

# Form 5305-C

(November 2007)  
Department of the  
Treasury  
Internal Revenue Service

Your Logo Here

HSA Custodian Named Above

## Health Savings Custodial Account and Disclosure Statement (Under section 223(a) of the Internal Revenue Code)

Do Not file  
with the  
Internal  
Revenue  
Service

**Important Note:** The first two pages of this document beginning below this paragraph is the IRS Form 5305-C and uses required IRS language. The IRS has not yet updated this form to reflect the increase in the penalty from 10% to 20% for non-eligible medical expense distributions. The IRS form also does not contain the current HSA contribution limits.

### **HSA Custodial Agreement**

The account owner named 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 his 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 preventative care and limited types of permitted insurance and permitted coverage), (3) is not entitled to benefits under Medicare (generally, has not reached age 65), and (4) cannot be claimed as a dependent on another person's tax return.

The account owner and the custodian make the following agreement:

### **Article I. Contributions**

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 in excess of the maximum amount for an account owner with 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) (if permitted 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. Contribution Limits**

1. For calendar year 2007, the maximum annual contribution limit for an account owner with single coverage is \$2,850. This amount increases to \$2,900 in 2008. For calendar year 2007, the maximum annual contribution limit for an account owner with family coverage is \$5,650. This amount increases to \$5,800 in 2008. These limits are subject to cost-of-living adjustments after 2008. calendar year 2004, the maximum annual contribution limit for an account owner with single coverage is the lesser of the amount of the deductible under the HDHP but not more than \$2,600.
2. Contributions to Archer MSAs or other HSAs count toward the maximum annual contribution limit to this HSA.
3. For calendar year 2007, an additional \$800 catch-up contribution may be made for an account owner who is at least age 55 or older and not enrolled in Medicare. The catch-up contribution increases to \$900 in 2008 and \$1,000 in 2009 and later years.
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. Account Owner Responsibilities**

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. Nonforfeitable**

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

### **Article V. Investment Limitations (see also Article XV)**

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. Distributions (See also Article XVI)**

1. Distributions of funds from this HSA may be made at any time 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 10 percent tax on that amount. The additional 10 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 that the distribution is tax-free.

## **Article VII. Payable Upon Death**

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. Reporting Requirements**

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. Controlling Provisions**

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. Amendments (see also Article XIII)**

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 below.

## **Article XI. Additional Provisions**

Article XI may be used for any additional provisions. If no other provisions will be added, draw a line through this space. If provisions are added, they must comply with the requirements of Article IX.

## **Article XII. Definitions.**

In addition to the definitions above and in the IRS Instructions, the words "you," "your," and "HSA owner" refer to the Account Owner or an appointed third party or your spouse, upon your death. "We," "us," and "our" refer to the Custodian. The Custodian is the financial institution named on the top of this agreement. The "Custodial Account" has the same meaning as "HSA."

## **Article XIII. Amendments.**

We have the right to amend this agreement at any time. We will deliver the amendment to you and you will be deemed to have automatically consented to the amendment thirty (30) days from the date we mail the amendment to you, unless you notify us in writing that you do not consent.

## **Article XIV. Resignation or Removal of Us as Custodian.**

**1. Termination of Agreement.** Either party may terminate this agreement at any time by giving 30 days prior written notice to the other. Within the 30 day termination period, you must transfer your HSA to a successor HSA custodian or trustee or request a distribution of the assets in the HSA. If you do not, we will have the right to distribute all assets in the HSA in a single payment to you, to transfer the account to a successor custodian of our choosing, or to distribute the assets in-kind to you. We reserve the right to withhold any funds we deem advisable for payment of any liabilities, including applicable fees or expenses owing to the Custodian.

**2. Resignation by Custodian.** We may resign as custodian, without your consent, upon thirty (30) days prior written notice to you. Upon our resignation, we will either appoint a successor custodian (see next paragraph), ask you to appoint a successor custodian, or we distribute the remaining assets in the HSA to you. If we distribute the assets, you are responsible for the tax consequences of the distribution.

**3. Appointment of Successor Custodian.** Pursuant to this Article, we may resign as custodian and appoint a successor custodian that we choose. The successor custodian (or trustee) must be a bank (as defined in Code Section 408(n)), an insurance company (as defined in section 816), or another person who satisfies the IRS requirements for HSA custodial duties. You will have thirty (30) days from the date of the notice to either request a complete distribution of the HSA or to designate a different successor custodian or trustee. If you do not request a complete distribution or designate a new custodian or trustee, you will be deemed to have automatically accepted the successor custodian. The successor custodian may have a new HSA Custodial Agreement with terms different than this Agreement. In that case, you will receive a copy of the new agreement.

## **Article XV. Investments.**

You are responsible for all investments selected in your HSA. If the Custodian offers investment choices beyond insured deposits of the Custodian, then this is a self-directed HSA and allows for investment in FDIC insured products of the Custodian as well as other investments. The Custodian may limit your investment alternatives to what is administratively feasible for it to offer. The Custodian does not approve, review, audit or otherwise investigate self-directed investment options. We are not responsible for any investments selected and do not review your investments choices. The Custodian is not liable for your investment losses. The Custodian does not give investment advice and shall not have a duty to question any investment directives received from you. The Custodian has no investment discretion.

## **Article XVI. Distributions.**

Pursuant to Article V, you are responsible to determine what is an eligible medical distribution. You understand that the Custodian does not verify your distributions for eligibility. If cases of distributions due to death or divorce, we will require you, your spouse, or your beneficiary to provide proper tax identification number(s). Any distribution by check, debit card, online banking or other method approved by us will be reported as a normal distribution, unless we inform you otherwise. If you make a mistake in taking a distribution, you can put it back into your HSA as the return of a mistaken distribution.

## **Article XVII. Eligibility.**

Consistent with other provisions of this Agreement, you are responsible to determine your eligibility for this HSA. The Custodian assumes no responsibility regarding eligibility for an HSA. You agree that we are not responsible to inquire into the eligibility of your contributions to the HSA. You are responsible for all tax or investment consequences for the HSA

## **Article XVIII. No Assumed Responsibilities.**

We assume no responsibilities other than those required under the Code. We are not responsible for your employer's failure to make any contributions under the HSA; including we shall not be liable for any losses, damages, costs, penalties, or expenses you incur as a result of any failure or action by your employer. We are not responsible for monitoring or notifying you of your employer's contributions to your HSA. You acknowledge that we are not responsible for representations made to you by insurance agents, brokers or the insurance agency that sold you the HDHP in connection with this HSA.

### **Article XIX. Fees and Expenses.**

You agree to pay the fees associated with the HSA. We have the right to modify the fees and will provide notification of modifications in a reasonable manner. We also may charge additional fees upon thirty (30) days prior written notice. You agree that we may collect these fees through automatic debiting of the HSA or through another method at our discretion. You agree that we may deduct any reasonable expenses we incur in the administration of your HSA from your HSA. Additionally, we have the right to liquidate your HSA assets to pay such fees and expenses. These expenses may include professionals hired by us in connection with your HSA. Any brokerage or asset-based fees attributable to your HSA will be charged to your HSA.

**Article XX. Hold Harmless.** You agree to hold us harmless and to indemnify us against any liability arising from actions we took in good faith pursuant to this agreement.

### **Article XXII. Miscellaneous.**

**1. Representations.** You represent to us that any information you give to us is accurate and complete; including any information contained on the HSA Application that you signed in connection with this HSA. You understand and represent that you are responsible for any penalties, taxes, judgments or expenses you incur in connection with this HSA. You understand that we have no duty to determine your eligibility for your HSA or your tax consequences for actions you take with your HSA; including, without limitation, deductibility of contributions and the taxability of distributions. You agree that you are solely responsible for determining eligibility for contributions and the tax consequences of contributions and distributions. We do not have or assume that duty. You understand that the HSA custodial role is limited in nature and that we do not provide tax or legal advice. You must seek your own tax or legal advice.

**2. Notices.** Notices given by us are effective when we mail the notices to the address we have in our records. Any notice you give to us will be considered effective when we actually receive it.

**3. Agreement to Update Information.** You agree to inform us if you (i) change your address, (ii) create an excess in your HSA by contributing more than your eligible amount, (iii) engage in a prohibited transaction as defined by IRC Section 4975, or as is otherwise necessary for us to serve as custodian for your HSA.

**4. Headings.** The headings and articles of this agreement are for convenience of reference only and shall have no substantive effect on the provisions of this agreement.

**5. Choice of Law.** The agreement shall be construed and interpreted in accordance with Federal law. In cases where state law is applicable, the state law of the home office of the Custodian shall apply.

**6. Disqualifying Provision.** Any provision of this agreement which would disqualify the HSA shall be disregarded to the extent necessary to make the Custodial Account an HSA.

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## **General Instructions**

*Section references are to the Internal Revenue Code.*

### **Purpose of Form**

Form 5305-C is a model (nonmandatory) 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, 2004-1 C.B. 269, Notice 2004-50, 2004-2 C.B. 196, Publication 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 2007, an HDHP for self-only coverage has a minimum annual deductible of \$1,100 and an annual out-of-pocket maximum (deductibles, co-payments and other amounts, but not premiums) of \$5,500. In 2008, the \$1,100 minimum annual deductible remains the same and the annual out-of-pocket maximum increases to \$5,600. For calendar year 2007, an HDHP for family coverage has a minimum annual deductible of \$2,200 and an annual out-of-pocket maximum of \$11,000. In 2008, the \$2,200 minimum annual deductible remains the same and the annual out-of-pocket maximum increases to \$11,200. These limits are subject to cost-of-living adjustments after 2008.

**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, a life 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.

### **Specific Instructions**

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 erroneous distributions, and descriptions or prohibited transactions. Attach additional pages if necessary.