

# HEALTH SAVINGS CUSTODIAL ACCOUNT AGREEMENT

Form 5305-C under section 223(a) of the Internal Revenue Code.

FORM (December 2011)

The account owner named on the application is establishing this health savings account (HSA) exclusively for the purpose of paying or reimbursing qualified medical expenses of the account owner, his or her spouse, and dependents. The account owner represents that, unless this account is used solely to make rollover contributions, he or she is eligible to contribute to this HSA; specifically, that he or she: (1) is covered under a high deductible health plan (HDHP), (2) is not also covered by any other health plan that is not an HDHP (with certain exceptions for plans providing preventive care and limited types of permitted insurance and permitted coverage), (3) is not enrolled in Medicare, and (4) cannot be claimed as a dependent on another person's tax return.

The account owner has assigned the custodial account the sum indicated on the application.

The account owner and the custodian make the following agreement:

## ARTICLE I

1. The custodian will accept additional cash contributions for the tax year made by the account owner or on behalf of the account owner (by an employer, family member, or any other person). No contributions will be accepted by the custodian for any account owner that exceeds the maximum amount for family coverage plus the catch-up contribution.
2. Contributions for any tax year may be made at any time before the deadline for filing the account owner's federal income tax return for that year (without extensions).
3. Rollover contributions from an HSA or an Archer medical savings account (Archer MSA) (unless prohibited under this agreement) need not be in cash and are not subject to the maximum annual contribution limit set forth in Article II.
4. Qualified HSA distributions from a health flexible spending arrangement or health reimbursement arrangement must be completed in a trustee-to-trustee transfer and are not subject to the maximum annual contribution limit set forth in Article II.
5. Qualified HSA funding distributions from an individual retirement account must be completed in a trustee-to-trustee transfer and are subject to the maximum annual contribution limit set forth in Article II.

## ARTICLE II

1. For calendar year 2011, the maximum annual contribution limit for an account owner with single coverage is \$3,050. This amount increases to \$3,100 in 2012. For calendar year 2011, the maximum annual contribution limit for an account owner with family coverage is \$6,150. This amount increases to \$6,250 in 2012. These limits are subject to cost-of-living adjustments after 2012.
2. Contributions to Archer MSAs or other HSAs count toward the maximum annual contribution limit to this HSA.
3. For calendar year 2009 and later years, an additional \$1,000 catch-up contribution may be made for an account owner who is at least age 55 or older and not enrolled in Medicare.
4. Contributions in excess of the maximum annual contribution limit are subject to an excise tax. However, the catch-up contributions are not subject to an excise tax.

## ARTICLE III

It is the responsibility of the account owner to determine whether contributions to this HSA have exceeded the maximum annual contribution limit described in Article II. If contributions to this HSA exceed the maximum annual contribution limit, the account owner shall notify the custodian that there exist excess contributions to the HSA. It

is the responsibility of the account owner to request the withdrawal of the excess contribution and any net income attributable to such excess contribution.

## ARTICLE IV

The account owner's interest in the balance in this custodial account is nonforfeitable.

## ARTICLE V

1. No part of the custodial funds in this account may be invested in life insurance contracts or in collectibles as defined in section 408(m).
2. The assets of this account may not be commingled with other property except in a common custodial fund or common investment fund.
3. Neither the account owner nor the custodian will engage in any prohibited transaction with respect to this account (such as borrowing or pledging the account or engaging in any other prohibited transaction as defined in section 4975).

## ARTICLE VI

1. Distributions of funds from this HSA may be made upon the direction of the account owner.
2. Distributions from this HSA that are used exclusively to pay or reimburse qualified medical expenses of the account owner, his or her spouse, or dependents are tax-free. However, distributions that are not used for qualified medical expenses are included in the account owner's gross income and are subject to an additional 20 percent tax on that amount. The additional 20 percent tax does not apply if the distribution is made after the account owner's death, disability, or reaching age 65.
3. The custodian is not required to determine whether the distribution is for the payment or reimbursement of qualified medical expenses. Only the account owner is responsible for substantiating that the distribution is for qualified medical expenses and must maintain records sufficient to show, if required, that the distribution is tax-free.

## ARTICLE VII

If the account owner dies before the entire interest in the account is distributed, the entire account will be disposed of as follows:

1. If the beneficiary is the account owner's spouse, the HSA will become the spouse's HSA as of the date of death.
2. If the beneficiary is not the account owner's spouse, the HSA will cease to be an HSA as of the date of death. If the beneficiary is the account owner's estate, the fair market value of the account as of the date of death is taxable on the account owner's final return. For other beneficiaries, the fair market value of the account is taxable to that person in the tax year that includes such date.

## ARTICLE VIII

1. The account owner agrees to provide the custodian with information necessary for the custodian to prepare any report or return required by the IRS.
2. The custodian agrees to prepare and submit any report or return as prescribed by the IRS.

## ARTICLE IX

Notwithstanding any other article that may be added or incorporated in this agreement, the provisions of Articles I through VIII and this sentence are controlling. Any additional article in this agreement that is inconsistent with section 223 or IRS published guidance will be void.

## ARTICLE X

This agreement will be amended from time to time to comply with the provisions of the Code or IRS published guidance. Other amendments may be made with the consent of the persons whose signatures appear on the application.

## ARTICLE XI

**11.01 Definitions** – In this part of this agreement (Article XI), the words “you” and “your” mean the account owner. The words “we,” “us,” and “our” mean the custodian, “Code” means the Internal Revenue Code, and “regulations” means the Treasury regulations.

**11.02 Notices and Change of Address** – Any required notice regarding this HSA will be considered effective when we send it to the intended recipient at the last email address we have in our records. If no email address was provided, we will provide such notice by U.S. mail to the last address we have in our records. This notice will direct you to our website to view any new information pertaining to your HSA electronically unless you notify us that you prefer we provide you with paper copies of the same. You, or the intended recipient, must promptly notify us of any change of email or mailing address. Any notice to be given to us will be considered effective when we actually receive it.

### 11.03 Representations and Responsibilities

a. *In General.* You represent and warrant to us that any information you have given or will give us with respect to this agreement is complete and accurate. Further, you agree that any directions you give us or action you take will be in compliance with applicable laws and proper under this agreement, and that we are entitled to rely upon any such information or directions. If we fail to receive directions from you regarding any transaction, if we receive ambiguous directions regarding any transaction, or if we, in good faith, believe that any transaction requested is in dispute, we reserve the right to take no action until further clarification acceptable to us is received from you or the appropriate government or judicial authority. We will not be responsible for losses of any kind that may result from your directions to us or your actions or failures to act, or for our exercising our right to take no action until we have received further clarification acceptable to us, and you agree to reimburse and indemnify us for any loss we may incur as a result of such directions, actions, or failures to act. We will not be responsible for any penalties, taxes, judgments, or expenses you incur in connection with your HSA. We have no duty to determine whether your contributions or distributions comply with the Code, regulations, rulings, or this agreement.

We may permit you to appoint, through written notice acceptable to us, an authorized agent to act on your behalf with respect to this agreement (e.g., attorney-in-fact, executor, administrator, and investment manager); we have no duty to determine the validity of such appointment or any instrument appointing such authorized agent. In addition, we may allow you to designate an authorized signer to perform various limited transactions on your HSA as specified in a form provided by or acceptable to us. We may rely upon this designation until such time, if any, that we receive a written revocation of the authorization. We will not be responsible for losses of any kind that may result from directions, actions, or failures to act by your authorized agent and/or authorized signer, and you agree to reimburse and indemnify us for any loss we may incur as a result of such directions, actions, or failures to act by your authorized agent and/or authorized signer. You will have 60 days after you receive any

documents, statements, or other information. If you do not notify us within 60 days, the documents, statements, or other information will be deemed correct and accurate, and we will have no further liability or obligation for such documents, statements, other information, or the transactions described therein.

By performing services under this agreement we are acting as your agent. You acknowledge and agree that nothing in this agreement will be construed as conferring fiduciary status upon us. We will not be required to perform any additional services unless specifically agreed to under the terms and conditions of this agreement, or as required under the Code and the regulations promulgated thereunder with respect to HSAs. We may employ agents and organizations for the purpose of performing administrative or other custodial-related services with respect to your HSA for which we otherwise have responsibility under this agreement, and the limitations on our duties to you under this agreement or otherwise will also apply with respect to each agent or organization so employed. You represent to us that if a mandatory distribution arises, you will have the means through your HSA and/or other retirement accounts to meet any mandatory distribution requirements. You agree to release, indemnify, and hold us harmless for any and all claims, actions, proceedings, damages, judgments, liabilities, costs, and expenses (including, without limitation, attorney’s fees) arising from or in connection with this agreement.

To the extent written instructions or notices are required under this agreement; we may accept or provide such information in any other form permitted by the Code or applicable regulations including, but not limited to, electronic communication.

UNDER NO CIRCUMSTANCES ARE WE, OR OUR OFFICERS, DIRECTORS, EMPLOYEES, MEMBERS, AGENTS, LICENSORS, OR REPRESENTATIVES, SUBJECT TO OR LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY OR SIMILAR DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES OR COSTS INCURRED AS A RESULT OF LOSS OF TIME, LOSS OF SAVINGS, LOSS OF DATA, LOSS OF REVENUES AND/OR PROFITS, WHETHER FORESEEABLE OR UNFORESEEABLE, THAT MAY ARISE OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR CUSTODIAN OR ADMINISTRATOR COMPLYING WITH YOUR DIRECTIONS, REGARDLESS IF SUCH DAMAGES ARE BASED IN CONTRACT, TORT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE.

b. *Prohibited Transactions.* You understand that certain transactions are prohibited in HSA plans under the Code, and specifically Code section 4975. You further understand that the determination of a prohibited transaction depends on the facts and circumstances that surround the particular transaction. You understand that we have no obligation or duty to make a determination, and accordingly will make no determination, as to whether any HSA investment is prohibited. You further understand that should your HSA engage in a prohibited transaction, you will incur a taxable distribution as well as possible penalties. You represent to us that you have consulted or will consult with your own tax or legal professional to ensure that none of your directions or instructions or HSA investments will constitute a prohibited transaction and that your HSA investments will comply with all applicable federal and state laws, regulations, and requirements.

c. *Unrelated Business Income Tax (UBIT).* Since your HSA is a tax-exempt organization under the Code, if your HSA earns income from an investment that uses debt financing or

that is derived from a business regarded as not related to the exempt purpose of your HSA, it may be subject to the so-called "unrelated business income tax" if it is in excess of permitted thresholds. For example, income from an HSA investment in a partnership generally will result in unrelated business taxable income. In the event that your investment of HSA assets results in taxable income (unrelated or debt-financed) under the Code (or other rules) for any taxable year, you agree to prepare or have prepared the applicable returns, an application for employer identification number (if not previously obtained), and any other documents that may be required, and to submit them to us for filing with the Internal Revenue Service (IRS) (or any other governmental entity), at least five days before the date on which the return is due for such taxable year, along with an appropriate payment directive authorizing us to execute the forms on behalf of your HSA and to pay the applicable unrelated business income tax from your HSA. You understand that we have no obligation or duty to prepare or have prepared such documents. You agree, however, that we may prepare any forms, returns, or other required documentation if you do not provide them in time. All taxes and the expenses incurred in preparing such documentation will be considered your HSA's expense and may be debited from your HSA. If your HSA has insufficient liquid assets to pay these expenses, you may pay them yourself. Certain HSA reimbursements are considered annual contributions. To ensure proper governmental reporting, you must inform us of any HSA expense that you pay for outside your HSA.

d. *Listed Transactions and Reportable Transactions.* You understand that certain transactions are or may be identified by the IRS as abusive tax shelter schemes or transactions. You further understand that the determination of a listed or reportable transaction may depend upon the facts and circumstances that surround the particular transaction. We have no duty to make a determination as to whether any HSA investment constitutes a listed or reportable transaction. You represent to us that you have consulted or will consult with your own tax or legal professional to ensure that any listed or reportable transactions engaged in by your HSA are identified.

You further represent and acknowledge to us that with respect to any listed or reportable transaction you are considered the entity manager who approved or caused your HSA to be a party to the transaction and that you are responsible for: reporting each such transaction to the IRS, using the applicable IRS form; paying any applicable excise taxes, using the applicable IRS form; disclosing to us that such transaction was a prohibited tax shelter transaction; and directing us as to any necessary corrective action to be taken by your HSA.

e. *Passive Custodian Provides No Investment Advice.* From time to time, we may provide general investment information regarding the products we offer through webinars, newsletters, social media posts, our website, and other forums, which you acknowledge and agree is not investment advice. Similarly, you acknowledge and agree that we may participate in events with other companies in our industry, which is not and should not be interpreted as our endorsement of any of the other participants. You further acknowledge and agree that we are strictly a passive custodian and as such do not provide legal or tax services or advice with respect to your HSA investments; and you release and indemnify and agree to hold harmless and defend us in the event that any investment or sale of your HSA assets pursuant to a *Direction of Investment* form violates any federal or state law or regulation or otherwise results in a disqualification, penalty, fine, or tax imposed upon you, your HSA, or us.

f. *Investment Conforms to All Applicable Securities Laws.* You represent to us that if any investment by your HSA is a security under applicable federal or state securities laws, such investment has been registered or is exempt from registration under federal and state securities laws; and you release and waive all claims against us for our role in carrying out your instructions with respect to such investment. You acknowledge that the foregoing representation is being relied upon by us in accepting your investment directions and you agree to indemnify us with respect to all costs, expenses (including attorneys' fees), fines, penalties, liabilities, damages, actions, judgments and claims arising out of such investment and/or a breach of the foregoing representation, including, without limitation, claims asserted by you.

g. *Custodian Not Responsible for Insurance.* We will not bear or assume any responsibility to notify you about or to secure or maintain fire, casualty, liability, or other insurance coverage on any personal or real property held by your HSA or that serves as collateral under any mortgage or other security instrument held by your HSA with respect to any promissory note or other evidence of indebtedness. It is incumbent upon you as the HSA owner to arrange for such insurance as you determine necessary or appropriate to protect your HSA assets and to direct us in writing as to the payment of any premiums therefore. Furthermore it is your responsibility to determine that payment has been made upon your written request by verifying same with your HSA statements. We will not be responsible for notification or payments of any insurance premiums, real estate taxes, utilities, or other charges with respect to any investment held in your HSA, unless you specifically direct us to pay the same in writing and sufficient funds are available to pay same from your HSA. Furthermore, it is your responsibility to determine that payment has been made from the HSA. You must use an appropriate *Payment Directive* form available from us within a sufficient period of time for such direction to be accomplished in accordance with our normal business practices (without regard to whether we have undertaken efforts to comply with such directive).

h. *Service Fees.* We have the right to charge establishment, document, and custodial fees, as well as other designated fees (e.g., a transfer, rollover, or termination fee) for maintaining your HSA. In addition, and as described in more detail in Section 11.05, we have the right to collect or otherwise receive as an additional fee any interest or other income earned or generated from any Uninvested Cash Funds (as defined in Section 11.05), and to be reimbursed for all reasonable expenses, including legal expenses, we incur in connection with the administration of your HSA. We may charge you separately for any fees or expenses, or we may deduct the amount of the fees or expenses from the assets in your HSA at our discretion. We reserve the right to charge any additional, reasonable fee to you after giving you 30 days' notice. Fees such as sub-accounting and other service fees may be paid to us or an associated business by third-parties for assistance in performing certain transactions with respect to this HSA. In addition, we or an associated business may receive other income from third- parties in connection with performing such services or the purchase and sale of publicly traded securities, privately held securities, or any other assets that may or may not be deemed to be securities, which you may have directed us to purchase or sell.

i. *All Invoices Are Due and Payable Upon Receipt.* If such charge cannot be paid from your HSA assets (e.g., if your HSA does not contain sufficient cash assets), we will submit an invoice to you for all outstanding fees and expenses plus

any applicable invoice costs and late charges. HSA expenses that you pay out of pocket may be considered regular HSA contributions, which are reported to the IRS and are subject to the annual contribution limitations. To collect such fees and/or expenses we may, and you expressly authorize us to, bill any credit card we have in our records related to your HSA, collect from any Uninvested Cash Funds held in your HSA, and/or liquidate sufficient investments in your HSA in accordance with Section 11.12 of this Article to pay such fees and expenses.

Any brokerage commissions attributable to the assets in your HSA will be charged to your HSA. Any reimbursements to your HSA for those commissions are considered HSA contributions and are subject to the annual HSA contribution limitations.

- j. *Interest and Earnings.* We may perform sub-accounting, recordkeeping, administrative or other services related to your HSA, and for these services we retain and receive interest and other income from assets that you have not directed us to invest. This income includes amounts generated on the Uninvested Cash Funds that we deposit with other financial institutions.

**11.04 Disclosure of Account Information** – We may use agents and/or subcontractors to assist in administering your HSA. We may release nonpublic personal information regarding your HSA to such providers as necessary to provide the products and services made available under this agreement, and to evaluate our business operations and analyze potential product, service, or process improvements.

#### **11.05 Investment of Amounts in the HSA**

- a. *In General.* You have exclusive responsibility for and control over the investment of the assets of your HSA. All transactions will be subject to any and all restrictions or limitations, direct or indirect, that are imposed by any and all applicable federal and state laws and regulations; the rules, regulations, customs, and usages of any exchange, market, or clearing house where the transaction is executed; our internal policies, standards, and practices; and this agreement. We will not exercise the voting rights and other shareholder rights with respect to investments in your HSA unless you provide timely written directions acceptable to us according to our then current policies and procedures. You will select the type of investment for your HSA assets provided, however, that your selection of investments must be limited to those types of investments that comport with our internal policies, practices, and standards and are deemed administratively feasible by us. We may, or an associated business may, in our, or their, sole discretion, make available to you additional opportunities, which may include publicly traded securities, mutual funds, money market instruments, and other investments that are obtainable by us, or an associated business, and that we, or such associated business, are capable of holding in the ordinary course of business.
- b. *Custodian Acting in Passive Capacity Only.* We are acting as a passive, directed, and non-discretionary custodian in holding HSA assets. Accordingly, we are not a fiduciary (as this term is defined in the Code, ERISA, or any other applicable federal, state or local laws) with respect to your HSA, and you acknowledge and agree that we are not a fiduciary with respect to your HSA.

It is not our responsibility to review the prudence, merits, viability or suitability of any investment directed by you or your investment advisors or to determine whether the investment is acceptable under ERISA, the Code or any other applicable law. We do not offer any investment advice, nor do we endorse any investment, investment product or

investment strategy; and we do not endorse any investment advisor, representative, broker, or other party selected by you. We have no responsibility to question or otherwise evaluate any investment directions given by you or by any investment advisor or representative appointed by you.

It is your responsibility to perform proper due diligence with regard to any such investment, representative, investment advisor, broker or other party. We will follow the directions of any such investment advisor, representative, broker or other party selected by you, provided you furnish us with written authorization and documentation acceptable to us, which may include a legal opinion. We will be entitled to all the same protections and indemnities in our reliance upon and execution of the directives of such investment advisor or other party as if such directives were given by you. We are under no obligation or duty to investigate, analyze, monitor, verify title to, or otherwise evaluate or perform due diligence for any investment directed by you or your investment advisor, representative or agent; nor are we responsible to notify you or take any action should there be any default or other obligation with regard to any investment. Any review performed by us with respect to an investment is solely for our own purposes of determining compliance with our internal policies, practices and standards, as we determine from time to time and the administrative feasibility of the investment and neither such review nor its acceptance should be construed in any way as an endorsement of any investment, investment company or investment strategy. We also have the right not to effect any transaction/investment that we deem to be beyond the scope of our administrative responsibilities, capabilities, or expertise or that we determine in our sole discretion does not comport with our internal policies, practices, or standards. We have no duty or obligation to notify you with respect to any information, knowledge, irregularities, or our concerns relating to your investment or your investment advisor, broker, agent, promoter, or representative, except as to civil pleadings or court orders received by us. We will use reasonable efforts to acquire or sell investments in accordance with your directions within a reasonable period of time after we have received an investment direction, and we will make reasonable efforts to notify you if we are unable or unwilling to comply with an investment direction. Subject to the foregoing, we will remit funds as directed, but have no responsibility to verify or ensure that such funds have been invested to purchase or acquire the asset selected by you.

- c. *Investment Documentation.* In directing us with respect to any investment, you must use our *Direction of Investment* form or such other form acceptable to us. We may act upon any instrument, certificate, paper or transmission believed to be genuine and that is signed or presented by the proper person or persons whether or not by facsimile or other form acceptable to us. We are under no duty to make any investigation or inquiry as to any statement contained in any such communication, but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained. You authorize and direct us to execute and deliver, on behalf of your HSA, any and all documents delivered to us in connection with your HSA investments; and we have no responsibility to verify or determine that any such documents are complete, accurate, or constitute the documents necessary to comply with your investment direction. You authorize and direct us to correct errors in investment titling without notice to you and to correct other minor clerical errors with telephone or email consent from you upon verification of your identity. We will retain electronic copies of documents related to your HSA as described in Treasury Regulations section 1.408-2(e)(5)(vii) in our capacity as a recordkeeper and not as any type of safekeeping agent. See also, Nevada Revised Statutes (NRS)

719.240; NRS 719.290. However, please note that we require all original stock certificates titled in the name of your HSA to be held by us.

- d. *Uninvested Cash Funds*. From time to time you may deposit funds with us, have available free credit balances, or otherwise direct us to hold funds for you not subject to a current *Direction of Investment* or otherwise awaiting your direction for investment or deposit (collectively referred to as "Uninvested Cash Funds"). You acknowledge and agree that Uninvested Cash Funds from your HSA may be invested on an omnibus basis with Uninvested Cash Funds from other accounts.

You direct us to sweep or deposit all Uninvested Cash Funds automatically into an FDIC insured bank account or any investment backed by the U.S. Treasury and/or full faith and credit of the United States Government (which may be invested on an omnibus basis with Uninvested Cash Funds from other accounts) until such time as further direction is received from you or your designated representative(s). You also authorize us to transfer any Uninvested Cash Funds to a different FDIC insured bank account without any further approval from you. Accounts used to hold Uninvested Cash Funds may include, without limitation, certificates of deposit, money market accounts, similar FDIC or government insured accounts at state or national banks or credit unions, or any investment backed by the U.S. Treasury and/or full faith and credit of the United States Government. Any FDIC insurance, which may be applicable to your account, is subject to all applicable laws and regulations, including those laws and regulations related to FDIC insurance limitations. We are entitled to retain and have paid to us as a fee any interest or other income earned or otherwise generated from the Uninvested Cash Funds deposited in such accounts, including any amounts paid to us by financial institutions at the time we deposit the Uninvested Cash Funds. You acknowledge and agree that we may retain this fee as compensation for the services we provide under this agreement.

- 11.06 **Beneficiaries** – If you die before you receive all of the amounts in your HSA, payments from your HSA will be made to your beneficiaries. We have no obligation to pay to your beneficiaries until such time we are notified of your death by receiving a valid death certificate.

You may designate one or more persons or entities as beneficiary of your HSA. This designation can only be made on a form provided by or acceptable to us, and it will only be effective when it is filed with us during your lifetime. Each beneficiary designation you file with us will cancel all previous designations. The consent of your beneficiaries will not be required for you to revoke a beneficiary designation. If you have designated both primary and contingent beneficiaries and no primary beneficiary survives you, the contingent beneficiaries will acquire the designated share of your HSA. If you do not designate a beneficiary or if all of your primary and contingent beneficiaries predecease you, your estate will be the beneficiary.

If your surviving spouse acquires the interest in this HSA by reason of being the beneficiary at your death, this HSA (or in accordance with rules established by the IRS, the relevant portion thereof) will be treated as if the surviving spouse is the HSA owner.

If the beneficiary is not your spouse, the HSA (or in accordance with rules established by the IRS, the relevant portion thereof) will cease to be an HSA as of the date of your death.

Upon learning of your death, we may, in our complete and sole discretion, make a final distribution to a beneficiary (other than your spouse) of his or her interest in the HSA. This distribution may be made without the beneficiary's consent and may be placed in an interest-bearing (or similar) account that we choose.

- 11.07 **Termination of Agreement, Resignation, or Removal of Custodian** – Either party may terminate this agreement at any time by giving written notice to the other. However, your termination of this agreement will not be effective until such time as all outstanding fees, costs, indemnities, penalties, expenses, or payments due to us are paid. We can resign as custodian at any time effective 30 days after we send written notice of our resignation to you through email (if an email address was provided, otherwise such notice will be sent to you through U.S. mail). Upon receipt of that notice, you must make arrangements to transfer your HSA to another financial organization. If you do not complete a transfer of your HSA within 30 days from the date we send the notice to you, we have the right to transfer your HSA assets to a successor HSA trustee or custodian that we choose in our sole discretion, or we may pay or distribute your HSA assets to you in a single sum or assignment. If we transfer your HSA, the existing HSA documents will govern your HSA relationship with the new custodian or trustee unless the successor custodian/trustee notifies you in writing of any changes and/or requires new HSA documents to be signed by you. We will not be liable for any actions or failures to act on the part of any successor trustee or custodian, nor for any tax consequences you may incur that result from the transfer or distribution of your assets pursuant to this section.

If this agreement is terminated, we may charge to your HSA a reasonable amount of money that we believe is necessary to cover any associated costs, including but not limited to, one or more of the following.

- Any fees, expenses, or taxes chargeable against your HSA
- Any penalties or surrender charges associated with the early withdrawal of any savings instrument or other investment in your HSA. After your HSA with us is closed, if there are additional assets remaining in or subsequently credited to your HSA, we will seek to distribute or transfer such assets in accordance with your prior direction, but only after offsetting any applicable administrative expenses and custodial fees (according to our then operative fee schedule).

We may establish a policy requiring distribution of the entire balance of your HSA to you in cash or property if the balance of your HSA drops below the minimum balance required under the applicable investment or policy established.

- 11.08 **Successor Custodian** – If our organization changes its name, reorganizes, merges with another organization (or comes under the control of any federal or state agency), or if our entire organization (or any portion that includes your HSA) is bought by another organization, that organization (or agency) will automatically become the trustee or custodian of your HSA, but only if it is the type of organization authorized to serve as an HSA trustee or custodian.
- 11.09 **Amendments** – We have the right to amend this agreement at any time. Any amendment we make, including those made to comply with the Code and related regulations, does not require your consent. You will be deemed to have consented to any other amendment, unless within 30 days from the date we send the amendment, you notify us in writing that you do not consent.
- 11.10 **Withdrawals or Transfers** – All requests for withdrawal or transfer will be in writing on a form provided by or acceptable to us. The method of distribution must be specified in writing or in any other method acceptable to us. The tax identification number of the recipient must be provided to us before we are obligated to make a distribution. Withdrawals will be subject to all applicable tax and other laws and regulations, including but not limited to possible early distribution penalty taxes, surrender charges, and withholding requirements.

11.11 **Transfers from Other Plans** – We can receive amounts transferred to this HSA from the trustee or custodian of another HSA. In addition, we can accept rollovers of an eligible amount from an Archer MSA. We reserve the right not to accept any transfer or rollover.

11.12 **Liquidation of Assets: Grant of Security Interest Upon Default**

a. We have the right to liquidate assets in your HSA if necessary to make distributions or to pay fees, expenses, indemnities, taxes, federal tax levies, penalties, or surrender charges properly chargeable against your HSA. If you fail to direct us as to which assets to liquidate, we will decide, in our complete and sole discretion, and you agree not to hold us liable for any adverse consequences that result from our decision.

b. If payment is not received on or before the due date listed on your invoice, a \$50 late fee will be assessed to your HSA and a *Past Due Notice* will be issued to you. In the event you fail to pay any fees, costs, indemnities, penalties, expenses, or payments due to us required by your Account Agreement or otherwise, and upon issuance of the *Past Due Notice*, we reserve the right to proceed with the process for establishing a lien on and security interest in all of your rights, title and interests in such portion of the HSA, the Uninvested Cash Funds and any other deposit, monies, accounts and other assets in such accounts or otherwise deposited with us at such time in an amount equal to the amounts necessary to pay in full such amounts then due to us, as collateral security for the prompt and complete payment of such unpaid fees or other amounts due and owing, to the maximum extent permitted by law or regulations, at our complete and sole discretion. Upon our providing you with notice through email (or through U.S. mail if no email address was provided) of our intent to pursue such security interest, you hereby authorize us to file all financing statements and other documents and take such other actions as may from time to time be necessary or desirable in our complete and sole discretion to perfect and to maintain the perfection and priority of such security interest and/or authorize us to liquidate the asset(s) without your prior approval and without any further notice. You understand and agree that pursuant to the Code, the portion of any HSA funds pledged as collateral may be treated as distributed to you and subject to taxes, interest, and penalties, which you will be responsible for and agree to indemnify and hold us harmless therefrom. Such a deemed distribution may also trigger IRS Form 1099-SA reporting, either when the lien is created or at some other required point.

We may, at our complete and sole discretion, liquidate sufficient asset(s) to cover outstanding fees plus one year's estimated fees, including the Account Termination Fee, and you agree not to hold us responsible for any adverse consequences that result from our decision. Upon receipt, such liquidated funds will first be applied to outstanding fees. Remaining balances, if any, will be placed into your HSA. We have no liability for any adverse tax or other financial consequences as a result of liquidating your HSA to cover the fees and charges. HSAs with past due fees, unfunded HSAs, and HSAs with zero value will continue to incur administration and maintenance fees until such time as you notify us in writing of your intent to close the HSA or of your wish that we resign. Should fees not be collected, we have the option to cease performing any functions, including, but not limited to, processing investment transactions, until such time as all fees charged against the HSA are fully paid. We may then close your HSA and distribute all assets to you, which will be reported to the IRS on Form 1099-SA and may subject you to possible taxes and penalties. In the event of non-payment, we

may employ a collection agency to recover any unpaid fees or expenses. You will be personally liable for all Re-registration Fees, Late Fees, Account Termination Fees, and any other fees related to collection of fees, including but not limited to, third party fees incurred.

11.13 **Restrictions on the Fund** – Neither you nor any beneficiary may sell, transfer, or pledge any interest in your HSA in any manner whatsoever, except as provided by law or this agreement.

11.14 **What Law Applies** – This agreement is subject to all applicable federal and state laws and regulations. If it is necessary to apply any state law to interpret and administer this agreement, the law of the state in which we are chartered will govern.

If any part of this agreement is held to be illegal or invalid, the remaining parts will not be affected. Neither your nor our failure to enforce at any time or for any period of time any of the provisions of this agreement will be construed as a waiver of such provisions, or your right or our right thereafter to enforce each and every such provision.

11.15 **Valuations Policy.** Each year (and when you take HSA distributions), we are required to report the fair market value ("FMV") of the assets within your HSA to the IRS. The IRS definition of FMV is the price at which the asset would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell, and both having a reasonable knowledge of the relevant facts. For additional guidance to determine FMV, please refer to the Code and to the Treasury Regulations.

You must provide us with a credible valuation of your HSA assets in order for us to generate accurate IRS reporting. We may report the FMV of your HSA assets based on supporting documentation that you provide and that, in our sole discretion, we deem reasonable and applicable. For example, we may base our FMV report on a recent, impartial appraisal of commercial real estate that you provide from a competent professional. Or we may report the FMV of your interest in a closely held company based on the detailed assessment of a CPA who is accustomed to appraising such companies.

If you do not provide to us an acceptable HSA valuation when required, you agree that we may, but are not required to, seek a valuation determination. The expenses incurred in preparing such a valuation will be considered your HSA's expense and may be debited from your HSA. If your HSA has insufficient liquid assets to pay these expenses, you may pay them yourself. Certain HSA reimbursements may be considered annual contributions. To ensure proper governmental reporting, you must inform us of any HSA expense that you pay for outside your HSA. If we determine the value of any asset in your HSA for recordkeeping or reporting purposes, we will use reasonable, good faith efforts. Illiquid assets can be difficult to value accurately, particularly without sometimes costly and time-consuming appraisals. Therefore, we neither guarantee the appropriateness of the appraisal techniques that we use, nor do we assume responsibility for the accuracy of the valuations obtained.

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## GENERAL INSTRUCTIONS

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Section references are to the Internal Revenue Code.

### WHAT'S NEW

**Additional Tax Increased** – For tax years beginning after December 31, 2010, the additional tax on distributions not used for qualified medical expenses increases from 10 percent to 20 percent.

### PURPOSE OF FORM

Form 5305-C is a model custodial account agreement that has been approved by the IRS. An HSA is established after the form is fully executed by both the account owner and the custodian. The form can be completed at any time during the tax year. This account must be created in the United States for the exclusive benefit of the account owner.

**Do not** file Form 5305-C with the IRS. Instead, keep it with your records.

For more information on HSAs, see Notice 2004-2, 2004-2 I.R.B. 269, Notice 2004-50, 2004-33 I.R.B. 196, Pub. 969, *Health Savings Accounts and Other Tax-Favored Health Plans*, and other IRS published guidance.

### DEFINITIONS

**Identifying Number** – The account owner's Social Security number will serve as the identification number of this HSA. For married persons, each spouse who is eligible to open an HSA and wants to contribute to an HSA must establish his or her own account. An employer identification number (EIN) is required for an HSA for which a return is filed to report unrelated business taxable income. An EIN is also required for a common fund created for HSAs.

**High Deductible Health Plan (HDHP)** – For calendar year 2011, an HDHP for self-only coverage has a minimum annual deductible of \$1,200 and an annual out-of-pocket maximum (deductibles, co-payments, and other amounts, but not premiums) of \$5,950. In 2012, the \$1,200 minimum annual deductible remains the same and the annual out-of-pocket maximum increases to \$6,050. For calendar year 2011, an HDHP for family coverage has a minimum annual deductible of \$2,400 and an annual out-of-pocket maximum of \$11,900. In 2012, the \$2,400 minimum annual deductible remains the same and the annual out-of-pocket maximum increases to \$12,100. These limits are subject to cost-of-living adjustments after 2012.

**Self-Only Coverage and Family Coverage Under an HDHP** – Family coverage means coverage that is not self-only coverage.

**Qualified Medical Expenses** – Qualified medical expenses are amounts paid for medical care as defined in section 213(d) for the account owner, his or her spouse, or dependents (as defined in section 152) but only to the extent that such amounts are not compensated for by insurance or otherwise. With certain exceptions, health insurance premiums are not qualified medical expenses.

**Custodian** – A custodian of an HSA must be a bank, an insurance company, a person previously approved by the IRS to be a custodian of an individual retirement account (IRA) or Archer MSA, or any other person approved by the IRS.

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## SPECIFIC INSTRUCTIONS

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**Article XI** – Article XI and any that follow it may incorporate additional provisions that are agreed to by the account owner and custodian. The additional provisions may include, for example, definitions, restrictions on rollover contributions from HSAs or Archer MSAs (requiring a rollover not later than 60 days after receipt of a distribution and limited to one rollover during a one-year period), investment powers, voting rights, exculpatory provisions, amendment and termination, removal of custodian, custodian's fees, state law requirements, treatment of excess contributions, distribution procedures (including frequency or minimum dollar amount), use of debit, credit, or stored-value cards, return of mistaken distributions, and descriptions of prohibited transactions. Attach additional pages if necessary.

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## DISCLOSURE STATEMENT

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### REQUIREMENTS OF AN HSA

- A. **Cash Contributions** – Your contribution must be in cash, unless it is a rollover contribution.
- B. **Maximum Contribution** – The total amount that may be contributed to your HSA for any taxable year is the sum of the limits determined separately for each month. The determination for each month is based on whether, as of the first day of such month, you are eligible to contribute and whether you have self-only or family coverage under a high deductible health plan (HDHP). If you have self-only coverage, the maximum monthly contribution is 1/12 of \$3,400 (for 2017) or \$3,450 (for 2018). If you have family coverage, the maximum monthly contribution is 1/12 of \$6,750 (for 2017) or \$6,900 (for 2018). These limits are subject to cost-of-living increases. In addition, if you have attained age 55 before the close of the taxable year, the annual contribution limit is increased by an additional amount not to exceed \$1,000 each year. The annual limit is decreased by aggregate contributions made to an Archer MSA and by any qualified HSA funding distributions from an IRA deposited into the HSA.
- If you become HSA-eligible after the beginning of the year, you may make a full year's contribution up to the statutory contribution limit as long as you maintain eligibility during the testing period. The testing period begins the last month of the initial eligibility year and ends at the end of the 12-month period following that month. If you do not remain eligible during the testing period, you must include in your gross income the contributions made for the months that you were not otherwise eligible and pay a 10 percent penalty tax on the amount.
- C. **Contribution Eligibility** – You are an eligible individual for any month if you (1) are covered under an HDHP on the first day of such month; (2) are not also covered by any other health plan that is not an HDHP and that provides coverage for any benefit covered under the HDHP (with limited exceptions); (3) are not enrolled in Medicare; and (4) are not eligible to be claimed as a dependent on another person's tax return.
- In general, an HDHP is a health plan that satisfies certain requirements with respect to deductibles and out-of-pocket expenses. Specifically, an HDHP has an annual deductible of at least \$1,300 (for 2017) or \$1,350 (for 2018) for self-only coverage and at least \$2,600 (for 2017) or \$2,700 (for 2018) for family coverage. In addition, the sum of the annual out-of-pocket expenses required to be paid (deductibles, copayments, and amounts other than premiums) cannot exceed \$6,550 (for 2017) or \$6,650 (for 2018) for self-only coverage and \$13,100 (for 2017) or \$13,300 (for 2018) for family coverage. All of these dollar amounts may be adjusted annually for cost-of-living increases.
- D. **Nonforfeitable** – Your interest in your HSA is nonforfeitable.
- E. **Eligible Custodians** – The custodian of your HSA must be a bank, savings and loan association, credit union, or a person or entity approved by the Secretary of the Treasury.
- F. **Commingling Assets** – The assets of your HSA cannot be commingled with other property except in a common custodial fund or common investment fund.
- G. **Life Insurance** – No portion of your HSA may be invested in life insurance contracts.

### INCOME TAX CONSEQUENCES OF ESTABLISHING AN HSA

- A. **HSA Deductibility** – If you are eligible to contribute to your HSA for any month during the taxable year, amounts contributed to your HSA are deductible in determining adjusted gross income up to the maximum contribution limits discussed above. The deduction is allowed regardless of whether you itemize deductions. Employer contributions to your HSA are excludable from your gross income and you cannot deduct such amounts on your tax return as HSA contributions.
- B. **Contribution Deadline** – The deadline for making an HSA contribution is your tax return due date (not including extensions). You may designate a contribution as a contribution for the preceding taxable year in a manner acceptable to us. For example, if you are a calendar-year taxpayer and you make your HSA contribution on or before your tax filing deadline, your contribution is considered to have been made for the previous tax year if you designate it as such.
- C. **Excess Contributions** – An excess contribution is any amount that is contributed to your HSA that exceeds the amount that you are eligible to contribute. If the excess is not corrected timely, an additional penalty tax of six percent will be imposed upon the excess amount. The procedure for correcting an excess is determined by the timeliness of the correction as identified below.
1. **Removal Before Your Tax Filing Deadline.** An excess contribution may be corrected by withdrawing the excess amount, along with the earnings attributable to the excess, before your tax filing deadline, including extensions, for the year for which the excess contribution was made. An excess withdrawn under this method is not taxable to you, but you must include the earnings attributable to the excess in your taxable income in the year in which the contribution was made. The six percent excess contribution penalty tax will be avoided.
  2. **Removal After Your Tax Filing Deadline.** If you are correcting an excess contribution after your tax filing deadline, including extensions, remove only the amount of the excess contribution. The six percent excess contribution penalty tax will be imposed on the excess contribution for each year it remains in the HSA.
  3. **Carry Forward to a Subsequent Year.** If you do not withdraw the excess contribution, you may carry forward the contribution for a subsequent tax year. To do so, you under-contribute for that tax year and carry the excess contribution amount forward to that year on your tax return. The six percent excess contribution penalty tax will be imposed on the excess amount for each year that it remains as an excess contribution at the end of the year.
- You must file IRS Form 5329 along with your income tax return to report and remit any additional penalty taxes to the IRS.
- D. **Tax-Deferred Earnings** – The investment earnings of your HSA are not subject to federal income tax until distributions are made (or, in certain instances, when distributions are deemed to be made).
- E. **Taxation of Distributions** – Distributions taken from your HSA to pay for qualified medical expenses or to reimburse you for qualified medical expenses that you already paid are excluded from your gross income. Qualified medical expenses are amounts you pay for medical care (as defined in Internal Revenue Code Section (IRC Sec.) 213(d)) for yourself, your spouse, and your dependents (as defined in IRC Sec. 152), but only to the extent that such amounts are incurred after the HSA was established and are not covered by insurance or otherwise. For a general description of qualified medical expenses, refer to IRS Publication 502, *Medical and Dental Expenses*, available at [www.irs.gov](http://www.irs.gov). Distributions made

for purposes other than qualified medical expenses are included in your gross income and are subject to an additional 20 percent penalty tax. This additional 20 percent penalty tax will apply unless a distribution is made on account of (1) attainment of age 65, (2) death, or (3) disability.

Withdrawals from your HSA are not subject to federal income tax withholding.

F. **Rollovers** – Your HSA may be rolled over to another HSA of yours or may receive rollover contributions, provided that all of the applicable rollover rules are followed. Rollover is a term used to describe a tax-free movement of cash or other property between any of your HSAs. The general rollover rules are summarized below. These transactions are often complex. If you have any questions regarding a rollover, please see a competent tax advisor.

1. **HSA or Archer MSA to HSA Rollovers.** Assets distributed from your HSA may be rolled over to an HSA of yours if the requirements of IRC Sec. 223(f)(5) are met. A proper HSA to HSA rollover is completed if all or part of the distribution is rolled over not later than 60 days after the distribution is received. You may make only one rollover contribution to an HSA during a 12-month period.

Assets distributed from your Archer MSA also may be rolled over to your HSA. A proper Archer MSA to HSA rollover is completed if all or part of the distribution is rolled over not later than 60 days after the distribution is received.

2. **Written Election.** At the time you make a rollover to an HSA, you must designate in writing to the custodian your election to treat that contribution as a rollover. Once made, the rollover election is irrevocable.

G. **Qualified HSA Funding Distributions** – If you are eligible to contribute to an HSA, you may be eligible to take a one-time, tax-free HSA funding distribution from your IRA and directly deposit it to your HSA. The amount of the qualified HSA funding distribution may not exceed the maximum HSA contribution limit in effect for the type of HDHP coverage (i.e., self-only or family coverage) that you have at the time of the deposit, and counts toward your HSA contribution limit for that year. If you do not remain HSA-eligible (for reasons other than death or disability) for 12 months following the transaction, the amount of the transaction is subject to taxation and a 10 percent penalty tax. For further detailed information, see IRS Publication 969, *Health Savings Accounts and Other Tax-Favored Health Plans*.

H. **Beneficiary Issues** – If you die and your beneficiary is your spouse, your HSA (or the relevant portion thereof) will become your spouse's HSA as of the date of your death.

If your beneficiary is not your spouse, the HSA (or the relevant portion thereof) will cease to be an HSA as of the date of your death.

If the beneficiary is your estate, the fair market value of the account as of your date of death is taxable on your final tax return. For other beneficiaries, the fair market value of the account is taxable to that beneficiary in the tax year that includes the date of death.

## LIMITATIONS AND RESTRICTIONS

A. **Deduction of Rollovers and Transfers** – A deduction is not allowed for rollover or transfer contributions.

B. **Prohibited Transactions** – If you or your beneficiary engage in a prohibited transaction with your HSA, as described in IRC Sec. 4975, your HSA will lose its tax-exempt status and you must include the value of your account in your gross income for that taxable year. Overdrawing your HSA is considered a prohibited transaction.

C. **Pledging** – If you pledge any portion of your HSA as collateral for a loan, the amount so pledged will be treated as a distribution and will be included in your gross income for that year.

## OTHER

A. **IRS Plan Approval** – The agreement used to establish this HSA has been approved by the IRS. The IRS approval is a determination only as to form. It is not an endorsement of the plan in operation or of the investments offered.

B. **Important Information About Procedures for Opening a New Account** – To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial organizations to obtain, verify, and record information that identifies each person who opens an account. Therefore, when you open an HSA, you are required to provide your name, residential address, date of birth, and identification number. We may require other information that will allow us to identify you.