



## HEALTH SAVINGS ACCOUNT (HSA) CUSTODIAL AND DEPOSIT AGREEMENT

### CUSTODIAL AND DEPOSIT AGREEMENT (“Agreement”)

The person whose name appears on the *Application* is establishing with *us* a *Health Savings Account (HSA)* qualified under Section 223 of the *IRS Code*. Funds on deposit in the *Account* at the *Bank* are insured by the *FDIC* up to the limits specified in the Federal Deposit Insurance Act and applicable regulations adopted by the *FDIC* from time to time.

### DEFINITIONS

Defined terms are italicized. As used in this *Agreement*:

- *Account* means the *HSA deposit account* *you* have established with *us*.
- *Application* means the *HSA Application*.
- *Bank* means Exante Bank, Inc.
- *Beneficiary* means the person *you* have chosen, as shown in the *Application*.
- *Check* means the checks which may be provided to *you* in connection with *your Account*.
- *Debit Card* means the MasterCard® debit card which may be issued to *you*, and to an authorized user of *your Account*, if applicable, by the *Bank* in connection with *your HSA*.
- *IRS Code* means the Internal Revenue Service (IRS) Code of 1986, as amended, and all the rules and regulations adopted by the United States Internal Revenue Service.
- *ERISA* is the federal *Employee Retirement Income Security Act*.
- *FDIC* is the Federal Deposit Insurance Corporation.
- *HSA* means this Health Savings Account.
- *You* or *your* or *yours* means the account holder who opened the *Account*.
- *We* or *us* or *our* means Exante Bank, Inc., a Utah state-chartered bank and member of the *FDIC*, or its successors or assigns.

### OUR RIGHTS AND OBLIGATIONS

As custodian of the *Account*, *our* sole duties are to:

- Keep accurate and complete records of contributions to and distributions from *your HSA*;
- File any returns and reports imposed by the *IRS Code* upon *us* as *HSA* custodian; and
- Use ordinary care and reasonable diligence in maintaining *your HSA*.

Upon any assignment of this *Agreement* or the *HSA* by *us*, the assignee automatically shall become the custodian of the *Account*. Upon *your* death, *we* will pay any balance in *your Account* (after deducting the amount of any *Debit Card* or other transactions made and related adjustments and chargebacks and any other *Account* fees and charges which may be owing) to the *beneficiary(ies)* designated by *you* on the *Application*, or as amended by *you* in a written notice to the *Bank*. Notify *us* immediately if *you* wish to change the *beneficiary*, such as in the case of a change in *your* marital status.

All materials provided by *us* are designed and distributed with the understanding that they do not constitute or include legal, tax, or other professional advice. *We* assume no responsibility for tax or other consequences to anyone arising from the establishment or use of the *HSAs*. *You* may wish to consult with an attorney or other qualified tax professional. By signing the *Application*, *you* acknowledge and agree that nothing in this *Agreement* is construed to confer fiduciary status upon *us* for any purpose. *We* are not required to perform any additional services unless specifically agreed to under the terms and conditions of this *Agreement*.

### YOUR RESPONSIBILITIES

*You* acknowledge and agree that *you* are solely responsible for (i) determining whether *you* are eligible to have an *Account*, and whether distributions from *your Account*, including *Check*, *Debit Card* purchases and other *Account* withdrawals, constitute qualified medical expenses, as defined in the *IRS Code*, (ii) keeping appropriate records for these purposes, (iii) ensuring that all contributions *you* make are permitted under applicable law, (iv) determining the tax consequences of any contributions (including rollover contributions) and distributions *you* make, and any taxes, interest, penalties and other expenses which may be payable under law in connection with *your Account*. *You* agree that *we* are a custodian of *your Account*, and *you* authorize *us* to act without further inquiry in accordance with writings bearing *your* signature.

The *HSA* is self-administered by *you*. *You* cannot assign *your HSA*, and *your* interest in *your HSA* is nonforfeitable. Only *you* can authorize withdrawals from *your HSA*. *We* reserve the right to correct errors, to withdraw any funds that should not have been placed in *your HSA* and to withdraw *Account* administrative fees. *You* may not use the *HSA* or the assets in it as security for any loan. Neither *you* nor any *beneficiary* may transfer or pledge any interest in *your HSA* in any manner whatsoever, except as provided by law or this *Agreement*. *You* are responsible for complying with all laws governing withdrawals, transfers and taxes. All transfers or distributions from the *Account* must be made in accordance with the *IRS Code*.

If you have your HSA through your employer, your employer has permitted us to offer our services through your workplace. The HSA is established pursuant to federal tax law, and is neither endorsed by nor sponsored by your employer. Rather, it is an individual Account arrangement between you and us. As a result, the HSA is not part of your employer's ERISA benefit plan, even if your employer contributes to it or you make pre-tax contributions under your employer's cafeteria plan.

By written notice to us, you can name a beneficiary who will receive the balance of your HSA upon your death. Upon satisfactory proof of your death, we will transfer or distribute the entire balance (as required by the IRS Code) to your beneficiary or, if none, to your estate.

### **DEPOSITS AND AVAILABILITY OF FUNDS**

Funds on deposit will be available for withdrawal from your Account in accordance with our standard funds availability schedule. We reserve the right to require at least seven days' written notice prior to withdrawal of funds from the Account. Deposits received by us during non-business hours will be considered to be made on the next full banking day. We may refuse, limit or return any funds received for deposit. We accept only funds in U.S. dollars. Funds received in other currencies will be returned to you. You agree to pay the Bank's standard Account fees, as in effect from time to time.

### **INTEREST AND FEES**

You will earn interest on the funds in your HSA at the rate established by us, which is based on prevailing market conditions. Interest will accrue daily based on the balance of funds on deposit in your Account and will be credited monthly.

You will pay us fees for the services we perform for you in connection with your HSA. You have acknowledged receipt of our schedule of fees as an attachment to the Application. You authorize us to withdraw all fees from the balance in your HSA. We can adjust the amount or type of the fees, or add new fees, from time to time.

### **WITHDRAWALS**

You may withdraw all or any part of the balance of your HSA at any time. You are solely responsible for the tax treatment of any withdrawals from the Account, whether made by Check, Debit Card or third party transfer from your Account.

If available on your Account, we may provide you with Checks to enable you to make withdrawals. You understand that we will not return original Checks to you. Processed Check images will be made available to you on our Web site. We are not responsible for actions taken by other banks, or for the loss or destruction of any Checks, drafts or other instruments in the possession of other banks or in transit. We may return unpaid any Check on your Account which is not on a form we provided to you, or which is presented to us before its date. We will not be responsible for paying or certifying postdated Checks on Accounts. You may ask us in writing to stop payment on a Check drawn on your Account which has not yet been paid by us. We will honor any written stop payment request from you which is received by us at least two business days before the Check is presented to us for payment. The stop payment order must specify the exact amount of the Check, the payee, the date of the Check, the number of the Check and your Account number. We will honor the stop payment request for six months.

If available on your Account, you also may request us to issue a Debit Card which will enable you to pay for purchases from your HSA. You authorize us to debit your HSA to pay for transactions made with your Debit Card by you and your authorized users. In addition to this Agreement, your use of the Debit Card is subject to the terms and conditions of the Card Agreement which has been provided to you and which are incorporated herein by reference.

### **THIRD-PARTY TRANSFERS**

You may authorize us, from time to time, on your behalf, to make transfers of funds to third parties in the amounts specified by you, and to debit your Account for the amount of each such payment we make. You understand we will also debit your Account for the applicable service charge which is then in effect, and which we may change from time to time. You understand that in performing this service, we will make these payments by Check or draft, and that we will be acting as your agent in making such payments. We will not be liable for any errors or delays in making any such payment, except for errors or delays caused by our gross negligence, or for our inability to make any payment due to circumstances beyond our control or if there are insufficient funds in your Account with which to make the payment.

### **INSUFFICIENT BALANCE**

You must maintain a balance in your Account which is sufficient to cover all Checks you write, Debit Card transactions you make, and transfers you authorize us to make on your behalf. If there are insufficient funds in your Account to cover any such Check or Debit Card transaction or transfer, we may refuse to honor the Debit Card transaction or transfer, or return the Check without paying it, as the case may be. If we make a transfer or pay a Check against insufficient funds or uncollected balances, you agree, promptly on demand, to pay to us the amount by which the Check exceeds the funds in your Account. You may be charged interest at our rates in effect from time to time on the insufficient balance for each day it is outstanding, and the fee specified on our Schedule of Fees.

### **OTHER INFORMATION AND CHANGE OF NAME OR ADDRESS**

Subject to ordinary care and usual practices, we are entitled to rely upon information we receive with respect to your HSA, including the information contained in the Application, and have no obligation to make further investigation, except as required by law.

You agree to notify us promptly, in writing, if you change your name or address by calling customer service and requesting an address change form.

You agree to immediately notify us of any changes in the information provided to us that we rely on in connection with your Account. You agree to provide us with any necessary information we may need to prepare reports required by the IRS Code or other laws and regulations.

### **CHANGES IN THIS AGREEMENT**

The rights, duties and obligations of both *you* and *us* with regard to *your HSA* are governed by this *Agreement* and the *Card Agreement*, as they may be amended from time to time. *We* may amend this *Agreement* only upon prior written notice to *you*, and any amendment will become effective on the date stated in *our* notice to *you* of the amendment.

In addition, Exante Bank or its successors and assigns, reserves the right to assign *your HSA* without *your* prior consent, provided that such assignee is qualified under the *IRS Code* to be an *HSA* custodian or trustee. Upon any assignment of this *Agreement*, the assignee shall automatically become custodian of the *Account* if it is qualified under the *IRS Code*, to serve as an *HSA* custodian or trustee. *You* acknowledge that such assignment may result in loss of *FDIC* insurance coverage for any *HSA* balances for which such assignee becomes a custodian or trustee.

## **NOTICES**

Any notice required by this *Agreement* to be given by *us* to *you* will be effective upon *our* deposit of the notice with the United States Postal Service with proper postage affixed and directed to the last address *you* provided *us*. Any notice required by this *Agreement* to be given by *you* to *us* will be effective upon receipt of the notice at Exante Bank, P.O. Box 271629, Salt Lake City, UT 84127-1629.

## **ARBITRATION**

Any claim or controversy that is not resolved by the parties shall, at the request of a party, be resolved by binding arbitration in accordance with the applicable commercial arbitration rules of the American Arbitration Association. In no event may arbitration be initiated more than one year following the date the dispute arose. Any arbitration proceeding under this *Agreement* shall be conducted in Salt Lake City, Utah. The arbitrators may construe or interpret, but shall not vary or ignore the terms of this *Agreement*, shall have no authority to award extra contractual damages of any kind, including punitive or exemplary damages, and shall be bound by controlling law. Judgment upon an arbitration award may be entered in any *court* of competent jurisdiction. The parties acknowledge that because this *Agreement* affects interstate commerce, the Federal Arbitration Act applies.

## **STATEMENTS**

*We* will make available on a Web site for *you* a monthly statement or statements summarizing each transaction in *your Account* during the preceding month. *We* will mail or deliver a statement or notice to *you* upon request. *You* agree to examine each statement or notice after it is posted on the Web site or sent to *you*. If *you* discover any unauthorized transactions, or signatures or alterations, or other discrepancies on *Checks* or *Debit Card* transactions, *you* must promptly notify *us* in writing of the relevant facts. *You* agree that if *you* do not report any discrepancies within 60 days of when *we* first send the statement or make it available to *you*, the statement will be deemed correct and *you* will not be able to assert a claim against *us*.

## **DEFAULTS**

*You* will be in default if *you* fail to meet any of *your* obligations under this *Agreement* or any other agreement with *us*. In the event of a default, *we* may exercise any legal rights *we* may have. If *we* are required to take any legal action under this *Agreement*, *you* agree to pay *our* court and collection costs and any attorney's fees and disbursements. If *you* are in default of this *Agreement*, or upon the closure of the *HSA*, whether such closure was made by *you* or by *us*, *we* shall not be obligated to continue to provide services under this *Agreement*.

## **ACCOUNT CANCELLATION AND SUSPENSION**

*We* may close the *Account* at any time. *You* may close the *Account* by notifying *us* in writing. No closure of the *Account* will affect *our* right to debit the *Account* for any withdrawals or charges made by *you*, or made by an authorized user of *your Debit Card*, or to honor any adjustments or chargebacks related to such transactions.

As soon as practical after termination, *we* will distribute the balance in *your HSA* in accordance with the *IRS Code*. After distribution of all funds, this *Agreement* will end and *we* will have no further duties, obligations, or liabilities to *you* or anyone, except as required by law.

## **LIMITATION OF LIABILITY/HOLD HARMLESS**

In connection with this *Agreement* and *your HSA*, *we* are not responsible for any act or failure to act that is reasonable under the circumstances or that is consistent with the rules and regulations of the Board of Governors of the Federal Reserve System and other federal regulatory agencies, or any applicable laws, rules or regulations of the State of Utah, or with general commercial practices of banks. *You* agree to indemnify *us* and hold *us* harmless against any claims, damages, expenses and losses, including attorney's fees, incurred by *us* resulting from (i) any action *we* take in honoring *your* instructions, including but not limited to all verbal or facsimile instructions received with respect to *your HSA*, (ii) in connection with *our* honoring of any subpoena or *court* order relating to *your HSA* or (iii) other costs, expenses or liabilities arising under this *Agreement* except costs, expenses or liabilities that arise from *our* breach of any duty under this *Agreement*.

## **MISCELLANEOUS**

*We* can choose not to exercise or to delay enforcement of any of *our* rights under this *Agreement* without compromising them. Each party's rights and obligations under this *Agreement* will be binding upon its heirs, executors, legal representatives, successors and permitted assigns. If any provision of this *Agreement* is held invalid or unenforceable, all other provisions of this *Agreement* shall remain in full force and effect. This *Agreement* becomes effective upon the opening and funding of *your Account*. This *Agreement* shall be governed by and construed in accordance with the laws of the State of Utah and applicable federal law.