



## **First National Bank Health Savings Account**

Congratulations, you have now elected to open a First National Bank Health Savings Account. To finish your enrollment into the HSA program, please complete the attached Enrollment Form and Custodial Agreement. Once you have completed the forms please send the signed original to:

First National Bank Omaha  
Attn: WMG Stop 1081  
1620 Dodge Street  
Omaha, NE 68197



## CUSTODIAL AGREEMENT

**THIS AGREEMENT** effective as of the date indicated above, is made by and between the above signed individual ("Account Beneficiary"), and First National Bank of Omaha ("FNBO").

**WHEREAS**, Account Beneficiary desires to establish a Health Savings Account ("HSA") under Section 223 of the Internal Revenue Code of 1986, as amended ("Code") for the exclusive purpose of paying qualified medical expenses as defined under Section 223(d)(2) of the Code,

**WHEREAS**, Account Beneficiary desires that FNBO provide certain administrative and custodial services and FNBO is willing to provide such administrative and custodial services,

**NOW, THEREFORE**, in consideration of the promises and other mutual considerations provided in this Agreement, Account Beneficiary and FNBO agree as follows:

### **1. DEFINITIONS**

- (a) **Account Beneficiary:** The individual on whose behalf the HSA is established.
- (b) **Agreement:** This Health Savings Account Custodial Agreement.
- (c) **Code:** The Internal Revenue Code of 1986, as amended.
- (d) **Designated Beneficiary:** The individual or entity designated by the Account Beneficiary as the primary beneficiary of the HSA. This individual will be entitled to receive any undistributed interest credited to the Account Beneficiary's HSA at the time of the Account Beneficiary's death. In the event the primary beneficiary predeceases the Account Beneficiary, the Designated Beneficiary shall include any contingent beneficiary designated by the Account Beneficiary.
- (e) **FNBO:** First National Bank of Omaha.
- (f) **HSA:** A trust, as defined under Code Section 223, created or organized in the United States exclusively for the purpose of paying qualified medical expenses of the Account Beneficiary.

### **2. CONTRIBUTIONS**

- (a) FNBO will accept contributions on behalf of the Account Beneficiary in the following forms:
  - (i) check, money order or electronic funds transferred from the Account Beneficiary, a family member of the Account Beneficiary or the Account Beneficiary's employer; or
  - (ii) rollover contributions of cash, securities or other assets from a Medical Savings Account or a HSA.
- (b) The Account Beneficiary's maximum taxable year contribution to his or her HSA is limited to the amount described under Code Section 223(b) plus any additional amount that consists of a rollover contribution described in Code Section 220(f)(5) or Code Section 223(f)(5).
- (c) FNBO shall not be responsible for determining whether the Account Beneficiary is eligible to make a contribution to a HSA, whether the Account Beneficiary participates in a qualified high deductible health plan or whether the Account Beneficiary's contributions comply with the Code, Treasury Regulations or this Agreement. FNBO will not accept any contributions that it knows will violate the Code Section 223 limits.
- (d) FNBO shall not be responsible for any applicable penalties or taxes for excess contributions contributed to the Account Beneficiary's HSA.

### **3. HSA ASSETS**

- (a) No part of the HSA assets shall be invested in life insurance contracts.
- (b) The HSA assets shall not be commingled with other property except in a common trust fund or common investment fund.
- (c) The Account Beneficiary's interest in the balance of his or her HSA shall be non-forfeitable and shall not be pledged as collateral for any loan or guaranty.

### **4. INVESTMENT OF CONTRIBUTIONS**

- (a) At the written direction of the Account Beneficiary, FNBO shall invest all initial HSA contributions and earnings thereon, in types of investments currently being offered by FNBO. Each investment selected shall be subject to any and all restrictions that are imposed by Federal and State law. In the event the Account Beneficiary does not direct FNBO regarding the investment of additional contributions, including earnings thereon, the initial investment direction of the Account Beneficiary will be followed, until such time as the Account Beneficiary otherwise directs FNBO.
- (b) FNBO shall have no duty other than to follow the written investment directions of the Account Beneficiary, and shall be under no duty to question the directions issued by the Account Beneficiary and shall not be liable for any investment losses sustained by the Account Beneficiary.
- (c) FNBO does not assume any responsibility for rendering advice with respect to the investment and reinvestment of the Account Beneficiary's HSA. FNBO shall not be liable for any loss which results from the Account Beneficiary's exercise and control over his or her HSA.

### **5. DIRECTED INVESTMENT POLICY**

- (a) FNBO offers a selection of mutual funds for the HSA. FNBO will accept Account Beneficiary direction among these mutual funds and/any cash option made available. The following options are available:

<u>Fund Name</u>	<u>Ticker</u>	<u>Morningstar Category</u>
1. Goldman Sachs Financial Square Money Market	FADXX	Money Market
2. Federated Total Return Bond	FTRFX	Intermediate Term Bond
- (b) Account Beneficiaries will be offered a debit account option; funds elected into this option will be placed in a FNBO checking account. The account will be subject to the rules that apply to FNBO deposit accounts and any debit card issued on the HSA will be subject to the rules governing FNBO and VISA debit cards.
- (c) FNBO will accept investment direction from Account Beneficiaries on the prescribed Investment Direction Election form or directions made using FNBO's website or phone line. Account Beneficiaries may change their investment direction on any business day on which the applicable market and FNBO are open.
- (d) Account Beneficiaries who do not make an investment election will be invested by default in a manner designed to provide income and preserve capital. These goals will be achieved by investing in the Goldman Sachs Financial Square Money Market Fund (FADXX).
- (e) HSA's will remain invested as directed by the Account Beneficiary until the Account Beneficiary otherwise directs.

- (f) The Account Beneficiary agrees that FNBO is not responsible for the acts or omissions of the Account Beneficiary. FNBO is not under any obligation to invest or otherwise manage any assets of the HSA. The Account Beneficiary will vote proxies on all assets invested in the HSA.
- (g) FNBO shall not permit the assets of the HSA to be invested in life insurance contracts or to be commingled with other property except in a common trust fund or common investment fund. FNBO shall provide that the assets in an Account Beneficiary's HSA are non-forfeitable.

**6. MUTUAL FUND DIRECTION AND DISCLOSURE**

- (a) Acknowledgment of Authority. The Account Beneficiary acknowledges and agrees that it has the sole authority to manage and control the decision to authorize and direct investments of the HSA's assets in mutual funds.
- (b) Acknowledgment of Receipt of Information. The Account Beneficiary further acknowledges that a Prospectus, with respect to each fund on the schedule below (the "Funds") has been offered for review.
- (c) Authorization, Direction and Approval. For each of the Funds, on the basis of the information contained in the Prospectus and the information contained in this Agreement, the Account Beneficiary:
  - (i) Authorizes and approves, as appropriate, the HSA to invest in the Funds;
  - (ii) Authorizes and approves the payment of administrative expenses and other fees to FNBO and/or its affiliates in accordance with the fee structure set forth in this Agreement; and
  - (iii) Understands that the authorizations and approvals contained herein are terminable at the will of the undersigned, without penalty to the HSA or Account Beneficiary upon receipt by FNBO of written notice of termination.

Fund Name	Ticker	12b-1	Sub-TA	Additional Revenue	Tot. Rev. Sharing
Goldman Sachs Financial Square Money Market Fund	FADXX	25 bps		8 bps	33 bps
Federated Total Return Bond	FTRFX		25 bps	5 bps	30 bps

**5. DISTRIBUTIONS**

- (a) All distribution requests must be in writing on a form acceptable to FNBO. This form must be completed in its entirety before FNBO is obligated to make a distribution.
- (b) FNBO shall not be responsible to determine whether the Account Beneficiary's distributions comply with the Code, Treasury Regulations or this Agreement.
- (c) FNBO shall not be responsible for any applicable penalties or taxes associated with distributions from an Account Beneficiary's HSA.
- (d) If the Account Beneficiary dies before his or her entire HSA interest is distributed; the remaining HSA interest will be distributed as follows:
  - (i) If the Account Beneficiary's surviving spouse acquires the Account Beneficiary's interest in the HSA by reason of being the Designated Beneficiary of such HSA, the HSA shall become the surviving spouse's HSA and the HSA shall be treated as if the surviving spouse was the Account Beneficiary, or
  - (ii) If the Designated Beneficiary is not the Account Beneficiary's surviving spouse, the HSA shall terminate as of the date of the Account Beneficiary's death and the fair market value of the HSA shall be includible in gross income of Designated Beneficiary or the Account Beneficiary's estate.

**6. BENEFICIARY DESIGNATION**

- (a) The Account Beneficiary may designate, from time to time, one or more individual(s) or entity(ies) as his or her Designated Beneficiary. Any such designation by the Account Beneficiary shall be made in writing and on a form acceptable to FNBO. The designation shall be effective only when filed with FNBO during the Account Beneficiary's lifetime.
- (b) The Account Beneficiary may change or revoke such designation at any time by filing a new form with FNBO. Unless otherwise specified by the Account Beneficiary in writing, each new form shall cancel all previous designations. The consent of a beneficiary is not required for the Account Beneficiary to revoke a designation.
- (c) If the Designated Beneficiary predeceases the Account Beneficiary, the Account Beneficiary's designation shall be ineffective. If no designation is in effect at the time of the Account Beneficiary's death, the Designated Beneficiary shall be the Account Beneficiary's estate. In the event FNBO is uncertain who is entitled to receive all or part of the HSA, FNBO reserves the right to request a court ruling to determine the disposition of the HSA assets, and to charge the HSA for any expenses incurred in obtaining such legal determination.
- (d) If FNBO resigns or is removed from its status as custodian, the last effective beneficiary designation filed with FNBO shall continue in effect with any successor custodian under this Agreement.

**7. FEES**

- (a) Account Beneficiary agrees that FNBO shall be entitled to receive any and all fees specified in FNBO's current published fee schedule for establishing and maintaining a HSA, including but not limited to, any fees for distributions from, transfers from, and terminations of the HSA. Account Beneficiary agrees that if Account Beneficiary has entered into this Agreement at a time when FNBO has agreed to a group fee schedule with Account Beneficiary's employer, the fee schedule shall automatically change to the current individual fee schedule upon the date that the Account Beneficiary's employment with his or her employer is terminated.
- (b) The Account Beneficiary agrees that FNBO shall be entitled to reimbursement for any expenses incurred by FNBO in the performance of its duties in connection with the HSA. Such expenses include, but are not limited to, administrative expenses, such as legal and accounting fees, expenses for preparing and filing any returns and reports with regard to unrelated business income and any taxes of any kind whatsoever that may be levied or assessed with respect to such HSA.
- (c) All such fees, taxes, and other administrative expenses charged to the HSA shall be collected either from the assets in the HSA or from any contributions to or distributions from such HSA if not paid by the Account Beneficiary or by a third party for the benefit of the Account Beneficiary. FNBO reserves the right to liquidate assets in the Account Beneficiary's HSA to make distributions or to pay fees, expenses or taxes properly chargeable against the Account Beneficiary's HSA. If the Account Beneficiary fails to direct FNBO as to

which assets to liquidate, FNBO will decide in their sole discretion, and the Account Beneficiary agrees not to hold FNBO liable for any adverse consequences that result from this decision.

(d) FNBO may change its fee schedule at any time by giving the Account Beneficiary 30 days prior written notice.

**8. REPORTING**

(a) If required by the Secretary of the Treasury, FNBO agrees to submit reports to the Secretary of the Treasury and the Account Beneficiary with respect to contributions, distributions, the return of excess contributions, and such other matters as the Secretary of the Treasury determines appropriate.

(b) If required, the Account Beneficiary agrees to provide FNBO with information necessary for FNBO to prepare those reports that may be required by the Secretary of the Treasury.

**9. TERMINATION**

(a) This Agreement may be terminated by FNBO or the Account Beneficiary at any time, with or without cause, upon thirty (30) days written notice. In the event FNBO resigns, it may appoint a successor to serve as a custodian under this Agreement. The Account Beneficiary shall then have 30 days from the date of such notice to either request a complete distribution of the HSA or designate a different successor custodian. If the Account Beneficiary does not request a distribution of the HSA or designate a different successor within such 30 days, the Account Beneficiary shall be deemed to have consented to the appointment of the successor custodian and the terms of any new governing instrument, and neither the Account Beneficiary nor the successor custodian shall be required to execute a written document to complete the transfer of the HSA to the successor custodian. The successor custodian may rely on any information, including Designated Beneficiary designations, previously provided by the Account Beneficiary.

(b) The Account Beneficiary may at any time remove and replace FNBO with a successor custodian of the Account Beneficiary's choice by giving 30 days written notice to FNBO. In such an event, FNBO shall then deliver the assets and all of the records and files associated with the HSA. The Account Beneficiary shall reimburse FNBO for its reasonable costs incurred in connection with such transfer.

(c) FNBO may retain a portion of the assets of the HSA as a reserve for payment of any anticipated remaining fees, expenses, taxes or penalties and shall pay over any remainder of this reserve to the successor custodian upon satisfaction of such fees, expenses, taxes or penalties.

**10. MISCELLANEOUS**

(a) Responsibilities. The Account Beneficiary represents that all information and instructions given to FNBO by the Account Beneficiary will be complete and accurate and that FNBO is entitled to rely upon any such information or instructions. FNBO shall not be responsible for losses of any kind that may result from the Account Beneficiary's information and instructions.

(b) Severability. In the event one or more of the provisions contained in this Agreement are declared invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be impaired thereby unless the effect of such invalidity is to substantially impair or undermine FNBO or the Account Beneficiary's rights and benefits hereunder. It is the intent of the parties that this Agreement meets the requirements of Code Section 223 and shall be interpreted and administered accordingly.

(c) FNBO Authorized to Serve as Custodian. FNBO hereby represents and warrants to the Account Beneficiary that it is authorized to be a custodian under Section 223 of the Code and that it is a bank as defined in Section 408(n) of the Code.

(d) Amendment. This Agreement may be amended from time to time.

(i) In the event the amendment is necessary to comply with the Code and any related regulations, the amendment will not require the Account Beneficiary's consent.

(ii) In all other instances, the amendment will only be effective with the consent of FNBO and the Account Beneficiary. An Account Beneficiary will be deemed to have consented to an amendment unless, within thirty (30) days from the date FNBO mails the amendment, the Account Beneficiary notifies FNBO, in writing, that he does not consent.

(e) Third Parties. The Account Beneficiary understands and agrees that FNBO may work with third parties in connection with this Agreement, including but not limited to certain collection, distribution and recordkeeping functions for the HSA.

(f) Notice. All notices sent by FNBO pertaining to this Agreement will be considered effective upon mailing. Any notice sent by the Account Beneficiary will be considered effective upon FNBO's actual receipt. The Account Beneficiary is responsible for updating his or her address.

(g) Prohibited Transaction. If the Account Beneficiary engages in a prohibited transaction (as defined under Code Section 4975) with the HSA, it will lose its tax exemption and the Account Beneficiary must include the taxable portion of his or her HSA in his or her gross income for that taxable year. If the Account Beneficiary pledges any portion of his or her HSA as collateral for a loan, the amount so pledged will be treated as a distribution and the taxable portion will be included in the Account Beneficiary's gross income for that year.

(h) Governing Law. Except to the extent preempted by Federal law, the laws of the State of Nebraska, as amended from time to time, shall govern the construction and application of this Agreement.

**IN WITNESS WHEREOF**, the Account Beneficiary and FNBO have executed this Agreement by signature on the first page of this document as of the date listed.