The account owner (or member) named is establishing this health savings account (hereafter HSA or Account) exclusively for the purpose of paying or reimbursing qualified medical expenses of the member, his or her spouse, and tax dependents. The member represents that, unless the Account is used solely to make rollover contributions, he or she is eligible to contribute to this HSA; specifically, that he or she: (1) is covered under a qualified high deductible health plan (HDHP); (2) is not also covered by any other health plan that is not a qualified HDHP (with certain exceptions for plans providing preventive care and limited types of permitted insurance and permitted coverage); (3) is not enrolled in Medicare; and (4) cannot be claimed as a dependent on another person’s tax return. Neither this document, nor any other communication from Custodian, is intended to be legal, tax or financial advice. The taxpayer should always consult a professional advisor.

The member and HealthEquity, Inc. (Custodian) make the following Agreement:

### Article I. Contributions

1.01 Custodian will accept additional cash contributions for the tax year made by the member or on behalf of the member (by an employer, family member, or any other person). No contributions will be accepted by Custodian for any member if the amount would result in total contributions that exceed the maximum annual amount for family coverage plus the catch-up contribution.

1.02 Contributions for any tax year may be made at any time before the deadline for filing the member’s federal income tax return for that year (without extensions).

1.03 Rollover contributions from an HSA or an Archer medical savings account (Archer MSA) (unless prohibited under this Agreement) need not be in cash and are not subject to the maximum annual contribution limit set forth in Article II.

1.04 Qualified HSA funding distributions from an individual retirement account (IRA) must be completed in a trustee-to-trustee transfer and are subject to the maximum annual contribution limit set forth in Article II.

### Article II. Contribution Limits

2.01 For calendar year 2014, the maximum annual contribution limit is $3,300 for a member with single coverage and $6,550 for a member with family coverage. For calendar year 2015, the maximum annual contribution limits increase to $3,400 for a member with single coverage and $6,850 for a member with family coverage. These limits are subject to cost-of-living adjustments each year.

2.02 Contributions to Archer MSAs or other HSAs count toward the maximum annual contribution limit to this HSA.

2.03 For the calendar year 2009 and in later years, an additional $1,000 catch-up contribution may be made for a member who is at least age 55 or older and not enrolled in Medicare.

2.04 Contribution limits for the current tax year may be found at www.treasury.gov or in IRS Publication 969—Health Savings Accounts and Other Tax-Favored Health Plans.

2.05 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.

2.06 Not all states recognize HSAs. Consult your tax advisor.

### Article III. Member Responsibilities

It is the responsibility of the member to determine whether contributions to this HSA have exceeded the maximum annual contribution limit described in Article II. If contributions to this HSA exceed the maximum annual contribution limit, the member shall notify the Custodian that there exist excess contributions to the HSA. It is the responsibility of the member to request the withdrawal of the excess contribution and any net income attributable to such excess contribution.

### Article IV. Nonforfeitable

The member’s interest in the balance in this custodial Account is nonforfeitable.

### Article V. Investment Limitations

5.01 No part of the custodial funds in the Account may be invested in life insurance contracts or in collectibles as defined in IRC section 408(m).

5.02 The assets of the Account may not be commingled with other property except in a common trust fund or common investment fund.

5.03 Neither the member nor Custodian will engage in any prohibited transaction with respect to the Account (such as borrowing or pledging the Account or engaging in any other prohibited transaction as defined in IRC section 4975).

### Article VI. Distributions

6.01 Distributions of funds from this HSA may be made at any time upon the direction of the member. The member may request a distribution through the Custodian’s website or by completing the HSA reimbursement form. Distribution requests other than using a completed and signed form or initiating a reimbursement through the website will not be honored (e.g., by email).

6.02 Distributions from this HSA that are used exclusively to pay or reimburse qualified medical expenses of the member, his or her spouse, or tax dependents are tax-free. However, distributions that are not used for QMEs are includible in the member’s gross income and are subject to an additional 20 percent tax on that amount. The additional 20 percent tax does not apply if the distribution is made after the member’s death, disability, or reaching age 65. State taxes may be different. Consult a professional advisor for your specific state’s tax consequences.

6.03 Custodian is not required to determine whether the distribution is for the payment or reimbursement of qualified medical expenses. Only the member is responsible for substantiating that the distribution is for qualified medical expenses and must maintain records sufficient to show if required, that the distribution is tax-free. Custodian does not calculate the income tax or penalties that may apply, or withhold any part of the distribution to pay for any said income tax or penalties. The distributions are reported to the Internal Revenue Service (IRS) annually. A Form 1099-SA will be issued by Custodian by January 31 of the year following the year of the distribution. A Form 5498-SA will be issued by Custodian by May 31 of the year following a fair market value is established. The Custodian will either email a notification to the Account owner that the form is available for download, or if the Account owner has not opted to receive electronic notification, a paper form will be mailed to the last known mailing address. See Article VIII regarding duties to provide information to Custodian.

### Article VII. Payable Upon Death

On death, distributions will be made to the designated beneficiary. If no beneficiary is designated, the balance goes to the estate. Therefore, if you want the account balance to go to specific person(s), you will need to designate the beneficiary on the Custodian’s website or by completing the beneficiary designation form. If your spouse is designated as the beneficiary, the balance can be transferred to a new HSA in the name of the spouse. If no beneficiary has been designated, the HSA will pass to Member’s estate and be distributed as directed by the personal representative of the estate. There are different tax consequences based on who is the beneficiary. See Publication 969.

### Article VIII. Reporting Requirements

8.01 The member agrees to provide Custodian with information necessary for Custodian to prepare any report or return required by the IRS.

8.02 Custodian agrees to prepare and submit any report or return as prescribed by the IRS.

### Article IX. Controlling Provisions

Notwithstanding any other article that may be added or incorporated in this Agreement, the provisions of Articles I through VIII and this sentence are controlling. Any additional article in this Agreement that is inconsistent with IRC section 223 or IRS published guidance will be void.

### Article X. Amendments

This Agreement will be amended from time to time to comply with the provisions of the Internal Revenue Code (IRC) or IRS published guidance. Other amendments may be made with the consent of the persons whose accounts are represented in this Agreement.
Article XI. Additional Provisions

11.01 Definitions

Family Coverage. Coverage that includes Member and other family members.

High Deductible Health Plan (HDHP). You understand that you must be covered only by a qualified HDHP in order to contribute to an HSA. A qualified HDHP is a health plan that meets the following deductible limits requirements. In 2014, minimum annual deductibles are $1,250 for individuals and $2,500 for families. In 2014, annual out-of-pocket maximums are $6,350 for self-only coverage and $12,700 for family coverage. In 2015, minimum annual deductibles increase to $1,300 for individuals and $2,600 for families. In 2015, annual out-of-pocket maximums increase to $6,450 for self-only coverage and $12,900 for family coverage. These limits are subject to cost-of-living increases each year; specific guidance for a given tax year can be found at www.treasury.gov. If you are unsure whether you are covered by a health plan that is considered a qualified HDHP, contact your health plan.

Member. Person who establishes the HSA or account as account owner.

Custodian. HealthEquity, Inc.

Qualified Medical Expenses. Amounts paid for medical care as defined in IRC section 213(d) for Member, his or her spouse, or tax dependents (as defined in IRC section 152) but only to the extent that such amounts are not compensated for by insurance or otherwise. With certain exceptions, health care insurance premiums are not qualified medical expenses.

11.02 Notices, Change of Address, Materials, and Communication

Any notice regarding this HSA will be considered effective when Custodian mails it to the last address of Member or intended recipient which Custodian has in its records or sends it by e-mail if Member has consented to electronic delivery. Any notice given to Custodian will be considered effective when Custodian actually receives it in writing at its place of business. Notice to Member must be in writing of any changes of address at: HealthEquity, Inc., Attn: Account Inquiries, 15 West Scenic Pointe Drive, Ste 100, Draper, UT 84020, by completing the Change of Address Form or by making the change through the Custodian’s website.

Member agrees that Custodian may, but shall not be required (unless required under applicable law) to, inform Member by forwarding materials or otherwise communicating with Member as to any questions, decisions, or other matters for which a vote may be requested, necessary or helpful, and Custodian shall thereafter have no responsibility whatsoever with respect thereto.

11.03 Representations and Responsibilities

Member represents and warrants that any information given or to be given with respect to this HSA is complete and accurate and Custodian is entitled to rely upon any such information or directions given by Member or Member’s authorized agent. Custodian shall not be required to determine the validity or sufficiency of any receipt, affidavit, notice, or other paper or agreement required to be delivered to Custodian under this Agreement.

In the event that Member has provided an electronic signature to Custodian in connection with an account application or other click sign agreement, Member agrees that Custodian may rely on such electronic signature for purposes of Member’s authorization of withdrawals or third-party transfers, notices to change of name or address, or other instructions to Custodian except when closing Member’s Account or when required by law. Custodian shall not be required to obtain Member’s physical signature for such purposes or any other purpose, except as may be required by law.

Anything in this Agreement to the contrary notwithstanding, Custodian may choose to request direction from Member as to any specific action or situation that arises with the HSA, and if a request for direction is made, Custodian shall incur no liability for following Member’s direction or for taking no action if no such direction is furnished to Custodian.

11.04 Cash Account, Investment Account, Funds Availability and Funds Mismangement. (See also Article XIII)

Except for certain investments chosen by the Member as discussed in Section 12.01, contributions to the Account shall be made into an FDIC-insured Cash Account. Member is responsible for reviewing all provided materials and understanding generally how medical expenses may be paid from the Cash Account, and how funds are made available for investment. Member and Member’s Account will be liable for any overdraft charges imposed by Custodian.

Funds on deposit in Member’s Account will generally be available for withdrawal from the Account within two (2) to five (5) business days of Member’s deposit. Unless otherwise instructed by Member, deposits received during non-business hours will be considered to be made on the next full banking day.

When you provide a check as payment, you authorize HealthEquity to either use the information from your check to make a one-time, Back Office Conversion (BOC), electronic fund transfer from your account if eligible, or to process the payment as a check transaction. Funds processed via BOC may be withdrawn from your account as soon as the same day your payment is received.

If the funds in Member’s HSA exceed a certain threshold as specified by Custodian, Member may be given the option of investing any balance above that threshold in certain available mutual funds and other investments (Investment Account). If sufficient funds are not available, no purchases will be allowed. Member has the sole authority and responsibility to select and to direct the investment in the Investment Account. Any income or dividends generated by the Investment Account shall be reinvested in the same fund that initially paid the dividends. Custodian will not act as an investment advisor to Member and Custodian will not review nor recommend any investment in the Investment Account. Custodian shall have no duty to disclose any risks associated with any investment and shall not have any liability for any loss of principal or income, nor for any expense which Member may incur relating to any investment. Assets in the Investment Accounts are not FDIC insured.

11.05 Interest on HSA

Interest is credited to Member’s Account monthly as of the last day of the statement cycle. If the Account is closed before accrued interest is credited, no interest will be paid or accrued for that month. Interest accrues no later than one business day after the day Custodian receives the funds provided the Account has been opened. The current interest rate payable is listed in Member’s monthly statement and is subject to change.

11.06 Service Fees and Compensation

Custodian may charge maintenance, service, and other designated fees (for example, a transfer, withdrawal, or termination fee), or expenses for maintaining Member’s HSA as set forth in Custodian’s written schedule of fees then in effect, which is provided in Member’s welcome kit. Fees may be changed upon 30-days written notice to Member. Monthly admin fees will be charged for any month that the Account is opened. Custodian may deduct such fees or expenses from the funds in Member’s HSA or, at its discretion, charge Member separately for any fees or expenses. Custodian may also allow fees to be paid from other sources, such as Member’s employer or health plan. Custodian also receives as additional compensation including (i) the difference between the interest received by Custodian on Cash Accounts and the amount paid to Member, (ii) interchange fees arising from HealthEquity Visa® Health Account Card (HealthEquity Visa Debit Card) transactions, and (iii) management and administration fees paid to Custodian on the Investment Accounts.

11.07 Amendments

Except for those amendments allowed under Article X, amendments will take effect upon 30-days written notice, and Member will be deemed to have consented to any other amendments to this Agreement, unless within 30 days from the date Custodian provides a copy of such amendment (by mail or electronic delivery). Member notifies Custodian that he/she does not consent to the amendment. In that event, the Account will be closed and the account balance, less any outstanding fees, will be transferred to another custodian designated by the Member’s or if none designated, distributed to the Member.

11.08 Distributions

Custodian may make any distributions required or authorized hereunder by mailing Custodian’s check, or other property, or by ACH, or by Fed wire, or other electronic transfer to the payee at the address last furnished to Custodian.

11.09 HealthEquity Visa® Debit Cards

The HealthEquity Visa Health Account Card is issued by The Bancorp Bank pursuant to a license from Visa USA Inc. The Bancorp Bank; Member FDIC. Member agrees that he/she may make HealthEquity Visa Debit Card transactions only to the extent there are sufficient available funds in the HSA. Custodian has no obligation to permit any withdrawal at a time when there are insufficient funds in Member’s HSA. In the event there is an overdraft in a Member’s Account, Member shall be liable for any overdraft or collection fees. The use of any HealthEquity Visa Debit Card in connection with the HSA may be limited to eligible merchants that provide, among other things, health care related goods and services and supply applicable MCC codes for verification purposes. Member is responsible for notifying
Custodian as soon as possible if the HealthEquity Visa Debit Card is lost or stolen, to avoid potential losses. To the extent permitted by law, the Account owner is responsible for all uses of the HealthEquity Visa Debit Card prior to the reporting of the lost or theft. Notification must be made by calling HealthEquity at the number printed on the back of Member’s HealthEquity Visa Debit Card, on Member’s statement, or on the HealthEquity website provided to log in to Member’s Account.

11.10 Transfer/Rollover

Custodian can receive amounts transferred to this HSA from the custodian or trustee of another HSA or certain other types of accounts. However, Custodian also reserves the right not to accept any transfer. Account owner represents and warrants that any rollovers are from another HSA or other qualified account.

11.11 Verification of Accounts

To help the government fight the funding of terrorism and money-laundering activities, federal law requires Custodian to verify certain information provided by Member for identification purposes including Member’s name, address, taxpayer identification number (TIN), and date of birth. Until this information has been verified pursuant to applicable federal laws, the Account may not be used. During such time, Custodian will charge its customary fees for maintaining the Account; upon request from Member, Custodian will close the Account and return funds to the original contributor.

11.12 Governing Law; Invalidity; Waiver

The terms of this Agreement shall be governed by and construed in accordance with the laws of the State of Utah without giving effect to principles of law regarding conflicts of laws. If any part of this Agreement is held to be illegal or invalid, the remaining parts shall not be affected. Neither Member nor Custodian’s 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.

11.13 Employer Contributions

Custodian shall not be liable for any losses, damages, costs, penalties, or expenses Member inures as a result of any employer’s failure to make any contributions to Member’s HSA. Custodian is not responsible for monitoring employer’s HSA contributions or notifying any Member of employer contributions. Member is responsible for contacting his/her own employer regarding its contributions and monitoring those contributions. In considering whether contributions have exceeded the allowable annual contribution limit, Member must take into account any employer contributions as well as any IRA rollovers or contributions previously made by Member that also count towards the annual contribution limit.

11.14 Additional Parties on the Account and Beneficiaries

If Member has added a spouse and/or another third party to write checks and/or use the HealthEquity Visa Debit Card, including additional HealthEquity Visa Debit Cards if one has been requested on Account, then Member acknowledges and agrees (a) it is Member’s sole responsibility to inform the authorized individual(s) about the purpose of the HSA and the tax consequences of using checks and HealthEquity Visa Debit Card for items that are not qualified expenses, (b) to be bound by, and to have the HSA bound by, any action taken by such authorized individual(s), and (c) to indemnify and hold harmless Custodian from any damages or expenses resulting from any actions taken by such authorized individual(s).

At any time, and from time to time, Member shall have the right to designate one or more beneficiaries to whom distribution of the balance of the HSA shall be made in the event of death prior to the complete distribution of the Account. Any such beneficiary designation shall not be deemed valid until Custodian receives a signed designation form satisfactory to Custodian or designates through the Custodian’s website. See Article VII for more information.

11.15 Additional Distributions

Custodian may make a distribution absent instruction from Member, if directed to do so pursuant to a court order, garnishment, IRS levy, or other levy. In such event, Custodian shall not incur any liability for acting in accordance with such court order or levy.

Article XII. General Powers and Duties of Custodian and Limits Thereon

12.01 Custodian’s Authorization and Empowerment:

Member hereby authorizes and empowers Custodian to administer the Member’s HSA including power:

- To hold funds received from time to time from Member or another source, such as rollovers and HSA transfers on behalf of Member’s HSA. The Cash Account shall hold all assets of the HSA unless the Member has chosen to put part of the assets into the Investment Account pursuant to the terms of this Agreement.
- To invest and reinvest the Investment Account only at Member’s direction from the list of available mutual funds or other investments, or to sell investments to cover fees or overdrafts without any investment responsibility on the part of Custodian.
- To reinvest all dividends paid from Member’s mutual funds or other investments in the same fund which initially paid the dividends.
- To collect any income generated from the Investment Account or the Cash Account; to make payments, disbursements or distributions from the HSA as directed by Member or authorized agent, and in conformity with the terms of this Agreement and federal regulations of HSAs.
- To change the list of mutual funds or other investments available to Member, including closing a fund to future investments, or terminating fund entirely. If the Custodian decides to do so, Custodian will offer to transfer the balance in that fund to another similar fund automatically, and the Member will be given a chance to transfer the balance to any other fund available.
- To perform any and all other acts, which in its judgment may be necessary or appropriate for the proper administration of the HSA and the custodial assets, including correcting errors made by either Custodian or employer, or employing such attorneys, agents, and vendors as Custodian feels appropriate without notice to Member.
- To seek, at the expense of the HSA, direction or approval from a court of competent jurisdiction whenever Custodian shall, in its sole discretion, deem it appropriate.
- To request such documentation and certification deemed appropriate within Custodian’s discretion to verify and establish the identity of the beneficiary or the estate upon death of Member, if the assets are to be distributed to Member’s estate.
- To pay any estate, inheritance, income, or other tax or assessment attributable to any property, or interest held in the HSA, or the assets of the HSA upon such information or direction as Custodian may require.
- To require releases or other related documentation from the taxing authority, beneficiaries or other payee and require indemnification from such payee as may be necessary for Custodian’s protection against tax liability.
- To close the Account is Custodian’s sole discretion if the Account is delinquent in the payment of any Account fees.

12.02 Binding Effect

The terms of this Agreement shall be binding upon Custodian and Member and their respective successors and assigns.

12.03 Indemnification

Member, and his/her authorized agents and representatives, and Member’s designated beneficiaries shall at all times fully indemnify and hold harmless Custodian and its affiliates, successors, and assigns, from any liability arising from withdrawals so made or actions so taken, and from any and all other liability, damages, losses (including losses on the Investment Account), costs, legal fees, taxes, penalties, and expenses (collectively, Damages) whatsoever that may arise in connection with this Agreement, except Damages arising from the negligence or willful misconduct of Custodian. Custodian shall not be responsible for any taxes, penalties, judgments, and expenses incurred by Member’s HSA.

Custodian shall have the right to bring suit against Member in a court of competent jurisdiction for the recovery of any sums owed to Custodian under this Agreement, including, but not limited to, fees, costs, overdrafts, expenses, and sums paid by Custodian in error to or for the benefit of the Account. In such event all court costs, legal expenses, reasonable compensation of time expended by Custodian in the performance of its duties, and other appropriate and pertinent expenses and costs may be collected by Custodian from the HSA.

Article XIII. Records, Reports and Valuation of Custodial Accounts

13.01 Statements and Reporting Written Objections or Exceptions

Custodian shall furnish or cause to be furnished to Member statements concerning the status of the Account at least quarterly. Member can access and retrieve the statements through Custodian’s website or other Internet portal, or choose to have such statements mailed at an additional cost as provided for on the written schedule of fees provided in the welcome kit. Member shall have sixty (60) days after either (a) the date of mailing of a paper HSA statement or (b) the posting of an HSA statement online at
Custodian’s website to file any written or verbal objections or exceptions with Custodian. Written objections should be sent to HealthEquity, Inc., Attn: Account Inquiry, 15 West Scenic Pointe Drive, Ste 100, Draper, UT 84020; verbal objections should also be made to Member Services, which can be reached by calling the member’s dedicated toll-free phone number located on the back of the card or 866.346.5800. The failure to file any objections or exceptions concerning errors or transactions within said sixty (60) day period shall signify Member’s approval of the statement and preclude Member from making future objections or exceptions regarding the statement. Such approval by Member shall be a full release and discharge to Custodian of such statement and all transactions, deposits, and disbursements disclosed on such statement.

13.02 Website Access
Custodian may grant Member online access to the Account through Custodian’s website. The website may be made available for view access only, or to allow Member to place trades in an Investment Account, as well as execute certain other services online. Custodian does not guarantee and is not liable for the performance or privacy of the online system, website, or the Internet. Website access may be unavailable at times such as when (a) systems require regular maintenance or upgrades; (b) unforeseen maintenance is necessary; or (c) major unforeseen events occur, such as earthquakes, fires, floods, computer failures, interruption in telephone service, electrical outages, civil unrest or riots, war, or acts or threatened acts of terrorism, or other circumstances beyond Custodian’s control. Custodian is not under any circumstance liable for the unavailability of access to the website or data entry errors and other errors made by Member.

Member shall have a password that will allow Member access to his/her HSA online. It shall be Member’s responsibility to keep the password private. Member shall be responsible for all actions taken by any person using Member’s password whether or not such use was authorized by Member.

13.03 Prevention of Account Owner Pledging Assets
Member shall have no right to pledge, assign, anticipate, hypothecate, or in any manner create a lien upon any assets, payments, or benefits while such assets are held in the HSA. The assets in Member’s Account shall not be subject to or responsible for the debts, contracts, or torts of any person whether or not entitled to distributions under this Agreement.

Article XIV. Removal and Appointment of Successor Custodian

14.01 Termination
Either Member or Custodian may terminate this Agreement for any reason at any time by giving written notice to the other. If Custodian terminates this Agreement, Member must make arrangements to transfer the Account to another custodian. If Member does not complete a transfer of the Account within thirty (30) days from the date of the termination notice to Member, Custodian has the right to 1) transfer the Account to another HSA custodian or 2) pay the Account to Member in a single sum. If this Agreement is terminated, Custodian may hold back from Member’s Account a reasonable amount of money that Custodian believes is necessary to cover any fees, account closure fees, and expenses or taxes chargeable against Member’s Account or any penalties associated with the early withdrawal of any savings instrument or other investment in Member’s Account. If the Account is terminated and funds had been placed in an Investment Account, that Account will be closed at the then current market value.

Pursuant to Custodian’s IRS-awarded non-bank trustee license, if the IRS Commissioner notifies Custodian that a substitution is required due to Custodian failing to comply with the requirements of §1.408-2(e) of the regulations or not keeping such records, or making such returns or rendering such statements as are required by forms or regulations, Custodian will substitute another trustee or custodian.

Article XV. Privacy

15.01 Information Kept Confidential
Custodian believes in maintaining the confidentiality of Member information, which is collected and retained when such information assists Custodian in (1) administering Member’s Account, (2) providing relevant products and services, and (3) complying with applicable laws and regulations.

15.02 Treatment of Personal Information
Custodian understands that Member expects that personal information will be handled with great care. Custodian does not disclose any nonpublic personal information (such as information about Member’s Account balance, HealthEquity Visa Debit Card use, medical claims, and any Account transaction) about Members or former Members to anyone, except

a. as necessary to provide the services contemplated herein;

b. as necessary to provide any additional services that the Member may enroll in voluntarily (e.g., Custodian may offer a prescription or medical service costs comparison site, and the Member enrolled in such services will, by definition, have to agree to share certain transaction information in order to receive such services);

c. as necessary to provide services in which the Member’s employer or health plan enrolled the Member (e.g., the Member’s health plan may have enrolled the Member in single sign on through the health plan’s portal, in which case certain information will be passed to and stored by the health plan);

d. as required to comply with civil or criminal subpoena, or other court orders, and

e. as otherwise permitted or required by law.

15.03 Privacy Statement
Custodian’s full Privacy Statement is provided to Member as part of the welcome kit and can also be viewed online at www.healthequity.com.

Article XVI. Consent to the Terms of Custodial Agreement
By accessing Member’s Account by telephone, internet, check, EFT, or HealthEquity Visa Debit Card, Member consents to the terms of this Custodial Agreement, including any amendments hereto.

16.01 Dispute Resolution
Members are encouraged to resolve any disputes through our toll free line, or if not available, by physical mail or encrypted electronic mail. Custodian does not encourage any disputes to be initiated by unsecured/encrypted electronic mail because the communication may involve nonpublic personal information that may be intercepted. Custodian shall respond to any claim, and offer any settlement, within 30 days.

16.02 Binding Arbitration
If any disputes could not be resolved through the above, Member, agree that any claim, dispute or controversy between Member and Custodian, against the other (or the heirs, successors, employees, agents or assigns of the other) and any claim arising from or relating to the subject matter of this Agreement, or the relationships which result from this Agreement, no matter against whom made, including the applicability of this arbitration clause and the validity of the entire agreement, shall be resolved by neutral binding arbitration by the American Arbitration Association, under the Arbitration Rules in effect at the time the claim is filed. Any arbitration may only be brought by the Member individually and not as a group. Any arbitration hearing at which will take place at a location near the Member’s residence. For disputes under $10,000, the arbitration may be conducted in person, by telephone, or only based by submissions.

Rules and forms of the American Arbitration Association may be obtained and all claims shall be filed at any office of the American Arbitration Association or at Corporate Headquarters, 335 Madison Avenue, Floor 10, New York, New York 10017-4605. Telephone: 212.716.5800, Fax: 212.716.5905, Website: www adr.org.

This arbitration agreement is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act. Judgment upon the award may be entered in any court having jurisdiction. If the arbitrator decides against Custodian, or if the arbitrator decides that the Member’s claim is not frivolous, Custodian shall pay all costs and expenses of the arbitrator, and any out of pocket expenses that the Member may have incurred. If the arbitrator finds that the Member’s claim is frivolous, then Member shall pay for its own costs, and the arbitrator’s fees and expenses, or such amounts as the arbitrator may decide. All decisions by the arbitrator are final and binding, and not subject to appeal to any court.

Notwithstanding the foregoing, Member may choose to file a case in small claims court for any dispute that could have been resolved in such a venue in the Member’s jurisdiction. For example, if a small claims court has jurisdiction for cases under $5,000, and the Member’s claim is under $5,000, the Member may file the claim in small claims court.

MEMBER IS HEREBY NOTIFIED THAT BY ACCEPTING THIS AGREEMENT, HE/SHE IS WAIVING ALL RIGHTS UNDER STATE OR ANY OTHER LAW TO CLASS OR COLLECTIVE ACTIONS, INCLUDING CLASS ARBITRATION.