

# HEALTH SAVINGS ACCOUNT CUSTODIAL AGREEMENT

This Health Savings Account Custodial Agreement (this “Agreement”) contains a dispute resolution provision that includes an agreement to arbitrate disputes (which is defined in Section 8.1). The Dispute resolution provision, which is in Article VIII of this Agreement, is called “Dispute Resolution and Binding Arbitration.” Please read Article VIII carefully because it will have a substantial effect on your rights, including your right to bring or participate in a class action or to have a jury trial in the event of a dispute between you and WealthCare Saver (the “Custodian”). However, even if the section applies to you, you may reject arbitration of disputes by following the steps noted in Article VIII within thirty (30) days of the effective date of this Agreement (defined in Section 1.2).

You have opened a Health Savings Account (“HSA”), as defined in Internal Revenue Code Section 223 for the purpose of paying or reimbursing Qualified Medical Expenses (as defined below). Throughout this Agreement, the terms “us,” “our,” and “we” refer to the Custodian. Alegeus Technologies, LLC, d/b/a WealthCare Saver is an Internal Revenue Service (“IRS”) approved, non-bank passive and non-passive trustee for HSAs that is operating as a passive custodian of HSAs for purposes of this Agreement.

You are the HSA applicant identified as such on the application and/or the HSA owner identified on the approved HSA. This Agreement contains the terms and conditions of your HSA with us. You, or an employer on your behalf, are establishing the account voluntarily and agree to the terms and conditions set forth herein by your continued use of the HSA. HSAs have restrictions on eligibility, how much you can contribute, on what medical expenses you can spend the funds, and how and if you invest the money in your HSA. You are responsible for making sure that you comply with the various limitations and restrictions under the Internal Revenue Code and this Agreement. As a result, we encourage you to review the Agreement with a qualified legal and/or tax advisor because it relates to your participation in an income tax qualified account. We also encourage you to read IRS Publication 969, which the IRS issued to explain HSAs and the rules that must be followed.<sup>1</sup>

## Definitions

The following words, terms and phrases are capitalized throughout this Agreement. They are capitalized because they have the following specific definitions:

“Administrator” refers to an organization that provides administrative services with respect to your HSA pursuant to an agreement with your employer and/or the Custodian, which agreement is subject to its separate terms and conditions.

“Agreement” includes this Health Savings Account Custodial Agreement, the Privacy Notice, the Fee Schedule, and any other documents, schedules, or appendices incorporated into and made a part of this Agreement by reference, and in all cases as amended.

“Business Day” means every day except Saturday, Sunday, or any day that is a federal holiday.

“Deposit Account” refers to the portion of your HSA that consists of cash or liquid deposits.

“Eligible Individual” has the same meaning as that term has in Internal Revenue Code Section 223(c)(1). You will find more details regarding the definition of Eligible Individual in IRS Publication 969.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“HSA” means a “health savings account,” as that term is defined in Internal Revenue Code Section 223(d)(1).

“HSA Investments” means the menu of investments selected by the Investment Advisor (and/or its agents and/or affiliates).

<sup>1</sup> Internal Revenue Code Section 223 permits eligible individuals to establish HSAs.

“HSA Investment Account” means the portion of your HSA that consists of the HSA Investments that you have chosen in accordance with this Agreement.

“Investment Advisor” means the company chosen by us to select and monitor HSA Investments, as further described in the HSA Investments Terms and Conditions disclosure.

“Investment Threshold” means the minimum initial balance your Deposit Account must reach and maintain before HSA funds may be invested in the HSA Investments in accordance with this Agreement.

“IRS Rules” refers to Internal Revenue Code Section 223 and the guidance issued by the IRS with respect to HSAs, which are currently summarized in IRS Publication 969.

“Portal” means the HSA website used to manage your HSA, access statements, tax forms, change in terms notices, etc.

“Qualified Medical Expenses” means amounts paid for medical care as defined in Internal Revenue Code Section 223(d) for you, your spouse, or your tax dependents as defined in the relevant IRS Rules, but only to the extent that such amounts are not compensated by insurance or otherwise.

## **ARTICLE I: ESTABLISHMENT OF THE HSA**

### **1.1. Eligibility for an HSA**

- (a) Only Eligible Individuals are permitted to establish an HSA, and you are solely responsible for determining if you qualify as one. Even though we have no obligation to verify whether you qualify, you agree we can require you to confirm that you qualify. You agree that any information that you provide to us will be accurate and complete, and that we can rely on its accuracy and completeness.

We may also require you to satisfy other requirements for establishing an HSA. For example, we are required to obtain, verify, and record certain information that identifies each person who attempts to open an HSA with us. We may decline your application or restrict or terminate your HSA immediately if you fail to satisfy these requirements, either when establishing the HSA or subsequently.

- (i) The restrictions we may place on your HSA include, without limitation, restrictions on payroll and other contributions, debit card restrictions, and restrictions which eliminate your ability to execute fund orders or process distribution requests.
- (ii) If we terminate or close your HSA, we will liquidate the assets in your HSA Investment Account as set forth in the HSA Investments Terms and Conditions disclosure, if applicable, and send you a check or an ACH deposit representing the cash proceeds of your HSA.

### **1.2. Effective Date and Term of Agreement**

- (a) You have an HSA with us and agree to be bound by this Agreement, all enrollment documentation, disclosures, and your continued use of the HSA. This Agreement and your HSA are considered effective the date your HSA is opened (“Effective Date”). You understand that the Effective Date of your HSA may differ from the date your HSA is considered effective for purposes of the IRS Rules. The effective date for purposes of the IRS Rules determines when medical expenses incurred by you and/or your eligible dependents are eligible for tax free distributions from your HSA.
- (b) This Agreement continues in effect until terminated in accordance with the provisions herein.

### **1.3. Governing Documents**

- (a) Both your and our rights and obligations regarding your HSA are set forth in this Agreement as it may be amended from time to time, including any attachments, exhibits, supplements, and other documents specifically incorporated into, and made a part of, this Agreement by reference or otherwise. If there is a conflict between this Agreement and any other HSA-related document or communication provided to you by us, this Agreement will control.
- (b) We are the Custodian and are not your advisor for legal, tax, investment, or other purposes. You understand and agree that no documents (including this Agreement), communications, representations, and correspondence, whether written or oral, that we provide regarding your HSA constitute, are intended to be, or should be construed as legal, tax, investment, financial or other professional advice.

### **1.4. Nature and Type of Account Established**

- (a) You agree that all use of your HSA will comply with all applicable laws and regulations. Your HSA will consist of a Deposit Account and, as applicable, an HSA Investment Account. All funds contributed to the Deposit Account of your HSA (whether contributed by you or on your behalf) are held by us on your behalf and for your benefit and may be held in one or more omnibus accounts together with funds of other HSA accountholders. We reserve the right to establish sub-accounts with respect to your HSA as we deem reasonable or necessary.
- (b) Your Deposit Account may consist of the following options:
  - (i) The WealthCare Saver HSA Deposit Account is an interest-bearing account at a federally insured depository institution, insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA) up to the maximum amount permitted under FDIC or NCUA guidelines, as appropriate, together with any other deposits owned by you at the same depository institution, including deposits from similar cash placement programs offered by other custodians, brokerages or entities issued directly to you by the depository institution. Please contact your Administrator for the current depository institutions at which your Deposit Account is held. We will determine the applicable interest rate payable on the balance of your Deposit Account. We may change the interest rate and annual percentage yield; we will provide you with thirty (30) days' advance notice of any changes in accordance with applicable laws. The interest rate paid with respect to your HSA may be higher or lower than the interest rate available to depositors making deposits at depository institutions in comparable accounts. In addition, we reserve the right to establish (and change) balance levels on which different rates of interest may be paid. The applicable interest rate payable to your Deposit Account will reflect that we retain a portion of the interest paid by the depository institution, which is our fee for custodial and administrative services for your Deposit Account. For current interest rate information, please refer to the HSA Interest Rate disclosure.
  - (ii) The WealthCare Saver High-Yield HSA Deposit Account is an interest-bearing account that is not FDIC or NCUA-insured, is not bank issued or guaranteed, and is subject to the loss of the principal and accrued interest. The terms and conditions of the WealthCare Saver High-Yield HSA are set forth in the WealthCare Saver High-Yield HSA Supplement to this Agreement. The terms and conditions of the WealthCare Saver High-Yield HSA Supplement are incorporated into this Agreement by reference.
- (c) The balance in your HSA Investment Account is not FDIC or NCUA-insured, is not bank issued or guaranteed, and is subject to investment risks, including fluctuations in value and the possible loss of the principal amount invested.
- (d) Except as otherwise required by law, the assets of your HSA are non-forfeitable.

## **1.5. Certain Limits on Legal Responsibility**

- (a) We are an IRS-approved non-bank passive and non-passive trustee and operate as a passive custodian of your HSA as contemplated by the IRS Rules. As a custodian, we hold the assets of your HSA on your behalf and for your benefit and act only in accordance with your instructions, except as otherwise specifically set forth herein. By opening or maintaining an HSA with us, you appoint us as your Custodian and authorize our acts as your Custodian as set forth herein.
- (b) You acknowledge and agree that nothing in this Agreement will be construed to confer fiduciary status upon us for any purpose. We are not a “Plan Administrator” or “Fiduciary” (as those terms are defined in ERISA) regarding your HSA or any employer sponsored benefit plan. We do not consider this HSA to be an employer sponsored, employee welfare benefit plan or an asset of an employer sponsored, employee welfare benefit plan or employee pension benefit plan (in each case, as defined by ERISA), even if your employer contributes to your HSA or your employer allows you to contribute to your HSA with pre-tax salary reductions through the employer’s “cafeteria plan”. Your employer is not a party to this Agreement.
- (c) We may utilize the services of third-party payment processors to execute payments from your HSA to the payee. In that event, your funds will be controlled by such third-party payment processor, may be held by such third-party payment processor in one or more omnibus accounts together with funds of other HSA accountholders, and you may be exposed to a risk of loss. You acknowledge and agree that you understand the risk of loss when we use such third-party payment processors, and you agree not to assert any claim or cause against us for any loss you may suffer resulting from our use of such third-party payment processors.
- (d) We are not obligated to perform any additional services not otherwise specifically set forth in this Agreement.
- (e) We assume no responsibility for tax or other consequences to you or anyone else arising from the establishment, maintenance, or use of the HSA. You are solely responsible for any taxes, interest, penalties, and other expenses which may be payable under applicable law in connection with your HSA.

## **1.6. Prohibited Transactions**

- (a) We may refuse to take any action requested by you (directly or indirectly) to the extent that we reasonably believe that such action will or is likely to violate applicable law. Notwithstanding the foregoing, we are under no obligation to investigate or inquire whether an action taken pursuant to your direct or indirect instructions constitutes a violation of applicable law and you will indemnify and hold us harmless from any damages, costs, or other liability that may arise as a result of any action we have taken in accordance with your instructions.
- (b) You understand and agree that you may be subject to adverse tax consequences if you (i) use the funds in your HSA to satisfy debts, contracts, or torts of any person otherwise not entitled to distributions under this Agreement, or (ii) use any portion of your HSA as security or collateral for a loan.
- (c) IRS Rules provide that a loan or other extension of credit between a disqualified person (including a trustee or custodian) and an HSA is a prohibited transaction. According to the IRS Rules, if an HSA holder or their beneficiary benefits from a non-exempt prohibited transaction, the HSA will cease to be an HSA on the first day of the year in which the prohibited transaction occurred. Further, we must treat the HSA as if all the assets were distributed on the first day of the year in which the prohibited transaction occurred. An overdraft may be characterized as a prohibited transaction. Therefore, all overdrafts, including those created by a transaction, a fee, or an oversight, are prohibited. If an overdraft occurs on the HSA, we reserve the right to liquidate HSA Investments, if any, to satisfy any loss or deficiency incurred due to prohibited transactions and may terminate the HSA. We will report the January 1 balance of the year in which such overdraft occurred, as a nonqualified distribution, unless the overdraft is corrected as described

in Section 3.1 below. Nonqualified distributions are includable in your gross income and may be subject to tax and other potential penalties. Please refer to IRS Publication 969.

### **1.7. Privacy and confidentiality**

We value and carefully safeguard your privacy. We have established policies and procedures designed to help safeguard the confidentiality and privacy of your information. You acknowledge and agree that we may share your personal information with third parties involved in the administration of your HSA, including your HSA Administrator. To review the privacy policies regarding consumer information, please refer to the WealthCare Saver Privacy Notice.

## **ARTICLE II: CONTRIBUTIONS**

### **2.1. Contributions Generally**

- (a) We will only accept cash contributions to your HSA. No property or in-kind transfers will be accepted. There is currently no minimum periodic contribution amount, but we reserve the right to require a minimum periodic contribution in the future, upon prior notice to you.
- (b) All contributions made by you or on your behalf to your HSA are initially allocated to the Deposit Account. Once the balance of your Deposit Account reaches the Investment Threshold, the balance in excess of the Investment Threshold may be invested thereafter in accordance with your instructions, subject to the terms of this Agreement, the HSA Investment Terms and Conditions disclosure, and such policies and procedures as we may implement.
- (c) For payroll deductions of your funds received from your employer, your funds will generally become available one Business Day after we receive your employer's payroll, and funds are allocated to your HSA. Electronic funds transfers, including ACH credit transfers and wire transfers to your HSA, will generally be available one Business Day after the Business Day we receive the funds. If you request a transfer of funds by ACH debit transfer to your HSA, those funds will generally be available three Business Days after the day you initiate the transfer. Contributions by check generally will be available three Business Days after the check is received by us. In certain circumstances, however, longer delays may apply.
- (d) Except for the rollover contributions described below, all contributions made by you or on your behalf to your HSA must be made in accordance with our procedures and while you are an Eligible Individual. Contributions are considered made when received except that contributions received after normal business hours will be considered made on the next Business Day, subject to sub-paragraph (c) above. For more information regarding when funds deposited in or transferred to your HSA become available for withdrawal, see Article III below.
- (e) We will accept rollover contributions from another HSA or Medical Savings Account ("MSA") as defined by IRS Rules. You are solely responsible for deciding whether to rollover or transfer funds to an HSA maintained in accordance with this Agreement and you are solely responsible for identifying for us any contributions to your HSA that are rollover contributions. All rollover contributions must be accompanied by the HSA Contribution form made available by your Administrator. Under IRS Rules, the rollover must be completed within 60 days of the distribution from another HSA or MSA, and only one such rollover contribution may be made each year. You may also request the custodian or trustee of another HSA or MSA make a direct transfer of your assets to an HSA established in accordance with this Agreement ("Trustee to Trustee Transfers"). You may also make a one-time transfer from an IRA to an HSA ("Qualified HSA Funding Distribution") in accordance with Internal Revenue Code Section 408 (and the regulations issued thereunder) and the IRS Rules. We are not responsible for monitoring the number of Qualified HSA Funding Distributions you make. We will only accept rollover contributions, Trustee to

Trustee transfers and Qualified HSA Funding Distributions that are made in accordance with our standard policies and procedures.

- (f) All contributions received by us during a calendar year (other than contributions identified by you as rollover contributions, Trustee to Trustee Transfers and Qualified HSA Funding Distributions) are allocated to your HSA for the calendar year in which they are received unless you notify us that a contribution should be allocated to a prior year and such request is timely and made in accordance with IRS Rules and our standard policies and procedures.
- (g) We reserve the right to correct any error related to your HSA, including the withdrawal of funds.

## **2.2. Maximum Contributions to the HSA**

- (a) Except in the case of a Rollover Contribution, no contribution will be accepted that exceeds the annual contribution limit under Internal Revenue Code Section 223(b) for the calendar year (“Individual Contribution Limit”). Your Individual Contribution Limit applies on an aggregate basis to all your HSA and MSA accounts held by all custodians, and you are solely responsible for ensuring that you do not contribute more than your Individual Contribution Limit in any given tax year. You understand and acknowledge that we are not obligated to, and we do not, verify or determine whether any contributions you make exceed your Individual Contribution Limit and we shall not be liable or responsible for any contribution in excess of your Individual Contribution Limit (“Excess Contributions”).
- (b) You understand and acknowledge that you may experience adverse tax consequences if you make Excess Contributions. If you make Excess Contributions and you wish to avoid the applicable taxes imposed on such Excess Contributions by IRS Rules, you understand that you must submit a timely request for the withdrawal of such Excess Contributions and any net earnings attributable to the Excess Contributions in accordance with IRS Rules.
- (c) In addition, the IRS Rules have established a limit on the amount of contributions that an HSA custodian may accept during a year (“Annual Contribution Limit”). We will not knowingly accept and retain contributions made by you and/or on your behalf during the year in excess of the Annual Contribution Limit. We may initially accept contributions in excess of the Annual Contribution Limit and then subsequently return those excess contributions to the sender if we become aware that the Annual Contribution Limit has been exceeded. You understand and acknowledge that you are not entitled to any interest, if applicable, on amounts in excess of the Annual Contribution Limit.

## **2.3. Contribution Rejections and Returns**

- (a) Credit for contributions made by you or an employer on your behalf is provisional until we receive a final settlement of the funds. If we do not receive settlement or payment, you agree that you must refund the amount we credited to you and that we may charge your HSA for such amount if you do not repay the amount. You may also be subject to an additional fee, if applicable, refer to the Fee Schedule.
- (b) We reserve the right to reject contributions (including rollover contributions) or transfers of funds to your HSA and to return such funds to the sender in accordance with this Agreement or as otherwise permitted or required under applicable law.
- (c) If a contribution is returned to us, we may accept the return without question and charge the item back against your HSA without advance notice to you and without regard to whether the institution on which it was drawn originally paid the item before subsequently determining it should not have been paid, or whether the return was made in a timely manner.
- (d) In our sole discretion, we may return to a presenting bank, returning bank or payment bank, or credit to your HSA, a paper copy or paper representation of an original check (including without

limitation an image replacement document, or a photocopy) drawn on or returned to your HSA that does not otherwise meet the technical or legal requirements for a “substitute check” as defined in the Check Clearing for the 21st Century Act (“Check 21 Act”). You agree that a check image that is received or created by us in the check deposit, collection, or return process shall be considered a “check” and/or an “item” for all purposes under this Agreement and applicable law. You authorize us to pay, process, or return a substitute check in the same manner as a “check” or “item” under this Agreement.

Without limiting any rights, we may otherwise have in this Agreement, you agree to indemnify and hold us harmless from any loss, claim, damage, or expense that we, you or any other person may incur directly or indirectly as a result of any action taken by us to process a check image or substitute check instead of the original check, including the destruction of the original check, as described above, to the extent permitted by applicable law.

#### **2.4. HSA Investments**

- (a) Once your Deposit Account balance reaches the Investment Threshold, you may elect to invest some or all the Deposit Account balance in excess of the Investment Threshold in one or more of the available HSA Investments. Information regarding the optional HSA Investments can be found by logging in to your Portal and selecting “Investments.” You have exclusive ownership of and responsibility for and control over the assets in your HSA and whether to invest. All investment transactions are subject to the terms of this Agreement, in addition to applicable federal and state laws and regulations, the rules and regulations of any exchange, market or clearing house where the transaction is executed, the terms of any applicable investment prospectus, and the HSA Investments Terms and Conditions disclosure. If you elect to establish an HSA Investment Account, the HSA Investments Terms and Conditions disclosure will be disclosed by the Investment Advisor at the time you establish this optional portion of your HSA.
- (b) Your Administrator may offer an automatic transfer feature. If this feature is available to you, and you select the automatic transfer feature via the Portal, when your balance in the Deposit Account exceeds the automatic transfer threshold, the excess funds will be automatically transferred from your Deposit Account into your HSA Investment Account. If the balance in the Deposit Account falls below the transfer threshold, no additional funds will be automatically swept into your HSA Investment Account until the Deposit Account once again exceeds the transfer threshold.
- (c) HSA Investments are your property and are not FDIC or NCUA-insured, not bank issued or guaranteed, and are subject to investment risks, including fluctuations in value and the possible loss of the amount invested. For information regarding expenses, earnings, and distributions, see the applicable investment prospectus and other publicly available information.
- (d) We have no liability or responsibility for the investment decisions you make and shall not be liable for any loss which results from your exercise of investment control over your HSA and your HSA Investment Account.
- (e) At our discretion, we reserve the right to liquidate your HSA Investments and/or terminate your HSA Investment Account and transfer the proceeds to your Deposit Account. Termination may occur for events such as death, suspicious unauthorized account activity, an overdrawn Deposit Account or upon the abandonment of your account as determined by applicable law, including state unclaimed property laws.
- (f) We may close your HSA Investment Account, at our discretion, where the account has a zero balance for an extended period designated by us.
- (g) You are responsible for any investment tax reporting, including and in accordance with applicable state laws.

- (h) Your HSA Investment Account may incur a period of system downtime; actions and trades executed by you may not be processed or may be delayed during this period and will be completed after the period of downtime ends.
- (i) You acknowledge that the execution of investments and related trade orders may be delayed and not executed in a timely manner.
- (j) No part of your HSA or your HSA Investment Account will be invested in life insurance contracts.

## ARTICLE III: WITHDRAWALS

### 3.1. Withdrawals Generally

- (a) The timing of availability of your HSA funds for withdrawal will vary depending on the type of contribution as described in Section 2.1 above.
- (b) You (or your authorized representative or user) may initiate a withdrawal at any time, by any means we establish, subject to any delays described herein, and to any limit on the frequency of withdrawals or the minimum amount of any withdrawal or distribution that we have imposed.
- (c) Your withdrawal may not exceed the balance of your Deposit Account. If the requested or desired withdrawal exceeds the balance of your Deposit Account, you must liquidate a portion of your available HSA Investments, if any, so the Deposit Account balance equals or exceeds the transaction amount.
- (d) You acknowledge and understand that we have no obligation to permit and normally will reject any withdrawal if your available Deposit Account balance is less than the requested withdrawal at the time it is initiated. However, occasionally an overdraft may occur. Such overdrafts will not be construed as a waiver of our right under this Agreement to reject future requests for withdrawals. In either case, whether the attempted withdrawal is rejected or paid subject to overdraft, we may charge you a fee (as set forth in the Fee Schedule). You agree either to promptly make a corrective contribution to your HSA equal to the amount of the overdraft and any applicable fees or you authorize us to liquidate your HSA Investment Account entirely, regardless of the overdraft amount in the event a corrective contribution is not received within sixty (60) calendar days of the overdraft incurrence. You agree that we shall have no liability or responsibility for any adverse consequences that result from our decision, and you may incur related fees. We reserve the right to terminate your -Deposit Account at our discretion and without prior notice if you fail to promptly satisfy the overdraft and pay the related fee(s) within sixty (60) calendar days of overdraft incurrence. If we terminate your Deposit Account, we reserve the right to refuse to reinstate the account or open a new account in your name. Please see Section 1.6 (c) above for additional information.
- (e) When your Deposit Account balance is less than all initiated withdrawals that are presented for payment on a given day, we may pay one or more withdrawals and reject or return others in any order we determine. We shall have no liability or responsibility to any provider or to you for any rejected or returned withdrawals that exceed the balance in the Deposit Account.
- (f) You will automatically receive a debit card accompanied by a separate cardholder agreement that describes the terms and conditions of use of the debit card. The debit card will only access funds in your Deposit Account. Generally, any attempted withdrawal using your card in amounts that exceed the balance in the Deposit Account will be rejected. We shall have no liability or responsibility to any provider or to you for any attempted withdrawal using your card in amounts that exceed the balance in the Deposit Account.
- (g) Withdrawals from your HSA to online fund transfers or bill payments, if available, may be subject to additional terms and conditions governing these services which you must accept online before

using the service. You consent to withdraw from your HSA and transfer funds to other third-party payment processors to facilitate the processing of payments in accordance with your instructions.

- (h) We may utilize a third-party payment processor for HSA payment processing. If you opt for online bill payment processing, your funds may be held with the third-party payment processor. Such payments may be made using a paper check or an electronic method and third parties may receive compensation as part of such payment process.
- (i) Your request to transfer your entire Deposit Account balance to a new custodian, resulting in a zero balance in your Deposit Account or to close your Deposit Account, will result in a closure fee, in accordance with the Fee Schedule.
- (j) Rollovers or transfers to a new custodian from your HSA must be requested and processed by the appropriate form provided by WealthCare Saver or your Administrator. Withdrawals from your HSA via online bill payment to process rollovers or transfers to a new custodian is not permitted. We reserve the right to disable online bill payment and Portal access should you not comply with this Agreement.

### **3.2. Stop Payments for Online Bill Pay Transactions**

- (a) Under certain circumstances, you may be able to place a stop payment order by calling the WealthCare Saver toll-free number at 1-866-287-5675 and providing the following information: (i) your HSA number; (ii) the bill pay check number; (iii) the date and amount of the check; (iv) the name of the party to be paid; and (v) your name and address.

This information can be found within the transaction description on the Portal. Unless the amount of the check and other information are reported with absolute accuracy, we cannot assure you that the stop payment order will be successful.
- (b) We reserve the right to charge you a fee for processing a stop payment request.
- (c) In the event that we inadvertently pay an item over your valid stop payment order, the following rules will apply: (i) you must be able to prove to us that you have suffered a loss and, if so, the amount of the loss; (ii) we will be able to enforce any rights that the original payee or any other person who held the bill pay check had against you; and (iii) the HSA will not be re-credited until you prove your loss and we are satisfied that we are required by law to do so.
- (d) If you stop payment on a bill pay transaction, you agree to indemnify us for any damages or expenses we incur arising out of the stop payment, including attorneys' fees. You assign to us all rights against the payee or any other holder of the item. You agree to cooperate with us in any legal action that we may take against such persons. You should be aware that anyone holding the item may be entitled to enforce payment against you despite the stop payment order.
- (e) To stop payment on a single or recurring preauthorized third-party debit to your HSA you should contact the merchant, allowing adequate time for that party to cancel the payment and for us to implement the cancellation request (which typically may take up to several Business Days). We are not responsible for any failure by a merchant to stop a payment or for your failure to notify the merchant in time to stop any given payment from your HSA.

### **3.3. Withdrawals by or to Third Parties**

- (a) Only you can authorize withdrawals from your HSA, except as otherwise set forth herein. If you provide your personal access information (e.g., passwords, security codes, etc.) to any third parties, or take any action that permits a third party to obtain and use such information, you understand and acknowledge that by doing so you are authorizing the third parties to make withdrawals on your behalf as though made by you. To revoke such authority, you must change your personal access information by logging in to your HSA via the Portal. We may, in our

discretion, honor or refuse to honor withdrawal authority purported to be established by external documentation (such as a financial or health care power of attorney) presented by you or a third party. If we elect to honor such authority, we may establish such conditions or limits on its exercise as we deem appropriate. Regardless, to the extent permitted by applicable law, you agree to indemnify and hold us harmless for relying on such authority. We may also continue to recognize such authority until we receive written notice of revocation from you and have had a reasonable time to act upon such revocation, or until such time as may otherwise be required by the authorizing document or by law.

(b) Unless prohibited by applicable law, we may make distributions of your funds to third parties without your authorization pursuant to levies, garnishments, or similar legal process, or court orders against your HSA and/or HSA Investment Account with which we reasonably believe we should or must comply. We will not be liable to you for any such distributions, and you agree to indemnify and hold us harmless against any claims, losses, damages, or expenses relating to such distributions.

#### **3.4. Purposes of Withdrawals**

(a) You may make withdrawals for any purpose. **You understand and acknowledge that any amounts withdrawn from your HSA that are not used exclusively to pay for Qualified Medical Expenses are includable in your gross income and may also be subject to an additional excise tax prescribed by IRS Rules.** You assume full responsibility for determining the tax consequences of any withdrawal from the HSA, for maintaining adequate records of all withdrawals for tax purposes, and for paying any taxes arising as a result of any such withdrawal that is not otherwise for Qualified Medical Expenses. We have no responsibility to, and will not, verify the purpose of your withdrawals or determine whether your withdrawals are used exclusively to pay for Qualified Medical Expenses or otherwise comply with this Agreement or applicable law.

(b) If we determine there is clear and convincing evidence that any withdrawal from your HSA was made because of a mistake of fact due to reasonable cause, we may, in our sole discretion, allow you to redeposit the mistaken distribution to your Deposit Account before the due date of the tax return (without regard to extensions) for the year in which you knew or should have known that the distribution was a mistake. Any such repayment of a mistaken distribution into your HSA will not be treated as another contribution for the year. If we allow repayment of a mistaken distribution, we may rely solely on your representation that such withdrawal was a mistaken distribution in accordance with IRS Rules. We are not liable for any adverse tax consequences that may arise from your repayment of a mistaken distribution. In addition, you are not entitled to credit for any interest or other earnings that might otherwise have accrued prior to the date the mistaken distribution is re-deposited into the HSA.

#### **3.5. Transfer of HSA Upon Separation, Divorce, Or Death; Beneficiaries**

(a) All transfers or withdrawals made pursuant to a separation instrument (as defined in Internal Revenue Code Section 71(b)(2)(A)), divorce decree, or death must be made in accordance with applicable law, this Agreement, and our policies and procedures.

(b) You have the right at any time to designate one or more beneficiaries to whom your HSA assets will be distributed upon your death. To be valid, any such beneficiary designation must be received by us prior to your date of death on a form provided by and/or acceptable to us. Any such beneficiary designation may be revoked by you at any time. You can also designate the beneficiary or change any such designation by logging in to the Portal. Any beneficiary designation will be automatically revoked upon receipt by us of a subsequent, valid beneficiary designation form bearing a later execution date.

(c) You represent and warrant that any beneficiary designation submitted by you to us satisfies all legal requirements under applicable law. You understand that in some states, the consent of your spouse may be required by law if you wish to name a person other than, or in addition to, your

legal spouse as your death beneficiary, or to change an existing death beneficiary designation. It is your obligation to determine if spousal consent is required by applicable law. We reserve the right to require spousal consent in writing or other acceptable form before accepting any beneficiary designation.

- (d) If you designate your legal spouse as your beneficiary, upon your death, your spouse will become the beneficiary of your HSA (or the portion of your HSA allocated to your surviving spouse), and your HSA will continue to be governed by the same terms and conditions unless terminated by either party. Your spouse may be required to provide information that we deem necessary to continue the HSA on their behalf.
- (e) If someone other than your legal spouse is named as beneficiary, the HSA (or the allocable portion of the HSA designated to a non-spouse beneficiary) will cease to be a tax advantaged HSA (consistent with IRS Rules) as of the date of your death. As soon as possible after receiving notice of your death, this Agreement will terminate and we will pay the balance of the HSA, reduced by all applicable fees, to the designated beneficiary or beneficiaries. In accordance with IRS Rules, if you name someone other than your estate or your spouse as beneficiary, your non-spouse beneficiary may be subject to income tax on the fair market value of the HSA (or the allocable portion of the HSA designated to such non-spouse beneficiary). If you named your estate as a designated beneficiary (or the estate is the beneficiary by operation of law), upon your death the representative of your estate should consult with your tax advisor to determine whether the HSA assets paid to the estate must be included in your final income tax return.
- (f) You acknowledge that you or your beneficiary may also be subject to income taxes and other applicable taxes on any funds held by us from the date of the death until notice of your death is received by us.
- (g) We may presume that a beneficiary is legally competent unless and until we receive sufficient (as determined by us) written notice to the contrary. Whenever any distribution hereunder is payable to a person known by us to be a minor or otherwise under a legal disability, we may, in our sole discretion, authorize all or any part of such distribution to:
  - (i) A parent or legal guardian of such person;
  - (ii) A representative such as a custodian, conservator, or guardian of the estate, who is authorized to manage funds and property belonging to such person under any applicable law; or
  - (iii) Such person directly.
- (h) If you fail to properly designate a valid beneficiary, we will pay the balance of your HSA to your estate except as otherwise expressly required by applicable law.
- (i) In the event of death leaving a negative balance in your HSA, we may submit a claim to recover the debt from your estate.

## ARTICLE IV: TERMINATION

### 4.1. Termination of This Agreement

- (a) You may terminate this Agreement at any time by submitting an account closure form from your Administrator or by calling the WealthCare Saver toll-free number at 1-866-287-5675. We may require you to submit additional documentation before your HSA is terminated and you will be subject to a closure fee, in accordance with the Fee Schedule.

- (b) We may terminate this Agreement at any time, for any reason, with no less than thirty (30) days prior written notice.
- (c) In addition, your HSA may be automatically terminated without prior notice on the date Custodian determines that your HSA balance has remained at \$0 for more than one year, or as required by applicable law.
- (d) We may resign and appoint a successor custodian or trustee to serve under this Agreement or under another governing instrument selected by the successor custodian or trustee by giving you written notice prior to the effective date of such resignation and appointment, which notice shall also include a copy of such other governing instrument. You will be provided at least thirty (30) calendar days following the date of such notice to either request a complete distribution of your HSA balance or designate a different successor custodian or trustee. If you do not request distribution of your HSA or designate a different successor within the applicable time period, you will be deemed to have consented to the appointment of the successor custodian or trustee and the terms of any new governing instrument, and neither you nor the successor shall be required to execute any written document to complete the transfer of your HSA to the successor custodian or trustee. The successor custodian or trustee may rely on any information, including beneficiary designations, previously provided by you to us. In lieu of appointing a successor custodian, we may instead distribute the assets of your HSA to you or your beneficiary as applicable. We will 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 the assets in your HSA pursuant to this Section 4.1.
- (e) Our election to forgo or delay the exercise of our rights to terminate this Agreement in any one instance does not waive our rights to terminate this Agreement in any other instance.

#### **4.2. Treatment of Account Upon Termination**

Once the HSA has been terminated, the balance in your HSA (including the proceeds from any of your HSA Investments liquidated prior to closing) will be distributed to you (or where applicable, your designated beneficiary) in accordance with this Agreement, except as otherwise set forth herein (e.g., we appoint a successor custodian), less any applicable fees and outstanding charges. HSA Investments will be liquidated as set forth in the HSA Investments Terms and Conditions disclosure, and you acknowledge that such a liquidation will be implemented without regard to market conditions, the impact of deferred sales charges, redemption fees, or any other considerations that might otherwise govern the time and manner of the sale of an investment.

### **ARTICLE V: HSA REPORTS AND INFORMATION**

#### **5.1. Reports and Information We Provide**

- (a) No less frequently than quarterly, we will make statements regarding certain HSA activity, such as contributions, withdrawals, and current HSA balance available to you electronically or via paper, depending on your delivery preference. Refer to the Fee Schedule for fees applicable to electronic and paper statement delivery. It is within our discretion to determine the information included in these statements. We make no representations or warranties that such information will be sufficient in the event you are required to provide substantiation to the IRS or other applicable authority regarding the purpose of distributions from your HSA. Nevertheless, we encourage you to keep copies of your statements (and any other supporting documents that you deem appropriate) for possible use. HSA activity will be accessible via the Portal or by contacting your Administrator.
- (b) We will report on contributions to and withdrawals from your HSA to the IRS in accordance with IRS Rules.

(c) We will also provide you with any forms or reports that we are required to provide you with in accordance with IRS Rules.

## **5.2. Your Obligation to Examine Statements and Report Problems, Limits on Our Liability**

IMPORTANT NOTE: THE PROVISIONS OF SECTION 5.2 DO NOT APPLY TO DEBIT CARD TRANSACTIONS OR TO HSA INVESTMENTS. In the event of any unauthorized or fraudulent debit card transactions on your HSA, your and our respective obligations and liabilities (if any) are governed by the separate cardholder agreement, and this Section 5.2 shall not apply. Your and our respective obligations with respect to HSA Investments are governed by the HSA Investments Terms and Conditions disclosure. For all other types of transactions, the following provisions apply.

- (a) You agree to examine each statement or other report or notice with reasonable promptness after it is made available to you. If you discover any errors, unauthorized or fraudulent transactions, or other discrepancies, you must promptly visit the Portal or contact your Administrator at the number on the back of your card, to receive a dispute form, so you can explain the problem in writing and return the dispute form using the contact information on the form. Even if you have called us, if you do not return a completed dispute form, we will not be considered to have received notice under this Agreement. YOU HEREBY AGREE THAT THE MAXIMUM REASONABLE TIME FOR YOU TO REVIEW AND REPORT ANY PROBLEM OR UNAUTHORIZED TRANSACTION REFLECTED THEREON IS SIXTY (60) CALENDAR DAYS FROM THE DATE THE UNAUTHORIZED TRANSACTION WAS CREDITED OR DEBITED TO THE ACCOUNT AND, THAT IF YOU FAIL TO PROVIDE US WITH THE COMPLETED DISPUTE FORM IN THAT TIME FRAME, YOU WILL BE PRECLUDED FROM MAKING A CLAIM AGAINST US FOR REIMBURSEMENT RELATING TO SUCH PROBLEM OR TRANSACTION. On any given occasion, we may elect to waive this 60-day provision and allow you a longer period of time, either for reasonable cause or for any other reason in our sole discretion, without compromising our right to enforce this provision on future occasions.
- (b) You agree to fully cooperate with us in any investigation, criminal prosecution, or attempt to recover funds, in any case of suspected unauthorized or fraudulent activity on your HSA, including sharing with us any information you may have to assist in identifying the suspected wrongdoer(s).
- (c) You agree that we shall have a reasonable period to investigate any claimed loss and that we have no obligation to provisionally credit your HSA while the investigation is pending. Our maximum liability for any problem that you report promptly (as required by Section 5.2(a) above) shall be the lesser of your actual damages that you are able to prove or the face amount of the error, unauthorized transaction, etc., but reduced in all cases by the amount of the loss, if any, that could have been avoided by your use of ordinary care. In no circumstance shall we be liable to you for any special, incidental, or consequential damages, including but not limited to attorneys' fees.
- (d) We have the right to cancel and reissue any security codes (*e.g.*, passwords, usernames, etc.) or other means of access to your HSA, or to close the HSA and reopen a new one, if we deem that necessary, such as in the event of proven or suspected fraudulent activity.
- (e) You are responsible for access to your HSA and may be held liable for losses that result from not safeguarding access to your HSA, including security settings.

## **5.3. Information You Provide**

- (a) You agree to provide us with any information we deem necessary to prepare reports required by applicable law. You also agree to promptly notify us of any changes in your address, email address, mobile phone number, marital status, name, or address of any beneficiary, or other information provided to us that we rely on or otherwise consider appropriate to maintain your HSA. If we receive notice from the U.S. Postal Service or its agent that your address has changed, we may change it on our records and begin sending statements and notices to that new address, if you have elected to receive paper statements.

(b) We are entitled to rely upon information we receive from you or other authorized sources with respect to your HSA and we have no obligation to make further investigation or inquiry as to the accuracy or currency of such information, except as may be required by law or this Agreement.

## **ARTICLE VI: FEES AND COMPENSATION**

### **6.1. In General**

(a) You agree to pay the applicable fees as set forth in the Fee Schedule. The Fee Schedule may be changed by us in its entirety or in any part thereof, at any time, on thirty (30) days prior written notice of any new or increased fees. Different fee schedules may also be established for various types or categories of accounts established in accordance with this Agreement.

(b) You authorize us to deduct all fees that are charged by and owed to us from your HSA in accordance with the terms of Article III and this Article VI herein; however, we may, in our sole discretion, allow you to pay such fees in a different manner or allow a third party such as your employer to pay them. If your HSA has insufficient funds to cover the entire amount of the fee, you may incur a lesser fee than that disclosed. Once sufficient funds are available in the HSA, any remaining fees owed will be debited. Failure to make prompt payment of any fees, or to ensure payment is promptly made when due, may result in termination of this Agreement as set forth herein.

(c) You understand and agree that we earn additional compensation or other financial benefits from our role as Custodian, including, without limitation, (1) on the basis of the interest rate differential between what is earned on the omnibus account(s) in which your Deposit Account is included and the interest rate credited to you on those funds, (2) interchange fees arising from the use of the debit card, and (3) administrative or other fees paid directly or indirectly in connection with HSA Investments.

(d) The fees and expenses set forth in the Fee Schedule are in addition to the expenses associated with the HSA Investments, which are described in the applicable prospectuses, and the HSA Investments Terms and Conditions disclosure. You should read the prospectuses carefully before making HSA Investments. As noted above, we may earn additional compensation as a result of the amounts invested in HSA Investments as detailed in the HSA Investment Terms and Conditions disclosure.

## **ARTICLE VII: LIABILITY AND INDEMNIFICATION**

### **7.1. Hold Harmless and Indemnification**

You agree to hold us harmless from, and indemnify us against, any liability, cost, or expense that may arise in connection with this Agreement or your HSA, including HSA Investments, except liabilities, costs, or expenses that may arise from our gross negligence or material breach of any duty under this Agreement as determined by a court of competent jurisdiction by a final non-appealable order.

### **7.2. Liability Limitation**

(a) We will not be liable for any losses, damages, costs, penalties, or expenses you incur as a result of your or any third party's failure to make contributions to your HSA. We cannot enforce a third party's requirement to make contributions to your HSA or notify you regarding the same. Any agreement between you and any third party, including your employer, is beyond the scope of this Agreement. As such, you are responsible for contacting any third party regarding its contributions and monitoring those contributions. We shall not be liable for any statements, representation, actions, or inactions of any insurance agent or agency that sold you an insurance plan in connection with the HSA.

- (b) We shall not be or be deemed in default of this Agreement, nor held responsible or liable for, any cessation, interruption, or delay in the performance of our obligations hereunder due to causes beyond our reasonable control, including, but not limited to a(n), natural disaster, act of God, epidemic, pandemic, labor dispute, civil unrest, disruption of the public markets, bank failure, terrorism, war or armed conflict, equipment or utility failure, the inability to obtain sufficient materials or services required in the conduct of our business (including Internet access), or any change in or the adoption of any law, judgment or decree, or related regulations or rules.
- (c) WE WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES, LOSSES, COSTS, OR EXPENSES OF ANY TYPE OR NATURE, REGARDLESS OF THE FORM OF THE ACTION OR THEORY OF RECOVERY, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF ANY OF THE FOREGOING. EXCEPT AS SET FORTH IN THIS AGREEMENT, WE DO NOT MAKE ANY REPRESENTATIONS OR WARRANTIES WHETHER EXPRESS, STATUTORY, OR IMPLIED.

## **ARTICLE VIII: DISPUTE RESOLUTION AND BINDING ARBITRATION**

### **8.1. Agreement to Arbitrate Disputes**

Custodian (“we,” “us,” or “our”, and as otherwise defined and described in this Agreement) and you (hereafter, “party” or “parties”) agree that any party will, at the election of any other, resolve by binding arbitration on an individual basis (and not through any class or mass action) any claim, dispute, cause of action or controversy (“Dispute” or “Disputes”) between or among them. Any party may elect to arbitrate a Dispute by making a demand for arbitration before or after a claim or counterclaim is filed.

### **8.2. Additional Persons Entitled to Enforce Agreement to Arbitrate**

The term Custodian shall include and mean any of our affiliates, successors, assigns, directors, officers, agents, and employees, each of which or whom shall have all of the rights of the Custodian under this Article VIII, including the right to elect arbitration of a Dispute and to enforce the agreement to arbitrate against you.

### **8.3. Scope of Agreement to Arbitrate; Arbitrator to Decide all Gateway Disputes**

- (a) The scope of this agreement to arbitrate Disputes shall extend to and include any and all Disputes arising out of or relating to this Agreement, you or your HSA, or any relationship arising therefrom, without regard to whether such Dispute arises in law or equity or sounds in contract, tort, statute, rule, regulation, or any other form or category of obligation or duty. The scope of this agreement to arbitrate also extends to, and the term Dispute also includes any Dispute regarding the making, scope, interpretation, or rejection or revocation of the agreement to arbitrate set forth in this Article VIII or the arbitrability of any particular Dispute, which the arbitrator shall decide.
- (b) You agree that a claim for injunctive relief is a Dispute within the meaning of this Article VIII and that we have the right to demand arbitration of such claim and, if you refuse our demand, to move to enforce arbitration in accordance with the terms of this Section 8.3 pursuant to the Federal Arbitration Act. If we bring and lose that motion in a court of first instance, you agree to stay your claim in court for public injunctive relief pending (a) exhaustion of our right to appeal in the court system from the ruling against us, and (b) completion of arbitration of all other Disputes. If we win our motion, your claims for injunctive relief will be decided in accordance with the terms of this Article VIII, meaning that the arbitrator can award only such injunctive relief as is necessary to remedy your own alleged injury or to prevent future injury to you alone.

#### **8.4. Federal Arbitration Act to Govern this Agreement to Arbitrate**

We and you agree that this agreement to arbitrate is made pursuant to a transaction involving interstate commerce. The Federal Arbitration Act (9 U.S.C. §§1-16) (the “FAA”) shall govern this Article VIII including without limitation, all Disputes relating to the making, validity, enforceability, rejection, interpretation, applicability or revocation of this agreement to arbitrate, any Disputes as to whether a Dispute is arbitrable, and any issue with respect to claims of joinder or consolidation, or the validity of jury trial, class action or representative action waivers. The FAA shall also govern any issue related to the confirmation of the arbitral award and entry of judgment thereon.

#### **8.5. Waiver of Jury Trial and Your Right to Bring or Participate in Class or Representative Actions**

We and you agree and acknowledge that by agreeing to arbitrate Disputes, you give up your right to (i) have a jury hear and decide your Dispute; (ii) have courts, other than small-claims courts, decide Disputes; (iii) serve as a private attorney general or in a representative capacity in court or in arbitration; (iv) join your Dispute with a Dispute between us and other HSA owners, or (v) bring or be a class member in a class or mass action in court or class arbitration. You agree that in arbitration, injunctive relief shall be limited to such relief as is necessary to remedy your own alleged injury or to prevent future injury to you alone.

#### **8.6. Administration of the Arbitration; Selection of the Arbitrator**

The arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules (the “Rules”), as modified by this arbitration provision. A copy of the JAMS Streamlined Arbitration Rules can be obtained from JAMS at <https://www.jamsadr.com/rules-streamlined-arbitration> or by calling (800) 352-5267. Alternatively, the arbitration shall be administered by the American Arbitration Association (“AAA”) under the AAA’s Consumer Arbitration Rules in effect at the time the arbitration is brought, as modified by this arbitration provision. Information about the arbitration process can be obtained from the AAA at [www.adr.org](http://www.adr.org) or by calling (800) 778-7879. Subject to Section 8.8(c) below, the arbitration shall be conducted by a single arbitrator who shall be selected from the JAMS or AAA panel of neutrals then active on the roster maintained by the JAMS or AAA office located in Boston, Massachusetts. If the parties do not agree on the identity of the arbitrator, JAMS or AAA shall appoint an arbitrator in accordance with the identified rules and the arbitrator qualifications set forth herein. If both AAA and JAMS are completely unavailable, and if you and we cannot agree on a substitute, then either you or we may request that a court appoint a substitute arbitrator.

#### **8.7. Fees and Costs of Arbitration**

We will pay the initial filing fee to commence arbitration if you elect to arbitrate. If you cannot afford to pay the JAMS or AAA or arbitrator costs and fees, we will advance those costs and fees if you ask us in writing. Any such request should be sent to: WealthCare Saver, ATTN: General Counsel, 280 Congress Street Suite 1005, Boston, MA 02210. If you lose the arbitration, the arbitrator will decide whether you must reimburse us for the money we advanced for you for the arbitration. \* If you win the arbitration, we will not ask for reimbursement of the money we advanced. Additionally, if you win the arbitration, and applicable law authorizes an award of costs and fees to the prevailing party, the arbitrator may decide that you are entitled to be reimbursed your reasonable attorneys’ fees and costs (if actually paid by you).

\* Notice to California HSA owners. You are a California HSA owner if you provided a California address in your HSA application, if you are a resident of California at the time you or we demand arbitration or initiate any proceeding in court regarding a Dispute, or if California law governs your Dispute. If you are a California HSA owner, or your arbitration hearing will take place in California, you will not be required to reimburse us for money we advanced for you in arbitration even if you lose the arbitration.

#### **8.8. Conduct of the Arbitration Proceedings, Laws and Rules Applicable**

- (a) For Disputes where \$10,000 or less is genuinely in Dispute (including any claim for attorney’s fees or costs) and there is no claim for injunctive relief, the arbitration may be conducted in person, by telephone, or based on written submissions. For all other Disputes, the arbitration hearing shall take

place at or near the JAMS or AAA office located in Boston, Massachusetts. The arbitrator shall conduct the arbitration in accordance with applicable federal law and the law of the place of the hearing. As applicable, the arbitrator shall also apply the rules of the arbitration administrator. To the extent of any conflict of law, the FAA shall control all other laws or rules. The arbitrator shall apply all applicable statutes of limitation and give effect to all applicable privileges including the attorney-client privilege and the attorney work-product doctrine. The arbitrator shall issue his or her award in writing and provide a reasoned basis for his or her award.

- (b) The arbitrator may hear and provide any remedy, whether legal or equitable (including injunctive relief) that is otherwise authorized by applicable law. However, you and we agree that the arbitrator shall have no jurisdiction to hear a class or mass arbitration or allow joinder of Disputes by other HSA owners with your Disputes. Nor does the arbitrator have jurisdiction to enter public injunctive relief. The arbitrator may only enter an injunction to remedy your own alleged injury or to prevent harm to you alone. Any award that purports to award relief on a class or mass basis or to award public injunctive relief jurisdiction shall be null and void and may not be confirmed.
- (c) The arbitrator's award will be final and, except as provided herein for appeals, any court of competent jurisdiction may enter judgment upon the arbitral award issued by a single arbitrator pursuant to the FAA. However, if more than \$100,000 was genuinely in Dispute (including any claims for attorney's fees or costs), or there is a claim for injunctive relief where the cost or loss to us would exceed \$100,000, then either you or we may choose to appeal the decision of the arbitrator to a new panel of three arbitrators selected in the same manner as set forth above. Upon a timely appeal, subject to the limitations of the arbitrator's jurisdiction set forth herein, the appellate panel is completely free to accept or reject the entire original award or any part of it. The appeal must be filed with the arbitration administrator not later than thirty (30) days after the original written final award issues. Subject to the limits on the arbitrator's jurisdiction set forth herein, any court of competent jurisdiction may enter judgment upon the arbitral award of the appellate panel.

#### **8.9. Right to Reject Arbitration for this Account**

You may reject the requirement to arbitrate under this Article VIII but only if we receive from you a written notice of rejection within thirty (30) days after the Effective Date or before your first use of the Account, whichever occurs first. You must send the notice of rejection to: WealthCare Saver, ATTN: General Counsel, 280 Congress Street Suite 1005, Boston, MA 02210. Your rejection notice must include your name, address, phone number, account number and personal signature. No one else may sign the rejection notice for you. Your rejection notice also must not be sent with any other correspondence. Rejection of arbitration will not affect your other rights or responsibilities under this Agreement, including use of your Deposit Account. If you reject arbitration, neither you nor we will be subject to the agreement to arbitrate pursuant to this Article VIII, including any obligation we may have to advance your costs or fees. However, your rejection of arbitration pursuant to this Article VIII shall not invalidate any other agreement to arbitrate that you have made or may make in the future with respect to any other account with us.

#### **8.10. Your Right to Go to Small Claims Court**

Without prejudice to any other provision of this Article VIII, you or we may choose to bring in small claims court any Dispute falling within the jurisdiction of that small claims court. However, if such a Dispute is transferred, removed, or appealed to a court that is not a small claims court, you agree to arbitrate the Dispute as provided herein. Similarly, if you or we file a counterclaim in small claims court proceedings, the other party may demand arbitration of that Dispute under this Article VIII to the same extent as if the Dispute had been raised originally and not raised as a counterclaim.

#### **8.11. Survival; Severability**

- (a) This Article VIII will survive termination of this Agreement, and your HSA. If any portion of this Article VIII cannot be enforced, then, subject to Sections 8.11(b) and 8.11(c), the unenforceable portion will be severed, and the rest of this Article will continue to apply.

- (b) Notwithstanding anything to the contrary elsewhere in this Article VIII, if a court, arbitrator, or appellate arbitration panel rules that the class or mass action waiver contained in this Article VIII cannot be enforced or that the arbitrator or appellate arbitration panel can decide a Dispute on a class, mass or other representative basis, and that ruling is not reversed on appeal, then, except for this sentence of this Article VIII will become automatically void.
- (c) Similarly, if an arbitrator or arbitration appellate panel enters an award granting public injunctive relief, and that portion of the award is not reversed on appeal pursuant to the FAA, then this sentence shall apply, and this Article VIII is void.

## **ARTICLE IX: MISCELLANEOUS**

### **9.1. Amendment**

We may amend this Agreement, including its Dispute Resolution provision (Article VIII) at any time and will send or make available to you advance notice of any material changes. Any amendment will become effective on the date we determine after notice, and your continued use of your HSA after such date constitutes your acceptance of the change. Further, this Agreement will be amended automatically to comply with any change in applicable law as of the effective date of such change. If any provision of this Agreement is found to conflict with the Internal Revenue Code or other laws, the Internal Revenue Code or such other laws, regulations and rules will supersede that provision.

### **9.2. Successors, Assigns, And Agents**

- (a) If we change our name, reorganize, merge with or are purchased by another organization, or come under the control of any government agency, that entity shall automatically become the custodian or trustee of your HSA, but only if it is qualified under the IRS Rules to serve as an HSA custodian or trustee. If the new entity is not qualified to be an HSA custodian or trustee, the HSA will be terminated effective as of the date the new entity takes control and all funds in your HSA will be distributed in accordance with the termination provisions set forth herein.
- (b) Notwithstanding any other provision of this Agreement, we also reserve the right to assign your HSA to another HSA custodian or trustee without prior notice for any reason in our sole discretion, provided that such assignee is qualified under the IRS Rules to be an HSA custodian or trustee.
- (c) We may, without your authorization, engage the services of third parties to assist us with the services provided under this Agreement.
- (d) We may, without your authorization, and at our sole discretion substitute another trustee or custodian if the IRS notifies us that a substitute custodian or trustee is required.
- (e) This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns. Your obligations under this Agreement will also be binding upon your heirs, executors, legal representatives, and permitted assigns.

### **9.3. Notices**

Any notice required by this Agreement to be given by us to you will be effective on the date it is made available to you electronically or, if we are providing such notices in paper form, such notices are effective upon our placement of the notice with the U.S. Postal Service with proper postage affixed and directed to the last address you provided us or which we receive from the USPS in accordance with Section 5.3(a) herein. Any notice you are required to give to us will be effective upon our receipt of the notice.

#### **9.4. Conflicting Claims About Your HSA**

- (a) If another person or entity makes a claim against or seeks to attach a lien on your HSA, or if we are notified of a dispute over matters such as the ownership of the HSA or the authority to withdraw funds, we may take one or more of the following actions without any liability to you:
  - (i) Continue to rely on the account documentation we currently have on file;
  - (ii) Honor the competing claim (including, if we deem it appropriate in our sole discretion, terminating this Agreement and your HSA) upon receipt of evidence we deem satisfactory to justify such claim;
  - (iii) Freeze all or part of the funds until the dispute is resolved to our satisfaction; and/or
  - (iv) Terminate the HSA and either send a check for the balance, payable to you or to you and each claimant, or pay the funds into an appropriate court for resolution.

#### **9.5. Unclaimed Property**

- (a) State unclaimed property laws may require us to turn over accounts considered to be abandoned to the applicable state, which is generally the state listed in the address for your account statement. Your HSA will be considered abandoned in accordance with our unclaimed property and escheatment procedures and relevant state law. For more information regarding how HSA Investments in an abandoned HSA are handled, see the HSA Investments Terms and Conditions disclosure.
- (b) Before we turn over an abandoned account, we will send a notice to the address we then currently show for the account statement unless mail we previously sent to this address was returned undeliverable for any reason.

#### **9.6. Privacy, Call Recording; Consent for Service Calls**

- (a) Privacy.
  - (i) We shall maintain the confidentiality of your information in accordance with applicable laws and our Privacy Notice. You agree to cooperate with us in any record keeping and reporting which we believe to be necessary to fulfill government requirements. To review the privacy policies regarding consumer information, please refer to the Privacy Notice.
- (b) Call Recording; Consent for Service Calls.
  - (i) By providing telephone number(s) to us at any time (including by using a telephone to call in to us), you authorize us and our affiliates and designees to contact you regarding your HSA and your card, whether the account(s) are with us or our affiliates, at such numbers using any means, including but not limited to, placing calls using an automated dialing system to cell, Voice over Internet Protocol (VoIP) or other wireless phone number, or by sending prerecorded messages or text messages, even if charges may be incurred for the calls or text messages; and you consent that any phone call with us may be monitored or recorded by us.

#### **9.7. Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts and applicable federal law without regard to the Commonwealth of Massachusetts's conflict of law rules.

#### **9.8. Waiver and Validity**

We can choose not to exercise or choose to delay enforcement of any of our rights under this Agreement without waiving or otherwise compromising them in addition to any right under Section 4.1(c) hereof. Subject to Section 8.11, if any provision of this Agreement is held invalid or unenforceable, all other provisions of this Agreement shall remain in full force and effect.