

# HEALTH SAVINGS ACCOUNT CUSTODIAL AGREEMENT

This Custodial Agreement (this “Agreement”) sets forth the terms and conditions that govern your health savings account (the “Account”) with HealthEquity, Inc. (the “Custodian”) while you participate in the health plan sponsored by Edward D. Jones & Co. L.P. (the “Employer”) that includes a health savings account benefit (the “Plan”). When used in this Agreement, the words “Participant”, “you”, “your”, or “yours” mean the participant with a health savings account (an “HSA”) under the Plan and owner of the Account, and includes any party you authorize or appoint to access and/or use your Account, which party will be considered your agent.

The Employer has structured the Account as part of an “employee welfare benefit plan” established by the Employer under the Employee Retirement Income Security Act of 1974 (“ERISA”). The Delegatee (as defined below) is responsible for selecting and monitoring investments, and for all applicable reporting, fiduciary, plan sponsor, and other responsibilities under ERISA, that are not otherwise retained by the Participant under the Internal Revenue Code (“IRC”), such as directing the Custodian to make distributions from the Account. The “Delegatee” shall mean the person or entity to whom Plan administration, investment and/or fiduciary authority has been delegated under, or in accordance with, the terms of the Plan.

Under this arrangement, the Custodian provides custodial services to you as directed by the Employer or by you (as appropriate) in accordance with ERISA, the IRC, and other applicable laws and regulations. The Custodian’s authority and responsibilities with respect to this Agreement shall be limited to those that are specifically identified herein or by law. The Custodian shall act solely upon the direction of the Employer or its Delegatee and in accordance with the terms of this Agreement, and shall have no discretion with respect to administration or investment of your account, and nothing in this Agreement shall be construed to confer fiduciary status upon the Custodian for any purpose. Your Account is generally self-administered except as otherwise directed by the Delegatee or required by the Plan.

By enrolling in an HSA under the Plan, instructing the Employer to open and maintain the Account on your behalf, contributing to your Account or receiving Account contributions, investing Account funds, or otherwise accessing or using your Account in any way, you consent to be bound by this Agreement.

Nothing in this Agreement is intended as legal, tax, financial, investment or medical advice or advice in respect of estate planning or the consequences of a change in marital status. You are solely responsible for determining if you are eligible to contribute to an HSA, how much you can contribute, whether your contributions are deductible, and the taxation of any distributions. Additional information relating to HSAs may be found at [www.treasury.gov](http://www.treasury.gov) or in Internal Revenue Service (“IRS”) Publication 969 — Health Savings Accounts and Other Tax-Favored Health Plans, or may be provided by the Employer. State-level taxation of HSAs varies from state to state. Always consult a professional when making important or life changing decisions.

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

## ARTICLE I. CONTRIBUTIONS

- 1.01 The Custodian will accept cash contributions made by or on behalf of the Participant and will hold such contributions at a bank or financial institution where such contributions are eligible for Federal Deposit Insurance Corporation (“FDIC”) insurance, as directed by the Employer. Your account statements will set forth the name of the bank or financial institution where your Account funds are held as of the end of the statement period.
- 1.02 Contributions for any tax year may be made at any time before the deadline for filing the Participant’s federal income tax return for that year (without extensions).
- 1.03 Rollover contributions from an HSA or an Archer medical savings account (“Archer MSA”), unless prohibited under this Agreement, need not be in cash and are not subject to the maximum annual contribution limits set forth in Article II.
- 1.04 Qualified transfers from an individual retirement account (“IRA”) to the Account must be completed by a trustee-to-trustee transfer and are subject to the maximum annual contribution limits set forth in Article II.
- 1.05 Incoming contributions made pursuant to external transfers (for example, transfers from an employer) will generally be available within two to five business days after the effective date of the transfer.
- 1.06 The Custodian shall not be liable for any losses, damages, claims, liabilities, penalties, judgments, settlements, litigation, investigations, costs or expenses that the Participant incurs as a result of any employer’s failure to make any contributions to the Account. The Custodian is not responsible for monitoring an employer’s contributions to the Account or notifying the Participant of employer contributions to the Account. The Participant is responsible for contacting his or her employer regarding the employer’s contributions to the Account and for monitoring those contributions. In considering whether contributions to the Account have exceeded the allowable annual contribution limit, the Participant must take into account any employer contributions as well as any IRA transfers or HSA contributions previously made by the Participant (including to other health savings accounts) that also count towards the annual contribution limit.
- 1.07 Accelerated contributions (as generally defined in IRS Notice 2004-50 Q/A 60) will be processed by the Custodian in accordance with instructions provided by the Employer, subject to the limitations and conditions defined by the Employer.

## ARTICLE II. ACCOUNT CONTRIBUTION LIMITS

- 2.01 Contributions are limited to the statutory maximum amount allowed under IRC section 223, taking into account the adjustments for partial years of eligibility and other terms of IRC section 223.
- 2.02 Contributions to Archer MSAs or other HSAs owned by the Participant count toward the maximum annual contribution limit for the Account.
- 2.03 Up to an additional \$1,000 of catch-up contributions may be made by or on behalf of a Participant who is at least age 55 or older by the end of the applicable calendar year and is not enrolled in Medicare.

## ARTICLE III. EXCESS CONTRIBUTIONS

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

## ARTICLE IV. DISTRIBUTIONS

- 4.01 Distributions of funds from the Account may be made at any time upon the direction of the Participant. The Participant may request a distribution from the Account through the Custodian’s website, by completing an account reimbursement form or by other means acceptable to the Custodian. Notwithstanding the foregoing, the Custodian will at all times hold in reserve an amount equal to the Participant’s closing fee (as set forth in the Custodian’s written schedule of fees then in effect), which amount may not be distributed by the Participant at any time.
- 4.02 The Custodian is not required to determine whether a distribution from the Account is for the payment or reimbursement of Qualified Medical Expenses (defined below). The Participant is responsible for substantiating that the distribution is for Qualified Medical Expenses and must maintain records sufficient to show, if required, that the distribution is tax-free. The Custodian does not calculate the income tax or penalties that may apply, or withhold any part of the distribution to pay for any such income tax or penalties. For purposes of this Agreement, the term “Qualified Medical Expenses” means amounts paid for medical care as defined in IRC section 213(d) for the Participant, his or her spouse, or “tax dependents” (generally as defined in IRC section 152) but only to the extent that such amounts are not compensated for by insurance or otherwise.
- 4.03 Distributions are reported to the IRS annually by the Custodian. Form 1099-SA will be issued by the Custodian by January 31 of the year following the year of the distribution. Form 5498-SA will be issued by the Custodian by May 31 of the year following the year of the contribution. The Custodian will email a notification to the Participant that the Forms are available for download, or if the Participant has not opted to receive electronic notification, the Custodian will mail a paper copy of Forms to the Participant’s last known mailing address.
- 4.04 Upon the death of the Participant, the Custodian will liquidate the Participant’s interests in any HSA Investment(s) (as defined below), if applicable, and distribute the proceeds, along with all other cash held in the Account, to the Participant’s designated beneficiaries. The Participant may designate one or more beneficiaries on the Custodian’s website or by completing the beneficiary designation form available on the Custodian’s website. If the Participant’s spouse is designated as the beneficiary, the Account balance can be transferred upon the death of the Participant to a new HSA in the name of the spouse. If there is no valid beneficiary designation on file with the Custodian at the time of your death, your legal spouse will be deemed to be your beneficiary. If you are not married at the time of your death, and no beneficiary is designated, the distribution will be made to the Participant’s estate. There are different tax consequences based on who is the designated beneficiary of the Account. See IRS Publication 969.
- 4.05 The Custodian may make any distributions from the Account required or authorized hereunder by mailed check, ACH, Fed wire or other electronic transfer to a payee at the address last furnished to the Custodian.
- 4.06 If check-writing is available in connection with the Account and the Participant provides a check as payment to a third party, the Participant authorizes the Custodian to either make a one-time electronic funds transfer from the Account, if eligible, or to process the payment as a check transaction.
- 4.07 The Custodian may make a distribution from the Account absent instruction from the Participant, if directed to do so pursuant to a court order, garnishment, IRS levy, or other levy. In such event, the Custodian shall not incur any liability for acting in accordance with such court order, garnishment or levy.
- 4.08 The Participant is liable for any overdraft charges imposed by the Custodian. Funds will

generally be available for distribution from the Account within two to five business days of contribution. Unless otherwise instructed by the Participant, contributions received during non-business hours will be considered to be made on the next full banking day.

## ARTICLE V. ACCOUNT

### 5.01 Nonforfeitable

In accordance with IRC section 223, the Participant's interest in the balance of the Account is nonforfeitable, except as otherwise provided by IRS guidance or applicable law.

### 5.02 Interest

The Participant's cash balance accrues interest at the rate listed on the Participant's monthly statement and posted on the Custodian's website. Interest rates are subject to change. Interest accrues no later than one business day after the day the Custodian receives the funds provided the Account has been opened. Interest is credited to the Account monthly as of the last day of the statement cycle. If the Account is closed before accrued interest is credited, no interest will be paid or accrued for that month. For more information go to: <https://www.healthequity.com/Member/CashInterestRates.aspx> (may require log in).

### 5.03 Investment Limitations

No part of the custodial funds in the Account may be invested in life insurance contracts or in "collectibles" as defined in IRC section 408(m). The custodial funds in the Account may not be commingled with other property except in a common trust fund or common investment fund. None of the Participant, the Employer, or the Custodian will engage in any non-exempt "prohibited transaction" as defined in IRC section 4975 and ERISA section 406(a) and (b) with respect to the Account (such as borrowing from or pledging the Account).

### 5.04 No Right of the Participant to Pledge Assets

In accordance with applicable law, the Participant shall have no right to pledge, assign, hypothecate, or in any manner create a lien upon any assets, payments, or benefits while such are held in the Account or cause or allow the assets in the Account to be subject to or responsible for the debts, contracts, or torts of any person whether or not entitled to distributions under this Agreement.

### 5.05 Verification of Accounts

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

## ARTICLE VI. INVESTMENT SUB-ACCOUNT

### 6.01 Generally

If the Account balance exceeds a certain threshold specified by the Employer, the Participant may invest the balance above that threshold in certain mutual funds and other securities selected solely by the Employer's HSA Investment Committee (the "HSA Investments").

The portion of the Account that is comprised of HSA Investments is referred to in this Agreement as the Participant's "Investment Sub-Account."

### 6.02 Custody of HSA Investments

At the direction of the Employer, HealthEquity Trust Company ("HETC"), a Wyoming-chartered trust company and wholly-owned subsidiary of the Custodian, serves as custodian of all HSA Investments and as the "qualified custodian" (as such term is defined in Rule 206(4)-2 under the Investment Advisers Act of 1940, as amended) of all HSA Investments. As directed by the Employer, Charles Schwab Bank (together with its affiliates, "Schwab") serves as sub-custodian of all HSA Investments.

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

6.04 Neither the Custodian nor HETC provides investment advice, or serves as an investment adviser to the Participant and neither of them will recommend any HSA Investments made available through the Investment Sub-Account. Neither the Custodian nor HETC shall have a duty to disclose any risks associated with any HSA Investment and shall not have any liability for any loss of principal or income, nor for any expense which the Participant may

incur relating to any HSA Investment. Assets in the Investment Sub-Account are not FDIC insured, are not deposits or obligations of the Custodian or HETC, are not guaranteed by the Custodian or HETC, and are subject to risk of loss. Investment advice may be obtained only from an investment adviser selected by the Participant. Investment advice is not part of the custodial services provided by the Custodian or HETC and is not covered by this Agreement. No communication between the Custodian (or any of its agents and affiliates) and the Participant, whether direct or indirect, shall be construed as a recommendation with respect to investments.

6.05 The Custodian and/or HETC may receive from Schwab or an issuer of HSA Investments certain communications related to HSA Investments held in the Participant's Investment Sub-account, including, among others, proxies and information concerning tender offers and proposed mergers (collectively, "Issuer Communications"). Issuer Communications may solicit a voting decision or other action regarding the HSA Investments to which they relate. To the extent the Custodian or HETC receives any Issuer Communications, the Participant (i) authorizes the Custodian and/or HETC (as applicable) to exercise all voting decisions and take any other required actions related to such Issuer Communications on the Participant's behalf in accordance with the Employer's direction; and (ii) acknowledges and agrees that the Participant will not receive any copies of such Issuer Communications. The Custodian and/or HETC may utilize the services of certain third-party consultants in determining how to vote in response to Issuer Communications. If the Participant desires to receive Issuer Communications, the Participant must notify the Custodian in writing, in which case the Custodian or HETC will forward the Issuer Communications to the Participant's address of record promptly after receipt, and the Participant will assume sole responsibility for voting or taking any action in respect of Issuer Communications.

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

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

7.01 While the Participant participates in the Plan, the Employer will pay maintenance, administration, service, and other Account fees and expenses designated by the Employer in connection with opening and maintaining the Account. All fees and expenses not paid by the Employer are chargeable to the Account, as set forth in the Custodian's written schedule of fees from time to time in effect. If the Account ceases to be part of the Plan, the Participant becomes responsible for all fees as set forth in the Custodian's written schedule of fees from time to time in effect. (See Article XII of this Agreement for more information about the effects of Agreement termination.)

7.02 The Custodian receives additional compensation equal to the difference between the interest received by the Custodian on cash held in the Account and the amount of interest paid to the Participant in respect of such cash (the "Cash Spread"). Cash Spreads vary depending on prevailing interest rates, which are subject to change.

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

### 7.04 Compensation Related to HSA Investments

The Custodian or HETC receives certain administration fees in connection with the Participant's HSA Investments.

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

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

## ARTICLE VIII. REPRESENTATIONS, WARRANTIES, AND RESPONSIBILITIES OF THE PARTICIPANT

The Participant hereby represents, warrants, acknowledges and covenants as follows:

8.01 The Participant has established the Account voluntarily in accordance with the Plan.

8.02 The Participant is eligible to contribute to the Account; specifically, that the Participant: (1) is covered under a Qualified High Deductible Health Plan ("HDHP"); (2) is not also covered by any other health plan that is not a qualified HDHP (or is not otherwise eligible to be coupled with a HSA); (3) is not enrolled in Medicare; and (4) cannot be claimed as a dependent on another person's tax return; unless the Account is used solely to make rollover contributions. A High Deductible Health Plan is defined in IRC section 223. Refer to IRS Publication 969 or consult your personal tax adviser for more information.

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

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

- 8.05 The Participant agrees that the Custodian may rely on any electronic signature given by the Participant for purposes of the Participant's authorization of withdrawals or third-party transfers, notices regarding change of name or address, or other instructions to the Custodian, except when required by law.
- 8.06 The Custodian does not have discretion with respect to investments or administration of the Account. In the event of uncertainty with respect to a course of action, the Custodian may request supplemental or clarifying direction from the Participant or the Employer. The Custodian shall incur no liability for following the Participant's or the Employer's direction or for taking no action if no such direction is furnished to the Custodian.
- 8.07 The Participant agrees to provide (directly or through the Employer) the Custodian with information necessary for the Custodian to prepare any report or return required by the IRS. The Custodian agrees to prepare and submit any report or return as prescribed by the IRS.
- 8.08 Any rollovers into the Account shall be from another HSA or other qualified account.
- 8.09 The Participant agrees to make Visa® Health Account Card transactions, issued by The Bancorp Bank (Participant FDIC) pursuant to a license from Visa USA Inc., only to the extent there are sufficient available funds in the Account. The use of any Visa® Health Account Card in connection with the Account may be limited to eligible merchants that provide, among other things, healthcare-related goods and services and supply applicable merchant category codes for verification purposes. The Participant is responsible for notifying the Custodian as soon as possible if the Visa® Health Account Card is lost or stolen to avoid potential losses. To the extent permitted by law, the Participant is responsible for all uses of the Visa® Health Account Card prior to notifying the Custodian of the loss or theft. Notification must be made by calling the Custodian at the number printed on the back of the Participant's Visa® Health Account Card, on the Participant's statement, or on the Custodian's website.
- 8.10 If the Participant has authorized his or her spouse and/or another third party to write checks and/or use the Visa® Health Account Card, including the issuance of additional Visa® Health Account Cards if requested for the Account, then the Participant acknowledges and agrees (a) it is the Participant's sole responsibility to inform the authorized individual(s) about the purpose of the Account and the tax consequences of using funds in the Account for items that are not Qualified Medical Expenses, (b) to be bound by, and to have the Account bound by, any action taken by such authorized individual(s), and (c) to indemnify and hold harmless the Custodian from any Losses (as discussed in Article X) resulting from any actions taken by such authorized individual(s).
- 8.11 If a Termination Event (as defined below) shall occur, the Participant agrees to be bound by, and the Account subject to, the terms and conditions of the Custodian's standard Custodial Agreement (as amended from time to time), which can be located at [www.healthequity.com](http://www.healthequity.com). Such terms and conditions shall apply unless and until the Participant rolls over the account to a different HSA provider (subject to applicable tax consequences).

#### ARTICLE IX. CUSTODIAN'S AUTHORIZATION AND EMPOWERMENT

The Participant hereby authorizes and empowers the Custodian to administer the Account in accordance with applicable law and the Plan, including the power:

- 9.01 To hold funds received from time to time from the Participant or another source, such as rollovers and HSA transfers, on behalf of the Account. The Custodian shall hold such funds in the Account unless the Participant has chosen to transfer assets into the Investment Sub-Account pursuant to the terms of this Agreement.
- 9.02 To invest and reinvest the Investment Sub-Account at the Participant's direction from the list of available HSA Investments, and to sell such HSA Investments to cover fees or overdrafts without any investment responsibility on the part of the Custodian.
- 9.03 To reinvest all realized earnings and dividends paid from an HSA Investment in the Investment Sub-Account in the same HSA Investment or such other investment.
- 9.04 To collect service fees from the Account or the Investment Sub-Account in accordance with the terms of this Agreement.
- 9.05 To make payments, disbursements or distributions from the Account as directed by the Participant or his or her authorized agent, in conformity with the terms of this Agreement.
- 9.06 Upon the direction of the HSA Investment Committee to the Custodian, to add, subtract, delete or otherwise modify any list of HSA Investments available for purchase by the Participant, including but not limited to, terminating an HSA Investment or prohibiting the Participant from making additional purchases of HSA Investments that are currently held in the Participant's Investment Sub-Account. If, upon the direction of the HSA Investment Committee, the Custodian terminates one or more HSA Investments in which the Participant is currently invested, the Custodian will notify the Participant and offer to automatically transfer the Participant's balance in such HSA Investment(s) to other investment(s) designated by the HSA Investment Committee (or, if no other investment is designated by the HSA Investment Committee, to liquidate the existing HSA Investment and contribute the proceeds to the cash balance of the Account). If, within thirty (30) days from the date the Custodian sends the notification to the Participant, the Participant does not elect to transfer its balance in the current HSA Investment(s) to another available HSA Investment, the Participant, by such inaction, shall have instructed the Custodian to liquidate the Participant's interest in the current HSA Investment(s) and return the proceeds to the cash balance of the Account. Following such liquidation, the terminated HSA Investment will no longer be available to the Participant for purchase.
- 9.07 The Participant acknowledges that any liquidation of HSA Investments will not result in immediately available proceeds to be placed in the cash balance of the Account and such proceeds will be available only in accordance with the terms and conditions applicable to the specific HSA Investment.
- 9.08 To perform any and all other acts, which in its judgment or the judgment of the Employer may be necessary or appropriate for the proper administration of the Account and the custodial assets in accordance with this Agreement and authorized directions, including correcting errors made by either the Custodian or the Employer, or employing such attorneys, agents, and vendors as the Custodian feels appropriate without notice to the Participant.
- 9.09 To seek, at the expense of the Account, direction or approval from a court of competent jurisdiction whenever the Custodian shall, in its sole discretion, deem it appropriate.
- 9.10 To request such documentation and certification deemed appropriate within the Custodian's discretion to verify and establish the identity of the beneficiary or the estate upon death of the Participant, if the assets are to be distributed to the Participant's estate.
- 9.11 To pay any estate, inheritance, income, or other tax or assessment attributable to any property, or interest held in the Account out of the assets of the Account upon such information or direction as the Custodian may require.
- 9.12 To require releases or other related documentation from the taxing authority, beneficiaries or other payee and require indemnification from such payee as may be necessary for the Custodian's protection against tax liability.
- 9.13 In the Custodian's sole discretion, to close the Account if the Account does not have a sufficient balance to pay fees that are due.
- 9.14 In the Custodian's sole discretion, to not accept transfers to the Account from a custodian or trustee of another HSA or certain other type of account.
- 9.15 To hire third party service providers, such as record keepers, clearing firms or broker-dealers, to provide certain services with respect to the HSA Investments.
- 9.16 In the Custodian's sole discretion, to substitute another trustee or custodian if the IRS notifies the Custodian that a substitute custodian is required for the Account.
- 9.17 In the Custodian's sole discretion, to not permit any distributions at a time when there are insufficient funds in the Account. In the event there is an overdraft of the Account, the Participant shall be liable for any overdraft or collection fees.

#### ARTICLE X. INDEMNIFICATION

The Participant agrees to indemnify, defend and hold harmless the Custodian and its affiliates, successors, assigns, directors, agents and employees from and against any and all losses, damages, claims, liabilities, penalties, judgments, settlements, litigation, investigations, costs or expenses (including, without limitation, the reasonable fees and expenses of outside counsel) brought by the Participant, or by or on behalf of a third party, arising out of or in connection with (a) the Custodian's good faith performance of this Agreement, except to the extent that such losses are determined by a court of competent jurisdiction through a final, non-appealable order to have been caused by the willful misconduct, bad faith or fraud of such indemnitee; and (b) the Custodian's good faith following any instructions or directions from the Participant, the HSA Investment Committee or the Employer received in accordance with this Agreement.

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

##### 11.01 Amendment

This Agreement may be amended from time to time by the Custodian. Each amendment will take effect upon sixty (60) days' notice to the Participant made pursuant to Section 13.03 of this Agreement, and the Participant will be deemed to have consented to such amendment unless, within sixty (60) days from the date the Custodian provides notice to the Participant, the Participant notifies the Custodian that Participant does not consent to the amendment. In that event, the Account will be closed and the account balance, less any outstanding fees, will be transferred to another custodian designated by the Participant or, if none is designated, distributed to the Participant. This Agreement may not be amended by the Participant without the Custodian's written consent.

##### 11.02 Assignment

The Custodian reserves the right to assign this Agreement without the Participant's prior consent, provided that any assignee must be qualified under the IRC to be an HSA custodian or trustee. Upon assignment of this Agreement, the assignee shall automatically become custodian of the Account if it is qualified under the IRC to serve as an HSA custodian or trustee. The Custodian shall not be liable for any actions or failures by a successor custodian or trustee to act, nor for any tax consequences, or other losses that result from the transfer or distribution of the Participant's assets.

#### ARTICLE XII. TERMINATION

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

##### 12.01 Termination by the Participant

If this Agreement is terminated by the Participant, the Custodian will, if applicable, promptly liquidate the Participant's interests in any HSA Investment(s) and contribute the proceeds to the cash balance in the Account. The Participant will be provided an opportunity to make arrangements to transfer the Account balance to another eligible HSA custodian. If the Participant does not complete a transfer of the entire Account balance to another eligible HSA custodian within thirty (30) days from the date of the termination notice provided to the Participant, the Custodian will have the right, in its sole discretion, to (a) transfer the Account balance to another HSA custodian that the Custodian selects or (b) distribute the Account balance to the Participant in a single sum; provided, however, that, in either case, the Custodian may hold back from the Account a reasonable amount of money that the Custodian believes is necessary to cover any fees, expenses, penalties or taxes chargeable against the Account, including any penalties associated with the liquidation of the Participant's HSA Investments.



## 12.02 Termination by the Custodian

If this Agreement is terminated by the Custodian, the Custodian will, following notice to the Participant, promptly liquidate the Participant's interests in any HSA Investment(s) and contribute the proceeds to the cash balance in the Account. Following termination and, if applicable, liquidation of the Participant's interests in any HSA Investment(s), the Custodian will have the right, in its sole discretion, to (a) transfer the Account balance to another HSA custodian that the Custodian selects or (b) distribute the Account balance to the Participant in a single sum; provided, however, that, in either case, the Custodian may hold back from the Account a reasonable amount of money that the Custodian believes is necessary to cover any fees, expenses, penalties or taxes chargeable against the Account, including any penalties associated with the liquidation of the Participant's HSA Investments.

## 12.03 Automatic Termination

If the Participant ceases to participate in the Plan as a result of a change of employment status or otherwise (in each case, a "Termination Event"), then (i) the Custodian will disassociate the Participant's Account from the Employer and the Plan, (ii) this Agreement shall automatically terminate and be of no further force or effect, and (iii) the Account shall automatically be subject to the Custodian's standard Custodial Agreement and other legal notices which are available on the Custodian's website at [www.healthequity.com](http://www.healthequity.com).

## 12.04 Other Considerations

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

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

### 13.01 Statements and Reporting Written Objections or Exceptions

The Custodian shall furnish or cause to be furnished to the Participant statements concerning the status of the Account at least quarterly. The Participant can access and retrieve the statements through the Custodian's website or other Internet portal, or choose to have such statements mailed as provided for on the written schedule of fees provided in the Participant's welcome kit.

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

### 13.02 Website

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

The Custodian will provide the Participant a user name and password that will allow the Participant access to his or her Account online. It shall be the Participant's responsibility to keep the user name and password (and other unique credentials such as social security number) private and secure. The Participant shall be responsible for all actions taken by any person using the Participant's user name and password (or other credentials) whether or not such use was authorized by the Participant.

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

## 13.03 Notice

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

## 13.04 Privacy

The Account is subject to the privacy and security protections of the Gramm-Leach-Bliley Act ("GLBA"). The Custodian has policies and procedures in place designed to maintain the confidentiality of the Participant's non-public personal information ("NPI", as defined by GLBA). The Custodian collects, processes, discloses, and safeguards the Participant's NPI in accordance with the Custodian's Notice of Privacy Practices, which is provided as part of the Participant's welcome kit and can also be viewed online at [http://healthequity.com/doclib/gen\\_privacy\\_notice.pdf](http://healthequity.com/doclib/gen_privacy_notice.pdf), as well as with the Custodian's Privacy Policy, which can be viewed online at <http://healthequity.com/legal.aspx#privacy>. All personal information furnished by the Participant in connection with the Account is subject to the terms of the Custodian's Privacy Policy and Notice of Privacy Practices. Notwithstanding the above, the Participant hereby authorizes and instructs the Custodian to provide any information about the Account, including the account number or any other NPI, to your Employer and those acting on behalf of the Plan, and allow the Employer to have limited access to the Member Portal.

You may also receive privacy notices under Health Insurance Portability and Accountability Act of 1996 ("HIPAA") from the Employer. Any protected health information sent by your Employer's group health plan to Custodian will be stored, maintained, and protected in accordance with the privacy and security rules established under HIPAA.

## ARTICLE XIV. GOVERNING LAW; INVALIDITY; WAIVER

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

## ARTICLE XV. DISPUTE RESOLUTION; BINDING ARBITRATION

The Participant is encouraged to resolve any disputes through the Plan's claims procedure.

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

Rules and forms of the American Arbitration Association may be obtained and all claims shall be filed at any office of the American Arbitration Association or at Corporate Headquarters, 335 Madison Avenue, Floor 10, New York, New York 10017-4605. Telephone: 212.716.5800, Fax: 212.716.5905, Website: [www.adr.org](http://www.adr.org).

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

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

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

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