

## ESTABLISHMENT DOCUMENTS

# Coverdell Education Savings Account (ESA)

To open a IRA account with PENSCO, you'll need:

- **Account Application**
- **Successor Responsible Individual Designation**
- **Instructions for Opening an Account**
- **Additional Information**
- **Custodial Account Agreement**
- **Privacy Policy**
- **Fee Schedule**

## INSTRUCTIONS

Complete the enclosed Account Application and Agreement forms, then mail or fax it back to PENSCO. Review and retain the Custodial Account Agreement, Privacy Policy and Fee Schedule for your records.

## RETURN INSTRUCTIONS

Return the completed forms to PENSCO by any of the following methods:

<b>Upload Online</b>	<b>Fax</b>	<b>Regular Mail</b>	<b>Express Deliveries</b>
<a href="http://www.pensco.com/upload">www.pensco.com/upload</a>	303-614-7038	PENSCO P.O. Box 173859 Denver, CO 80217-3859	PENSCO 1560 Broadway, Ste. 400 Denver, CO 80202-3331

**QUESTIONS?** Call our Client Services team at 800-962-4238.

# Coverdell Education Savings Account (ESA) Application

**IMPORTANT INFORMATION:** In order to help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each client who opens an account. When you open an account, we will ask for your name, physical address, date of birth, Social Security number, and other information that will allow us to identify you. We may also ask to see your driver's license or other forms of identification.

**YOUR SIGNATURE AND DATE ARE REQUIRED ON PAGE 5.**

## 1 DESIGNATED BENEFICIARY INFORMATION

NAME (FIRST, MI, LAST)		SOCIAL SECURITY NUMBER	DATE OF BIRTH
MAILING ADDRESS (IF P.O. BOX, PROVIDE PHYSICAL ADDRESS BELOW)			
CITY	STATE/PROVINCE	COUNTRY	POSTAL CODE

- Residence Address: Required if different from mailing address, or if P.O. Box. is provided above as mailing address.

STREET ADDRESS			
CITY	STATE/PROVINCE	COUNTRY	POSTAL CODE
PRIMARY PHONE NO.		EMAIL ADDRESS	

## 2 RESPONSIBLE INDIVIDUAL INFORMATION

NAME (FIRST, MI, LAST)		SOCIAL SECURITY NUMBER	DATE OF BIRTH
OCCUPATION		SOURCE OF WEALTH	
MAILING ADDRESS (IF P.O. BOX, PROVIDE PHYSICAL ADDRESS BELOW)			
CITY	STATE/PROVINCE	COUNTRY	POSTAL CODE

- Residence Address: Required if different from mailing address, or if P.O. Box. is provided above as mailing address.

STREET ADDRESS			
CITY	STATE/PROVINCE	COUNTRY	POSTAL CODE
PRIMARY PHONE NO.		EMAIL ADDRESS	



## 2 RESPONSIBLE INDIVIDUAL INFORMATION (CONTINUED)

THE RESPONSIBLE INDIVIDUAL IS A:  Parent  Guardian

**PLEASE BE AWARE THAT YOU WILL RECEIVE PRINTED QUARTERLY STATEMENTS BY MAIL.** You will be assessed a quarterly fee of \$5.00 for this service; this quarterly fee will be waived if you elect to receive your statements electronically. To waive this fee and receive electronic statements, you must register your PENSCO account online at [www.pensco.com/register](http://www.pensco.com/register); then, you must elect to receive electronic statements through your online account.

## 3 APPOINT A SUCCESSOR RESPONSIBLE INDIVIDUAL

NAME (FIRST, MI, LAST)		RELATIONSHIP	
SOCIAL SECURITY NUMBER		DATE OF BIRTH	
RESIDENCE ADDRESS			
CITY	STATE/PROVINCE	COUNTRY	POSTAL CODE
PRIMARY PHONE NO.			

## 4 DEPOSITOR INFORMATION

- Residence Address: Required if different from mailing address, or if P.O. Box. is provided as mailing address.

NAME (FIRST, MI, LAST)		RELATIONSHIP	
OCCUPATION		SOURCE OF WEALTH	
SOCIAL SECURITY NUMBER		DATE OF BIRTH	
MAILING ADDRESS			
CITY	STATE/PROVINCE	COUNTRY	POSTAL CODE
RESIDENCE ADDRESS			
CITY	STATE/PROVINCE	COUNTRY	POSTAL CODE
PRIMARY PHONE NO.	OTHER PHONE		

## 5 CUSTODIAN INFORMATION

**Custodian Name:** PENSCO Trust Company

**Mailing Address:** Mailing Address, P.O. Box 173859, Denver, CO 80217-3859

The Participant named above is establishing a Coverdell Education Savings Custodial Account under Section 530 of the Internal Revenue Code for the benefit of the designated beneficiary exclusively to pay for the qualified elementary, secondary, and higher education expenses, within meaning of Section 530(b)(2), of such designated beneficiary.

## 6 INVESTMENT INFORMATION

Please select all of the investment types you plan to hold in your ESA account. This information will help PENSCO better serve the needs related to your investments. Selecting an asset type below is not intended as your instruction for a purchase or transfer, and we understand that your intentions may change over the life of your account. Your account investment options are not limited to your selection(s) below.

**Standard Assets** — includes Mutual Funds, Money Markets, Stocks/Bonds (including exchange-traded LPs and ADRs), REITs (exchange-traded), Annuities, Managed Accounts, Brokerage Accounts, Certificates of Deposit (CDs), Mortgage-Backed Securities, Warrants, Treasuries, Strips, Rights.

### Alternative Assets

- |   |   |  |
|---|---|--|
| <input type="checkbox"/> Real Property  | <input type="checkbox"/> Secured Notes (i.e. Trust Deeds/Mortgages)       | <input type="checkbox"/> Unsecured Notes (i.e. Loans to a person or corporation) |
| <input type="checkbox"/> Private Stock  | <input type="checkbox"/> Limited Partnerships/Limited Liability Companies | <input type="checkbox"/> REITs (Non-exchange traded and private)                 |
| <input type="checkbox"/> Offshore Funds | <input type="checkbox"/> Tax Liens  | <input type="checkbox"/> Foreign Securities                                      |

## 7 CHECK ENCLOSURE SUMMARY (CONTRIBUTION ALLOCATION)

- Only complete this section **IF YOU ARE SUBMITTING YOUR APPLICATION BY MAIL AND ENCLOSING A PERSONAL CHECK.**

Employer SEP Contribution	\$ _____
Rollover Contribution	\$ _____
IRA Contribution for 20 ____	\$ _____
IRA Contribution for 20 ____	\$ _____
<b>Total Enclosed</b>	<b>\$ _____</b>

**NOTE:** Make check payable to PENSCO Trust Company. Indicate the tax year for each "regular" Coverdell ESA contribution in the memo section or on a separate sheet. If you are providing contributions for multiple accounts in one check, be sure to provide detailed instructions about how funds are to be allocated.

## 8 UNINVESTED CASH ACKNOWLEDGMENT

As the Responsible Individual, I have reviewed the Uninvested Cash section of the Account Agreement and Disclosures, and I hereby direct PENSCO to deposit all undirected and uninvested cash from any source, including but not limited to contributions, transfers, proceeds from asset sales and income and distributions from assets held in the custodial account, into deposit accounts with a Federal Deposit Insurance Corporation ("FDIC") insured bank (which may include banks affiliated or that may be affiliated with PENSCO, such as Opus Bank), at the discretion of PENSCO. I understand and agree that the deposit accounts in banks affiliated or that may be affiliated with PENSCO shall bear a reasonable rate of interest. I also acknowledge that the deposits at each bank will be insured by the FDIC up to the federal deposit insurance limits (currently \$250,000 per account holder) and that any amount in excess of the legal limit will not be insured by the FDIC. PENSCO shall seek to identify depository banks that are categorized as "well capitalized" institutions by the FDIC. However, I acknowledge and agree that PENSCO makes no representations or warranties as to the financial status of any depository bank or its ability to satisfy its obligations to the Account Owner and that the status of a depository bank as a "well capitalized" bank at any particular time does not mean that it will be so at any time in the future.

Interest earned on such cash balances, net of the Custodial Cash Fee described in the Billing and Fee Collection section of the Account Agreement and Disclosures, shall be credited to the custodial account as of the end of each month. I understand and agree that my account is only eligible to earn interest in any month in which my account remains open on the interest crediting date and that any interest that may accrue on my account during a month that my account is closed prior to the interest crediting date will be paid to PENSCO as an additional fee. I also understand and agree that the Custodial Cash Fee may reduce the amount of net interest paid to my account on a monthly basis to zero or a negligible amount. I further understand and agree that my account has a minimum cash requirement and that fees are applicable to accounts that fall below the required minimum, as outlined in the Fee Schedule. I also understand and agree that PENSCO may require me to give at least 7 days notice of my intent to withdraw funds from my custodial account.

**9 BENEFICIARY DESIGNATION IN CASE OF DEATH**

Beneficiary must be a family member as defined in the General Instructions to IRS Form 5305-EA (Coverdell Education Savings Custodial Account).

**10 BENEFICIARY INFORMATION**

**10A PRIMARY BENEFICIARY(IES)**

NAME (FIRST, MI, LAST)		DATE OF BIRTH	PERCENTAGE
SOCIAL SECURITY NO.		RELATIONSHIP	
RESIDENCE ADDRESS			
CITY	STATE/PROVINCE	COUNTRY	POSTAL CODE

**11 YOUR ACKNOWLEDGMENT & SIGNATURE**

I (We), the undersigned, have read, understand and agree to all of the terms as set forth in the Coverdell ESA Application, ESA Custodial Account Agreement, and ESA Additional Information, (collectively, "Plan Documents"), and that I (we) have retained the Plan Documents including a copy of this completed Application. I (We) further specifically acknowledge that I (we) have read, understand and agree to the Arbitration Statement that is part of the Plan Documents, and the Custodian's Fee Schedule that is available at the PENSCO website at [www.pensco.com](http://www.pensco.com) and that PENSCO provided you with this document. I also understand that fees are not prorated upon establishment or termination, and I consent to have my conversations with PENSCO recorded.

**PLEASE SIGN AND DATE BELOW.**

	RESPONSIBLE INDIVIDUAL SIGNATURE	DATE
	DEPOSITOR SIGNATURE (IF DIFFERENT FROM RESPONSIBLE INDIVIDUAL)	DATE

When the plan has been accepted by PENSCO, you will be sent an account establishment confirmation letter showing your account number and account information. Trading cannot proceed until a PENSCO account number has been assigned and the account has been funded.

**TO DESIGNATE AN INTERESTED PARTY OR FINANCIAL REPRESENTATIVE,  
PLEASE COMPLETE AND RETURN THE FOLLOWING PAGES TO PENSCO.**

FOR PENSCO TRUST COMPANY USE ONLY

AUTHORIZED SIGNATURE	ACCOUNT NO. (PENSCO WILL COMPLETE)
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**INVESTMENT PRODUCTS: NOT FDIC INSURED • NO BANK GUARANTEE • MAY LOSE VALUE**

## 12 INTERESTED PARTY DESIGNATION

Please complete the information below if you are authorizing an interested party other than you or your designated financial representative (including, but not limited to broker, financial planner, accountant, attorney) to receive information about your account. Please note that this individual will have limited access to your account information. PENSCO Trust Company (PENSCO) will not accept purchase and sale instructions from this individual.

Individuals who are designated as an Interested Party by the Account Owner may not be a sponsor of or otherwise affiliated with an investment in the Account. It is the responsibility of the Account Owner and the Interested Party to review the assets for the Account to ensure compliance with this provision and to take steps to remove an Interested Party from the Account in the event of non-compliance.

This form authorizes PENSCO to provide account information and electronic statements to the Interested Party referenced below. If the Interested Party is associated with a broker-dealer, financial exchange or a regulated investment advisory firm, PENSCO may make information about Account activity available to the broker-dealer, exchange or compliance officer for the advisory firm as they deem necessary to receive such information.

By signing this Authorization, if any controversy, claim or dispute arises relating to the release of or providing account information, I agree to release, indemnify, defend and hold PENSCO and its related entities harmless.

### 12A INTERESTED PARTY INFORMATION

NAME (FIRST, MI, LAST)		PHONE NO.	FAX NO.
FIRM NAME		EMAIL ADDRESS	
RESIDENCE ADDRESS			
CITY	STATE/PROVINCE	COUNTRY	POSTAL CODE

### PLEASE SIGN AND DATE BELOW TO DESIGNATE AN INTERESTED PARTY.

	ACCOUNT OWNER SIGNATURE	DATE
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## 13 FINANCIAL REPRESENTATIVE DESIGNATION & AUTHORIZATION

PENSCO Trust Company (PENSCO) does not require that you designate a Financial Representative (FR) for your Account. If you wish to authorize an FR to act as your agent for your account, please complete the information below.

### 13A FINANCIAL REPRESENTATIVE INFORMATION

- Your Financial Representative (FR) should be able to provide you with this information.

NAME (FIRST, MI, LAST)		OFFICE NAME	FR BROKER-DEALER
FR INDIVIDUAL CRD NO.		FIRM CRD NO.	
RESIDENCE ADDRESS			
CITY	STATE/PROVINCE	COUNTRY	POSTAL CODE
PHONE NO.	CELL PHONE NO.	FAX NO.	
EMAIL ADDRESS			

### 13B ACCOUNT OWNER DESIGNATION OF FINANCIAL REPRESENTATIVE

I agree that I, and not PENSCO and its related entities, am solely responsible for the actions of my FR in connection with my Account and any investments in my Account. I acknowledge and agree that I am solely responsible for selecting my FR, and that the FR is my agent and not the employee or agent of PENSCO or its related entities and is not affiliated with PENSCO and its related entities in any way.

I make the following FR designation subject to all applicable provisions of the Account Establishment Documents, including but not limited to the Terms and Conditions of Appointment of FR contained in the Additional Account Terms. I authorize this individual to execute transactions for my account, including but not limited to purchases, sales, and exchanges of investments for the Account. I also authorize my FR and, if applicable, my FR's brokerdealer to receive electronic statements and any other account information from PENSCO via written, telephone or electronic communications.

I affirm that this FR and his/her employees, staff, broker-dealer firm and any companies to which my FR or the aforementioned are associated is not a sponsor of or otherwise affiliated with any investment in my account. I agree that it is my responsibility to review any investments for my Account to ensure compliance with this provision and to remove my FR from my Account in the event of non-compliance. I acknowledge that it is my responsibility to monitor the actions of my FR to ensure compliance with all laws, rules and regulations and to remove my FR from my Account if he or she does not comply with the laws, rules and regulations that apply to my Account. I acknowledge and agree that PENSCO and its related entities are under no duty to investigate or inquire about my FR or any directions or instructions given by my FR. I further agree that PENSCO and its related entities will have no liability for any losses that may occur due to changes in market value of an investment or PENSCO's actions or inactions based on reliance on instructions from myself or my FR.

I understand that I may revise this information at any time by giving written notice to PENSCO. I am aware that any change to my authorized FR will not cancel any instructions given by my FR prior to PENSCO's receipt of written notice regarding this change.

#### PLEASE SIGN AND DATE BELOW TO DESIGNATE A FINANCIAL REPRESENTATIVE.

	ACCOUNT OWNER SIGNATURE	DATE
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### 13C FINANCIAL REPRESENTATIVE ACKNOWLEDGMENT & SIGNATURE

- Your Financial Representative (FR) must read the acknowledgment and provide a signature below.

I, the Financial Representative named in Section 12A, hereby consent to my designation as Financial Representative by the Account Owner of the above-named IRA. I understand and acknowledge that, as Financial Representative, I will be acting as the authorized agent of the Account Owner and not as the agent of PENSCO. Additionally, I affirmatively represent to both the Account Owner and PENSCO that I will not make any statements or other communications to or with the Account Owner or any other party suggesting that I am acting as the agent of PENSCO for any purpose relating to this retirement account or to any investment.

I acknowledge that I am not, nor are any of my employees, staff, broker-dealer firm (if applicable) and any companies to which I or the aforementioned are associated is a sponsor of or otherwise affiliated with any investment in any account for which I am appointed as FR. I agree that it is my responsibility to ensure compliance with this provision and to remove myself as an FR in the event of non-compliance.

I acknowledge that, if I am associated with a member of FINRA or of certain financial exchanges (each an "Employer Member"), I may be required by applicable rules to notify such Employer Member of my affiliation to this Account. I acknowledge my responsibility to ensure that the Employer Member is provided with such information as is necessary to ensure compliance with applicable rules with respect to my activities in connection with this Account.

I further acknowledge that it is a condition of my appointment by the Account Owner as FR to this Account that I comply with all laws, rules and regulations that apply to me and to this Account, and that if I do not, I understand that I may be removed as FR.

#### PLEASE SIGN AND DATE BELOW.

	FINANCIAL REP. SIGNATURE	DATE
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## ADDITIONAL STEPS REQUIRED TO SETUP YOUR ACCOUNT

### DELIVERY INSTRUCTIONS

Please complete, sign and return this application with your contribution and applicable fee payment. Be sure to keep a copy for your records. Please print or type. **All fields must be completed. If not applicable, please indicate by printing "N/A" or "None" where appropriate.**

Submit this application through one of the following delivery methods:

Upload Online	Fax	Regular Mail	Express Deliveries
<a href="http://www.pensco.com/upload">www.pensco.com/upload</a>	303-614-7038	PENSCO P.O. Box 173859 Denver, CO 80217-3859	PENSCO 1560 Broadway, Ste. 400 Denver, CO 80202-3331

When the plan has been accepted by PENSCO, the Account Owner will be sent an account establishment confirmation letter showing the account number and account information. Trading may be delayed until a PENSCO account number has been assigned and the account has been funded by the Account Owner.

Once you receive your PENSCO account number, you must register for online access to your account within seven (7) days. To do so, visit [www.pensco.com/register](http://www.pensco.com/register), and complete the following steps:

1. Securely provide credit/debit card information. **ALL ACCOUNT OWNERS ARE REQUIRED TO MAINTAIN A VALID CREDIT/DEBIT CARD ON FILE AT ALL TIMES.**
2. Confirm your Fee Payment Preference. Your account Fee Payment Preference is currently set to automatically pay your account fees using available cash in your custodial account.
  - If you prefer to pay your account fees using cash from your custodial account, no further action is needed from you;
  - If you prefer to pay your account fees using the credit/debit card on file (from Step No. 1), you may do so by updating your Fee Payment Preference.

Please refer to your IRA Custodial Agreement for more information on Billing & Fee Collection.





# COVERDELL ESA APPOINT SUCCESSOR RESPONSIBLE INDIVIDUAL DESIGNATION

## INSTRUCTIONS

A Responsible Individual of an Education Savings Account must complete this form to designate a Successor Responsible Individual to succeed in that capacity. Should the Responsible Individual become incapacitated or die before such time as the Designated Beneficiary reaches the age of majority under state law or all assets have been distributed from the Custodial Account and the Custodial Account terminates, whichever is earlier, the Successor Responsible Individual becomes the Responsible Individual.

## ACCOUNT INFORMATION

### Name of Designated Beneficiary

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last Name: \_\_\_\_\_

Social Security Number: \_\_\_\_\_

Daytime Phone: \_\_\_\_\_

### Name of Responsible Individual

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last Name: \_\_\_\_\_

## SUCCESSOR RESPONSIBLE INDIVIDUAL

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last Name: \_\_\_\_\_

Relationship: \_\_\_\_\_

Residence Address: \_\_\_\_\_

City: \_\_\_\_\_ State/Province: \_\_\_\_\_

Country: \_\_\_\_\_ Postal Code: \_\_\_\_\_

Social Security Number: \_\_\_\_\_

Daytime Phone: \_\_\_\_\_

## ACKNOWLEDGEMENT AND SIGNATURE

I, the Responsible Individual for the referenced Education Savings Account, hereby name the Successor Responsible Individual in the event of my death or incapacity. **Note:** *The Responsible Individual's signature must be notarized.*



\_\_\_\_\_  
Responsible Individual Signature

State of \_\_\_\_\_ ) County of \_\_\_\_\_ )

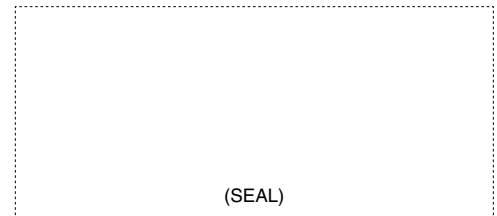
The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,

20\_\_\_\_ by \_\_\_\_\_, Responsible Individual. WITNESS my hand and official seal.  
(name)

My commission expires \_\_\_\_/\_\_\_\_/\_\_\_\_



\_\_\_\_\_  
Notary Public Signature



**INVESTMENT PRODUCTS: NOT FDIC INSURED • NO BANK GUARANTEE • MAY LOSE VALUE**

Upload forms to:  
[www.pensco.com/upload](http://www.pensco.com/upload)

Send mail to:  
PENSCO  
P.O. Box 173859  
Denver, CO 80217-3859

For express deliveries:  
PENSCO  
1560 Broadway, Suite 400  
Denver, CO 80202-3331

Questions?  
Call 1-800-962-4238

Fax to: 303-614-7038



# COVERDELL EDUCATION SAVINGS ACCOUNTS (ESA) ESTABLISHMENT DOCUMENTS

## INSTRUCTIONS

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### IT IS IMPORTANT THAT YOU:

Read and keep these Instructions, Additional Account Terms, Additional Information about Coverdell ESAs, and IRS Form 5305-EA Trust Agreement for your records, and make a copy of the completed Application before sending it back to PENSCO Trust Company (PENSCO). All of these documents explain what you can expect from PENSCO as the Custodian and what is expected of the Depositor and/or Responsible Individual. These documents constitute the Depositor's and/or Responsible Individual's agreement with PENSCO for the ESA.

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### APRIL PLAN ESTABLISHMENT AND CONTRIBUTION DEADLINE

Your signed Application must be received by PENSCO in its offices on or before tax-filing due date, with no extensions (generally April 15th), in order for the ESA to be eligible to receive contributions for that tax year.

Contribution checks must also be postmarked to PENSCO on or before your tax-filing due date (with no extensions).

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### PURPOSE OF FORM

IRS Form 5305-EA is a model Custodial Account agreement that meets the requirements of section 530(b)(1) and has been pre approved by the IRS. A Coverdell Education Savings Account (ESA) is established after the form is fully executed by both the Depositor and the Custodian. This account must be created in the United States for the exclusive purpose of paying the qualified elementary, secondary, and higher education expenses of the designated beneficiary.

If the model account is a trust account, see IRS Form 5305-E, Coverdell Education Savings Trust Account. Do not file IRS Form 5305-EA with the IRS. Instead, the Depositor must keep the completed form in its records.

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### DEFINITIONS

**Custodian.** The Custodian must be a bank or savings and loan association, as defined in section 408(n), or any person who has the approval of the IRS to act as Custodian. Any person who may serve as a Custodian of a traditional IRA may serve as the Custodian of a Coverdell ESA.

**Depositor.** The Depositor is the person who establishes the Custodial Account.

**Designated beneficiary.** The designated beneficiary is the individual on whose behalf the Custodial Account has been established.

**Family member.** Family members of the designated beneficiary include his or her spouse, child, grandchild, sibling, parent, niece or nephew, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law, and the spouse of any such individual. A first cousin, but not his or her spouse, is also a "family member."

**Responsible Individual.** The responsible Individual, generally, is a parent or guardian of the designated beneficiary. However, under certain circumstances, the Responsible Individual may be the designated beneficiary.

**Identification Numbers.** The Depositor and designated beneficiary's Social Security numbers will serve as their identification numbers. If the Depositor is a nonresident alien and does not have an identification number, write "Foreign" in the block where the number is requested. The designated beneficiary's Social Security number is the identification number of his or her Coverdell ESA. If the designated beneficiary is a nonresident alien, the designated beneficiary's individual taxpayer identification number is the identification number of his or her Coverdell ESA. An employer identification number (EIN) is required only for a Coverdell ESA for which a return is filed to report unrelated business income.

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### SPECIFIC INSTRUCTION (IRS FORM 5305-EA)

**Note:** The age limitation restricting contributions, distributions, rollover contributions, and change of beneficiary are waived for a designated beneficiary with special needs.

**Article X.** Article X and any that follow may incorporate additional provisions that are agreed to by the Depositor and Custodian to complete the agreement. They may include, for example, provisions relating to: definitions, investment powers, voting rights, exculpatory provisions, amendment and termination, removal of the Custodian, Custodian's fees, state law requirements, treatment of excess contributions, and prohibited transactions with the Depositor, designated beneficiary, or Responsible Individual, etc. Attach additional pages as necessary.

Optional provisions in Article V and Article VI. IRS Form 5305-EA may be reproduced in a manner that provides only those optional provisions offered by the Custodian.

**INVESTMENT PRODUCTS: NOT FDIC INSURED • NO BANK GUARANTEE • MAY LOSE VALUE**

## ADDITIONAL INFORMATION FOR COVERDELL EDUCATION SAVINGS ACCOUNTS

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### PURPOSE

The questions and answers contained in this Additional Information for Coverdell Education Savings Accounts (ESAs) document summarize the requirements for a Coverdell ESA. Coverdell ESAs previously were known as Education Individual Retirement Accounts, or Education IRAs. Coverdell ESAs are governed by Section 530 of the Internal Revenue Code (Code) and any regulation that may be issued under Code Section 530. The details under which this Coverdell Education Savings Account is governed are specified by the law and as provided in the Coverdell Education Savings Account Custodial Account Agreement.

The Coverdell ESA is a savings tool created by the federal government to help save for a child's education expenses. Any person may contribute to the child's Coverdell ESA, provided that the total contributions for the child during the calendar year do not exceed \$2,000. Contributions to a Coverdell ESA are not tax deductible. The tax benefits of the Coverdell ESA include tax-deferred growth of the earnings and tax-free distributions, such distributions are used for qualified education expenses.

Because the rules with respect to Coverdell ESAs are very complex, you should consult your own tax advisor if you have questions about the information contained in this Additional Information for Coverdell ESAs document. Further information is contained in IRS Publication 970, which can be obtained from any District Office of the Internal Revenue Service (IRS).

In this Additional Information for Coverdell ESAs document, the term "child" or "Designated Beneficiary" means the Designated Beneficiary, as defined in the Custodial Account Agreement, on whose behalf the Custodial Account is established.

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### DISCUSSION

#### Section 1. Coverdell Education Savings Account

Beginning January 1, 2002, taxpayers may deposit up to \$2,000 per year into an ESA for a child under age 18. Parents, grandparents, other family members, friends, and a child him/herself may contribute to the child's ESA, provided that the total contributions for the child during the taxable year do not exceed the \$2,000 limit. Amounts deposited in the account grow tax-free until distributed, and the child will not owe tax on any withdrawal from the account if the child's qualified higher education expenses or qualified elementary and secondary education expenses at an eligible educational institution for the year equal or exceed the amount of the withdrawal. If the child does not need the money for qualified education expenses, the account balance can be rolled over to the ESA of certain family members who can use it for their qualified education expenses. Amounts withdrawn from an ESA that exceed the child's qualified education expenses in a taxable year are generally subject to income tax and to an additional tax of 10 percent. The Hope Scholarship Credit and Lifetime Learning Credit may not be claimed for a student's expenses in a taxable year in which the student takes a tax-free withdrawal from an ESA.

#### Q1: What is an Education Savings Account (ESA)?

A1: An ESA is a trust or custodial account that is created or organized in the United States exclusively for the purpose of paying the qualified higher education expenses or qualified elementary and secondary education expenses of the designated beneficiary of the account. The account must be designated as an ESA when it is created in order to be treated as an ESA for tax purposes.

#### Q2: For whom may an ESA be established?

A2: An ESA may be established for the benefit of any child under age 18. Contributions to the ESA cannot be made after the designated beneficiary reaches his/her 18th birthday.

#### Q3: Where may an individual open an ESA?

A3: An individual may open an ESA with any bank, or other entity that has been approved to serve as a nonbank trustee or custodian of an individual retirement account (IRA), and the bank or entity is offering ESAs. Other entities that wish to offer ESAs but are not approved to serve as IRA trustees or custodians may seek approval by following the same IRS procedures used for approval of other IRA nonbank trustees. See Notice 97-57, 1997-43 I.R.B. (October 27, 1997).

#### Q4: When may a taxpayer start contributing to an ESA for a child?

A4: A taxpayer may start making contributions on January 1, 1998, or at any time thereafter.

**Q5: How much may be contributed to a child's ESA?**

A5: Beginning in taxable year 2002, up to \$2,000 per year in aggregate contributions may be made for the benefit of any child. The contributions may be placed in a single ESA or in multiple ESAs.

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**Q6: What happens if more than \$2,000 is contributed to an ESA on behalf of a child in a calendar year?**

A6: Aggregate contributions for the benefit of a particular child in excess of \$2,000 for a calendar year are treated as excess contributions. If the excess contributions (and any earnings attributable to them) are not withdrawn from the child's account (or accounts) before the first day of the sixth month of the taxable year following the taxable year, the excess contributions are subject to a 6 percent excise tax for each year the excess amount remains in the account.

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**Q7: May contributions other than cash be made to a child's ESA?**

A7: No. ESAs are permitted to accept contributions made in cash only.

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**Q8: May contributors take a deduction for contributions made to an ESA?**

A8: No.

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**Q9: Are there any restrictions on who can contribute to an ESA?**

A9: In the case of a contributor who is an individual, the contributor may contribute up to \$2,000 to a child's ESA if the individual's modified adjusted gross income for the taxable year is no more than \$95,000 (\$190,000 for married taxpayers filing jointly). The \$2,000 maximum contribution per child is gradually reduced for individuals with modified adjusted gross income between \$95,000 and \$110,000 (between \$190,000 and \$220,000 for married taxpayers filing jointly). For example, an unmarried taxpayer with modified adjusted gross income of \$96,500 in a taxable year could make a maximum contribution per child of \$450 for that year. Taxpayers with modified adjusted gross income above \$110,000 (\$220,000 for married taxpayers filing jointly) cannot make contributions to anyone's ESA.

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**Q10: May a child contribute to his/her own ESA?**

A10: Yes.

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**Q11: Does a taxpayer have to be related to the designated beneficiary in order to contribute to the designated beneficiary's ESA?**

A11: No.

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**Q12: How many ESAs may a child have?**

A12: There is no limit on the number of ESAs that may be established designating a particular child as beneficiary. However, in any given taxable year the total aggregate contributions to all the accounts designating a particular child as beneficiary may not exceed \$2,000.

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**Q13: May a designated beneficiary take a tax-free withdrawal from an ESA to pay qualified higher education expenses if the designated beneficiary is enrolled less than full-time at an eligible educational institution?**

A13: Yes. Whether the designated beneficiary is enrolled fulltime, half-time, or less than half-time, he/she may take a taxfree withdrawal to pay qualified education expenses.

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**Q14: What happens when a designated beneficiary withdraws assets from an ESA to pay for college?**

A14: Generally, the withdrawal is tax-free to the designated beneficiary to the extent the amount of the withdrawal does not exceed the designated beneficiary's qualified education expenses.

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**Q15: What are "qualified education expenses"?**

A15: "Qualified education expenses" means qualified higher education expenses and qualified elementary and secondary education expenses. Qualified higher education expenses include expenses for tuition, fees, books, supplies, and equipment required for the enrollment or attendance of the designated beneficiary at an eligible educational institution. Qualified higher education expenses also include amounts contributed to a qualified state tuition program. Qualified higher education expenses also include room and board (generally the school's posted room and board charge, or \$2,500 per year for students living off-campus and not at home) if the designated beneficiary is at least a half-time student at an eligible educational institution. The standards for determining

whether a student is enrolled at least halftime are the same as those used for the Hope Scholarship Credit. (See Sec. 1, Q&A3.)

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**Q16: What is an eligible educational institution?**

A16: An eligible educational institution is any college, university, vocational school, or other postsecondary educational institution that is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088) and, therefore, eligible to participate in the student aid programs administered by the Department of Education. This category includes virtually all accredited public, nonprofit, and proprietary postsecondary institutions. (The same eligibility requirements for institutions apply for the Hope Scholarship Credit, the Lifetime Learning Credit, and early withdrawals from IRAs for qualified higher education expenses.)

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**Q17: What happens if a designated beneficiary withdraws an amount from an ESA but does not have any qualified higher education expenses to pay in the taxable year he/she makes the withdrawal?**

A17: Generally, if a designated beneficiary withdraws an amount from an ESA and does not have any qualified higher education expenses during the taxable year, a portion of the distribution is taxable. The taxable portion is the portion that represents earnings that have accumulated tax-free in the account. The taxable portion of the distribution is also subject to a 10 percent additional tax unless an exception applies.

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**Q18: Is a distribution from an ESA taxable if the distribution is contributed to another ESA?**

A18: Any amount distributed from an ESA and rolled over to another ESA for the benefit of the same designated beneficiary or certain members of the designated beneficiary's family is not taxable. An amount is rolled over if it is paid to another ESA on a date within 60 days after the date of the distribution. Members of the designated beneficiary's family include the designated beneficiary's children and their descendants, stepchildren and their descendants, siblings and their children, parents and grandparents, stepparents, and spouses of all the foregoing. The \$2,000 annual contribution limit to ESAs does not apply to these rollover contributions. For example, an older brother who has \$2,000 left in his ESA after he graduates from college can roll over the full \$2,000 balance to an ESA for his younger sister who is still in high school without paying any tax on the transfer.

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**Q19: What happens to the assets remaining in an ESA after the designated beneficiary finishes his/her post-secondary education?**

A19: There are two options. The amount remaining in the account may be withdrawn for the designated beneficiary. The designated beneficiary will be subject to both income tax and the additional 10 percent tax on the portion of the amount withdrawn that represents earnings if the designated beneficiary does not have any qualified higher education expenses in the same taxable year he/she makes the withdrawal. Alternatively, if the amount in the designated beneficiary's ESA is withdrawn and rolled over (as described in Q&A18 of this section) to another ESA for the benefit of a member of the designated beneficiary's family, the amount rolled over will not be taxable.

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**Q20: Rather than rolling over money from one ESA to another, may the designated beneficiary of the account be changed from one child to another without triggering a tax?**

A20: Yes, provided: (1) the terms of the particular trust or custodial account permit a change in designated beneficiaries (each trustee or custodian will control whether options like this one are available in the accounts they offer), and (2) the new designated beneficiary is a member of the previous designated beneficiary's family. (See Q&A18 in this section).

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**Q21: May a student or the student's parents claim the Hope Scholarship Credit or Lifetime Learning Credit for the student's expenses in a taxable year in which the student receives money from an ESA on a tax-free basis?**

A21: The Hope or lifetime learning credit can be claimed in the same year the beneficiary takes a tax-free distribution from a Coverdell ESA as long as the same expenses are not used for both benefits. This means the beneficiary must reduce qualified higher education expenses by tax-free educational assistance, and then further reduce them by any expenses taken into account in determining a Hope or lifetime learning credit.

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**Q22: May contributions be made to both a qualified state tuition program (QTP) and an ESA on behalf of the same designated beneficiary in the same taxable year?**

A22: You can contribute to both a QTP and a Coverdell ESA in the same year for the same designated beneficiary.

# Custodial Account Agreement: Coverdell ESA

## CUSTODIAN: PENSICO TRUST COMPANY

### INSTRUCTIONS

Please read and keep these Instructions, Additional Account Terms, Additional Information about Coverdell ESAs, and Form 5305-EA Custodial Agreement for your records, and make a copy of the completed Application before sending it to PENSICO Trust. All of these documents explain what you can expect from PENSICO Trust as the Custodian and what is expected of the Depositor and/or Responsible Individual. These documents constitute the Depositor's and/or Responsible Individual's agreement with PENSICO Trust for the ESA.

### APRIL PLAN ESTABLISHMENT & CONTRIBUTION DEADLINE

Your signed Application must be received by PENSICO Trust in its offices on or before tax-filing due date, with no extensions (generally April 15th), in order for the ESA to be eligible to receive contributions for that tax year. Contribution checks must also be postmarked to PENSICO Trust on or before the Depositor and/or Responsible Individual's tax-filing due date (with no extensions).

### PURPOSE OF FORM

Form 5305-EA is a model Custodial Account agreement that meets the requirements of Section 530(b)(1) and has been pre-approved by the IRS. A Coverdell Education Savings Account (ESA) is established after the form is fully executed by both the Depositor and the Custodian. This account must be created in the United States for the exclusive purpose of paying the qualified elementary, secondary, and higher education expenses of the designated beneficiary. If the model account is a custodial account, see Form 5305-E, Coverdell Education Savings Trust Account. Do not file Form 5305-EA with the IRS. Instead, the Depositor must keep the completed form in its records.

### DEFINITIONS

**Custodian.** The custodian must be a bank or savings and loan association, as defined in Section 408(n), or any person who has the approval of the IRS to act as Custodian. Any person who may serve as a Custodian of a Traditional IRA may serve as the Custodian of a Coverdell ESA.

**Depositor.** The Depositor is the person who establishes the Custodial Account.

**Designated Beneficiary.** The Designated Beneficiary is the individual on whose behalf the Custodial Account has been established.

**Family Member.** Family members of the Designated Beneficiary include his or her spouse, child, grandchild, sibling, parent, niece or nephew, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law, and the spouse of any such individual. A first cousin, but not his or her spouse, is also a "family member."

**Responsible Individual.** The Responsible Individual, generally, is a parent or guardian of the Designated Beneficiary. However, under certain circumstances, the Responsible Individual may be the Designated Beneficiary.

**Identification Numbers.** The Depositor and Designated Beneficiary's Social Security Numbers will serve as their identification numbers. If the Depositor is a nonresident alien and does not have an identification number, write "Foreign" in the block where the number is requested. The Designated Beneficiary's Social Security Number is the identification number of his or her Coverdell ESA. If the Designated Beneficiary is a nonresident alien, the Designated Beneficiary's individual Taxpayer Identification Number is the identification number of his or her Coverdell ESA. An Employer Identification Number (EIN) is required only for a Coverdell ESA for which a return is filed to report unrelated business income.

### SPECIFIC INSTRUCTION (FORM 5305-EA) NOTE:

The age limitation restricting contributions, distributions, rollover contributions, and change of beneficiary are waived for a designated beneficiary with special needs.

Article X. Article X and any that follow may incorporate additional provisions that are agreed to by the Depositor and Custodian to complete the agreement. They may include, for example, provisions relating to: definitions, investment powers, voting rights, exculpatory provisions, amendment and termination, removal of the Custodian, Custodian's fees, state law requirements, treatment of excess contributions, and prohibited transactions with the Depositor, Designated Beneficiary, or Responsible Individual, etc. Attach additional pages as necessary.

Optional provisions in Article V and Article VI. Form 5305-EA may be reproduced in a manner that provides only those optional provisions offered by the Custodian.

### ARTICLE 1

The Custodian may accept additional cash contributions provided the Designated Beneficiary has not attained the age of 18 as of the date such contributions are made. Contributions by an individual contributor may be made for the tax year of the Designated Beneficiary by the due date of the Designated Beneficiary's tax return for that year (excluding extensions). Total contributions that are not rollover contributions described in Section 530(d)(5) are limited to \$2,000 for the tax year. In the case of an individual contributor, the \$2,000 limitation for any year is phased out between modified adjusted gross income (AGI) of \$95,000 and \$110,000. For married individuals filing jointly, the phase-out occurs between modified AGI of \$190,000 and \$220,000. Modified AGI is defined in Section 530(c)(2).

## ARTICLE 2

No part of the Custodial Account funds 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 a common investment fund (with the meaning of Section 530(b) (1)(D)).

## ARTICLE 3

**3.1** Any balance to the credit of the Designated Beneficiary on the date on which he/she attains age 30 shall be distributed to him/ her within 30 days of such date.

**3.2** Any balance to the credit of the Designated Beneficiary shall be distributed within 30 days of his/her death unless the designated death beneficiary is a family member of the Designated Beneficiary and is under the age of 30 on the date of death. In such case, that family member shall become the Designated Beneficiary as of the date of death.

## ARTICLE 4

The Depositor shall have the power to direct the Custodian regarding the investment of the above-listed amount assigned to the Custodial Account (including earnings thereon) in the investment choices offered by the Custodian. The Responsible Individual, however, shall have the power to redirect the Custodian regarding the investment of such amounts, as well as the power to direct the Custodian regarding the investment of all additional contributions (including earnings thereon) to the Custodial Account. In the event that the Responsible Individual does not direct the Custodian regarding the investment of additional contributions (including earnings thereon), the initial investment direction of the Depositor also will govern all additional contributions made to the Custodial Account until such time as the Responsible Individual otherwise directs the Custodian. Unless otherwise provided in this agreement, the Responsible Individual also shall have the power to direct the Custodian regarding the administration, management, and distribution of the account.

## ARTICLE 5

The "Responsible Individual" named by the Depositor shall be a parent or guardian of the Designated Beneficiary. The Custodial Account shall have only one Responsible Individual at any time. If the Responsible Individual becomes incapacitated or dies while the Designated Beneficiary is a minor under state law, the Successor Responsible Individual shall be the person named to succeed in that capacity by the preceding Responsible Individual in a witnessed writing or, if no successor is so named, the Successor Responsible Individual shall be the Designated Beneficiary's other parent or successor guardian. At the time that the Designated Beneficiary attains the age of majority under state law, the Designated Beneficiary becomes the Responsible Individual. If a family member under the age of majority under state law becomes the Designated Beneficiary by reason of being a named death beneficiary, the Responsible Individual shall be such Designated Beneficiary's parent or guardian.

## ARTICLE 6

The Responsible Individual may change the beneficiary designated under this agreement to another member of the Designated Beneficiary's family described in Section 529(e)(2) in accordance with the Custodian's procedures.

## ARTICLE 7

1. The Depositor agrees to provide the Custodian with all information necessary to prepare any reports required by Section 530(h).
2. The Custodian agrees to submit to the Internal Revenue Service (IRS) and Responsible Individual the reports prescribed by the IRS.

## ARTICLE 8

Notwithstanding any other articles which may be added or incorporated, the provisions of Articles I through III will be controlling. Any additional articles inconsistent with Section 530 and the related regulations will be invalid.

## ARTICLE 9

This agreement will be amended as necessary to comply with the provisions of the Code of the related regulations. Other amendments may be made with the consent of the Depositor and Custodian.

## ARTICLE 10 – DEFINITIONS

### 10.1 DEFINITIONS

#### **Qualified Elementary, Secondary, and Higher Education Expenses.**

"Qualified higher education expenses," in general, means expenses for tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a Designated Beneficiary at an eligible educational institution. "Qualified elementary and secondary education expenses," in general, means expenses for tuition, fees, academic tutoring, special needs services in the case of a special needs beneficiary, books, supplies, and other equipment which are incurred in connection with the enrollment or attendance of the Designated Beneficiary of the Custodial Account as an elementary or secondary school student at a public, private, or religious school; expenses for room and board, uniforms, transportation, and supplementary items and services (including extended day programs) which are required or provided by a public, private, or religious school in connection with such enrollment or attendance; and expenses for the purchase of any computer technology or equipment (as defined in Section 170(e)(6)(F)(i)) or Internet access and related services, if such technology, equipment, or services are to be used by the Designated Beneficiary and the Designated Beneficiary's family during any of the years the beneficiary is in school. Expenses for computer software designed for sports, games, or hobbies are not included unless the software is predominately educational in nature. "Eligible educational institution" means all accredited public, nonprofit, and proprietary post-secondary schools. The college, university, vocational school, or other postsecondary educational institution must be described in Section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088) and must be eligible to participate in the student aid programs administered by the U.S. Department of Education. "School" means any school that provides elementary education or secondary education (Kindergarten through Grade 12), as determined under State Law.

Rollover contribution means any amount paid or distributed from a Coverdell Education Savings Account that is paid, not later than the 60th day after the date of such payment or distribution, into another Coverdell Education Savings Account for the benefit of the same beneficiary, or a family member of such beneficiary, who has not attained age 30 as of such date.

Only one rollover per Coverdell Education Savings Account is allowed during the 12-month period ending on the date of the payment or distribution.

Modified Adjusted Gross Income (MAGI), for most taxpayers, means Adjusted Gross Income (AGI) as figured on their Federal income tax return. If filing Form 1040, MAGI is the AGI, modified by adding back any:

- a. Foreign earned income exclusion,
- b. Foreign housing exclusion,
- c. Exclusion of income for bona fide residents of American Samoa, Guam, and the Northern Mariana Islands, and
- d. Exclusion of income from Puerto Rico.

## 10.2 DISTRIBUTION OF ACCOUNT

**a. Right to Withdraw.** The Responsible Individual shall have the right to request the withdrawal of all or any part of the ESA Account provided that such withdrawal is made to and reported under the Designated Beneficiary's name and Social Security Number. Withdrawals may be requested by the Responsible Individual at any time upon written notice to the Custodian using a form acceptable to the Custodian. The Custodian shall make distributions in cash or property at the value reported by the Custodian.

**b. Final Distribution of Account – During Designated Beneficiary's Lifetime.** The Responsible Individual shall provide written notice to the Custodian, using a form acceptable to the Custodian, with instructions for the final distribution of any balance to the credit of the Designated Beneficiary 30 days prior to the Designated Beneficiary's attaining age 30.

**c. Final Distribution of Account – Upon Designated Beneficiary's Death.** In the event of the Designated Beneficiary's death, the Responsible Individual shall notify the Custodian within 30 days of the Designated Beneficiary's death and provide written instructions to the Custodian, using a form acceptable to the Custodian, for the final distribution of any balance to the credit of the Designated Beneficiary in accordance with (a) or (b) below:

1. If a death beneficiary has been named, is a family member of the Designated Beneficiary, and is under 30 years of age, such death beneficiary shall become the Designated Beneficiary in accordance with the provisions of Section 10.3.1; or
2. If a death beneficiary has not been named, distribution shall be made in accordance with Section 10.3.2.

**d. Custodian Under No Duty of Notification.** The Custodian shall be under no duty of notification to the Responsible Individual or any other individual and shall have no liability with respect to any adverse consequence (including, but not limited to, taxes and/or penalties), resulting from the Responsible Individual's failure to timely provide the Custodian with the required notifications or instructions.

**e. Transfer of Assets To and From This ESA.** The Custodian is authorized to receive and add to the Custodial Account the assets of another Coverdell ESA for the benefit of the same Designated Beneficiary that are transferred to this plan and which the Responsible Individual has determined are eligible for such transfer. The Responsible Individual on this Plan may direct the Custodian in writing to transfer all or any portion of the Account to another Coverdell ESA established on behalf of the Designated Beneficiary

provided that the Custodian/Trustee of that plan has provided written acceptance of such assets.

**f. Transfer Due To Divorce.** Notwithstanding any other Article conferring authority on the Responsible Individual to notify, instruct, direct or provide approval to the Custodian with respect to the management of the Account, the Designate Beneficiary and the Designated Beneficiary's spouse or former spouse may direct the Custodian in writing, on a form acceptable to the Custodian, to transfer the appropriate portion of the assets in the Account to the Coverdell ESA of the spouse or former spouse pursuant to a divorce or separation instrument. It will be the Designated Beneficiary's, and not the Custodian's, responsibility to ensure that the transfer instructions are in accordance with terms of the decree of divorce, separation or dissolution of marriage.

**g. Change of Designated Beneficiary.** In accordance with Article VI, the Responsible Individual may change the Designated Beneficiary by requesting, on a form acceptable to the Custodian, the transfer of all or a portion of the Account to a separate Coverdell ESA established on behalf of the family member of the Designated Beneficiary receiving the transfer.

## 10.3 ADMINISTRATIVE PROVISIONS

**a. Designation of Death Beneficiary.** The Responsible Individual may designate a death beneficiary to whom the Custodian shall pay any balance to the credit of the Designated Beneficiary upon the Designated Beneficiary's death in accordance with Section 10.2.3. The Custodian shall prescribe the form for the written designation of the death beneficiary and, upon receipt of the form by the Custodian, it shall become effective on that date and shall revoke all designations filed prior to that date by the Responsible Individual. The death beneficiary designation on file with the Custodian as of the date of death shall be considered the effective designation. If more than one death beneficiary is named, any balance to the credit of the Designated Beneficiary shall be paid pro rata to the death beneficiaries.

**b. No Death Beneficiary Designation.** If a Responsible Individual fails to designate a death beneficiary in accordance with Section 10.3.1, or if no designated death beneficiary is living on the date of distribution, then the designated death beneficiary shall be deemed to be the Designated Beneficiary's spouse (if legally married to the Designated Beneficiary on the date of death and if living on the date of distribution), or, if no such spouse, the designated death beneficiary shall be deemed to be the Responsible Individual.

**c. Designation of Successor Responsible Individual.** In accordance with and in addition to Article V, the Responsible Individual may, at any time, relinquish his or her authority, on a form acceptable to the Custodian, as the Responsible Individual in favor of the Successor Responsible Individual named to succeed in that capacity.

**d. Reports.** Notwithstanding Article VII, the Responsible Individual shall furnish the Custodian whatever information is necessary for the Custodian to prepare any report required under Code Section 530(h).

**e. Custodian's Right to Rely on Information.** The Custodian may assume the truth of any statement made by the Responsible Individual under the provisions of the Plan. The Custodian shall be under no duty of inquiry with respect to any statement made by the Responsible Individual and shall have no liability with respect to



any action taken in reliance upon any such statement. Any notice from the custodian to any person provided for in this Plan shall be effective if sent by First Class mail to such person at the person's last known address. The Custodian, Designated Beneficiary, Responsible Individual, or designated death beneficiary may waive any notice required to be received by it under this Plan.

#### **10.4 INVESTMENT OF CUSTODIAL ACCOUNT/ RESPONSIBLE INDIVIDUAL AND CUSTODIAN POWER**

**a. Investment Responsibility.** For purposes of this Plan and any applicable statutory rules, the Responsible Individual or his authorized agent is a fiduciary within the meaning of Code Section 4975(e)(3) with respect to the Account and the assets in this Account. The Custodian acts in a nondiscretionary capacity and does not act as a fiduciary with respect to the appointment of a Financial Representative or the selection and retention of Plan investments. Notwithstanding Article IV, immediately upon establishment of this Plan and subject to the Terms and Conditions of Appointment of Designated Representative or Financial Representative and to Section 10.4.5, the Responsible Individual has the sole authority and discretion, fully and completely, to select and to direct the investment of all assets in this Account. The Responsible Individual accepts full and sole responsibility for the success or failure of any investment decision or selection made and for an investment's suitability to be held in the Account. The Responsible Individual also accepts full responsibility for instituting or defending against any action related to the protection of any investment interest.

The Responsible Individual shall be responsible for ensuring that any documents relating to any investment are signed, recorded, genuine, legally enforceable and/or sufficient to give rise to a legal interest. The Responsible Individual acknowledges that the Custodian shall have no duty or responsibility to take such actions. The Responsible Individual represents that if any investment in this Account is a security under applicable federal or state securities law, that such investment has been registered or is exempt from registration under federal or state securities laws; and the Responsible Individual releases and waives all claims against the Custodian and its agents for their role in carrying out the Responsible Individual's instructions with respect to such investment.

In addition, the Responsible Individual shall be solely and fully responsible for ensuring proper payment of any taxes, tax or other penalties and other liabilities, and compliance with the Responsible Individual's reporting obligations, in connection with contributions to, disbursement from, or investments or transactions with respect to the Account, and for the consequences of such payment (or nonpayment) or of any noncompliance with applicable reporting requirements. Among other things, it shall be the sole and full responsibility of the Responsible Individual:

1. To ensure that any contribution made to the Account is done so in compliance with Code Section 530;
2. To ensure that Account earnings intended by the Responsible Individual to be tax-deferred qualify for tax-deferred treatment;
3. To ensure that contributions to the intended to qualify as Rollover contributions under Code Section 530, qualify as such;
4. To (1) determine if any investment or transaction directly or indirectly involving or relating to the Account or its assets or income may constitute a prohibited transaction, within the

meaning of Code Section 4975; generate "unrelated business taxable income," as defined in the Code, for the Account; constitute a "listed transaction" or "reportable transaction," as defined in the Code and regulations or other pronouncements issued by the United States Treasury or Internal Revenue Service; provides for a rate of interest that is usurious; or otherwise result in adverse tax consequences to the Account, the Responsible Individual or Designated Beneficiary or any other person; and (2) take all corrective actions and comply with all applicable reporting requirements with respect to the foregoing;

**5.** For any year that the custodial account has unrelated business taxable income within the meaning of the Code, before deductions of more than one thousand dollars (\$1,000) (1) obtain (if not previously obtained) a taxpayer identification number from the Internal Revenue Service for the custodial account, (2) to prepare or have prepared on behalf of the Account and submit to the Custodian fully completed federal and state tax return forms, including any requests for filing extensions, and any other documents required to be filed with the Internal Revenue Service or other agency in connection with such forms, at least five (5) business days before the filing deadline for each such form and (3) at the time such forms are submitted to the Custodian, to provide the Custodian with a written directive (or directive in another manner acceptable to the Custodian) authorizing and directing the Custodian to sign such forms on behalf of the custodial account and to pay from the custodial account to the Internal Revenue Service or other agency all amounts which the applicable form reports are due to it; and

**6.** To ensure that all taxes and penalties are properly and timely paid and that all tax and other reporting requirements, other than those which under this Agreement the Custodian has expressly undertaken to satisfy, are properly and timely complied with. Notwithstanding the foregoing, the Custodian, in its sole discretion, may sell or liquidate assets in the Account, to the extent necessary to satisfy any tax deficiency with respect to the Account reported to the Custodian by the Internal Revenue Service, or of any liability properly chargeable to the Account.

Upon the death of the Responsible Individual, the Successor Responsible Individual assumes all rights, responsibilities and liabilities for investment of the Account. Throughout this document, whenever "Responsible Individual" is used, "Successor Responsible Individual" shall be substituted, as appropriate, if the Responsible Individual has died.

**b. Custodian Limitation on Liability.** The Custodian's duties shall be limited to those expressly stated under this agreement or as imposed by the Code or other applicable law. The Custodian acts in a nondiscretionary capacity and has no fiduciary capacity or authority with respect to any matter involving the Account or the Account assets, including but not acts in a non-discretionary capacity and has no fiduciary capacity or authority with respect to any matter involving the Plan or the Plan assets, including but not limited to 1) the appointment and retention of the Financial Representative; 2) the selection and retention of Plan investments; and 3) the selection of Plan assets in order to make distributions from the Plan whether in cash or in kind. The Custodian shall not be liable for the acts or omissions of the Responsible Individual or his agent or of the sponsor of any investment. The Custodian shall

not have any responsibility nor any liability for any loss of income or of capital, nor for any expense which the Custodian may incur, relating to any investment, or to the sale or exchange of any asset which the Responsible Individual or his authorized agent directs the Custodian to make. The Custodian will not act as an investment advisor to a Responsible Individual and shall not have any duty to question the Responsible Individual's or his authorized agent's directions regarding the purchase, retention or sale of any asset or appointment of agent. The Custodian shall not incur any liability by reason of any action taken or not taken by the Responsible Individual or his authorized agent resulting from the Custodian transmitting or not transmitting to the Responsible Individual or his authorized agent any information of any kind and from wherever derived concerning the authorized agent or concerning any investment. The Custodian shall not assume or incur any liability by reason of, or have any duty or responsibility to inquire into, or take action with respect to, any acts performed or not performed by the former Trustee/Custodian of any plan which has transferred all or any portion of its assets to the Custodian of this Account.

The Custodian shall render no tax, legal, investment or other advice (and no statement, communication or other act by the Custodian or any of its employees or agents shall be deemed to constitute or may be relied upon as any such advice) with respect to any investment or transaction involving the Account.

PENSCO's "custodial duties" are limited to receiving the Depositor's funds for investment from Depositor or a Responsible Individual, following the reasonable written instructions and carrying out the ministerial duties set forth in the Custodial Agreement. PENSCO Trust shall be authorized, and shall have the responsibility only to follow the written instructions of the Depositor or Responsible Individual, as expressly provided in this Custodial Agreement.

Depositor acknowledges that it is the Depositor's duty and responsibility to ensure that any documents relating to any investment are signed, recorded, genuine, legally enforceable and/or sufficient to give rise to a legal interest. Depositor acknowledges that PENSCO shall have no duty or responsibility for such actions.

**c. Custodian's Interim Responsibility.** The Participant or the Participant's authorized agent shall direct the Custodian with regard to the investment of any cash in the Account. In the absence of specific direction from the Participant to invest cash in the Account, the Custodian will be deemed to have been directed by the Participant to deposit all uninvested cash with an FDIC-insured depository institution (which may include banks affiliated or that may be affiliated with PENSCO, such as Opus Bank); the uninvested cash deposited with an FDIC-insured depository institution shall bear a reasonable rate of interest.

**d. Custodian's Right Not to Follow Investment Direction.** In addition, margin transactions and writing uncovered calls or puts are not permitted. Certain investments or classes of investments may pose administrative burdens to the Plan or Custodian and therefore, the Custodian also reserves the right not to process or accept such investments. The decision not to act on investment directions that the Custodian deems burdensome for administrative reasons should in no way be construed as a fiduciary decision or a determination concerning the prudence or advisability, legality or consequences of investing in the asset.

**e. Investment of Custodial Account.** The Custodian, as Custodian of the Custodial Account assets entrusted to it under the Plan, shall

not commingle the Trust with any other property it holds except in a common trust fund or common investment fund. Subject to the rules imposed by the Custodian, and in accordance with the investment or other directions given by the Participant or the Participant's authorized agent, the Custodian is authorized and empowered, but not by way of limitation, with the following powers, rights and duties:

1. To hold or invest any part or all of the Custodial Account in any asset permissible under law as an investment for an individual retirement account ;
2. To manage, sell, contract to sell, grant options to purchase, convey, petition, divide, subdivide, exchange, transfer, abandon, improve, repair, insure, lease for any term even though commencing in the future or extending beyond the term of the Custodial Account and otherwise deal with all property, real or personal, in such manner for such considerations and on such terms and conditions as are in accordance with the written direction the Custodian receives;
3. To borrow money, to lend money, to assume indebtedness, extend mortgages and encumber by mortgage or pledge;
4. To have with respect to the Custodial Account all of the rights of an individual owner, including the power to give proxies, to participate in any voting trusts, mergers, consolidations or liquidations and to exercise or sell stock subscriptions or conversion rights, provided the exercise of such powers is in accordance with and at the direction of the Participant;
5. To retain in cash so much of the Custodial Account as the Participant or his authorized agent directs, or as provided under Section 12.3 .
6. To purchase and to hold annuity contracts and exercises all rights of ownership of the contracts.

**f. Custodian's Powers.** Subject to the investment directions of the Responsible Individual or the Responsible Individual's authorized agent, the Custodian shall have the power or duty:

1. To hold any securities or other property in the Custodial Account in the name of the Custodian or its nominee, or in another form as it may deem best, with or without disclosing the Custodian relationship;
2. To retain any funds or property subject to any dispute without liability for the payment of interest and to decline to make payment or delivery of the funds or property until a court of competent jurisdiction makes final adjudication, and to pay all reasonable expenses and attorney's fees which may be necessarily incurred by the Custodian with respect to the foregoing matter;
3. To charge against and pay from the Custodial Account all taxes of any nature levied, assessed or imposed upon the Custodial Account, and to pay all reasonable expenses and attorney's fees which may be necessarily incurred by the Custodian with respect to the foregoing matter;
4. To file any tax or information return required of the Custodian, and to pay any tax, interest or penalty associated with any such tax return;

5. To act pursuant to written blanket settlement authorization given by the Responsible Individual on transactions executed by his designated agent. The Custodian is authorized to honor all trade confirmations received from such agent;

6. To furnish or cause to be furnished to the Responsible Individual, at least annually, reports concerning the status of the Account, including a statement of the assets of the Custodial Account held at the end of the calendar year;

7. To begin, maintain or defend any litigation necessary in connection with the administration of the Plan, except that the Custodian shall not be obliged or required to do so unless indemnified to its satisfaction;

8. To return any third party funds that can be shown to Custodian's satisfaction to have been sent in error or deposited to Account in error; and

9. To amend this Custodial Account Agreement consistent with provisions of applicable law. Notwithstanding the provisions of Article IX, the Responsible Individual irrevocably delegates to the Custodian the power to amend this Custodial Account Agreement without any prior consent of the Responsible Individual upon 30 days prior written notice to the Responsible Individual setting forth such amendment. If the Custodian does request the consent of the Responsible Individual for an amendment to this Custodial Account Agreement, the Responsible Individual will be deemed to have consented to such amendment unless the Responsible Individual responds in writing within 30 days of the mailing of such request, indicating their refusal to consent.

**g. Prohibited Transactions.** The Depositor and/or the Responsible Individual acknowledges that certain types of investments or transactions directly or indirectly involving or relating to the custodial account or its assets or income may (1) constitute prohibited transactions, within the meaning of Code section 4975, resulting in tax consequences to the Depositor and/or other persons; (2) generates "unrelated business taxable income tax," as defined in the Code, for the custodial account; (3) constitute "listed transactions" or "reportable transactions," as defined in the Code and regulations or other pronouncements issued by the United States treasury or Internal Revenue Service, resulting in reporting requirements, and adverse consequences for failing to comply with any applicable reporting or other requirements, for the Depositor and/ or other persons; (4) provide a rate of interest that may be considered usurious, and/ or (5) otherwise result in adverse tax consequences to the custodial account or the Depositor. IT IS THE DEPOSITOR'S RESPONSIBILITY TO DETERMINE AND TO CONSULT HIS OR HER ADVISOR AS THE Depositor DEEMS NECESSARY OR ADVISABLE IN ORDER TO DETERMINE WHETHER AN INVESTMENT OR TRANSACTION INVOLVING THE CUSTODIAL ACCOUNT OR ITS ASSETS OR INCOMES DOES OR MAY CONSTITUTE A PROHIBITED TRANSACTION, GENERATE UNRELATED BUSINESS TAXABLE INCOME, CONSTITUTE A LISTED OR REPORTABLE TRANSACTION, PROVIDES A RATE OF INTEREST THAT MAY BE CONSIDERED USURIOUS, OR RESULTS IN ANY OTHER TAX OR ADVERSE CONSEQUENCE, AND THE CONSEQUENCES, REQUIREMENTS AND OBLIGATIONS RESULTING THEREFROM. PENSICO TRUST AND PENSICO LLC AND THEIR EMPLOYEES AND AGENTS SHALL NOT BE RESPONSIBLE FOR MAKING ANY SUCH DETERMINATION, OR FOR NOT ADVISING THE Depositor TO MAKE

ANY SUCH DETERMINATION. PENSICO TRUST AND PENSICO LLC SHALL NOT BE HELD LIABLE FOR LOSSES, TAXES, PENALTIES OR OTHER CONSEQUENCES RESULTING FROM ANY CUSTODIAL ACCOUNT INVESTMENT OR TRANSACTIONS THAT CONSTITUTES A PROHIBITED TRANSACTION, GENERATES UNRELATED BUSINESS INCOME TAXABLE INCOME, IS A LISTED TRANSACTION OR REPORTABLE TRANSACTION, OR OTHERWISE RESULTS IN ANY ADVERSE CONSEQUENCES TO ANY PERSON.

**h. Delegation of Custodian Powers.** The Custodian may designate or employ any person or persons to carry out any powers or responsibilities of the Custodian. The limitations on the duties of the Custodian under this Custodial Agreement or otherwise shall apply to all such persons.

#### 10.5 FEES & EXPENSES OF THE CUSTODIAN

The Responsible Individual shall be charged by the Custodian for its services under this Plan in accordance with the Custodian's current Fee Schedule applicable to the Plan. The Custodian may receive a service fee from a depository bank, mutual fund or other investment sponsor for necessary administrative services that the Custodian performs incident to the establishment and maintenance of records for any account and the Responsible Individual acknowledges and agrees to the Custodian's receipt of such amounts. If the Responsible Individual dies before distribution of his entire Account, the Successor Responsible Individual shall assume responsibility for all fees and expenses associated with this Account, and shall be covered by this Article 10.5.

#### 10.6 TERMINATION

**a. Termination by the Responsible Individual.** The Responsible Individual shall have the right, at any time, to terminate this Plan and the Custodial Account created under this agreement. The Plan shall terminate upon the first to occur of the following:

1. The date determined by the Responsible Individual's written notice given to the Custodian at least 60 days prior to termination;
2. Upon the written request of the Responsible Individual to terminate the Plan after the Custodian has distributed all assets in the Account; or
3. On the date the Plan ceases to be an Education Savings Account within the meaning of Code Section 530. As soon as administratively practicable after this date, the Custodian shall distribute all of the assets in the Custodial Account to the Designated Beneficiary or transfer all of the assets in the Custodial Account to a successor Trustee/Custodian appointed by the Responsible Individual. The Plan will not be considered terminated if the Custodian has not authorized the removal of the assets from the Plan.

**b. Resignation or Removal of Custodian.** The Custodian may resign at any time with or without cause upon written notice to the Responsible Individual. Resignation will take effect 30 days after the date the notice is sent, unless a successor Trustee/Custodian is duly appointed before that date. The Custodian may be removed at any time with or without cause by the Responsible Individual on 60 days' written notice to the Custodian. Such effective date may be changed upon written mutual agreement. To be effective, the Responsible Individual's notice of removal of the Custodian must include notice of the appointment of a successor Trustee/Custodian and a written acceptance of such appointment by the successor

Trustee/Custodian. If, by the effective date of either the Custodian's resignation or removal or such longer time as the Custodian may agree to, the Responsible Individual has not appointed a successor Trustee/Custodian which has duly accepted such appointment, the Custodian shall terminate the Plan, which shall be effective by distributing all assets in the Account in a single sum in cash or in kind to the Designated Beneficiary, subject to the Custodian's right to reserve funds as provided below. Upon the resignation or removal of the Custodian, the Custodian shall be entitled to deduct from the Custodial Account such reasonable amount as it deems necessary to provide for expenses in the settlement of its account, the amount of compensation due to it, and any taxes or other sums chargeable against the Custodial Account for which it may be liable. If the Custodial Account is not sufficient for such purposes, the Custodian shall have the right to a settlement of its account, which, at the option of the Custodian, may be by judicial settlement in an action the Custodian institutes in a court of competent jurisdiction; or by a settlement agreement between the Custodian and the Responsible Individual (or Successor Responsible Individual, if applicable). Upon settlement under this Section 10.6.2, all right, title and interest of the Custodian in the assets of the Custodial Account shall vest in the successor Trustee/ Custodian or, if no duly appointed successor Trustee/Custodian, in the Designated Beneficiary. At that time, all future liability of the Custodian shall terminate under the Plan; provided, however, the Custodian shall execute, acknowledge and deliver all documents and written instruments necessary to transfer and convey the right, title and interest in the assets of the Custodial Account, to the successor Trustee/Custodian or, if no duly appointed successor Trustee/Custodian, to the Designated Beneficiary.

#### 10.7 SUCCESSOR TRUSTEE/CUSTODIAN

In the event the Custodian merges, reorganizes, is acquired or changes its name, the surviving entity will become the trustee or custodian of the ESA provided that it is authorized to serve in that capacity pursuant to the Code.

#### 10.8 MISCELLANEOUS

**a. No Responsibility for Responsible Individual Action.** The Custodian shall have no obligation or responsibility with respect to any act of, or failure to act, on the part of a Responsible Individual or his/her duly authorized agent or a Successor Responsible Individual or his/her duly authorized agent. The Custodian is not required to determine the correctness of the amount of any contribution, nor is the Custodian required to determine whether a rollover contribution satisfies the definition of Code Section 530(d) (5). The Custodian or the Responsible Individual may waive any notice required to be received by it under this Plan and, in the case of any written notice or election required under this Plan, the Custodian may accept such notice or election in any form (including electronically) approved by the Custodian for such notice or election.

**b. Custodial Account Not Guaranteed.** The Custodian does not in any way guarantee the Custodial Account from loss or depreciation. The liability of the Custodian to make any payment from the Custodial Account at any time and all times is limited to the then available assets of the Custodial Account.

**c. Controlling Provisions.** Any provision of this Plan shall be wholly invalid if it is inconsistent, in whole or in part, with Code Section 530. This Plan shall be governed by and construed, administered and enforced according to the laws of the state in which is located

the Custodian's principal place of business except to the extent preempted by Federal law.

**d. Successors.** The Plan shall be binding upon all persons entitled to benefits under the Plan, their respective heirs and legal representatives and upon the Custodian and its successors.

### ARTICLE 11 – ADDITIONAL ACCOUNT TERMS

#### 11.1 UNINVESTED CASH

PENSCO has the authority to deposit all undirected and uninvested cash into deposit accounts with a Federal Deposit Insurance Corporation (FDIC) insured bank (which may include banks affiliated or that may be affiliated with PENSCO, such as Opus Bank), at the discretion of PENSCO. Deposit accounts in banks affiliated or that may be affiliated with PENSCO shall bear a reasonable rate of interest.

The Account Owner acknowledges that deposits at any such bank are insured by the FDIC up to the federal deposit insurance limits (currently \$250,000 per account holder) and that any amount in excess of the legal limit will not be insured by the FDIC. PENSCO shall seek to identify depository banks that are categorized as "well capitalized" institutions by the FDIC. However, the Account Owner acknowledges and agrees that PENSCO makes no representations or warranties as to the financial status of any depository bank or its ability to satisfy its obligations to the Account Owner and that the status of a depository bank as a "well capitalized" bank at any particular time does not mean that it will be so at any time in the future.

#### 11.2 TELEPHONE TRADING & RECORDED PHONE LINE AUTHORIZATION

Unless you select the "elect-out" option in this section of the Account Application; by signing the Coverdell ESA Application, you authorize PENSCO Trust Company to honor eligible transaction requests it receives by telephone from the you or your designated Financial Representative (including employees and staff of the FR).

PENSCO Trust Company reserves the right not to honor transaction requests by telephone if there are not sufficient funds or shares in the Account, or if PENSCO Trust Company receives incomplete information to process the requested transaction. PENSCO Trust Company will not be liable for any loss, expense or cost arising out of any telephone instructions that are processed pursuant to this procedure.

PENSCO Trust Company has automatic telephone recording equipment on certain telephone lines used by its employees who take or process trading requests and client inquiries. By signing the ESA Application, you give PENSCO Trust Company consent to record and play back such calls as necessary for business purposes, and you acknowledge that recorded phone line conversations are the property of PENSCO Trust Company. Recorded phone line conversations are the property of PENSCO Trust Company and will be maintained at the sole discretion of PENSCO Trust Company.

#### 11.3 INTERESTED PARTY (INFORMATION ONLY) DESIGNATION

You may authorize an additional person (other than yourself or your Designated Representative or Financial Representative – if applicable) to receive Account information and electronic statements ONLY. PENSCO Trust Company will not accept purchase or sale instructions from an Interested Party.

Individuals who are designated as an Interested Party by the Depositor and/or Responsible Individual may not be a sponsor of or otherwise

affiliated with an investment in the Account. It is the responsibility of the Depositor and/or Responsible Individual and the Interested Party to review the assets for the Account to ensure compliance with this provision and to take steps to remove an Interested Party from the Account in the event of non-compliance.

#### **11.4 FINANCIAL REPRESENTATIVE INFORMATION & AUTHORIZATION**

You should complete this section if you choose to designate a financial representative (FR), who the Depositor and/or Responsible Individual authorizes to execute transactions for the ESA according to the "Terms and Conditions of Appointment of Financial Representative" below.

The FR must separately consent to his or her designation as your agent, and acknowledge that he or she will be acting solely as your Agent and not as the agent of PENSCO Trust Company.

##### **a. Terms & Conditions of Appointment of Financial**

**Representative.** By execution of the Application, the named FR (if any) has been designated subject to the following terms and conditions:

1. The Depositor and/or Responsible Individual, and not PENSCO Trust Company, is responsible for the actions of the FR. The FR is the authorized agent of the Depositor and/or Responsible Individual and is not an employee or agent of PENSCO Trust Company. The Depositor and/or Responsible Individual acknowledges that PENSCO Trust Company does not require that the Depositor and/or Responsible Individual appoint an FR, does not recommend the appointment of any specific FR, does not make any representations regarding his/her compliance with securities laws or registration requirements, and is not affiliated with the FR in any way.
2. The FR (which includes the FR's employees and staff) is authorized to provide transaction instructions to PENSCO Trust Company for the Account and to direct PENSCO Trust Company to perform transactions for the Account on behalf of the Depositor and/or Responsible Individual. Such direction may include, but is not limited to, making or receiving payment pursuant to the FR's investment directions or upon receipt of transaction confirmations.
3. The FR may remove himself or herself upon written notice to PENSCO Trust Company.
4. PENSCO Trust Company shall be fully protected in relying on and acting on any notice, instruction, direction or approval received from the FR. PENSCO Trust Company shall be under no duty to make any investigation or inquiry with respect to any notice, instruction, direction or approval received from the FR, or to investigate or take any action with respect to the FR.
5. The Depositor and/or Responsible Individual may remove his or her FR by providing written notice to PENSCO Trust Company on a form acceptable to PENSCO Trust Company; however, the removal of an FR shall not have the effect of canceling any notice, instruction, direction or approval from that FR received by PENSCO Trust Company before PENSCO Trust Company receives written notice of the removal of the FR.
6. The Depositor and/or Responsible Individual may designate a new FR by providing written notice to PENSCO Trust Company on a form provided by PENSCO Trust Company; however, PENSCO Trust Company shall not rely on or action any notice,

instruction, direction or approval from the new FR received by PENSCO Trust Company before PENSCO Trust Company receives the written notice of the new designation of the FR.

7. PENSCO Trust Company shall reflect the name and business address of the Depositor and/or Responsible Individual's designated FR on each quarterly Account statement and shall assume that the FR information reflected on the Account statement is accurate unless the Depositor and/or Responsible Individual and/or the FR notifies PENSCO Trust Company in writing of the discrepancy.

8. If the FR is associated with a broker-dealer firm or financial exchange, PENSCO Trust Company may make information about Account activity available to the broker-dealer or exchange to assist them with their supervisory responsibilities required under applicable rules and regulations.

9. The FR and his/her employees, staff, broker-dealer firm, and any companies to which the aforementioned are associated, may not sponsor or otherwise be affiliated with the investments purchased within the Account. It is the responsibility of the Depositor and/or Responsible Individual and the FR to perform a review of the investments for the Account to ensure compliance with this provision and to take necessary steps to remove the FR from the Account in the event of non-compliance.

10. It is the Depositor and/or Responsible Individual's responsibility to review the actions of the FR to ensure compliance with all laws and regulations and to remove the FR if he or she does not comply with the laws, rules and regulations that apply to the Account or to the terms of the Account.

##### **b. Terms & Conditions of Designated Representative**

1. The Depositor and/or Responsible Individual, by providing such information in any form or manner that is otherwise acceptable to PENSCO Trust, may designate a representative ("Designated Representative") through whom PENSCO Trust shall be authorized to accept investment instructions for the custodial account. The Depositor and/or Responsible Individual (and not PENSCO Trust) shall be responsible for investigating, selecting, instructing and monitoring the Designated Representative, and to perform whatever investigation or due diligence as may be appropriate before selecting, designating or retaining the Designated Representative. The Designated Representative shall be the authorized agent of the Depositor and shall not be treated for any purpose as an employee, agent or affiliate of PENSCO Trust, or as controlled, approved, recommended or endorsed by PENSCO Trust. PENSCO Trust shall have no duty to, and shall not supervise or monitor the Designated Representative or any investment transactions the Designated Representative instructs PENSCO Trust to make. PENSCO Trust may construe any and all investments and transactions requested or directed by the Designated Representative, whether written, or oral, as having been duly authorized by the Depositor and/or Responsible Individual if the Depositor and/or Responsible Individual has appointed a Designated Representative for the custodial account. PENSCO Trust is authorized to notify the Designated Representative of any investment instructions(s) received from the Depositor and/or Responsible Individual; unless the Depositor specifically notifies PENSCO Trust NOT to

do so in writing, or PENSCO Trust is prohibited from doing so by law. PENSCO Trust will not be responsible for any consequences of such notification. The Depositor and/or Responsible Individual may remove a Designated Representative by written notice to PENSCO Trust, provided, however, that removal of a Designated Representative shall not have the effect of cancelling any notice, instruction, direction or approval received by PENSCO Trust from the removed Designated Representative before PENSCO Trust has received written notice of removal of the Designated Representative and has had a reasonable opportunity to implement such cancellation.

**2.** If the Depositor and/or Responsible Individual designates a Designated Representative who is a registered investment advisor (RIA), these additional provisions shall apply: The Custodian may accept instructions from the Designated Representative who is an RIA for investment and other transactions concerning the Account as having been duly authorized by the Account Holder, whether pursuant to any power of attorney, investment management agreement or similar document or instrument pursuant to which the Depositor and/or Responsible Individual has given authority to the RIA with respect to assets such as the custodial account. The Custodian may rely on and implement such instructions from a Designated Representative who is an RIA without obtaining, reviewing or requiring such Designated Representative to provide a copy of any power of attorney, investment management agreement or similar document signed by the Depositor and/or Responsible Individual, and without determining the existence or scope of any restrictions on the authority of the Designated Representative. PENSCO Trust may rely on any communication from any employee of the Designated Representative who is an RIA as having been delivered on behalf of the Designated Representative and shall have no obligation or duty to investigate or determine whether that employee was authorized to deliver these instructions. The Depositor and/or Responsible Individual agrees that the provisions of this paragraph and any other provisions relating to a Designated Representative who is an RIA shall apply as well to any other person that the Depositor and/or Responsible Individual may designate as a Designated Representative if such person is not an RIA but is a regulated person or entity, such as a bank, savings and loan, broker-dealer or other financial institution, with appropriate modifications to the language to reflect the substitution of the type of regulated entity (e.g., "bank") for "RIA" in the relevant provision.

**3.** If the Depositor and/or Responsible Individual appoints a Designated Representative who is an RIA, the Depositor agrees that PENSCO may communicate with the Designated Representative as the principal point of contact with respect to all matters concerning the custodial account and that PENSCO Trust shall have no obligation to copy the Depositor and/or Responsible Individual on its communications with the Designated Representative. The Depositor also authorizes PENSCO Trust to provide copies of all correspondence, reports and statements with respect to the custodial account and any related information about the custodial account to a Designated Representative who is an RIA.

## **11.5 CONFIDENTIALITY & SECURITY**

PENSCO Trust restricts access to nonpublic personal information about the Depositor and the custodial account to those employees, vendors and agents who need to know that information to provide products or services to the custodial account. PENSCO Trust maintains physical, electronic, and procedural safeguards that comply with federal standards to guard the Depositor's nonpublic information. Access to account information is provided only to authorized parties after written or verbal requests are successfully authenticated. It is the Depositor's obligation to promptly report suspected or actual security breach activity that they become aware of to the custodian.

## **11.6 ADMINISTRATIVE FEASIBILITY**

Basic guidelines for this policy are set by the IRS. Other investment restrictions are determined by PENSCO Trust Company for administrative purposes. PENSCO Trust Company reserves the right not to honor any investment instruction if adequate information has not been provided or if PENSCO Trust Company cannot meet special administrative requirements of the investment. PENSCO Trust Company does not recommend or comment on the investment merits or management of any investment. PENSCO Trust Company does not conduct due diligence and it does not review investments for their merits, suitability or legality for investment in a Coverdell ESA. PENSCO Trust Company may, for its own administrative purposes, review investment materials and it may or may not maintain copies of such review material. Depositor and/or Responsible Individuals are responsible for obtaining, reviewing and keeping copies for their own use, any prospectus, offering memorandum, purchase agreement or other material for investments they direct that PENSCO Trust Company purchase in a Coverdell ESA.

Please refer to the Fee Schedule for more information on the types of investments PENSCO Trust Company permits in client Accounts, and to see the fees associated with each type of investment.

## **11.7 PENSCO TRUST COMPANY VALUATION REPORTING POLICY**

Each account statement the Depositor and/or Responsible Individual receives reflects the reported value of the account assets, all transactions that have been processed by PENSCO Trust Company and all fees (if any) that have been charged. PENSCO Trust Company reports the value of account assets as accurately as possible using the resources available to it. The Values listed on the PENSCO Trust

Company account statement may differ from values listed on related brokerage account or other asset sponsor statements.

Individual values for securities that have publicly-quoted prices are reported based solely on such quoted prices, which are obtained from a quotation service or other source generally available to the public. PENSCO Trust Company does not guarantee the accuracy of prices obtained from quotation services or other sources, or the length of availability of such prices.

Values for alternative assets are generally reported at their original offering price to investors. PENSCO Trust Company classifies alternative assets into two types: equity and debt. Assets that PENSCO

Trust Company has classified as alternative equities include, but are not limited to, non-service-priced private partnership or limited liability company interests, private common and preferred stock and private real estate investment trusts. Assets that PENSCO Trust Company has classified as alternative debt include, but are not limited to, mortgages/

deeds of trust, corporate and private partnership notes

and other private debt offerings. Information regarding whether an alternative asset has been classified as equity or debt is available upon request. On an annual basis (or more frequently if requested), PENSICO Trust Company requests updated valuation information from such persons as asset sponsors, general partners or managing members of private partnership or limited liability company interests, officers of private corporations and sponsors of other assets it has classified as alternative equities. PENSICO Trust Company will normally adjust the reported value of an alternative equity asset if the general partner, officer or sponsor provides PENSICO Trust Company with an updated value. If it does not receive an updated value from the general partner, officer or sponsor, PENSICO Trust Company may require that the Depositor and/or Responsible Individual obtain and provide to PENSICO Trust Company an updated value from the asset sponsor, or provide an independent appraisal for their asset. If the Depositor and/or Responsible Individual fails to provide this information, PENSICO Trust Company may require the Depositor and/or Responsible Individual to remove the asset from their account by transfer or distribution. If the Depositor and/or Responsible Individual does not remove the asset from the Account as directed, PENSICO Trust Company may distribute the asset to the Depositor and/or Responsible Individual at the last reported value or resign and distribute the entire Account to the Depositor and/or Responsible Individual. PENSICO Trust Company does not request updated valuation (or outstanding loan balance) information for assets it has classified as alternative debt. However, PENSICO Trust Company will normally adjust the reported value (or outstanding loan balance) of an alternative debt asset if it receives updated valuation (or outstanding loan balance) information from the Servicing Agent or from the alternative debt asset sponsor. For alternative debt assets that, according to PENSICO Trust Company's records have passed their maturity date, PENSICO Trust Company may require the asset sponsor, Servicing Agent or Depositor and/or Responsible Individual to provide information to show the current status of the asset. If PENSICO Trust Company does not receive this information when requested, PENSICO Trust Company may distribute the asset to the Depositor and/or Responsible Individual at the last reported value or resign and distribute the entire Account to the Depositor and/or Responsible Individual. PENSICO Trust Company does not conduct appraisals of assets and does not seek to verify the prices or values provided to it. The reported value of any asset may differ materially from its actual value. PENSICO Trust Company does not guarantee the accuracy of reported values or whether the Depositor and/or Responsible Individual will be able to obtain the reported value in the event of a sale, redemption or surrender. Values reported as N/A indicate that either: 1) PENSICO Trust Company has become aware of an event that has occurred making the previous valuation doubtful, such as a bankruptcy filing or appointment of receiver, 2) PENSICO Trust Company has received information from the asset sponsor, or an independent appraisal from a third party to indicate that the asset has no value, or 3) A security generally has a publicly-quoted price, but PENSICO Trust Company has received a "no-bid" indication from a third party quotation service. Valuation information or other information provided or reported by PENSICO Trust Company should not be used as a basis for making, retaining or disposing of an asset. Please refer to reports (or other information) provided by brokers, general partners, corporate officers or other asset sponsors (or contact these sources directly) with regard to the current operation and status of any chosen asset(s) The frequency with which PENSICO Trust Company updates prices depends upon the asset type and the frequency with which asset sponsors provide updated valuation information. This means that a price might be updated

monthly, quarterly, semiannually, annually or on the specific date the updated valuation information was received. This may also mean that, while the number of shares or other information regarding an asset has been updated, the price may not have been updated.

Note: Mutual funds and other assets sometimes pay dividends or distribute income on or shortly before quarter-end. Such transactions generally will not be reflected on the Account Statement until the quarter in which PENSICO Trust Company receives payment or confirmation from the asset sponsor verifying the transaction and share position. Please keep this in mind when reviewing the Depositor and/or Responsible Individual security positions and account value.

A total value for all your assets (by category) is listed in the "Account Summary" portion of your statement. Your Account Statement (and the reported values therein) should not be used as the basis for making, retaining or disposing of an asset.

#### **11.8 STATEMENT REVIEW PERIOD**

Please review each Account statement carefully, and be sure the activity and balances on your PENSICO Trust Company Account statement are accurate. The Depositor and/or Responsible Individual must report any discrepancies to PENSICO Trust Company in writing within 90 days of the date of the Account statement. If we do not receive the Depositor and/or Responsible Individual's written objections within the stated period, PENSICO Trust Company shall be relieved of all liability for the report, act or procedure reflected on the statement.

#### **11.9 NOTICE OF CHANGE OF ADDRESS**

Any required notice regarding this Coverdell ESA will be considered effective when PENSICO Trust Company mails it to the last address of the intended recipient that we have in our records. Any notice given to PENSICO Trust Company will be considered effective when received. You must notify us of any change in address in writing.

#### **11.10 INDEMNIFICATION & LIMITATION OF LIABILITY**

This section shall apply to you, as the Responsible Individual, the Depositor, Designated Beneficiary and to any named death beneficiary(ies) and any of their successors. All references to the Responsible Individual in this section include the Designated Beneficiary(ies) upon his or her reaching the age of majority and upon any named death beneficiary upon the death of the Designated Beneficiary.

The Custodian shall have no liability for any loss or diminution of the ESA assets resulting from the changes in the market value of an asset; or resulting from reliance or action taken in reliance upon notice, instruction, direction or approval received from a Responsible Individual, the Designated Representative or the FR; or by reason of any exercise or failure to exercise investment direction authority by a Responsible Individual or by the Designated Representative or the FR; or by reason of the Custodian's refusal to act in accordance with any exercise of investment direction by a Responsible Individual the Designated Representative or the FR; or for any failure of the Designated Representative or the FR or asset sponsor to comply with any laws or registration requirements; or by reason of any other act or failure to act by a Responsible Individual or by the designated the Designated Representative or the FR; or by reason of any prohibited transaction or ESA disqualification occurring as a result of any action taken or not taken by the Custodian in reliance on direction from a Responsible Individual, the Designated Representative or the FR.

The Responsible Individual waives and will hold the Custodian harmless from any and all claims including but not limited to damages, court costs, legal fees and costs of investigation arising as a result of changes in the market value of any asset; resulting from reliance or action taken in reliance upon notice, instruction, direction or approval received from a Responsible Individual, the Designated Representative or the FR; or by reason of any exercise or failure to exercise investment direction authority by a Responsible Individual, the Designated Representative or by the FR; or by reason of the Custodian's refusal to act in accordance with any exercise of investment direction by a Responsible Individual, the Designated Representative or the FR; or for any failure of the Designated Representative or the FR or asset sponsor to comply with any laws or registration requirements; or by reason of any other act or failure to act by a Responsible Individual, the Designated Representative or by the FR; or by reason of any prohibited transaction or ESA disqualification occurring as a result of any action taken or not taken by the Custodian in reliance on direction from a Responsible Individual, the Designated Representative or the FR.

The Depositor and/or Responsible Individual, and upon the death of the Depositor and/or Responsible Individual, The Beneficiary, agrees to defend, indemnify and hold harmless PENSICO Trust, PENSICO LLC, their employees, directors, shareholders, officer, agents and representatives, and any successors or assigns of the foregoing, from and against any and all damages, losses, liabilities, claims, actions, costs and expenses, including but not limited to attorneys' fees, court costs and witness fees, that PENSICO Trust and PENSICO LLC or any of such persons may be subject to, incur or pay out, based on, as a result of, arising out of or otherwise related in any way to:

- a. Any act of PENSICO Trust or PENSICO LLC or any such person with respect to the custodial account;
- b. Any claim, suit, action or liability that may be alleged or asserted against PENSICO Trust or PENSICO LLC or any such person in connection with any investment made by PENSICO Trust or with respect to any act taken by PENSICO Trust or PENSICO LLC or any such person pursuant to any direction from the Depositor, the Designated Representative or the FR for failing to act in the absence of any such direction;
- c. The investment or any transaction involving any custodial account asset by PENSICO Trust or any claims or allegations relating to any such investment or transaction; or
- d. Any lawsuit, action, arbitration, formal inquiry or other legal proceeding in which PENSICO Trust or PENSICO LLC or any such person is named as a party (except for any action in which PENSICO Trust or PENSICO LLC is named as a defendant by the Depositor alleging a breach of this Custodial Agreement by PENSICO Trust.

#### **11.11 CONFIRMATIONS DELIVER POLICY**

The Responsible Individual agrees to receive confirmations for trades processed by PENSICO Trust Company in the form of periodic statements which detail trading transactions. The Responsible Individual further understands that he/she may receive a duplicate broker-dealer confirmation or a written notification of a particular mutual fund or other publicly-traded investment transaction at no additional cost.

#### **11.12 ARBITRATION**

The Account Owner hereby agrees that all claims and disputes of every type and matter between the Account Owner and PENSICO, including but

not limited to claims in contract, tort, common law claims or alleged statutory violations, shall be submitted to binding arbitration with, and pursuant to the Rules of, the American Arbitration Association. To the extent not preempted by federal law, Colorado law (including without limitation Colorado statutes governing trust companies) shall control during the arbitration. The Account Owner expressly waives any right he/she may have to institute or conduct litigation or arbitration in any other forum, or before any other body, whether individually, representatively or in another capacity. Arbitration is final and binding on the parties. An award rendered by the arbitrator(s) may be confirmed in any court having jurisdiction over the parties. In an arbitration the parties are entitled to a fair hearing, but arbitration procedures are simpler and more limited than rules applicable in court. The arbitrator's award is not required to include factual findings or legal reasoning, and any party's right to appeal or to seek modification of rulings by the arbitrator is strictly limited.

The Account Owner agrees to the Arbitration Statement above and to the Indemnification of Custodian contained in the plan documents. The indemnification obligation specifically applies to claims brought by the Custodian.

#### **11.13 MINIMUM ACCOUNT VALUE REQUIREMENT**

Accounts requesting a distribution or transfer must retain the minimum cash as required under the Fee Schedule or in an asset PENSICO Trust Company deems liquid in addition to the total amount due for invoiced fees. If the Depositor and/or Responsible Individual's distribution/transfer request would leave the account with less than the required balance, the account may be automatically closed and the termination fee will apply.

#### **11.14 BILLING & FEE COLLECTION**

In consideration for services under this IRA Custodial Account Agreement, PENSICO shall be paid the fees specified on the applicable Fee Schedule, the provisions of which are incorporated into these Additional Account Terms. Such fees may include, but are not limited to, account establishment, account maintenance, account termination and other account administrative fees as identified in the applicable Fee Schedule, as well as processing fees and custodial cash management and administration fees for uninvested cash balances held at FDIC-insured depository institutions unaffiliated with PENSICO ("Custodial Cash Fee"). Account establishment fees shall be paid by the Account Owner at the time a completed and executed IRA Application is submitted to PENSICO. Account administration, account termination, custodial processing services and other account administrative fees ("custodial fees") shall be paid either by deducting cash from the custodial account or by charging the debit/credit card on file, or by any other acceptable payment method that may be offered by PENSICO in the future. The Custodial Cash Fee paid to PENSICO shall be deducted from interest earned on cash balances prior to the crediting of such interest to the Account Owner's custodial account at the end of each month, and is charged as a percentage, as determined in the discretion of PENSICO from time to time (the "Percentage"). The Custodial Cash Fee may reduce the amount of net interest paid to the Account Owner on a monthly basis to zero or a negligible amount. The Custodial Cash Fee is not charged against the principal balance of cash held by the Account Owner in the custodial account. See the Uninvested Cash section for more details regarding uninvested custodial cash. The account is only eligible to earn interest if it is open as of the interest crediting date, and any interest that may accrue during a month that an account is



closed prior to the interest crediting date will be paid to PENSCO as an additional fee.

PENSCO reserves the right to effect changes to its Fee Schedule, including an increase in the maximum percentage that may be charged as a Custodial Cash Fee, upon thirty (30) days prior written notice to the Account Owner, with the exception of the Custodial Cash Fee Percentage which may vary from time to time, and may be changed at any time without notice.

Fees will continue to accrue and be payable even if the Account contains no assets from which PENSCO can collect amounts owed by the Account Owner.

PENSCO may charge the Account Owner, and/or the custodial account, and shall be reimbursed by the Account Owner or the custodial account, for any reasonable expense incurred by PENSCO in connection with any account services or activities that PENSCO determines are necessary or advisable, or which are expressly directed by the Account Owner, and which are not included in the services provided by PENSCO for its normal fees. PENSCO will only pay expenses relating to the external administration of a specific investment held in the custodial account, such as property tax or association fees, from cash available in the custodial account and will not advance such expenses on behalf of the Account Owner if cash is unavailable.

Examples of the foregoing include, but are not limited to, attorney's fees and other legal costs and expenses (including, without limitation, filing and other court fees; arbitration; mediation; investigation; expert witness; and court reporter fees and similar expenses): (1) in defense of, or otherwise on behalf of, the custodial account or the Account Owner's interest therein in any arbitration, litigation, investigation or request by a governmental or regulatory agency, involving or relating to the custodial account or any of its assets or transactions; or (2) in defense of PENSCO, if PENSCO is named together with the Account Owner or the custodial account in any proceeding involving the Account Owner or the custodial account. PENSCO may establish a reasonable reserve from the assets of the custodial account with which to pay its compensation or expenses for administration.

Within thirty (30) days of establishment of a custodial account, the Account Owner shall furnish PENSCO with the cardholder name, card number and expiration date ("Information") of a valid credit card or bank/debit card ("debit/credit card"). (See the PENSCO website for a list of acceptable card account issuers.) The cardholder shall authorize PENSCO to charge the card account on file for custodial fees and expenses in accordance with this Billing and Fee Collection section. The Account Owner must maintain valid debit/credit card Information on file at all times. If such debit/ credit card Information expires or otherwise ceases to be valid, the Account Owner shall immediately provide PENSCO with valid replacement debit/credit card Information, and authorize PENSCO to charge such replacement debit/credit card for custodial fees and expenses in accordance with this Billing and Fee Collection section.

Account Owners may elect to pay their custodial fees using available cash in their custodial account, or by charging the debit/credit card Information on file (the "Fee Payment Preference"). Fees will first be satisfied by cash held as prepayment of fees, if any. If there is no cash held as prepaid fees, PENSCO will attempt to satisfy fees using the method selected as the Fee Payment Preference.

If PENSCO is not able to satisfy the payment of fees using the selected Fee Payment Preference, satisfaction of custodial fees will be attempted using any other available means, including by using available cash in the custodial account. Please note that if PENSCO has to use other available means to satisfy the fee balance, this may delay the transaction including, account termination request, and may result in adverse tax consequences.

In the event that an Account Owner has selected a Fee Payment Preference of charging the debit/credit card on file, and PENSCO's attempt to charge the debit/credit card fails for any reason, including but not limited to, card expiration or temporary "holds" placed on the card by the card issuer, and PENSCO is able to satisfy the outstanding fees using available cash in the custodial account as described above, PENSCO may, at its sole discretion, decline any request to make subsequent attempts to charge the credit/ debit card on file or other card as provided by the Account Owner for such fees and to reimburse the custodial account in the amount of such fees.

For any Account Owner request to reimburse the custodial account for fees collected from available cash in the situation described above (where the Fee Payment Preference was set to charge the debit/credit card on file, but where such attempt failed, and available cash in the custodial account was used to satisfy such fees) in favor of making payment with unqualified funds (from outside of the custodial account), PENSCO may, at its sole discretion, accept a check to pay the fees under these circumstances, and PENSCO will not make a subsequent attempt to charge the credit/debit card on file or to charge any other credit/debit card provided by the Account Owner for such fees.

If any custodial fees remain outstanding for more than 45 days, and all available payment methods have been attempted to satisfy such fees, PENSCO may attempt to satisfy any such unpaid fees by liquidating investments in the custodial account as PENSCO determines in its sole discretion, as necessary to satisfy the balance of the outstanding fees plus an amount equal up to one year's estimated custodial fees, as well as any other costs associated with such liquidation, including but not limited to all expenses charged by asset sponsors and the fees set forth on the Fee Schedule. The prior quarter's fees, plus applicable annual custodial fees shall be used as a basis for the estimation of the one year custodial fees.

If custodial fees remain outstanding after 45 days, after reasonable attempts have been made to satisfy such fees with other available means, PENSCO may notify the Account Owner in writing of its intent to resign as Custodian and distribute its assets to the Account Owner if fees are not satisfied within 30 days from the date of such notification. PENSCO may employ a collection agency to recover all unpaid fees and expenses.

In the event of an overdraft in the custodial account, PENSCO shall provide the Account Owner with written notice to immediately either pay PENSCO or deposit funds in the custodial account to remedy such overdraft. Upon failure of the Account Owner to pay outstanding fees and expenses, or to remedy an overdraft in the custodial account within the time specified, following a 30-day notice period, PENSCO may resign as Custodian and distribute the account assets to Account Owner. PENSCO may employ a collection agency to recover all unpaid fees, expenses, and overdrafts.

The Account Owner hereby relieves PENSCO of any liability, including but not limited to claims for costs, taxes, penalties and extra fees resulting

from the failure of the Account Owner to pay any assessed fees in a timely manner and from any consequent actions taken by PENSICO. The Account Owner understands and agrees he or she is responsible for reporting any inaccuracy of all assessed account fees and must report any inaccuracies within 45 days of the Fee Statement date.

For any charge made to a credit/debit card that the Account Owner wishes to dispute, the Account Owner shall direct the dispute to PENSICO. If after a review of the dispute, PENSICO agrees that the charge or portion thereof should be refunded, such refund will be processed in a timely manner.

Debit/credit card charges should not be disputed directly with the card issuer. Doing so may result in a charge back to PENSICO, which will in turn result in an immediate debit to the uninvested cash in the custodial account of an equal amount that was charged to PENSICO. Should the uninvested cash in the custodial account be insufficient to cover the amount, the outstanding balance will be assessed to the custodial account and the Account Owner will be notified. Satisfaction of the assessed fee amount will be subject to the terms of this Billing and Fee Collection section.

Accounts holding \$200 or less in cash, and no other assets, may be closed, and the cash balance will be paid to PENSICO as an Account Termination Fee as set forth in the Fee Schedule.

Certain fees set forth on the Fee Schedule may continue to apply after notification to an Account Owner of their account closure. Examples of such fees may include, but are not limited to: research/special services fees (including trailing dividends and other payments to the custodial account post-closure), check/wire fees, requests for copies of records and other miscellaneous fees that are attributable to work performed by PENSICO related to the custodial account, but performed after the account has closed. Any fees that remain unpaid after the custodial account is closed will be subject to collections and payment according to the terms outlined in this Billing and Fee Collection section.

#### **11.15 GOVERNING LAW**

Except to the extent governed by or subject to the requirements of the Code or other applicable federal law, or preempted by federal law, the Custodial Agreement shall be governed by and construed and administered under the laws of the State of Colorado, without giving effect to any state's choice of law provisions.

#### **11.16 ELECTRONIC RECORDS**

PENSICO Trust and the Depositor and/or Responsible Individual agree that PENSICO Trust, the Depositor and/or the Responsible Individual each has the legal and contractual right to (a) execute and deliver this Custodial Agreement and all supplemental and replacement agreements (collectively, the "Agreement"); (b) provide and communicate directions, instructions, notices, information, records and documents (collectively, the "Documents") to each other and other persons or entities; (c) create, generate, record, store, transmit, receive, and retain the Documents and Agreements; and (d) effect and process transactions under the Agreements for all of the foregoing or related purposes through or by the use of electronic means, processes, transmissions, communications, and records. All Agreements and documents pertaining or relating to the legal, contractual, transactional and business relationship between PENSICO Trust, the Depositor and/or the Responsible Individual, including, without limitation, all directions and instructions of the Depositor and/or Responsible Individual to PENSICO

Trust, may be recorded, stored, retained, and evidenced by electronic records. Any written or similar Agreements or Documents in paper or hard copy form (collectively, the "Hard Copy Documents") may also be converted to, and recorded, stored, retained, and evidenced by or in electronic records, including Hard Copy Documents that have been created or are effective prior to the date of this Custodial Agreement. Electronic records shall include electronic signatures of each of PENSICO Trust, the Depositor and/or Responsible Individual and those of any third person or entity. PENSICO Trust, the Depositor and/or Responsible Individual may refuse to conduct transaction by electronic means upon notice to the other party, may refuse to conduct transactions by electronic means upon notice to the other party.

Any electronic record shall accurately reflect the information set forth in any Hard Copy Record, if applicable, after it was first generated in its final form as an electronic record or alternative format. All electronic records of PENSICO Trust, the Depositor and the Responsible Individual shall remain accessible for later reference or use by PENSICO Trust, the Depositor and/or the responsible Individual or any other person or entity.

After either PENSICO Trust, the Depositor and/or the responsible Individual has recorded, stored, retained, and evidenced any such Hard Copy Documents into electronic records, then PENSICO Trust, the Depositor and/or the Responsible Individual, as the case may be, shall have the right but no obligation, to destroy any Hard Copy Documents so recorded, stored, retained and evidenced by or into electronic records, including any Hard Copy Documents that predate, or were in effect or prior to, the date of this Custodial Agreement (collectively, the "Pre-existing Hard Copy Documents"). The destruction of any Pre-existing Hard Copy Documents shall not affect any rights of either PENSICO Trust, the Depositor and/or the Responsible Individual, including for legal, contractual, transactional, or business purposes or with respect to any contractual, legal or regulatory dispute or proceeding of any type or nature, including lawsuits, arbitrations, mediations, investigations, administrative proceedings, regulatory actions, or the like (collectively, "Proceedings"). Either party may introduce all applicable electronic records, including those electronic records of such Hard Copy Documents that were destroyed, into evidence, for the record or for any other legal, contractual, transactional, regulatory or related purpose at any Proceedings and may utilize all such electronic records for all of the foregoing purposes. Notwithstanding the foregoing, neither PENSICO Trust, the Depositor and/or the Responsible Individual shall destroy any Hard Copy Documents that are required by applicable law to be retained in an original or non-electronic form.

#### **11.17 ATTORNEY'S FEES**

In the event of any dispute or controversy between PENSICO Trust or PENSICO LLC and the Depositor and/or Responsible Individual, with regard to the custodial account or this Custodial Agreement or any provision hereof, or its interpretation, construction or implementation, or relating to the respective duties of the parties hereunder, the prevailing party in such dispute shall be entitled to recover from the non-prevailing party all reasonable fees, costs and expenses, including without limitation, attorney's fees, costs and expenses incurred by or on behalf of the prevailing party, all of which shall be in addition to any award of damages or other relief to which such party is entitled.

# FACTS

## WHAT DOES PENSCO TRUST COMPANY DO WITH YOUR PERSONAL INFORMATION?

**Why?** Financial Companies choose how they share your personal information. Federal law gives consumers the right to limit some, but not all, sharing. Federal Law also requires us to tell you how we collect, share, and protect your personal information. Please read the notice carefully to understand what we do.

**What?** The types of personal information we collect and share depend on the product or service you have with us. This information can include:

- Social Security number and account balances
- Account transactions and payment history
- Assets and investment experience

When you are *no longer* our customer, we continue to share your information as described in this notice.

**How?** All financial companies need to share customers’ personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers’ personal information; the reasons PENSCO Trust Company chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does PENSCO Trust Company share?	Can you limit this sharing?
<b>For our everyday business purposes</b> – such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus	Yes	No
<b>For our marketing purposes</b> – to offer our products and services to you	Yes	No
<b>For joint marketing with other financial companies</b>	No	We don’t share
<b>For our affiliates’ everyday business purposes</b> – information about your transactions and experiences	Yes	No
<b>For our affiliates’ everyday business purposes</b> – information about your creditworthiness	No	We don’t share
<b>For our affiliates to market to you</b>	Yes	Yes
<b>For nonaffiliates to market to you</b>	No	We don’t share

**To limit our sharing**

- Call **800-962-4238**. A representative will assist you with your request, or
- Visit us online to review our policy and opt-out: [www.pensco.com/legal/privacy](http://www.pensco.com/legal/privacy)

**Questions?** Call **800-962-4238** or visit [www.pensco.com](http://www.pensco.com)

## Who we are

**Who is providing this notice?**

PENSCO Trust Company

## What we do

**How does PENSCO Trust Company protect my personal information?**

To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.

**How does PENSCO Trust Company collect my personal information?**

We collect your personal information, for example, when you

- Open an account or deposit money
- Provide account information or give us your contact information
- Direct us to buy or sell securities
- Use your credit or debit card

**Why can't I limit all sharing?**

Federal law gives you the right to limit only

- Sharing for affiliates' everyday business purposes — information about your creditworthiness
- Affiliates from using your information to market to you
- Sharing for nonaffiliates to market to you

State laws and individual companies may give you additional rights to limit sharing.

**What happens when I limit sharing for an account I hold jointly with someone else?**

Your choice will apply to everyone on your account, unless you tell us otherwise.

## Definitions

**Affiliates**

Companies related by common ownership or control. They can be financial and nonfinancial companies.

- PENSCO Trust Company is affiliated to the following entities: Opus Bank, a California Commercial Bank; Opus Financial Partners, LLC; Opus Equity Partners, LLC; and PENSCO Services, LLC.

**Nonaffiliates**

Companies not related by common ownership or control. They can be financial and nonfinancial companies.

- Neither PENSCO Trust Company nor its affiliates share your information with nonaffiliates for marketing purposes.

**Joint Marketing**

A formal agreement between nonaffiliated financial companies that together market financial products or services to you.

- PENSCO Trust Company does not participate in joint marketing with nonaffiliates.

## PENSICO Service Schedule

BASIC COSTS	
<b>Account Establishment</b>	\$50
<b>Quarterly Account Administration<sup>1</sup></b> Per account, based on total account value (TAV)	
\$0—\$79,999	\$100.00
\$80,000—\$99,999	\$50.00 + .0625% of TAV
\$100,000—\$499,999	\$62.50 + .05% of TAV
\$500,000—\$999,999	\$150.00 + .0375% of TAV
\$1,000,000+	\$275.00 + .025% of TAV
<b>Asset Custodial Processing Services</b>	
Quarterly asset maintenance <sup>2</sup> (per asset)	
Real property, promissory notes and mortgages	\$12
All other assets <sup>3</sup>	Free
Purchases and sales	
Alternative assets	Free
<b>Distribution and Transfer Costs</b>	
Asset transfer in	Free
Partial account transfer out (per transfer to another institution)	\$100
Partial distribution requests	\$8
Full account closure	\$225 + \$50 per asset

OTHER COSTS			
ACH	Free	Paper statement <sup>4</sup>	\$5 (\$20 annually)
Wire	\$30	Roth conversion	Free
Check	Free	Roth re-characterization	\$150
Cashier's check	\$35	Minimum cash balance <sup>5</sup>	\$25
Overnight mail	\$18	Custom research, special services billed at \$75/hr	
		Returned check	\$30
		Safekeeping <sup>6</sup>	\$40
		Late payment <sup>7</sup>	\$25
		Account reopen	\$275

The Account Owner can choose to pay service charges with a credit/debit card, bank account (ACH), or with cash from the account. Registered Account Owners can update their payment preferences online at [www.pensico.com](http://www.pensico.com).

<sup>1</sup> The account administration cost is billed quarterly in arrears based on the total account value on the last business day of the calendar quarter.

<sup>2</sup> The quarterly asset maintenance cost is assessed on asset holdings as of the last business day of each calendar quarter.

<sup>3</sup> Other alternative assets include, but are not limited to, LPs, LLCs, non-exchange traded REITs, corporate debit and tax liens.

<sup>4</sup> Paper statement costs are billed quarterly at the end of each quarter.

<sup>5</sup> Minimum average daily cash balance of \$500 must be maintained. The minimum cash balance fee is assessed quarterly based on the average daily cash balance for the quarter.

<sup>6</sup> Safekeeping cost is per asset document package, billed annually in advance, in the quarter in which the asset is accepted.

<sup>7</sup> The late payment cost is billed in any quarter in which any costs are outstanding after forty-five (45) calendar days following the end of the prior calendar quarter.

**INVESTMENT PRODUCTS ARE NOT FDIC INSURED • NO BANK GUARANTEE • MAY LOSE VALUE**

PENSCO Trust Company ("PENSCO") shall charge a Custodial Cash fee that will be deducted from interest earned on cash balances prior to the crediting of such interest to the Account Owner's custodial account at the end of each month. The account is only eligible to earn interest if it is open as of the interest crediting date, and any interest that may accrue on the account during a month that the account is closed prior to the interest crediting date will be paid to PENSCO as an additional fee. The Custodial Cash fee is charged as a percentage, as determined in the discretion of PENSCO from time to time, but not to exceed a maximum per annum rate of 3.50% of the average daily balance of custodial account cash. See the Uninvested Cash and Terms for Uninvested Cash sections of your Account Owner Agreement for more information about the Custodial Cash fee.

PENSCO reserves the right to effect changes to this Fee Schedule, including an increase in the maximum percentage that may be charged for Custodial Cash fees, upon thirty (30) days' prior written notice to the Account Owner, with the exception of the Custodial Cash fee percentage which will vary from time to time based on the cash balance held by the Account Owner in the custodial account and for which the percentage charged by PENSCO may be changed at any time without notice if it does not exceed the maximum percentage. A reduction in the maximum percentage for the Custodial Cash fee may also be made by PENSCO at any time without notice. See the Uninvested Cash and Terms for Uninvested Cash sections of your Account Owner Agreement for more information about the Custodial Cash fee.

Fees will continue to accrue and be payable even if the Account contains no assets from which PENSCO can collect amounts owed by the Account Owner.

The Account Owner is responsible for reporting any inaccuracy of all assessed account fees and must report any inaccuracies to PENSCO's Client Services within 45 days of the Fee Statement date.

Accounts holding \$200 or less in cash, and no other assets, may be closed at PENSCO's sole discretion, and the cash balance will be paid to PENSCO as a Full Account Closure fee.

PENSCO may charge the Account Owner, and/or the custodial account, and shall be reimbursed by the Account Owner or the custodial account, for any reasonable expense incurred by PENSCO in connection with any account services or activities that PENSCO determines are necessary or advisable, or which are expressly directed by the Account Owner, and which are not included in the services provided by PENSCO for its normal fees. See the Account Owner Agreement for more details.

All outstanding account costs must be satisfied prior to the completion of an asset transfer out or an account closure.

Certain costs in this Fee Schedule may apply after notification of account closure. Examples include: research/special services costs, such as trailing dividends, check/wire costs, and requests for copies of records. Costs that remain unpaid after account closure will be subject to collections and payment according to the terms of the Account Owner Agreement.

Fees for non-recourse loans will be assessed on the asset only – the loan will not be included for the purposes of determining fees.

PENSCO does not provide investment advice, does not sell investments, and does not offer tax or legal advice. PENSCO does not evaluate, recommend or endorse any advisory firm or investment. Investments are not FDIC insured and are subject to risk, including the loss of principal.