



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 *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., a Utah state-chartered bank and member of the *FDIC*, or its successors or assigns.
- *Beneficiary* means the person you have chosen to receive the proceeds of your *Account*, as shown in the *Application* or any other form provided by us.
- *Check* means the checks which may be provided to you in connection with your *Account*.
- *Code* means the Internal Revenue Code of 1986, as amended as of the date of and during the term of this *Agreement*, and all the rules and regulations in effect or adopted by the United States Internal Revenue Service during the term of this *Agreement*.
- *Debit Card* means the authorized third party provider 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*.
- *Disclosure Statement* means the statement provided by us to you describing how you can obtain *Investments* for your *Account*.
- *ERISA* is the federal *Employee Retirement Income Security Act* of 1974, as amended as of the date of and during the term of this *Agreement*.
- *FDIC* is the Federal Deposit Insurance Corporation.
- *Investments* shall mean such mutual funds as have been accepted by us and made available to you for purchase using funds within the *Account* as directed by you either through arrangements directly with the mutual fund or through a broker-dealer as provided under the terms of this *Agreement*, the *Disclosure Statement*, and the separate terms and conditions contained within the prospectus and statement of additional information relating to the purchase of any specific mutual fund.
 - *Investments* are not insured by the *FDIC*.
 - *Investments* are not guaranteed by us.
 - *Investments* may lose value.
- *You* or *your* or *yours* means the account holder who opened the *Account*.
- *We* or *us* or *our* means the *Bank*.

OUR RIGHTS AND OBLIGATIONS

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

- Keep accurate and complete records of contributions to, *Investments* made within, and distributions from your *HSA*;
- File any returns and reports imposed by the *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 *Code*, (ii) keeping appropriate records for these purposes, (iii) ensuring that all contributions and *Investments* 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 Account, and your interest in your HSA is nonforfeitable. Only you can authorize withdrawals from your HSA. We reserve the right to correct errors (whether made by us or your employer, if applicable) including the right 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 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 any Investments held in our name or in a nominee name for your HSA and any funds on deposit in your Account upon your death. Upon satisfactory proof of your death, we will transfer or distribute the entire balance (as required by the Code) to your Beneficiary or, if none, to your estate.

DEPOSITS AND AVAILABILITY OF FUNDS

Funds on deposit in your Account 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 on deposit with us in your Account 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 Account. We can adjust the amount or type of the fees, or add new fees, from time to time.

SELF-DIRECTED INVESTMENT PROVISIONS

Investment of Contributions: You may invest any portion of the contributions to your Account in excess of the minimum amount established by us as described within the Disclosure Statement and any interest earnings of such Investments and in such amounts as you specifically select and direct (or as directed by the Beneficiary upon your death), in orders to us in such form as may be acceptable to us, without any duty to diversify and without regard to whether such property is authorized by the laws of any jurisdiction as a trust investment. We shall direct all orders received to such broker-dealer as we may select for the execution of such orders and we shall maintain adequate records thereof. If any such orders are not received as required, or, if received, are unclear in our opinion, all or a portion of the contribution may continue to be held as funds on deposit in your Account without liability for loss of income or appreciation, and without liability pending receipt of an acceptable order or clarification. You acknowledge and agree that prior to submitting an order, you shall have received, read and understood the prospectus describing the Investments and all fees and expenses relating to such purchase. All purchases of the Investments shall be made according to the terms and conditions of the then-effective prospectus relating to the Investments and any statement of additional information as such documents may be amended and updated in accordance with applicable law. We shall have no duty other than to follow your investment directions and shall be under no duty to question said instructions and shall not be liable for any investment losses sustained by you. We shall not make any investment or dispose of any investment except upon the express verbal or written direction from you, except as provided in this Agreement. You acknowledge that any liquidation of Investments will not result in immediately available funds for deposit to your Account and such funds will be available only in accordance with the terms and conditions applicable to the specific investment made by you and the terms and conditions of the Account regarding availability of funds.

Registration: All Investments shall be registered in our nominee name or a suitable nominee. The same nominee name may be used with respect to assets of other HSA accounts whether or not held under agreements similar to this one or in any capacity whatsoever. However, we shall maintain a separate accounting of the Investments registered in our nominee name for the benefit of your Account.

No Investment Advice: We do not assume any responsibility for rendering advice with respect to the investment and reinvestment of the funds on deposit within your Account and shall not be liable for any loss which results from your exercise of investment control over your Account. You (or as directed by the Beneficiary upon your death) shall have and exercise exclusive responsibility for control over the investment of any funds within the Account, and we have no duty to question the investment directives provided by you.

Disclosures and Voting: We shall deliver, or cause to be executed and delivered, to you all notices, prospectuses, financial statements, proxies and proxy soliciting materials relating to Investments held for the benefit of the Account. We shall not vote any Investments or take any other action, pursuant to such documents, with respect to such assets except only in accordance with such directions you provide to us regarding any such vote.

Miscellaneous Expenses: You agree to pay any and all expenses incurred in connection with any Investments made for the benefit of the Account and any transfer taxes incurred in connection with the investment or reinvestment of the assets of the Account.

WITHDRAWALS

You may withdraw all or any part of the balance of your Account 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 Account*. You authorize us to debit *your Account* 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* or *Debit Card* transactions 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. You authorize us to liquidate *Investments*, at our discretion, to cover any insufficient funds in *your Account*.

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 *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, the *Bank*, reserves the right to assign your *HSA* without your prior consent, provided that such assignee is qualified under the *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 *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

Upon receipt of a signed *Application* or other bank approved affirmation from *you*, *we* will make available electronically 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 Account* in accordance with the *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 by *us* 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. *We* are not responsible for any act or failure to act of any broker-dealer or mutual fund relating to the *Investments*. *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.