1970. Most US-registered securities brokers are SIPC members.

# Health Savings Account Custodial Agreement

## 2. Account.

**2.1 When Account is Established.** The Account is established with the Custodian on the date it is set up with the Custodian, or on such later date as may be determined under applicable law. The Owner should verify his or her state's applicable law. If a newly eligible Owner enrolls in an HDHP after the first of the month, the Account may not be established until the first of the following month. The Custodian makes no representation as to whether expenses incurred after the establishment date of an unfunded Account may be reimbursed from contributions that are made on a later date.

**2.2 Identifying Number.** The Owner's Social Security Number will serve as the identification number for the Account. If the Owner is married and the Owner's spouse is eligible to open an HSA and wants to contribute to an HSA, the Owner's spouse must establish his or her own account. A Social Security Number is required because the Account must have Forms 1099 and 5498 to report contribution and distribution totals.

**2.3 Verification and Maintenance of Account.** The Custodian is entitled to obtain, verify, and record certain information provided by the Owner for identification purposes, including the Owner's name, address, date of birth, and identification number. Until this information has been verified, the Account may not be used. During such time, the Custodian may charge its customary fees for maintaining the Account; upon request from the Owner, the Custodian will close the Account and return funds to the original contributor, less any fees or expenses chargeable against the Account, or lost interest associated with the early withdrawal of any savings instrument or other investment in the Account. Neither the Custodian nor the HSA Administrator shall be liable for any tax consequences or tax withholdings incurred as a result of the transfer or distribution of Account assets.

**2.4 New Accounts.** The Account funds will be available generally no later than the ninth (9<sup>th</sup>) Business Day after the Account is established but could be held up to ninety (90) Business Days after funds are deposited in the Account. Please refer to [Section 3.1](#) for information about Large Deposits and to the HSA Administrator's rules governing funds availability for details.

**2.5 Beneficiaries; Successors-in-Interest.** If the Owner dies before receiving all the funds from the Account, payments from the Account will be made to the Owner's beneficiary(ies). The Owner may designate one or more persons or entities as the beneficiary of the Account. This designation can only be made through the HSA website account or on a form prescribed by the Custodian and will only be effective when filed with the Custodian during the Owner's lifetime. Unless specified otherwise in writing by the Owner, each beneficiary designation the Owner files with the Custodian will cancel all previous designations. The consent of a beneficiary will not be required for the Owner to revoke a beneficiary designation. If the Owner has designated both primary and contingent beneficiaries and no primary beneficiary(ies) survives the Owner, the contingent beneficiary(ies) shall acquire the designated share of the Account. If the Owner does not designate a beneficiary, or if all primary and contingent beneficiary(ies) predecease the Owner, the Owner's estate will be the beneficiary.

If the beneficiary is the Accountholder's spouse, the HSA shall become the spouse's HSA as of the date of death. If the beneficiary is not the Accountholder's spouse, the HSA shall cease to be an HSA as of the date of death of the Accountholder. If the beneficiary is the Accountholder's estate, or if no beneficiary was designated by the Accountholder, then the fair market value of the Account as of the date of death is taxable on the Accountholder's final personal income tax return. For other beneficiaries, the fair market value of the Account is taxable to the beneficiary in the tax year that includes the date of the Accountholder's death.

Upon learning of the Owner's death, the Custodian may, in its complete and sole discretion, make a final distribution to a beneficiary (other than the Owner's spouse) of his or her interest in the Account. This distribution may be made without the beneficiary's consent and may be placed in an interest-bearing (or similar) account that the Custodian chooses.

**2.6 Account Website.** The Owner will require internet access to open the Account. The HSA Administrator will provide the Owner with access to a personal HSA website account. The Owner will need to establish a username and password. The HSA Administrator will post all information the Owner needs to manage the Account on the HSA website account. This information includes Account balance, contributions, distributions, annual IRS Forms 1099-SA and 5498-SA, and any amendments to this Agreement. The Owner agrees to review the Account at least once per

# Health Savings Account Custodial Agreement

month. The Owner is responsible for protecting access to the Account and not sharing the Account username and password with anyone.

The HSA website account has all the information and tools the Owner needs to manage the Account and make investments.

## 3. Contributions.

**3.1 Cash Portion of the Account.** By opening an Account, the Owner directs that the Custodian set up credits to the Account, including amounts contributed to or received in the Account and cash proceeds of investment sales of Account assets directed by the Owner or made on the Owner's behalf, to be held in the Cash Portion of the Account until the Owner directs a transfer to an investment or other asset deployment option. Distributions and debits from the Account and allocations specifically directed by the Owner to other asset deployment options are debited from the Cash Portion of the Account.

The HSA Administrator will receive contributions (including rollovers, transfers, and mistaken distributions) from the Owner and/or employer and transfer them to a contribution account maintained with the Custodian by the HSA Administrator. The Custodian will transfer these amounts from the contribution account to the Cash Portion of the Account. The funds in the Cash Portion of the Account are separately accounted for. The Custodian may accept cash contributions for the tax year made by the Owner or on behalf of the Owner (by an employer, family member, or any other person). No contributions that exceed the maximum amount for family coverage plus the Catch-Up Contribution will be accepted by the Custodian for any Owner. The Custodian may delay funds availability on Large Deposits.

Contributions for any tax year may be made at any time before the deadline for filing the Owner's federal income tax return for that year (without extensions).

Rollover contributions from an HSA or an Archer MSA are not subject to the Maximum Annual Contribution Limit set forth in Section 4.

Qualified HSA distributions from a health flexible spending arrangement or health reimbursement arrangement must be completed in a trustee-to-trustee transfer and are not subject to the Maximum Annual Contribution Limit set forth in Section 4.

Qualified HSA funding distributions from an Individual Retirement Account (IRA) must be completed in a trustee-to-trustee transfer and are subject to the Maximum Annual Contribution Limit set forth in Section 4.

## 4. Contribution Limits.

The Account has a Maximum Annual Contribution Limit determined by the IRS. The Owner may qualify for a Catch-up Contribution, which allows for an additional cash contribution. Contributions to Archer MSAs and other HSAs count toward the Maximum Annual Contribution Limit. The Maximum Annual Contribution Limit is listed on the HSA Website, [www.irs.gov](http://www.irs.gov), and IRS Publication 969.

Contributions in excess of the Maximum Annual Contribution Limit are subject to an excise tax. However, Catch-Up Contributions are not subject to an excise tax.

## 5. Excess Contributions.

It is the responsibility of the Owner to determine whether contributions to the Account have exceeded the Maximum Annual Contribution Limit described in Section 4. If this happens, the Owner shall notify the HSA Administrator of the excess contributions to the Account. It is the responsibility of the Owner to request the withdrawal of the excess contribution and any net income attributable to such excess contribution.

## 6. Deposit Arrangement.

# Health Savings Account Custodial Agreement

**6.1** The Cash Portion of the Account is deposited by the Custodian for the benefit of the Owner, pursuant to an agreement between the Custodian and the Depository Institution(s). A list of the Depository Institutions is posted on <https://www.wexinc.com/wex-custodian-services/>. If Custodian transfers Owner's funds to more than one Depository Institution, Custodian will allocate Owner's funds among them. These allocations may change from time to time, and Owner will not receive any evidence of ownership, such as an account passbook, for the amounts held in the Depository Accounts. Instead, evidence of ownership will be recorded by book entry on the records of Custodian. The Owner acknowledges that the Cash Portion of the Account is subject to – and the Custodian is not liable for – risks associated with cash deposits, including but not limited to creditor rights, banking and currency risks, and insolvency of a Depository Institution.

**6.2** Under the Deposit Arrangement, Custodian will retransfer Owner's funds from one or more Depository Institutions to pay items, process withdrawals, process investment purchases, and honor wire, debit card, and ACH withdrawals from the Account.

**6.3** The Custodian acts in accordance with this Agreement and the Owner's instructions and does not exercise discretionary authority or control with respect to the Cash Portion of the Account placed in a Depository Account or otherwise with respect to the Deposit Arrangement. The Custodian has not advised the Owner with respect to the decision to use the Deposit Arrangement or to use any Depository Institution.

**6.4** The Custodian (or one of its affiliates) may be a customer of, provide services to, be an affiliate of, or have other financial interactions with Depository Institutions.

## **7. Nonforfeitable Account.**

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

## **8. Prohibited Transactions.**

No part of the custodial funds in the Account may be invested in life insurance contracts or in collectibles as defined in Section 408(m) of the Code.

The assets of the Account may not be commingled with other property except in a common trust fund or common investment fund.

Neither the Owner nor the Custodian will engage in any prohibited transaction with respect to the Account (such as borrowing or pledging the account or engaging in any other prohibited transaction as defined in Section 4975 of the Code).

## **9. Distributions**

Distributions of funds from the Account may be made upon the direction of the Owner.

Distributions from the Account that are used exclusively to pay or reimburse Qualified Medical Expenses of the Owner, the Owner's spouse, or the Owner's dependents are tax-free. Distributions that are not used for Qualified Medical Expenses are included in the Owner's gross income and are subject to an additional amount of tax on that amount, which is set by statute; however, the additional tax does not apply if the distribution is made after the Owner'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 Owner is responsible for substantiating that the distribution is for Qualified Medical Expenses and must maintain records sufficient to show, if required, that the distribution is tax-free.

The Owner may access the Account via debit card, electronic transfer, or a check request. The Owner may request a direct transfer of the Account balance to another HSA custodian. No distributions of in-kind transfers shall be permitted. The Social Security Number or tax identification number of the recipient must be on file or provided to the Custodian before the Custodian is obligated to make a distribution or transfer. Distributions shall be subject to all

# Health Savings Account Custodial Agreement

applicable tax and other laws and regulations, including possible early distribution penalties or surrender charges, and do not have any withholding requirements. The Owner authorizes electronic debit and credit entries, if applicable, to his or her designated checking or savings account. The Owner also authorizes adjustments to these accounts for error corrections. This authorization will remain in effect until the termination of this Agreement.

If the Owner requests a distribution that exceeds the balance in the Cash Portion of the Account, some or all of the investments will be sold as described in Section 17.4 and sufficient funds will be transferred from the Investment Portion of the Account to the Cash Portion of the Account to cover the amount of the distribution.

**9.1 No Overdrafts Permitted.** The Owner agrees not to withdraw or attempt to withdraw funds in excess of the balance in the Account. Should an overdraft occur, the Owner must repay the overdraft immediately and all account activity shall be suspended until the Owner contributes the necessary funds to reinstate the Account. The Custodian and HSA Administrator are not required to provide the Owner with notice or make demand for such repayment. In the event of an overdraft, the HSA Administrator or Custodian reserves the right, in its discretion, to close the Account without notice. The closing of the Account does not relieve the Owner of any obligation to repay the full amount of the overdraft. Repayment of the overdraft shall be applied first, to any outstanding fees related to the Account, and second, to any negative balance of the Account. If after sixty (60) days the Owner has not contributed the necessary funds, then the Owner agrees to be subject to any and all collection actions needed to recover such funds. If the Custodian or HSA Administrator closes the Account, the HSA Administrator or the Custodian, reserves the right, in its discretion, to refuse to reinstate the Account or open a new Account in the Owner's name. The HSA Administrator or Custodian will not reinstate or open a new Account if the Custodian or the HSA Administrator believes there is evidence of fraud or other factors that may cause a loss.

**9.2 Mistaken Distributions.** The Custodian may allow the Owner to return mistaken Account distributions provided there is clear and convincing evidence that the amount(s) distributed from the Account was because of a mistake of fact due to reasonable cause. In determining whether this standard has been met, the Custodian shall have the ability to rely on the Owner's representation that the distribution was, in fact, a mistake. The Custodian may not permit the return of mistaken distributions that relate to a calendar year after December 31 of that year.

In no event shall the Custodian restrict or limit Account distributions to the payment or reimbursement of the Owner's Qualified Medical Expenses. However, the Custodian may, on a case-by-case basis or as a matter of policy, place reasonable restrictions on both the frequency and the minimum amount of distributions from the Account.

## 10. Preparation of Reports.

The Owner 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.

## 11. Service Providers.

The Custodian will maintain custody of the Account assets in the Owner's Cash Portion and Investment Portion of the Account. The Custodian's broker-dealer trading partner is authorized to place security orders, settle security trades, hold securities in custody, and perform related activities on the Owner's behalf. The Custodian or the HSA Administrator is authorized to contract for or make arrangements with any affiliate or third party for the provision of necessary services to the Account, including without limitation for investment record keeping.

The Custodian has entered into an agreement for certain recordkeeping and administration duties with the HSA Administrator. The HSA Administrator has also entered into an agreement with the Owner or the Owner's employer to receive and forward contributions to the Account and to provide other related services. Under this agreement, the HSA Administrator is authorized and directed to: (a) provide the Owner with access to a personal HSA website account; (b) maintain electronic records showing the assets in the Account and records of contributions, distributions, investment transactions, and any other related transactions; (c) process distribution requests from the Account; (d) maintain all information necessary for the Custodian to prepare required returns, reports, or other documents for applicable taxing authorities, including IRS Forms 1099-SA and 5498-SA; and (e) provide related services.

# Health Savings Account Custodial Agreement

All questions and comments should be directed to the HSA Administrator through its website or by other means made available to the Owner through the HSA Administrator. The Owner must provide all investment instructions through the HSA website account.

If the Custodian terminates its agreement with the HSA Administrator, the Custodian may resign as custodian of the Account on the effective date of termination of the agreement between the Custodian and the HSA Administrator, and the Owner may transfer the Account to the HSA Administrator's successor custodian or to another custodian of the Owner's choice. The Owner is responsible for the transfer of the Account.

If the HSA Administrator terminates its agreement with the Custodian, the HSA Administrator may also make arrangements for the transfer of the Account to a successor custodian.

In the event the Owner terminates employment with his or her employer or otherwise discontinues making contributions under the employer's HSA funding program, the Owner may be offered an opportunity to continue to receive HSA services under the HSA Administrator's retail HSA program. The Owner will be provided with details of that program, which may include, without limitation, changes to investment choices, fees, plan type, username, password, and/or online security features.

## **12. Representations, Warranties, and Responsibilities of the Owner.**

The Owner represents and warrants that any information given or to be given with respect to the Account is and shall be complete and accurate; that any directions given to the HSA Administrator or action taken by the Owner will be proper under this Agreement; and that the Custodian is entitled to rely upon any such information or directions given by the Owner. If the Custodian fails to receive directions from the Owner regarding any transaction, or the Custodian receives ambiguous directions regarding any transaction, or the Custodian in good faith believes that any transaction requested is in dispute, the Custodian reserves the right to take no action until further clarification acceptable to the Custodian is received from the Owner or the appropriate government or judicial authority. The Custodian shall not be responsible in the event of any failure or interruption of services resulting from the act or omission of any third-party service provider used to give such direction, and shall not be responsible for any losses in the event of such a failure or interruption. The Custodian shall not be responsible for losses of any kind that may result from the Owner's directions to the Custodian or the Owner's actions or failures to act, and the Owner agrees to reimburse the Custodian for any loss the Custodian may incur as a result of such directions, actions, or failures to act. The Custodian shall not be responsible for any penalties, taxes, judgments, or expenses the Owner incurs in connection with the Account. The Custodian has the right, but not the obligation, to require the Owner to provide, on a form provided by or acceptable to the Custodian, proof or certification that the Owner is eligible to contribute to the Account, including, but not limited to, proof or certification that the Owner is covered by an HDHP.

The Owner acknowledges that establishment of the Account is completely voluntary and that, to the best of his or her knowledge, the employer, if applicable, does not (a) limit the Owner's ability to move funds to another HSA beyond restrictions imposed by the Code; (b) impose conditions on utilization of HSA funds beyond those permitted under the Code; (c) make or influence the investment decisions with respect to funds contributed to the Account; (d) represent that the Account is an employee welfare benefit plan established or maintained by the employer; or (e) has received any payment or compensation in connection with the Account.

The Custodian may permit the Owner to appoint, through written notice acceptable to the Custodian, an authorized agent to act on the Owner's behalf with respect to this Agreement (for example, attorney-in-fact, executor, administrator, or investment manager); however, the Custodian has no duty to determine the validity of such appointment or any instrument appointing such authorized agent.

The Custodian shall not be responsible for losses of any kind that may result from directions, actions, or failures to act by the Owner's authorized agent, and the Owner agrees to reimburse the Custodian for any loss the Custodian may incur as a result of such directions, actions, or failures to act by the Owner's authorized agent. The Owner will have thirty (30) days after receiving any notice, however received, pertaining to any documents, account information, or other information to notify the Custodian in writing of any errors or inaccuracies. If the Owner does not notify the Custodian within thirty (30) days, the notices, documents, account information, or other information shall be deemed correct and accurate, and the Custodian shall have no further liability.



# Health Savings Account Custodial Agreement

The Custodian shall not be required to perform any additional services unless specifically agreed to under the terms and conditions of this Agreement, or as required under the Code and the applicable guidance with respect to HSAs. The Owner agrees to indemnify and hold the Custodian and HSA Administrator harmless for any and all claims, actions, proceedings, damages, judgments, liabilities, costs, and expenses, including attorneys' fees, arising from or in connection with this Agreement. To the extent written instructions or notices are required under this Agreement, the Custodian may accept or provide such information in any other forms permitted by law, including through electronic mediums.

## **13. Interest; Custodian Compensation.**

Each full month the Account remains open, the Owner's Cash Portion of the Account will be credited with Owner Net Interest. The Owner Net Interest is determined by the interest paid by each Depository Institution less the Program Fee and will not differ based on the Depository Institution where the Cash Portion of the Account is deposited. The Owner's Net Interest Rate is available at <https://www.wexinc.com/wex-custodian-services/>.

The HSA Administrator may temporarily hold funds in contribution or distribution accounts with the Custodian in the ordinary course of its duties. Until such time that funds deposited to a contribution account are allocated to the Cash Portion of the Account, or funds are withdrawn electronically or by check from a distribution account, any revenue that the HSA Administrator earns from the use of funds deposited in these accounts shall be part of its compensation for servicing the Account. The Owner acknowledges and understands that fees charged under this Agreement would be higher if the HSA Administrator did not earn revenue from the funds held in these accounts.

The compensation the Custodian receives for services rendered includes the Program Fee, revenue from the use of funds temporarily held in an operational account at Custodian, and if applicable, investment fees and other fees as described in this Section 13.

The Owner has reviewed the Custodian's direct and indirect compensation (as described herein) and determined that the compensation the Custodian receives is reasonable for the services it provides. The Owner has further determined that such services are necessary for the establishment and maintenance of Account and the Deposit Arrangement.

The Custodian or the HSA Administrator reserves the right to charge a periodic service fee or other designated fees (for example, a transfer, rollover, investment management, termination, or closure fee) for maintaining the Account. In addition, the Custodian has the right to be reimbursed for all reasonable expenses, including legal expenses, the Custodian incurs in connection with the administration of the Account. The Custodian has the right to charge a \$75 per hour fee for any additional services provided to the Owner that are not described in this Agreement. The Custodian may charge the Owner separately for any fees or expenses or may deduct the amount of the fees or expenses from the assets in the Account, at the Custodian's discretion. The Custodian reserves the right to charge any additional fee upon thirty (30) days' notice to the Owner that the fee will be effective.

The HSA Administrator may charge a separate fee for administration and other services related to the Account. The Owner authorizes the HSA Administrator to charge the Owner separately for those fees or to deduct the amount of the fees or expenses from the assets in the Account. An employer may also agree to pay all or a portion of these fees on the Owner's behalf. The amount of fees payable may be set forth in a separate fee schedule that may be part of the application or disclosed on the HSA website account. In all cases, the HSA Administrator may charge the Account a \$25 fee or the remaining balance of the Account if the balance is less than \$25 for twenty-four (24) consecutive months.

To the extent that the Owner directs the investment of the Account in mutual funds, balances invested in those mutual funds are subject to investment fees and other charges and expenses as described by the applicable prospectuses, available on the HSA website account and this Agreement. The Owner cannot reimburse the Account for those commissions.

## **14. Investment Portion of the Account.**

# Health Savings Account Custodial Agreement

**14.1 Automatic Investment Transfers.** The Owner may set up the Account to make auto-investment transfers from the Cash Portion of the Account to the Investment Portion of the Account on the HSA website. The Cash Portion of the Account must exceed the investment threshold by at least a minimum amount before transferring funds. When that occurs, the excess funds will automatically be transferred to the Investment Portion of the Account. The Owner may provide instructions for the investment of such funds among an array of mutual funds made available in the Investment Portion of the Account. If the Owner does not provide instructions on where to invest such amounts, the amount will be held in a default fund (the “**Default Fund**”). The Default Fund may be an interest-bearing FDIC-insured account or a money market mutual fund or similar investment fund within the Investment Portion of the Account and has a minimum investment risk. Unless the Owner makes changes, the investment allocations will remain in effect and be applied to both current and future transfers to the Investment Portion of the Account.

The Owner's auto-investment transfers will not be monitored by the Custodian or the HSA Administrator or any agent, employee, or contractor of the Custodian or the HSA Administrator. The Owner's ability to invest through the Account depends on the balance in the Cash Portion of the Account. If the investment threshold falls below the required amount that the Owner must maintain in the Cash Portion of the Account by more than the minimum amount for transferring funds, the Owner's mutual funds will automatically be sold as described in Section 17.4 and transferred back to the Cash Portion of the Account. This may require liquidation of some or all investments in order to transfer the proceeds to the Cash Portion of the Account.

**14.2 One-Time Transfers.** The Owner may perform a manual transfer from the Cash Portion of the Account to the Investment Portion of the Account or vice versa, based on his or her investment elections or specific fund choices.

**14.3 Investment Options.** A broad array of mutual fund options will be available for investment. These fund options may be selected by an independent registered investment advisor. Alternatively, the HSA Administrator or Financial Advisor may replicate the investment options selected by the employer for its 401(k) plan or other Defined Contribution (DC) Plan that permits participant-directed investments. **The Owner acknowledges and agrees that investments, including mutual funds, are not a deposit and are not insured by the FDIC, NCUA, or any federal government agency. There is no guarantee of the value of the investments, and they may lose value. The Owner also acknowledges that past investment performance is not a guarantee of future investment results. The Owner agrees to review investment information before investing in mutual funds or other investments.**

If the Portfolio is made available by the Custodian and its independent registered investment advisor, the available mutual funds in the Portfolio may change from time to time. The Portfolio is posted on the HSA Website. The Custodian will not provide advance notice of a change in share class for the same mutual fund option, whether initiated by the Custodian or the fund company, unless the change results in fee increases for the investment option. The Financial Advisor or HSA Administrator may also change investment options to match changes in investments (or a subset thereof) selected by the employer for its defined contribution retirement plan. In any event, if the Owner does not provide new investment instructions, the Owner authorizes and directs the Custodian to liquidate the balances invested in the eliminated investment option and transfer the proceeds to the Default Fund or a fund of similar risk, based on the instructions the Custodian receives from the Financial Advisor or the HSA Administrator.

The Owner agrees that the Custodian is not responsible for the HSA Administrator's selection or monitoring of the Financial Advisor, the Financial Advisor's selection, monitoring, deletion, or replacement of mutual funds made available in the Portfolio, or any obligation of the employer or its financial advisors with respect to the selection or monitoring of investments made available through the employer's defined contribution retirement plan that are also made available in the Portfolio. The Owner agrees that the Custodian is not responsible for fee disclosure obligations of Financial Advisors or the HSA Administrator, or for any claim arising from actual or alleged violations by the HSA Administrator or Financial Advisor of any state or federal laws related to broker-dealers or investment advisors.

The Investment Portion of the Account includes the Default Fund. If the Default Fund is an interest-bearing FDIC-insured account, interest will be paid on cash held. Cash held in an interest-bearing FDIC-insured account within the Investment Portion of the Account and the Cash Portion of the Account, combined with other Separate Accounts with the Depository Institution, are FDIC- insured up to the then-current limit.

# Health Savings Account Custodial Agreement

**14.4 Investment Processing.** The Owner is solely responsible for managing the investments in the Account. The Owner must complete all investment transactions, including all communications and instructions, through the HSA website account. The Owner will establish a username and password for Owner's HSA website account and will safeguard and not share such username and password with anyone. All instructions received from the HSA website account shall be deemed to have been authorized by the Owner. The Owner may use the HSA website account to place orders for the purchase and sale of mutual funds or other investments the Custodian makes available. The Owner hereby authorizes and directs the Custodian to accept such investment instructions from the HSA website account, to pay for mutual fund share purchases from the Account, and to transfer proceeds from the sale of mutual fund shares to the Cash Portion of the Account.

Investment instructions that require the movement of cash to or from the Cash Portion of the Account, which includes auto-investment transfers or one-time transfers, will be processed the Business Day following the Business Day that investment instructions are submitted on the HSA website account. Investment instructions that do not require the movement of cash to or from the Cash Portion of the Account (such as investment election changes, realigning the Portfolio, or scheduling an automatic realignment of the Portfolio), will be processed on the same Business Day if received prior to the close of the U.S. equity markets. Any instructions received after the close of the U.S. equity markets will be processed within one (1) Business Day from receipt of complete and accurate instructions. The Owner's investment instructions received will be delayed one (1) Business Day if there are pending auto-investment transfers or one-time transfers. It is the Owner's responsibility to determine market holidays and when there is an early market closing, which would cause the investment instructions to be processed on the following Business Day.

The Owner agrees that the Custodian relies only on instructions received through the HSA website account, and the Custodian has no duty to investigate any instructions. The Custodian's obligation to execute the Owner's instruction is contingent upon the determination that the instruction can be administered, and the instructions have followed the Custodian's procedures. The Owner's investment instructions may be delayed at the Custodian's discretion due to pending investment activity.

None of the Custodian, the HSA Administrator, and the Financial Advisor to the HSA Administrator provide investment advice to the Owner or select or recommend mutual funds or other investments options for the Owner. None of the Custodian, the HSA Administrator, and the Financial Advisor to the HSA Administrator will question whether an investment selected by the Owner is appropriate or suitable. The Owner agrees that the Custodian will not be liable for any investment losses. A financial advisor may assume responsibility for rendering investment advice with respect to the Account and may offer an opinion or judgment to the Owner on matters concerning the value or suitability of any investment or proposed investment for the Account, only if the Owner and the financial advisor enter into a separate agreement to provide investment advice to the Owner.

Investment transactions for the Account will not be processed until the Custodian receives the funds to be invested and the instruction in proper form and has established that all mutual funds selected for the Portfolio are eligible for trading through the Custodian's broker-dealer trading partner. The Custodian is not responsible if a financial advisor or the HSA Administrator makes an incomplete or incorrect list of mutual funds available for investment in the Portfolio. Investment transactions will be processed either as soon as administratively practicable or on the scheduled date for processing.

**14.5 Investment Fees, Expenses, Dividends, and Rights.** Some mutual funds may charge a redemption fee when they are sold. Any redemption fee will be charged to the Investment Portion of the Account, and the Owner cannot reimburse the Account for redemption fees. The mutual fund prospectus will disclose whether redemption fees apply.

Some mutual funds pay dividends or interest. Dividends and interest will be reinvested in the same mutual funds that pay them. The prospectus for each fund will provide more information. All conversion, subscription, voting, and other rights pertaining to any securities held in the Account, if applicable, will be exercised on the Owner's behalf. The available mutual funds are subject to fees and expenses, as described in the prospectus or other disclosure materials made available to the Owner through the HSA website account. The Owner may invest in other investment vehicles (for example, stocks, bonds, or savings accounts) only if the Financial Advisor makes such investments available as investment options.

# Health Savings Account Custodial Agreement

If the Portfolio is made available by the Custodian and its independent registered investment advisor, the Custodian will transfer the Investment Fee Rebate to the Investment Portion of the Account based on the Owner's holdings in each fund. The Investment Fee Rebate is calculated at the end of each calendar quarter and received within thirty (30) days thereafter. The Custodian will allocate the Owner's share of the Investment Fee Rebate, if any, to the Investment Portion of the Account within five (5) Business Days after receipt as additional earnings. If the Portfolio is made available by a Financial Advisor and/or the HSA Administrator, the Custodian may follow the same process with Investment Fee Rebates. Alternatively, the Custodian may transfer the Investment Fee Rebate to the HSA Administrator or the Financial Advisor selected by the HSA Administrator as compensation for investment services. Prior to the end of each calendar quarter, the Custodian may deduct a custodial management fee from the Investment Portion of the Account in an amount up to one-sixteenth of one percent (.0625%) per quarter or equal to an annual fee of one-quarter of one percent (.25%) on balances invested in mutual funds in the Investment Portion of the Account.

The HSA Administrator or Financial Advisor will disclose any additional fees separately, such as fees based on a fixed percentage of the value of investments. The HSA Administrator or Financial Advisor, as applicable, is responsible for complying with all requirements of applicable law regarding disclosure of investment-related compensation, reimbursements, fees, and/or expenses payable from the Account.

If the Owner opens a portion of the Account for investments, the Owner may have access to a Financial Advisor for personal investment advice pursuant to a separate agreement between the Owner and the Financial Advisor. Pursuant to the agreement between the Owner and the Financial Advisor, a financial advisory fee may be deducted from the Investment Portion of the Account on a monthly or quarterly basis as indicated in the applicable fee disclosure.

**14.6 Health Savings Brokerage Account.** The Investment Portion of the Account may include an option for a Brokerage Account. In order to open a Brokerage Account, the Owner will be required to have a balance in the Investment Portion of the Account and enter into a separate agreement with the Brokerage Account broker. The Brokerage Account will permit the Owner to direct the investment of the Account within many investment choices available to the Brokerage Account. The auto-investment feature does not apply within the Brokerage Account, and investments within the Brokerage Account will not be liquidated if the Owner has a negative balance in the Cash Portion of the Account. The Owner is responsible for buying and selling investments within the Brokerage Account and monitoring the Cash Portion of the Account to prevent closure of the Account. The Custodian may instruct the broker to liquidate investments in the Brokerage Account only if the Account is closed, deemed to be abandoned under applicable state law, subject to levies or garnishments, or upon the Owner's death. The Owner agrees that the Custodian is not responsible for the selection or monitoring of investments in the Brokerage Account, determining the suitability of investments, or the fee disclosure obligations of the broker. **The Owner is responsible for complying with all laws and employer policies regarding insider trading. If the Owner or a family member is associated with a FINRA or Exchange Member Firm, the Owner agrees to notify his or her employer before opening a Brokerage Account and obtain any required authorizations. The Owner agrees to work with the broker as applicable regarding any investment restrictions and duplicate copies of trade confirmations and statements. As custodian of the Brokerage Account, the Custodian does not monitor the Owner's investments and is not responsible for compliance with FINRA Rule 3210 or similar state or federal restrictions on insider trading.**

## 15. FDIC/NCUA Eligibility.

If the Cash Portion of the Account is held at an FDIC-insured Depository Institution, then it is eligible for insurance by the FDIC, an independent agency of the U.S. government, up to a standard maximum amount in accordance with the rules of the FDIC (together with any other deposits owned by the Owner at the same Depository Institution, including deposits from similar cash placement programs offered by other custodians, brokerages, or other entities, as well as savings and checking accounts, money market deposit accounts, and CDs issued directly to the Owner by the Depository Institution). Additional information regarding FDIC insurance is available at [fdic.gov](http://fdic.gov) or by calling the FDIC at 877-ASK-FDIC (877-275-3342).

If the Cash Portion of the Account is held at an NCUA-insured Depository Institution, then it is eligible for insurance by the NCUA, an independent agency of the U.S. government, up to a standard maximum amount in accordance with the rules of the NCUA. Similar to the FDIC, the limits of NCUA coverage are based on the aggregate amount of a consumer's funds held by the insured credit union. Additional information regarding NCUA insurance is available at [ncua.gov](http://ncua.gov) or by calling the NCUA at 800-755-1030, option 2.

# Health Savings Account Custodial Agreement

The Custodian is not responsible for monitoring the Cash Portion of the Account or other deposits in Separate Account(s) at a Depository Institution to determine whether the Owner exceeds the limits of FDIC or NCUA coverage, as applicable. Contributions to the Account are eligible for FDIC or NCUA insurance, as applicable, only after they reach the Depository Account. Contributions are not insured in transit, including but not limited to, while held by an employer or administrative entity contracted by an employer, and while in receipt of the Custodian prior to being deposited in the Account by the Custodian.

The Owner acknowledges and agrees that securities and insurance product purchases as directed by the Owner and held in the Owner's Account, such as mutual funds and non-insured deposits, are investment or insurance products. Such assets: (a) are not insured by the FDIC or NCUA; (b) carry no Custodian, Depository Institution, or other bank or government guarantees; and (c) have associated risks. Securities investments and insurance products are subject to risk of loss, including loss of principal. While investment securities may be subject to SIPC insurance coverage, SIPC coverage does not cover fluctuations in the market value. Insurance products are guaranteed by the insurer, subject to credit risk.

## 16. Consent to Electronic Disclosures.

By executing this Agreement, the Owner agrees that all account information from the Custodian or the HSA Administrator, including but not limited to the enrollment form, the Custodial Agreement and Disclosure Statement, the Custodian's Interest Rate Disclosure, the Custodian's Privacy Policy, HSA Forms 1099-SA and 5498-SA, documents issued by mutual fund companies (including prospectuses, trade confirmations, and other investment fund information), and any confirmation of online instructions or elections shall be made available exclusively in electronic form. Account information may be viewed at any time by logging into the HSA website account. Account information related to the Account will be posted on the HSA website account, or at the Custodian's discretion, provided either by email to the email address the HSA Administrator has on file for the Owner, or by U.S. Mail to the Owner's mailing address the HSA Administrator has on file for the Owner. The Owner is responsible to advise the HSA Administrator in writing of any change to the email or mailing addresses on file for the Owner.

Records of the Account contributions, distributions, investment activity, earnings, and balances will be made available exclusively through the HSA website account. Before being granted online access to the Account records, it will be necessary to enter a username, password, and/or enhanced online security feature that the Owner will receive prior to logging into the HSA website account.

Consent to electronic notices will apply to all future applicable notices relating to the Account until the Owner is no longer the Owner of the Account or withdraws consent as provided below.

The Owner may receive the Account summary and tax forms in paper form by changing the election online in the HSA website account under Statements & Notifications. Additional fees may apply for paper copies. Consult the HSA Administrator for any applicable fees. Investment options may not be available if the Owner does not consent to receive prospectuses, trade confirmations, and related documents in electronic form. The Owner may withdraw consent to electronic delivery of notices on a future date by contacting the HSA Administrator at the contact information listed in the HSA website account. The Custodian reserves the right to not open an account or to close the Account if the Owner withdraws consent to electronic delivery of notices.

In order to receive information and disclosures in electronic format, the Owner must have access to a computer with the following browser software or equivalent software and communications access to the Internet:

Browser Software	Minimum Version Required
Microsoft Internet Explorer (IE)	IE11 and greater
Mozilla FireFox	Most current and prior 2 versions
Apple Safari	Most current and prior 2 versions
Google Chrome	Most current and prior 2 versions
Microsoft Edge (Windows 10)	Most current and prior 2 versions

# Health Savings Account Custodial Agreement

The Owner will also need Adobe Acrobat Reader to view and download the agreements, disclosures, Account summaries, tax forms, investment fund information, or any other applicable forms, and ability to download and save information and access to a printer to order to keep agreements and summaries for the Owner's records.

The Owner agrees to check the HSA website account no less frequently than monthly to view the Account activity and communications, which will have information about the Account balance, contributions, distributions, and recent amendments to this Agreement readily available for review. The Owner will verify that all activity on the Account is authorized activity. The HSA website account will provide a link or links to other websites for the Owner to obtain specific information about the investments, including prospectuses. It may be necessary for the Owner to establish a separate username, password, and/or enhanced online security feature for this purpose and to complete additional forms, and is responsible for keeping this information confidential. The Custodian is not responsible for any other person's use of this information.

## 17. Custodian Powers.

The Custodian may register securities in its name or in the name of its nominee without disclosing that such securities are held as custodian or as nominee. Except as expressly provided otherwise in this Agreement, the Custodian shall have all the powers generally conferred on custodians under the Code. Additionally, the Custodian shall also have the power to perform any and all acts that it deems necessary or appropriate for the proper custodial servicing of the Account. The Custodian may adjust the balance of the Account as necessary to correct administrative errors, including improperly allocated contributions, distributions, earnings, or losses. In the event a check or other instrument is returned for insufficient funds, any corresponding contributions to the Account are also subject to adjustment by the Custodian. The Custodian or the HSA Administrator may liquidate all or a portion of the Owner's investments and the Cash Portion of the Account and transfer the proceeds as may be required to satisfy levies or garnishments under applicable state law.

**17.1 Assignment.** The Custodian reserves the right to assign this Agreement without the Owner's prior consent, provided that any assignee must be qualified under the Code to serve as an HSA custodian or trustee. Upon assignment of this Agreement, the assignee shall automatically become a custodian of the Account. 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 Owner's assets.

**17.2 Termination of Agreement, Resignation, or Substitution of the Custodian.** The Custodian may terminate this Agreement at any time by giving written notice to the Owner. The Owner may terminate this Agreement at any time by giving written notice to the HSA Administrator. If this Agreement is terminated by the Owner, the Custodian or the HSA Administrator may charge to the Account an amount of money necessary to cover any associated costs pertaining to terminating this Agreement and closing the Account. The Account will be closed in accordance with the HSA Administrator's internal policies and procedures. The Custodian will substitute another trustee or custodian if the IRS notifies the Custodian that a substitute custodian is required because the Custodian has failed to comply with the requirements of section 1.408-2(e) of the federal Income Tax Regulations, or is not keeping the records, making returns, or rendering statements that are required by forms or regulations. The Custodian may resign as custodian at any time effective thirty (30) days after the date that the Custodian provides written notice to the Owner of the Custodian's resignation (the "**Termination Notice Date**"). Upon receipt of that notice, the Owner shall make arrangements to transfer the Account to another financial organization. In some cases, and in its sole discretion, the Custodian may permit the Owner to reinstate the Account. If the Owner does not reinstate the Account or complete a transfer of the Account within thirty (30) days from the Termination Notice Date, the Custodian may (a) transfer the Account to a successor HSA custodian or trustee in accordance with Section 17.3 or (b) pay the Account to the Owner in a single sum by mailing a check to the Owner's last known address. The Owner is responsible for determining eligibility to roll over this amount to another HSA within thirty (30) days. The HSA Administrator may escheat this amount (transfer it) to the state of the Owner's last known residence under the rules applicable to that state if the check is not presented for payment within one hundred eighty (180) days of the date of distribution. The HSA Administrator will attempt to contact the Owner before escheating the funds. Once the funds are escheated, the Owner may be able to recover the funds from the state. The Owner agrees that neither the Custodian nor the HSA Administrator are responsible for any funds that are escheated to a state.

# Health Savings Account Custodial Agreement

**17.3 Successor Trustee or Custodian.** If the Custodian changes its name, reorganizes, merges with another organization (or comes under the control of any federal or state agency), or if the entire organization (or any portion that includes the Account) is bought by another organization, that organization (or agency) shall automatically become the trustee or custodian of the Account, but only if it is the type of organization authorized to serve as an HSA trustee or custodian. If the organization is not the type of organization authorized by law to serve as an HSA trustee or custodian, then the Owner must make arrangements to transfer the Account to another financial organization. If the Owner does not complete a transfer of the Account within thirty (30) days from the date the Custodian provides written notice, the Custodian has the right to transfer the Account assets to a successor HSA custodian or trustee that the Custodian chooses in its sole discretion, or the Custodian may distribute the Account to the Owner in a single sum by mailing a check to the Owner's last known address. The Owner is responsible for determining eligibility to roll over this amount to another HSA within thirty (30) days. The HSA Administrator may escheat this amount (transfer it) to the state of the Owner's last known residence under rules applicable to that state, if the check is not presented for payment within one hundred eighty (180) days of the date of distribution. The HSA Administrator will attempt to contact the Owner before escheating the funds. Once the funds are escheated, the Owner may be able to recover the funds from the state. The Owner agrees that neither the Custodian nor the HSA Administrator are responsible for any funds that are escheated to a state.

**17.4 Liquidation of Assets.** The Custodian has the right to liquidate assets in the Investment Portion of the Account if necessary, for example: (a) due to Owner's request(s) for one or more distributions via the portal for a maximum amount of cash plus investments (in which case the system will liquidate the assets needed to satisfy the distribution(s)); (b) to pay fees, expenses, taxes, penalties, or surrender charges properly chargeable against the Account; (c) when Owner's Cash Portion of the Account is lower than the cash balance threshold due to disbursements through Owner's HSA (through debit card swipes, bill pay, reimbursements to Owner, and so forth); (d) due to a request by Owner or the HSA Administrator to close the HSA; (e) due to escheatment; or (f) due to garnishment of wages. The Custodian will liquidate the Owner's investments in the same proportion as the investment holdings, and the Owner agrees not to hold the Custodian liable for any adverse consequences that may result from its decision to liquidate investments in this order. Due to market fluctuations during the time period for processing the distribution request, the Owner might not receive the total amount of the requested distribution.

**17.5 Abandoned Accounts.** The Account may be considered abandoned when there is no owner-generated activity (including, but not limited to, deposits, withdrawals, letters, phone calls, or address changes) for an extended period of time not longer than required under applicable law. In the event that the Custodian determines that the Account has been abandoned, the Custodian may close the Account and issue a check to the Owner's address on the HSA website account. Funds in abandoned Accounts may also be escheated (transferred) to the state of the Owner's last known residence if the Account is deemed abandoned under rules applicable to that state. The Custodian will attempt to contact the Owner before escheating the funds. Once the funds are escheated, the Owner may be able to recover the funds from the state. The Owner agrees that neither the Custodian nor the HSA Administrator are responsible for any funds that are escheated to a state.

If the Account balance is \$25 or less for twenty-four (24) consecutive months as determined by the HSA Administrator, the HSA Administrator reserves the right to cancel the Account debit card and close the Account without notifying the Owner. If the Account was set up through the Owner's employer, and the Account balance is zero and employment with the employer has been terminated, the HSA Administrator has the right to close the Account immediately.

## **18. Indemnification.**

The Owner 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, investigation, costs, or expenses (including, without limitation, reasonable attorneys' fees and expenses) 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 willful misconduct, bad faith, or fraud of such indemnitee; and (b) the Custodian's good faith following any instructions or directions from the Owner received in accordance with this Agreement.

## **19. Disclaimers.**

# Health Savings Account Custodial Agreement

**19.1** The Account is not intended to constitute an “employee welfare benefit plan” or an “employee pension benefit plan” as defined by ERISA or any similar state or federal law. Regardless of the status of the Account under ERISA, neither the Custodian nor the HSA Administrator are a “plan administrator” or “plan sponsor” of the Account or of any arrangement or plan of which the Account is a part. The Custodian expressly disclaims responsibility for ERISA’s participation, vesting, funding, reporting, disclosure, and fiduciary requirements as they may apply to the Account, including but not limited to any requirement to provide notices or election forms regarding continuation coverage under ERISA. The Custodian is not providing services to the Owner or the Account as a fiduciary under ERISA, under any comparable and applicable provisions of federal, state, or local law, or under the Investment Advisor’s Act of 1940, and nothing in this Agreement shall be construed as conferring fiduciary status upon the Custodian (except solely as is required by applicable law to maintain nonbank trustee status). If and to the extent that the Account is deemed to be part of an arrangement or plan subject to ERISA, including any determination that the Account is subject to ERISA’s continuation coverage requirements, this agreement may be amended or terminated at the Custodian’s sole discretion as of the effective date of such determination or on such later date, as the Custodian deems appropriate.

**19.2** The Custodian has no duty to determine whether the Owner’s contributions or distributions comply with the Code, Treasury Regulations, IRS Rulings, or this Agreement. In no event shall the Custodian be responsible to determine if contributions made by the Owner’s employer to the Account, if applicable, meet the requirements for comparable contributions, the rules of which are set forth in the Code and IRS published guidance.

**19.3** The Custodian will maintain all confidential information in accordance with all applicable banking laws and regulations. The Account established by this Agreement, however, is not intended to be a “health plan” or other “covered entity” as defined by regulations interpreting HIPAA. The Custodian does not have access to personal health information and expressly disclaims responsibility for the duties imposed upon covered entities or its business associates under HIPAA.

**19.4** HSAs are personal health savings vehicles rather than group employee benefits. Although with respect to the Account, the Owner’s employer, if applicable, may have agreed to forward contributions through its payroll system to the HSA Administrator for contribution to the Account, the Owner is not restricted from moving funds to another HSA custodian or trustee (but the employer, if applicable, is not required to forward payroll contributions to another HSA provider).

**19.5** Some states and localities may have tax laws that are different from the federal laws for HSAs. The Owner is responsible for consulting with tax or legal advisors with questions about state and local laws that may affect the Account.

**19.6** Custodian shall have no liability for any funds prior to receipt by Custodian or not under Custodian’s custody or control.

**19.7** The Custodian will be released without any liability on its part from the performance of its obligations hereunder, to the extent such performance is prevented by a major unforeseen event or condition not reasonably within the control of the Custodian that prevents, delays, hinders, or adversely affects, in whole or in material part, the performance of its obligations or that renders the performance of such obligations so difficult or costly as to make such performance commercially unreasonable. For purposes of this provision, major unforeseen events or conditions include but are not limited to earthquake, fire, blizzard, flood, tornado, or any other adverse weather condition; pandemic or epidemic; military operation; acts or threatened acts of terrorism (whether foreign or domestic in origin); computer failure; interruption in telephone, internet, or the world wide web services; electrical outage; national emergency; labor shortage, civil unrest, or riot; or the order of any government agency or acting government authority or any other cause beyond the Custodian’s reasonable control whether similar or dissimilar to the foregoing causes.

## **20. Privacy.**

The Custodian has policies and procedures in place designed to maintain the confidentiality of the Owner’s personal information. The Custodian collects, processes, discloses, and safeguards the Owner’s personal information in accordance with its Notice of Privacy Practices, which can be viewed online at <https://www.wexinc.com/wex-custodian-services/>, as well as with its Privacy Policy, which can be viewed online at <https://www.wexinc.com/wex-custodian-services/>. All personal information furnished by the Owner in connection with the Account is subject to the



# Health Savings Account Custodial Agreement

terms of the Custodian's Privacy Policy and Annual Notice of Privacy Practices. By executing this Agreement through acceptance of its terms below, the Owner acknowledges receipt of the Privacy Policy and agrees to receive future notices of any updates through the Account website.

## 21. Sweep Disclosure Notification.

As set forth under this Agreement, the Owner may make contributions to the Account. Based on the value of the Account and minimum amounts defined under this agreement, funds may be moved between the Cash Portion and Investment Portion of the Account. These funds may either be in a deposit account at a financial institution selected by Custodian or an investment account at an outside investment company, at the Owner's direction.

If the Owner directs that the funds be in a deposit account with the Custodian, then these funds will be deposited with a financial institution and insured by the FDIC-insured up to the then-current limit. In the event the Custodian fails, the Owner will be a secured creditor of the Custodian to the extent of the FDIC deposit insurance limits. If the funds are in excess of the FDIC deposit insurance limits, the Owner will be an unsecured creditor with respect to the excess.

If the Owner directs that the funds be at an outside investment company, then these funds are not considered a deposit account with the Custodian and are not FDIC insured. In the event the Custodian fails, these funds will remain the Owner's separate funds at the outside investment company and are subject to the provisions of the outside investment company's oversight.

By executing this Agreement, the Owner acknowledges receipt of the Sweep Disclosure Notification and agrees to receive future notices of any updates to the Sweep Disclosure Notification at <https://www.wexinc.com/wex-custodian-services/> or in this Agreement, which is available on the Owner's HSA website account, and to review the Sweep Disclosure Notification no less frequently than annually.

## 22. Notice.

The Owner consents to and agrees that all notices, and documentation, and other information related to the Account, including with respect to the Investment Account, if applicable, will be made available to the Owner through the HSA Administrator's website and/or delivered to the Owner via e-mail. All notices to the Custodian should be mailed to:

WEX Inc.  
Attn: HSA Custodial Operations  
97 Darling Avenue  
South Portland, ME 04106

Any notice to be given to the Owner regarding the Account will be considered effective when the Custodian makes it available to the Owner through the HSA Administrator's website and/or delivers it to the Owner via e-mail or mails it to the last address that the Custodian has for the Owner in the Custodian's records. Any notice to be given to the Custodian will be considered effective when the Custodian has received it and had reasonable time to act upon it. The Owner must notify the Custodian of any change of address as soon as possible. Upon the Owner's written request, the Custodian will deliver to the Owner any required notice at the most current address the Custodian has in its records. The Owner must notify the HSA Administrator in writing of any changes of address by (a) completing the change of address form and mailing it to the HSA Administrator; or (b) making the change through the HSA Administrators website.

## 23. Choice of Law.

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 the State of Delaware will govern. If any part of this agreement is held to be illegal or invalid, the remaining parts shall not be affected. Neither the Owner's nor the Custodian's failure to enforce at any time or for any period of time any of the provisions of this Agreement shall be construed as a waiver of such provisions or the Owner's right or the Custodian's right thereafter to enforce each and every such provision.

# Health Savings Account Custodial Agreement

---

## **24. Amendments.**

The Custodian has the right to amend this Agreement at any time. Any amendment the Custodian makes to comply with federal or state law does not require the Owner's consent. The Owner will be deemed to have consented to any other amendment unless, within thirty (30) days from the date of notice of the amendment, the Owner notifies the HSA Administrator in writing that the Owner does not consent. The Custodian reserves the right, at its discretion, to notify the Owner of any amendments by posting notice of the amendment on the HSA website account or sending a notice of the amendment via email or U.S. Mail. If a notice regarding an amendment to this Agreement is posted on the Owner's HSA website account or sent via email or U.S. Mail, it will be considered effective when posted on the Owner's HSA website account or sent to the Owner at the last electronic or other mailing address maintained for the Owner by the Owner's HSA Administrator in its records.

## **25. Integration with Other Provisions.**

Notwithstanding any other section that may be added or incorporated in this Agreement, the provisions of Sections 1 through 25 are controlling. Any additional section in this Agreement that is inconsistent with Section 223 of the Code or IRS published guidance will be void.

# Electronic Disclosure Statement

In order to apply for an HSA, you must consent to receipt of documents in electronic form, including your enrollment form, Custodial Agreement and Disclosure Statement, Interest Rate Disclosure, Privacy Policy, 1099-SA and 5498-SA tax forms, documents issued by mutual fund companies, including prospectuses, trade confirmations, change in investment options and other investment fund information, your HSA summary and any confirmation of your online instructions or elections. Your consent will apply to all future applicable notices relating to your Health Savings Account (HSA) until you are no longer an accountholder or until you withdraw consent as provided below.

All communications will be provided electronically. If you wish to receive your HSA summary and tax forms in paper form, you may select that option by changing your election under Message Center/Update Notification Preferences or by calling your HSA Administrator. Additional fees may apply for paper copies. Consult your HSA Administrator for any applicable fees. Investment options may not be available if you do not consent to receive prospectuses, trade confirmations and related documents in electronic form.

## Security, Hardware and Software Information

In order to receive information and disclosures in electronic format, you must have access to a computer with the following browser software or equivalent software and communications access to the Internet:

Browser Software	Minimum Version Required
Microsoft Internet Explorer (IE)	IE11 and greater
Mozilla FireFox	Most current and prior 2 versions
Apple Safari	Most current and prior 2 versions
Google Chrome	Most current and prior 2 versions
Microsoft Edge (Windows 10)	Most current and prior 2 versions

You will also need Adobe Acrobat Reader to view and download the agreements, disclosures, HSA summaries, tax forms, investment fund information or any other applicable forms.

## For Your Records

In order to keep agreements and summaries for your records, you will need access to a printer or the ability to download and save information.

## Withdrawing Your Consent

You may withdraw your consent to receive the initial account opening disclosures by exiting this online session any time prior to submitting your application for processing. Your consent is not stored unless you complete this online session. If you wish to withdraw your consent to electronic delivery of notices on a future date, please contact your HSA Administrator at the

contact information listed on this website. We reserve the right to not open an account or to close your account if you withdraw your consent to electronic delivery of notices.

By checking the "I have read and agree to the Electronic Disclosure Agreement" box below, you indicated your consent to receive the disclosures listed above electronically. You also confirm that you have the effective ability to access the agreements, disclosures, summary, tax forms, investment information, and confirmations in electronic form.



# Important Information on Patriot Act Requirements

---

To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents. Your identity may be verified through the use of a database maintained by a third party. If your identity cannot be verified, you understand that you may be required to provide additional information, and that your HSA may be closed if additional verification is not possible. Upon such closure, funds deposited in your HSA will be returned to you, or your employer, less any fees, expenses or taxes chargeable against your HSA, or penalties or surrender charges associated with the early withdrawal of any savings instrument or other investment in your HSA. We shall not be liable for any tax consequences you may incur that result from the transfer of distribution of your assets as a result of this distribution.

**Health Savings Account Custodial Agreement, Electronic Disclosure Statement & Important Information on Patriot Act Requirements**

I have reviewed and accepted the terms of the above agreements.

---

**SIGNATURE** **PRINTED NAME**

---

**DATE**

**Instructions:** Email this page only to [customerservice@empowerflex.com](mailto:customerservice@empowerflex.com) or return it to your Employer to send to EMPOWER.