

HSA BANK SERVICES AGREEMENT

This Agreement ("Agreement") is made on _____ (the "Effective Date") by and among the _____ (the "Employer" or "Company"), with principal offices at _____, and HSA Bank, a division of Webster Bank, N.A. ("Bank") with principal offices at 605 N 8th St, Sheboygan, WI 53081. The Employer and Bank may be referred to as a "Party" and collectively as the "Parties".

WHEREAS, Bank provides third party administration services for health reimbursement arrangements (HRAs), health and dependent care flexible spending accounts (FSAs), qualified transportation fringe benefit arrangements (TBAs), and health care continuation coverage (COBRA); and

WHEREAS, Bank provides custodial services for health savings accounts (HSAs); and

WHEREAS, Employer desires Bank to perform the services described herein, and Bank desires to perform those services for Employer.

NOW, THEREFORE, in consideration of the above and the terms set forth below, and intending to be legally bound, the Parties agree as follows:

1. Employer requests that Bank provide the following products and services (check those that apply).

- ☐ Health Savings Accounts
- ☒ Plan Administration Services
 - ☐ Health Reimbursement Arrangement
 - ☐ Limited Purpose Health Reimbursement Arrangement
 - ☐ Health Flexible Spending Accounts
 - ☐ Limited Purpose Health Flexible Spending Accounts
 - ☐ Dependent Care Flexible Spending Accounts
- ☐ Transportation Fringe Benefits (parking, transit)
- ☐ COBRA Services
- ☐ Employer requests information relating to specialty services with Bank's preferred vendor
 - ☐ Plan documents (Cafeteria Plans including POPs, Health Reimbursement Arrangements, Wrap Plans)
 - ☐ Nondiscrimination testing
 - ☐ Form 5500 preparation

☒ HSA Bank is originating financial depository institution (pulls funds from employer's account via ACH)

2. This Agreement is comprised of this signature page and all applicable product-specific Exhibits. Exhibit A reflects general terms and conditions for all services. Additional Exhibits identified by name reflect terms and conditions that apply to each service selected by Employer. All of the Exhibits attached to this Agreement are included and made a part of this Agreement.

Upon mutual agreement of the Parties, Employer may add services, or change options with respect to services, by written amendment to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date by their respective duly authorized representatives.

_____	HSA Bank, a division of Webster Bank, N.A.
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

EXHIBIT A

GENERAL TERMS AND CONDITIONS FOR ALL SERVICES

I. SERVICES Bank shall perform the services selected by Employer in accordance with the terms and conditions of this Agreement. The terms and conditions set forth in the General Terms and Conditions for All Services shall apply to services described herein that are provided by Bank to Employer. All terms set forth in any Exhibits and all related Schedules are in addition to and not instead of these terms and condition, unless otherwise stated.

II. TERM AND TERMINATION

2.1 Term. The term of this Agreement shall begin on the Effective Date and continue for a period of three (3) years (the "Initial Term"). This Agreement will automatically renew for twenty-four (24) months at the end of the Initial Term and for an additional twelve (12) months thereafter (each a "Renewal Term"), unless terminated by either Party by written notice provided at least one hundred and twenty (120) days prior to the end of the Initial Term or any subsequent Renewal Term. The initial Term and Renewal Term shall be collectively referred to as the "Term".

2.2 Termination for Cause.

- a. Either Party may terminate this Agreement upon sixty (60) days prior written notice to the other stating the effective date of termination upon the bankruptcy, insolvency, dissolution or appointment of a receiver with respect to the other Party.
- b. If either Party is in default under any provision of this Agreement, the other Party may give written notice to the defaulting Party of such default. If the defaulting Party has not used good faith efforts to cure such breach or default within thirty (30) days after it receives such notice, or if good faith efforts to cure have begun within thirty (30) days but such cure is not completed to the satisfaction of the non-defaulting Party within sixty (60) days, the nondefaulting Party shall have the right by further written notice (the "Termination Notice") to terminate the Agreement as of any future date designated in the Termination Notice.
- c. Either Party may terminate this Agreement if any law is enacted or interpreted by a court or government regulator prohibit the continuance of this Agreement
- d. Bank may immediately suspend claim payments and/or terminate this Agreement with five (5) days prior written notice. If the Employer fails to provide sufficient funds for the payment of benefits under an HRA, FSA or TBA, Bank may terminate this Agreement with thirty (30) days prior written notice if any monthly administrative fee due Bank by Employer is more than thirty (30) days late.

2.3 Performance After Termination. To the extent applicable, when this Agreement is terminated, Bank will immediately cease the performance of any further FSA, HRA, TBA, or COBRA services to Employer, regardless of when claims are incurred. If Bank agrees to provide post-termination "run-out" services for claims incurred prior to termination, the terms of this Agreement will remain in place during such period. Upon termination of this Agreement or, if later, the end of any run-out period, Bank will cease processing expense reimbursement requests that are in its possession and return to Employer or its designee any unpaid or other pending payment requests and/or any subsequent reimbursement requests. Bank shall have the immediate right to demand and pursue collection of any fees, reimbursements or other amounts that are due and owing to Bank as of the date of termination pursuant to the terms of this Agreement.

Within one hundred twenty (120) days after the later of the termination of this Agreement or the applicable run-out period, Bank shall prepare and deliver to the Employer a complete and final accounting and report of the financial status of any HRA, FSA or TBA as of the date of termination, together with all books and records in its possession and

control pertaining to the administration of the plan or program, all claim files, and all reports and other paper pertaining to the plan or program.

Termination of this Agreement does not terminate any relationship between Bank and employees of Employer for HSA custodial services.

III. INTELLECTUAL PROPERTY RIGHTS

3.1 Rights Reserved. Each Party retains all respective intellectual property rights, including all patent, copyright, trademark rights, and/or service mark rights in any materials, software or processes belonging to it, its subsidiaries, affiliates, or licensors, including but not limited to rights accruing by virtue of applicable federal, state, or common law. Except as provided herein, neither Party grants any other rights or licenses to the other.

3.2 Logos. Except as provided below, the Parties shall not use any logo, trademark, service mark, trade name, or image of the respective owner (each a "Logo") whether any such Logo is registered or unregistered, or otherwise protected or protectable under state or federal law, in any manner other than as is expressly authorized in writing by an authorized representative of the Logo's owner. Nothing in this Agreement or any subsequent authorization shall confer any right of ownership in any Logo, and neither Party shall make any representation to that effect, or use the Logos in a manner that suggests that such rights are conferred, and the Logos are and shall remain the sole property of the owner.

3.3 Bank Logo. Bank hereby provides to the Employer and any plan which Bank administers during the term of this Agreement, a non-exclusive, non-transferable, limited license to copy, display, and to use its Logos, subject the right of Bank to require changes in such further use (such changes may include discontinuing the use, in Bank's sole discretion), solely for purpose of communicating with employees regarding the programs and plans administered by Bank. The Employer may distribute written material of Bank to its eligible employees, subject to such rules, standards and requirements established by Bank from time to time in its sole discretion.

3.4 Employer Logo. Employer provides to Bank, during the term of this Agreement, a non-exclusive, non-transferable, limited license to copy, display, and to use its Logos, subject to the right of Employer to require changes in such further use (such changes may include discontinuing the use, in Employer's sole discretion), solely for purposes of co-branding materials for Employer's employees and for displaying it on the Bank's customer list on Bank's website or in marketing presentations.

IV. CONFIDENTIAL INFORMATION

4.1 Confidential Information. Each Party (as "Recipient") may have access to, and each Party (as "Owner") may provide to the other Party, information that the Owner regards as confidential or proprietary. "Confidential Information" includes information of a commercial, personal, proprietary or technical nature and includes the following, whether now in existence or hereafter created: (a) any information of or about the Owner's customers of any nature whatsoever, and specifically including, the fact that someone is a customer or prospective customer of the Owner, and all personal or financial information relating to and identified with such persons ("Customer Information"); (b) all information marked "confidential" or similarly marked, or information that the Recipient should, in the exercise of reasonable business judgment, recognize as confidential; (c) all business, financial or technical information of the Owner and any of the Owner's vendors (including account numbers, and software licensed from third parties or owned by the Owner or its affiliates); (d) the Owner's marketing philosophy and objectives, promotions, markets, materials, financial results, technological developments and other similar proprietary information and materials; (e) all information protected by rights embodied in copyrights, whether registered or unregistered (including all derivative works), patents or pending patent applications, "know how",

trade secrets and any other intellectual property rights of the Owner or Owner's licensors; (f) information with respect to employees of Bank and/or Employer which is non-public, confidential, business related, or proprietary in nature, including names of employees, the employees' positions within Bank or Employer, the fact that they are employees of Bank or Employer, contact information for employees, personal employee identification numbers, and any other information released to Bank or Employer regarding employees in the past and in the future; and (g) all notes, memoranda, analyses, compilations, studies and other documents, whether prepared by the Owner, the Recipient or others, which contain or otherwise reflect Confidential Information.

4.2 Essential Obligation. Confidential Information must be held in confidence and disclosed only to those employees or agents whose duties reasonably require access to such information in connection with the products and services. Recipient must protect the Owner's Confidential Information using at least the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, disclosure or duplication (except as required for backup systems) of such Confidential Information as Recipient uses to protect its own confidential information of a similar nature. Recipient shall establish and maintain data safeguards against the destruction, loss, alteration of or unauthorized access to Owner's Confidential Information in the possession of Recipient. Recipient must report as soon as practicable but in no less than two (2) business days any actual or suspected violation of the confidentiality provisions to the Owner to extent allowed and take all reasonable and further steps as required to prevent, control or remedy any such violation.

4.3 Compelled Disclosure. If Recipient is required by a court or governmental agency having proper jurisdiction to disclose any Confidential Information, Recipient must provide notice to the Owner as soon as practicable but in no less than two (2) business days of such requirement unless prohibited by law to enable the Owner to seek an appropriate protective order. If required by law, however, Recipient may disclose the Owner Confidential Information to a governmental agency with proper jurisdiction without notification to the Owner. Upon the request of a governmental agency with proper jurisdiction (such as the Internal Revenue Service or the United States Department of Labor), a Party may disclose this Agreement and its terms without notification to the other Parties.

4.4 Disclosure to Third Parties. If disclosure of Confidential Information to non-governmental, non-judicial third parties is required or allowed under this Agreement, Recipient must ensure that such third parties have express obligations of confidentiality and non-disclosure substantially similar to Recipient's obligations under this Agreement. Recipient will be liable for any and all direct and foreseeable damages arising out of such non-governmental, non-judicial third parties' disclosure of Confidential Information.

4.5 Exclusions. Except for Customer Information, the term Confidential Information excludes any portion of such information that Recipient can establish to have been:

- a. Publicly known without breach of this Agreement;
- b. Known by Recipient without any obligation of confidentiality, prior to disclosure of such Confidential Information;
- c. Received in good faith from a third party source that to Recipient's reasonable knowledge rightfully disclosed such information; or
- d. Developed independently by Recipient without reference to the Owner's Confidential Information.

4.6 Remedies. If Recipient or any of its representatives or agents breaches their obligations with respect to Confidential Information of the other Party, irreparable injury may result to the Owner or third parties entrusting Confidential Information to the Owner. Therefore, the Owner's remedies at law may be inadequate and the Owner shall be entitled to seek an injunction to restrain any continuing breach. Both parties also waive any requirement

for the securing or posting of any bond in connection with the obtaining of any such injunctive or other equitable relief. Notwithstanding any limitation on Recipient's liability, the Owner shall further be entitled any other rights and remedies that it may have at law or in equity.

4.7 Data Privacy Provisions. The Parties agree to execute a Business Associate Agreement ("BAA") in the event Protected Health Information (as such term is defined in the HIPAA Privacy Rule at 45 CFR §160.103) is created, accessed or received by Bank in the course of fulfilling Employer's obligations under this Agreement. In such event, a separate Business Associate Addendum will be attached hereto as an Exhibit and incorporated into this Agreement.

V. INDEMNIFICATION Bank will indemnify, defend and hold harmless Employer, its directors, officers, employees and agents, from and against any damages, losses, liabilities, judgments and expenses arising out of third party claims, including but not limited to reasonable attorneys' fees, court costs and other damages and expenses, arising out Bank's breach of this agreement, breach of applicable laws, willful misconduct, criminal conduct, reckless acts or fraud.

Employer will indemnify, defend and hold harmless Bank, its directors, officers, employees and agents, from and against any damages, losses, liabilities, judgments and expenses arising out of third party claims, including but not limited to reasonable attorneys' fees, court costs and other damages and expenses arising out Employer's breach of this agreement, breach of applicable laws, willful misconduct, criminal conduct, reckless acts or fraud.

VI. LIMITATION OF LIABILITY THE MAXIMUM TOTAL LIABILITY OF ONE PARTY TO ANOTHER SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID BY EMPLOYER DURING THE PRIOR TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE LOSS.

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, ASSIGNS, OR EMPLOYEES, FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO CLAIMS MADE UNDER OR PURSUANT TO THIS AGREEMENT EVEN IF THE PARTY OR PARTIES HAVE BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

EXCEPT FOR BANK'S DUTIES WITH RESPECT TO THE PLAN THAT ARE EXPRESSLY PROVIDED IN THIS AGREEMENT OR SUBSEQUENTLY AGREED TO IN WRITING BY BANK AND THE EMPLOYER, BANK SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND EMPLOYER'S USE OF BANK SERVICES RELATED TO THE PLAN IS AT ITS OWN RISK. BANK DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

VII. DEBIT CARDS Debit cards ("Cards"). The following additional provisions shall apply with respect to the debit card services to the extent debit cards are part of the services offered.

7.1 Definitions.

- a. "Card Transaction" means when the Card is presented for payment.
- b. "Account" means an employee's notional interest in their health FSA, HRA, or TBA, or their ownership interest in an HSA.
- c. "Participants" for purposes of this Section A.7 means employees who are participating in the Accounts, and employees who are accountholders in an HSA. When used to describe an HSA accountholder, the term Participant does not indicate that the HSA arrangement is part of an employee benefit plan.

7.2 General Provisions

- a. All Participants will receive a Card without a separate fee. Bank reserves the right to assess a fee, at its standard rate, for replacement cards or issuance of multiple cards on one account.
- b. Cards are designed to be compliant with the Inventory Information Approval System (IIAS), a point-of-sale technology that permits automatic substantiation of claims for pharmacy expenses. Cards may be “stacked” if Employer offers Transportation Benefit Arrangements for purchases of transit passes or parking expenses (the appropriate “purse” is determined by the Merchant Category Code (MCC) at the point of sale).
- c. Bank agrees to cancel, as soon as is practical, access to a Participant's account when a Card is reported as lost or stolen.
- d. Bank agrees, upon notice from Employer of termination or ineligibility of a Participant in an FSA or HRA, to deactivate such Participant's Card with respect to any FSA or HRA Account, as soon as is practical. Should Employer fail to provide this notice in a timely manner causing payment of ineligible expenses, Employer will be responsible for all costs incurred for subsequent Card transactions made by the terminated or ineligible Participant.
- e. Bank will make available to the Employer, for distribution to the Participants, information as to the proper use of the Card. Participants will be required to agree to Card terms and conditions as a condition to using the Card.
- f. When a Card is linked to an FSA or HRA Account, Cards used for matched copayments and recurring medical expenses will be automatically substantiated. Cards linked to an FSA or HRA Account that are used for other purposes are treated as conditional pending confirmation of the charges through additional third-party information. If a Card linked to an FSA or HRA Account is used to pay for an ineligible or unsubstantiated expense, Employer agrees to follow correction procedures consistent with the applicable regulatory guidelines, which include, but are not limited to re-crediting Participant FSA or HRA Accounts by facilitating an after-tax payroll deduction in accordance with applicable law and/or offsetting the amount with an eligible expense.
- g. Employer agrees to notify Bank immediately upon suspicion or confirmation of inappropriate or fraudulent Card use. If Bank suspects fraud or suspicious activity regarding a Participant, Employer agrees to cooperate with Bank in its investigation and to respond to requests for additional information as soon as practicable but in no less than two (2) business days. Bank reserves the right to terminate access to the Card.

VIII. REPORTING AND COMMUNICATIONS Employer will have access to a Web Portal. The Web Portal supports daily, weekly and/or monthly reporting of FSAs, HRAs and TBAs, along with aggregate reporting of HSAs. Employees will have online and mobile access to all accounts twenty-four hours a day seven days a week (24/7), and periodic statements are available online.

IX. MISCELLANEOUS

9.1 Governing Laws. The laws of the State of Texas shall govern this Agreement, excluding any applicable conflict of law provisions, and to the extent they are not inconsistent with or preempted by ERISA, the Code, the ACA or any other applicable federal law.

9.2 Binding Agreements. This Agreement, including any Exhibits and Schedules attached, constitutes the entire contract between Bank and Employer and no modification or amendment shall be valid unless agreed to in writing by both parties. This document may be executed in one or more counterparts, each of which shall be considered an original, but all of which together shall be considered one and the same instrument.

9.3 Authority. Employer and Bank each represents to the other that it has taken all necessary corporate action to authorize the execution and delivery of this Agreement. This Agreement, including all Exhibits and Schedules, is accepted and agreed to by the Parties as of the effective date of this Agreement.

9.4 Notices. Except for invoices and billing-related communications or notices of fee changes, which may be sent by email, any notices required or permitted to be given by one Party to the other under this Agreement shall be deemed given when: (a) hand delivered; (b) sent by first class or certified, postage prepaid United States Mail; or (c) sent by overnight courier sent to the address given above; and if to Bank to the attention of Charles Wilkins, Executive Vice President; and if to Employer to the attention and address of the person shown on the signature block. In addition, for notices to Bank, a mandatory copy, but such copy shall not be sufficient in itself to constitute notice, shall be sent to:

Webster Bank, National Association
145 Bank Street
Waterbury, CT 06702
Attn: General Counsel

9.5 Assignment. Either Party may assign this Agreement to any subsidiary or affiliate under its control, or as part of the sale of any substantial portion of its assets, or pursuant to any merger, consolidation or other reorganization, without the other Party's prior written consent. Except as so provided, neither Party may assign its rights and responsibilities under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld. An assignee of either Party, if authorized hereunder, shall have all of the rights and obligations of the assigning Party set forth in this Agreement.

9.6 Waiver. If either Party fails to enforce any right or remedy under this Agreement, that failure is not a waiver of the right or remedy for any other breach or failure by the other Party.

9.7 Severability. If any provision of this Agreement is determined by a court to be unenforceable or invalid, such determination shall not affect any other provision, each of which shall be construed and enforced as if such invalid or unenforceable provision were not contained herein. EMPLOYER AND BANK EACH CONSENT TO WAIVING THEIR RIGHT TO A JURY TRIAL. EMPLOYER UNDERSTANDS THAT THIS CONSENT MEANS THAT EMPLOYER MAY NOT BE ENTITLED TO A TRIAL BY JURY, IN CONNECTION WITH ANY LITIGATION RELATING TO THIS AGREEMENT.

9.8 Force Majeure Event. A "Force Majeure Event" means any act or event, whether foreseen or unforeseen, that: (a) prevents a Party (the "Nonperforming Party"), in whole or in part, from performing its obligations under this Agreement; (b) is beyond the commercially reasonable control of and not the fault of the Nonperforming Party; and (c) the Nonperforming Party has been unable to avoid or overcome the act or event by the exercise of due diligence. A Force Majeure Event includes, but is not limited to, any natural disaster (such as earthquakes or floods), emergency conditions (such as war, riot, fire, theft or labor dispute or difficulties), legal constraint or governmental action or inaction, breakdown or failure of a Party's computer, transmission or communication facilities and equipment or of third parties, breakdown of any private or common carrier communication or transmission facilities, any time-sharing supplier and any mail; or courier service. If any Party is delayed or prevented from fulfilling its obligations under this Agreement by a Force Majeure Event, said Party will not be liable under this Agreement for said delay or failure.

9.9 Relationship of the Parties. The parties agree that in performing their responsibilities under this Agreement, they are in the position of independent contractors. This Agreement is not intended to create, nor does it create and shall not be construed to create, a relationship of partner or joint venture or any association for profit between Employer and Bank.

9.10 No Third-Party Beneficiaries. Except as expressly provided herein, this Agreement is made and entered into for the sole protection and benefit of the parties hereto. Nothing herein express or implied, is intended to or shall be construed to confer upon or give to any person, firm, corporation or legal entity other than the parties and their affiliates any interest, rights, remedies or other benefits with respect to or in connection with any agreement or provision contained herein or contemplated hereby.

9.11 Taxes. To the extent that the Services to be provided are subject to any sales, use, excise, personal property or any other taxes, payment of such taxes shall be the sole responsibility of Employer. Income tax due on income received by Bank from Employer pursuant to this Agreement shall be the responsibility of Bank. If Company is required to pay any taxes based on this Section 9.11, Company shall pay such taxes with no reduction or offset in the amounts payable to Bank hereunder.

9.12 Survival. The provisions of Sections 2.3, III, IV, V, VI, 9.1, 9.2, 9.4, 9.5, 9.6, 9.7 and 9.9-9.13 of this Exhibit A shall survive the termination of this Agreement.

9.13 Information. The Parties agree that all information provided to one Party by another Party or any other person or entity (other than the receiving Party) on behalf of the other Party pursuant to any service agreement or other agreement or arrangement with such Party with respect to the services provided hereunder shall be true, accurate, and complete (including the absence of any omissions which, in the context, would be misleading), and that all Parties may rely on such information in performing the services hereunder.

9.14 Audit. Upon reasonable notice to Company the Bank shall have the right to perform an audit, at its expense, for the purpose of determining company's compliance with this Agreement.

PLAN ADMINISTRATION SERVICES EXHIBIT

FSA'S AND HRA'S

I. PLAN ADMINISTRATION SERVICES Services provided by Bank in the administration of Employer's FSA or HRA (each, a "Plan") shall include the following:

1.1 Plan Administration. Bank shall assist the Employer in the administration of the Plan or Plans selected by Employer. If Employer selects an HSA arrangement, the terms and conditions set forth in a separate exhibit (the HSA Custodial Services Exhibit) shall apply.

1.2 Plan Documents. Employer shall be responsible for all Plan documents and providing all necessary information to Bank for Bank's proper administration of the Plan. The Employer may request a referral by the Bank to a third party vendor who will assist the Employer in the creation of Employer's plan documents for a separate fee. It is the Employer's responsibility to ensure that the Plan documents are complete, comply with applicable law, and are timely adopted. Bank shall not have any legal responsibility with respect to Employer's Plan Documents.

1.3 Record-Keeping. Bank shall assist the Employer in the development and maintenance of administrative and record-keeping systems for the Plan.

1.4 Forms. Employers shall use administrative forms and user guide information provided by Bank. All forms and user guide information provided by Bank shall be subject to periodic updates and revisions, and Employer agrees to use the most current versions. Bank will provide instructions and forms for the processing of benefit claims under the Plan. Except where benefits are provided through debit cards, all Plan participants shall be required to apply for benefits under the Plan using forms provided by Bank. Bank will provide all forms in electronic format to Employer and participants. Paper-based forms can also be made available upon request through the Bank's call center.

1.5 Claims and Appeals. Bank may rely on information from the Employer with regard to Participant's elections. Claims received from participants by Bank will be processed on a daily basis Monday through Friday, during regular business hours, excluding national holidays. Bank shall have no power or authority to waive or modify any terms and conditions of the Plan. The following procedures will apply with respect to any health FSA or HRA:

a. Bank shall make the initial determination whether to grant or deny each participant's claim for benefits in accordance with the Plan and any reasonable rules established by Bank. Bank will provide automatic email notification to Participants who request this service when manual claims are received and reimbursement is sent. For those individuals that request it. If Bank finds that a participant is entitled to the benefits under the Plan, Bank shall arrange for the proper payment from the Plan and Bank is authorized by Employer to pay the claim from the Employer's account. Participants may choose direct deposit to participant savings or checking accounts.

b. If Bank finds that a participant is not entitled to reimbursement of a claim, Bank shall provide to such Participant a notice of adverse benefit determination as soon as administratively practicable after the claim was received by Bank, but no later than the time period required by Section 503 of ERISA, if applicable. The notice shall comply with the requirements set out in the Plan's summary plan description and Section 503 of ERISA, if applicable.

c. The participant may appeal an adverse benefit determination within one hundred eighty (180) days following receipt of the notice. Bank will provide the first level of appeals, and make available external review following the second level of internal appeals. Employer agrees to administer the second level of internal appeals. Employer may also choose to conduct its own appeals process, in which case Bank's obligation with

respect to the claim ends upon issuance of the notice of adverse benefit determination, unless directed by Employer to pay the claim following Employer's appeal process.

d. Except where Employer elects to administer its own appeals process, Employer appoints Bank a named fiduciary solely with respect to performing the first level appeals, and Employer delegates to Bank the discretionary authority to: (i) construe and interpret the terms of the Plan; and (ii) to make a determination concerning the availability of Plan benefits regarding these claims to the extent necessary to perform the first level of appeals. Except with respect to the first level of appeals, Bank shall neither have nor shall be deemed to exercise any discretion, control, or authority with respect to the disposition of a Plan or Employer funds. Bank shall make payments or distributions from the Employer Account in accordance with the framework of policies, interpretations, rules, practices and procedures set forth in the Plan and as otherwise agreed upon or directed by Employer.

e. Bank and Employer, as the case may be, agree to follow the timeline for appeals set forth in 29 CFR 2560.503-1, as expanded by Section 2719 of the Public Health Service (PHS) Act and its implementing regulations.

f. If the Employer denies the claim following the second internal review, and the claimant requests and is eligible for voluntary external review of its decision by an independent review organization ("IRO"), Bank will make external review available to the claimant consistent with Section 2719 of the PHS Act at no cost to Employer. Employer agrees to abide by the decision of the IRO.

1.6 Forfeited Funds. Any unclaimed amounts, including any previous reimbursement checks or other similar methods of payment that have been issued but remain unendorsed, that remain unpaid after one hundred eighty (180) days will be returned to the Employer, minus any necessary fees and expenses (such as check cancellation fees) that are owing to Bank pursuant to this Agreement.

1.7 Plan Data. Bank will maintain archival records for seven (7) years during the Term of this Agreement. Following the Agreement's termination and with advance written notice by Employer, Bank will cooperate with Employer (or Employer's subsequent service provider) to affect an orderly transition of services covered by the Agreement. Bank is not required to destroy, erase or modify any archival records that it maintains in the normal course of its business.

1.8 Notice of Litigation. Employer shall notify Bank promptly of any summons, complaint, or other communication concerning threatened litigation and any inquiry by any governmental agency that is related to the Employer's Plan, unless such notification would be a violation of applicable law.

1.9 Bank not Responsible for Benefits. Bank shall not be liable or use its funds for the payment of benefits under the Plan, including, without limitation, where sought as damages in an action against the Employer, Bank or the Plan. Bank does not insure or underwrite the Employer's liability to provide benefits under the Plan, and the Employer shall have the sole responsibility and liability for payment of all benefits under the Plan.

II. THE EMPLOYER'S RESPONSIBILITIES Responsibilities of the Employer in the administration of the Plan shall include the following:

2.1 General Compliance. Although Bank serves as Employer's agent for services rendered pursuant to this Agreement, the Employer remains the Plan Sponsor and Plan Administrator. Except to the extent expressly delegated to Bank by this Agreement, Employer is solely responsible for compliance with the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act (HIPAA), the Code, the ACA, ERISA, and other applicable laws or regulations.

2.2 Enrollment. The Employer shall assist in the enrollment of participants and provide Bank with a complete list of all participants enrolled in the Plan, and any other demographic and related information that Bank may need to properly administer the Plan pursuant to this Agreement. Employer shall notify Bank frequently throughout each month of all changes in participants. Employer shall be solely responsible to determine the eligibility of any employee to enroll in the Plan, collect requested enrollment information from employees, and inform Bank of any changes to an employee's enrollment status.

Late notification of Plan eligibility or incorrect Plan eligibility information provided by the Employer to Bank may result in erroneous Plan benefit payments. In this event, the Employer shall be solely responsible for any such erroneous payment and the Employer shall also be solely responsible for collecting any such erroneous payments from the participant or other individual. If such erroneous payment results in insufficient funds in the Employer's account to pay valid claims, Employer shall restore such funds immediately.

Bank will assist with plan implementation and employee enrollment meetings for an additional fee.

2.3 MSP Secondary Payor. Employer shall collect and provide to Bank in an electronic format all required information to ensure compliance with the MSP Secondary Payor rules and regulations where Bank acts as a Registered Reporting Entity (RRE) for HRA plans offered by Employer.

2.4 Contributions. Participant contributions, if any, made by participants through salary reduction or otherwise, shall be used to reimburse Employer for contributions advanced by the Employer to pay benefits under the Plan. No participant contributions shall be made to an HRA.

2.5 Amendments. The Employer shall provide Bank with a copy of any contemplated amendment to the Plan no less than thirty (30) days prior to the anticipated amendment effective date. However, under no circumstances should the Employer adopt any amendment that would alter Bank's duties hereunder without prior written consent of Bank.

2.6 Reporting and Disclosure Obligations. The Employer shall file with the appropriate governmental agencies all required returns, reports, documents and other papers relating to the Plan. The Employer shall distribute to participants all materials and documents as may be necessary for the operation of the Plan or to satisfy the requirements of applicable law and the Employer shall remain responsible for the final contents of all materials and documents, including Summary Plan Descriptions ("SPDs"), and with respect to an HRA, a Summary of Benefits and Coverage ("SBC") (unless such HRA is described in the SBC provided by an employer-sponsored group health plan).

2.7 Nondiscrimination Testing. Employer will ensure that its Plans meet nondiscrimination requirements under Sections 125, 129 and 105(h) of the Code, as applicable. The Employer may request a referral by the Bank to a third party vendor who will assist the Employer with nondiscrimination testing for a separate fee. Bank will provide information it maintains that is requested by the Employer to conduct nondiscrimination testing.

2.8 Form 5500 Preparation. Employer will file IRS Forms 5500 for employee welfare benefit plans subject to ERISA unless exceptions apply (i.e., certain unfunded welfare benefit plans with fewer than one hundred (100) covered participants are exempt from filing). The Employer may request a referral by the Bank to a third party vendor who will assist the Employer with completing Forms 5500 for a separate fee. Bank will provide information it maintains that is requested by the Employer to assist in preparing Forms 5500.

2.9 Right of Early Termination. If Employer reasonably determines in its fiduciary capacity that this Agreement is or has become disadvantageous to an FSA or HRA administered for Employer by Bank, then upon thirty (30) days advance written notice, the Employer may terminate that portion of the Agreement which relates to the FSA or HRA plan administration services. However, if the Employer terminates the Agreement with respect to an FSA or HRA

prior to the completion of the Initial Term, Bank shall be entitled to payment of reasonable compensation for losses upon early termination of this Agreement, including but not limited to recovery of startup costs, legal and related expenses. For avoidance of doubt, the Parties agree that reasonable compensation for such termination during the first year of the Initial Term shall be equal to twelve (12) months of fees (based on average fees paid or payable by Employer to Bank during the months preceding termination); reasonable compensation for termination during the second year shall be six (6) months' worth of fees determined in the same manner; and reasonable compensation for termination during the third year shall be three (3) months' worth of fees determined in the same manner.

III. EMPLOYER FUNDING

3.1 Claims Based Funding. Employer shall use funds from its general assets to make payments for Plan benefits. Employer shall not set up a trust or an account in the Plan's name to be used to pay for Plan benefits. Upon the Effective Date of this Agreement, Employer shall establish or maintain a bank account (the "Employer Account") and transfer general assets of Employer to the account in an amount equal to one twelfth (1/12th) of the expected annual Plan contributions (the "Required Minimum Balance"). Employer shall give Bank the right to debit the bank account via automated clearinghouse ("ACH") transfers in the amount required to pay claims processed through debit cards and Bank fees. Employer shall also give Bank the authority to write checks against the account for the payment of manual claims for substantiated expenses from the Plan.

Employer will transfer an amount necessary to return the existing deposit balance to the Required Minimum Balance not less than weekly. In the event that funds in the account are inadequate to pay Plan benefits, Bank shall forward to Employer a report itemizing amounts payable for Plan benefits, and Employer shall immediately transfer said amount plus the amount required to bring the account balance to the Required Minimum Balance. If Employer fails to transfer the required amount of funds to the account, Bank may immediately cease payment of claims, suspend its obligations under this Agreement, and may terminate this Agreement. In no event will Bank be obligated to issue claim payments of any kind if the existing deposit balance falls below zero.

Bank shall provide daily, weekly, and/or monthly reports to Employer itemizing amounts paid or payable for Plan benefits and other Plan expenses, including administrative fees due Bank. Bank shall adjust any claim disputes by Employer, or errors detected by Bank or Employer, in the report for the next period's payment due after the dispute is resolved or errors identified.

3.2 Employee Fraud. The Employer is solely responsible for making the Plan whole if fraud is committed against the Plan. Bank shall not be responsible for pursuing or correcting any such actions.

3.3 Reliance by Bank. Employer has authorized and instructed Bank in this Agreement to implement its standard administrative procedures to provide services in accordance with this Agreement. Bank shall be fully protected in relying upon representations by Employer set forth in this Agreement and communications made by or on behalf of Employer in effecting its obligations under this Agreement. Employer and Bank agree that if Employer provides Bank with specific written instructions (in a form acceptable to Bank) to provide services in a manner other than in accordance with Bank's standard procedures, Bank may (but need not) comply with Employer's written instructions, provided that, to the extent that Bank complies with such instructions, Employer and not Bank shall be solely responsible for Bank's actions so taken, and Employer agrees to indemnify and hold Bank harmless (including reasonable attorney's fees and costs) and expressly releases all claims against Bank in connection with any claim or cause of action, which results from or in connection with Bank following Employer's written instructions.

IV. SERVICE FEES

4.1 Plan Administrative Services Fees. Bank shall be entitled to a fee for its services to the Plan and under this Agreement, which shall be payable in accordance with the attached Fee Schedule for FSA and HRA Administration Services. Monthly fees will be invoiced for participants enrolled in the Plan during the prior month. If a participant has an active account or arrangement in any day of the prior month, the employer is responsible for payment for that participant for that month and Bank shall initiate ACH transfers from such the Employer Account on the 25th of the month in the amount of the invoice. An active account or arrangement includes an employee with an FSA or HRA and a former employee that has elected COBRA continuation coverage with an FSA or HRA arrangement. An active account or arrangement also includes a terminated employee with an FSA or HRA for a period of ninety (90) days past the coverage termination date, during which period the employee may submit claims for final reimbursement and obtain support regarding their FSA or HRA. This includes employees with FSA or HRA accounts or arrangements that may have zero (\$0) balance eligible for claims.

In the alternative, Bank will send Employer a monthly invoice for fees payable for the prior month by email/mail on the 2nd day of each month. Employer shall pay all fees for Plan participants. Employer shall set up a clearing account with Bank for the purpose of paying such fees and shall send to the clearing account a sufficient amount of available funds no later than the 23rd day of each month in order to cover such fees. Employer may send the funds via wire or other method, but agrees to send said monies in a method whereby all funds shall be good and available as of the 24th day of the month. Employer authorizes Bank to withdraw money from the clearing account to pay such fees on the 25th day of each month. These monies will be payment for the amount shown on the invoice for the prior month. Employer agrees to inform Bank within thirty (30) days from the receipt of the invoice if any fee is disputed.

Employer agrees that failure to pay any such fees is a material breach of this Agreement. If good, available and sufficient monies to cover all fees are not available on the 25th day of the month in which payment is due, then Bank may collect the fees directly from the Employer's account described in Section 3.1 of this Exhibit.

4.2 Right of Offset. Notwithstanding anything in this Agreement or any other agreement between the parties to the contrary, if the Employer fails to pay Bank within thirty (30) days as a result of any service provided by Bank to the Employer under this Agreement or any other agreement between the parties, Bank shall be permitted to deduct the past due amount from any funds provided by the Employer pursuant to this Agreement or any other agreement between the parties which are held by Bank without prior notice and without prior approval of the Employer. This right of offset shall be in addition to any other remedies that Bank may have in this Agreement or any other agreement between the parties with respect to such non-payment, including, without limitation, any right to terminate the Agreement, regardless of whether the past-due amount is paid in full as a result of the offset rights provided herein.

4.3 Participant Counts. Participant counts for billing purposes are determined on the first business day of each month.

FEE SCHEDULE FOR FSA AND HRA ADMINISTRATION

BUSINESS ASSOCIATE EXHIBIT

This Business Associate Addendum ("Addendum") shall supersede any conflicting or inconsistent terms and provisions of the Agreement to which this Addendum is attached, including any exhibits or other attachments thereto and all documents incorporated therein by reference. This Addendum may be executed and made effective prior to execution of a written contract reflecting the Agreement.

This Addendum is intended to comply with the Administrative Simplification provisions in Part C of the Health Insurance Portability and Accountability Act of 1996, Public Law 104 191 ("HIPAA"), as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH") under Title XIII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) and by the Genetic Information Nondiscrimination Act of 2008, Public Law 110-233 ("GINA").

RECITALS

WHEREAS, Plan Sponsor and Bank are parties (or in good faith negotiations to become parties) to an Agreement pursuant to which Bank provides certain services to Plan Sponsor and the Covered Entity and, in connection with those services, Covered Entity (and Plan Sponsor or another Business Associate of Covered Entity) discloses Protected Health Information ("PHI") to Bank, and Bank creates and receives PHI on behalf of Covered Entity;

WHEREAS, the HIPAA Rules (as defined below), including Business Associate provisions, do not apply to banking and financial institutions with respect to certain payment processing activities, as identified in Section 1179 of the HIPAA Statute, to the extent that those activities constitute authorizing, processing, clearing, settling, billing, transferring, reconciling, or collecting payments for health care or health plan premiums; and

WHEREAS, to the extent that Bank provides services to the Covered Entity in its capacity as Business Associate which involve access to PHI and such services are in addition to the payment processing activities identified above and which are thus not excluded under the Section 1179 exemption, Covered Entity and Bank, acting in its capacity as Business Associate, wish to modify the Agreement to include certain provisions which would be required by the HIPAA Rules for a Business Associate.

NOW THEREFORE, for and in consideration of the recitals above and mutual covenants and conditions below, Plan Sponsor and Bank, acting in its capacity as Business Associate, enter into this Addendum, and agree as follows:

I. DEFINITIONS

1.1 Catch-all Definition. The following terms used in this Addendum shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

1.2 Specific Definitions.

- a. Business Associate. "Business Associate" shall generally have the same meaning as the term "Business Associate" at 45 CFR §160.103, and in reference to the party to this Addendum, shall mean HSA Bank, a division of Webster Bank, N.A.;
- b. Covered Entity. "Covered Entity" shall generally have the same meaning as the term "Covered Entity" at 45 CFR §160.103, and in reference to the party to this Addendum, shall mean the Employer sponsored HRA and/or FSA plan(s) specified in the FEE SCHEDULE FOR FSA and HRA ADMINISTRATION; and

- c. HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

Business Associate agrees to:

- a. Not use or disclose protected health information other than as permitted or required by the Agreement or as required by law;
- b. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement;
- c. Report to Covered Entity any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR §164.410, and any security incident of which it becomes aware (except that, for purposes of this reporting requirement, Business Associate does not need to report inconsequential incidents that occur on a daily basis such as scans or "pings" that are not allowed past Business Associate's firewalls);
- d. In accordance with 45 CFR §164.502(e)(1)(ii) and §164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;
- e. Make available protected health information in a designated record set to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR §164.524, and forward any such request from an individual to the Covered Entity as necessary for the Covered Entity to satisfy its obligations under 45 CFR §164.524;
- f. Make any amendment(s) to protected health information in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 CFR §164.526, and forward any such request from an individual to the Covered Entity as necessary for the Covered Entity to satisfy its obligations under 45 CFR §164.526;
- g. Maintain and make available the information required to provide an accounting of disclosures to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR §164.528, and forward any such request from an individual to the Covered Entity as necessary for the Covered Entity to satisfy its obligations under 45 CFR §164.528;
- h. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s); and
- i. Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

III. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- a. Business associate may only use or disclose protected health information as necessary to perform the services set forth in the Agreement;
- b. Business associate may use or disclose protected health information as required by law;

- c. Business associate agrees to make uses and disclosures and requests for protected health information consistent with Covered Entity's minimum necessary policies and procedures;
- d. Business associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 (the Privacy Rule) if done by Covered Entity, except for the specific uses and disclosures set forth below;
- e. Business associate may use protected health information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;
- g. Business associate may provide data aggregation services relating to the health care operations of the Covered Entity;
- h. Business Associate may use or disclose protected health information pursuant to a valid authorization by an individual that satisfies the requirements of 45 CFR §164.508, except for uses or disclosures of psychotherapy notes or genetic information; and
- i. Business associate may use and disclose de identified information to the extent permitted by the HIPAA Rules.

IV. PROVISIONS FOR COVERED ENTITY TO INFORM BUSINESS ASSOCIATE OF PRIVACY PRACTICES AND RESTRICTIONS

- a. Covered entity shall notify Business Associate of any limitation(s) in the notice of privacy practices of Covered Entity under 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of protected health information;
- b. Covered entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her protected health information, to the extent that such changes may affect Business Associate's use or disclosure of protected health information; and
- c. Covered entity shall notify Business Associate of any restriction on the use or disclosure of protected health information that Covered Entity has agreed to or is required to abide by under 45 CFR §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of protected health information.

V. PERMISSIBLE REQUESTS BY COVERED ENTITY

Covered entity shall not request Business Associate to use or disclose protected health information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity.

VI. TERM AND TERMINATION

6.1 Term. The Term of this Addendum shall be effective as of the Effective Date of this Addendum, and shall terminate upon date of termination of this Addendum, this Agreement or on the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner;

6.2 Termination for Cause.

- a. If Covered Entity knows of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of the Covered Entity's obligation under the Agreement, Covered Entity will:
 - i. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Addendum and any relevant sections of the Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity; or
 - ii. Immediately terminate this Addendum and any relevant sections of the Agreement if Business Associate has breached a material term of this Addendum and cure is not possible.
- b. If Business Associate knows of a pattern of activity or practice of Covered Entity that constitutes a material breach or violation of the Covered Entity's obligation under the Agreement, Business Associate will:
 - i. Provide an opportunity for Covered Entity to cure the breach or end the violation and terminate this Addendum and any relevant sections of the Agreement if Covered Entity does not cure the breach or end the violation within a reasonable time specified by Business Associate; or
 - ii. Immediately terminate this Addendum and any relevant sections of the Agreement if Covered Entity has breached a material term of this Addendum and cure is not possible.

6.3 Obligations of Business Associate Upon Termination. Upon termination of this Addendum for any reason, Business Associate, with respect to protected health information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:

- a. Retain only that protected health information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
- b. Return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining protected health information that the Business Associate still maintains in any form;
- c. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as Business Associate retains the protected health information;
- d. Not use or disclose the protected health information retained by Business Associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out at 3(e) and (f) above which applied prior to termination; and
- e. Return to Covered Entity or, if agreed to by Covered Entity, destroy the protected health information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

6.4 Survival. The obligations of Business Associate under this Section shall survive the termination of this Addendum.

VII. MISCELLANEOUS

7.1 Regulatory References. A reference in this Addendum to a section in the HIPAA Rules means the section as in effect or as amended;

7.2 Amendment. The Parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law;

7.3 Interpretation. Any ambiguity in this Addendum shall be interpreted to permit compliance with the HIPAA Rules;

7.4 Indemnification. The Covered Entity and Plan Sponsor will indemnify and hold harmless Business Associate and any affiliate, officer, director, employee or agent of Business Associate from and against any penalties, claim, cause of action, liability, damage, cost or expense, including attorneys' fees and court or proceeding costs, arising out of or in connection with any failure of Covered Entity or Plan Sponsor to comply with the HIPAA Rules;

7.5 State Law. Nothing in this Addendum shall be construed to require Business Associate to use or disclose protected health information without a written authorization from an individual who is a subject of the protected health information, or written authorization from any other person, where such authorization would be required under applicable state law for such use or disclosure. Covered entity hereby acknowledges and agrees that it is Covered Entity's responsibility to inform Business Associate of any state law provisions that are more restrictive than HIPAA Rules.

**CONTRIBUTION FILE ORIGATION
AND FUNDING AGREEMENT EXHIBIT**

WHEREAS, Company has requested that the Bank permit Company to submit and receive electronic signals for paperless debit and/or credit entries (an "Entry") by means of the Automated Clearing House ("ACH") Network from an account established by Company ("Account") to a clearing account established by Company at Bank ("Clearing Account") pursuant to the terms of this Agreement, the rules of the National Automated Clearing House Association and Appendices to such rules, and rules of the applicable local ACH Associations, as each may be amended from time to time (hereinafter together called the "Rules") or by means of wire transfer or other electronic Entry transmission methods the parties may agree to from time to time.

WHEREAS, Bank is willing to act as an Originating Depository Financial Institution to initiate fund transfers from an Account via the ACA Network to the Clearing Account from which Bank will settle debit card charges and/or reimburse participants via direct deposit for eligible expenses under the terms of a health reimbursement arrangement, flexible spending account, and/or transportation benefit arrangement.

WHEREAS, Bank is willing to act as an Originating Depository Financial Institution or as a Receiving Depository Financial Institution to facilitate contributions by Company to health savings accounts via the Clearing Account (Company may choose between the Bank initiating fund transfers from an Account to the Clearing Account, or Company initiating fund transfers from an Account to the Clearing Account via the ACH Network, wire transfer, or other electronic Entry transmission methods the parties may agree to from time to time).

WHEREAS, the Bank is willing to accommodate the Company by processing the electronic Entries for ultimate delivery to health savings accounts and/or reimbursement to participants or debit card settlements for eligible incurred expenses under a health reimbursement arrangement, a flexible spending account or a transportation benefit arrangement.

NOW, THEREFORE, the Company and the Bank agree as follows:

1. Entries. The Company will prepare and submit all electronic Entries to the Bank for a debit and/or credit to an Account (or related instructions) in accordance with agreed upon specifications, file submission methods, Bank cut-off hours, and transmission protocols. The Company will be solely responsible for the correctness, both as to content and form, of all information submitted to the Bank by Company. If any information is not readable, out of balance with collected and available funds as described in Section 4 below, out of balance with information in the file header, or otherwise unprocessable or nonconforming, Bank will promptly notify Company and Company must correct all applicable matters and resubmit the information in correct content and form to Bank before Bank will process or initiate any electronic transactions to or from the Account to the Clearing Account. By submitting Entries to the Bank the Company instructs the Bank to process all Entries received by the Bank from the Company in accordance with the terms of this Agreement.

2. Rules. The Company agrees to comply with and be bound by the operating Rules, as amended from time to time, as well as the terms of this Agreement, and any other applicable rules or regulations including but not limited to the Electronic Fund Transfer Act, Regulation E and Article 4A of the Uniform Commercial Code, as same may be amended from time to time.

3. Statements. The Bank shall not provide Company with advices of electronic debits and/or credits against Company's employees' accounts except to the extent it is required to do so by law or standard business practices.

4. Company Funding Obligations. The Bank is not obligated to process any Entry to a health savings account or

eligible reimbursements or debit card settlements unless the Clearing Account contains a balance in collected funds sufficient to pay all electronic credit Entries submitted by the Company and the Bank has received final settlement pursuant to UCC Section 4A-403(a). If the Bank should elect to process any Entry for which it has not received final settlement or payment pursuant to UCC Section 4A-403(a), the amount of such Entry, at the option of the Bank, shall become immediately due and payable by the Company to the Bank, and the Bank shall have the right to charge the amount thereof to the Company's clearing account or claim a refund from the Company.

If the Clearing Account includes excess undistributed funds for more than ninety (90) calendar days, Company agrees that the Bank may transfer some or all such excess undistributed funds to Company by sending Company a check (addressed to Company's most recent address associated with this Agreement and the clearing account on file at the Bank), or (in the Bank's sole discretion) a wire transfer or an ACH (sent to Company using the most recent Account and/or other pertinent information associated with this Agreement and the Clearing Account on file at the Bank). Company acknowledges that any such wire transfer or ACH shall be governed by the laws of the State of Texas and that any credit given by Company's depository institution for any such wire transfer or ACH is provisional until Company's depository institution has received final settlement through a Federal Reserve Bank or otherwise has received payment as provided for in UCC Section 4A-403(a). In addition, if Company's depository institution does not receive such payment for such wire transfer or ACH, Company's depository institution will be entitled to refund from Company in the amount of the provisional credit to Company's account for such wire transfer or ACH, and the Bank will not be considered to have paid the amount of the wire transfer or ACH (as applicable) to Company.

Settlement deadlines are set forth in Schedule A.

5. Entry Notice. The Company agrees to give notice to applicable Customers of each credit Entry Company instructs the Bank to process or initiate to any Customer Account. The Company agrees to strictly comply with this provision.

6. Warranties. The Company hereby makes all applicable representations and warranties to Bank in connection with each Entry that Bank is required to make under the Rules and other provisions of this Agreement for such Entry. Without limiting the foregoing, the Company warrants and agrees that: (a) each Entry is accurate, is timely, has been authorized by the party whose Account will be credited or debited and otherwise complies with the Rules and this Agreement; (b) the Company has complied with all applicable pre-notification requirements and provisions of the Rules; (c) Company shall not request or initiate any Debit entries from the Clearing Account unless it has received prior written consent from Bank (which consent Bank may withhold in Bank's discretion); (d) Company shall not request or initiate any Debit entries from its employee accounts unless it has received prior written consent from Bank (which consent Bank may withhold in Bank's discretion); (e) Company shall not request or initiate any Debit entries that are authorized in advance by an employee to occur on a recurring basis, at substantially regular intervals, without further action required by the Customer to initiate such Debit entries; and (f) the Company will comply with U.S. law in regards to origination of Entries including but not limited to sanctions enforced by the Office of Foreign Assets Control (OFAC). It shall further be the responsibility of the Company to obtain information regarding such OFAC enforced sanctions. (This information may be obtained directly from the OFAC Compliance Hotline at 1-800-540-OFAC.) Each of these representations and warranties are ongoing and are made upon transmission of an Entry for such Entry.

The Company hereby agrees to indemnify and hold harmless the Bank against any claim, demand, proceedings, losses, liabilities, expenses (including attorney's fees), and damages that the Bank may incur as a result of Company's breach of a representation or warranty, or Company's failure to comply with this Agreement or the Rules.

Bank shall comply with the Rules and all applicable federal and state laws and regulations as applicable to this Agreement.

7. Transmission Protocols. Transmission protocols have been offered to the Company by the Bank with respect to the Entries to be transmitted by the Company to the Bank, and the Company has reviewed and accepted same as a commercially responsible method of providing security against unauthorized payment orders. Company warrants that no individual will be allowed to initiate Entries in the absence of proper supervision and safeguards, and agrees to take reasonable steps to maintain the confidentiality of the transmission protocols and any passwords, codes, security devices and related instructions provided by the Bank from time to time in connection with the transmission protocols. If Company believes or suspects that any such information or instructions have been known or accessed, disclosed or used by unauthorized persons, Company agrees to notify the Bank as soon as reasonably possible followed by written confirmation. The occurrence of unauthorized access will not affect any transfers made in good faith by Bank prior to actual receipt and processing of such notifications. Prior to actual receipt and processing of such notifications, the Bank may conclusively presume that Entries transmitted by Company to the Bank using the Bank's file transmission protocols are authorized by and effective against Company. Company agrees to comply with the file submission methods and security procedures described in Schedule B.

8. No Cancellation or Amendment of Entries. Company shall have no right to cancel or amend any Entry/file after its receipt by Bank, except to the extent specifically agreed to by Bank in Bank's discretion on a case-by-case basis.

9. Rejection of Entries. Bank may reject any Entry which does not comply with the requirements of Sections 1, 2, 3, and 5 of this Agreement or which contains an Effective Entry Date more than five (5) days after the business day such Entry is received by Bank. Bank also may reject any Entry: (a) if Company fails to have sufficient funds to cover said Entry; and/or (b) for any reason the Bank in good faith believes that the Entry may be erroneous, fraudulent, or would violate applicable laws and regulations. Bank shall notify Company by: (a) telephone; (b) electronic transmission; or (c) in writing, of any such rejection no later than the business day such Entry would otherwise have been processed by Bank. Notices of rejection shall be effective when given. Bank shall have no liability to Company by reason of the rejection of any such Entry or the fact that such notice is not given at an earlier time than that provided for herein.

10. ACH Returns. In addition to other rights provided to Bank under this Agreement, Bank may suspend certain functionalities granted to Company under this Agreement in the event Bank becomes aware of ACH returns or reasonably suspects a breach of applicable transmission protocols has or may have occurred.

11. Fees. Bank reserves the right to charge a twenty-five (\$25.00) dollar fee for any of the following: (a) returned entries or files (can occurs when the file is not formatted properly, the account or bank information is incorrect, or an account is closed); (b) correction work is required to fix information in a file, (the charge will be per Entry (i.e. destination account number or other associated information field) to be corrected); (c) reversals (which can occur if an account owner reports an unauthorized transaction to their bank (RDFI), the charge will be per reversed transaction; and (d) supplemental files or entries that are generated to correct entries that have already been submitted. The Bank may change its fees from time to time upon thirty (30) days prior written notice.

12. Liability. THE BANK INCLUDING ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND REPRESENTATIVES SHALL NOT BE LIABLE FOR INTERRUPTION OF COMMUNICATION FACILITIES, ERRORS IN TRANSMISSION, SUSPENSION IN PAYMENTS BY ANOTHER BANK, WAR, EMERGENCY CONDITIONS, OR ANY SIMILAR OR DISSIMILAR CAUSES BEYOND THE REASONABLE CONTROL OF BANK.

THE BANK INCLUDING ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND REPRESENTATIVES SHALL NOT BE OBLIGATED OR RESPONSIBLE WITH RESPECT TO ANY ACT OR FAILURE TO ACT BY A CORRESPONDENT OR INTERMEDIARY BANK, WACHA, NACHA, A REGIONAL OR LOCAL AUTOMATED CLEARING HOUSE, OR ANY OTHER THIRD PARTY.

THE BANK INCLUDING ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND REPRESENTATIVES SHALL BE RESPONSIBLE ONLY FOR PERFORMING THE SERVICES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, AND SHALL BE LIABLE ONLY FOR

ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT IN PERFORMING THOSE SERVICES. IN NO EVENT SHALL THE BANK INCLUDING ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND REPRESENTATIVES HAVE ANY LIABILITY FOR ANY CONSEQUENTIAL, SPECIAL, PUNITIVE OR INDIRECT LOSS OR DAMAGE WHICH THE COMPANY MAY INCUR OR SUFFER IN CONNECTION WITH THIS AGREEMENT EVEN IF THE BANK HAS BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

IF THE BANK: (A) FAILS TO PROCESS A TRANSACTION IN A VERIFIED FILE; (B) CAUSES AN INCORRECT AMOUNT OF FUNDS TO BE CREDITED TO A HEALTH SAVINGS ACCOUNT; OR (C) CAUSES FUNDS TO BE DIRECTED TO AN ACCOUNT THAT DOES NOT COMPLY WITH THE COMPANY'S VERIFIED ENTRY/FILE, THEN THE BANK WILL BE RESPONSIBLE FOR RETURNING ANY IMPROPERLY TRANSFERRED FUNDS TO THE COMPANY'S CLEARING ACCOUNT AND FOR DIRECTING TO THE PROPER RECIPIENT ANY PAYMENTS OR TRANSFERS THAT WERE PREVIOUSLY MISDIRECTED OR NOT COMPLETED. THE RECREDITING OF COMPANY'S CLEARING ACCOUNT AND THE REDIRECTING OF TRANSFERS SHALL CONSTITUTE THE BANK'S ENTIRE LIABILITY FOR INCOMPLETE OR INCORRECT TRANSFERS. THESE ARE COMPANY'S ONLY REMEDIES.

13. Inconsistency of Name and Account Number. The Company acknowledges that, if an Entry describes the receiver (such as an employee) inconsistently by name and Account number or social security number or other identifying number, payment and processing of the Entry may be made on the basis of the Account number or social security number or other identifying number even if it identifies a person different from the named receiver, in the Bank's discretion, or the Bank may choose to reject the Entry. The Company agrees that the Bank has no obligation to review Bank records or otherwise determine whether an Entry describes a receiver inconsistently by name and by an identifying number, and may choose in the Bank's discretion to process Entries based on identifying numbers instead of receiver names.

14. Data Retention. Company shall retain data on file adequate to permit remaking of Entries for five (5) business days following the date of their original transmittal to Bank as provided herein, and shall provide such data to Bank upon its request.

15. Tapes and Records. All magnetic tapes, Entries, Bank security procedures and related records used by Bank for transactions contemplated by this Agreement shall be and remain Bank's property. Bank may, at its sole discretion, make available such information upon Company's request. Any reasonable expenses incurred by Bank in making such information available to Company shall be paid by Company.

16. Evidence of Authorization. Company shall obtain all consents and authorizations required under the Rules and this Agreement and shall retain such consents and authorizations for two (2) years after they expire.

17. Miscellaneous. The Bank may amend the terms of this Agreement from time to time by providing no less than ten (10) calendar days prior written notice to the Company. Notices may be sent by the Bank first class mail or electronically at the Bank's option to Company or an Authorized Representative (hereinafter defined) of Company. In addition to other rights provided to Bank under this Agreement, the Bank shall have no obligation to transmit Entries if the Company is in default of any of its obligations under this Agreement, including the obligation to pay the Bank for each credit Entry. The Bank shall be entitled to rely on any written or electronic notice believed by it in good faith to be signed or transmitted by one of the authorized representatives of the Company ("Authorized Representative") whose names, email addresses (if applicable), and signatures are provided to Bank by Company. This Agreement shall be governed by and construed in accordance with applicable federal law and the substantive law of the state of Texas without regard to principles of choice of law or conflict of law. If any provision of this Agreement is determined to be invalid, illegal, or otherwise unenforceable by a final, nonappealable decision of an arbitrator or a court having jurisdiction, that determination will not affect any other provision of this Agreement, the invalid provision will be severed from this Agreement, and all remaining provisions will continue to be enforceable by their terms and of full force and effect. Section captions are for convenience and reference purposes only and are not intended to limit the

construction or effect of this Agreement. The use of the singular in this Agreement includes the plural, and vice versa. A "Business Day" is a day HSA Bank is open to the public for conducting substantially all of its business, other than Saturday, Sunday, or Federal Reserve Bank holidays. This Agreement is for the sole benefit of Company and Bank. No other third party shall be deemed to be a beneficiary of this Agreement.

18. Cooperation in Loss Recovery Efforts. In the event of any damages for which Bank or Company may be liable to each other or to a third party pursuant to the services provided under this Agreement, Bank and Company will undertake reasonable efforts to cooperate with each other, as permitted by applicable law, in performing loss recovery and mitigation efforts and in connection with any actions that the relevant party may be obligated to defend or elects to pursue against a third party.

19. Termination. Either party may terminate this Agreement at any time. Such termination shall be effective fifteen (15) business days following the day of the other party's receipt of written notice of such termination, or such later date as is specified in that notice. Any termination of this Agreement shall not affect any of the parties' rights or obligations with respect to Entries initiated by Company prior to such termination, or the payment obligations of Company with respect to services performed by Bank prior to termination, or any other obligations that by their nature or by their terms survive termination of this Agreement, including other agreements between Company and Bank. Notwithstanding any foregoing language that may be to the contrary, Bank may terminate this Agreement with three (3) business days prior written notice for any breach of the Rules by Company or immediately in the event the Bank becomes aware of ACH returns or unauthorized Entries.

20. Audit. Upon reasonable notice to Company the Bank shall have the right to perform an audit, at its expense, for the purpose of determining Company's compliance with the Rules and this Agreement.

21. Entire Agreement. This Agreement is the complete and exclusive statement of the agreement between Bank and Company with respect to the subject matter hereof and supersedes any prior agreement(s) between Bank and Company with respect to such subject matter. In the event of any inconsistency between the terms of this Agreement and the Company's Clearing Account agreement (if applicable), the terms of this Agreement shall govern. In the event performance of the services provided herein in accordance with the terms of this Agreement would result in a violation of any statute, regulation or government policy to which Bank is subject, and which governs or affects the transactions contemplated by this Agreement, then the Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and Bank shall incur no liability to Company as a result of such violation or amendment. No course of dealing between Bank and Company will constitute a modification of this Agreement, the Rules, or any Entry transmission protocols or constitute an agreement between the Bank and Company regardless of whatever practices and procedures Bank and Company may use.

SCHEDULE A
HSA BANK SETTLEMENT DEADLINES

Credit/Debit Entries

File Transmission and ACH debit from Company's account: until 11:00 am Central Time on the Business Day of receipt of the file. Bank will initiate the ACH for those files received prior to 11 a.m. Central Time on the same Business Day; otherwise Bank will initiate the following Business Day. Completion of an initiation will be the next Business Day.

Funds Receipt: Two (2) Business Days to file transmission receipt and processing from the date of the ACH completion.

"Business Day" is a day HSA Bank is open to the public for conducting substantially all of its business, other than Saturday, Sunday, or Federal Reserve Bank holidays.

"Effective Date" must be a Business Day or the record will be processed on the first Business Day following the effective date.

The Bank may transmit the electronic credit and/or debit by electronic communication or by such means the Bank deems appropriate to convey the Company Entries.

SCHEDULE B SECURITY PROCEDURES

Bank shall be entitled to rely on any written notice or other written communication believed by it in good faith to be genuine and to have been sent by Employer, and any such communication shall be deemed to have been sent by such person. It is the responsibility of the Employer to notify Bank in writing of any changes to those individuals designated as the authorized representative for the Employer.

PC/Internet File Transmission Through Secure FTP

- The Employer's authorized representative ("Sender") will access the Bank FTP site for ACH via the Bank's authorized login procedure using Employer's designated User Name and Password which Bank will implement on the Bank's FTP Server. (Please see below for password protection and site encryption)
 - **Password Protection**: When you enroll to use the services described in this Agreement, you will select a username and password, set up several challenge questions, which only you should know how to answer. Together, these items identify you as an authorized representative of the Employer for the functions you have been given access to. You may be asked to supply any of the above mentioned items each time you logon to use the services. You should be sure to select information that cannot be easily guessed or deduced by others. To help safeguard your information, you should keep it confidential. You agree not to give your information, or make it available to any other person. We are entitled to act on information received using your username and password, and you agree that the use of your username and password will have the same legal effect as your signature in authorizing a transaction. If you forget your password, you may use the forgotten password link or contact us to reset your password so you can select a new password. We reserve the right to modify our account access process to provide safeguards. We will notify you of any changes to this process by email.
 - **Encryption**: Encryption is a method of encoding your information so that it cannot be read by others who do not have authorization to decode that information. The information you enter is encrypted by your web browser and is only decrypted (decoded) when it reaches our web server.
- The Bank's firewall will filter the IP Address, only accepting files from a preauthorized and verified Employer IP address. Files originating from any other IP address will be rejected.
- The ACH will be encrypted with our PGP Public Key, which will be provided to Employer for this express purpose.
- The information provided in the ACH file will be relied upon by Bank for verification of the totals contained in the transmission.
- Bank will verify that the file totals agree with the information provided in the file header. In the event of a discrepancy in the totals, Bank will notify Employer by rejecting the file and sending an e-mail to the Employer's Authorized Representative. Bank will only process verified files; any rejected files must be re-sent with correct information before they will be processed.
- The Employer is solely responsible for the accurate creation, modification, and deletion of the account information maintained and used for ACH file transfer.
- The Employer is responsible for compliance with all security procedures.

- The Bank shall be entitled to rely on any written notice believed by it in good faith to be signed by one of the authorized representatives of the Employer.