

## **Health Savings Account Custodial Account Agreement**

The account owner named on the Enrollment Form (or named below if not named on the Enrollment Form) is establishing this health savings account (custodial account, Health Savings Account or HSA) under section 223(a) of the Internal Revenue Code (the "Code") exclusively for the purpose of paying qualified medical expenses (as defined in section 223(d)(2) of the Code) of the account owner, his or her spouse, and dependents. The account owner represents that, unless this account is used solely to make rollover contributions, he or she is eligible to contribute to this Health Savings Account; specifically, that he or she: (1) is covered under a high deductible health plan (HDHP); (2) is not also covered by any other health plan that is not an HDHP (with certain exceptions for plans providing preventive care and limited types of permitted insurance and permitted coverage); (3) is not entitled to benefits under Medicare (generally, has not reached age 65); and (4) cannot be claimed as a dependent on another person's tax return.

The account owner has made an initial contribution to the custodial account, in cash, in the amount set forth on the Enrollment Form (or noted below if not otherwise included on the Enrollment Form).

The account owner and Fulton Bank, as the custodian, make the following agreement:

### **ARTICLE I**

The custodian will accept additional cash contributions for the tax year made by the account owner or on behalf of the account owner (by an employer, family member or any other person). The custodian will accept only cash contributions in the aggregate up to the maximum amount allowable under section 223(b) of the Code for the tax year, except in the case of a rollover contribution described in section 223(f)(5) of the Code. That contribution limit is increased for individuals who have reached the age of 55 (Catch up Contributions) before the close of the tax year, by \$500 for tax year 2004, \$600 for 2005, \$700 for 2006, \$800 for 2007, \$900 for 2008 and \$1,000 for 2009 and thereafter. Certain contribution limits will be increased to reflect a cost-of-living adjustment, if any, pursuant to section 223(g) of the Code. Contributions for any tax year may be made at any time before the deadline for filing the account owner's federal income tax return for that year (without extensions). It is the responsibility of the account owner to determine whether contributions to this Health Savings Account have exceeded the maximum annual contribution limit. If contributions to this Health Savings Account exceed the maximum annual contribution limit, the account owner shall notify the custodian that there exist excess contributions to the Health Savings Account. It is the responsibility of the account owner to request the withdrawal of the excess contribution and any net income attributable to such excess contribution. The account owner acknowledges and agrees that in the event the account owner makes any contribution in excess of the applicable maximum amount allowable under section 223 of the Code, that account owner shall be solely responsible for any and all tax consequences associated with such excess contributions and acknowledges and agrees that custodian has no obligation or responsibility to monitor the amount or level of contributions to the custodial account, or the appropriateness of any withdrawal from or expense paid through the account, it being the account owner's sole responsibility to comply with all applicable rules and regulations associated with the establishment, maintenance and use of the Health Savings Account. 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 II**

The account owner's interest in the balance in the custodial account is nonforfeitable.

### **ARTICLE III**

No part of the custodial account funds may be invested in life insurance contracts or in collectibles as defined in section 408(m) of the Code, nor may the assets of the custodial account be commingled with other property except in a common trust fund or common investment fund. Neither the account owner nor the custodian will engage in any prohibited transaction with respect to this account (such as borrowing or pledging the account or engaging in any other prohibited transaction as defined in section 4975 of the Code).

### **ARTICLE IV**

1. Distributions of funds from this HSA may be made at any time upon the direction of the account owner.
2. Distributions from this HSA that are used exclusively to pay or reimburse qualified medical expenses of the account owner, his or her spouse, or dependents are tax-free. However, distributions that are not used for qualified medical expenses are included in the account owner's gross income and are subject to an additional 10 percent tax on that amount. The additional 10 percent tax does not apply if the distribution is made after the account owner's death, disability, or reaching age 65.
3. The custodian is not required to determine whether the distribution is for the payment or reimbursement of qualified medical expenses. Only the account owner is responsible for substantiating that the distribution is for qualified medical expenses and must maintain records sufficient to show that the distribution is tax-free.

### **ARTICLE V**

If the account owner dies before the entire custodial account funds are distributed to him or her, the entire remaining balance of the custodial account funds will be disposed of as follows:

1. If the beneficiary is the account owner's spouse, the custodial account shall become the spouse's Health Savings Account as of the date of the death of the account owner.
2. If the beneficiary is not the account owner's spouse, the custodial account shall cease to be an Health Savings Account as of the date of the death of the account owner and the fair market value of the account shall be taxable to the beneficiary (or the estate of the account owner) in the taxable year, which includes such date in accordance with section 223(f) of the Code.

## ARTICLE VI

1. The account owner agrees to provide the custodian with all information necessary to prepare any reports required by section 223 of the Code and the regulations promulgated thereunder from time to time.
2. The custodian agrees to submit to the Internal Revenue Service (IRS) and the account owner the reports prescribed by the IRS in connection with the Health Savings Account as may be required of the custodian.

## ARTICLE VII

This agreement will be amended as necessary to comply with the provisions of the Code and the related regulations promulgated thereunder. Other amendments may be made with the written consent of the account owner and the custodian.

## ARTICLE VIII

1. **Definitions:** As used herein, the words "you" and "your" refer to the account owner. The account owner is the person who establishes the custodial account. The words "we", "our," and "us" refer to the custodian. The word "Code" means the Internal Revenue Code. The words "Identifying Number" mean the account owner's social security number or other applicable federal tax identification number.
2. **Notices and Changes of Address:** Any required notice regarding this agreement or the Health Savings Account will be considered effective when we mail it to the last address of the intended recipient which we have in our records. Any notice to be given to us will be considered effective when we actually receive it. You must notify us of any changes of address.
3. **Representations and Responsibilities:** You represent and warrant to us that any information you have given or will give us with respect to this agreement is complete and accurate. Further, you agree that any directions you give us, or any action you take will be proper under this agreement and that we are entitled to rely upon any such information or directions. We shall not be responsible for losses of any kind that may result from your directions to us or your actions or failures to act, and you agree to reimburse us for any losses we may incur as a result of such directions, actions or failures to act. We shall not be responsible for any penalties, taxes, judgments or expenses you incur in connection with your Health Savings Account. We have no duty to determine whether your contributions or distributions comply with the Code, regulations, rulings, IRS published guidance or this agreement.
4. **Service Fees:** We have the right to charge a service fee on an annual, monthly or other periodic basis and other designated fees (for example, a transfer, withdrawal or termination fee) for maintaining your Health Savings Account. In addition, we have the right to be reimbursed for all reasonable expenses we incur in connection with the administration of your Health Savings Account. We may charge you separately for any fees or expenses, or we may deduct the amount of the fees or expenses from the assets in your Health Savings Account as permitted by law, at our discretion. We reserve the right to change any fee or charge any additional fee upon 30 days notice to you that the fee will be effective.
5. **Investment of Amounts in the Account:** You will select the type of investment for your Health Savings Account assets; provided, however, that your selection of investments shall be limited to those types of investments that we are authorized by our charter, state and federal banking laws and state and federal securities or other laws, to offer or to direct such assets to on your behalf and do in fact offer for or agree to direct your assets to at your election and risk, for investment of Health Savings Account assets.
6. **Beneficiaries:** You may designate one or more person or entity as beneficiary of your Health Savings Account. This designation can only be made on a form prescribed by us, and it will only be effective when it is filed with us during your lifetime. Unless specified otherwise in writing by you, each beneficiary designation you file with us will cancel all previous ones. The consent of a beneficiary shall not be required for you to revoke a beneficiary designation. If you do not designate a beneficiary, your estate will be the beneficiary.
7. **Termination:** Either party may terminate this Agreement at any time by giving written notice to the other. We can resign as custodian at any time effective 30 days after we mail written notice of our resignation to you. Upon receipt of that notice, you must make arrangements to transfer your Health Savings Account to another qualified custodian or trustee as designated by section 223(d) of the Code. If you do not complete a transfer to your Health Savings Account within 30 days from the date we mail the notice to you, we have the right to transfer your Health Savings Account assets to a successor qualified custodian or trustee that we choose in our sole discretion, or we may pay your Health Savings Account to you in a single sum. 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 hold back from your Health Savings Account a reasonable amount of money that we believe is necessary to cover any one or more of the following:

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

If our organization is merged with another organization in which we are not the surviving entity (or comes under the control of any federal or state agency) or if our entire organization (or any portion which includes your Health Savings Account) is bought by another organization and as a result we cease to exist as a separate entity, that organization (or agency) shall automatically become the trustee or custodian of your Health Savings Account, but only if it is the type of organization authorized to serve as an Health Savings Account trustee or custodian.

If we fail to comply with certain Treasury regulations or we are not keeping the records, making the returns, or sending the statements as are required by forms or regulations, the IRS may, after notifying you, require you to substitute another custodian or trustee.

8. **Amendments:** We have the right to amend this agreement at any time. Any amendment we make to comply with the Code, regulations, rulings or IRS published guidance does not require your consent. You will be deemed to have consented to any other amendments unless, within 30 days from the date we mailed the amendment, you notify us in writing that you do not consent.

9. Withdrawals: All requests for withdrawal shall be in writing or in other form acceptable to Fulton; and, if in writing, shall be made on a form provided by or acceptable to us. Any withdrawals shall be subject to all applicable tax and other laws and regulations including the requirement that such withdrawals are for qualified medical expenses pursuant to section 223(f) of the Code, possible withdrawal penalties, excise taxes and withholding requirements.

10. Transfer from Other Qualified Accounts: We can receive amounts transferred to this Health Savings Account from the custodian or trustee of another Health Savings Account or qualified Archer Medical Savings Account. However, we also reserve the right not to accept any transfer.

11. Liquidation of assets: We have the right to liquidate assets in your Health Savings Account if necessary to make distributions or to pay fees, expenses or taxes properly chargeable against your Health Savings Account. 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 or any adverse consequences that result from our decision.

12. Restrictions On the Account: Neither you nor any beneficiary may sell, transfer or pledge any interest in your Health Savings Account or its assets in any manner whatsoever, except as provided by law or this agreement.

13. What Law Applies: This agreement is subject to all applicable federal and state laws and regulations. If it is necessary to apply any state law to interpret and administer this agreement, the law of the Commonwealth of Virginia shall govern without regard to or application of its conflict of laws principles. If any part of this agreement is held to be liable or invalid, the remaining parts shall not be affected. Neither your nor our failure to enforce at any time or for any period of time any of the provisions of the agreement shall be construed as a waiver of such provisions, or your right or our right thereafter to enforce each and every such provision.

14. Limitation of Liability; Use of Third Parties; No Agents: We shall not be liable to you for any losses, damages, costs, penalties or expenses you incur as a result of your employer's failure to make the contributions to your Health Savings Account required under your employer's health plan, if applicable. We are not responsible for monitoring any of your employer's contributions to your Health Savings Account or notifying you of your employer's contributions. You are responsible for contacting your employer regarding its contributions, if applicable, and monitoring those contributions. We will provide monthly statements to you. We shall not be liable to you for any statements, representations, actions or inactions of any insurance agent or agency that sold you an insurance plan in connection with your Health Savings Account or any other third party including, but not limited to any administrative agent, investment advisor, company or fund. No such third party is our partner, agent, affiliate, representative or co-venture. You acknowledge and agree that we may from time to time use certain third parties to administer and perform certain functions under this agreement relating to your Health Savings Account. You further acknowledge and agree that we may share necessary information (including your personal information) with such third parties as necessary for them to perform the responsibilities assigned or delegated to them in connection with the administration of your Health Savings Account. You understand that Health Savings Administrators, L.L.C., or any successor thereto, is not an agent of or affiliated with Fulton Bank and we shall have no liability to you or any other person for any act, action, advice, representation, warranty or failure to act by such party.

15. No Tax Advice: We have not rendered you tax advice or legal counsel in connection with your Health Savings Account. You should consult the Code and your personal tax advisor concerning questions relating to your Health Savings Accounts as well as your rights, responsibilities and the tax treatment thereof.

16. Controlling Provisions: Notwithstanding any other article or any other provisions that may be part of, added to or incorporated in this agreement, the provisions of Articles I through VI and this sentence are controlling. Any additional article in this agreement that is inconsistent with section 223 of the Code, regulations, rulings or IRS published guidance will be void.

17. Additional Provisions: The Terms and Conditions of the Enrollment Form, the Additional Provisions for Health Savings Accounts, the Supplemental Terms, Conditions and Disclosures for HSA Debit Card Accounts and the Supplemental Terms, Conditions and Disclosures for HSA Fund Advantage Accounts are part of this agreement. The Supplemental Terms, Conditions and Disclosures for HSA Debit Card Accounts apply when you have assets invested in the HSA Debit Card Account. The Supplemental Terms, Conditions and Disclosures for HSA Fund Advantage Accounts apply when you have assets invested in the HSA Fund Advantage Account. When completing the Enrollment Form for the Health Savings Account, you may elect either the HSA Debit Card Account or the HSA Fund Advantage Account. Thereafter you may transfer your assets from one account to the other, although you may incur fees in doing so. However, you may not have funds in both such accounts at the same time.

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(For Custodian Use if Not Included on Enrollment Form)

Name of account owner                      Date of birth of account owner                      Identifying number (see definitions)

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Address of account owner                      Check if  new account  rollover  amendment

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Amount of initial contribution to the custodial account \$ \_\_\_\_\_ (dollars)

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