

# Voya Health Account Solutions

Living today, planning for tomorrow

## VOYA HEALTH SAVINGS ACCOUNT CUSTODIAL AGREEMENT

The Account Owner is establishing a Health Savings Account (an “HSA” and, with respect to the Account Owner, the “Account”), as defined in Internal Revenue Code (“Code”) Section 223, with Voya Institutional Trust Company 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 the Account is used solely to make rollover contributions, the Account Owner is eligible to contribute to the Account; specifically, that the Account Owner: (1) is covered under a high deductible health plan (HDHP); (2) is not also covered by any other health plan that is not an HDHP (with certain exceptions for plans providing preventive care and limited types of permitted insurance and permitted coverage); (3) is not enrolled in Medicare; and (4) cannot be claimed as a dependent on another person’s tax return.

This Agreement shall govern the Account. The Account Owner and the Custodian agree as follows:

### ARTICLE I. DEFINITIONS

The following definitions shall apply to these capitalized terms as used throughout this Agreement:

“Account Owner” means the individual on whose behalf an Account is established under this Agreement, including any authorized agent of such person.

“Agreement” means this [Health Savings Account Custodial Agreement] and all other documents, schedules and/or appendices incorporated into and made a part of this Agreement by reference.

“Application” means the submission of Account Owner information to the Custodian or HSA Administrator sufficient to allow the Custodian to establish the Account on behalf of the Account Owner. An Application may consist of information submitted by the Account Owner, the Owner’s employer or a combination of the two.

“Business Day” means a day that the Federal Reserve System and the New York Stock Exchange are open for business.

“Cardholder Agreement” means the separate agreement between the Account Owner and the Debit Card issuer and any other terms, conditions and requirements that are applicable to the Debit Card as established by the Debit Card issuer and its agents.

“Cash Account” means the portion of the Account that is held within the Deposit Program.

“Catch-Up Contribution” means an additional annual contribution that may be made for an Account Owner that (a) has attained age 55 before the close of the taxable year and (b) is not enrolled in Medicare.

“Close of Market” means, for any given Business Day, the closing time designated by the New York Stock Exchange for such day.

“Code” means to the Internal Revenue Code of 1986, as amended from time to time.

“Custodian” means Voya Institutional Trust Company and its sub-custodians and agents.

“Debit Card” means the debit card made available by the Debit Card issuer to be used by the Account Owner to facilitate distributions from the Account.

“Deposit Program” means the arrangement between the Custodian, its sub-custodians and agents, and the Program Banks under which amounts within the Cash Account are deposited at the Program Banks.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“Fee Schedule” means the listing of fees that may be deducted from the Account pursuant to this Agreement. The Fee Schedule is maintained on the HSA Website.

“HSA Administrator” means Voya Benefits Company and its subcontractors and agents.

“Interest Rate Disclosure” means the schedule of interest rates applicable to the Account Owner’s holdings within the Deposit Program. The Interest Rate Disclosure is maintained on the HSA Website.

“Investment Account” means the portion of the Account that is held within the Portfolio and HSBA.

“Investment Transfer Threshold” means the minimum balance for the Cash Account that must be satisfied before Account assets can be transferred from the Cash Account to the Investment Account. When the Account Owner establishes Auto-Investment Transfers, the Investment Transfer Threshold is the balance threshold within the Cash Account that automatically triggers a transfer from the Cash Account to the Investment Account and vice versa, provided such transfer would satisfy the Minimum Auto-Transfer Amount. The Investment Transfer Threshold is established by the Account Owner through the HSA Website.

“IRS Rules” means Code Section 223 and all relevant regulations and guidance issued by the Internal Revenue Service with respect to HSAs.

“Large Deposit” means a cash contribution amount established by the Custodian and/or the HSA Administrator as a fraud prevention tool.

“Minimum Auto-Transfer Amount” means the required minimum amount for a transfer between the Cash Account and the Investment Account and vice versa, whether or not part of an Automatic Investment Transfer. The Minimum Auto-Transfer Amount is \$100 unless a different minimum is described on the HSA Website.

“Program Bank List” means the hierarchical listing of the Program Banks that are part of the Deposit Program. The Program Bank List is maintained on the HSA Website.

“Program Banks” means the depository institutions identified on the Program Bank List.

“Rollover Contribution” has the meaning given that term in Code Section 223.

## **ARTICLE II. EFFECTIVE DATE OF AGREEMENT; ESTABLISHMENT AND MAINTENANCE OF THE ACCOUNT**

### **2.1 Acceptance and Effective Date of Agreement**

The Account Owner, through the submission of an Application on the Account Owner’s behalf, accepts and agrees to the terms and provisions of this Agreement, including the appointment of the Custodian, and its successors, as custodian of the Account established hereunder. If the Account Owner’s employer submits the Application on behalf of the Account Owner, the Account Owner will be deemed to have consented to the terms of this Agreement if the Account Owner fails to object thereto by sending written notice to the HSA Administrator, in a form and manner acceptable to the HSA Administrator, within thirty (30) days from the date of the Custodian’s or HSA Administrator’s receipt of the Application. Any such objection must be accompanied by the Account Owner’s closure of the Account, including a distribution or transfer of the full Account balance, in accordance with the Custodian’s and HSA Administrator’s policies and procedures.

This Agreement is effective on the date that the Account Owner’s Application is accepted by the Custodian. The enrollment notification or similar welcome communication that the HSA Administrator provides to the Account Owner serves as notice of this Agreement’s acceptance by the Custodian.

### **2.2 Establishment of Account**

The Account is established with the Custodian on the date it is set up with the Custodian, or on such later date as may be determined under applicable law.

### **2.3 Verification of Account Owner**

Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. The Account may not be used by the Account Owner until the Account Owner’s information has been verified. During such time, the Custodian may charge its customary fees for maintaining the Account. Upon request from the Account Owner, the Custodian will close the Account and return funds to the original contributor, less any fees or expenses chargeable against the Account, or lost interest associated with the early distribution of the Account. Neither the Custodian nor the HSA Administrator shall be liable for any tax consequences or tax withholdings incurred as a result of the transfer or distribution of Account assets.

### **2.4 Account Website**

The HSA Administrator will provide the Account Owner with access to an account administration website (the “HSA Website”). In order to use the HSA Website, the Account Owner will need to establish a username and password. The Account Owner shall protect access to the Account and not share an

Account username, password or other access credential with anyone else. The Account Owner agrees that the Custodian may rely on instructions received in proper form through the HSA Website. All information concerning the Account will be made available through the HSA Website, including Account balance, contribution and distribution information, annual IRS Forms 1099-SA and 5498-SA, investment information, disclosures and any amendments to this Agreement. The Account Owner agrees to review the Account and Account information at least once per month. The Account Owner acknowledges that the Account Owner must utilize the HSA Website to initiate any investment transactions within the Account.

## **2.5 No Discretion by Custodian**

The Custodian shall receive and hold the assets of the Account on behalf of the Account Owner in accordance with the terms of this Agreement. Nothing in this Agreement is intended to give the Custodian any discretionary responsibility or authority with respect to the Account or the disposition of any Account assets. The Account Owner directs the investment of the Account, including within the Cash Account, and shall bear sole responsibility for the consequences arising from such investment.

## **2.6 Nonforfeitable Account**

The Account Owner's interest in the balance of the Account is nonforfeitable.

## **2.7 Designation of Beneficiary**

The Account Owner may designate one or more beneficiaries for the Account at any time, and change or revoke such designation at any time, in a form and manner acceptable to, and filed with, the Custodian. The beneficiary designation will be effective when filed with the Custodian during the Account Owner's lifetime, and any designation so filed will revoke all previous beneficiary designations for the Account. If the Account Owner does not designate a beneficiary, or if no primary or contingent beneficiaries survive the Account Owner, the Account Owner's estate will be the beneficiary of the Account, except as otherwise expressly required by applicable law.

The Account Owner represents and warrants that any beneficiary designation submitted by the Account Owner satisfies all legal requirements under applicable law. In some states, the consent of the Account Owner's spouse may be required by law if the Account Owner wishes to name a person other than or in addition to the Account Owner's spouse as beneficiary or to modify an existing beneficiary designation. The Account Owner understands and agrees that it is the Account Owner's obligation to determine if spousal consent is required by applicable law.

## **ARTICLE III. CONTRIBUTIONS**

### **3.1 Contributions Generally**

All contributions to the Account must be made in cash. No property or in-kind contributions or transfers will be accepted. There is currently no minimum periodic contribution amount established for the Account, but the Custodian reserves the right to establish a minimum periodic contribution amount in the future upon prior written notice.

Annual contributions, including Catch-Up 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), or such later date as may be determined by the Department of the Treasury or the Internal Revenue Service. All annual contributions that are received by the Custodian during a calendar year will be credited to the Account for the calendar year in which they are received by the Custodian unless the Account Owner designates the contribution as a prior-year contribution and such designation is timely made in accordance with IRS Rules and the Custodian's and HSA Administrator's policies and procedures.

The Custodian will also accept Rollover Contributions and trustee-to-trustee transfers from another HSA or from an Archer Medical Savings Account ("Archer MSA"). Rollover Contributions and trustee-to-trustee transfers from another HSA or from an Archer MSA are not subject to the Annual Contribution Limit referenced in Section 3.2 below. An Account Owner may also make a one-time trustee-to-trustee transfer from an individual retirement account to the Account (a "Qualified HSA Funding Distribution") in accordance with Code Section 408 and IRS Rules. A Qualified HSA Funding Distribution is subject to the to the Annual Contribution Limit referenced in Section 3.2 below. Rollover Contributions, trustee-to-trustee transfers and Qualified HSA Funding Distributions must be made in accordance with IRS Rules and the Custodian's and HSA Administrator's policies and procedures.

The Account Owner is solely responsible for (i) deciding whether to rollover or transfer funds to the Account and (ii) for properly identifying a Rollover Contribution as a Rollover Contribution. The Account Owner's identification of a Rollover Contribution shall be received by the Custodian as the Account Owner's confirmation that the Rollover Contribution satisfies the requirements of Code Section 223(f)(5). The Custodian is not responsible for any losses incurred by the Account or the Account Owner as a result of the timing of any rollover or transfer from another trustee or custodian that are due to circumstances beyond the control of the Custodian.

The Custodian reserves the right to reject contributions or transfers of funds to the Account in accordance with the Custodian's and HSA Administrator's policies and procedures and to return such funds to the sender in accordance with this Agreement or as otherwise permitted or required under applicable law.

### **3.2 Contribution Limits**

The Account has a maximum annual contribution limit determined by the Internal Revenue Service (the "Maximum Annual Contribution Limit"). The Account Owner may qualify for a Catch-up Contribution, an additional annual contribution. The Account Owner's contributions to Archer MSAs and other HSAs count toward the Maximum Annual Contribution Limit. The Maximum Annual Contribution Limit is listed on the HSA Website, on [www.irs.gov](http://www.irs.gov), and is further explained within IRS Publication 969.

The Account Owner is solely responsible for determining whether contributions to the Account have exceeded the Maximum Annual Contribution Limit. If contributions to the Account exceed the Maximum Annual Contribution Limit, the Account Owner shall notify the Custodian that there exist excess contributions to the Account. Contributions in excess of the Maximum Annual Contribution Limit are subject to an excise tax. 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. The Custodian will not verify or determine whether any contributions exceed the Account Owner's Maximum Annual Contribution Limit.

The Custodian will not accept contributions for the Account Owner that exceed the annual maximum amount for family coverage, plus a Catch-Up Contribution, if applicable.

### **3.3 Contribution Processing**

The Custodian will deposit all contributions (including transfers of assets) promptly after the receipt thereof. All contributions to the Account are initially allocated to the Cash Account and will be held at the direction of the Account Owner pursuant to direction made in such form and manner as is acceptable to the Custodian and HSA Administrator.

Amounts will be held in the Cash Account until the Account Owner directs either (i) a distribution of the amount from the Account or (ii) a transfer of the amount to the Investment Account. Contributions will be available for distribution in accordance with the Custodian's and HSA Administrator's policies and procedures and applicable law. The Custodian may delay funds availability on Large Deposits.

If the funding for a contribution is denied by the paying entity, the Custodian may accept the denial without question and charge the item back against the Account without advance notice to the Account Owner. The Account Owner may be charged a fee for each returned item.

## **ARTICLE IV. THE CASH ACCOUNT**

### **4.1 General**

All contributions and other deposits to the Account will be directed to the Cash Account. Amounts held within the Cash Account will be deposited through the Deposit Program at one or more banks as set forth on the Program Bank List and further described below. The Custodian will act in accordance with this Agreement and the Account Owner's instructions and does not exercise discretionary authority or control with respect to the Cash Account. The Account Owner is solely responsible for monitoring and managing the Account Owner's holdings within the Account.

### **4.2 The Deposit Program**



The Custodian, through its sub-custodians and agents, has established interest-bearing deposit accounts at one or more of the Program Banks (the “Deposit Accounts”) on behalf of customers of the Custodian who participate in the Deposit Program. The Deposit Accounts are eligible for Federal Deposit Insurance Corporation (“FDIC”) insurance as described below. The Custodian, acting as the Account Owner’s agent, will establish Deposit Accounts for the Account Owner at one or more of the Program Banks and make deposits to and withdrawals from the Deposit Accounts as authorized under this Agreement. The Account Owner will not have a direct account relationship with the Program Banks and will not be able to make withdrawals directly from the Deposit Accounts. Deposits held within the Cash Account are only available through the Account. The Custodian will receive a fee from the Program Banks as described in Article VII.

Deposit Account ownership will be evidenced by a book entry on the account records of each Program Bank showing an omnibus Program Deposit Account and by records of the Account Owner’s deposit in the Program Deposit Account maintained by the Custodian. No evidence of ownership, such as a passbook or certificate, will be issued to the Account Owner. Each Deposit Account constitutes a direct obligation of the Program Bank and is not directly or indirectly an obligation of the Custodian. The Custodian does not guarantee in any way the financial condition of the Program Banks or the accuracy of any publicly available financial information concerning the Program Banks.

Pursuant to federal banking regulations, the Program Banks must reserve the right to require seven days’ prior written notice before permitting the withdraw or transfer of funds from the Deposit Accounts. The Program Banks have informed the Custodian that they do not currently intend to exercise this right against the Deposit Accounts.

The Account Owner hereby authorizes the Custodian (i) to act as the Account Owner’s agent and custodian in establishing, maintaining, making deposits to and withdrawals from, and effecting other transactions in the Account Owner’s Deposit Accounts, (ii) to appoint sub-custodians and agents as necessary to open, maintain and provide services with respect to the Deposit Accounts; (iii) to provide instructions to such sub-custodians and agents on behalf of the Account Owner and (iv) to receive information that the Program Banks may provide to the Custodian in connection with the Account Owner’s Deposit Accounts.

#### **4.3 Program Banks and the Program Bank List**

The Program Banks appear on the Program Bank List in the order in which the Deposit Accounts will be opened for the Account Owner and the Account Owner’s funds will be deposited. The Account Owner may not change the order of the Program Banks on the Program Bank List. However, the Account Owner may at any time designate a Program Bank as ineligible to receive the Account Owner’s funds by contacting the HSA Administrator at the phone number identified for such purpose on the HSA Website. If the Account Owner designates a Program Bank as ineligible, such Program Bank will be treated as having been removed from the Program Bank List as such list is applicable to the Account Owner. In addition, the Account Owner may at any time instruct the Custodian to remove the Account

Owner's funds from a Program Bank, close the Account Owner's Deposit Account with the Program Bank and designate the Program Bank as ineligible to receive future deposits. In such case, the Account Owner's funds from a closed Deposit Account will be deposited in Deposit Account at the next available Program Bank set forth on the Program Bank List.

Under the Deposit Program, the Account Owner's deposit limit for each Program Bank is \$246,500.00 (the "Program Bank Deposit Limit"). Once the Account Owner's Deposit Account balances reach the Program Bank Deposit Limit at a particular Program Bank, any additional deposits from the Account Owner will be allocated to Deposit Accounts at the next available Program Bank set forth on the Program Bank List.

The Program Bank List may change from time to time. One or more of the Program Banks included on the Program Bank List may be replaced with a Program Bank not previously included on the Program Bank List, a Program Bank may be deleted from the Program Bank List or the order of Program Banks on the Program Bank List may change. Generally, the Account Owner will receive notification in advance of changes that result in the addition of a Program Bank to the Program Bank List or a change in the sequence of the Program Bank List. Under certain circumstances, such as if a Program Bank is no longer able to accept deposits for regulatory or other reasons, the Custodian may be unable to provide advance notice of changes to the Program Bank List. In such cases, the Custodian will provide notice as soon as practicable. Information regarding changes to the Program Bank List will be posted to the HSA Website or communicated to the Account Owner via email or U.S. Mail at the electronic or mailing address maintained for the Account Owner by the HSA Administrator. The current Program Bank List will be accessed by the Account Owner through the HSA Website. The Account Owner's continued use of the Deposit Program and/or the Account after notification of a change in the Program Bank List will constitute the Account Owner's consent to the Program Bank List.

In the event that the order of the Program Banks on the Program Bank List changes, the Account Owner's previously deposited funds will not be reallocated based on the new sequence. In the event that a Program Bank at which the Account Owner has deposits no longer makes the Deposit Accounts available, the Account Owner authorizes and directs the Custodian to transfer the Account Owner's funds from such Program Bank to the next available Program Bank on the Program Bank List.

On any day, a Program Bank may be closed for business or temporarily unable to accept deposits from the Account Owner. In such event, the Account Owner authorizes and directs the Custodian to place the Account Owner's funds at the next Program Bank on the Program Bank List. When the Program Bank that could not accept the Account Owner's funds is again able to accept the Account Owner's funds, the Custodian will place the Account Owner's available cash balances in that Bank.

Withdrawals will be allocated to the Account Owner's Deposit Accounts on a "last-in, first-out" basis (funds will be withdrawn first from the last Program Bank on the Program Bank List and last from the first Program Bank on the Program Bank List).

If the Account Owner maintains deposits through the Deposit Program at two or more of the Program Banks, information concerning the Account Owner's respective balances at each applicable Program Bank can be accessed by contacting the HSA Administrator at the phone number identified for such purpose on the HSA Website.



#### 4.4 Information About FDIC Insurance

The Deposit Accounts (including principal and accrued interest) are insured by the FDIC, an independent agency of the U.S. Government, up to \$250,000 for all deposits held in the same insurable capacity at any one Program Bank. The Account Owner's funds become eligible for deposit insurance immediately upon placement into a Deposit Account at a Program Bank. Generally, any accounts or deposits that the Account Owner may maintain directly with a particular Program Bank, or through any other intermediary, in the same insurable capacity in which the Deposit Accounts are maintained would be aggregated with the Deposit Accounts for purposes of the \$250,000 federal deposit insurance limit.

The Account Owner is solely responsible for monitoring the total amount of deposits that the Account Owner holds with any one Program Bank, directly or through an intermediary, in order to determine the extent of deposit insurance coverage available to the Account Owner on the Account Owner's deposits, including the Deposit Accounts. The Custodian is not responsible for any insured or uninsured portion of the Deposit Accounts or any other deposits.

In the event a Program Bank fails, the Deposit Accounts at that Program Bank are insured, up to \$250,000, for principal and interest accrued to the day the Program Bank is closed.

If the Account Owner's Deposit Accounts or other deposits at the Program Bank are assumed by another depository institution pursuant to a merger or consolidation, such deposits will continue to be insured separately, up to the FDIC insurance coverage limits, from the deposits that the Account Owner might have established with the acquiror until (i) the maturity date of any time deposits (including certificates of deposit) that were assumed, or (ii) with respect to deposits that are not time deposits, the expiration of a six-month period from the date of the acquisition. Thereafter, any assumed deposits will be aggregated with the Account Owner's existing deposits with the acquiror held in the same capacity for purposes of FDIC insurance coverage. Any deposit opened at the acquiror after the acquisition will be aggregated with deposits established with the acquiror for purposes of FDIC insurance coverage.

Information about FDIC insurance may be obtained by contacting the FDIC, Deposit Insurance Outreach, Division of Depositor and Consumer Protection, by letter (550 17th Street, N.W., Washington, D.C. 20429), by phone (877-275-3342 or 800-925-4618 (TDD)), by visiting the FDIC website at [www.fdic.gov/deposit/index.html](http://www.fdic.gov/deposit/index.html), or by e-mail using the FDIC's On-line Customer Assistance Form available on its website.

#### 4.5 Interest

The interest rates for the Deposit Accounts are contained on the Interest Rate Disclosure, which is available through the HSA Website. The interest rates are tiered, meaning the rate will vary based upon the amount of funds the Account Owner maintains in the Deposit Accounts through the Deposit Program. All Program Banks will utilize the same interest rate tiers and will pay the same rate of interest on the Deposit Accounts within each interest rate tier. The interest credited to the Account Owner's Deposit Accounts by the Program Banks represents only a portion of the overall interest paid by the

Program Bank on deposits made through the Deposit Program. The other portion is paid to the Custodian as set forth in Article VII. The interest rates on the Deposit Accounts will be determined by the amount the Program Banks are willing to pay on the Deposit Accounts minus the fees paid to the Custodian and other parties as set forth in Article VII. The Program Banks are not obligated to pay different interest rates on different tiers, and the interest rate tiers may be changed at any time without notice.

Interest will accrue on Deposit Account balances from the day funds are deposited into the Deposit Accounts at a Program Bank through the business day preceding the date of withdrawal from the Deposit Accounts at the Program Bank. Interest will be compounded daily and credited monthly on the last Business Day of each month. The Account Owner acknowledges and agrees that if the Account Owner closes the Cash Account prior to the date that monthly interest is credited, the Account Owner will not receive any accrued interest for that month.

The interest rates paid with respect to the Deposit Accounts at a Program Bank may be higher or lower than the interest rates available to depositors making deposits directly with the Program Bank or other depository institutions or that may be available through comparable deposit account features of other products or through the purchase of cash equivalent investments.

Interest rates may change daily. All changes to the interest rates will be communicated to Account Owner through the HSA Website or to the Account Owner via email or U.S. Mail at the electronic or mailing address maintained for the Account Owner by the HSA Administrator. The Account Owner's continued use of the Deposit Program and/or the Account after notification of a change in the rates will constitute the Account Owner's consent to the rates.

#### **4.6 Transfers from the Investment Account to the Cash Account**

Amounts held within the Investment Account may be transferred to the Cash Account from time to time as provided under this Agreement. The Account Owner authorizes and directs the Custodian to place such transferred amounts within the Deposit Program.

### **ARTICLE V. THE INVESTMENT ACCOUNT**

#### **5.1 Transfers to and from the Investment Account**

When the Cash Account exceeds the Investment Transfer Threshold, the Account Owner may elect to transfer all or any portion of the excess to the Investment Account as described in this section. The Account Owner may elect to transfer all or any portion of the Investment Account to the Cash Account at any time, provided that the amount transferred is at least \$100 or such other minimum amount as is identified on the HSA Website. If because of distributions or other activity the balance of the Cash Account falls below the Investment Transfer Threshold by at least the Minimum Auto-Transfer Amount, the amount of the shortfall will automatically be transferred from the Investment Account to the Cash Account. Holdings within the Investment Account will be liquidated to fund such transfers as provided in Section 5.4.

(a) **One-Time Transfers.** The Account Owner may perform a one-time transfer from the Cash Account to the Investment Account or vice versa through the HSA Website (“One-Time Transfer”). If the Account Owner has established an Automatic Investment Transfer program for the Account (as described below), the completion of a One-Time Transfer will terminate the Automatic Investment Transfer program then in effect.

(b) **Automatic Investment Transfers.** The Account Owner may establish automatic investment transfers from the Cash Account to the Investment Account through the HSA Website (“Automatic Investment Transfers”). When the Cash Account exceeds the Investment Transfer Threshold by at least the Minimum Auto-Transfer Amount, the excess will automatically be transferred to the Investment Account. The Account Owner may provide instructions for the investment of such transferred amounts among the mutual funds made available in the Investment Account. The Account Owner agrees that if the Account Owner does not provide investment instructions, the transferred amounts will be invested in the default fund identified on the HSA Website (the “Default Fund”). The Default Fund may be a money market mutual fund or similar investment fund that is available within the Investment Account. The Account Owner’s Automatic Investment Transfers will not be monitored by the Custodian or the HSA Administrator.

## 5.2 Investment Options

An array of mutual funds (the “Portfolio”) will be available for investment. These mutual funds are selected by a registered investment advisor (“Financial Advisor”) engaged by the HSA Administrator. The Financial Advisor may be an affiliate of the HSA Administrator and/or the Custodian. The Portfolio may replicate the investment options available under the Account Owner’s employer’s 401(k) plan or other defined contribution plan that permits participant-directed investments. *The Account Owner acknowledges and agrees that investments, including mutual funds, are not a deposit and are not insured by the FDIC or any federal government agency. There is no guarantee of the value of the investments, and they may lose value. The Account Owner also acknowledges that past investment performance is not a guarantee of future investment results.*

The mutual funds that are available within the Portfolio are identified on the HSA Website, and changes to the Portfolio will be posted to the HSA Website or communicated to the Account Owner via email or U.S. Mail at the electronic or mailing address maintained for the Account Owner by the HSA Administrator. Should a change to the Portfolio require a liquidation of Account holdings, the Account Owner will be notified in advance and provided an opportunity to elect a transfer from the affected mutual fund(s) (the “Closing Fund”). For any holdings remaining in the Closing Fund as of the liquidation date, the Account Owner authorizes and directs the Custodian to (i) liquidate such holdings and to transfer the proceeds to the Default Fund or such mutual fund(s) as are identified in the relevant notice (the “Replacement Fund”), and (ii) modify any existing investment instructions that would direct the investment of a future contribution into the Closing Fund so that such contribution will instead be invested in the Replacement Fund.

The Custodian has no responsibility for the HSA Administrator’s selection or monitoring of the Financial Advisor, the Financial Advisor’s selection of or decision to make changes to the mutual funds made available within the Portfolio, or any actions of the Account Owner’s employer or its service providers

with respect to the selection or monitoring of funds made available through the employer's retirement plan that are also made available within the Portfolio. The Account Owner agrees that the Custodian has no responsibility for any disclosure or other legal obligations of the Financial Advisor or the HSA Administrator with respect to the Portfolio.

The Account Owner is solely responsible for monitoring and managing the Account Owner's investments within the Account.

### **5.3 Investment Fees, Expenses, Dividends and Rights**

Some mutual funds within the Portfolio may assess a redemption fee when shares of the fund are sold. Redemption fees will automatically be charged against the Investment Account, and the Account Owner may not reimburse the Account for the amount of the redemption fees. The Account Owner agrees to review the applicable mutual fund prospectus to determine if and when redemption fees may apply.

Some mutual funds pay dividends or interest from time to time. Dividends and interest allocable to the Account will automatically be reinvested in the mutual fund that paid the dividend or interest. All conversion, subscription, voting and other rights pertaining to any securities held in the Account, if applicable, will be exercised on the Account Owner's behalf.

The mutual funds within the Portfolio are subject to fees and expenses as described in the applicable fund prospectus or other fund disclosure materials made available to the Account Owner through the HSA Website.

The mutual funds within the Portfolio may pay servicing fees ("Fund Service Fees") to service providers, such as Custodian or its sub-custodians or agents, in connection with administrative activities performed by the service provider and as described in the applicable fund prospectus or other fund disclosure materials. Fund Service Fees are generally paid on a quarterly basis and calculated with reference to the aggregate assets invested in the fund through the Custodian or its sub-custodians or agents and/or on a per-investor basis. Fund Service Fees that are paid to the Custodian or its sub-custodians or agents and are allocable to the Account will be credited to the Investment Account ("Investment Fee Rebate"). The Custodian will allocate the Account Owner's share of the Investment Fee Rebate, if any, on a quarterly basis within five (5) Business Days after receipt. The allocation will be made to the Investment Account as additional earnings.

### **5.4 Liquidation of Holdings**

From time to time, some or all of the Account Owner's holdings within the Investment Account may need to be liquidated and the proceeds transferred to the Cash Account in order to facilitate distributions or for other purposes described in this Agreement, such as to replenish the Cash Account so that its balance meets the Investment Transfer Threshold. In such situations, the Account Owner authorizes and directs the Custodian to liquidate holdings in the Investment Account (including within the HSBA, if applicable) on a pro-rata basis as needed. The Account Owner agrees that the Custodian shall have no liability for any consequences that may result from the liquidation of the Account's holdings pursuant to this Section.

## 5.5 Health Savings Brokerage Account

The Investment Account may include a brokerage account feature (“HSBA”). In order to open an HSBA, the Account Owner must have a balance in the Investment Account and enter into a separate agreement with the HSBA provider. The HSBA will permit the Account Owner to direct the investment of HSBA assets within the investments available within the HSBA.

The Account Owner agrees that the Custodian, the HSA Administrator and the Financial Advisor have no responsibility for the selection or monitoring of investments available through the HSBA, determining the suitability of such investments or for any disclosure or other obligations of the HSBA provider.

The Account Owner is responsible for complying with all laws and employer policies regarding insider trading and other matters under applicable securities laws. If the Account Owner or a family member is associated with a FINRA or Exchange Member Firm (as defined by applicable law and regulation), the Account Owner agrees to notify the Account Owner’s employer prior to opening an HSBA and to obtain any required authorizations. The Account Owner agrees to work with the HSBA provider, as applicable, regarding any investment restrictions and requests for duplicate copies of trade confirmations and/or statements. The Custodian and HSA Administrator do not monitor the Account Owner’s investments in the HSBA and are not responsible for compliance with FINRA Rule 3210 or any similar state or federal restrictions on insider trading.

Automatic Investment Transfers are not available for the HSBA.

## 5.6 Transaction Processing

The Account Owner must use the HSA Website to initiate any investment transactions within the Account. Investment instructions that require the movement of cash to or from the Cash Account (such as Auto-Investment Transfers and One-Time Transfers) and that are received by the Custodian through the HSA Website prior to the Close of Market on a Business Day will be processed as of the next Business Day. Investment instructions that do not require the movement of cash to or from the Cash Account (such as investment election changes) will be processed on the same Business Day if received by the Custodian through the HSA Website prior to the Close of Market and as of the next Business Day if received after the Close of Market. The processing of the Account Owner’s investment instructions will be delayed one (1) Business Day if the Account Owner has pending Auto-Investment Transfers or One-Time Transfers.

The Custodian’s obligation to execute the Account Owner’s instruction is contingent upon the determination that the instruction can be administered and that the instruction complies with the Custodian’s procedures. The Account Owner’s investment instructions may be delayed due to the processing of pending investment activity within the Account.

## ARTICLE VI. DISTRIBUTIONS



## 6.1 Distributions Generally

Distributions of funds from the Account will be made upon the direction of the Account Owner in such form and manner as is acceptable to the Custodian and HSA Administrator. The Custodian reserves the right to reasonably limit the frequency of distributions and/or the minimum amount of any distribution.

Distributions from the Account that are used exclusively to pay or reimburse Qualified Medical Expenses of the Account Owner, the Account Owner's spouse or the Account Owner's dependents are tax-free. Distributions that are not used for Qualified Medical Expenses are included in the Account Owner's gross income and are subject to an additional amount of tax on that amount, which is set by statute; however, the additional tax does not apply if the distribution is made after the Account Owner's death, disability or reaching age 65. The Custodian is not required to, and will not, determine whether any distribution from the Account is for the payment or reimbursement of Qualified Medical Expenses. The Account Owner is solely responsible for substantiating that a distribution is for Qualified Medical Expenses and must maintain records sufficient to show, if required, that the distribution is tax-free.

Distributions will be funded first from the Cash Account. If a distribution is requested that exceeds the Account Owner's balance in the Cash Account, some or all of the investments held in the Investment Account will be liquidated as described in Section 5.4 above, and sufficient funds will be transferred from the Investment Account to the Cash Account to fund the distribution.

The Account Owner may make distributions from the Account via Debit Card, electronic transfer or check. The Account Owner may request a direct transfer of the Account balance to another HSA custodian or trustee. All distributions from the Account will be made in cash. No property or in-kind distributions or transfers are permitted. The Social Security Number or tax identification number of the recipient must be on file or provided to the Custodian or the HSA Administrator before the Custodian will make a distribution or transfer. Distributions shall be subject to all applicable tax and other laws and regulations. The Debit Card is governed by the Cardholder Agreement.

The Custodian shall make distributions from the Account without the Account Owner's direction (or, after the death of the Account Owner, without the beneficiary's direction) if directed to do so by any levies, attachments or similar legal process or court orders with which the Custodian reasonable believes it should or must comply ("Legal Process") or upon the resignation or removal of the Custodian. Neither the Custodian nor the HSA Administrator will incur any liability as a result of acting in accordance with such Legal Process or with the procedures contained in Section 8.8 below.

All distributions or transfers made pursuant to a separation instrument (as defined in Code Section 71(b)(2)(A)), divorce decree or death must be made in accordance with this Agreement, applicable law, and the Custodian's and the HSA Administrator's policies and procedures.

## 6.2 No Overdrafts Permitted

The Account Owner agrees not to withdraw or attempt to withdraw funds in excess of the balance in the Account. Should an overdraft occur, the Account Owner must repay the overdraft immediately and all Account activity shall be suspended until the Account Owner contributes the necessary funds to reinstate the Account. Neither the Custodian nor the HSA Administrator will be required to provide the



Account Owner with notice or make demand for such repayment. In the event of an overdraft, the Custodian reserves the right to close the Account without notice. The closing of the Account will not relieve the Account Owner of any obligation to repay the full amount of the overdraft. Repayment of the overdraft shall be applied first to any outstanding fees related to the Account, and second to any negative balance of the Account. If after sixty (60) days the Account Owner has not contributed the necessary funds, then the Account Owner agrees to be subject to any and all collection actions needed to recover such funds. If the Custodian closes the Account, the Custodian may refuse to reinstate the Account or open a new Account in the Account Owner's name. The Custodian will not reinstate or open a new Account if the Custodian believes there is evidence of fraud or other factors that may cause a loss.

When the available Account balance is less than all initiated distributions that are presented for payment on a given day, the Custodian may pay one or more withdrawals and reject or return others in any order it deems appropriate. Absent unusual circumstances, transactions normally will be processed in the chronological order in which they occurred.

### **6.3 Mistaken Distributions**

The Custodian may allow the Account Owner to return mistaken Account distributions provided there is clear and convincing evidence that the amount(s) were distributed from the Account because of a mistake of fact due to reasonable cause (e.g., the Account Owner reasonably, but mistakenly, believed that an expense was a Qualified Medical Expense and was reimbursed for that expense from the Account). In determining whether this standard has been met, the Custodian may rely solely on the Account Owner's representation that the distribution was, in fact, a mistake. The Custodian will not permit the return of mistaken distributions that relate to a calendar year in accordance with IRS Rules and the Custodian's and HSA Administrator's policies and procedures.

The Custodian has no liability for any tax consequences that may arise from the Account Owner's repayment of a mistaken distribution to the Account. The Account Owner is not entitled to a credit for any interest or other earnings that might otherwise have accrued prior to the date the mistaken distribution is re-deposited into the Account.

### **6.4 Death of the Account Owner**

If the Account Owner's spouse is a beneficiary of the Account, the portion of the Account allocated to the spouse will become the spouse's HSA as of the date of the Account Owner's death, and the spouse's Account will continue to be governed by the terms of this Agreement. The spouse may be required to provide information necessary to continue the HSA on behalf of the spouse or distribute or transfer the Account balance. Consistent with IRS Rules, the portion of the Account allocated to any beneficiary that is not the Account Owner's spouse shall cease to be an HSA as of the date of the Account Owner's death. If the beneficiary is the Account Owner's estate, or if no beneficiary was designated by the Account Owner, then the fair market value of the Account as of the date of the Account Owner's death is taxable on the Account Owner's final personal income tax return. For other

beneficiaries, the fair market value of the Account is taxable to the beneficiary in the tax year that includes the date of the Account Owner's death.

The Custodian may distribute or transfer any portion of the Account following the death of the Account Owner pursuant to the beneficiary designation then on file with the Custodian, and such distribution and transfer will discharge the Custodian from all claims as to the portion of the Account so distributed or transferred.

The Custodian may presume that a beneficiary is legally competent unless and until it receives sufficient written notice to the contrary. Whenever any distribution hereunder is payable to a person known by the Custodian to be a minor or otherwise under a legal disability, the Custodian may make any part of such distribution to: (i) a parent or legal guardian of such person; (ii) a representative such as a custodian, conservator or guardian of the estate, who is authorized to manage funds and property belonging to such person under any applicable law; (iii) a custodial account established under a Uniform Gifts to Minors Act, Uniform Transfers to Minors Act or similar act; or (iv) such person directly.

If the Account Owner has designated more than one primary or contingent beneficiary without specifying the percentages to which such beneficiaries are entitled, payment will be made to the surviving beneficiaries, as applicable, in equal shares.

In the event of reasonable doubt respecting the proper course of action to be taken by the Custodian hereunder, the Custodian may resolve such doubt by seeking a judicial or administrative determination that shall be binding on all parties claiming any interest in the Account. In such event, all court costs, legal expenses and other reasonable expenses incurred by the Custodian may be collected by the Custodian from the Account.

## **ARTICLE VII. ACCOUNT FEES**

The fees payable from the Account for services to the Account shall be in such amount as the HSA Administrator shall establish from time to time and as are described in this Article and as set forth in the Fee Schedule that is maintained on the HSA Website. The HSA Administrator may modify the Fee Schedule at any time. The Custodian will provide the Account Owner with at least 30 days' advance notice of any new or increased fees. Changes to the Fee Schedule will be posted to the HSA Website or communicated to the Account Owner via email or U.S. Mail at the electronic or mailing address maintained for the Account Owner by the HSA Administrator.

The Account Owner authorizes and directs the Custodian to deduct all fees (as well as any expenses as provided for elsewhere in this Agreement) from the Cash Account portion of the Account. If the balance of the Cash Account is not sufficient to pay such fees and expenses, the Account Owner's holdings within the Investment Account will be liquidated as necessary pursuant to Section 5.4 above.

In addition to the fees that are deducted from your Account and identified in the Fee Schedule, the fees include a portion of the interest payable by the Program Banks on deposits made through the Deposit Program. Such fee will be the amount of overall interest that is payable by the Program Banks on deposits made through the Deposit Program (the "Overall Interest") that exceeds the interest rates applicable to the Account Owner's balances under the Interest Rate Disclosure. The Custodian may pay part of this fee to its sub-custodians and agents for their services with respect to the Deposit

Program. The Overall Interest is established by Program Banks in accordance with one of three benchmarks: the daily effective federal funds rate reported by the Board of Governors of the Federal Reserve System for the prior Business Day, the U.S. Dollar One-Month ICE Benchmark Administration Limited LIBOR for the prior Business Day or another index agreed to by the Program Bank.

The HSA Administrator may temporarily hold funds in contribution or distribution accounts with the Custodian in the ordinary course of its duties. Until such time that funds deposited to a contribution account are allocated to the Cash Account or funds are withdrawn electronically or by check from a distribution account, any credit, interest or other earnings payable for the use of funds in these accounts shall be part of the Custodian's and/or HSA Administrator's compensation for servicing the Account.

The Custodian or HSA Administrator may retain any gains resulting from the correction of errors with respect to transactions made by the Custodian pursuant to your instructions.

The Custodian and/or HSA Administrator may receive all or a portion of the maximum fees permitted by law to be paid by a provider or merchant's bank to a debit card issuer in connection with the Account Owner's use of the Debit Card. These fees may be shared with other service providers providing services for the Account.

## **ARTICLE VIII. MISCELLANEOUS**

### **8.1 Representations, Warranties and Additional Responsibilities of the Account Owner**

The Account Owner represents and warrants that any information given or to be given by the Account Owner with respect to the Account is and shall be complete and accurate; that any directions given to the HSA Administrator or action taken by the Account Owner will be proper under this Agreement, and that the Custodian is entitled to rely upon any such information or directions given by the Account Owner.

The Custodian has the right, but not the obligation, to require the Account Owner to provide, in a form and manner acceptable to the Custodian, proof or certification that the Account Owner is eligible to contribute to the Account, including, but not limited to, proof or certification that the Account Owner is covered by an HDHP.

If there is suspected unauthorized or fraudulent activity with respect to the Account, the Account Owner shall fully cooperate with the Custodian and HSA Administrator in the investigation and any criminal prosecution or attempt to recover funds, including sharing any information the Account Owner may have to assist in identifying the suspected wrongdoer(s).

### **8.2 Custodian Powers**

The Custodian may delegate to one or more entities, including its affiliates, the performance of Custodian's obligations under this Agreement and may appoint service providers, agents, sub-

custodians and depositories, which may include Custodian's affiliates, as to part or all of the assets of the Account. The Custodian may hold securities or other Account property in book entry form or through another agent or nominee, including without limitation in an omnibus account arrangement.

The Account Owner authorizes the Custodian to adjust the balance of the Account as necessary to correct administrative errors, including improperly allocated contributions, distributions, earnings or losses, and authorizes adjustments to the Account Owner's designated checking or savings accounts to facilitate error corrections. In the event a check or other instrument is returned for insufficient funds, the balance of the Account will be subject to adjustment by the Custodian.

If the Custodian receives instructions from the Account Owner (or, after the death of the Account Owner, a beneficiary) which are, in the opinion of the Custodian, incomplete, unclear or otherwise not acceptable, the Custodian may request additional instructions from the Account Owner (or beneficiary) and may, pending the Custodian's receipt of such instructions, take no action until further clarification acceptable to the Custodian is received by the Custodian. The Custodian shall not be liable to anyone for any loss resulting from delay caused by directions that are incomplete, unclear or otherwise not acceptable to the Custodian.

Except as expressly provided otherwise in this Agreement, the Custodian shall have all the powers generally conferred on HSA custodians under the Code. Additionally, the Custodian shall also have the power to perform any and all acts that it deems necessary or appropriate for the proper custodial servicing of the Account.

### **8.3 Prohibited Transactions**

No part of the funds in the Account may be invested in life insurance contracts or in collectibles as defined in Code Section 408(m).

The assets of the Account may not be commingled with other property except in a common trust fund or common investment fund.

Neither the Account Owner nor the Custodian will engage in any prohibited transaction with respect to the Account (such as borrowing or pledging the Account or engaging in any other prohibited transaction as defined in Code Section 4975).

### **8.4 Information and Returns**

The Account Owner agrees to provide the Custodian with information necessary for the Custodian to prepare any report or return required by applicable law. The Account Owner also agree to promptly notify the Custodian of any changes in the Account Owner's mailing address, email address, marital status, name or address of any beneficiary, or other information provided to the Custodian that the Custodian relies on or otherwise needs to maintain the Account in compliance with applicable law. The Custodian is entitled to rely upon information that it receives from the Account Owner or other authorized sources with respect to the Account, and the Custodian has no obligation to make further

investigation or inquiry as to the accuracy or currency of such information, except as may be required by applicable law.

The Custodian agrees to prepare and submit any report or return as prescribed by the Internal Revenue Service and to provide the Account Owner with such other statements and notices as determined by the Custodian and HSA Administrator from time to time. Unless the Account Owner makes a written objection to such report, return or other Account information provided by the Custodian or HSA Administrator within sixty (60) days after its being made available to the Account Owner, the Account Owner will be deemed to have approved such report, return or other Account information, and the Custodian and HSA Administrator shall be released from all liability to anyone with respect to the activities and transactions as shown on or reflected by such report, return or other Account information.

## **8.5 Privacy**

The Custodian maintains administrative, technical and physical safeguards against the destruction, loss or alteration of the Account Owner's personal information. The Custodian collects, processes, discloses and safeguards the Account Owner's personal information in accordance with its privacy notice ("Privacy Notice"), which can be viewed online at <https://www.voya.com/privacy-notice>. All personal information furnished by the Account Owner or Account Owner's employer in connection with the Account is subject to the terms of the Privacy Notice. Through the Account Owner's acceptance of the terms of this Agreement, the Account Owner acknowledges receipt of the Privacy Notice and agrees to receive future notices of any updates to the Privacy Notice through the HSA Website.

## **8.6 Indemnification**

To the fullest extent permitted by law, the Account Owner (or, following the Account Owner's death, the beneficiary) agrees to indemnify and hold harmless the Custodian, the HSA Administrator, and their affiliates, agents, successors and assigns, and their respective directors, officers, employees and representatives from any and all claims, actions or liabilities that may arise in connection with this Agreement or the Account, including with respect to any investment held within the Account, except such claims, actions or liabilities that arise from the indemnitee's gross negligence or willful misconduct. The Custodian will not be liable for any special, incidental, consequential or punitive damages under any circumstance and has no responsibility or liability for the actions or inactions of any predecessor or successor custodian or trustee of the Account.

## **8.7 Disclaimers and Limitations on Custodian's Liability**

The Account is not intended to constitute an "employee welfare benefit plan" or an "employee pension benefit plan" as defined by ERISA or any similar state or federal law, even if the Account Owner's employer contributes to the Account or allows the Account Owner to contribute to the Account with pre-tax salary reductions through the employer's "cafeteria plan" established in accordance with Code Section 125. The Account Owner's employer is not a party to this Agreement. Neither the Custodian nor the HSA Administrator will be a "plan administrator" or "plan sponsor" of the Account or of any



arrangement or plan of which the Account is a part. The Custodian and HSA Administrator expressly disclaim responsibility for ERISA's participation, vesting, funding, reporting, disclosure and fiduciary requirements as they may apply to the Account, including but not limited to any requirement to provide notices or election forms regarding continuation coverage under ERISA. Nothing in this Agreement shall be construed as conferring fiduciary status upon the Custodian or the HSA Administrator. If and to the extent that the Account is deemed to be part of an arrangement or plan subject to ERISA, this agreement may be amended or terminated at the Custodian's discretion as of the effective date of such determination or such later date as determined by the Custodian.

No materials or communications provided by the Custodian with regard to the Account constitute, are intended to be or should be construed as legal, tax, investment or other professional advice. The Custodian has no responsibility for the purpose, propriety, tax treatment or other consequences arising from the establishment, maintenance or use of the Account, or for any action taken by it or the HSA Administrator pursuant to the Account Owner's direction. The Account Owner is solely responsible for any taxes, interest, penalties and other expenses which may be payable under applicable law in connection with the Account.

The Custodian shall not be responsible in the event of any failure or interruption of services resulting from the act or omission of any third-party service provider used by the Account Owner to give a direction hereunder, and shall not be responsible for any losses in the event of such a failure or interruption.

The Custodian shall not be deemed in default of this Agreement, nor held responsible for any cessation, interruption or delay in the performance of its obligations hereunder due to causes beyond its reasonable control, including, but not limited to, natural disaster, act of God, labor controversy, civil disturbance, disruption of the public markets, terrorism, war or armed conflict, equipment or utility failure, the inability to obtain sufficient materials or services required in the conduct of its business (including Internet access), or any change in or the adoption of any law, regulation, judgment or decree.

The Custodian has no duty to question the directions of the Account Owner in the investment or ongoing management of the Account or to advise the Account Owner regarding the purchase, retention, withdrawal, or sale of assets credited to the Account. Neither the Custodian nor the HSA Administrator shall have any liability for any loss that results from the Account Owner's exercise of control (whether by action or inaction) over the Account, or any loss that results from any directions received from the Account Owner with respect to the Account.

The Custodian is not obligated to perform any services not specifically set forth in this Agreement except as required under the Code or other applicable law.

## **8.8 Resignation of Custodian; Successor Trustee or Custodian**

The Custodian may resign as custodian and appoint a successor custodian or trustee to serve under this Agreement or under another governing instrument selected by the successor custodian or trustee by giving the Account Owner written notice prior to the effective date of such resignation and appointment, which notice shall also include a copy of such other governing instrument, if applicable.



The Account Owner will be provided a reasonable period of time following the date of such notice to request a complete distribution of the Account balance. If the Account Owner does not request the distribution of the Account within the applicable time period, the Account Owner will be deemed to have consented to the appointment of the successor custodian or trustee and the terms of any new governing instrument, and neither the Account Owner nor the successor shall be required to execute any written document to complete the transfer of the Account to the successor custodian or trustee. The successor custodian or trustee may rely on any information, including beneficiary designations, previously provided to the Custodian or the HSA Administrator by the Account Owner.

The Custodian may resign as custodian without appointing a successor at any time upon at least thirty (30) days' prior written notice to the Account Owner. Upon receipt of that notice, the Account Owner shall make arrangements to transfer the balance of the Account to another HSA custodian or trustee. If the Account Owner does not complete a transfer of the Account before the effective date of the resignation, or such other date as indicated by the Custodian, the Custodian may (i) transfer the balance of the Account (less any applicable fees and outstanding charges) to a successor HSA custodian or trustee in accordance with the preceding paragraph or (ii) pay the balance of the Account (less any applicable fees and outstanding charges) to the Account Owner in a single sum by mailing a check to the address maintained for the Account Owner by the HSA Administrator. If the check is not timely presented for payment pursuant to its terms, the Custodian may escheat the funds to the state of the Account Owner's residence under the applicable rules promulgated by that state. The Owner agrees that neither the Custodian nor the HSA Administrator will have any responsibility for any funds that are escheated to a state.

The Custodian will not be liable for any actions or failures to act on the part of any successor custodian or trustee, nor for any tax consequences the Account Owner may incur as a result of the transfer or distribution of the Account pursuant to this section.

Any entity into which the Custodian may be merged or with which it may be consolidated, or any entity resulting from any merger or consolidation to which the Custodian is a party, or any entity succeeding to the custodial business of the Custodian, shall automatically become the successor of the Custodian hereunder, without the execution or filing of any instrument or the performance of any further act on the part of the parties hereto, provided that the surviving entity satisfies the requirements of Code Section 223(d)(1)(B).

## **8.9 Termination of Agreement**

The Custodian may terminate this Agreement at any time by giving written notice to the Account Owner.

The Account Owner may terminate this Agreement at any time by giving written notice to the HSA Administrator in a form and manner acceptable to the Custodian. Any termination of this Agreement by the Account Owner must coincide with the Account Owner's closure of the Account, including a distribution or transfer of the full Account balance, in accordance with the Custodian's and HSA Administrator's policies and procedures. If this Agreement is terminated by the Account Owner, the Custodian and/or the HSA Administrator may assess a termination fee as described in Article VII.

## **8.10 Amendments**

The Custodian may amend this Agreement at any time as necessary to comply with the provisions of applicable law. Such amendments do not require the Account Owner's consent or approval. Other amendments to this Agreement may be made by the Custodian at any time upon written notice to the Account Owner. The Account Owner will be deemed to have consented to the amendment if the Account Owner fails to object thereto by sending written notice to the HSA Administrator, in a form and manner acceptable to the HSA Administrator, within thirty (30) days from the date of the notice. An objection must be accompanied by the Account Owner's closure of the Account, including a distribution or transfer of the full Account balance, in accordance with the Custodian's and HSA Administrator's policies and procedures.

## **8.11 Instructions, Notices and Communications**

All instructions, notices or communications required to be given by the Custodian to the Account Owner shall be deemed to have been given when posted on the HSA Website or sent to the Account Owner via email or U.S. Mail at the electronic or mailing address maintained for the Account Owner by the HSA Administrator.

All instructions, notices or communications required to be given by the Account Owner to the Custodian shall be mailed, delivered or provided to the Custodian at its designated mailing address or electronic address as specified by the Custodian, and no such instruction, notice or communication shall be effective until the Custodian's actual receipt thereof.

## **8.12 Governing Law**

This Agreement, and the duties and obligations of the Custodian, shall be construed in accordance with and governed by the laws of the State of Connecticut, without regard to Connecticut's conflict of law rules, except as superseded by federal law.

## **8.13 Other**

If any provision of this Agreement is found to be in conflict with the Code or other applicable law, the Code or such other applicable law will supersede that provision.

The Custodian may elect not to exercise or may choose to delay enforcement of any of its rights under this Agreement without compromising them.

If any provision of this Agreement is held to be invalid or unenforceable, all other provisions of this Agreement shall remain in full force and effect.

## **8.14 Consent to Electronic Delivery of Materials**

The Account Owner agrees that all Account information from the Custodian or the HSA Administrator, including but not limited to the Agreement, Interest Rate Disclosure, Program Bank List, Boya Privacy Notice, IRS Forms 1099-SA and 5498-SA, prospectuses and other investment fund information, HSA Summary and confirmations of Account activity shall be made available to Account Owner exclusively in electronic form through the HSA Website. Account information may be viewed at any time by logging into the HSA Website. Information related to the Account will be posted on the HSA Website or, at the Custodian's discretion, provided via the electronic or mailing address maintained for the Account Owner by the HSA Administrator. Records of Account contributions, distributions, investment activity, earnings and balances will be made available exclusively through the HSA Website.

The Account Owner's consent to electronic delivery of materials will apply to all future materials relating to the Account until the Account Owner withdraws consent as provided hereafter. The Account Owner may elect to receive the Account Summary document and applicable tax forms in paper form by changing the election online in the HSA Website under 'Message Center/Update Notification Preferences'. Additional fees may apply for paper copies. The Account Owner may withdraw consent to electronic delivery of other materials by giving written notice to the HSA Administrator in a form and manner acceptable to the HSA Administrator. Any such notice must be accompanied by the Account Owner's closure of the Account, including a distribution or transfer of the full Account balance, in accordance with the Custodian's and HSA Administrator's policies and procedures.

In order to receive materials in electronic format, the Account Owner must have access to a computer with the following browser software or equivalent software and communications access to the Internet:

<b>Browser Software</b>	<b>Minimum Version Required</b>
Microsoft Internet Explorer (IE)	IE11 and greater*
Mozilla FireFox	Most current and prior 2 versions
Apple Safari	Most current and prior 2 versions
Google Chrome	Most current and prior 2 versions
Microsoft Edge (Windows 10)	Most current and prior 2 versions

\* As Microsoft 365 apps and services end support of Internet Explorer 11 (IE11) and the legacy version of the Microsoft Edge desktop application, the Custodian will also end support of those browsers.

The Account Owner will also need Adobe Acrobat Reader to view and download materials, and must have the ability to download and save information or have access to a printer in order to keep materials for the Account Owner's records.

The HSA Website will provide a link or links to other websites for the Account Owner to obtain specific information about investments available through the Account, including prospectuses. It may be necessary for the Account Owner to establish a separate username, password and/or enhanced online security feature for this purpose and to complete additional forms.