

Alliance Benefit Group, Inc.  
Alta Trust Company  
Health Savings Account Program  
Individual Custodial Agreement

May 16, 2019

**LEGAL02/37400806v1**

**Custodial Agreement**

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## HEALTH SAVINGS ACCOUNT CUSTODIAL AGREEMENT

Alliance Benefit Group (“ABG”) and Alta Trust Company (“Alta Trust”) have established the Alliance Benefit Group Health Savings Account Program (“Program”) through which Health Savings Accounts (“HSAs”), as defined in Internal Revenue Code (“Code”) Section 223, are made available to qualifying individuals who apply for and are approved for an HSA in accordance with the terms of the Program.

This Custodial Agreement (“Agreement”) contains the terms and conditions of Your participation in the Program. Your participation in this Program is conditioned, in part, on your written acknowledgment (provided on a separate form) that you have read this Agreement and that you agree to the terms and conditions set forth herein. Since this Agreement is a legally binding contract related to your participation in an income tax qualified account, We encourage you to review the Agreement with a qualified legal and/or tax advisor.

### Definitions

The following words, terms and phrases are capitalized throughout this Agreement. They are capitalized because they are important terms with specific definitions.

“ABG” refers to Alliance Benefit Group, the Program’s administrator.

“Agreement” includes this Custodial Agreement and any other documents, schedules, or appendices incorporated into and made a part of this Agreement by reference.

“Alta Trust” refers to Alta Trust Company, the HSA Custodian.

“Cash Account” refers to the portion of your HSA that consists of cash.

“Code” refers to the Internal Revenue Code of 1986, as amended from time to time.

“Custodian” refers to Alta Trust and/or any sub-custodian designated by Alta Trust .

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

“HSA” has the same meaning as that term has in Code Section 223(d)(1).

“HSA Investments” means the investment options offered to You in accordance with this Agreement.

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

“Initial Investment Threshold” means the initial balance your Cash Account must reach before all HSA assets are invested in the HSA Investments in accordance with this Agreement.

“IRS Rules” refers to Code Section 223 and the guidance issued by the IRS with respect to HSAs. You can find a summary of the IRS Rules in Publication 969.

“You” and “Your” refers to the Account Beneficiary identified as such on the application.

“Us”, “Our” and “We” refers to ABG and the Custodian collectively.

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

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

- (a) Except where otherwise permitted by IRS Rules, only Eligible Individuals are permitted to establish an HSA. You are solely responsible for determining if You qualify as an Eligible Individual. Even though We have no obligation to verify whether You qualify as an Eligible Individual, We reserve the right to require confirmation from You that You qualify as an Eligible Individual as a condition of participation in this Program.
- (b) You may also be required to satisfy other requirements for establishing an HSA with Us. For example, Federal law may require Us to obtain, verify and record information that identifies each customer who attempts to open an account with us. We reserve the right to decline your application or to terminate your HSA immediately if you fail to satisfy these requirements.
- (c) You hereby authorize us to collect information about You that we deem reasonably necessary to establish and maintain the HSA, including but not limited to a credit report.

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

- (a) This Agreement is considered effective on the date approved by Us. You understand and acknowledge that the effective date of Your HSA for purposes of the Program may differ from the date that 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. The welcome kit that you receive from ABG is considered notice of approval by Us.
- (b) This Agreement continues in effect until terminated in accordance with Article VIII herein.

### **1.3 Governing Documents**

- (a) The rights and obligations of both Us and You with regard to the Program and Your HSA are set forth in this Agreement as it may be amended from time to time, including any attachments, exhibits, 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) You understand and agree that no documents (including this Agreement), communications, representations and correspondence, whether written or oral, that are provided by Us with regard to Your HSA constitute, are intended to be or should be construed as legal, tax, investment or other professional advice.

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

- (a) All funds contributed by You or on Your behalf to your HSA are held by Custodian on Your behalf in an omnibus account at a financial institution of Custodian's choosing. Your HSA will consist of a notional Cash Account and, where applicable, the HSA Investment Account. Custodian reserves the right to establish other sub-accounts with respect to your HSA as deemed reasonable and necessary by Custodian.

- (b) The balance in your Your Cash Account is insured by the Federal Deposit Insurance Corporation (FDIC) up to the maximum amount permitted under FDIC guidelines.
- (c) Except as specifically set forth herein or as otherwise required by law, the assets of Your HSA are non-forfeitable.

## **1.5 Legal responsibility**

- (a) Alta Trust is the IRS-approved “custodian” of Your HSA as contemplated by the IRS Rules. This means that Alta Trust simply holds the assets of Your HSA on Your behalf and acts only in accordance with Your instructions, except as otherwise specifically set forth herein. Alta Trust may designate a third party “sub-custodian” as it deems necessary or appropriate to facilitate investments and such sub-custodian will also be an IRS-approved HSA custodian. ABG is the Program Administrator, which means ABG provides day to day administration of Your HSA. We only act in accordance with your instructions, except as specifically set forth herein.
- (b) You acknowledge and agree that nothing in this Agreement will be construed to confer fiduciary status upon the Us for any purpose, except as otherwise required by law or as specifically agreed to by ABG and/or Custodian herein.
- (c) We are not obligated to perform any additional services not otherwise specifically set forth in this Agreement.
- (d) We assume no responsibility for tax or other consequences to anyone 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.
- (e) Under no circumstances is this HSA considered to be an employer sponsored welfare benefit plan or part of an employer sponsored, employee welfare benefit or pension plan 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” established in accordance with Code Section 125. Your employer is not a party to this Agreement.

## **1.6 Prohibited transactions**

- (a) We may refuse to take any action requested by You to the extent that we reasonably believe that such action will violate applicable law. Notwithstanding the foregoing, we are under no obligation to investigate or inquire whether action taken pursuant to Your 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) You use any portion of Your HSA as security or collateral for a loan.

## 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 Your information. For more information regarding Our respective privacy policies regarding consumer information, please log in to [myHSA.com](https://myHSA.com).

## ARTICLE II. CONTRIBUTIONS AND DEPOSITS

### 2.1 Contributions generally

- (a) The Custodian 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 written notice to You.
- (b) All contributions made by You or on Your behalf to your HSA are initially allocated to the Cash Account. Once the balance of your Cash Account reaches the Initial Investment Threshold, the balance in excess of the Initial Investment Threshold will be invested thereafter in accordance with your instructions as set forth in the HSA Investment Terms and Conditions. The HSA Investment Terms and Conditions are incorporated into and made a part of this Agreement by reference. You can find a copy of the HSA Investment Terms and Conditions at [myHSA.com](https://myHSA.com). You acknowledge that your Cash Account balance will be invested in the default investments identified in the HSA Investment Terms and Conditions if you do not timely notify ABG of your investment decisions.
- (c) With the exception of Rollover Contributions described below, all contributions made by You or on Your behalf to your HSA must be made in accordance with the procedures established by Us. Contributions are considered made when received by the Custodian except that contributions received by the Custodian after normal business hours will be considered made on the next business day that is not a holiday.
- (d) The Custodian will also accept Rollover Contributions (as defined by IRS Rules) from another HSA or Medical Savings Account (“MSA”) as defined in Code Section 220. 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 a form approved by Us. You may also request the custodian or trustee of another HSA or MSA to make a direct transfer of Your assets in another HSA or MSA 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 Trustee to Trustee transfers and Qualified HSA Funding Distributions that are made in accordance with Our standard policies and procedures.
- (e) We reserve the right to reject contributions or transfers of funds to your HSA for any reason and to return such funds to the sender in accordance with this Agreement or as otherwise permitted or required under applicable law.
- (f) All contributions received by the Custodian during a calendar year (other than contributions identified by You as Rollover Contributions, Trustee to Trustee Transfers and Qualified HSA Funding Distributions) are allocated<sup>4</sup> to Your HSA for the calendar year in which they are



received by the Custodian unless You notify Us that a contribution should be allocated to a prior year and such request is timely made in accordance with IRS Rules and Our standard policies and procedures.

## **2.2 Maximum contributions to the HSA**

- (a) You are solely responsible for ensuring that You do not contribute more than the maximum amount that You are permitted by IRS Rules to contribute during a calendar year (“Individual Contribution Limit”). You understand and acknowledge that we do not nor are we obligated to verify or determine whether any contributions You make exceed Your Individual Contribution Limit.
- (b) You understand and acknowledge that You may experience adverse tax consequences if You make contributions in excess of Your Individual Contribution Limit (“Excess Contributions”). If You make Excess Contributions and You wish to avoid the applicable excise taxes imposed on such Excess Contributions by IRS Rules, You understand that You must timely request the withdrawal of such Excess Contributions and any net earnings attributable to the Excess Contributions in accordance with IRS Rules. At Your request and subject to applicable fees, we will calculate the net earnings attributable to such Excess Contributions in accordance with our reasonable interpretation of the applicable law.
- (c) In addition, the IRS Rules have established a limit on the amount of contributions that HSA custodians may accept during a year (“Custodian Contribution Limit”) and the Custodian Contribution Limit may be higher than your Individual 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 Custodian Contribution Limit. We may initially accept contributions in excess of the Custodian Contribution Limit and then subsequently return those contributions to the sender if we become aware that the Custodian 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 Custodian Contribution Limit.

## **2.3 Contribution Processing**

- (a) Contributions that You make or that are made on Your behalf to your HSA will be credited to Your HSA upon receipt of such contributions by Custodian and will be available for withdrawal in accordance with Our standard policies and procedures and applicable law. Generally, funds allocated to Your HSA will be available for withdrawal as soon as reasonably possible after Custodian receives such funds but there may be a delay to ensure the funds contributed are available.
- (b) If a contribution is returned to the Custodian at any time for any reason, Custodian may accept the return without question and charge the item back against Your HSA, without advance notice to You and without regard to the following:
  - (i) Whether the institution on which it was drawn originally paid the item before subsequently determining it should not have been paid, or
  - (ii) Whether the return was made in a timely manner.
- (c) We may charge You a fee for each returned item. If You have insufficient funds to cover a returned item, You may owe us the fee if the fee is greater than your HSA balance.

## ARTICLE III. WITHDRAWALS FROM THE HSA

### 3.1 Withdrawals generally

- (a) Withdrawals may be initiated by You or your authorized representative at any time, subject to any delays described herein, and by any means established by Us.
- (b) We reserve the right to limit the frequency of withdrawals and/ or the minimum amount of any withdrawal/ distribution.
- (c) You agree that You will only initiate a withdrawal to the extent the withdrawal does not exceed the balance of your HSA that is available for withdrawals on the date that you request the withdrawal. Withdrawals will first be made from your HSA Cash Account. If you have HSA Investments, and the withdrawal request exceeds your HSA Cash Account balance, You authorize Us to liquidate HSA Investments in accordance with the HSA Investments Terms and Conditions. You understand and acknowledge that all HSA Investments may not be available to liquidate for requested withdrawals. See the HSA Investment Terms and Conditions for more details regarding liquidation of investments to facilitate withdrawals.
- (d) You acknowledge and understand that We have no obligation to permit any withdrawal initiated at a time if your available HSA balance is less than the requested withdrawal and we will normally reject any such attempted withdrawal. However, occasionally we may allow amounts in excess of your HSA balance to be paid. Such excess payments 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, we may charge You a fee (as set forth in the Schedule of Fees). You are solely responsible for repaying the Custodian for any excess payments made by the Us. You agree that we may withdraw the amount you owe us from your HSA unless you agree to and do actually reimburse the Custodian from Your general assets.
- (e) When Your available HSA 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 deem appropriate. Absent unusual circumstances, however, Your transactions normally will be processed in the chronological order in which they occurred.
- (f) You will automatically receive one debit card accompanied by a separate cardholder agreement that describes the terms and conditions of use of the card.
- (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. All telephone requests for withdrawals from Your HSA should be made by calling ABG at the phone number identified at [myHSA.com](http://myHSA.com). By

making a telephone request for a withdrawal, You agree that, to the extent applicable, the terms and conditions set forth in our then-current online services agreement concerning withdrawals/ distributions made through online instructions shall also apply to any such telephone request. This agreement is available online at any time; or, You may call ABG to request a copy.

### **3.2 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, You understand and acknowledge that 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 into your account at [myHSA.com](https://myHSA.com). 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, 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 to third parties without Your authorization pursuant to levies, attachments or similar legal process or court orders with which we reasonable 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.

### **3.3 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 (as defined by IRS Rules) 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 verify the purpose of Your withdrawals or determine whether Your withdrawals comply with this Agreement or applicable law.
- (b) If there is clear and convincing evidence that any withdrawal from Your HSA Account 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 Cash Account 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 a 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.

### **3.4 Transfer of HSA upon separation, divorce or death; beneficiary designations**

- (a) All transfers or withdrawals made pursuant to a separation instrument (as defined in Code Section 71(b)(2)(A)), divorce decree, or death must be made in accordance with applicable law, this Agreement and Our internal 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 delivered to and received by ABG prior to Your death on a form provided by and/or acceptable to ABG. Any such beneficiary designation may be revoked by You at any time. You can designate the beneficiary or change any such designation by logging into Your account at [myhsa.com](http://myhsa.com). Any beneficiary designation will be automatically revoked upon receipt by ABG 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 ABG 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. You understand and agree that it is Your obligation to determine if spousal consent is required by applicable law. We reserve the right to require this 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 Account Beneficiary of this HSA (or the portion of the HSA allocated to Your surviving spouse) and this HSA will continue on 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 behalf of the spouse.
- (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(ies). 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. If You named Your estate as a designated beneficiary upon Your death (or the estate is the designated beneficiary by operation of law), 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 and other applicable taxes on any funds held by Custodian from the date of the death until notice of Your death is provided.
- (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) If You die leaving a negative balance in Your HSA, You understand and acknowledge that we may submit a claim to recover the debt from Your estate.

#### **ARTICLE IV. TERMINATION OF THIS AGREEMENT AND YOUR HSA**

##### **4.1 Termination of this Agreement**

- (a) You may terminate this Agreement at any time by calling the number identified on the back of Your debit card. You may be required by us to complete and submit additional documentation before Your HSA is terminated and You may be subject to a termination fee.
- (b) Except as provided herein, We may terminate this Agreement at any time for any reason with prior written notice. 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 a reasonable period of time 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.
- (c) This Agreement will terminate without 30 days prior written notice on any of the following dates:
  - (i) If You designate someone other than Your spouse as beneficiary, the date that we receive notice of Your death;

- (ii) The date that any applicable fees are not paid when due as set forth herein;
- (iii) The date You fail to promptly make a contribution equal to or reimburse us for any overdrafts in accordance with notice provided to You by Us;
- (iv) You opt out of electronic communications;
- (v) As of any other date specifically described herein;
- (vi) As required by applicable law.

Our election to forgo 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 account has been terminated as set forth herein, 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, reasonable costs associated with terminating the HSA, and outstanding charges. HSA Investments will be liquidated as set forth in the HSA Investments Terms and Conditions.

### **ARTICLE V. REPORTS AND INFORMATION REGARDING YOUR HSA**

#### **5.1 Reports and information we provide**

- (a) Establishment of your HSA under the Program is conditioned on your consent to receive all information and statements from Us electronically. If You wish to revoke this consent, You may do so at any time; however, You understand that this will result in termination of your HSA except as otherwise specifically indicated by ABG.
- (b) We will periodically make statements (typically quarterly) available electronically regarding certain HSA activity, such as contributions, withdrawals, and investment activity, and current HSA balance. It is within our discretion to determine the information included on 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 with regard to 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 in providing substantiation.
- (c) We will also provide You with any forms or reports that we are required to provide You in accordance with IRS Rules. Such forms will not be provided electronically.

#### **5.2 Your obligations to examine statements and report problems; limitations on our liability**

**IMPORTANT NOTE: THE PROVISIONS OF THIS 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, the respective obligations and liabilities (if any) of You and Us are governed by the separate cardholder agreement which You will receive with the card, and this Section 5.2 shall not apply. In the event You have questions about HSA Investments, the respective obligations and

liabilities of You, Us, and any other party involved with HSA Investments are governed by the HSA Investments Terms and Conditions. For all other types of transactions, the following provisions shall 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 call ABG. We may subsequently require You to explain the problem in writing and send it to us. YOU HEREBY AGREE THAT THE MAXIMUM REASONABLE TIME FOR YOU TO REVIEW AND REPORT ANY PROBLEM OR UNAUTHORIZED TRANSACTION REFLECTED THEREON IS 60 DAYS, AND THAT IF YOU FAIL TO NOTIFY US WITHIN THAT TIME PERIOD, YOU MAY 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 (such as extended travel or illness) or for any other reason in our sole discretion, without compromising our right to enforce the provision on future occasions.
- (b) If there is suspected unauthorized or fraudulent activity on Your account, You agree to fully cooperate with Us in the investigation and any criminal prosecution or attempt to recover funds, 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 of time 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 subsection (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 account and reopen a new one if we deem that necessary, in the event of proven or suspected fraudulent activity.

### **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, marital status, name or address of any beneficiary, or other information provided to Us that we rely on or otherwise need to maintain Your HSA in compliance with any applicable law. 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.
- (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

### 6.1 Fees

- (a) You agree to pay the applicable fees as set forth in the Schedule of Fees, which you can access by logging into your account at [myhsa.com](http://myhsa.com). We may change the fee schedule at any time, and we will give You at least 30 days advance notice of any new or increased fees. We may also establish different fee schedules for various types or categories of accounts established in accordance with this Agreement.
- (b) You authorize Us to deduct all such fees from Your HSA in accordance with the terms of Article III herein; however, we may, in our sole discretion, allow You to pay such fees in a different manner. We may also accept, in our sole discretion, payment of fees by a third party (e.g., Your employer). It is Your obligation to ensure all fees paid by a third party are timely and completely paid. 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) ABG may receive all or a portion of the maximum fees permitted by law to be paid by a provider or merchant's bank to the debit card issuer whenever you use the debit card provided to you in connection with the program. ABG may share a portion of those fees with the Custodian or other third party.
- (d) The Custodian may receive remuneration from the Investment companies offered under the Program in the form of 12b-1 and/or other fees. See the MyHSA Investment Terms and Conditions for more details.
- (e) The Custodian may retain any credit, interest or other earnings (collectively the "Float") payable by a financial institution with respect to your HSA Cash Account balance while such funds are awaiting investment/reinvestment or pending distribution.
- (f) The Custodian may retain any gains resulting from correction of errors with respect to trades made by the Custodian pursuant to your instructions.

## ARTICLE VII. HOLD HARMLESS AND LIMITATION OF LIABILITY

### 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. We are not liable for any special, incidental, consequential, or punitive damages under any circumstance.

### 7.2 Liability limitation

We shall not be deemed in default of this Agreement, nor held responsible 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, natural disaster, act of God, labor controversy, civil disturbance, disruption of the public markets, 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.



## **ARTICLE VIII. MISCELLANEOUS**

### **8.1 Amendment**

We may amend this Agreement at any time and will generally send or make available to You notice of any material changes. Any amendment will become effective on the date determined by Us, and Your continued use of the account 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 be in conflict with the Code or other laws, the Code or such other laws will supersede that provision.

### **8.2 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 Your prior consent 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) 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.

### **8.3 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 required by this Agreement to be given by You to us will be effective upon our receipt of the notice at the address provided at the Member Website.

### **8.4 Conflicting claims about Your account**

- (a) If another person or entity makes a claim against 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;
- (iv) Terminate the HSA and either:
  - A. Send a check for the balance, payable to You or to You and each claimant; or
  - B. Pay the funds into an appropriate court for resolution.

## **8.5 Unclaimed property**

- (a) Unclaimed property laws may require us to turn over abandoned accounts to the applicable state, which is generally the state listed in the address for Your account statement. Your account will be considered abandoned in accordance with Our unclaimed property and escheat procedures.
- (b) Before We turn over an abandoned account, we may send a notice to the address we currently show for the account statement. If mail we previously sent to this address was returned, we may not send this notice.
- (c) If You have not made a deposit to or withdrawal from, or initiated other activity in Your HSA for a period of time that we consider substantial, then (unless prohibited by law) we may charge dormant account fees on the HSA in addition to regular monthly maintenance and other fees. For more information regarding how we handle HSA Investments in an abandoned HSA, see the HSA Investments Terms and Conditions.

## **8.6 Recording and Monitoring Telephone Calls**

We may record or monitor telephone calls between You and us. We need not remind You of our recording or monitoring before each call unless required to do so by law.

## **8.7 Governing law**

With respect to any question, conflict or dispute between You and ABG only, this Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without regard to Illinois' conflict of law rules. With respect to any question, conflict or dispute that involves the Custodian, this Agreement will be governed by and construed in accordance with the laws of the State of South Dakota without regard to South Dakota's conflict of law rules. By entering into this Agreement, you agree to be subject to the jurisdiction of the applicable state or federal courts of the county in which each of us maintains a business.

## **8.8 Waiver and Validity.**

We can choose not to exercise or choose to delay enforcement of any of our rights under this Agreement without compromising them. If any provision of this Agreement is held invalid or unenforceable, all other provisions of this Agreement shall remain in full force and effect.