



## Custodial Agreement and Disclosure Statement – Health Savings Account

The Accountholder is establishing this Health Savings Account (“HSA”) exclusively for the purpose of paying or reimbursing qualified medical expenses of the Accountholder, his or her spouse, and dependents. The Accountholder represents that, unless this account is used solely to make rollover contributions, he or she is eligible to contribute to this HSA; specifically, that he or she (i) is covered under a high deductible health plan (HDHP), (ii) 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), (iii) is not enrolled in Medicare, and (iv) cannot be claimed as a dependent on another person’s tax return. Healthcare Bank, a division of Bell State Bank & Trust is the “Custodian” under this agreement and the Third Party Administrator (“TPA”) is the “Designated Representative” and “HSA Administrator.”

The Accountholder and the Custodian make the following agreement:

### **Article I.**

The Custodian will accept cash contributions for the tax year made by the Accountholder or on behalf of the Accountholder (by an employer, family member or any other person). No contributions will be accepted by the Custodian for any Accountholder that exceeds the maximum amount for family coverage plus the catch-up contribution (for individuals who attain age fifty-five (55) before the close of the tax year).

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

Rollover or transfer contributions from an HSA, Individual Retirement Account, or an Archer Medical Savings account (Archer MSA) are permitted subject to applicable rules.

### **Article II.**

Contributions to the Accountholder’s HSA are subject to a maximum annual limit, based on whether the Accountholder has elected single or family coverage under the HDHP. For calendar year 2013, the maximum annual contribution limit for an Accountholder with single coverage is \$3,250. This amount increases to \$3,300 in 2014. For calendar year 2013, the maximum annual contribution limit for an Accountholder with family coverage is \$6,450. This amount increases to \$6,550 in 2014. These limits are subject to cost-of-living adjustments after 2014. Eligibility and contribution limits are determined on a month-to-month basis.

Contributions to Archer MSAs or other HSAs count toward the maximum annual contribution limit to this HSA.

An additional \$1,000 catch-up contribution may be made for an Accountholder who is at least age fifty-five (55) or older and not enrolled in Medicare.

Contributions in excess of the maximum annual contribution limit are subject to an excise tax. However, the catch-up contributions are not subject to an excise tax.

### **Article III.**

It is the responsibility of the Accountholder to determine whether contributions to this HSA have exceeded the maximum annual contribution limit described in Article II. If contributions to this HSA or any combination of your HSAs exceed the maximum annual contribution limit, the Accountholder shall remove the excess contributions. It is the responsibility of the Accountholder to timely request the withdrawal of the excess contribution and any net income attributable to such excess contribution. Regardless of which year excess contributions were made, a withdrawal of excess contributions will be reported as having occurred in the tax year of such withdrawal.

### **Article IV.**

The Accountholder’s interest in the balance in this custodial account is nonforfeitable.

### **Article V.**

No part of the custodial funds in this account may be invested in life insurance contracts or in collectibles as defined in Section 408(m) of the Internal Revenue Code (the “Code”).

The assets of this account may not be commingled with other property, except in a common trust fund or common investment fund.

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

**Article VI.**

Debit Card payments and distributions of funds from this HSA may be made upon the direction of the Accountholder.

Distributions from this HSA that are used exclusively to pay or reimburse qualified medical expenses of the Accountholder, his or her spouse, or dependents are tax free. However, distributions that are not used for qualified medical expenses are included in the Accountholder's gross income and are subject to an additional twenty percent (20%) tax on that amount. The additional twenty percent (20%) tax does not apply if the distribution is made after the Accountholder's death, disability, or reaching age sixty-five (65).

The Custodian is not required to determine whether the distribution is for the payment or reimbursement of qualified medical expenses. Only the Accountholder is responsible for substantiating that the distribution is for qualified medical expenses and must maintain records sufficient to show, if required, that the distribution is tax free.

**Article VII.**

If the Accountholder dies before the entire interest in the account is distributed, the entire account will be disposed of as follows:

1. If the beneficiary is the Accountholder's spouse, the HSA shall become the spouse's HSA as of the date of death.
2. If the beneficiary is not the Accountholder's spouse, the HSA shall cease to be an HSA as of the date of death. The fair market value of the account is taxable to the non-spouse primary beneficiary in the tax year that includes such date.
3. If the beneficiary is the Accountholder's estate or if there is no beneficiary, the fair market value of the account as of the date of death is taxable on the Accountholder's final personal income tax return.

**Article VIII.**

The Accountholder agrees to provide the Custodian with information necessary for the Custodian to prepare any reports or returns required by the IRS.

The Custodian agrees to prepare and submit any reports or returns as prescribed by the IRS.

**Article IX.**

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

**Article X.**

This agreement will be amended from time to time to comply with the provisions of the Code or IRS published guidance. Other amendments may be made with the consent of the Accountholder. Your HSA is established with the Custodian on the date it is set up with the Custodian. If the initial account is established after the first of the month, the HSA is established the first of the following month. The Custodian makes no representation whether expenses incurred after the establishment date of an unfunded HSA may be reimbursed from contributions that are made on a later date.

**Article XI**

**11.01 Definitions.** In this part of the agreement, the words "you" and "your" shall mean Accountholder. The Accountholder is the person who establishes the custodian account. The words "we," "us" and "our" shall refer to the TPA and the Custodian.

**11.02 Delegation of Responsibility.** The Custodian has delegated responsibility for certain recordkeeping and administration to the TPA. The TPA shall receive and forward contributions to your HSA, and make distributions from your HSA. All of your questions, comments, and instructions should be directed to the TPA through its website or by other means made available to you through the TPA. You have appointed the TPA your Designated Representative to serve as HSA Administrator in the separate agreement titled "Designation of Representative by Accountholder."

When you provide instructions to the TPA regarding your HSA, the TPA will pass those instructions on to the Custodian, through the Application.

**11.03 Notices and Change of Address.** Any required notice regarding this HSA will be considered effective when sent to the intended recipient via e-mail or, at our discretion, via U.S. Mail to the last electronic or other mailing address maintained for you by the TPA in its records. Any notice to be given to the TPA or the Custodian will be considered effective when actually received. You or the intended recipient must notify the TPA if you change your e-mail address or other mailing address. In the event of your death, your spouse or account beneficiary must notify the TPA of any corresponding change in e-mail or other mailing address. Any notice you provide to the TPA or the Custodian will be considered effective when actually received.

**11.04 Representations and Responsibilities.** You represent and warrant that any information you provide us regarding your HSA with respect to this agreement is complete and accurate. Further, you agree that any directions you give the TPA or action you take will be proper under this agreement, and that we are entitled to rely upon any such information or directions. If we fail to receive directions from you regarding any transaction, or if we receive ambiguous directions regarding any transaction, or we in good faith believe that any transaction requested is in dispute, we reserve the right to take no action until further clarification acceptable to us is received from you or the appropriate government or judicial authority. We 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. We shall not be responsible for losses of any kind that may result from your directions to us or your actions or failures to act, and you agree to reimburse us for any loss we may incur as a result of such directions, actions or failures to act. We shall not be responsible for any penalties, taxes, judgments or expenses you incur in connection with your HSA. We have no duty to determine whether your contributions or distributions comply with the Code, Treasury Regulations, IRS Rulings or this agreement. We have the right to require you to provide, on a form provided by or acceptable to us, proof or certification that you are eligible to contribute to this HSA, including, but not limited to, proof or certification that you are covered by a HDHP. In no event shall we be responsible to determine if contributions made by your employer to your HSA meet the requirements for comparable contributions, the rules of which are set forth in the Code and IRS published guidance.

You acknowledge that establishment of your HSA is completely voluntary on your part and that, to the best of your knowledge, your employer does not (i) limit your ability to move funds to another HSA beyond restrictions imposed by the Code; (ii) impose conditions on utilization of HSA funds beyond those permitted under the Code; (iii) make or influence the investment decisions with respect to funds contributed to an HSA; (iv) represent that the HSA is an employee welfare benefit plan established or maintained by the employer; or (v) receive any payment or compensation in connection with the HSA.

We may permit you to appoint, through written notice acceptable to us, an authorized agent (in addition to your Designated Representative) to act on your behalf with respect to this agreement (e.g., attorney-in fact, executor, administrator, investment manager); however, we have no duty to determine the validity of such appointment or any instrument appointing such authorized agent. We shall not be responsible for losses of any kind that may result from directions, actions or failures to act by your authorized agent, and you agree to reimburse us for any loss we may incur as a result of such directions, actions or failures to act by your authorized agent. You will have thirty (30) days after you receive any documents, account information or other information from us to notify us in writing of any errors or inaccuracies reflected in these documents, account information or other information. If you do not notify us within thirty (30) days, the documents, account information or other information shall be deemed correct and accurate, and we shall have no further liability or obligation for such documents, account information, other information or the transactions described therein.

By performing services under this agreement, we are acting as your agent. You acknowledge and agree that we are not providing services to you or your HSA as a fiduciary under the Employee Retirement Income Security Act of 1974 ("ERISA") Section 3(21), under any comparable and applicable provisions of 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 us. We shall not be required to perform any additional services unless specifically agreed to under the terms and conditions of this agreement, or as required under the Code and the applicable guidance with respect to HSAs. You agree to indemnify and hold us 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, we may accept or provide such information in any other forms permitted by law, including through electronic mediums.

**11.05 Service Fees.** The Custodian reserves the right to charge a periodic service fee or other designated fees (e.g., a transfer, rollover, investment management or termination fee) for maintaining your HSA. In addition, the Custodian has the right to be reimbursed for all reasonable expenses, including legal expenses, it incurs in connection with the administration of your HSA. The Custodian has the right to charge a \$75.00 per hour fee when it is required to pull documentation on your behalf. The Custodian may charge you separately for any fees or expenses, or may deduct the amount of the fees or expenses from the assets in your HSA at its discretion. The Custodian reserves the right to charge any additional fee upon thirty (30) days' notice to you that the fee will be effective.

The TPA may charge a separate fee for administration and other services related to your HSA. You authorize the TPA to charge you separately for those fees, or to deduct the amount of the fees or expenses from the assets in your HSA. Your employer may also agree to pay these fees on your behalf. The amount of fees payable may be set forth in a separate fee schedule which may be part of your application.

To the extent that you direct investment of your HSA in mutual funds pursuant to Section 11.07, balances invested in those mutual funds are subject to investment fees and other charges and expenses as described by the applicable prospectuses. Any brokerage commissions attributable to the assets in your HSA will be charged to your HSA. You cannot reimburse your HSA for those commissions.

**11.06 Definitions and How your HSA Operates.**

1. "Application" shall mean the 1Cloud by Evolution1® system available through a link provided by your TPA which provides you access to your HSA account information, Investment Account and is used to process your HSA transactions.
2. "BIN Sponsor" shall mean the entity which initiates Debit Card settlement from the Distribution Account.
3. "Cash Account" shall mean an account, or accounts held for the benefit of the Accountholder into which HSA dollars are swept from the Contribution Account and held until swept into the Investment Account or Distribution Account. The Cash Account balance is utilized for authorizing distribution requests and purchases with a debit card.

Your HSA funds in the Cash Account will be separately accounted for, credited to your HSA balance, and insured by the Federal Deposit Insurance Corporation ("FDIC") up to \$250,000, or the maximum limit allowable by law pursuant to FDIC insurance

coverage rules. If you currently have deposit accounts held at the Custodian, FDIC insurance will cover the total of your accounts up to \$250,000. For information about FDIC insurance coverage, see the "Your Insured Deposits" information at FDIC's website: <http://www.fdic.gov/deposit/deposits/insured/>. Funds invested in the Cash Account are used by the Custodian in its general banking business, which may generate income to the Custodian; such income is considered part of the fees for the Custodian's services.

4. "Cash Account Minimum Threshold" shall mean the amount in the Cash Account that triggers money movement from the Investment Account to the Cash Account.
5. "Cash Account to Investment Account Trigger" shall mean when the Cash Account balance exceeds the Investment Transfer Threshold by an amount equal to or more than the Minimum Auto-Sweep Amount, HSA dollars are auto-swept from the Cash Account to the Investment Account.
6. "Contribution Account" shall mean an account, or accounts, into which the Accountholder and employer contributions are deposited by the TPA, and from which HSA dollars are swept into the Cash Account.
7. "Debit Card" shall mean the card issued to the Accountholders to access funds in the Accountholder's HSA
8. "Default Portfolio" shall mean the standard offering of mutual funds, as chosen by the Custodian or as agreed upon by the Custodian and the TPA.
9. "Distribution Account" shall mean an account, or accounts, from which distributions, rollovers and transfers are made to the Accountholder, and into which HSA dollars are swept from the Cash Account.
10. "Investment Account" shall mean an account, or accounts, into which HSA dollars are swept from the Cash Account. Dollars swept into the Investment Account are initially invested in a FDIC-insured interest-bearing account on behalf of the Accountholder. The Accountholder has the ability to invest these dollars into a variety of investment funds.
11. "Investment Account to Cash Account Trigger" shall mean when the Cash Account balance falls below the Investment Transfer Threshold by an amount equal to or more than the Minimum Auto-Sweep Amount, investments are sold to bring the Cash Account back to the Investment Transfer Threshold. If it is necessary to liquidate one or more of your investments, the Custodian will follow the procedure in Section 11.17.
12. "Investment Transfer Threshold" shall mean the amount in the Cash Account that triggers money movement from the Cash Account to the Investment Account.
13. "Minimum Auto-Sweep Amount" shall mean minimum amount of money required to move HSA dollars between the Cash Account and the Investment Account once the applicable thresholds are met.

**How your HSA Operates.** The TPA will receive contributions (including rollovers, transfers, and mistaken distributions) from you and/or your employer and transfer them to the Contribution Account. Based on your account balances and instructions, the Custodian will move monies between accounts based on threshold and trigger amounts, as described below. The TPA will issue distributions (including rollovers, transfers, and mistaken contributions) to you from the Distribution Account or to the BIN Sponsor for Debit Card settlement.

The Custodian will transfer contributions from the Contribution Account into the Cash Account on a daily basis.

When your Cash Account balance meets or exceeds the Cash Account to Investment Account Trigger amount, the Custodian will transfer funds from the Cash Account to the Investment Account in an amount equal to or more than the Minimum Auto-Sweep Amount, and place these funds in an interest-bearing account and/or in such investment fund(s) as you elect.

When you request a distribution from your HSA that is less than the balance in your Cash Account, the Custodian will transfer the distribution amount from the Cash Account to the Distribution Account.

When you request a distribution from your HSA that is more than the balance in your the Cash Account, the Custodian will transfer sufficient funds from the Investment Account to the Cash Account to cover the amount of the distribution, and transfer the distribution amount to the Distribution Account.

If, for any reason, your Cash Account balance drops below the Investment Account to Cash Account Trigger amount, the Custodian will transfer such funds in an amount equal to or more than the Minimum Auto-Sweep Amount from the Investment Account to the Cash Account as needed to bring the Cash Account balance to the Investment Transfer Threshold. If it is necessary to liquidate one or more of your investments, the Custodian will follow the procedure in Section 11.17.

You have authorized electronic debit and credit entries, if applicable, to your designated checking or savings account. You have also authorized adjustments to these accounts for error corrections. This authorization will remain in effect until the termination of this agreement.

**11.07 HSA Investment Options.** HSA investment options include shares or participations of one or more investment companies as defined in the Investment Company Act of 1940, as amended (such funds are often referred to as "mutual funds"). Mutual funds made available as HSA investment options may include funds for which the Custodian serves as investment advisor, custodian, and/or distributor, and receives compensation for such services, as disclosed in the current prospectus for such mutual fund. The Custodian may also provide administrative, shareholder, or sub-transfer agency services, for other mutual funds that are available as HSA investment options, and the Custodian may receive compensation from third parties for those services, as disclosed in the current prospectus for such mutual fund or as disclosed by us from time to time. All dividends, including capital gain distributions, paid on mutual fund shares shall be reinvested in full and fractional shares of the mutual fund paying the distribution in the manner specified in the prospectus of the mutual fund. It will be your responsibility to exercise all conversion, subscription, voting and other rights pertaining to any securities held in your HSA, if applicable. You may invest in other investment vehicles (for example, stocks, bonds, savings accounts or other investment vehicles) only if the Custodian makes such investments available as investment options. Unless you make changes, your investment allocations will remain in effect and be applied to both current and future contributions to your account.

You have exclusive responsibility for and control over the investment of the assets in your Investment Account. All transactions shall be subject to any and all restrictions or limitations, direct or indirect, which are imposed by our charter, articles of incorporation, or bylaws; any and all applicable federal and state laws and regulations; the rules, regulations, customs and usages of any exchange, market or clearing house where the transaction is executed; our policies and practices; and this agreement. Neither the Custodian nor the TPA shall have discretion to direct any investment in your HSA. Neither the Custodian nor the TPA assumes any responsibility for rendering investment advice with respect to your HSA, nor will the Custodian or the TPA offer any opinion or judgment to you on matters concerning the value or suitability of any investment or proposed investment for your HSA. In the absence of instructions from you (as delivered to the Custodian through the Application), or if your instructions are not otherwise in a form acceptable to us, the Custodian shall have the right to hold these amounts in the interest-bearing account, and shall have no responsibility to invest these amounts in anything other than the interest-bearing account unless and until directed by you. Neither the Custodian nor the TPA will exercise the voting rights and other shareholder rights with respect to investments in your HSA. You will select the type of investment for your HSA assets, provided, however, that your selection of investments shall be limited to those types of investments that the Custodian is authorized by its charter, articles of incorporation or bylaws to make available and does in fact make available for investment in HSAs. The Custodian may, in its sole discretion, make available to you, additional investment offerings, which shall be limited to publicly traded securities, mutual funds, money market instruments and other investments that are obtainable by the Custodian and that it is capable of holding in the ordinary course of its business.

Mutual funds that are made available as HSA investment options may change from time to time. We will provide you with reasonable advance notice of such changes and give you the opportunity to change your investment allocations accordingly. If a mutual fund is eliminated as an HSA investment option and you do not instruct us to redirect your current investment balance, you hereby authorize and direct us to liquidate your HSA funds invested in the eliminated mutual fund and transfer those funds to an interest-bearing FDIC-insured account. If you have also not redirected your investment allocation as it relates to future contributions, future contributions that would have been allocated to the eliminated mutual fund will instead be invested in an interest-bearing FDIC-insured account. You may direct the Custodian to redeem any or all mutual fund shares held in your HSA and to invest the proceeds in any other available mutual funds, subject, however, to the applicable terms and conditions of the prospectus for each mutual fund involved.

You understand and acknowledge that some mutual funds (their managers, servicing agents, advisors, distributors or other affiliates) that may be held in the HSA may pay, directly or indirectly, as administrative expenses of the mutual fund, pursuant to a written plan described in Securities and Exchange Commission Rule 12b-1, or in another manner, fees or other compensation to the Custodian or its affiliates in recognition of shareholder services and recordkeeping services provided ("12b-1 fees"). The Custodian will allocate 12b-1 fees to your HSA based on your holdings in each mutual fund. The Accountholder acknowledges 12b-1 fees or other compensation are described in the prospectus or other disclosure materials made available to the Accountholder, and that administrative and management fees hereunder would otherwise be higher if 12b-1 fees were not payable to the Custodian or its affiliates. The 12b-1 fees are remitted by the mutual fund companies on a random basis during the year. The 12b-1 fees received during each calendar quarter will be allocated to your HSA by the end of each quarter as additional earnings.

The Accountholder agrees that the Custodian will on a quarterly basis deduct a management fee from your HSA equal to one-quarter of one-quarter 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 your Investment Account. All or a portion of the management fees will be offset by the amount of 12b-1 fees received.

Different fees and rebate structures may apply to Accountholders with investment alternatives other than the Default Portfolio.

Some mutual funds may charge a redemption fee. Redemption fees, if any, will be charged to your Investment Account. You cannot reimburse your HSA for redemption fees. For further information on redemption fees, please see the mutual fund prospectus.

You understand that the value of your HSA and the growth in value of the HSA are dependent solely on the performance of the investment options you select. You acknowledge that investment options available under this HSA such as mutual funds and other securities (but not the Cash Account) are not insured by FDIC or other agency, are not guaranteed by the Custodian or any affiliate of the Custodian, TPA, or your employer, and may lose value. You also acknowledge that past investment performance is not a guarantee of future investment results with respect to an investment option and that you will review investment information about the investment options before investing. You should seek the assistance of a financial professional to address any questions or concerns you may have about your investment options and the selection of investments for your HSA.

**11.08 Investment Account.** The Investment Account is only available online through the Application. Accordingly, all investment transactions in the Investment Account must be initiated and conducted through the Application. Your investment in the HSA investment options may constitute the purchase of securities. As a holder of securities, you may be entitled to receive certain documents, including but not limited to prospectuses and proxies. Any securities-related documents required to be transmitted to you as a result of your investment in the HSA investment options will be transmitted to you electronically through the Application. As a condition to opening an Investment Account, you will be required to consent to the electronic delivery of all documents of any issuer whose securities are made available to your HSA, including issuers and securities made available after the date your account is opened. If you become unable to access the Application, or if you revoke your consent to electronic disclosure of investment information, you must contact your TPA immediately. At that time you will be given the option to terminate your account (and, if you choose, roll it over to another provider), or to liquidate your investment in the investment options and hold your HSA entirely in the Cash Account.

**11.09 Account Information.** Records of your HSA contributions, distributions, investment activity, earnings and balances will be made available exclusively through the Application. Before being granted online access to your HSA records, it will be necessary to enter a personal identification number ("PIN"), user ID and/or enhanced online security feature that you will receive prior to logging into the Application.

By executing this HSA Custodial Agreement and Disclosure Statement, you agree that all account information from the Custodian shall be made available exclusively in electronic form. Account information may be viewed at any time by logging into the Application. Any notices related to your HSA will be posted on the Application, or at our discretion, provided either by e-mail to the e-mail address we have on file for you, or by U.S. Mail to your mailing address we have on file for you. For an additional fee, if applicable, the TPA will send paper account information to your address by U.S. mail. You are responsible to advise the TPA in writing of any change to either your e-mail or mailing address.

Account information, notices and communications will be accessible in a form you can view, save to your computer or print as paper copies. A link will be provided to any software necessary to view, print, and/or save your HSA account information.

The Application will have information about your account balance, contributions, distributions, and recent amendments to your Custodial Agreement and Disclosure Statement and Designation of Representative by Accountholder readily available for review. The Application will provide a link or links to other websites for you to obtain specific information about your investments, including prospectuses. It may be necessary for you to establish a separate PIN, user ID and/or enhanced online security feature for this purpose and complete additional forms.

You agree to check the Application no less frequently than monthly to view your HSA account activity and other communications and information. You are responsible for keeping your HSA, PIN user ID and/or enhanced online security feature confidential, and we are not responsible for any other person's use of your PIN, user ID and/or enhanced online security feature.

**11.10 Earnings on HSA Funds.** In connection with the investment, contribution and distribution of funds in the ordinary course of our duties, we are authorized to deposit cash in checking or other disbursement accounts in our name or in the name of an affiliate. Until such time that a check is presented for payment, the TPA (or an affiliate) will receive an earnings credit that is calculated using a tiered rate which is based on the 91-day Treasury Bill index (after a ten percent (10%) reserve requirement). Any such earnings credit received by the TPA on HSA funds held in the contribution or distribution accounts, and any revenue earned by the Custodian from the use of funds deposited in the Cash Account, shall be part of our compensation for servicing this HSA, and you acknowledge and understand that fees otherwise charged by us for services under this agreement would be higher if we did not earn interest on HSA funds we deposit in accounts to accommodate HSA contributions or distributions or did not earn revenues from HSA funds deposited in the Cash Account. If a check drawn on the Distribution Account is not presented for payment within a maximum of one hundred eighty (180) days of the date it was written, the check shall be deemed invalid and the funds will be transferred from the Distribution Account back to your Cash Account as soon as reasonably practicable. After the maximum number of days has passed, you may contact the TPA to request a replacement check.

**11.11 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 of the powers generally conferred on custodians under the laws of the State of North Dakota. 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 your HSA. The Custodian may adjust the balance of your HSA 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 your HSA are also subject to adjustment by the Custodian.

**11.12 Beneficiary(ies).** If you die before you receive all of the funds from this HSA, payments from your HSA will be made to your death beneficiary(ies). You may designate one (1) or more persons or entities as death beneficiary of your HSA. This designation can only be made through the Application or on a form provided by or acceptable to us, and it will only be effective when it is filed with the TPA during your lifetime. Unless otherwise specified, each death beneficiary designation you file with the TPA will cancel all previous ones. The consent of a death beneficiary(ies) shall not be required for you to revoke a death beneficiary designation. If you have designated both primary and contingent death beneficiaries and no primary death beneficiary(ies) survives you, the contingent death beneficiary(ies) shall acquire the designated share of your HSA. If you do not designate a death beneficiary, or if all of your primary and contingent death beneficiary(ies) predecease you, your estate will be the death beneficiary.

You understand that if you designate your spouse as primary death beneficiary or contingent death beneficiary of this HSA, the dissolution, termination, annulment or other legal termination of your marriage will automatically revoke all beneficiary designations, both primary and contingent. After such revocation and until such time as a new beneficiary designation is completed, the HSA shall be treated as if there is no beneficiary designated.

Based on the above, if your spouse acquires the interest in this HSA by reason of being the death beneficiary at your death, this HSA shall be treated as if the surviving spouse were the Accountholder. If the death beneficiary is not your spouse, the HSA (or in accordance with rules established by the IRS the relevant portion thereof) will cease to be an HSA as of the date of death. Upon learning of the Accountholder's death, we may, in our complete and sole discretion, make a final distribution to a death beneficiary (other than the Accountholder's spouse) of his or her interest in the HSA. This distribution may be made without the death beneficiary's consent and may be placed in an interest-bearing (or similar) account that we choose.

**11.13 Termination of Agreement, Resignation, or Removal of the Custodian.** You may terminate this agreement at any time by giving written notice to the TPA. If this agreement is terminated by you, the Custodian may charge to your HSA an amount of money necessary to cover any associated costs pertaining to terminating this agreement.

The Custodian may resign at any time effective thirty (30) days after it mails written notice of its resignation to you. Upon receipt of that notice, you must make arrangements to transfer your HSA to another financial organization. If you do not complete a transfer of your HSA within thirty (30) days from the date the Custodian mails the notice to you, the Custodian has the right to transfer your HSA assets to a qualified successor HSA custodian or trustee that it chooses in its sole discretion, or it may pay your HSA to you in a single sum. The Custodian shall not be liable for any actions or failures to act on the part of any successor custodian or trustee, nor for any tax consequences you may incur that result from the transfer or distribution of your assets pursuant to this section.

**11.14 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 which includes your HSA) is bought by another organization, that organization (or agency) shall automatically become the trustee or custodian of your HSA, but only if it is the type of organization authorized to serve as an HSA trustee or custodian. If the organization is not the type of organization authorized by law to serve as an HSA trustee or custodian, then you must make arrangements to transfer your HSA to another financial organization. If you do not complete a transfer of your HSA within thirty (30) days from the date the Custodian mails the notice to you, the Custodian has the right to transfer your HSA assets to a successor HSA custodian or trustee that it chooses in its sole discretion, or it may pay your HSA to you in a single sum.

**11.15 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 your consent. You will be deemed to have consented to any other amendment unless, within thirty (30) days from the date of notice of the amendment, you notify the TPA in writing that you do not consent.

**11.16 Distributions.** All requests for distributions or direct transfer to another HSA shall be made via electronic transfer, debit card, or on a form made available through the Application or the TPA and acceptable to the Custodian. No distributions of in-kind transfers shall be permitted, except at the Custodian's discretion. The Social Security Number or tax identification number of the recipient must be provided to the Custodian before it is obligated to make a distribution. Distributions shall be subject to all applicable tax and other laws and regulations, including possible early distribution penalties or surrender charges and withholding requirements.

You agree not to withdraw or attempt to withdraw amounts in excess of the balance of the HSA. In the event that an overdraft occurs, you will immediately contribute an amount to the HSA equal to the amount of the overdraft and any outstanding fees assessed against the HSA, including any overdraft fees. Such contributions made by you to the HSA shall be applied, first, to any outstanding fees (including overdraft fees) payable to the Custodian and/or the TPA, and second, to the negative balance of the HSA. Until you contribute the necessary funds to have the account become positive, all account activity shall be suspended. If after ninety (90) days you have not contributed the above required amounts, then you agree to be subject to any and all collection actions needed to recover such amounts and the account shall be closed.

The Custodian may allow the return of mistaken distributions provided there is clear and convincing evidence that the amount(s)

distributed from the HSA 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 your representation that the distribution was, in fact, a mistake. The Custodian may not permit return of mistaken distributions that relate to a calendar year after December 31st of that year.

In no event shall we restrict or limit HSA distributions to the payment or reimbursement of your qualified medical expenses. However, we 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 HSA.

**11.17 Liquidation of Assets.** The Custodian has the right to liquidate assets in your HSA if necessary to make distributions or to pay fees, expenses, taxes, penalties or surrender charges properly chargeable against your HSA. The Custodian will liquidate your investments in the same proportion as your investment holdings, and you agree not to hold us liable for any adverse consequences that may result from our decision to liquidate investments in this order. You understand that you might not receive the total amount of your requested distribution due to market fluctuations during the time period for processing your distribution request.

**11.18 What Law Applies.** This agreement is subject to all applicable federal and state laws and regulations. If it is necessary to apply any state law to interpret and administer this agreement, the laws of the State of North Dakota shall govern. If any part of this agreement is held to be illegal or invalid, the remaining parts shall not be affected. Neither you nor our 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 your right or our right thereafter to enforce each and every such provision.

**11.19 Disclaimers.** The HSA established by this agreement is intended not to constitute an "employee welfare benefit plan" or an "employee pension benefit plan" as defined by ERISA. Regardless of the status of the HSA under ERISA, we are not an "employer" or "plan sponsor" of the HSA or of any arrangement or plan of which the HSA is a part. We expressly disclaim responsibility for ERISA's participation, vesting, funding, reporting, disclosure, and fiduciary requirements as they may apply to your HSA, including but not limited to any requirement to provide notices or election forms regarding continuation coverage under ERISA. If and to the extent that the HSA is deemed to be part of an arrangement or plan subject to ERISA, including any determination that the HSA is subject to ERISA's continuation coverage requirements, this agreement may be amended or terminated at our sole discretion as of the effective date of such determination or on such later date, as we deem appropriate.

We will maintain all confidential information in accordance with all applicable banking laws and regulations. The HSA established by this agreement, however, is not intended to be a "health plan" as defined by final regulations interpreting the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). Regardless of the status of the HSA under HIPAA Privacy Rules, we are not a "plan administrator" or "plan sponsor." We expressly disclaim responsibility for the duties imposed upon "covered entities" under HIPAA Privacy Rules, except as may be agreed upon pursuant to a business associate agreement between us and a covered entity or any third party subject to the HIPAA Privacy Rules. If and to the extent that we are determined to be responsible for HIPAA compliance beyond the duties assumed pursuant to a business associate agreement, this agreement may be amended or terminated at our sole discretion as of the effective date of such determination or such later date, as we deem appropriate.

HSAs are personal health savings vehicles rather than group employee benefits. Although with respect to this HSA, your employer may have agreed to forward contributions through its payroll system to the Custodian, either directly or through the TPA, you are not restricted from moving funds to another HSA custodian or trustee (but your employer is not required to forward payroll contributions to another HSA provider).

Some states and localities may have tax laws that are different from the federal laws for HSAs. You should consult with your tax or legal advisor with questions about state and local laws that may affect your HSA.

## 11.20 Disclosure Statement.

### 1. Requirements of an HSA.

a. **Cash Contributions.** Regular or annual HSA contributions must be in cash, which may include a check, money order, ACH or wire transfer. It is within the Custodian's discretion to accept in-kind contributions for rollovers or transfers.

b. **Maximum Contribution.** Except as provided in paragraph d. below, the total amount that may be contributed to your HSA for any taxable year is the sum of the limits determined separately for each month. The determination for each month is based on whether, as of the first (1<sup>st</sup>) day of such month, you are eligible to contribute and whether you have individual or family coverage under a HDHP. The maximum monthly contribution is adjusted each year for cost-of-living increases. For calendar year 2013, the maximum monthly contribution with self-only coverage under an HDHP is one-twelfth (1/12th) of \$3,250. This amount increases to \$3,300 in 2014. For calendar year 2013, the maximum monthly contribution with family coverage under an HDHP is one-twelfth (1/12th) of \$6,450. This amount increases to \$6,550 in 2014. In addition, if you have attained age fifty-five (55) before the close of the taxable year, and are not enrolled in Medicare, the contribution limit is increased on a monthly basis by an additional amount not to exceed \$1,000. The annual limit is decreased by aggregate contributions to another HSA or to an Archer MSA.

c. **Contribution Eligibility.** You are an eligible individual for any month if you (i) are covered under an HDHP on the first day of such month; (ii) are not also covered by any other health plan that is not an HDHP and that provides coverage for any benefit covered

under the HDHP (with limited exceptions such as a Limited Purpose Health Flexible Spending Account); (iii) are not enrolled in Medicare; and (iv) are not claimed as a dependent on another person's tax return.

In general, an HDHP is a health plan that satisfies certain requirements with respect to deductibles and out-of-pocket expenses, as adjusted for inflation. For calendar year 2013, for self-only coverage, an HDHP has an annual deductible of at least \$1,250 and the sum of the annual out-of-pocket expenses required to be paid (deductibles, co-payments and amounts other than premiums) cannot exceed \$6,250. For calendar year 2014, for self-only coverage, an HDHP has an annual deductible of at least \$1,250 and the sum of the annual out-of-pocket expenses required to be paid (deductibles, co-payments and amounts other than premiums) cannot exceed \$6,350. For calendar year 2013, for family coverage, an HDHP has an annual deductible of at least \$2,500 and the sum of the annual out-of-pocket expenses cannot exceed \$12,500. For calendar year 2014, for family coverage, an HDHP has an annual deductible of at least \$2,500 and the sum of the annual out-of-pocket expenses cannot exceed \$12,700. All of these dollar amounts are adjusted for cost-of-living increases.

d. **HSAs Established Mid-Year.** If you are an eligible individual during the last month of the taxable year, you will be treated as (i) as having been an eligible individual during each of the months in such taxable year, and (ii) as having been enrolled, during each of the months you are treated as an eligible individual solely by reason of item (i) above, in the same high deductible health plan in which you are enrolled for the last month of such taxable year. Under these circumstances, and subject to the requirement that you remain an eligible individual during the testing period, you may contribute the maximum amount to your HSA as though you were an eligible individual throughout the entire taxable year. The "testing period" means the period beginning with the last month of the taxable year referred to above, and ending on the last day of the twelfth (12th) month following such month.

If at any time during the testing period you cease to be an eligible individual, then your gross income in the taxable year in which you cease to be an eligible individual will be increased by the amount of all contributions to your HSA which could not have been made but for the rule above in this paragraph d., and you may be required to pay a penalty tax equal to twenty percent (20%) of the amount of such increase. These amounts will not be included in gross income or subject to the twenty percent (20%) penalty tax if you cease to be an eligible individual because of death or because you become disabled (within the meaning of Section 72(m) of the Code).

e. **Nonforfeitable.** Your interest in your HSA is nonforfeitable.

f. **Eligible Custodians.** The custodian of your HSA must be a bank, savings and loan association, credit union, or a person approved by the IRS.

g. **Commingling Assets.** The assets of your HSA cannot be commingled with other property, except in a common trust fund or common investment fund.

h. **Life Insurance.** No portion of your HSA may be invested in life insurance contracts.

## 2. Income Tax Consequences of Establishing an HSA.

a. **Tax Treatment of HSA Contributions.** If you are eligible to contribute to an HSA for any month during the taxable year, amounts contributed to your HSA are deductible in determining adjusted gross income up to the maximum contribution limits discussed above. The deduction is allowed regardless of whether you itemize deductions. Employer contributions to your HSA are excludable from your gross income and you cannot deduct such amounts on your tax return as HSA contributions.

b. **Tax-Deferred Earnings.** The investment earnings of your HSA are not subject to federal income tax until distributions are made (or, in certain instances, when distributions are deemed to be made).

c. **Taxation of Distributions.** The taxation of HSA distributions depends on whether the distribution is for a qualified medical expense. Generally, distributions paid due to qualified medical expenses are excluded from your gross income. Qualified medical expenses are amounts you pay for medical care (as defined in the Code Section 213(d)) for yourself, your spouse and your dependents (as defined in the Code Section 152), but only to the extent that such amounts are not covered by insurance or otherwise. Distributions made for purposes other than qualified medical expenses are included in your gross income and are subject to an additional twenty percent (20%) tax on the includable amount.

d. **Rollovers and Transfers.** Your HSA may be rolled over to another HSA of yours, or may receive rollover contributions, provided that all of the applicable rollover rules are followed. Rollover is a term used to describe a tax free movement of cash or other property between any of your HSAs or other tax favored accounts. The rollover rules are generally summarized below. These transactions are often complex. If you have any questions regarding a rollover, please see your tax advisor.

Funds distributed from your HSA may be rolled over to another HSA that you own if the requirements of the Code Section 223(f)(5) are met. A proper HSA to HSA rollover is completed if all or part of the distribution is rolled over not later than sixty (60) days after the distribution is received. You may not have completed another HSA to HSA rollover from the distributing HSA during the twelve (12) months preceding the date you received the distribution. Further, you may roll over the same dollars or assets only once every twelve (12) months. Finally, current IRS-published guidance indicates that you may make only one rollover contribution to an HSA during a one (1) year period.

Funds distributed from your Archer MSA may be rolled over to your HSA. A proper MSA to HSA rollover is completed if all or part of the distribution is rolled over not later than sixty (60) days after the distribution is received. Rollovers from an IRA to an HSA are also permitted subject to the requirements and limitation under the Tax Relief and Health Care Act of 2006 and IRS guidance issued thereunder.

At the time you make a proper rollover to an HSA, you must designate to the Custodian, in writing, your election to treat that contribution as a rollover. Once made, the rollover election is irrevocable.

e. **Carry back Contributions.** A contribution is deemed to have been made on the last day of the preceding taxable year if you make a contribution by the deadline for filing your income tax return (not including extensions), and you designate that contribution as a contribution for the preceding taxable year. For example, if you are a calendar year taxpayer and you make your HSA contribution on or before April 15th, your contribution is considered to have been made for the previous tax year if you designated it as such.

### 3. Limitations and Restrictions.

a. **Deduction of Rollovers and Transfers.** A deduction is not allowed for rollover or transfer contributions.

b. **Prohibited Transactions.** If you or your death beneficiary engage in a prohibited transaction with your HSA, as described in Code Section 4975, your HSA will lose its tax-exempt status and you must include the value of your account in your gross income for that taxable year and pay all applicable taxes and penalties.

c. **Pledging.** If you pledge any portion of your HSA as collateral for a loan, the amount so pledged will be treated as a distribution and will be included in your gross income for that year and may be subject to the additional twenty percent (20%) tax.

### 4. Federal Tax Penalties.

a. **Twenty Percent (20%) Penalty.** If you receive a distribution that is included in your gross income, you are subject to an additional tax of twenty percent (20%). This additional twenty percent (20%) tax will apply unless a distribution is made on account of (i) attainment of age sixty-five (65) (or, if different, the age specified under Section 1811 of the Social Security Act), (ii) death, or (iii) disability.

b. **Excess Contribution Penalty.** An excise tax of six percent (6%) is imposed upon any excess contribution you make to your HSA. This tax will apply each year in which an excess remains in your HSA. An excess contribution is any contribution amount which exceeds your contribution limit, excluding rollover and direct transfer amounts.

### 5. Other.

a. **Important Information about Procedures for Opening and Maintaining your Account.** To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial organizations to obtain, verify, and record information that identifies each individual who opens an account. What this means for you, when you open an account, you are required to provide your name, residential address, date of birth, and identification number. As part of the ongoing maintenance of your account we may require other information or documentation that allows us to identify you. You understand 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, less any fees or expenses chargeable against your HSA, or penalties or surrender charges associated with the early withdrawal of any savings instrument or other investment in your HSA account. The Custodian shall not be liable for any tax consequences or tax withholdings you may incur as a result of the transfer or distribution of your assets.

b. **Force Majeure.** We will be released without any liability on our part from the performance of our obligations hereunder, to the extent our performance is prevented by the event of Force Majeure. Force Majeure will mean any event or condition not reasonably within our control which prevents in whole or in material part, the performance by us of our obligations hereunder or which renders the performance of such obligations so difficult or costly as to make such performance commercially unreasonable.

We shall not be liable for failure to perform or delay in performance of any of our obligations under this agreement to the extent that such failure or delay results from any act of God, including but not limited to a blizzard, flood, tornado or any other adverse weather conditions; military operation; terrorist attack; widespread and prolonged loss of use of the internet or the world wide web, national emergency; civil commotion; or the order of any government agency or acting government authority or any other cause beyond our reasonable control whether similar or dissimilar to the foregoing causes.

### c. Healthcare Bank, a Division of Bell State Bank & Trust Privacy Policy.

By executing this agreement, you acknowledge receipt of the Privacy Policy. You agree to receive future notices of any updates to the Privacy Policy at [www.healthcarebank.com](http://www.healthcarebank.com), and to review the Privacy Policy no less frequently than annually. See Privacy Policy

below.

**FACTS****WHAT DOES HEALTHCARE BANK, A DIVISION OF BELL STATE BANK & TRUST,  
DO WITH YOUR PERSONAL INFORMATION**

<b>Why?</b>	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
<b>What?</b>	The types of personal information we collect and share depend on the product or service you have with us. This information can include: <ul style="list-style-type: none"> <li>-Social Security number and account balances</li> <li>-payment history and transaction history</li> <li>-account transactions and checking account information</li> </ul> <p>When you are <i>no longer</i> our customer, <i>we</i> continue to share your information as described in this notice.</p>
<b>How?</b>	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons Healthcare Bank, a division of Bell State Bank & Trust, chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does Healthcare Bank, a division of Bell State Bank & Trust, share?	Can you limit this sharing?
<b>For everyday business purposes</b> – such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus	<b>Yes</b>	<b>No</b>
<b>For our marketing purposes</b> – to offer our products and services to you	<b>Yes</b>	<b>No</b>
<b>For joint marketing with other financial companies</b>	<b>No</b>	<b>We don't share</b>
<b>For our affiliates' everyday business purposes</b> – information about your transactions and experiences	<b>No</b>	<b>We don't share</b>
<b>For our affiliates' everyday business purposes</b> – information about your creditworthiness	<b>No</b>	<b>We don't share</b>
<b>For nonaffiliates to market to you</b>	<b>No</b>	<b>We don't share</b>

**Questions?**Call toll free 1-866-442-2472 option 1 or go to [www.healthcarebank.com](http://www.healthcarebank.com)

<b>Who we are</b>	
<b>Who is providing this notice?</b>	Healthcare Bank, a division of Bell State Bank & Trust
<b>What we do</b>	
<b>How does Healthcare Bank, a division of Bell State Bank &amp; Trust, protect my personal information?</b>	<p>To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.</p> <p>We also maintain other physical, electronic and procedural safeguards to protect this information and we limit access to information to those employees for whom access is appropriate.</p>
<b>How does Healthcare Bank, a division of Bell State Bank &amp; Trust, collect my personal information?</b>	<p>We collect your personal information, for example, when you</p> <ul style="list-style-type: none"> <li>-open an account or apply for a loan</li> <li>-make deposits or withdrawals from your account</li> <li>-use your credit or debit card</li> <li>-seek advice about your investments</li> </ul> <p>We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.</p>
<b>Why can't I limit all sharing?</b>	<p>Federal law gives you the right to limit only</p> <ul style="list-style-type: none"> <li>-sharing for affiliates' everyday business purposes – information about your creditworthiness</li> <li>-affiliates from using your information to market to you</li> <li>-sharing for nonaffiliates to market to you</li> </ul> <p>State laws and individual companies may give you additional rights to limit sharing.</p>
<b>Definitions</b>	
<b>Affiliates</b>	<p>Companies related by common ownership or control. They can be financial and nonfinancial companies.</p> <ul style="list-style-type: none"> <li>-Our affiliates include financial companies such as State Bankshares, Inc. and nonfinancial companies, such as Discovery Benefits, Inc.</li> </ul>
<b>Nonaffiliates</b>	<p>Companies not related by common ownership or control. They can be financial and nonfinancial companies.</p> <ul style="list-style-type: none"> <li>-Healthcare Bank, a division of Bell State Bank &amp; Trust, does not share with nonaffiliates so they can market to you.</li> </ul>
<b>Joint marketing</b>	<p>A formal agreement between nonaffiliated financial companies that together market financial products or services to you.</p> <ul style="list-style-type: none"> <li>-Healthcare Bank, a division of Bell State Bank &amp; Trust, doesn't jointly market.</li> </ul>

d. **Sweep Disclosure Notification.** As set forth under this agreement, you may make contributions to your HSA. Based on the value of your HSA and certain threshold and trigger amounts defined under this agreement, funds may be moved between your Cash Account and Investment Account. These funds may either be in a deposit account at the Custodian or an Investment Account at an outside investment company, at your direction.

If you direct that the funds be in a deposit account at the Custodian, then these funds will be insured by the FDIC to the extent of the deposit insurance limits. In the event of the failure of the Custodian, you 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, you will be an unsecured creditor with respect to the excess.

If you direct that the funds be at an outside investment company, then these funds are not considered a deposit account of the Custodian and are not FDIC insured. In the event of the failure of the Custodian, these funds will remain your separate funds at the outside investment company and are subject to the provisions of the outside investment company.

By executing this agreement, you acknowledge receipt of the Sweep Disclosure Notification and agree to receive future notices of any updates to the Sweep Disclosure Notification at [www.healthcarebank.com](http://www.healthcarebank.com), and to review the Sweep Disclosure Notification no less frequently than annually.

e. **Custodian Information.** Healthcare Bank, 3100 13th Ave SW, Fargo, ND 58103. Healthcare Bank is a division of Bell State Bank & Trust, a wholly owned subsidiary of State Bankshares, Inc.

## Designation of Representative by Accountholder

The Health Savings Account (“HSA”) Accountholder named on the Healthcare Bank Custodial Agreement and Disclosure Statement (“Accountholder”) hereby appoints, designates, and authorizes Advantage Administrators (“TPA”) to serve as its Designated Representative and HSA Administrator. The TPA hereby accepts the appointment by the Accountholder, subject to the terms and conditions set forth below.

**1. Designated Representative.** In its role as Designated Representative, the TPA will serve as primary liaison between the Accountholder and Healthcare Bank (“Custodian”). The TPA will not provide any services to the Accountholder or the Accountholder’s HSA as a fiduciary under Section 3(21) of ERISA, under any comparable and applicable provisions of state or local law, or under the Investment Advisor’s Act of 1940.

**2. Investments.** All investment transactions, including all communications and instructions, must be completed by the Accountholder through the investment portal (“Investment Portal”) available through the 1Cloud by Evolution1® system (“Application”) made available to the Accountholder by the TPA. The communications and instructions may include instructions to place orders for the purchase and sale of mutual funds or other investments made available through the Custodian. The Accountholder hereby authorizes and directs the Custodian to accept such investment instructions from the Investment Portal and the Application, to pay for mutual fund share purchases from the Accountholder’s HSA, and to receive payment from the sale of mutual fund shares into the Accountholder’s HSA. The Accountholder and the TPA agree to the following:

a. No investment transaction for the Accountholder’s HSA to be processed by the Custodian at the direction of the Accountholder will be processed until the Custodian receives the funds to be invested and the instruction in proper form. Investment transactions will be processed either as soon as administratively practicable thereafter or, if later, on the scheduled date for processing. The Custodian may rely conclusively on all instructions given through the Investment Portal and the Application that the Custodian believes to be genuine. In the absence of proper investment instructions, the Custodian will not be liable for interest, market gains or losses in the HSA. The Custodian is not a guarantor of timely processing with respect to the Accountholder or TPA.

b. The Accountholder agrees that the Custodian may rely on instructions from the Investment Portal and the Application, and the Accountholder agrees that the Custodian shall be under no duty to make an investigation with respect to any such instructions. However, each direction is contingent upon the determination by the Custodian that the instruction can be administered by the Custodian.

c. The Accountholder is solely responsible for managing the investments of the Accountholder’s HSA and for communicating investment instructions through the Investment Portal on the Application. All instructions, directions, and/or confirmations received by the Custodian from the Investment Portal and the Application shall be deemed to have been authorized by the Accountholder.

d. The Accountholder understands and agrees the Custodian will hold only those mutual funds or other investments agreed to by the Custodian.

e. The Custodian may delay the processing of any investment transaction due to a Force Majeure, government or National Securities Clearing Corporation (“NSCC”) restrictions or changes, exchange, market or NSCC rulings, strikes, interruptions of communications or data processing services, or disruptions in orderly trading on any exchange or market. “Force Majeure” means a cause or event outside the reasonable control of the parties or that could not be avoided by the exercise of due care, such as an act of God, including but not limited to a blizzard, flood, tornado or any other adverse weather conditions, or a significant mechanical, electronic or communications failure.

f. The Accountholder agrees that the TPA is not an agent of the Custodian except with respect to HSA contributions transmitted from the TPA to the Custodian.

**3. HSA Administrator.** In its role as HSA Administrator, the TPA will assume recordkeeping and nondiscretionary administrative duties on behalf of the Custodian, for the benefit of both the Custodian and the Accountholder. The TPA will not provide any services to an Accountholder or an Accountholder’s HSA as a fiduciary under Section 3(21) of ERISA, under any comparable and applicable provisions of state or local law, or under the Investment Advisor’s Act of 1940. The TPA agrees to assume the following specific duties and responsibilities:

a. Receive and forward contributions from the Accountholder and Accountholder’s employer.

b. Receive and transmit investment instructions and other information to the Custodian through the Application.

c. Pay distributions to or for the benefit of the Accountholder.

d. Maintain all necessary information on the Application for the Custodian to prepare required returns, reports, or other documents to the applicable taxing authorities, including IRS Forms 5498-SA and 1099-SA.

e. Provide access to the Accountholder through the use of the Application to permit the Accountholder to initiate transactions and access information on HSA balances and investments.

- f. Forward requests to the appropriate mutual fund provider if necessary for prospectuses, financial statements, reports, or any other material related to mutual funds to the extent such information is not made available electronically through the Application.
- g. Produce electronic account information to the Accountholder through the Application, or by paper if requested by the Accountholder, showing the assets of the HSA and records of contributions, distributions, and other transactions.
- h. Perform other reasonable services requested by the Custodian and the Accountholder.

**4. Removal of the Designated Representative and the HSA Administrator.** The Accountholder may remove the TPA as the Designated Representative or the HSA Administrator by closing their HSA with the Custodian.

**5. Compensation to the TPA from the Custodian.** As compensation for assuming recordkeeping and administrative duties on behalf of the Custodian, and pursuant to the terms of a separate agreement between the Custodian and the TPA, as follows:

a. If the Fed Funds Rate on the last Business Day of the month is equal to or greater than two and one-half percent (2.5%) per annum, then the Custodian shall pay to the TPA an amount equal to one percent (1%) per annum of HSA assets held in the Cash Account, up to a maximum Cash Account balance of \$2,000 per Accountholder.

b. If the Fed Funds Rate on the last Business Day of the month is less than two and one-half percent (2.5%) per annum, then the amount the Custodian shall pay to the TPA may be reduced, in the sole and exclusive discretion of the Custodian, below the one percent (1%) per annum of the HSA assets held in the Cash Account, up to a maximum Cash Account balance of \$2,000 per Accountholder or eliminated in total.

1. If the Custodian, in their sole and exclusive discretion, does pay compensation to the TPA when the Fed Funds Rate is less than two and one-half percent (2.5%); such payment shall not result in any future obligation of the Custodian to the TPA or be considered as an amendment or modification of this agreement.

2. Upon the Fed Funds Rate increasing to two and one-half percent (2.5%) or above, the Custodian will pay compensation to the TPA as set forth under paragraph 5.a. above.

c. No HSA assets shall be used for this purpose, and all such compensation shall be paid from the Custodian's general assets. The amount of compensation shall be adjusted to reflect daily average collected balances of HSA funds in the Cash Account, up to a maximum Cash Account balance of \$2,000 per Accountholder. This amount may be reduced if (i) the Accountholders are permitted to invest minimum balances in interest-bearing accounts, (ii) the minimum balance for one (1) or more specified groups of Accountholders is less than designated threshold agreed upon by the Custodian, or (iii) the Custodian makes changes to the standard offering of mutual funds, as chosen by the Custodian or as agreed upon by the Custodian and the TPA, at the request of the TPA or other third party, other than the Accountholders, which results in increased expenses or decreased revenues to the Custodian. The TPA shall communicate designated threshold to the Accountholder.

**6. Liability.** The Accountholder hereby agrees to indemnify, defend and hold the TPA and the Custodian, and any parent, subsidiary, related corporation, or affiliate of the TPA or the Custodian, including their respective directors, managers, officers, employees and agents, harmless from and against any and all loss, costs, damages, liability, expenses or claims of any nature whatsoever, including but not limited to legal expenses, court costs, legal fees, and costs of investigation, including appeals thereof, arising, directly or indirectly:

a. Thereof from any action that the TPA or the Custodian takes in good faith in accordance with any certificate, notice, confirmation, or instruction delivered by the Accountholder, whether through the Application or otherwise. The Accountholder waives any and all claims of any nature it now has or may have against the TPA or the Custodian and its affiliates, parent company and their respective directors, managers, officers, employees, agents and other representatives, which arise, directly or indirectly, from any action that the TPA and the Custodian takes in good faith in accordance with any certificate, notice, confirmation, or instruction from the Accountholder.

b. Out of any loss or diminution of any mutual fund or other investment of the HSA resulting from changes in the market value; reliance, or action taken in reliance, on instructions from the Accountholder; any exercise or failure to exercise investment direction authority by the Accountholder; the TPA or the Custodian's refusal on advice of counsel to act in accordance with any investment direction by the Accountholder; any other act or failure to act by the Accountholder; any prohibited transaction due to any actions taken or not taken by the TPA or the Custodian in reliance on instructions from the Accountholder; or any other act the TPA or the Custodian takes in good faith hereunder.

Without limiting the generality of the foregoing, the Custodian shall not be liable for any losses arising from its compliance with instructions from the Accountholder or the TPA; or executing, failing to execute, failing to timely execute or for any mistake in the execution of any instructions, unless such action or inaction is by reason of the willful misconduct of the Custodian.

The Accountholder is responsible for and hereby agrees to reimburse the TPA for any fees or penalties paid by the TPA for corrected 1099-SA and/or 5498-SA forms due to an error by the Accountholder.

This provision shall survive the termination of the Custodial Agreement and Disclosure Statement.

**7. Electronic Communications.** The Accountholder understands and authorizes that certain investment elections, changes or transfers, distribution decisions, and any other decision or election by the Accountholder or the TPA shall be accomplished exclusively by electronic means through the Investment Portal and the Application, which includes, but is not limited to, the internet and which are not otherwise prohibited by law and which are in accordance with procedures and/or systems approved or arranged by the Custodian and the TPA.

**8. Electronic Payment Authorization.** The Accountholder authorizes electronic debit and credit entries, if applicable, to the Accountholder's designated checking or savings account. The Accountholder also authorizes adjustments to these accounts for error corrections. This authorization will remain in effect until the termination of this agreement.

**9. Distributions.** The Accountholder authorizes the Custodian to distribute funds from the HSA on behalf of the Accountholder upon instruction through the Application or through the use of the Debit Card. Funds to be disbursed shall be placed in a Distribution Account of the TPA, and the Accountholder authorizes the TPA to withdraw funds requested by the Accountholder from the Distribution Account and pay them to or for the benefit of the Accountholder or, if agreed upon in advance between the Accountholder and the TPA, to the TPA for administrative fees or to a third party provider of medical services or supplies.

**10. Relationship of the Custodian and Designated Representative and HSA Administrator.**

This provision shall survive the termination of the Custodial Agreement and Disclosure Statement. The Accountholder understands and agrees the Custodian will hold only those mutual funds or other investments agreed to by the Custodian.

The Accountholder understands and authorizes that certain investment elections, changes or transfer, distribution decisions, and any other decision or election by the Accountholder or the TPA shall be accomplished exclusively through the Investment Portal and the Application in accordance with procedures and/or systems approved or arranged by the Custodian and the TPA.

The Accountholder authorizes the Custodian to distribute funds from the account on behalf of the Accountholder upon instruction from the Application or through the use of the Debit Card. Funds to be disbursed shall be placed in the Distribution Account of the TPA, and the Accountholder authorizes the TPA to withdraw funds requested by the Accountholder from the Distribution Account and pay them to or for the benefit of the Accountholder.

The Custodian has entered into a separate contract with the TPA with respect to its roles as the Designated Representative and the HSA Administrator. Upon termination of the contract between the Custodian and the TPA, the Accountholder agrees that the Custodian may assume the responsibilities of the TPA. If the Custodian does not choose to assume the responsibilities of the TPA, the Accountholder may appoint a new Designated Representative and HSA Administrator if acceptable to the Custodian pursuant to this agreement. If the Custodian does not choose to assume the responsibilities of the TPA and the Accountholder does not appoint a new Designated Representative and HSA Administrator acceptable to the Custodian, the Custodian may resign on the effective date of termination of the contract between the HSA Administrator and the Custodian. The Custodian is authorized to contract or make arrangements with any affiliate or third party for the provision of necessary services to the Account. The Custodian is specifically authorized to place securities orders, settlement security trades, hold securities in custody and perform related activities on behalf of the account.

**11. Amendment.** The Custodian and the TPA, upon mutual agreement, have the right to amend this agreement at any time. Any amendment made to comply with federal or state law does not require the Accountholder's consent. The Accountholder will be deemed to have consented to any other amendment unless, within thirty (30) days from the date of notice of the amendment, the Accountholder notifies the TPA in writing that it does not consent.

**12. Termination of Agreement and Resignation.** The Accountholder may terminate this agreement at any time by giving written notice to the TPA. The TPA may resign as Designated Representative and HSA Administrator any time effective thirty (30) days after it mails written notice of its resignation to the Accountholder. Upon receipt of that notice, the Accountholder must make arrangements with the Custodian to appoint a new Designated Representative and HSA Administrator. If the Custodian does not choose to assume the responsibilities of the TPA, and the Accountholder does not appoint a new Designated Representative and HSA Administrator acceptable to the Custodian, the Custodian may resign on the effective date of termination of this agreement.

**13. Fees.** The Accountholder shall pay the TPA the administrative fees described in any separate agreement with the TPA, and the Custodian shall undertake no responsibility for collecting, reconciling, reporting or disclosing said fees in connection with this agreement.

The TPA shall pay the Custodian a service charge for activity costs associated with the Contribution and Distribution Accounts maintained at the Custodian, as described in a separate schedule with the TPA. The Custodian shall pay the TPA an earnings credit for positive collected balances in the Contribution and Distribution Account. The earnings credit shall be calculated using a tiered rate which is based on the 91-day Treasury Bill index, after a ten percent (10%) reserve requirements. If the earnings credit exceeds the activity costs, there shall be no service charge. If the earnings credit is less than the activity costs, the service charge shall be deducted from the TPAs designated account.

**14. Termination.** In the event the Accountholder terminates employment or otherwise discontinues making contributions under the Accountholder's employer's HSA funding program, the Accountholder may be offered an opportunity to continue these HSA services as provided by the Custodian and Designated Representative. Accountholder will be provided with details of such arrangement, which may include, without limitation, changes to the Accountholder's investment choices, fees, plan type, user ID, password, and/or enhanced online security feature.