

# HEALTH SAVINGS CUSTODIAL ACCOUNT AGREEMENT

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

FORM (Rev. October 2016)

The individual whose name appears on the accompanying HSA Application Form (hereinafter called "Depositor") is establishing an HSA Individual Retirement Custodial Account (a "Custodial Account") with Empire Trust Inc. or its successor (hereinafter referred to as "Custodian"). This HSA Individual Retirement Custodial Account is established for the exclusive benefit of the individual (or his beneficiaries) within the meaning of §408(a) of the Internal Revenue Code and the related Treasury regulations. Custodian has delegated certain Custodial Account record keeping and administrative functions ("Administrative Services") to the administrator whose name appears on the IRA Application Form as the "Administrator".

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 trust 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 depositor, the words “we,” “us,” and “our” mean the custodian, the word “Code” or “IRC” means the Internal Revenue Code, “regulations” means the Treasury regulations and the word “Account Representative” or “Representative” means any individual you have delegated his or her investment responsibilities to under Section 11.06.

**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 address that we have in our records. Any notice to be given to us will be considered effective when we actually receive it. You, or the intended recipient, must notify us of any change of address.

**11.03 Representations and Responsibilities** – 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 or your Account Representative give us, or action you or your Account Representative take will be proper under this Agreement and that we are entitled to rely upon any such information or directions. You acknowledge that we are under no obligation to determine what actions or documentation may be necessary or appropriate with respect to any transaction requested by you or your Account Representative, and that we need only obtain those documents specified by you or your Account Representative in any authorization (i.e. purchase or sale authorization). We will have no duty to confirm or ascertain that any such document or instrument obtained in connection with any transaction is genuine or authentic, or that it has been properly or correctly executed or entered into by any purported party thereto.

Upon receipt of any report or statement, you must inform us in writing if you believe any information on the report/statement is incorrect within 30 days after the report/statement is sent. If you do not so inform us, then we shall be relieved from all liability regarding the status of your account as stated in the report/statement.

We shall not be responsible for losses of any kind that may result from your directions to us or your actions or failures to act and you agree to reimburse us for any loss we may incur as a result of such directions, actions or failures to act. We shall not be responsible for any penalties, taxes, judgments, damages or expenses you incur in connection with your HSA. The Custodian agrees to submit reports to the Internal Revenue Service and the Depositor prescribed by the Internal Revenue Service. You agree to prepare and provide to us Form 990-T, if required. We are responsible for filing Form 990-T with the IRS once you have provided it to us.

We have no duty to determine whether your contributions or distributions comply with the Code, regulations, rulings, or this agreement. We have the right to require you to provide, on a form provided by or acceptable to us, proof or certification that you are eligible to contribute to this HSA, including, but not limited to, proof or certification that you are covered by an HDHP. In no event will we be responsible to determine if contributions made by your employer to your HSA meet the requirements for comparable contributions, the rules of which are set forth in the Code and IRS published guidance.

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, investment manager), but 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 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.

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.

**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 Service Fees** – We have the right to charge an annual service fee or other designated fees (e.g. a transfer, rollover or termination fee, etc.) for maintaining your HSA. We may also charge additional fees for complex transactions requiring extraordinary time and attention from our staff. In addition, we have the right to be reimbursed for all reasonable expenses, including various transaction and 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 fee upon 30 days notice to you that the fee will be effective. Any brokerage commissions attributable to the assets in your HSA will be charged to your HSA. You cannot reimburse your HSA for these commissions or any Service Fees paid from your HSA.

Fees are billed quarterly and will be automatically deducted from available cash or Custodian may charge to your credit card (Visa or MasterCard), if authorized. Rejected credit card charges are subject to a \$25 reprocessing fee. If payment is not received within thirty (30) days from the due date reflected on your invoice, a \$15 Late Fee will be assessed to your account and a Past Due Notice will be mailed. 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 account are fully paid. Additionally we may liquidate assets from the account, without notice, for any outstanding fee which has not been paid. We may, at our discretion, liquidate sufficient assets to cover outstanding fees plus one year’s estimated fees, including termination fees. Due to the nature of certain investments a partial liquidation may not be possible. In such cases we may liquidate your entire holdings in the investment. Upon receipt, proceeds will be first applied to outstanding fees. Remaining balances, if any, will be placed into your account and deposited in an account as described in paragraph 5 of 11.06 (a).

In the event that fees are not paid within thirty (30) days after mailing the Past Due Notice we will begin the process of closing your account. Any asset distributed directly to you as a part of closing your account will be reported to the IRS on Form 1099-R and may

subject you to possible taxes and penalties. Accounts with past due fees, unfunded accounts and accounts with zero value will continue to incur administration and maintenance fees until such time as you notify us in writing (on a form prescribed by us) of your intent to close the account or we resign as custodian. You will be liable for all past due fees, re-registration fees, late fees and account termination fees. In the event of nonpayment we may employ a collection agency to recover any unpaid fees or expenses.

The Custodian is entitled to receive, from the assets held in your Account, a fee equal in amount to all the income that is generated from any Undirected Cash (defined as any cash in your Account not invested pursuant to a specific investment direction by you, the Accountholder) which is held by Custodian in an account or product of an FDIC or other United States government insured financial institution, United States government security, or security that is insured or guaranteed by the United States government (Custodial Fee). You agree that the Custodial Fee may be retained by Custodian as compensation for the services provided by Custodian. The Custodial Fee is associated with cash management activities, including, but not limited to, account maintenance, depository bank selection, transaction processing, sub-accounting, recordkeeping, and other services performed under the terms of this Agreement and your Account Application.

We may also receive compensation in the form of shareholder servicing fees, sub-transfer agency fees, and other types of fees paid by certain mutual funds or their affiliates in consideration of services we provide to them, e.g., purchase and redemption of shares and participant-level recordkeeping. This compensation is paid to us pursuant to service agreements between the funds and us. Under no circumstances will you be responsible for the payment of this compensation to us, nor will you be entitled to any offsets or credits to the service fees and expenses you owe to us by reason of our having received this compensation. The compensation paid to us is based either on a set fee per investor or on a percentage of the average daily net asset value of shares invested in the fund.

#### 11.06 Investment of Amounts in the HSA –

a. **Direction of Investment.** You acknowledge that it is your sole responsibility to direct the investment of your HSA assets and that we, acting as custodian of your account, will have no responsibility or involvement in evaluating or selecting any assets for acquisition or disposition, and shall have no liability for any loss or damage that may result from or be associated with any requested investment transaction. You shall direct all investment transactions, including earnings and the proceeds from securities sales. Your investment choices are limited to investments that the Custodian is capable of holding in the ordinary course of its business and in accordance with its policies and practices.

At our sole discretion, we reserve the right to not accept any investment into your custodial account. Certain types of investments may pose unacceptable administrative burdens to us, and therefore, we reserve the right to not accept such investments into your custodial account. Administrative burdens include, but are not limited to, the inability of our computer, accounting, or other systems to service the asset or excessive manual labor to service the asset. In addition, all assets must comply with Trust Company policies. We reserve the right to review any or all investments to determine if the asset is administratively feasible to us. Our review will be solely administrative in nature. Our decision to not accept an asset should in no way be construed as a determination concerning the prudence or suitability of the investment for your HSA. Likewise, acceptance of the asset by us should not be construed as a favorable opinion as to the prudence or suitability of the

investment for your HSA. Our review of any asset you desire to purchase and hold in your custodial account should in no way be construed as a “due diligence” review. We do not perform any type of feasibility study, nor do we research or confirm any financial information regarding any investment.

You and upon your death, your Beneficiary agree to indemnify and hold harmless the Custodian from and against all losses, expenses, settlement payments, or judgements incurred by, or entered against the Custodian as the result of any threatened or asserted claim against the Custodian that pertains in any way to: the Custodian’s activities with you; your investments; and/or any situation or matter associated with this account. Your indemnification obligations also include the responsibility to reimburse the Custodian for all attorneys’ fees and costs incurred by the Custodian in: responding to threatened claims by any party; defending (including an appeal) against asserted claims by any party; and/or prosecuting (including an appeal) a claim or counterclaim against you requesting payment of the indemnification obligation set forth herein. Your indemnification obligation applies to any threatened or asserted claim against us including specifically, a claim that is threatened or asserted by you against us. Your indemnification obligation hereunder also applies to any threatened or asserted claims brought by you against us resulting from wrongful conduct by any representative appointed by you including, but not limited to, fraud, forgery or any other illegal act engaged in by your representative or other agent retained by you.

You agree to indemnify and hold us harmless from and against any and all claims, liabilities, causes of action, losses and expenses (including, without limitation, any court costs, attorney’s fees and other expenses) asserted against or incurred by us as a result of, or in any way relating to, any action requested or directed by you or your Account Representative.

**In the absence of instructions from you or if your instructions are not in a form acceptable to us, the Custodian shall hold your Undirected Cash in an account or product of an FDIC or other United States government insured financial institution, United States government security, or security that is insured or guaranteed by the United States government, unless or otherwise directed by you. The account is insured for up to the amount available under the FDIC insurance; amounts in the account in excess of FDIC insurance limits are not insured.**

Directions regarding your account must be in writing from either you or your designated representative. In the event that we receive written investment directions from either you or your designated representative, we may rely on the genuineness of all signatures and shall be under no duty to investigate any directions or investment decisions. You authorize us to honor original and fax copies of requests from you or the representative you have appointed. We shall be under no duty to investigate the genuineness of the signatures, but may employ any means of verification we wish if we elect to pursue verification.

Custodian shall be under no obligation or duty to secure, verify title to or otherwise evaluate the assets underlying any investment contemplated herein, or to obtain or maintain insurance coverage (whether liability, property or otherwise) with respect to any such assets or investments or the collateral for such investment. The Custodian shall be fully protected in acting upon any instrument, certificate or paper believed to be genuine and to be signed or presented by the proper person or persons, and the Custodian shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing but may accept the same as conclusive evidence

of the truth and accuracy of the statements therein contained. Further, Custodian is not providing legal or tax services or advice with respect to the investment and the undersigned absolves and indemnifies Custodian in the event that the investment or sale of assets pursuant to any investment directions violates any federal or state law or regulation or otherwise results in a disqualification, penalty or tax imposed upon the HSA, Custodian or the undersigned. Furthermore, the undersigned authorizes and directs Custodian to execute and deliver, on behalf of his or her HSA, any and all documents delivered to Custodian in connection with such investment; and Custodian shall have no responsibility to verify or determine that any such documents are complete, accurate or constitute the documents necessary to comply with the above investment direction.

All transactions shall be subject to any and all applicable Federal and State laws and regulations and the rules, regulations, customs and usages of any exchange, market or clearing house where the transaction is executed and to our policies and practices.

- b. **Our Investment Powers and Duties** – We shall have no discretion to direct any investment in your HSA. We assume no responsibility for rendering investment advice with respect to your HSA, nor will we offer any opinion or judgment to you on matters concerning the value or suitability of any investment or proposed investment for your HSA. We shall exercise the voting rights and other shareholder rights with respect to securities in your HSA but only in accordance with the instructions you give to us.

We, in no way, guarantee the account from loss or depreciation. Our liability to make any payment from the account is at all times limited to the then available assets of the account.

Except to the extent, if any, that may be required by applicable law, we shall have no duty or obligation to monitor or make you or your Account Representative aware of the receipt or non-receipt of any funds payable to your account with respect to any assets in such account (e.g., dividends, interest or other distributions) or to provide you with any other information or documentation (other than pleadings, orders or official notices arising from any judicial proceeding) that we may receive or become aware of with respect to such assets. (For example, and not by way of limitation, we shall have no obligation or duty to provide you with any information or documentation with respect to tender offers from 3rd parties, or that have not been registered with the Securities and Exchange Commission.) We shall have no duty to undertake any action with respect to the collection or enforcement of any payments or rights relating to such assets (including, without limitation, any participation in any bankruptcy proceedings, receivership proceedings, foreclosures or other litigation, or the perfection or enforcement of any lien or other rights with respect to such assets) without receiving prior instruction from you, accompanied by such undertaking of indemnification as we may request to assure us that we will be fully reimbursed and protected with respect thereto. Without limitation on the foregoing, we may however, if we so elect, advised by counsel if deemed appropriate, respond and participate in any such bankruptcy proceeding, receivership proceedings, or other litigation to which we or your account may have been made a party, and in such case we shall be fully indemnified and protected by you for any action taken by us in good faith. We shall be entitled to seek the advice of legal counsel in connection with any matter relating to your account or any assets, and may in good faith rely and act upon such advice.

- c. **Delegation of Investment Responsibility** – We may, but are not required to, permit you to delegate your investment responsibility for your HSA to another party acceptable to us by giving written notice of your delegation in a format we prescribe. We shall follow the direction of any such party who is properly appointed and we shall be under no duty to review or question, nor shall we be responsible for, any of that party's directions, actions or failures to act. We have the right to rely on any representations and/or warranties made by your Account Representative in connection with any sale or purchase on behalf of your account, including but not limited to representations with regard to prohibited transactions and suitability requirements.

Said Representative may be a registered representative of a broker/dealer organization, a financial advisor or any other person as may be acceptable to you. The Representative shall be your authorized agent and is not the agent of the Custodian. We shall construe all investment directions given by your representative, whether written or oral, as having been authorized by you. You may appoint and/or remove your representative by written notice to the Custodian provided that the removal of Representative shall not have the effect of canceling any notice, instruction, direction or approval received by the Custodian from the removed Representative before the Custodian received said notice of removal from you.

- 11.07 **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 account 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.

- 11.08 **Termination of Agreement, Resignation, or Removal of Custodian** – Either party may terminate this agreement at any time by giving written notice to the other. We can resign as custodian at any time effective 30 days after we send written notice of our resignation to you. 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 your HSA to you in a single sum. 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

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.

**11.09 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.

**11.10 Amendments** – We have the right to amend this agreement at any time. Any amendment we make 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.

**11.11 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.

We may allow the return of mistaken distributions if there is clear and convincing evidence that the amounts distributed from the HSA were because of a mistake of fact due to reasonable cause. In determining whether this standard has been met, we may rely on your representation that the distribution was, in fact, a mistake.

In no event will we restrict HSA distributions to pay or reimburse only your qualified medical expenses. We may, however, on a case-by-case basis or as a matter of policy, place reasonable restrictions on both the frequency and the minimum amount of distributions from the HSA.

We may establish a policy whereby having a zero balance in your HSA may not cause the HSA to be closed. At our discretion, future contributions may be made to the HSA until you instruct us to close the HSA.

**11.12 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.

**11.13 Liquidation of Assets** – We have the right to liquidate assets in your HSA if necessary to make distributions or to pay fees, expenses, taxes, 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 to not hold us liable for any adverse consequences that result from our decision.

**11.14 Valuation** – The assets in your account shall be valued annually at the end of each calendar year, but we retain the right to value the assets in your account more frequently. We will value the investments of the account utilizing various third-party pricing sources and designated valuation agents. However, we do not guarantee the accuracy of prices obtained from these sources. The year end value of illiquid and/or non-publicly traded investments, which may include without limitation limited partnerships, limited liability companies, privately held stock, real estate investment trusts, hedge funds, and such other investments as we may designate, must be provided to us no later than the following January 10th by the asset's designated valuation agent or third party pricing source. If we do not receive a current market value by the following January 10th for such investment, we shall be entitled to use as that year end's fair market value the last fair market value provided to us, or if none, the original purchase price of the investment for all applicable tax reporting and year-end statement valuations. At any point after there has been a failure to provide us with a fair market value for a period exceeding 9 months after requested, we may distribute the investment at its last reported value to you, or after your death your beneficiary and shall have no responsibility or liability for any tax, financial, or other consequences relating to or arising from such distribution. Unless we have received written information to the contrary, promissory notes and privately offered corporate debt will have valuations reflected at the face value shown on the original note or debt instrument or if the note is such that it is subject to an amortization schedule, valuation may be shown at amortized value. We are not responsible for the timeliness or the accuracy of the fair market value for any investment, and shall have no responsibility or liability for acting on a fair market value so provided, or the last fair market value utilized if none is provided. If we are required to obtain a fair market value for an investment due to a court order or similar circumstance, we may obtain an appraisal from an independent third party, paying the cost for said appraisal from the liquid investments held in the account, or in the alternative after having first received the cost of the appraisal from you or your beneficiary if liquid investments in the account are otherwise insufficient. You, and upon your death, your beneficiary agree to indemnify us and hold us harmless from and against all losses, expenses, settlements or claims with regard to investment decisions, distribution values, tax reporting or any other financial impact or consequence relating to or arising from the valuation of assets in the account.

**11.15 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.

The assets in your HSA will not be responsible for the debts, contracts, or torts of any person entitled to distributions under this agreement.

**11.16 What Law Applies** – This Agreement is subject to all applicable Federal and State laws and regulations. You agree that where state law applies, Kansas law will govern this instrument, any other instrument executed in connection with your account, and you, your agent and our respective rights and obligations hereunder or otherwise with respect to the account and assets. This document and any other document executed in connection with your account does not become effective until a signed copy has been received and accepted by us in the State of Kansas (the taking of action by us of any authorization will constitute our acceptance). We will have the right to refuse to accept and to not act upon, any instruction or

direction given by you or your agent, provided that we promptly notify you or your agent of such election and refusal. You acknowledge and understand that all of our duties and undertakings will be carried out in the State of Kansas, and agree that any claims or disputes that arise in connection with your account or any assets or any transaction requested by you or your agent must be brought in arbitration as described in Section 11.20 below. If it is necessary to apply any State law to interpret and administer this Agreement, the law of Kansas will govern. If any part of this Agreement is held to be illegal or invalid, the remaining parts will not be affected. Neither party's 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, nor a waiver of either party's right thereafter to enforce each and every provision.

11.17 **Indemnity of Custodian** – To the extent not prohibited by Federal or State law, you agree to indemnify, defend and hold us, our subsidiaries and affiliates (including officers, agents and employees) harmless against and from any and all claims, demands, liabilities, costs and expenses (including reasonable attorneys' fees and expenses), arising in connection with this agreement, with respect to: any negligence or alleged negligence, whether passive or active, by us, our subsidiaries or affiliates (including officers, agents and employees); any breach or alleged breach, whether passive or active, by us, our subsidiaries or affiliates (including officers, agents and employees) of any responsibilities under this Agreement; any breach or alleged breach, whether passive or active, by a third party of responsibilities under this Agreement; or any claim arising out of the purchase, holding or sale of any investments in the HSA, whether directed by you or any agent appointed by you. You further agree to pay for our defense and the defense of our subsidiaries and affiliates (including officers, agents and employees) by independent counsel of our choice against any such claims, demands, liabilities or costs referred to above.

You agree to indemnify, defend and hold us, our subsidiaries and affiliates (including officers, agents and employees) harmless against and from any and all payments or assessments which may result from holding any publicly-traded security or any nonstandard, non-publicly traded or illiquid investment within the HSA account, and further agree that we and our subsidiaries and affiliates (including officers, agents and employees) shall be under no obligation whatsoever to extend credit or otherwise disburse payment beyond the cash balance of your account for any payment or assessment related to such investment(s).

11.18 **Adverse Claims** – If we receive any claim to the assets held in the HSA which is adverse to your interest or the interest of your beneficiary, and we in our absolute discretion decide that the claim is, or may be meritorious, we may withhold distribution until the claim is resolved or until instructed by a court of competent jurisdiction. As an alternative, we may deposit all or any portion of the assets in the HSA into the court through a motion of interpleader. Deposit with the court shall relieve us of any further obligation with respect to the assets deposited. We have the right to be reimbursed from the funds deposited for our legal fees and costs incurred.

11.19 **HSA Not Guaranteed** – We do not guarantee the HSA from loss or depreciation. Our liability to make payment to you at any time and all times is limited to the available assets of the HSA.

11.20 **Arbitration of Claims** – *ARBITRATION OF DISPUTES*. PLEASE READ THIS ARBITRATION PROVISION CAREFULLY. IT PROVIDES THAT ANY CONTROVERSY OR DISPUTE BE RESOLVED BY BINDING ARBITRATION. ARBITRATION REPLACES THE RIGHT TO GO TO COURT, INCLUDING THE RIGHT TO A JURY AND THE RIGHT TO PARTICIPATE IN A CLASS ACTION OR SIMILAR PROCEEDING.

**Agreement to arbitrate.** You and we agree that either you or we may, without the other's consent, require that any Claims between you and us be submitted to mandatory, binding arbitration except for certain matters excluded below. This arbitration provision is made pursuant to a transaction involving interstate commerce, and will be governed by, and enforceable under, the Federal Arbitration Act (the "FAA"), 9 U.S.C. § 1 et seq., and (to the extent State law is applicable), the State law governing this transaction.

**Claims subject to Arbitration include, but are not limited to:** Any controversy arising out of or relating to this Agreement or the breach thereof, or to the HSA or any transactions authorized by you and/or your agent.

**Arbitration location, finality, procedures, waiver of jury trial, class action or any representative action.** Arbitration will occur in Johnson County, Kansas according to the rules of The American Arbitration Association. Arbitration is final and binding on the parties. The Parties are waiving their right to seek remedies in court, including the right to jury trial. Claims made as part of a class action or other representative action, and the arbitration of such Claims must proceed on an individual (non-class, non-representative) basis. If you or we require arbitration of a particular Claim, neither you, we, nor any other person may pursue the Claim in any litigation, whether as a class action, private attorney general action, other representative action or otherwise. Pre-arbitration discovery is generally more limited than and different from court proceedings. If any portion of this arbitration provision is deemed invalid or unenforceable, the remaining portions will nevertheless remain in force.

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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 \$3,450 (for 2018) or \$3,500 (for 2019). If you have family coverage, the maximum monthly contribution is 1/12 of \$6,900 (for 2018) or \$7,000 (for 2019). 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 \$1,350 (for 2018 and 2019) for self-only coverage and at least \$2,700 (for 2018 and 2019) 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 \$6,650 (for 2018) or \$6,750 (for 2019) for self-only coverage and \$13,300 (for 2018) or \$13,500 (for 2019) 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.

### NOTICE OF FINANCIAL PRIVACY

You have chosen to do business with IRA Innovations, LLC and we are obligated to honor that relationship with great care, beginning with the information you have chosen to share with us. We believe that your privacy should not be compromised. At the same time, we want to offer you the services you need to accomplish your financial goals. We believe we can do both through the privacy policy outlined below. IRA Innovations, LLC believes that the confidentiality and protection of customer information is one of our fundamental responsibilities. And while information is critical to providing quality service, we recognize that one of our most important assets is our customers' trust. Thus, the safekeeping of customer information is a priority for us.

### INFORMATION THAT WE COLLECT

Information about consumers is accumulated from a variety of sources. Some information is provided to us directly by customers themselves. We develop other data as a function of providing a product or service to a customer. Still other information is obtained from outside sources. We will limit the use and collection of information about our customers to that which is necessary to administer our business and provide superior service. This means that we will use information to help us identify and mitigate potential risks or loss to IRA Innovations, LLC only in accordance with the principles set out in this policy.

### HOW WE PROTECT YOUR INFORMATION

IRA Innovations, LLC has established procedures to ensure that your financial information is accurate, current, and complete, in keeping with reasonable commercial standards. We also pledge to respond to requests to correct inaccurate information in a timely manner. All customer information is considered private and privileged and is to be used solely for the purpose of providing the finest service available. We restrict access to customer information to our employees who need access to provide services to our customers. IRA Innovations, LLC is committed to the security of your financial and personal information. All of our operational and data processing systems are in a secure environment thereby protecting your account information from being accessed by third parties.

### WHAT INFORMATION WE DISCLOSE

We may disclose certain customer information to third parties that work for us or assist us in providing services to our customers (for example: Proxy Mailing Service). We do not reveal specific information about your accounts or other personally identifiable data to parties outside our affiliated companies for their independent use unless: 1) you request or authorize it; 2) the information is provided to help complete a transaction initiated by you; 3) the information is provided to a reputable credit bureau or similar information reporting agency; or 4) the disclosure otherwise is lawfully permitted or required. We do not provide account or personal information to non-affiliated companies for the purpose of independent telemarketing or direct mail marketing of any products or services.

### HOW TO CONTACT US

At IRA Innovations, LLC, we value our customer relationships. We want you to understand how we use the information you provide and our commitment to ensuring your personal privacy. If you have any questions about how IRA Innovations, LLC protects your confidential information, please call us at 1-205-985-0860.