

## Important Disclosure Information Health Savings Account Custodial Agreement

Under section 223(a) of the Internal Revenue Code

### I. Agreement

PayFlex Systems USA, Inc. ("PayFlex," "Custodian," "us" or "we") is the custodian of your Health Savings Account ("HSA"). This agreement covers the administration of your HSA. You agree to the terms and conditions of this Agreement when you or any authorized user on your account accepts, signs, or uses the PayFlex debit card or your HSA. If you do not agree to all the terms of this agreement, you must contact your Employer to opt out. Read through the terms of this agreement carefully so that you understand how your HSA works.

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

Please keep this agreement with your HSA records. You can refer to this agreement as needed. You do not need to return it to us or file it with the Internal Revenue Service (IRS).

**Effective date:** 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 such notice or communication shall be deemed to have been given

- on the day such notice or communication is personally delivered;
- three (3) business days after such notice or communication is mailed by regular U.S. mail;
- one (1) business day after such notice or communication is sent by overnight courier; or
- on the business day such notice or communication is faxed or sent electronically.

Any notices or communications you provide to us must be in writing and delivered by U.S. mail or transmitted by facsimile (fax) or electronic mail (e-mail).

**Rights:** 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.

**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 so that we may

verify your identity. We may refuse to accept any application for an HSA at our discretion. Our acceptance of your application constitutes our agreement to these terms.

PayFlex does not offer tax, legal, or investment advice.

### II. Amendments

We may amend this agreement from time to time to comply with the provisions of the Internal Revenue Code, IRS guidance, or other applicable laws or regulatory guidance. We also reserve the right, at our sole discretion, to update, change or replace any part of this Agreement. You can review the most current version of this Custodial Agreement on the PayFlex member portal on the PayFlex website. You may also request a paper copy. In the event we update this Agreement, we will present you with an updated version the next time you log on to the PayFlex member website. As an accountholder, it is your obligation to check our website periodically for changes. Your continued use of the PayFlex debit card or your HSA, following the posting of any changes to this Custodial Agreement, constitutes your acceptance of those changes.

### III. Eligibility

When you apply for an HSA you represent that you are eligible for the HSA. You determine if you are eligible to enroll in an HSA based on the requirements for eligibility (§125 of the Internal Revenue Code).

**Qualifying for an HSA:** To be eligible for an HSA, you must: (1) be 18 years of age or older (2) be covered under a qualified high deductible health plan (HDHP); (3) not be covered by any other health plan that is not a HDHP, including a spouse's Flexible Spending Account (FSA), with certain exceptions for plans providing preventive care and limited types of permitted insurance and permitted coverage; (4) not be enrolled in Medicare; and (5) not be claimed as a dependent on another person's tax return.

**First of month eligibility:** HSA eligibility is based on the first day of the month. If your qualified HDHP coverage

starts after the first day of the month, you are eligible for the HSA on the first day of the next month.

#### IV. Contributions

You can contribute to your HSA. We will only accept contributions in U.S. Dollars to your HSA. Also, your spouse, your employer, or anyone else can contribute on your behalf, unless prohibited by applicable law. All contributions count toward your contribution limit regardless of who made the contribution.

**Contributions by the tax-filing deadline:** You may make contributions for any tax year up to the deadline for filing your federal income tax return for that year (without extensions). For most years, that is April 15 of the following year. That date may change if April 15 falls on a weekend or a holiday.

**Employer Advanced Contributions:** Employer advanced contributions may be a benefit available to you by your employer under your HSA program; if so, then PayFlex shall administer advanced contributions according to your HSA program. PayFlex cannot administer or support the use of an employer's advanced contribution to satisfy any prior tax year deficit, and you may be obligated to pay back your employer any funds owed at the end of the tax year.

In the unlikely event that your employer makes a contribution to your HSA in error, your employer may request a reversal of that contribution; if you do not have enough funds in your HSA balance to cover the reversal, your employer may apply advanced contributions to your account on your behalf.

#### V. Contribution Limits

The IRS sets the annual contribution limits. How much you can contribute to your HSA is based on your HDHP coverage (individual or family), your age, and your period of eligibility. If you have any questions about these contribution limits, consult with your tax advisor.

**Annual contribution:** The IRS sets a limit for HDHP self-only coverage and a limit for family coverage. These limits may change each year.

**Last-month rule:** If you enroll in the HDHP after January 1 but you still have coverage on December 1 of the same year, you may be able to contribute up to the contribution limit for the year. Under the last-month rule, if you are an eligible individual on the first day of the last month of your tax year (December 1 for most taxpayers), you can contribute *as if* you were eligible all year; however, you must

remain eligible to contribute to an HSA during the entire testing period. The testing period is 13 months, starting on December 1 of the current year through December 31 of the following year (for calendar year taxpayers). If you do not maintain HSA eligibility for the entire testing period (except for death or disability), HSA contributions for the months you were not actually eligible are included in your gross income for that year. You may also have to pay an additional 10% excise tax.

**Catch-up contribution:** If you are age 55 or older and not enrolled in Medicare you may be able to contribute an additional amount to your HSA.

**Married rule:** If you or your spouse has family HDHP coverage, you both are treated as having family coverage. While you can each have an HSA, the family contribution limit applies to you jointly. If your spouse is age 55 or older and eligible to make a catch-up contribution, he or she must do so in their own HSA. Your spouse cannot contribute their catch-up contribution to your HSA.

#### VI. Excess Contributions

When you contribute more to your HSA than allowed to for the year, you will have excess contributions. You determine if you have excess contributions. In addition to having to pay income taxes on the excess amount, you may also have to pay an excise tax. If you do have excess contributions, you can ask us to withdraw the excess amount and any earnings on that amount. You can avoid paying the excise tax if you withdraw the excess amounts by the tax filing deadline, including extensions, for the year that you deposited the contribution. You may also have to pay all relevant income taxes and any tax penalties on the excess amount and earnings.

##### Statutory Contribution Maximum

The statutory contribution maximum is the most that anyone could contribute to an HSA for the year. This is the family contribution limit plus the catch-up contribution. We cannot allow an accountholder to contribute more than this amount.

If you attempt to make a deposit that will place your total contributions for the year over this statutory maximum, we will reject the entire deposit. This is true regardless of whether the contribution comes directly from you or from your employer. You can adjust your deposit amount to bring your total annual contributions to the statutory maximum.

## VII. Rollovers

You are allowed to roll over funds, tax free, from a Medical Savings Account (MSA) or another HSA. A rollover is when you receive the funds from one account and then deposit them into another HSA.

The IRS limits you to one rollover in a twelve-month period. You must roll over the funds within 60 days of receipt.

MSA and HSA rollovers do not count toward your contribution limit for the year.

## VIII. Trustee to Trustee Transfers

You can instruct one trustee to transfer your HSA funds to an HSA you have with another trustee. A trustee to trustee transfer does not count toward your annual contribution limit. There is no limit to how many trustee transfers you request. Fees may apply.

**Trustee transfer to PayFlex:** You can instruct another trustee to transfer your funds to the HSA you have with us. You can do this with the PayFlex trustee transfer form.

**Trustee transfer from PayFlex:** You can transfer all or part of your balance to another trustee. Consult the other trustee for the process to request this transfer.

## IX. Qualified HSA Funding Distribution

A qualified HSA funding distribution is a transfer of funds from your traditional or Roth Individual Retirement Account (IRA) to your HSA. You can transfer funds from your IRA to your HSA once in your lifetime. You can transfer up to your HSA contribution limit for the year you transfer the funds. The amount that you transfer does count against your HSA contribution limit for the year of the transfer.

## X. HSA Funds

You can withdraw funds from your HSA to pay for out of pocket medical expenses. Funds in your HSA are held in one or more aggregate accounts that we establish to hold all the balances of our HSA account holders.

These pooled funds are held at one or more insured financial institutions of our choosing. The pooled arrangement does not expose you to any risk on the balance in your cash account. We may receive compensation for these pooled funds.

You are entitled to, and will receive, interest on your cash account balance. You will not receive additional compensation for the difference between your earned

interest and the compensation we may receive for the pooled funds.

You have the right to ask about the financial institutions where we hold pooled HSA funds. You may call our Customer Service team at the number on the back of your PayFlex debit card.

## XI. FDIC Insured

Your HSA account balance is eligible for FDIC insurance, up to applicable FDIC deposit limits. FDIC is the Federal Deposit Insurance Corporation. Invested funds are not FDIC insured; see Article XIII for more information on HSA investments.

## XII. Interest

Funds in your HSA will earn interest.

**Interest calculations:** We calculate interest nightly and track it during the course of a month. Interest is compounded monthly, computed on a 365-day year basis. For leap years, this is based on 366 days. All interest calculations are based on the available cash balance in your HSA at the time of calculation, using the interest rate in effect at that time.

**Interest credited monthly:** We post earned interest monthly, by the second banking day of the next month.

**Disclosures:** We disclose the monthly interest amount in your online account transaction history. You will also see your monthly interest in your account statements. You can find your account statements in the PayFlex member portal.

**Last day of month requirement:** Your HSA must be open on the last day of the month to earn any interest due for that month. If you close your HSA before the last day of the month you will not receive interest for that month.

**Change in interest rate:** We reserve the right to change the rate of interest you receive on HSA cash account balances. We also reserve the right to establish and apply different rates of interest depending on the amount of your cash account balance, as allowed by applicable law or regulations.

## XIII. Investments

You may have investment options available to you under your HSA program; if so, you may transfer some of your HSA funds to an investment account. The terms and conditions outlined in the "Investment Account Terms and Conditions" determine how you can participate in the

investment account. “Investment Account Terms and Conditions” can be found on the PayFlex member portal.

**Minimum cash balance:** To open and maintain an investment account you must have a minimum balance in your HSA account balance.

**Investment options:** If you have investment options available to you, you will be able to invest in one or more mutual funds. We offer a designated slate of mutual fund choices allowed under current law. The fund slate may change from time to time, with new or modified mutual funds. If a fund becomes unavailable, we may liquidate your investment in that fund and deposit the proceeds in your cash account. You can then reinvest those funds in another mutual fund option in our slate.

**HSA overdrawn:** If your HSA becomes overdrawn, we may liquidate funds from your investments and transfer the proceeds to your account balance.

**Fees:** We may charge an annual or monthly maintenance fee for the HSA investment account. You can find a statement of fees in the materials you receive when you open an HSA investment account. You may also contact us if you have questions. We would deduct these fees from your HSA account balance. There may be other service fees with a specific mutual fund option. Fees are listed in the prospectus for each fund option.

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

**No FDIC coverage:** Funds that you hold in an investment account are not FDIC-insured. They also are not included in your HSA account balance for interest calculations.

**Investment dividends:** Earnings on your investments may be posted to your HSA account balance. Earnings may not be posted into your HSA investment account.

**Investments only from your HSA:** You can invest funds only from your HSA. You cannot invest non-HSA funds in your HSA investment account.

**Investment rebalancing:** You can move funds from one fund option to another within our mutual fund slate.

**Not available with your debit card:** You cannot use your PayFlex debit card<sup>®</sup> to access funds in your HSA investment account. If you need to use invested funds to pay for out-of-pocket medical expense you must redeem mutual fund shares and transfer the proceeds back to your HSA cash account.

**Investment liquidations:** You can transfer funds at any time from your investment account back into your HSA.

**Risk:** When you transfer funds into an HSA investment account you can potentially benefit from capital appreciation in the value of mutual fund holdings. However, you may be exposed to a number of risks; including but not limited to the risk of loss of the entire investment. You should always read the prospectus for each mutual fund you intend on purchasing to familiarize yourself with any potential risks.

**Investment is Optional:** The HSA investment account is an optional, self-directed service. We do not provide investment advice. You are solely responsible for any investment account decisions you make. You will have exclusive control over any decision to allocate HSA funds to these options.

#### XIV. Prohibited Transactions

Neither you nor we will engage in any prohibited transaction with this account. Prohibited transactions include:

- Borrowing against the HSA, including overdrawing the account
- Pledging the HSA as collateral
- Investing HSA funds in life insurance contracts or collectibles
- Comingling your HSA assets with other property, except in a common trust fund or common investment fund

PayFlex reserves the right to close your HSA in the event of a prohibited transaction.

#### XV. Qualified and Non-Qualified Expenses

You can use your HSA funds to pay for qualified and non-qualified expenses.

**Accountholder responsibility:** It is your responsibility to determine if a distribution is for a qualified or non-qualified expense. We will not make that determination.

**Qualified medical expenses:** When you use your HSA funds to pay or reimburse qualified medical expenses you do not have to pay federal income taxes on those funds. You can use your HSA funds for qualified medical expenses for you, your spouse, and your dependents (who qualify as dependents for tax purposes). Refer to [irs.gov](https://www.irs.gov); Publications 969 and 502 provide information on qualified medical expenses.

**Non-qualified expenses:** If you use your HSA funds for a non-qualified expense, you will have to pay taxes on the amount. This includes non-medical expenses

and medical expenses that you incurred before your HSA establishment date.

You must include the amount for non-qualified expenses in your gross income. You may also have to pay an additional 20% tax on that amount. The 20% tax does not apply if you made the withdrawal after your death, disability, or reaching age 65.

## XVI. Distributions

You determine the distribution of funds from your HSA.

**Establishment date:** You can use your HSA funds for qualified medical expenses that you incur on or after the date your HSA is established. The establishment date is the date that your HSA opens, not the date that it is first funded.

**Debit card:** When you use the debit card that you have with your HSA, you agree to the debit card terms and conditions. You will find these in the cardholder agreement that you receive with the debit card.

**Funds hold:** We may put a hold on your HSA funds for amounts that you authorize but that we have not yet paid. Held amounts will not be available to pay other expenses.

**Insufficient balance:** If the available funds in your HSA are less than the amount of a requested distribution, we may deny that request. If your HSA balance falls to or below \$0.00 we will not process any distributions until funds are deposited to your account or you transfer funds from the investment account (if you have one).

We have the right to liquidate assets from your HSA investment account, if necessary, to cover distributions, fees, expenses, taxes, penalties, or surrender charges. In doing this, we will decide in our complete and sole discretion which assets to liquidate. You agree not to hold us liable for any adverse consequences that result from our decision.

## XVII. Availability of Funds

**Timing:** Deposits received after 3:00 pm CT/4:00 pm ET will be considered received on the next banking day.

All deposits to your HSA must be in U.S. Dollars. Funds will be available in accordance with Federal Reserve Regulation CC, as applicable.

**Payroll and employer contributions:** These are contributions that come to PayFlex from your employer. Payroll contributions are those contributions that you have deducted from your paycheck, either pre-tax or post-tax, for deposit into your HSA. Your employer may also contribute to your HSA. Employer contributions are

not deducted from your paycheck. Payroll and employer contributions will be available for withdrawal on the deposit date that your employer reports, provided that we have received the funds from your employer.

**Online deposits:** When you make an online deposit to your HSA, the funds will come from a bank account that you previously linked to your HSA. The funds will come through the automated clearing house (ACH) system. These funds will be available within two banking days after we receive the funds.

**Check deposits:** When you mail a check to us, the funds will be available three banking days after the day we receive the check. In some circumstances, there may be longer delays for funds availability; this could be due to a large dollar amount, a check that requires special handling, an unplanned situation such as a system or communication failure, or for any other reason as allowed by law.

**Funding errors:** We reserve the right to adjust your HSA balance to correct a funding error.

## XVIII. HSA Balance

Your HSA balance carries over from year to year. The interest that you earn in your HSA is non-forfeitable.

## XIX. Beneficiaries

You have the right to name one or more beneficiaries for your HSA. If you want your funds to go to your beneficiary, you must designate your beneficiary prior to your death. You can do this online from the PayFlex member portal or you can request a paper form from PayFlex and return it to us. You can change your beneficiary at any time.

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

**Non-spouse beneficiary:** If you are married and do not wish to designate your spouse as your beneficiary, you may need your spouse's consent to name someone else as beneficiary. It is your responsibility to know if your state requires your spouse's consent for you to name someone who is not your spouse as your beneficiary.

**No designated beneficiary:** If you do not have a beneficiary on file with us at the time of your death, your estate will be deemed to be your beneficiary; we will pay the funds to your estate.

**HSA balance at the time of death:** If you have funds in your HSA, including an HSA investment account, at the time of your death, the remaining HSA balance will be disposed of as follows:

(1) If you name your spouse as your beneficiary, your HSA will become your spouse's HSA after your death (unless otherwise specified by applicable laws). If you have HSA investments, we will liquidate the investments into the HSA account balance. The funds will remain tax-free for your spouse. Your spouse may use the funds to pay your remaining out-of-pocket medical expenses or set up his or her own HSA investment account, if applicable.

(2) If your beneficiary is not your spouse, the HSA will cease to be an HSA as of the date of your death. If you have HSA investments, we will liquidate the investments into the HSA account balance. The fair market value of the account as of the date of death, minus any payments for qualified medical expenses, will be taxable to that person (or your estate) in the year of death.

## XX. Divorce or Separation

If a portion of your HSA funds are to be transferred to your former or estranged spouse, we must receive a request for a transfer of funds pursuant to the terms of a divorce or separation agreement within ninety (90) days of the agreement's effective date. If the funds transfer to someone other than your spouse, you may have to pay income tax and penalties on the transfer amount.

## XXI. Tax Reporting

We will prepare and provide the following tax forms for your HSA.

**Form 1099-SA:** This form reports the distributions from your HSA for the year. We will provide this form at the end of January for the prior year. If you had no withdrawals from your HSA for the year, you will not receive a Form 1099-SA. If applicable, this form will include the Fair Market Value (FMV) as of the date of death.

**Form 5498-SA:** This form reports contributions to your HSA. We will provide this form at the end of May for the prior year, as it will include any contributions made in the current year for the prior year. This form also reports the FMV as of December 31 of the prior year.

**Form 8889:** As an HSA account holder, you will have to file Form 8889 with your tax return.

## XXII. Account Fees

We may charge an annual or monthly maintenance fee

for your HSA as well as other service and administrative fees. We may change or add fees from time to time. If we do, we will let you know at least 30 days in advance.

**Fee schedule:** You can review the list of account fees at any time. A fee schedule is available in the PayFlex member portal or by calling PayFlex.

**Monthly maintenance fee:** If you have your HSA through your employer, your employer may pay this fee. If not, we will charge this fee to your HSA each month.

**Other fees:** In addition to the monthly maintenance fee, other fees that may apply to your account include, but are not limited to, account close, non-sufficient funds (overdraft), stop payment, deposit item returned, and paper statement. You are responsible for any fees that you incur. We will deduct fees from your account balance.

**Insufficient balance for fees:** You will need to ensure that you keep enough funds in your HSA to cover these fees. If your balance is not enough to cover fees for 60 consecutive calendar days, we will bring your balance to zero (\$0.00) and close your HSA.

## XXIII. Account Closure

You may close your HSA at any time. Closing your account will also terminate this agreement. We may also close your HSA as allowed by law or regulations. We may charge you a fee when closing your account. You can review the list of account fees at any time. A fee schedule is available in the PayFlex member portal or by calling PayFlex.

**Investment Account:** If you direct us to close your HSA, that will include your investment account (if you have one). We will liquidate your investment account and place all funds back in your HSA.

**Notify your employer:** If you still receive contributions through your employer, you will need to notify your employer that your account is closed. If your employer reports a contribution after your account has closed, that deposit will reject. We cannot deposit funds into a closed account.

**Escheatment:** We may close your account and escheat the funds. Refer to Article XXIV for escheatment.

**Final disbursement:** If you ask us to close your account and do not direct us to send your final HSA balance to a new trustee, we will send those funds to you. We may report this payment to the IRS as a non-qualified withdrawal from your HSA. You will have to roll over the funds to another HSA or report the funds appropriately as a qualified or non-qualified distribution.

**Final disbursement returned:** If a final disbursement is returned to us, we will re-open your HSA. We will post the funds back to your balance and reactivate your debit card or send you a new debit card.

#### XXIV. Escheatment

HSAs are subject to state escheatment laws. Accounts are escheated after a specific period of no activity ("dormancy"). Each state has its own dormancy period. When an account is escheated, we will close the account and turn the funds over to our Unclaimed Property division. The funds will subsequently be escheated to the state of residence that we have on file for you.

**Notification:** We will notify you if your account has been flagged for possible escheatment. You will be able to take action to avoid escheatment. The notification that we send to you will explain what action you can take to keep your account open.

**Checks:** Escheatment also applies to uncashed checks paid out of your HSA. Checks that are not cashed a year after their issue date will be turned over to our Unclaimed Property division.

**Interest:** These funds do not earn interest.

#### XXV. Contractors

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

**Actions with Contractors:** 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.

**Contractor services:** Some services (such as a debit card or an investment fund) may require you to enter into an additional agreement or abide by additional terms and conditions. By accepting that service you will have accepted the agreement or terms and conditions that apply.

**Fee share:** We may share fees, fee revenue, or both with our contractors, including contractors that are our

affiliates. We will disclose any fees that you or your HSA pay. We will consider your continued use of our services or the services of our contractors as your approval of such fees.

**Interchange fees:** Our contractors may receive interchange fees from parties other than us when you use your HSA debit card. The interchange fees may vary; in all cases it will be equal to or less than the highest possible fee allowed for card transactions. Neither you nor we are responsible for the payment of any interchange fee. This fee may not be deducted from your HSA.

#### XXVI. Account Instructions

We and our contractors may rely on all information and instructions you provide. If we or our contractors do not receive instructions for any transaction, receive instructions that are not clear, or believe in good faith that a requested transaction is in dispute, we or our contractors may take no action until we receive further clarification.

We and our contractors are not responsible for losses that may result from your instructions, actions, or failure to act. We and our contractors will not be responsible for any taxes, fines, penalties, judgments, or expenses you incur in connection with your HSA.

**Authorized agent:** You have the right to appoint someone else to act on your behalf with respect to your HSA or this agreement, by completing an authorization form or providing a legal document/proof of legal appointment. We and our contractors will then rely on all information and instructions provided by your agent. We and our contractors will not 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 costs or liabilities we or they may incur as a result of actions or inactions of your agent.

#### XXVII. Termination

You may terminate this Agreement at any time by giving us written notice that you wish to close your account. To request an account closure, complete the Account Closure Request form available online or call PayFlex to obtain a paper request form.

We may terminate this Agreement at any time by giving written notice to you.

**Custodial resignation:** PayFlex has sole discretion to resign as custodian for reasons such as deciding to exit the HSA business. To do so, we would provide written

notice to you. This would not require your consent. Upon our resignation, we would either appoint a successor custodian, ask you to appoint a successor custodian, or distribute the remaining assets in your HSA to you. If we send the remaining funds to you, we may report this payment to the IRS as a non-qualified withdrawal from your HSA.

We will not resign as custodian at the request of a third party, including your employer, or for the purpose of facilitating a transfer of HSA funds to a new custodian or trustee designated by you or your employer.

**Successor Custodian:** A successor custodian (or trustee) must be a bank, an insurance company, or another entity that satisfies the IRS requirements for HSA custodial duties.

The successor custodian would be effective immediately. If you do not terminate this agreement and request a complete distribution or you do not designate a new custodian or trustee, you would be deemed to have accepted the successor custodian that we name.

The successor custodian's HSA Custodial Agreement and all related account documentation would then automatically apply to your HSA. In such case, you would receive a copy of the new custodial agreement and related material.

**Debit card:** If we terminate the Agreement, we will also cancel the debit card associated with your account. We would cancel it upon terminating the Agreement.

**Disclaimers:** If we were to distribute your HSA assets to you, you would be responsible for the tax consequences of the distribution. We would not be liable for any actions or failures to act on the part of the successor custodian or trustee. We would not be responsible for any tax consequences you may incur as a result of the transfer or distribution of your assets.

## XXVIII. Hold-Harmless

You will indemnify and hold us harmless from and against any claim, loss, liability, damage, cost, or expense (including reasonable attorney's fees) that arise 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 any subpoena or court order relating to your HSA). Exceptions are for

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, 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.

For more detailed information, you can refer to [payflex.com](http://payflex.com). Or if you have your HSA through your employer, your plan material.

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