

# **Sterling Health Services, Inc. Administrative Services Agreement**

This Administrative Services Agreement (“Agreement”) is made between Sterling Health Services, Inc. (“Sterling HSA”) and the individual (“Depositor”) who signs the Sterling HSA Enrollment Form. Depositor is establishing a Health Savings Account (“HSA”) under Section 223 of the Internal Revenue Code (the “Code”). Depositor has made an initial cash contribution to the Sterling HSA Health Savings Account (“Custodial Account”) described in the Individual Sterling HSA Enrollment Form, Sterling Health Services, Inc. Custodial Agreement, or other relevant documents. This initial cash contribution, any additional contributions, and any earnings thereon are *subject to the terms of this Agreement*.

## **ARTICLE I**

Depositor consents to the disclosure of Custodial Account information to Sterling HSA, when such disclosure is required to enable Sterling HSA to comply with the terms of this Agreement and/or applicable laws or regulations.

## **ARTICLE II**

Depositor shall be responsible for the payment of taxes or penalties of any kind that may be assessed against the Custodial Account.

## **ARTICLE III**

Upon Depositor’s request, Sterling HSA shall make reports to the IRS. Depositor acknowledges that all such reports shall be based on information furnished by Depositor. Depositor expressly agrees to indemnify Sterling HSA for any liabilities, taxes, interest, or penalties Sterling HSA may incur as a result of filing a report based on incorrect or insufficient information provided by Depositor.

## **ARTICLE IV**

Custodial Account funds, including any earnings thereon will be invested in interest-bearing deposit accounts established by Sterling HSA and/or other investments acceptable to Sterling HSA. Sterling HSA, in its sole discretion, may establish different categories or types of accounts based upon Depositor’s maintenance of specified minimum Custodial Account balances and may also establish different investment options for each category or type of account.

## **ARTICLE V**

Depositor acknowledges that any amounts distributed out of the Custodial Account which are not used exclusively to pay for “qualified medical expenses,” as defined in Section 213(d) of the Code, may be included in Depositor’s gross income and may also be subject to an additional 10% excise tax. Sterling HSA shall have no responsibility for determining whether distributions are used to pay for qualified medical expenses.

## **ARTICLE VI**

1. Depositor may elect to take qualified medical expense distributions by utilizing Sterling HSA’s bill-paying service or by debit card transaction. Sterling HSA’s agreement governing use of such debit card is incorporated by reference into this Agreement, but only to the extent that such debit card agreement does not conflict with this Agreement, or any applicable provisions of the Code, or other laws or regulations. In the event of a conflict, the terms of this Agreement, and/or applicable provisions of the Code, or other laws or regulations shall be deemed to prevail.

2. Depositor agrees to utilize Sterling HSA’s bill-paying service and make debit card transactions only to the extent there are sufficient collected funds in Depositor’s account. Depositor understands that Sterling HSA has no obligation to make any bill payment at a time when there are insufficient funds in Depositor’s account.

3. Subject to the limitations of applicable laws and regulations, Depositor agrees to indemnify and hold Sterling HSA harmless from and against any liability, damage, or cost, including attorney’s fees, Sterling HSA may incur in connection with (a) any bill-paying service transactions or debit card transactions against any deposit account comprising the Custodial Account and (b) any other matter relating to the Custodial Account, unless such liability is caused by Sterling HSA’s gross negligence or willful misconduct.

## **ARTICLE VII**

1. Sterling HSA shall *receive fees for services* under this Agreement in amounts set forth in its written schedule of fees in effect from time to time. Such fees may include, but are not limited to, administration fees, transaction fees, and distribution fees. Sterling HSA shall have the right to change its fee schedule at any time upon giving Depositor thirty (30) days written notice. Sterling HSA may also establish a different fee schedule for each category of accounts.

2. Sterling HSA shall be authorized to deduct all such fees from the Custodial Account, but may, in its sole discretion, allow Depositor to pay such fees from non-custodial funds. Sterling HSA shall also be entitled to payment from the Custodial Account of all expenses and costs reasonably incurred by it in the administration of the Custodial Account, including, but not limited to,

reimbursement for the cost of bill-paying service transactions and debit card transactions, unless such expenses and costs are paid directly by Depositor.

3. Depositor agrees to comply with any minimum transaction amounts set forth in Sterling HSA's fee schedule, including, but not limited to, minimum contribution amounts.

#### **ARTICLE VIII**

Sterling HSA shall treat any contribution made between January 1 and April 15 as a contribution for the current taxable year unless Depositor provides written notice to Sterling HSA at the time of such contribution that the contribution is for the preceding taxable year.

#### **ARTICLE IX**

1. Sterling HSA shall provide Depositor with a quarterly statement showing the activity in the Custodial Account.

2. Depositor shall promptly review all confirmations of transactions and statements of activity to ensure that they are accurate. Except as otherwise provided in this Agreement, confirmations of transactions and statements of activity shall be conclusive if Depositor does not *object in writing* within ten (10) days after the date such documents are mailed to Depositor. Sterling HSA and its officers and employees shall be forever released and discharged from any liability with respect to any claim arising out of any action or omission reflected on such conclusive confirmation or statement.

#### **ARTICLE X**

This Agreement will be amended from time to time to comply with the provisions of the Code and related regulations. Other amendments may be made with the consent of Depositor and Sterling HSA, in accordance with Article XII of this Agreement.

#### **ARTICLE XI**

1. Depositor may terminate this Agreement by giving thirty (30) days written notice to Sterling HSA.

2. Sterling HSA may resign at any time for any reason upon thirty (30) days written notice to Depositor. Upon such resignation, Depositor may appoint another qualified HSA administrator to whom the Custodial Account funds shall be delivered. If Depositor has not instructed Sterling HSA to deliver the assets of the Custodial Account to a successor administrator within thirty (30) days of Sterling HSA's notice of resignation, Sterling HSA shall pay such assets to Depositor.

3. If this Agreement is terminated or Sterling HSA resigns, Sterling HSA may retain from the assets of the Custodial Account, such sums as are reasonably necessary to pay (a) any fees, expenses, or taxes properly chargeable against the Custodial Account or (b) any penalties associated with

the early withdrawal of any savings instrument or other investment of the Custodial Account.

4. Sterling HSA may liquidate the Custodial Account assets when necessary to make distributions or to pay fees, expenses, or taxes properly chargeable against the account. If, upon a request by Sterling HSA, Depositor fails to direct which Custodial Account assets may be liquidated for these purposes, Sterling HSA, in its sole discretion, will make such determination. Depositor agrees that Sterling HSA shall not be held liable for any adverse consequences resulting from such determination.

#### **ARTICLE XII**

Sterling HSA may amend this Agreement in order to conform to the requirements of applicable regulators and applicable law, or for any other purpose. Any amendments intended to satisfy the requirements of applicable regulators or of applicable law may be made retroactively and without the consent of Depositor. Any other amendments shall require the consent of Depositor. Depositor shall be deemed to have consented to any amendment if Depositor fails to object to the amendment within thirty (30) days after mailing of written notice of the amendment to Depositor.

#### **ARTICLE XIII**

1. Depositor acknowledges and agrees that certain banking services associated with the Custodial Account will be provided by The Mechanics Bank, Inc. ("Bank"), separate and apart from the administrative services provided by Sterling HSA under this Agreement. Neither Bank nor Sterling HSA has any control over or liability for the acts or omissions of the other or for the services that each respectively provides.

2. Depositor expressly consents to the sharing of financial and other information between Sterling HSA and Bank and among Sterling HSA's various affiliates.

#### **ARTICLE XIV**

Sterling HSA may appoint one or more agents to assist in the performance of any of its duties under this Agreement.

## **ARTICLE XV**

Sterling HSA may give a statement, notice, or other communication to Depositor by mailing it to Depositor's address as set forth in the Sterling HSA Enrollment Form or such other address as Depositor provides to Sterling HSA in writing. Such statement, notice, or other communication shall be deemed given when it is mailed by Sterling HSA or Sterling HSA's agent.

## **ARTICLE XVI**

This Agreement shall be binding upon and inure to the benefit of any successor or assignee of Sterling HSA, whether by way of sale, merger, consolidation, assignment, or change of name.

## **ARTICLE XVII**

All questions concerning the interpretation of this Agreement shall be decided and construed in accordance with the laws of the State of California, except to the extent federal law supersedes California law.

## **ARTICLE XVIII**

1. If any provision of this Agreement is or becomes inconsistent with any present or future law or regulation applicable to HSAs, said provision shall be deemed to be modified to conform to such law or regulation. The remaining provisions of this Agreement shall continue in full force and effect.

2. If any provision of this Agreement should be held invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect and shall not be affected by the invalid or unenforceable provision.

## **ARTICLE XIX**

This Agreement and the documents referred to in the introductory paragraph of this Agreement contain the entire agreement of Sterling HSA and Depositor with respect to the subject matter hereof, and may not be modified orally or in any manner other than as specified in Article XII.

# Sterling Health Services, Inc. Custodial Agreement

This Custodial Agreement (“Agreement”) is made between The Mechanics Bank, Inc. (“Custodian”) and the individual (“Depositor”) who signs the Sterling HSA Enrollment Form. Depositor is establishing a Health Savings Account (“HSA”) under Section 223 of the Internal Revenue Code (the “Code”). Depositor has made an initial cash contribution to the Sterling HSA Health Savings Account (“Custodial Account”) described in the Individual Sterling HSA Enrollment Form or other relevant documents. This initial cash contribution, any additional contributions, and any earnings thereon are *subject to* the terms of this Agreement.

## ARTICLE I

1. Custodian may accept additional cash contributions on behalf of Depositor in any tax year of Depositor. Depositor, Depositor’s employer, or any other person or entity may make such additional contributions on Depositor’s behalf. Depositor acknowledges that the total contributions for any single tax year of Depositor are limited to the maximum allowable as a deduction under section 223 of the Code unless the contribution is a rollover contribution described in section 223 of the Code.

2. Depositor shall comply with all applicable laws and regulations and all other conditions or limitations established by Custodian regarding the Custodial Account, including, but not limited to, the method or timing of contributions.

3. Depositor acknowledges sole responsibility for determining the amount of eligible contributions. Custodian shall have no responsibility for determining whether such contributions comply with the requirements and limitations of the Code or advising Depositor regarding the same.

## ARTICLE II

Depositor’s interest in the balance of the Custodial Account is non-forfeitable.

## ARTICLE III

No part of the Custodial Account may be invested in life insurance contracts nor may the assets of the Custodial Account be commingled with other property, except in a common trust fund or common investment fund.

## ARTICLE IV

1. Depositor may take distributions from the Custodial Account at any time, by any method permitted by Custodian. Depositor agrees to comply with any limitations imposed by Depositor’s employer on distributions made from Custodial Account funds contributed by the employer.

2. Depositor acknowledges that any amounts distributed out of the Custodial Account which are not used exclusively to pay for “qualified medical expenses,” as defined in Section 213(d) of the Code, will be included in Depositor’s gross income and may also be subject to an additional 10% excise tax. Custodian shall have no responsibility for determining whether distributions are used to pay for qualified medical expenses.

3. Depositor assumes full responsibility for determining the tax consequences of any distribution from the Custodial Account, maintaining adequate records of all distributions for tax purposes, and paying any taxes resulting from any such distribution.

4. Upon Depositor’s death, Custodian shall distribute any funds remaining in the Custodial Account to the beneficiary or beneficiaries properly designated by Depositor. Such beneficiary or beneficiaries shall bear the sole responsibility for reporting and paying taxes on any such distribution.

## ARTICLE V

Depositor agrees to provide Custodian with information necessary for Custodian to prepare any reports required by the Code or other applicable laws or regulations.

## ARTICLE VI

This Agreement will be amended from time to time to comply with the provisions of the Code and related regulations. Other amendments may be made with the consent of Depositor and Custodian, in accordance with Article XV of this Agreement.

## ARTICLE VII

Custodian’s terms and conditions governing any deposit account established on behalf of Depositor are incorporated by reference into this Agreement, but only to the extent that such terms and conditions do not conflict with this Agreement or any applicable provisions of the Code or other laws or regulations. In the event of a conflict, the terms of this Agreement and/or applicable provisions of the Code or other laws or regulations shall be deemed to prevail.

## ARTICLE VIII

1. Depositor agrees to make debit card transactions only to the extent there are sufficient collected funds in Depositor’s account. Depositor understands that Custodian has no obligation to approve any withdrawal by debit card at a time when there are insufficient funds in Depositor’s account.

2. Depositor acknowledges and agrees that if debit card(s) are issued at the request of Depositor, Depositor shall have sole responsibility for any transactions initiated by holder(s) of such debit card(s).

## ARTICLE IX

1. Depositor shall have the right to designate one or more beneficiaries to whom Custodial Account funds shall be distributed upon Depositor’s death. Any such beneficiary designation must be delivered to Custodian prior to Depositor’s death on a form provided by or acceptable to Custodian. Depositor may revoke a beneficiary designation at any time. In addition, a beneficiary designation shall be automatically revoked upon receipt by Custodian of a subsequent beneficiary designation in valid form bearing a later execution date.

2. Depositor understands that in certain states the consent of Depositor’s spouse may be necessary if Depositor wishes to name a person other than or in addition to Depositor’s spouse as beneficiary or change an existing beneficiary designation. Depositor represents and warrants that any beneficiary designation submitted to Custodian by Depositor satisfies all requirements of applicable law.

3. If Depositor’s surviving spouse is the designated beneficiary of the Custodial Account, he or she may continue the HSA as his or her own, subject to any conditions or limitations contained in the Code or IRS

regulations and subject also to the completion of any documentation required by Custodian.

4. In the absence of a valid beneficiary designation on file with Custodian at the time of Depositor's death or if all of the designated beneficiaries have predeceased Depositor, Custodian shall distribute the Custodial Account to Depositor's estate.

5. Custodian shall have no duty, obligation, or responsibility to make any inquiry or conduct any investigation concerning the identification, address, or legal status of any individual or individuals alleging the status of beneficiary nor to make inquiry or investigation concerning the possible existence of any beneficiary, claim, or election not reported to Custodian prior to the distribution of the Custodial Account. Custodian shall have no higher duty than the exercise of good faith and shall incur no liability by reason of any action taken in reliance upon erroneous, inaccurate, or fraudulent information reported by any source assumed to be reliable or by reason of incomplete information in its possession at the time of such distribution

#### ARTICLE X

1. Depositor shall have sole responsibility for reporting to the IRS all contributions to and distributions from the Custodial Account and for the tax consequences of all such contributions and distributions, including, but not limited to, rollovers, transfers, excess contributions, and prohibited transactions. Depositor acknowledges that Custodian has not, and will not, provide any tax advice in connection with the Custodial Account and understands that Depositor should consult with Depositor's tax advisor for any such advice.

2. Depositor shall be responsible for the payment of taxes or penalties of any kind that may be assessed against the Custodial Account.

#### ARTICLE XI

Depositor shall promptly review all confirmations of transactions and statements of activity to ensure that they are accurate. Except as otherwise provided in this Agreement, confirmations of transactions and statements of activity shall be conclusive if Depositor does not *object in writing* within ten (10) days after the date such documents are mailed to Depositor. Custodian and its officers and employees shall be forever released and discharged from any liability with respect to any claim arising out of any action or omission reflected on such conclusive confirmation or statement.

#### ARTICLE XII

Subject to the limitations of applicable laws and regulations, Depositor agrees to indemnify and hold Custodian harmless from and against any liability, damage, or cost, including attorney's fees, Custodian may incur in connection with (a) any bill-paying service transactions or debit card transactions against any deposit account comprising the Custodial Account and (b) any other matter relating to the Custodial Account, unless such liability is caused by Custodian's gross negligence or willful misconduct.

#### ARTICLE XIII

Depositor may not borrow from the Custodial Account or pledge any portion of the account as security for a loan.

#### ARTICLE XIV

1. Depositor may terminate this Agreement by giving 30 days written notice to Custodian.

2. Custodian may resign at any time for any reason upon 30 days written notice to Depositor. Upon such resignation, Depositor may appoint another qualified HSA custodian to whom the Custodial Account funds shall be delivered. If Depositor has not instructed Custodian to deliver the assets of the Custodial Account to a successor custodian within 30 days of Custodian's notice of resignation, Custodian shall pay such assets to Depositor.

3. If this Agreement is terminated or Custodian resigns, Custodian may retain from the assets of the Custodial Account, such sums as are reasonably necessary to pay (a) any fees, expenses, or taxes properly chargeable against the Custodial Account or (b) any

4. Custodian may liquidate the Custodial Account assets when necessary to make distributions or to pay fees, expenses, or taxes properly chargeable against the account. If, upon a request by Custodian, Depositor fails to direct which Custodial Account assets may be liquidated for these purposes, Custodian, in its sole discretion, will make such determination. Depositor agrees that Custodian shall not be held liable for any adverse consequences resulting from such determination.

#### ARTICLE XV

Custodian may amend this Agreement in order to conform to the requirements of applicable regulators and applicable law, or for any other purpose. Any amendments intended to satisfy the requirements of applicable regulators or of applicable law may be made retroactively and without the consent of Depositor. Any other amendments shall require the consent of Depositor. Depositor shall be deemed to have consented to any amendment if Depositor fails to object to the amendment within 30 days after mailing of written notice of the amendment to Depositor.

#### ARTICLE XVI

Custodian may appoint one or more agents to assist Custodian in the performance of any of its duties under this Agreement.

#### ARTICLE XVII

In the event of (a) reasonable doubt concerning the performance of any of its duties under this Agreement or (b) a dispute between persons claiming an interest in the Custodial Account, Custodian may, in its sole discretion, resolve such doubt or dispute by judicial determination, which shall be binding on Depositor and any other persons claiming an interest in the Custodial Account. In such event, Custodian shall collect from the Custodial Account all court costs, attorneys' fees and other expenses, and reasonable compensation for the time expended by Custodian in the performance of its duties.

#### ARTICLE XVIII

Custodian understands that Depositor will enter into an agreement with Sterling Health Services, Inc. ("Sterling HSA") under which Sterling HSA shall provide certain administrative services in connection with Depositor's Custodial Account. All such administrative services are provided directly by Sterling HSA and not by Custodian. Sterling HSA is solely responsible for all such administrative services and is not acting as a subcontractor, agent, or representative of Custodian in providing such administrative services. Custodian has no control over or any obligation or liability with respect to any such administrative services. Sterling HSA is compensated for providing all such administrative services from the fees Depositor has agreed to pay Sterling HSA.

## **ARTICLE XIX**

Custodian may give a statement, notice, or other communication to Depositor by mailing it to Depositor's address as set forth in the Sterling HSA Enrollment Form or such other address as Depositor provides to Custodian in writing. Such statement, notice, or other communication shall be deemed given when it is mailed by Custodian or Custodian's agent.

## **ARTICLE XX**

This Agreement shall be binding upon and inure to the benefit of any successor or assignee of Custodian, whether by way of sale, merger, consolidation, assignment, or change of name.

## **ARTICLE XXI**

All questions concerning the interpretation of this Agreement shall be decided and construed in accordance with the laws of the State of California, except to the extent federal law supersedes California law.

## **ARTICLE XXII**

1. If any provision of this Agreement is or becomes inconsistent with any present or future law or regulation applicable to HSAs, said provision shall be deemed to be modified to conform to such law or regulation. The remaining provisions of this Agreement shall continue in full force and effect.

2. If any provision of this Agreement should be held invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect and shall not be affected by the invalid or unenforceable provision.

## **ARTICLE XXIII**

This Agreement and the documents referred to in the introductory paragraph of this Agreement contain the entire agreement of Custodian and Depositor with respect to the subject matter hereof, and may not be modified orally or in any manner other than as specified in Article XV.

# FREQUENTLY ASKED QUESTIONS

## ELIGIBILITY REQUIREMENTS

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### **What is a Health Savings Account?**

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 added section 223 to the Internal Revenue Code to permit eligible individuals to establish health savings accounts (HSAs) for taxable years beginning after December 31, 2003. An HSA allows individuals to pay for qualified health expenses and save for future qualified medical and retiree health expenses on a tax-free basis. An HSA is similar to an Individual Retirement Account ("IRA"). Like an IRA, an HSA is established for the benefit of an individual, is owned by that individual, and is "portable." Thus, if the individual is an employee who changes employers or leaves employment, the HSA stays with the individual. However, an IRA cannot be used as an HSA nor can you combine an IRA and an HSA in a single account.

### **Who is eligible for an HSA?**

To be eligible for an HSA, you must be covered by a high deductible health plan and you must not be covered by other health insurance. (This restriction does not apply to insurance for specified illness or disease or accident, disability, dental care, vision care, long-term care or hospitalization insurance) In addition, you cannot be enrolled in Medicare nor can you be claimed as a dependent on someone else's tax return. You are also ineligible for an HSA if, while covered under a high deductible health plan, you are also covered (whether as an individual, spouse, or dependent) under a health plan that is not a high deductible health plan.

### **May an individual establish more than one HSA?**

An eligible individual may establish and contribute to more than one HSA. However, the rules governing HSAs, such as those setting maximum annual contribution limits, apply no matter how many HSAs are established by an eligible individual. Thus, for example, the account balances of all HSAs established by an individual are aggregated for purposes of applying the maximum annual contribution limit described below.

### **What is a "high deductible health plan"?**

A high deductible health plan is a health insurance plan that has an annual deductible (determined yearly by the Treasury Department). In 2008, the deductible must be at least: (1) \$1,100 for individual (self-only) coverage or (2) \$2,200, for family coverage (coverage of more than one individual). In 2008 the annual out-of-pocket expenses required to be paid under the health plan cannot exceed \$5,600 for individual coverage or \$11,200 for family coverage. Out-of-pocket expenses include deductibles, co-payments, and other amounts the participant must pay for covered benefits, but do not include premiums. High deductible health plans can have first dollar coverage (no deductible) for preventive care and higher out-of-pocket expenses (copays & coinsurance) for non-network services. (The dollar amounts described above are subject to annual cost of living adjustments.)

### **Who can offer a high-deductible health plan?**

A high-deductible health plan may be offered by a variety of entities, including insurance companies and health maintenance organizations (HMOs).

### **Are HSAs allowed under a cafeteria plan?**

If a high deductible plan is offered as part of a cafeteria plan, it can be used to establish your eligibility for an HSA. (A cafeteria plan or flexible benefit plan is an employee benefit plan that permits employees to choose from a variety of benefits, including health and accident insurance cash, tax advantages and retirement plan contributions.)

### **May HSA contributions made under a cafeteria plan be changed?**

If you elect to make HSA contributions under a cafeteria plan, you may start or stop the election or increase or decrease the amount of your HSA contribution at any time, as long as the change is effective prospectively.

### **May an individual who uses a discount card for health care services or products contribute to an HSA?**

A discount cardholder may be eligible to establish an HSA if the individual is covered by a high-deductible health plan and is required to pay health care costs, taking into account the discount, until the HDHP deductible is satisfied.

### **May an individual covered by an Employee Assistance Program (EAP), disease management program, or wellness program establish an HSA?**

An individual who is covered by such programs may still be eligible to establish an HSA if the programs do not provide significant medical care or medical treatment benefits. Certain screening and preventive care services are disregarded when determining whether a program provides significant medical care or treatment benefits.

#### **ESTABLISHING AN HSA**

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### **How do you establish an HSA?**

If you are an eligible individual, you can establish an HSA with a qualified HSA trustee or custodian, in much the same way that individuals establish IRAs with qualified IRA trustees or custodians. No permission or authorization from the Internal Revenue Service ("IRS") is necessary. Sterling HSA requires you to complete an application form available on our website ([www.sterlinghsa.com](http://www.sterlinghsa.com)).

### **Can you revoke your HSA custodial agreement?**

You may revoke a Sterling Health Services, Inc. ("Sterling HSA") Custodial Agreement within a period of seven (7) days after the date upon which you enter into the Agreement. To revoke the Agreement, please write to Sterling HSA at 475 14<sup>th</sup> Street, Suite 120; Oakland CA 94612. If you mail your notice of revocation, the postmark date (or date of certification or registration, if sent by certified or registered mail) will be deemed the date of delivery and the date of revocation. If you revoke your account in accordance with these time limits, you are entitled to a return of the entire amount deposited to your account without adjustments for any fees, expenses, commissions, or investment gains or losses.

#### **CONTRIBUTIONS TO HSAS**

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### **Who may contribute to an HSA?**

Contributions to HSAs can be made by an eligible individual, the individual's employer, the individual's family members, and any other person. Contributions made by the individual are deductible from the individual's adjusted gross income. Contributions made by the individual's employer are excluded from the individual's income and are not taxable to the individual. Contributions from all sources are aggregated for purposes of applying the maximum annual contribution limit described below.

### **How do you make contributions to an HSA?**

Contributions to an HSA must be made in cash or its equivalent. As custodian of your HSA, Sterling HSA will accept contributions by check or via the Automated Clearing House (ACH) Network. Sterling HSA will also accept rollovers or transfers of assets from a medical savings account ("MSA"), as permitted by the Internal Revenue Code.

### **How much can you contribute to an HSA?**

The maximum contribution for 2008 is \$2,900 for an individual or \$5,800 for a family. (These dollar limits will be adjusted for inflation each year.) These annual contribution limits apply regardless of whether the contributions are made by an individual, the individual's employer, the individual's family members, or any other person. The maximum contribution limits apply regardless of the deductible amount you purchased or when you opened the HSA qualified insurance plan, although you must maintain coverage for 12 consecutive months.

### **Do special rules apply to contributions by spouses?**

HSA contributions by spouses are divided equally between them unless they have agreed to a different division.

### **What is the tax treatment of an eligible individuals' HSA contributions?**

Contributions to your HSA, up to the applicable maximum contribution, are deductible from your adjusted gross income, whether or not you itemize deductions.

### **What is the tax treatment of employer contributions to an HSA?**

Employer contributions to an employee's HSA are excludable from the employee's gross income, up to the maximum contribution limit for that employee. Although the employee cannot deduct the employer's HSA contributions, the contributions are not taxable to the employee nor are they subject to withholding from wages for income tax or other employment taxes. HSA contributions by employers are considered a type of benefit, and are therefore, tax-deductible for the employer.

**Is there a catch-up contribution?**

Individuals age 55 plus may make catch up contributions. In 2008, the catch up contribution is \$900. This amount will be increased by \$100 every year until the contribution limit is at \$1,000.

**What if my spouse who is also 55 wishes to make a catch up contribution?**

Your spouse may make a catch up contribution as well. In accordance with IRS regulations, Sterling HSA will set up a separate account for this purpose.

**Is there a deadline for contributions to an HSA for a taxable year?**

Contributions for any taxable year can be made in one or more payments, at any time prior to the deadline, without extensions, for filing your federal income tax return for that year, but not before the beginning of that year. For calendar year taxpayers, this deadline for contributions is generally April 15 following the year for which the contributions are made.

**What happens when HSA contributions exceed the maximum amount that may be deducted or excluded from gross income in a taxable year?**

An "excess contribution" (a contribution made by you or your employer that exceeds the amount allowed by law) is not deductible by you or your employer and is included in your gross income if made on your behalf by your employer. An excise tax of 6% for each taxable year is imposed on excess individual and employer contributions.

If the excess contributions for a taxable year and the net income attributable to such excess contributions are paid or distributed to you before the deadline (without extensions) for filing your federal income tax return for the taxable year, then the net income from the excess contributions are included in your gross income for the taxable year in which the distribution is received. However, the excise tax would not be imposed on the excess contributions nor would the distribution of the excess contributions be taxed. Allowable rollover contributions do not count in determining whether an excess contribution has been made.

**Are rollover contributions to HSAs permitted?**

Rollover contributions from MSAs and other HSAs into an HSA are permitted. These rollover contributions to your HSA need not be in cash and are not subject to the annual contribution limits. Rollovers from an IRA are permitted once in a lifetime, and cannot exceed the maximum contribution limits for that calendar year. Rollovers from a health reimbursement account ("HRA") or a health flexible spending account ("FSA") to your HSA are permitted up to 2011, and are in addition to the maximum contribution limits.

**Can you pledge any part of your HSA as security for a loan?**

Any portion of your HSA that you pledge as security for a loan will be treated as a distribution for the year the pledge is made. The amount pledged is includable in your gross income and a 10% premature distribution penalty tax on the pledged amount may also be imposed.

**Do HSA administration and account fees count toward the maximum annual contribution limit?**

If such fees are paid directly to your HSA trustee or custodian by you or your employer, the fees are not considered contributions to your HSA and do not count toward the maximum annual contribution limit. If, instead, you authorize your HSA trustee or custodian to withdraw payment for such fees from your HSA, the amount withdrawn does not increase the maximum annual contribution limit. For example, if your maximum annual contribution limit is \$2,000 and a \$50 administration fee is withdrawn from your HSA, your annual contribution limit remains at \$2,000. It does not increase to \$2,050.

**Will Sterling HSA provide tax advice in connection with your HSA?**

Sterling HSA does not provide tax advice concerning your HSA. It is your sole responsibility to determine the tax consequences of establishing an HSA. Please discuss any questions you may have with your tax advisor.

**How are HSA contributions treated for tax/payroll purposes?**

HSA contributions can be made pretax unless you are dealing with an individual or an employer who does not have a Section 125 Plan or Premium only Plan document that allows these dollars to be deducted on a pretax basis. Even in the event that one of the situations above is the case an HSA account holder can still make an HSA contribution post tax and then deduct it from their W2 at the end of the year.

HSA contributions are entirely tax free on a Federal basis in all states (whether those contributions are made by an employer or employee). At this time a handful of states, including California do not follow Federal tax guidelines and State taxes still apply.

Technically HSA contributions through a 125 cafeteria plan by salary reduction are treated as employer contributions — that is why they are excluded from income and wages. While most people consider salary reduction amounts as "employee contributions", technically, this is not the case — they are reported as employer contributions.

Salary reductions for health insurance are typically reported in box 14 — employees may need this information if State or local taxes do not exclude such amounts. Some employers may also include employer contributions to health insurance in box 14 so that employees know what they are receiving. A good HSA administrator will automatically issue tax documents to all account holders so they may add all HSA contributions onto their State tax return. Ultimately it is the account holder responsibility to report all HSA contributions.

## **DISTRIBUTIONS FROM HSAS**

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### **When can you receive distributions from your HSA?**

You are permitted to receive distributions from your HSA at any time. At Sterling HSA, you may withdraw funds from your account by asking us to pay a bill on your behalf, by paying an expense directly with your debit card, or by transferring funds from your Sterling HSA account into your checking account on the internet.

### **How are distributions from an HSA taxed?**

Distributions from an HSA used exclusively to pay for the qualified medical expenses of you or your spouse or eligible dependents are generally excludable from gross income. The amount of any distribution not used exclusively for such qualified medical expenses is includable in your gross income and may be subject to an additional 10% premature distribution penalty tax on the amount includable. (This 10% penalty tax does not apply to distributions made after your death, disability, or attainment of age 65.) In addition, distributions made for expenses that are reimbursed by another health plan are includable in your gross income, whether or not the other health plan is a high-deductible health plan.

### **Must Sterling HSA determine whether HSA distributions are for qualified medical expenses?**

Sterling HSA is not required to determine whether distributions from your HSA are used for qualified medical expenses. It is your sole responsibility to make that determination. You are also solely responsible for maintaining adequate records for tax purposes and for paying any taxes and penalties which may result from any distribution. Please discuss any questions you may have with your tax or legal advisor. We keep copies of medical bills and payments made on your behalf. We can make these copies available to you as you need them.

### **May a mistaken distribution be repaid without adverse tax consequences or penalty?**

The amount of a mistaken distribution is not included in your gross income nor is it subject to the 10% penalty or excise tax on excess contributions if: 1) you receive the distribution as a result of a mistake of fact due to reasonable cause and 2) you repay to your HSA the amount of the mistaken distribution no later than April 15 following the first year you knew or should have known of the mistake. (Please note that your HSA trustee or custodian is not obligated to allow you to repay mistaken distributions to your HSA.)

### **May distributions from an HSA be deferred to later taxable years?**

Distributions from your HSA to pay or reimburse qualified medical expenses incurred in the current year may be deferred to later taxable years, as long as those expenses were incurred after your HSA was established. Distributions from your HSA in the current year can be used to pay or reimburse qualified medical expenses incurred in prior years, as long as those expenses were incurred after your HSA was established. You must keep proper records in order for these distributions to be excludable from your gross income.

### **What medical expenses are eligible for tax-free distributions from your HSA?**

At present, qualified medical expenses include the following, but only to the extent these expenses are not covered by insurance or otherwise:

|  |                                     |
|--|-------------------------------------|
| Abdominal supports   | Long term care insurance premiums   |
| Abortion   | Medicare Parts A & B after age 65   |
| Acupuncture  | Metabolism tests                    |
| Air conditioner (when necessary for relief from difficulty in breathing) | Neurologist                         |
| Alcoholism treatment   | Nursing (including board and meals) |
|  | Obstetrician                        |

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|                      |   |  |
|----------------------|---|--|
|                      | Ambulance                                     | Operating room costs   |
|                      | Anesthetist                                   | Ophthalmologist  |
|                      | Arch supports                                 | Optician   |
|                      | Artificial limbs                              | Optometrist  |
| sickness/disability) | Autoette (when used for relief of             | Oral surgery   |
|                      | Birth control pills (by prescription)         | Organ transplant (including donor's expenses)                                  |
|                      | Blood tests                                   | Orthopedic shoes   |
|                      | Blood transfusions                            | Orthopedist  |
|                      | Braces  | Osteopath  |
|                      | Cardiographs                                  | Oxygen and oxygen equipment  |
|                      | Chiropractor                                  | Pediatrician   |
|                      | Christian Science Practitioner                | Physician  |
|                      | Contact Lenses                                | Physiotherapist  |
|                      | Contraceptive devices (by prescription)       | Podiatrist   |
| only)                | Convalescent home (for medical treatment      | Postnatal treatments   |
|                      | Crutches                                      | Practical nurse for medical services   |
|                      | Dental treatment                              | Prenatal care  |
|                      | Dental x-rays                                 | Prescription medicines   |
|                      | Dentures                                      | Psychiatrist   |
|                      | Dermatologist                                 | Psychoanalyst  |
|                      | Diagnostic fees                               | Psychologist   |
|                      | Diathermy                                     | Psychotherapy  |
|                      | Drug addiction therapy                        | Radium therapy   |
|                      | Drugs (by prescription)                       | Registered nurse   |
|                      | Elastic hosiery (by prescription)             | Special school costs for the handicapped                                       |
|                      | Eyeglasses (by prescription)                  | Spinal fluid test  |
| doctor               | Fees paid to health institute prescribed by a | Splints  |
| services             | FICA and FUTA taxes paid for medical          | Sterilization  |
|                      | Fluoridation unit                             | Surgeon  |
|                      | Guide dog                                     | Telephone or TV equipment to assist the hard-of-hearing                        |
|                      | Gum treatment                                 | Therapy equipment  |
|                      | Gynecologist                                  | Transportation expenses (relative to health care)                              |
|                      | Healing services                              | Ultra-violet ray treatment   |
|                      | Hearing aids and batteries                    | Vaccines   |
|                      | Hospital bills                                | Vasectomy  |
|                      | Hydrotherapy                                  | Vitamins (by prescription)   |
|                      | Insulin treatment                             | Wheelchair   |
|                      | Lab tests                                     | X-rays   |
|                      | Lead paint removal                            | Certain permissible premiums for dental insurance, accident, cancer and COBRA. |
| care)                | Legal fees                                    |  |
|                      | Lodging (away from home for outpatient        |  |

For more information, see IRS Publication 502: Medical and Dental Expenses (Section 213(d)).

#### DEATH OF AN HSA ACCOUNT HOLDER

##### What happens to your HSA upon your death?

When you open your Sterling HSA account, you will be asked to designate one or more beneficiaries to whom distribution of your HSA will be made upon your death. You may revoke this beneficiary designation at any time and designate different individuals as beneficiaries. Any beneficiary designation you make must be delivered to Sterling HSA prior to your death on a form provided by or acceptable to Sterling HSA. If you do not make a valid beneficiary

designation prior to your death, Sterling HSA will distribute the assets in your HSA to your estate. In some states, your spouse's consent may be necessary if you wish to name a person other than or in addition to your spouse as beneficiary or if you change an existing beneficiary designation. Please consult with your attorney before making your beneficiary designation.

#### **What are the income tax consequences after your death?**

If your spouse is the named beneficiary of your HSA, your HSA becomes the HSA of your spouse upon your death, subject to the completion of documents required by Sterling HSA. The surviving spouse is subject to income tax only the extent distributions from the HSA are not used for qualified medical expenses. If your HSA passes to a person other than your surviving spouse, the HSA ceases to be an HSA as of the date of your death, and the beneficiary is required to include the fair market value of the HSA assets as of the date of your death in his or her gross income. The includable amount is reduced by any payments from the HSA for your qualified medical expenses, if such payments are made within one year after your death.

If you have not made a valid beneficiary designation, your HSA ceases to be an HSA upon your death and the fair market value of the assets in your HSA, as of the date of death, is includable in your gross income for the year of death.

#### **HEALTHCARE FSA LIMITED PURPOSE PROVISION**

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#### **How does an HSA work if my client has a healthcare FSA?**

A group can offer health savings accounts (HSAs) along side a healthcare flexible spending account (FSA) as long as the group has a "limited purpose provision" added to their healthcare FSA plan document. This can be done by most healthcare FSA administrators. The "limited purpose provision" allows employees with a healthcare FSA to use their FSA funds "first dollar" for dental and vision – anything non medical, but the employee must use their HSA funds up to their annual deductible for medical before they can use their healthcare FSA funds for medical. This rule also applies to employees whose spouses have an FSA with their employer even if the HSA account holder's employer does not offer a healthcare FSA. The limited purpose provision does not apply to those employees who do not have an HSA. Without the limited purpose provision added to the healthcare FSA plan document, an employee with a healthcare FSA cannot have an HSA. A dependent care FSA is not affected by the addition of an HSA.

IRS Publication 969 covers the Healthcare FSA/HSA stacking rules and "limited purpose provisions" on a high level. Please see "Other Coverage" under the HSA subhead at <http://www.irs.gov/publications/p969/ar02.html#d0e172>

#### **DOMESTIC PARTNERSHIPS**

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#### **Can HSA funds be used for a domestic partner?**

HSAs are a Federal program and as such covered by Family Protection Act which does not recognize domestic partnerships even if the state of residency does. In the state of California for example, an employee's domestic partner could be covered under the employee's health plan however, the employee can only make a single HSA contribution (assuming there were no children). In such a case, the employee cannot use his/her HSA funds for the domestic partner's expenses (even if qualified) without being taxed and penalized. The only way for a domestic partner to be a recognized for Federal tax purposes is if the partner qualifies to be a legal tax dependent.

#### **S CORPORATIONS AND PARTNERSHIPS**

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#### **I have a client who is an S Corporation. Can the company contribute for the owner(s)?**

A company cannot contribute to the HSA account of individuals owning 2% or more of the company), pay administrative fees on their behalf and write it off as a business expense (as they could do for contributions to other employees). The 2% + owners or Partners themselves can have HSA compatible coverage and establish HSAs. They would need to contribute with their own after-tax dollars. Because the 2%+ owners or Partners are not receiving an employer contribution, they can choose to fund their HSA in anyway they see fit and are not

limited to the comparability requirements. At the end of the year, the owners/Partners would deduct their HSA contributions from their individual tax return.

#### **OTHER MATTERS**

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##### **What kind of statements will you receive in connection with your HSA?**

Sterling HSA will send you a quarterly statement showing the activity in your HSA custodial account. You may also register online to view your account balance and activity at any time as well as transfer funds online.

##### **What information must be reported to the IRS?**

We report contributions and disbursements to the IRS. Those reports are also given to the accountholder in Form 5498SA (yearly contributions) and Form 1099SA. Sterling HSA's fourth quarter report will help accountholders complete this form. We will also mail Forms 5498SA and 1099SA by the time deadlines required by the IRS (May 31 and February 28, respectively.)

Here are the two links on DOL Guidance on HSAs:

[www.hsafinder.com/11-06\\_04.shtml](http://www.hsafinder.com/11-06_04.shtml)

[www.hsafinder.com/pdf/fab\\_2006\\_02.pdf](http://www.hsafinder.com/pdf/fab_2006_02.pdf)