

# Important Disclosure Information

## **Health Savings Account Custodial Agreement**

**(Under section 223(a) of the Internal Revenue Code)**

Please keep this agreement with your HSA records.

Thank you for choosing PayFlex Systems USA, Inc. ("PayFlex," "Custodian," "us" or "we") as the custodian of your Health Savings Account ("HSA"). You and we agree to be bound by the terms of this agreement in connection with administration of your HSA.

By applying for and funding your HSA (other than as a rollover from another HSA), you represent that you: (1) are covered under a qualified high deductible health plan (HDHP); (2) are not also covered by any other health plan that is not an HDHP (with certain exceptions for plans providing preventive care and limited types of permitted insurance and permitted coverage); (3) are not enrolled in Medicare; and (4) cannot be claimed as a dependent on another person's tax return.

### **Article I**

We will accept cash contributions in U.S. Dollars to your HSA from you or on your behalf (by your employer, a family member or other person). However, we will not accept contributions that exceed the maximum annual amount for family coverage plus any allowable catch-up contribution. Catch-up contributions are allowable for you if you are 55 or older.

You may make contributions for any tax year at any time before the deadline for filing your federal income tax return for that year (without extensions).

### **Article II**

You can make contributions to an HSA up to certain limits as established by the Internal Revenue Service (IRS). If you enroll in the high deductible plan after the plan year has begun, you may still contribute up to the maximum contribution amount, provided that you maintain HDHP coverage for a 12-month testing period. (The testing period begins with the last month of the taxable year in which you enrolled and ends on the last day of the 12 month period following such month) If you do not maintain continuous HDHP coverage for the testing period (other than for reason of death or disability), any HSA contributions which could not have been made otherwise (i.e., contributions attributable

to any month(s) preceding the month in which you enrolled in the HDHP) are included in your gross income for the year in which you ceased to be eligible and those amounts are subject to an additional 10% excise tax. Please consult with your tax advisor for further information.

If you are age 55 or older and not enrolled in Medicare you may be eligible to contribute an additional "catch-up" amount to your HSA. See materials included with your enrollment or consult your tax advisor for information about these contribution limits.

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

### **Article III**

You are permitted to rollover funds on a tax-free basis from a Medical Savings Account (MSA) or another HSA. MSA and HSA rollovers do not decrease the amount that may be contributed to the HSA during the year.

### **Article IV**

It is your responsibility to determine whether contributions to this HSA have exceeded your maximum annual contribution limit. If contributions to this HSA exceed the maximum annual contribution limit, you must notify us of the excess amount. It is also your responsibility to request the withdrawal of the excess contribution and any net income attributable to it.

### **Article V**

Your interest in the balance of your HSA account is non-forfeitable.

### **Article VI**

Funds in your HSA cash account will be credited interest by us as described in Article VII below. We may also make available other investment options available to you. You will have exclusive control over any decision to allocate HSA funds to these options.

No funds in your HSA may be invested in life insurance contracts or in collectibles. The assets of your HSA may not be commingled with other property except in a common trust fund or common investment fund.

Neither you nor we will engage in any prohibited transaction with respect to this account (such as borrowing or pledging the account) as defined by the Internal Revenue Code ("Code").

### **Article VII**

Your HSA account will include a cash account, and, if available in your HSA program, may also include an investment account.

Cash account: Funds in your cash account are maintained in an aggregate account established for the benefit of all of our HSA holders at an insured financial institution of our choosing. You will not be exposed to any investment risk on balances in your cash account. We will credit interest on the balance in your HSA cash account above the required minimum balance for interest, if any, that applies to your account. We will calculate this interest on a nightly basis (reflecting the available cash balance in your HSA cash account and using the interest rate in effect that night), track this interest during the course of a month and credit interest earned to your HSA cash account no later than the second banking day of the next month. The interest rate for the month will be disclosed to you in your on-line account transaction history and (where applicable) in periodic account statements. Interest is compounded monthly and computed on a 365-day year basis (366 in leap year if your HSA is open on February 29). Interest will be calculated only on available funds as described in Article XVI below. If you close your HSA in mid-month you will not receive interest for that month. Your HSA cash balance is eligible for FDIC insurance up to applicable FDIC deposit limits. We may receive compensation in connection with aggregate cash account balances we deposit. You are entitled to interest on your cash account as specified herein, but otherwise not to any portion of the compensation we may receive in connection with the accounts in excess of calculated interest amounts we pay you. We reserve the right in our sole discretion to change the rate of interest you receive on HSA cash account balances and to establish and apply different rates of interest depending on the amount of your cash account balance.

Investment account: If available under your HSA program you may elect to transfer a portion of your HSA to an investment account. Through this investment account you will be able to invest in one or more mutual funds from a designated slate of mutual fund investment choices allowed under applicable law that will be made available to you. You must be a U.S. person (a U.S. citizen or a U.S. resident alien) to enroll in an HSA investment account. Participation in the investment account will be subject to whatever additional terms and conditions ("Investment Account Terms and Conditions") made applicable to the arrangement.

Any amounts you allocate to an investment account will not be FDIC insured and will not be included in your cash balance for purposes of crediting interest as described in this section.

To open an investment account you must have a minimum of \$1,000 in your HSA cash account. We may charge an annual or monthly maintenance fee for participation in the HSA investment account service. For a statement of these fees see the materials provided with your enrollment or contact us. To the extent otherwise unpaid, we may deduct these fees from your HSA. In addition, there may be service fees associated with the mutual fund options. Such fees are disclosed in the prospectus for each applicable fund option. Service

fees, eligibility criteria, minimum investment requirements and initial funds transfer amounts are subject to change.

Investments in mutual fund options can be made only by transferring funds from your HSA cash account to an investment account. Proceeds from mutual fund redemptions can be reinvested in other mutual funds from the designated mutual fund slate or transferred back into your HSA cash account. Funds held in the HSA investment account cannot be accessed via an HSA debit card. You must redeem mutual fund shares and transfer the proceeds back to the cash account in order to make purchases, including the payment of any medical-related expenditure, with these funds.

The fund slate available to you may change (e.g. modify or replace) from time to time. If a fund ceases to be available we may liquidate your investment in that fund and deposit the proceeds in your cash account. We may also liquidate your investments and transfer the proceeds to your cash account in the event your cash account becomes overdrawn.

By transferring funds into an HSA investment account you can potentially benefit from capital appreciation in the value of mutual fund holdings. However, you will also be exposed to a number of risks, including the loss of principal, and you should always read the prospectuses for the mutual funds you intend on purchasing to familiarize yourself with these risks. The HSA investment account is an optional, self-directed service. We do not provide investment advice for HSA investment account participants. You are solely responsible for any investment account decisions you make.

## **Article VIII**

Distributions of funds from your HSA may be made at your direction. If you elect to receive and use a debit card in conjunction with your HSA, you agree to review and accept the debit card terms and conditions contained in the cardholder agreement that will be supplied to you with the debit card.

Distributions from your HSA that are used exclusively to pay or reimburse qualified medical expenses for you, your spouse or your dependents (who qualify as dependents for health coverage purposes) are tax-free from federal income tax.

However, distributions that are not used for qualified medical expenses are included in your gross income and are subject to an additional 20% tax on that amount. The additional 20% tax does not apply if the distribution is made after your death, disability, or reaching age 65. We are not required to determine whether the distribution is for the payment or reimbursement of qualified medical expenses. You alone are responsible for substantiating that the distribution is for qualified medical expenses and you must report any such distributions on your annual tax return (Form 8889) and maintain records sufficient to show, if required, that the distribution is tax-free.

## **Article IX**

You have the right to designate one or more beneficiaries to whom your HSA funds will be distributed upon your death. To be valid, any such beneficiary designation must be delivered to us prior to your death on a form provided by us, or a form that is otherwise acceptable to us. Any such beneficiary designation may be revoked by you at any time by delivering written notice of the revocation to us, and shall be automatically revoked upon receipt by us of a subsequent beneficiary designation in valid form bearing a later execution date. You understand that the consent of your spouse may be necessary if you wish to name a person other than or in addition to your spouse as beneficiary or to change an existing beneficiary designation. If there is no valid beneficiary designation on file with us 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, the funds will be paid to your estate.

You represent and warrant that any beneficiary designation submitted to us is complete, accurate and satisfies all legal requirements under applicable law. We may presume that a beneficiary is legally competent until we receive written notice to the contrary.

If you die before the entire interest in your HSA is distributed, the remaining HSA balance will be disposed of as follows: (1) If the beneficiary is your spouse, the HSA will become your spouse's HSA as of the date of your death (unless otherwise specified by applicable laws), and (2) If your beneficiary(ies) is not your spouse, the HSA will cease to be an HSA as of the date of your death and the fair market value of the account will be taxable to that person (or your estate) in the tax year that includes the date of death, reduced by any payments made for your qualified medical expenses if paid within one year of your death and any applicable fees.

If a request for a transfer is made pursuant to the terms of a divorce or separation agreement, we must receive the request within 90 days of the effective date of the divorce or separation instrument. Transferring your interest to someone other than your spouse may subject you to income tax and penalties on the transferred amount.

## **Article X**

You will provide us with information necessary for us to prepare any report or return required by the IRS. We will prepare and submit any report or return as prescribed by the IRS.

## **Article XI**

Notwithstanding the remaining articles of this agreement, the provisions of Articles I through X and this sentence are controlling. Any provision that is inconsistent with section 223 of the Code or IRS published guidance will be void.

## **Article XII**

We may amend this agreement from time to time without advance notice to you to comply with the provisions of the Code or IRS published guidance.

We may also make other amendments from time to time by sending a notice of the amendment to you. You will be deemed to accept the amendment unless you terminate this agreement within 30 days of receiving the notice.

## **Article XIII**

We may charge an annual or monthly maintenance fee for your HSA as well as other service and administrative fees. For a statement of these fees see the materials provided with your enrollment or contact us. We may deduct these fees from your HSA.

Certain fees may be paid in whole or in part by your employer or other third party. If you leave the employer or these payments are terminated for other reasons you will be responsible for paying all fees in order to maintain your HSA. You may also be responsible for additional fees if you elect additional features or investment options made available to you in connection with your HSA.

We may change our fees from time to time with notice to you. New fees will be effective 30 days after the notice is given.

In addition to fees we charge, we may receive compensation in connection with the aggregate HSA cash account balances we deposit. Such compensation will not exceed the U.S. Prime Rate (as published in the Wall Street Journal).

## **Article XIV**

We may engage sub-custodians, financial institutions, fund managers, clearing brokers or other contractors (collectively our "contractors") to provide services for your HSA. We may change these contractors at any time without notice to you. Some contractors may be our affiliates and we or the affiliate may receive compensation from such arrangements.

In particular, we may on your behalf: (1) open an account at a depository institution of our choice and deposit all or a portion of your HSA funds into that account, (2) close any account we have opened on your behalf and transfer the funds to another account, (3) execute on your behalf any documents related to the opening, maintenance and closing of any depository account, and (4) withdraw from these accounts fees and expenses of your HSA.

Some services (such as a debit card, or investment fund) may require that you enter into an additional agreement or abide by additional terms and conditions that we or our contractors provide to you. If you accept the service you will be deemed to accept the agreement or terms and conditions that apply to it.

We may share fees and/or fee revenue with our contractors, including contractors that are our affiliates. Any fees paid by you or your HSA will be disclosed to you and your continued use of our services or the services of our contractors will be considered approval of such fees. In addition, our contractors may receive interchange fees from parties other than us for use of HSA debit cards. The interchange fees may vary, but in all cases will be equal to or less than the highest possible fee allowed for all card transactions. Neither you nor we are responsible for the payment of any interchange fee and such fees may not be deducted from your HSA.

## **Article XV**

We and our contractors will be entitled to rely on all information and instructions you provide. If we or our contractors fail to receive instructions with respect to any transaction, receive instructions that are ambiguous, or believe in good faith that a requested transaction is in dispute, we or our contractor may take no action until further clarification acceptable to us is received. Neither we nor our contractors will be responsible for losses that may result from your instructions, actions or failure to act, nor will we or they be responsible for any taxes, fines, penalties, judgments or expenses you incur in connection with your HSA.

If you appoint an authorized agent to act on your behalf with respect to your HSA or this agreement we and our contractors may rely on all information and instructions provided by your agent. Neither we nor our contractors will be required to verify the validity of the agent's appointment or be responsible for losses that may result from your agent's instructions, actions or failure to act. You will reimburse us or our contractors for any additional costs or liabilities we or they may incur as a result of actions or inactions of your agent.

## **Article XVI**

Unless we otherwise agree, all funds deposited in your HSA will be in cash and in U.S. Dollars, accompanied by a completed deposit form.

Funds deposited into your HSA cash account will be available for withdrawal after the day of deposit depending upon the type of deposit and in accordance with Federal Reserve Regulation CC. The day of deposit is the banking day on which the deposit is received before the cut-off time specified for the place where the deposit is received. Deposits received after the applicable cut-off time will be deemed received the next banking day. Deposits by electronic funds transfer will be available on the day we determine the deposit is made. Automated clearing house (ACH) credits to the cash account will be available on the day of receipt. ACH withdrawals from other accounts to your HSA cash account generally will be available two banking days after the drawdown request is submitted by us to the ACH system. Deposits by check generally will be available no earlier than three banking days after the day of deposit. In certain circumstances, longer delays in availability may apply such as for large dollar items, checks requiring special handling, checks drawn on out of state banks, emergency situations such as failure of communications or computer equipment and for any other reason as permitted by applicable law or regulation. If funds are being credited to your HSA account through payroll deduction, please check with your employer regarding the timing and application of the payroll deposits. We reserve the right to make adjustments to your HSA balances to correct funding errors on deposits made to your account. Interest will be credited only on available funds.

## **Article XVII**

You may also elect to have claims submitted automatically to your HSA from health plans we designate. We may rely on evidence of this election from your health plan to execute these withdrawals automatically on your behalf until we receive written notice from you that you have terminated this election.

We may put a hold on funds in your HSA for amounts authorized but not yet paid in connection with a debit, credit or automatic submission transaction. Held amounts will not be available to pay other expenses.

We may refuse any request for withdrawal, whether automatic or not, if the available funds in your HSA account are less than the amount of the requested withdrawal. If your HSA cash account balance falls to or below \$0.00 we will not process any further withdrawals until additional funds are deposited or transferred from the investment account. We have the right to liquidate assets in your HSA investment account if necessary to make distributions or to pay fees, expenses, taxes, penalties or surrender charges properly chargeable against your HSA. If you fail to direct us as to which assets to liquidate, we will decide, in our complete and sole discretion, and you agree not to hold us liable for any adverse consequences that result from our decision.

## **Article XVIII**

You may terminate this Agreement at any time by giving us prior written notice. If you provide a completed HSA transfer form to us at the time of termination we will transfer the balance of your HSA to a qualified replacement account administrator you designate. We may liquidate any investments in your HSA investment account in order to execute this transfer. If you do not provide a completed HSA transfer form at time of termination we will pay the balance of your HSA account to you. We may report this payment as a non-qualified withdrawal from your HSA.

We may terminate this Agreement at any time by giving written notice to you. We may resign as custodian, without your consent, upon written notice to you. Upon our resignation, we will either appoint a successor custodian (see next paragraph), ask you to appoint a successor custodian, or we will distribute the remaining assets in the HSA to you. If the Agreement is terminated, we will cancel any outstanding debit card associated with your account at the time of termination. If we distribute the assets, you are responsible for the tax consequences of the distribution. We shall not be liable for any actions or failures to act on the part of any successor custodian or trustee, nor for any tax consequences you may incur that result from the transfer or distribution of your assets pursuant to this section. If this Agreement is terminated, we may charge to your HSA a reasonable amount of money that we believe is necessary to cover any associated costs, including but not limited to, one or more of the following;

- Any fees, expenses or taxes chargeable against your HSA;
- Any penalties or surrender charges associated with the early withdrawal of any savings instrument or other investment in your HSA.

**Appointment of Successor Custodian:** Pursuant to this Article XVIII, we may resign as custodian and appoint a successor custodian that we choose. The successor custodian (or trustee) must be a bank (as defined in Code Section 408(n)), an insurance company (as defined in section 816), or another person who satisfies the IRS

requirements for HSA custodial duties. The appointment of a successor custodian will become effective immediately; provided, however, that you will retain your right to terminate this Agreement pursuant to this Article XVIII. If you do not exercise your right to terminate this agreement and request a complete distribution or designate a new custodian or trustee, you will be deemed to have automatically accepted the successor custodian. In the event that a successor custodian is appointed, the successor custodian's HSA Custodial Agreement and all related account documentation will automatically become applicable. In such case, you will receive a copy of the new custodial agreement and related documentation.

## **Article XIX**

Any notice we provide to you under this agreement will be considered effective when we send it to you at your last address we have in our records. Any notice you provide to us will be considered effective when we receive it.

No one other than we and you (or in the event of your death your duly designated beneficiary) will have any rights under this agreement.

This agreement will be governed by the laws of the United States and the State of Nebraska.

## **Article XX**

You will indemnify and hold us harmless from and against any claim, loss, liability, damage, cost, or expense (including reasonable attorney's fees) that arises or may arise in connection with this agreement or your HSA (including, without limitation, any action we take or do not take in honoring your instructions including, but not limited to, all verbal, electronic or facsimile instructions received with respect to your HSA, or in connection with our honoring of any subpoena or court order relating to your HSA), except liabilities, damages, costs, or expenses that arise from our breach of any of our duties under this agreement.

In connection with this agreement and your HSA, we are not responsible for any act or failure to act that is reasonable under the circumstances or that is consistent with any applicable laws, rules or regulations of the applicable state law, or with general commercial practices of banks.

WE ARE NOT LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGE, LOSS, COST OR EXPENSE OF ANY TYPE OR NATURE, REGARDLESS OF THE FORM OF THE ACTION OR THEORY OF RECOVERY, AND 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 AND WARRANTIES WHETHER EXPRESS, STATUTORY OR IMPLIED.

## **Acceptance of Agreement**

Your application for an HSA forms part of this agreement and constitutes your acceptance of its terms. You will provide us any information we reasonably request in order to verify your identity. We may refuse to accept any application for an HSA at our discretion; however our acceptance of your application constitutes our agreement to the terms above.

Please keep this agreement with your HSA records. You do not need to return it to us or file it with the IRS.

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