



FORT COMMUNITY CREDIT UNION

## **HEALTH SAVINGS ACCOUNT (HSA) CUSTODIAL AND DEPOSIT AGREEMENT**

### **CUSTODIAL AND DEPOSIT AGREEMENT (“Agreement”)**

The person whose name appears on the Application is establishing with us a Health Savings Account (HSA) qualified under Section 223 of the IRS Code. Funds on deposit in the Account at Fort Community Credit Union are insured by the NCUA up to the limits specified in the Federal Credit Union Act and applicable regulations adopted by the NCUA from time to time.

### **OUR RIGHTS AND OBLIGATIONS**

As custodian of the Account, our sole duties are to:

- ✓ Keep accurate and complete records of contributions to and distributions from your HSA;
- ✓ File any returns and reports imposed by the IRS Code upon us as HSA custodian; and
- ✓ Use ordinary care and reasonable diligence in maintaining your HSA.

Upon any assignment of this Agreement or the HSA by Fort Community Credit Union, the assignee automatically shall become the custodian of the Account. Upon your death, we will pay any balance in your Account (after deducting the amount of any Debit Card or other transactions made and related adjustments and chargebacks and any other Account fees and charges which may be owing) to the beneficiary(ies) designated by you on the Application, or as amended by you in a written notice to the Credit Union. Notify us immediately if you wish to change the beneficiary, such as in the case of a change in your marital status. All materials provided by us are designed and distributed with the understanding that they do not constitute or include legal, tax or other professional advice. We assume no responsibility for tax or other consequences to anyone arising from the establishment or use of the HSAs. You may wish to consult with an attorney or other qualified tax professional. By signing the Application, you acknowledge and agree that nothing in the Agreement is construed to confer fiduciary status upon us for any purpose. We are not required to perform any additional services unless specifically agreed to under the terms and conditions of the Agreement.

### **YOUR RESPONSIBILITIES**

You acknowledge and agree that you are solely responsible for (i) determining whether you are eligible to have an Account, and whether distributions from your Account, including Check, Debit Card purchases and other Account withdrawals, constitute qualified medical expenses, as defined in the IRS Code, (ii) keeping appropriate records for these purposes, (iii) ensuring that all contributions you make are permitted under applicable law, (iv) determining the tax consequences of any contributions (including rollover contributions) and distributions you make, and any taxes, interest, penalties and other expenses which may be payable under law in connection with your Account. You agree that we are a custodian of your Account, and you authorize us to act without further inquiry in accordance with writings bearing your signature. The HSA is self-administered by you. You cannot assign your HSA and your interest in your HSA is non-forfeitable. Only you can authorize withdrawals from your HSA. We

reserve the right to correct errors, to withdraw any funds that should not have been placed in your HSA and to withdraw Account administrative fees. You may not use the HSA or the assets in it as security for any loan. Neither you nor any beneficiary may transfer or pledge any interest in your HSA in any manner whatsoever, except as provided by law or this Agreement. You are responsible for complying with all laws governing withdrawals, transfers and taxes. All transfers or distributions from the Account must be made in accordance with the IRS Code. If you have your HSA through your employer, your employer has permitted us to offer our services through your workplace. The HSA is established pursuant to federal tax law, and is neither endorsed by nor sponsored by your employer. Rather, it is an individual Account arrangement between you and us. As a result, the HSA is not part of your employer's ERISA benefit plan, even if your employer contributes to it or you make pre-tax contributions under your employer's cafeteria plan. By written notice to us, you can name a beneficiary who will receive the balance of your HSA upon your death. Upon satisfactory proof of your death, we will transfer or distribute the entire balance (as required by the IRS Code) to your beneficiary or, if none, to your estate.

### **DEPOSITS AND AVAILABILITY OF FUNDS**

Funds on deposit will be available for withdrawal from your Account in accordance with our standard funds availability schedule. We reserve the right to require at least seven days' written notice prior to withdrawal of funds from the Account. Deposits received by us during non-business hours will be considered to be made on the next full business day. We may refuse, limit or return any funds received for deposit. We accept only funds in U. S. dollars. Funds received in other currencies will be returned to you. You agree to pay the Credit Union's standard Account fees, as in effect from time to time.

### **INTEREST AND FEES**

You will earn interest on the funds in your HSA at the rate established by us, which is based on prevailing market conditions. Interest will accrue daily based on the balance of funds on deposit in your Account and will be credited monthly. You will pay us fees for the services we perform for you in connection with your HSA. You have acknowledged receipt of our schedule of fees as an attachment to the Application. You authorize us to withdraw all fees from the balance in your HSA. We can adjust the amount or type of the fees, or add new fees, from time to time.

### **WITHDRAWALS**

You may withdraw all or any part of the balance of your HSA at any time. You are solely responsible for the tax treatment of any withdrawals from the Account, whether made by Check, Debit Card or third party transfer from your Account. If available on your Account, we may provide you with Checks to enable you to make withdrawals. You understand that we will not return original Checks to you. We are not responsible for actions taken by other financial institutions, or for the loss or destruction of any Checks, drafts or other instruments in the possession of other financial institutions or in transit. We may return unpaid any Check on your Account, which is not on a form we provided to you. You must make any stop-payment order in the manner required by law and we must receive it in time to give us a reasonable opportunity to act on it. The stop payment order must specify the exact amount of the Check, the payee, the date of the Check, the number of the Check and your Account number. We will

honor the stop payment request for six months if received in writing and 14 days for verbal orders.

If available on your Account, you also may request us to issue a Debit Card which will enable you to pay for purchases from your HSA. You authorize us to debit your HSA to pay for transactions made with your Debit Card by you and your authorized users. In addition to this Agreement, your use of the Debit Card is subject to the terms and conditions of the Card Agreement which has been provided to you and which are incorporated herein by reference.

### **THIRD-PARTY TRANSFERS**

You may authorize us, from time to time, on your behalf, to make transfers of funds to third parties in the amounts specified by you, and to debit your Account for the amount of each such payment we make. You understand we will also debit your Account for the applicable service charge which is then in effect, and which we may change from time to time. You understand that in performing this service, we will make these payments by Check or draft, and that we will be acting as your agent in making such payments. We will not be liable for any errors or delays in making any such payment, except for errors or delays caused by our gross negligence, or for our inability to make any payment due to circumstances beyond our control or if there are insufficient funds in your Account with which to make the payment.

### **INSUFFICIENT BALANCE**

You must maintain a balance in your Account which is sufficient to cover all Checks you write, Debit Card transactions you make, and transfers you authorized us to make on your behalf. If there are insufficient funds in your Account to cover any such Check or Debit Card transaction or transfer, we may refuse to honor the Debit Card transaction or transfer, or return the Check without paying it, as the case may be. If we make a transfer or pay a Check against insufficient funds or uncollected balances, you agree, promptly on demand, to pay to us the amount by which the Check exceeds the funds in your Account.

### **OTHER INFORMATION AND CHANGE OF NAME OR ADDRESS**

Subject to ordinary care and usual practices, we are entitled to rely upon information we receive with respect to your HSA, including the information contained in the Application, and have no obligation to make further investigation, except as required by law. You agree to notify us promptly, in writing, if you change your name or address. You agree to immediately notify us of any changes in the information provided to us that we rely on in connection with your Account. You agree to provide us with any necessary information we may need to prepare reports required by the IRS Code or other laws and regulations.

### **CHANGES IN THIS AGREEMENT**

The rights, duties and obligations of both you and us with regard to your HSA are governed by this Agreement and the Card Agreement, as they may be amended from time to time. We may amend this Agreement only upon prior written notice to you, and any amendment will become effective on the date stated in our notice to you of the amendment. In addition, Fort Community Credit Union or its successors and assigns, reserves the right to assign your HSA without your prior consent, provided that such assignee is qualified under the IRS Code to be

an HSA custodian or trustee. Upon any assignment of this Agreement, the assignee shall automatically become custodian of the Account if it is qualified under the IRS Code, to serve as an HSA custodian or trustee. You acknowledge that such assignment may result in loss of NCUA insurance coverage for any HSA balances for which such assignee becomes a custodian or trustee.

## **NOTICES**

Any notice required by this Agreement to be given by us to you will be effective upon our deposit of the notice with the United States Postal Service with proper postage affixed and directed to the last address you provided us. Any notice required by this Agreement to be given by you to us will be effective upon receipt of the notice at Fort Community Credit Union, 800 Madison Ave., Fort Atkinson, WI 53538-1322.

## **STATEMENTS**

We will mail a monthly statement summarizing each transaction in your Account during the preceding month. You agree to examine each statement after it is sent to you. If you discover any unauthorized transactions, or signatures or alterations, or other discrepancies on Checks or Debit Card transactions, you must promptly notify us in writing of the relevant facts. You agree that if you do not report any discrepancies within 60 days of when we first send the statement or make it available to you, the statement will be deemed correct and you will not be able to assert a claim against us.

## **DEFAULTS**

You will be in default if you fail to meet any of your obligations under this Agreement or any other agreement with us. In the event of default, we may exercise any legal rights we may have. If we are required to take any legal action under this Agreement, you agree to pay our court and collection costs and any attorney's fees and disbursements. If you are in default of this Agreement, or upon the closure of the HSA, whether such closure was made by you or by us, we shall not be obligated to continue to provide services under this Agreement.

## **ACCOUNT CANCELLATION AND SUSPENSION**

We may close the Account at any time. You may close the Account by notifying us in writing. No closure of the Account will affect our right to debit the Account for any withdrawals or charges made by you, or made by an authorized user of your Debit Card, or to honor any adjustments or chargebacks related to such transactions. As soon as practical after termination, we will distribute the balance in your HSA in accordance with the IRS Code. After distribution of all funds, this Agreement will end and we will have no further duties, obligations, or liabilities to you or anyone, except as required by law.

## **LIMITATION OF LIABILITY/HOLD HARMLESS**

In connection with this Agreement and your HSA, we are not responsible for any act or failure to act that is reasonable under the circumstances or that is consistent with the rules and regulations of the Board of Governors of the Federal Reserve System and other federal regulatory agencies, or any applicable laws, rules or regulations of the State of Wisconsin, or

with general commercial practices of financial institutions. You agree to indemnify us and hold us harmless against any claims, damages, expenses and losses, including attorney's fees, incurred by us resulting from (i) any action we take in honoring your instructions, including but not limited to all verbal or facsimile instructions received with respect to your HSA, (ii) in connection with our honoring of any subpoena or court order relating to your HSA or (iii) other costs, expenses or liabilities arising under this Agreement except costs, expenses or liabilities that arise from our breach of any duty under this Agreement.

### **MISCELLANEOUS**

We can choose not to exercise or to delay enforcement of any of our rights under this Agreement without compromising them. Each party's rights and obligations under this Agreement will be binding upon its heirs, executors, legal representatives, successors and permitted assigns. If any provision of this Agreement is held invalid or unenforceable, all other provisions of this Agreement shall remain in full force and effect. This Agreement becomes effective upon the opening and funding of your Account. This Agreement shall be governed by the construed in accordance with the laws in the State of Wisconsin and applicable federal law.