



RESOLUTION No. 21-421

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

RESOLUTION APPROVING THE ADMINISTRATIVE SERVICES AGREEMENT BETWEEN THE COUNTY OF NEVADA AND VOYA BENEFITS COMPANY, LLC TO ADMINISTER THE COUNTY'S FLEXIBLE SPENDING ARRANGEMENT, DEPENDENT CARE FLEX AGREEMENT, AND HEALTHCARE REIMBURSEMENT ACCOUNTS, FOR THE PERIOD JANUARY 1, 2022 THROUGH DECEMBER 31, 2027, AND AUTHORIZING THE HUMAN RESOURCES DIRECTOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE COUNTY OF NEVADA

WHEREAS, the County of Nevada wishes to continue to provide dependent care flexible spending accounts ("DFA"), and the flexible spending arrangement ("FSA") to its employees to offset the impact the rising cost of health care to employees; and,

WHEREAS, both programs are employee funded; and,

WHEREAS, the County of Nevada wishes to continue to provide healthcare reimbursement accounts ("HRA") for qualified employees to offset the higher cost of health care in the Truckee area; and,

WHEREAS, the HRA is funded by the County through the Human Resources budget and billed back to the appropriate departments; and,

WHEREAS, the County shall pay the administrative rate of \$3.50 per month per enrolled employee DFA and FSA participant for the period of January 1, 2022 through December 31, 2027; and,

WHEREAS, the administrative fees are paid through the Human Resources budget and absorbed by departments through the Cost Plan; and,

WHEREAS, Voya has agreed to waive the HRA deposit; and

WHEREAS, the County shall place \$12,000, an amount equal to two-weeks' worth of FSA & DFA enrolled participants annual elections, on deposit with Voya; and,

WHEREAS, upon termination of the Agreement, any unused portion of the deposit on file with Voya shall be returned to the County.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors, of the County of Nevada that the Administrative Services Agreement by and between the County of Nevada and Voya Benefits, LLC for the administration of employee benefit plans be and hereby is being approved in substantially the form attached hereto as Exhibit A, and the Human Resources Director is authorized to execute the Agreement on behalf of the County.

BE IT FURTHER RESOLVED that the Human Resources Department is hereby authorized to deposit an initial amount of \$12,000 to pre-fund the FSA and DFA program.

PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 28th day of September, 2021, by the following vote of said Board:

Ayes: Supervisors Heidi Hall, Edward Scofield, Dan Miller, Susan K. Hoek and Hardy Bullock.

Noes: None.

Absent: None..

Abstain: None.

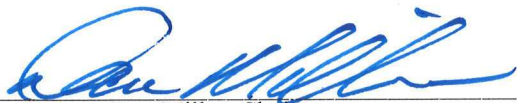
ATTEST:

JULIE PATTERSON HUNTER
Clerk of the Board of Supervisors

By: _____



Dan Miller, Chair



9/28/2021 cc: HR*
AC*

EMPLOYER SERVICES AGREEMENT

BY AND BETWEEN

VOYA BENEFITS COMPANY, LLC

AND

County of Nevada ("EMPLOYER")

Effective Date: 01/01/2022

This EMPLOYER SERVICES AGREEMENT (the "Agreement") is effective as of 01/01/2022 (the "Effective Date"), between Voya Benefits Company, LLC ("Voya"), a Delaware limited liability company, directly and on behalf of its Affiliates, and County of Nevada ("Employer"). Voya and Employer are each referred to as a "Party" and collectively as the "Parties" under this Agreement.

WITNESSETH:

WHEREAS, Voya is in the business of providing administrative services for certain spending and reimbursement Accounts; and

WHEREAS, Voya has sub-contracted with WEX Health Inc. ("WEX Health") to provide systems, processes and qualified personnel who are experienced in administering such Accounts; and

WHEREAS, pursuant to the terms hereof, and without endorsing Voya, Employer desires to retain Voya to provide certain Account administrative services as hereinafter described; and

WHEREAS, Voya agrees to provide administration of such Accounts to Employer's employees; and

WHEREAS, the Parties desire to enter into an agreement to set forth their respective rights, duties and obligations with respect to the delivery of such administration services.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, it is hereby agreed as follows:

Section 1 – Definitions

When these terms are capitalized in the Agreement, they have the meanings set forth below. The words may be singular or plural.

“Account” means an account or arrangement administered using the Application or Services, including, without limitation, FSA and/or HRA, to the extent selected by the Employer as part of the Employee Benefit Plan.

“Affiliate” means entities that currently exist or are later acquired that, directly or indirectly, (i) control, (ii) are controlled by, or (iii) are under common control with Voya or the Employer. An entity will be deemed to control another entity if it has the power to direct or cause the direction of the management or policies of such entity, whether through the ownership or voting securities, by contract, or otherwise.

“Agreement Period” means the period of [twelve (12) months] commencing on Effective Date and automatically continuing for additional 12-month periods until the Agreement is terminated.

“Application” means the web-based software application(s) and supporting services described in the Application Exhibit(s) attached hereto. For purposes of this Agreement, the singular “Application” refers to all web-based software applications to which the Employer and/or the Participant is granted access.

“COBRA” means the Consolidated Omnibus Budget Reconciliation Act of 1986, as amended, and its associated regulations.

“Employee Benefit Plan” means a plan or program established by the Employer to provide certain health and welfare and fringe benefits to its employees, and pursuant to which the Accounts made subject to this Agreement are offered.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and its associated regulations.

“FSA” means Flexible Spending Account, including a Health Flexible Spending Account, a Dependent Care Flexible Spending Account, and a limited purpose Health Flexible Spending Account.

“HRA” means Health Reimbursement Account or Arrangement.

“IRC” means the Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated thereunder.

“IRS” means the Internal Revenue Service.

“Material Financial Obligation” means a minimum balance in the Account in an amount equal to not less than five (5) days of expected Bank Account activity.

"Participant" means a person who has established and maintains an Account through Voya or the Employer, or whose enrollment has been terminated, but who may still apply for reimbursements. "Employment Status," and "Closed" have the meanings ascribed to them in the Application, as herein defined, in accordance with the instructions received from Voya. In the case of COBRA services, a Participant means a COBRA Qualified Beneficiary, as that phrase is defined in COBRA. Unless otherwise stated in this Agreement, Voya shall be responsible for updating the Application to reflect a change in the status of all Participants for whom the Employer has notified Voya had a change in status.

"PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, as applied to the information created, received, maintained or transmitted by Voya or its subcontractors from or on behalf of the Plan.

"Plan" means the administrative Services program offered through Voya to which this Agreement applies.

"Run-out Period" means the period following the termination of the Agreement whereby Voya will continue to process claims for applicable benefits that were incurred prior to but not processed as of the termination date, to the extent requested by the Employer in writing.

"Service Fees" shall include the fees set forth in Exhibit B to the Agreement.

"Services" means administrative services as set forth on the Exhibit(s) that assist with processing and administration of Accounts and/or benefit plans/programs and includes the business processes used to deliver the Services.

"Systems" means the systems Voya owns or makes available to Employer to facilitate the transfer of information in connection with this Agreement.

Section 2 - Services

Section 2.1 Services. Voya will perform Services for the Plan as described herein in Exhibit A. All rights granted to, and all benefits received by, the Employer pursuant to this Agreement will extend to Employer's Affiliates. Voya has no responsibility or authority for the design, funding or operation of any Employer-sponsored health and welfare benefit plan for compliance of any such plan with ERISA or the IRC.

Section 2.2 Voya's Provision of Services. Voya may assign any of the Services to WEX Health, Voya's Affiliates, or another third party ("Subcontractor"). All of Voya's obligations and responsibilities under this Agreement, including, but not limited to, data security, shall also apply to a Subcontractor. All references to Voya in this Agreement and Exhibits shall be deemed to include, if applicable, a Subcontractor.

Section 3 - Employee Benefit Plans

Section 3.1 Responsibility for the Employer's Employee Benefit Plan. Any references in this Agreement to Voya "administering" the Plan or the Accounts are descriptive only and do not confer upon Voya anything beyond certain agreed upon ministerial duties related to the Plans being provided by Voya. Employer accepts total responsibility for its Employee Benefit Plans for

purposes of this Agreement, including its benefit design and compliance with any laws that apply to Employer or the Employee Benefit Plan.

Section 3.2 Plan Changes. Employer must provide Voya with written notice of any changes to the Employer's Employee Benefit Plan within sixty (60) days prior to the effective date of the change to allow Voya to determine if such change will alter the Services Voya provides under this Agreement. Any material change in the Services, including without limitation, any change to the Service Fees payable by Employer hereunder, must be mutually agreed to in writing by the Parties. For the avoidance of doubt, any changes to the Plan that do not alter the Services or Service Fees hereunder may be agreed to by the Parties via electronic communication, or such other form of written communication to which the Parties agree. Voya will notify Employer if (i) the change increases Voya's cost of providing Services under this Agreement or (ii) Voya is reasonably unable to implement or administer the change. If the Parties cannot agree to a new Service Fee within (30) thirty days of the notice of the change, or if Voya notifies the Employer that Voya is unable to reasonably implement or administer the change, Voya shall have no obligation to implement or administer the change.

Section 3.3 Plan Consistent with this Agreement. By entering into this Agreement, Employer certifies that any provisions herein that relate to the Employer's Employee Benefit Plans are consistent with such plans, and that Voya's Services will not conflict with the terms of any plan document, summary plan description, insurance policy, or other documents governing the Employee Benefit Plan.

Section 3.4 Employee Communications. Before distributing any communications describing any Plan offered through Voya, Employer will provide Voya with copies of any such communications that refer to Voya or the Services prior to distributing these materials to Employer's employees or third parties. Voya will provide any corrections or comments to the Employer in writing within a commercially reasonable time-period after receipt, as agreed to by the Parties. Employer will amend the materials or communications if the references to Voya are not accurate, or any provision is not consistent with this Agreement or the Services that Voya is providing. Voya will not be bound by any communication that has not been reviewed and approved by Voya.

Section 3.5 Affiliated Employers. Employer represents that Employer and any of Employer's Affiliates covered under the Plan make up a single "controlled group" as defined by the IRC. Employer agrees to provide Voya with a list of Employer's Affiliates covered under the Plan upon request.

Section 4 - Employer's Responsibilities

Section 4.1 Information Employer Provides to Voya. Employer will inform Voya which of Employer's employees, their dependents and/or other persons are Participants. This information must be accurate and provided to Voya in a timely manner and in the format prescribed by the specifications provided by Voya during the implementation process. Employer agrees to provide Voya (or cause Employer's vendor to provide Voya) with all information that Voya reasonably requires to provide Employer's Participants with the Services as described in accordance with Exhibit A and Voya's Plan guidelines. Employer will notify Voya of any change to this information as soon as reasonably possible. Voya will be entitled to rely on the most current information in Voya's possession regarding eligibility of Participants in paying

benefits from the Accounts and providing other Services under this Agreement. Voya shall not be responsible or liable for acts or omissions made in reliance on erroneous data provided by the Employer or any other person, including any Participant, or for the failure of Employer to perform its obligations under this Agreement. Any retroactive eligibility changes which impact claims for benefits from the Account will be mutually agreed upon by the Parties. If Voya agrees to make retroactive eligibility changes, additional reasonable Service Fees may apply, as mutually agreed.

Section 4.2 Notices to Participants. Employer will give Participants the information and documents they need to obtain benefits under the Plan within a reasonable period of time before benefits under the Plan begins. In the event this Agreement is terminated, Employer will notify all Participants that the Services Voya is providing under this Agreement are discontinued.

Section 4.3 Escheat. Employer is solely responsible for complying with all applicable abandoned property or escheat laws, making any required payments, and filing any required reports.

Section 4.4 Tax Reporting. Employer is solely responsible for any W-2 and related reporting to the IRS regarding any Account, except as explicitly agreed to in writing by Voya and the Employer or required by law. Voya and its Affiliates do not assume any responsibility for compliance with federal or state laws, including federal tax laws and regulations, applicable to the Employer or any Employee Benefit Plan.

Section 4.5 Services/Changes. The Services provided by Voya are generally described in Exhibit A. Any changes to such Services require the written consent of both Parties.

Section 4.6 Right to Market. By entering into this Agreement, Employer expressly permits Voya and its Affiliates to advertise or market additional Voya products and services directly to Participants during the term of this Agreement as expressly agreed to by the Employer.

Section 5 - Provisions Applicable to Flexible Spending Accounts (FSAs) and Health Reimbursement Arrangements (HRAs)

Section 5.1 Employer as Plan Administrator. For purposes of any FSA or HRA, the Employer, or its delegate, is the plan administrator and the claims fiduciary as described under ERISA. As such, the Employer or its delegate will exercise all discretion, control and authority with respect to the disposition of the FSA or HRA plan assets and the available benefits under the FSA or HRA.

Section 5.2 Employer's Responsibilities. The Employer shall ensure that any summary plan descriptions, plan documents and any other documentation relating to the FSA or HRA are appropriately completed, are in compliance with FSA or HRA requirements and all applicable law, and are appropriately and timely adopted. The Employer shall provide Voya a current copy of such documents governing the administration of the FSA or HRA. The Employer shall be responsible for distributing summary plan descriptions, summaries of material modifications and all other plan documentation to Participants and other individuals on a timely basis. When applicable, the Employer shall also ensure that all medical plan carriers and/or payroll data processors provide timely, accurate and complete data files in the prescribed electronic data file format and method specified by Voya.

Section 5.3 Employer Eligibility Determinations. The Employer, in its sole discretion, shall determine which individuals are eligible to participate in the FSA or HRA and shall provide Voya with timely, accurate, and complete initial and ongoing enrollment and eligibility data in the electronic data file format prescribed by Voya. Such information shall include, but is not limited to, the number and names of individuals eligible for and covered under the FSA or HRA and any other information determined by Voya to be necessary to provide the Services.

Section 5.4 Voya's Responsibilities. Voya shall provide certain Services in connection with the FSA or HRA. Accordingly, the Employer authorizes Voya to use Voya's standard procedures for the provision of Services that have been designed to ensure that the administration of the FSA or HRA complies with section 125 of the IRC and the regulations and IRS guidance thereunder. Voya shall provide such Services in accordance with the framework of policies, interpretations, rules, practices and procedures as set forth in the Employee Benefit Plan documents and summary plan descriptions, and as otherwise mutually agreed upon or as directed by the Employer. Voya shall not have discretionary authority or discretionary controls respecting management of any trust fund and shall not have authority to exercise, nor exercise, any control respecting management and shall not render investment advice with respect to any money or other property of any trust fund.

Section 5.5 Business Associate Agreement. All handling and processing of PHI shall be subject to and comply with the Business Associate Agreement attached herein as Exhibit D ("BAA"). In the event of a conflict between the terms and conditions of the BAA and the terms and conditions of this Agreement, the terms and conditions of the BAA shall govern. Voya shall, with respect to any PHI: (1) comply with the BAA; (2) make no attempt to identify PHI that has been fully or partially de-identified (such as encoded data); and (3) not contact the individuals to whom the PHI pertains except to the extent it is permitted to do so under this Agreement or the BAA.

Section 5.6 Enrollment and Eligibility Processing. Voya shall process initial and ongoing enrollment and eligibility data submitted by the Employer in the format prescribed by the specifications provided by Voya during the implementation process. Voya shall also process enrollment data and benefit elections submitted by the Employer through proper methods established by Voya and the Employer. The Employer shall provide timely notification to Voya of Participant terminations. Voya shall not be responsible for FSA or HRA claim payments made to a terminated employee prior to receipt by Voya of notice of the employee's termination.

Section 5.7 Claims Processing. If applicable, Voya shall process data files received from medical plan carriers and/or payroll data processors in the format prescribed by Voya. Voya shall also process claims received from Participants, as well as the first appeal of any denied claims. Voya is not responsible for processing any appeal of any claim beyond the first level appeal. The Employer is responsible for accepting the auto adjudication procedures to be used in connection with certain payments to be made using the stored value card technology. Voya will process payments of claims and other requests for payment according to requirements specified by IRS regulations. Neither Voya nor its Affiliates have any discretionary authority or control relating to the administration of any Employee Benefit Plan.

Section 5.8 Payments. Voya shall issue payments for FSA-eligible or HRA-eligible expenses on behalf of a Participant directly to the health or dependent care provider (as applicable) or

shall issue a reimbursement payment for FSA-eligible or HRA-eligible expenses through either check or direct deposit to the Participant. Voya will process debit card transactions and authorize payments made directly to approved payees (e.g., health care providers, drugstores or qualifying merchants) via a debit card, if requested by the Employer.

Section 6 - Service Fees

Section 6.1 Service Fees. Employer will pay for Voya's Services in accordance with the Service Fees listed in Exhibit B. In addition to the Service Fees specified in Exhibit B, upon prior written notice, Employer shall also pay Voya any additional fee that is authorized by a provision elsewhere in this Agreement if applicable.

Section 6.2 Changes in Service Fees. Voya can change the Service Fees with reasonable advanced written notice to Employer (i) any time there are changes made to this Agreement, the Plan, or the Employee Benefit Plan that affect the Service Fees, or (ii) when there are changes in laws or regulations that affect the Services Voya are providing, or will be required to provide, under this Agreement. Any new Service Fee required by such change will be effective as of the date the changes occur, even if that date is retroactive. Voya will provide Employer with a new Exhibit B that will replace the existing Exhibit B or an amendment stating the new Service Fees. If Employer does not agree to any change in Service Fees, then Employer may prospectively terminate this Agreement upon written notice. Such termination must be sent by Employer within thirty (30) days after Employer receives written notice of the new Service Fees and the Employer's written notice must state when such termination shall become effective. Employer must still pay any Service Fees due for the periods during which the Agreement is in effect.

Section 6.3 Due Dates, Payments, and Penalties. Voya will invoice Employer for the amounts that Employer owes Voya. The amounts owed are due and payable on the due date shown on the invoice. In other cases, Voya will provide Employer with statements in advance that Employer completes and either sends to Voya or verifies through electronic acknowledgement. For advance statements, which shall be delivered at least five days before the due date, the date for payment is the first day of the next calendar month. If undisputed amounts owed are not paid within fifteen (15) days after their due date ("Grace Period"), Employer will pay Voya interest on such past due amounts from the date due until paid at the rate of one and one half percent (1½%) of the unpaid balance per month or, where a lower rate is prescribed by law, the highest rate thereby permitted. Employer agrees to reimburse Voya for any reasonable costs that Voya incurs to collect these amounts. Voya's decision to provide Employer with a Grace Period is based on Voya's assessment of Employer's financial condition, as of the Effective Date, and Employer's ongoing compliance with Material Financial Obligations. If Voya determines, based on reasonable information and belief, that Employer's financial condition has deteriorated, or Employer continues to fail to comply with the Material Financial Obligations specified in this Agreement, Voya may remove the Grace Period upon notice to Employer and reserve the right to either charge interest on payments not received after the due date or terminate the Agreement if payments are not received by the applicable due date.

Section 6.4 Reconciliation. Once per year or upon termination of this Agreement, Voya and Employer will reconcile the total amounts Employer paid to Voya with the total amounts Employer owed to Voya. If the reconciliation indicates that Voya owes Employer money, Voya will pay to Employer the difference within forty-five (45) days of the reconciliation. If the reconciliation indicates that Employer owes Voya money, Voya will invoice Employer for the

amount due and include it in the next payment due to Voya. If the Agreement is terminated, Voya will pay Employer the amount owed within thirty (30) days after Voya performs a final reconciliation. If the final reconciliation indicates that Employer owes Voya money, Employer will pay Voya within thirty (30) days after receiving Voya's written invoice the amounts owed to Voya. If Employer fails to pay any amounts when due under this Agreement, Employer shall pay to Voya interest on such past due amounts from the date due until paid at the rate of one and one half percent (1½%) of the unpaid balance per month or, where a lower rate is prescribed by law, the highest rate thereby permitted.

Section 6.5 Disputed Service Fees and Charges. Employer will notify Voya promptly of any charges it reasonably disputes. If Employer disputes the amount owed, no interest will be assessed to the extent Voya's bill was incorrect. The Parties agree to meet in good faith in person or via teleconference and use best efforts to resolve disputed fees within thirty (30) days of the date Employer provides Voya with notice of the dispute. If the Parties are unable to resolve the dispute within the thirty (30)-day period, either Party may exercise its legal remedies to resolve any charge discrepancies. The undisputed amounts will still be due pursuant to Section 6.3 herein.

Section 7 - Funding Benefits

Employer is solely responsible for transmitting the Account contributions and/or credits, whether made through Participant salary reduction contributions or Employer contributions. On a schedule and in the form to be agreed upon by the Parties, Employer shall remit to Voya the funds or credits to be deposited into or credited to the Account of each Participant and provide accompanying data, which accurately indicates each FSA, or other Account that will be funded or credited and the dollar amount to be funded or credited to each such Account. Any payroll deduction or other contributions to a funded Account shall be contributed directly to the Account of the Participant pursuant to the Employer's direction. Employer will provide clear instructions to Voya regarding crediting amounts to individual Accounts. In the event that Employer's instructions to Voya are unclear or ambiguous, Voya's reasonable interpretation of the instructions will be accepted. Voya shall have no liability for any funds not received by Voya or for any errors in crediting Accounts based on the data provided by Employer, including where such contributions are set up as automated recurring contributions.

Section 8 - Term of the Agreement

The initial term of this Agreement will commence on the Effective Date at midnight. This Agreement shall be automatically renewed on the same terms and conditions for successive one (1) year terms thereafter, unless either Party provides written notice to the other Party of its intention not to renew at least ninety (90) days prior to the expiration of the term then in effect, or if either Party terminates the Agreement pursuant to any other termination provisions herein. The Initial Term and any renewal terms constitute the "Term."

Section 9 – Termination

Section 9.1 Termination Events.

9.1.1 Either Party may terminate this Agreement immediately upon notice to the other Party, if the other Party (i) materially breaches this Agreement, and fails to remedy such breach within 30

days after receiving notice of the breach from the other Party; (ii) materially breaches this Agreement in a manner that, upon mutual agreement of the Parties, cannot be remedied; (iii) commences bankruptcy or dissolution proceedings, has a receiver appointed for a substantial part of its assets, or ceases to operate in the ordinary course of business.

9.1.2 Voya may terminate this Agreement immediately upon notice to Employer if: (i) Employer did not pay the fees or other amounts Employer owed Voya when due under the terms of this Agreement; or (ii) Employer fails to provide the required funds for payment of benefits under the terms of this Agreement.

9.1.3 Either party may terminate this Agreement immediately upon notice to the other Party if any state or other jurisdiction: (i) prohibits a Party from administering the Accounts under the terms of this Agreement; or imposes a material penalty on Employer or Voya, and such penalty is based on the administrative Services specified in this Agreement. In such case, the Party may immediately discontinue the Agreement's application in such state or jurisdiction. Notice must be given to the other Party when reasonably practical. The Agreement will continue to apply in all other states or jurisdictions, or as otherwise specified in this Agreement.

Section 9.2 Termination for Convenience. A Party may terminate this Agreement, in whole or in part, for convenience, upon ninety (90) days' written notice to the other Party.

Section 9.3 Run-Out Period Services. If requested, Voya will provide Run-Out Period services following the Agreement's termination. This provision applies only to claims for FSA benefits incurred prior to the termination date. All other terms of the Agreement will apply to these Run-Out Period services. Unless otherwise agreed by the Employer and Voya, claims that have been postmarked or uploaded prior to the end of the Run-Out Period will be processed within the subsequent fourteen (14) calendar days. At the end of the fourteen (14) calendar days, Voya will provide to the Employer Account balance, claims and forfeiture reporting and settle any outstanding financial obligations. However, Voya will not provide Run-Out Period services after the Agreement terminates or the Services terminate if (i) Employer does not provide the funding required by this Agreement, or (ii) if Voya terminates for any other material breach.

Section 10 - Records and Information

Section 10.1 Records. Voya will keep records relating to the Services Voya provides under this Agreement for as long as Voya is required to do so by law.

Section 10.2 Access to Information. If Employer needs information in Voya's possession for lawful or legitimate purposes other than an audit, Voya will provide Employer access to such information, if it is legally permitted to do so and the information relates to Voya's Services under this Agreement, provided the Employer gives Voya reasonable advance notice and an explanation of the need for such information. Employer represents that Employer has reasonable procedures in place for handling PHI, as required by law. Employer will only use or disclose PHI as permitted under this Agreement or by applicable laws. Voya will provide information only while this Agreement is in effect and for a period of six (6) months after the Agreement terminates, unless Employer demonstrates that the information is required by law. Voya also will provide reasonable access to information to an entity providing Plan administrative services or consulting services to Employer to enable such entity to provide Plan administrative services or provide consulting services to the Employer, as the case may be, upon the request of the

Employer. Before Voya provides PHI to such entity, the parties (i.e., entities that provide Plan administrative services or provide consulting services to Employer), must sign a mutually agreed-upon confidentiality agreement, on terms reasonably acceptable to the Parties.

Section 10.3 Voya's Knowledge. Except as expressly set forth herein, this Agreement will not be construed to transfer or assign any of Voya's rights or proprietary interests in any materials, knowledge, processes, methodologies, formats, or other types of intellectual property that are possessed and owned by Voya prior to the time it begins to provide Services hereunder and independent of the performance of Services hereunder.

Section 10.4 Proprietary Business Information. Each Party will limit the use of the other's Proprietary Business Information to only the information required to administer the Accounts, to perform under this Agreement, or as otherwise permitted under this Agreement. Neither Party will disclose the other's Proprietary Business Information to any person or entity other than to the disclosing Party's employees, subcontractors, or representatives needing access to such information to administer the Accounts, to perform under this Agreement, or as otherwise permitted under this Agreement, except that Voya's financial Proprietary Business Information cannot be disclosed to any third party without Voya's express written consent. This provision shall survive the termination of this Agreement.

Section 10.5 Publicity and Use of Voya/Employer Content. The Parties will not use the other Party's or their Affiliates' names, trademarks, trade names, service marks, logos, or other brand marks (collectively the "Marks") without the other's prior written approval, which may be withheld in that Party's sole discretion. The Parties will instruct all Personnel of this prohibition. Each Party acknowledges that the Marks and all rights therein belong exclusively to the original Party and their Affiliates, and that this Agreement does not confer upon the other Party any rights, goodwill, or other interest in the other Party's Marks. Each Party recognizes the validity of the Marks and will not at any time (i) contest, impair, or jeopardize in any way the other Party's and their Affiliates' right, title, and interest in and to the Marks; (ii) cause the validity or enforceability of the Marks or their ownership thereof to be called into question; or (iii) invalidate, impair, tarnish, disparage, degrade, dilute, or injure the Marks (or the goodwill associated therewith) or the reputation of the other Party or their Affiliates. Each Party will not, and will cause all their Personnel not to, make any "case study," testimonial, press release, or other public announcement regarding this Agreement or any activities performed hereunder. If a Party requires the use of the other Party's Marks in order to provide Services under this Agreement, the other Party grants a limited, revocable, non-transferable, non-exclusive license to use the Marks solely as required to provide Services as further described herein. The Marks may be used and displayed only in the form approved by the Party in writing, which may be amended from time to time. If applicable, the Party may provide written branding standards and requirements with respect to the use of its Marks, and the other Party will comply with all such branding standards and requirements. Upon the termination or expiration of this Agreement or the earlier request of a Party, the other Party will return all Marks or destroy them, as directed.

Section 10.6 PHI. The Parties' obligations with respect to the use and disclosure of PHI are outlined in the Business Associate Addendum attached to this Agreement as Exhibit D.

Section 11 - System Access

Section 11.1 System Access. Voya grants Employer the nonexclusive, nontransferable right to access and use the functionalities contained within the Systems, under the terms specified in this Agreement. Employer agrees that all rights, title, and interest in the Systems and all rights in patents, copyrights, trademarks, and trade secrets encompassed in the Systems will remain Voya's. To obtain access to the Systems, Employer will obtain, and be responsible for maintaining, at no expense to Voya, the hardware, software, and Internet browser requirements Voya provides to Employer, including any amendments thereto. Employer will be responsible for obtaining an Internet Service Provider or other access to the Internet. Employer will not (i) access Systems or use, copy, reproduce, modify, or excerpt any Systems documentation provided by Voya in order to access or utilize Systems, for purposes other than as expressly permitted under this Agreement or (ii) share, transfer or lease Employer's right to access and use Systems, to any other person or entity that is not a Party to this Agreement without Voya's consent. Employer may designate any third party to access Systems on Employer's behalf, provided the third party agrees to these terms and conditions of Systems access and Employer assumes joint responsibility for such access.

Section 11.2 Security Procedures. Employer will use commercially reasonable physical and software-based measures to protect the passwords and user IDs provided by Voya for access to and use of any web site provided in connection with the services. Employer shall use commercially reasonable anti-virus software, intrusion detection and prevention system, secure file transfer and connectivity protocols designed to protect any email and confidential communications provided to Voya, and maintain appropriate logs and monitoring of system activity. Employer shall notify Voya within a reasonable timeframe of any (a) unauthorized access or damage, including damage caused by computer viruses resulting from direct access connection, to the System, and (b) misuse and/or unauthorized disclosure of passwords and user IDs provided by Voya which impact the System.

Section 11.3 System Access Termination. Voya reserves the right to (i) terminate any Employer's System access in the event that such Employer user fails to accept the hardware, software and browser requirements provided by Voya, including any amendments thereto; and (ii) terminate any Employer administrative user's System access (but not Participants' system access) immediately on the date Voya reasonably determines that Employer or a third party designated by Employer to access the Systems on Employer's behalf has materially breached any provision of this Agreement. With respect to subsection (ii) above, Employer's Systems access will be reinstated immediately if Voya determines, in its reasonable discretion, that Employer has corrected the problem, provided reasonable assurances that the material breach is not likely to reoccur and is in alignment with applicable laws and regulations. If Voya terminates Employer's System access, pursuant to subsection (ii) above, Voya will provide an alternative to accessing the data that Employer would have accessed through the System. Employer's System access will terminate upon termination of this Agreement, provided however that if a Run-out Period is provided in accordance with Exhibit A - Services, Employer may continue to access applicable functionalities within the Systems during the Run-out Period. Upon any of the termination events described in this Agreement, Employer agrees to cease all use of Systems, and Voya will deactivate Employer's identification numbers, passwords, and access to the System.

Section 12 – Indemnification

Voya shall indemnify and hold harmless Employer from and against third-party claims resulting solely from or arising out of Voya's gross negligence or willful misconduct relating to the Services provided hereunder. Voya's obligation to indemnify Employer will only apply if Employer notifies Voya promptly, in writing, as to any such claim for which indemnification is sought and gives Voya the right, upon being notified, to exclusively control and direct the investigation, preparation, defense, trial and settlement of each such claim so long as Voya continues to diligently pursue such defense or settlement. Employer shall not, without Voya's prior written consent (not to be unreasonably withheld, conditioned or delayed), settle, compromise, or consent to the entry of any judgement in any pending or threatened claim, action, or proceeding in respect of which indemnification is sought under this Agreement. Employer will reasonably cooperate with Voya in the defense and/or settlement of any such claim. Employer shall indemnify and hold harmless Voya, its assigns, directors, officers, employees, agents, and Subcontractors, and WEX Health ("Voya Parties") from and against claims resulting from or arising out of breach of this Agreement by Employer or its employees including with respect to gross negligence or willful misconduct, employment-related decisions, or any claims or liabilities relating to work status, compensation, tax, insurance, or benefits or ERISA matters by Employer's employees under this Agreement. This includes any third-party claims brought against Voya Parties as the claims administrator, or due to the Employer's failure to act in accordance with applicable provisions of the IRC and associated guidance issued by the IRS, or ERISA if applicable, with respect to Employer's Employee Benefit Plans, including, but not limited to, any reporting requirement; and/or claims against Voya Parties relating to a FSA and/or HRA Benefit utilized by Employer's employees. Employer's obligation to indemnify Voya Parties will only apply if the Voya Party notifies Employer promptly, in writing, as to any such claim and gives Employer the right to control and direct the investigation, preparation, defense, trial and settlement of each such claim. Voya Parties will reasonably cooperate with Employer in the defense and/or settlement of any such claim. The indemnification obligations of a Voya Party and Employer shall terminate upon the expiration of the Agreement except as to any matter concerning which a claim has been asserted by notice to the other Party by at the time of such expiration or within the applicable statute of limitation after the effective date of Agreement termination.

Section 13 - Confidential Information

Section 13.1 Confidential Information. Either Party ("Disclosing Party"), including their employees, agents, consultants and contractors, may disclose Confidential Information to the other Party ("Non-Disclosing Party"), including their employees, agents, consultants and contractors, in connection with this Agreement, which may include proposals for additional services to be provided by Voya to Employer or Participants. "Confidential Information" means (i) non-public information concerning the Disclosing Party; its affiliates; and their respective businesses, products, processes, and services, including technical, marketing, agent, customer, financial, personnel, and planning information; (ii) information of individuals, including financial, health, and personal information; (iii) trade secrets; and (iv) any other information that is marked confidential or which, under the circumstances surrounding disclosure, the Non-Disclosing Party should know is treated as confidential by the Disclosing Party. Except with respect to personally identifiable information, which will be treated as Confidential Information under all circumstances, Confidential Information will not include (A) information lawfully obtained or created by the Non-Disclosing Party

independently of the Disclosing Party's Confidential Information and without breach of any obligation of confidence, or (B) information that enters the public domain without breach of any obligation of confidence. All Confidential Information will remain the property of the Disclosing Party and will be subject to the terms of this Agreement. For the purposes of this Agreement, "Confidential Information" shall not include PHI, which shall be subject to the confidentiality requirements of the BAA.

Section 13.2 Use and Disclosure of Confidential Information. The Non-Disclosing Party agrees that it will disclose the Disclosing Party's Confidential Information only to its employees, Affiliates, agents, consultants, and contractors who have a need to know and are bound by confidentiality terms no less restrictive than those contained in this Agreement. The Non-Disclosing Party will use all reasonable care in handling and securing the Disclosing Party's Confidential Information and will employ all security measures used for its own proprietary information of similar nature. These confidentiality obligations will not restrict any disclosure of Confidential Information by order of a court, regulatory authority or any governmental agency; provided, that the Non-Disclosing Party will limit any such disclosure to the information actually required to be disclosed. Promptly following the termination or expiration of this Agreement, the Non-Disclosing Party will return or destroy all of the Disclosing Party's Confidential Information in its possession and, upon written request, will promptly certify in writing to the Disclosing Party that it has done so.

Section 13.3 Period of Confidentiality. The restrictions on use, disclosure, and reproduction of Confidential Information set forth in this Section will, with respect to personally identifiable information and Confidential Information that constitutes a "trade secret" (as that term is defined under applicable law), be perpetual, and will, with respect to other Confidential Information, remain in full force and effect during the term of this Agreement and for three years following the termination or expiration of this Agreement.

Section 13.4. Injunctive Relief. The Parties agree that the breach, or threatened breach, of any of the confidentiality provisions of this Agreement may cause irreparable harm without adequate remedy at law. Upon any such breach or threatened breach, the Disclosing Party will be entitled to injunctive relief to prevent the Non-Disclosing Party from commencing or continuing any action constituting such breach, without having to post a bond or other security and without having to prove the inadequacy of other available remedies. Nothing in this Section will limit any other remedy available to either Party.

Section 14 – Limitations on Liability

SECTION 14.1 INDIRECT DAMAGES. SUBJECT TO THE EXCLUSIONS SET FORTH BELOW, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY, ITS AFFILIATES OR PERSONNEL BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE OR OTHER INDIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE CAUSE OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

SECTION 14.2. CUMULATIVE LIABILITY. SUBJECT TO THE EXCLUSIONS SET FORTH BELOW, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, AN AMOUNT EQUAL TO FIVE (5) TIMES THE TOTAL CUMULATIVE LIABILITY OF EACH PARTY, ITS AFFILIATES AND PERSONNEL ARISING OUT OF OR RELATED TO THIS AGREEMENT,

REGARDLESS OF THE CAUSE OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, SHALL BE LIMITED TO: (A) FOR VOYA, THE TOTAL OUTSTANDING AMOUNTS DUE AND OWING HEREUNDER; AND (B) FOR EMPLOYER, THE TOTAL AMOUNTS PAID AND PAYABLE HEREUNDER. THE EXISTENCE OF ONE OR MORE CLAIMS OR SUITS SHALL NOT ENLARGE THIS LIMIT.

SECTION 14.3 EXCLUSIONS. THE LIMITATIONS ON LIABILITY SET FORTH ABOVE SHALL NOT APPLY TO, OR LIMIT THE LIABILITY OF A PARTY, ITS AFFILIATES OR PERSONNEL FOR: (A) A MATERIAL BREACH OF ITS CONFIDENTIALITY AND SECURITY OBLIGATIONS; (B) ITS INDEMNIFICATION AND DEFENSE OBLIGATIONS UNDER THIS AGREEMENT; (C) GROSS NEGLIGENCE, FRAUD, OR WILLFUL OR INTENTIONAL MISCONDUCT; OR (D) BODILY INJURY, DEATH, OR LOSS OR DAMAGE TO REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY.

Section 15 – General Provisions

Section 15.1 Independent Contractor Relationship. Voya is an independent contractor of Employer, and this Agreement will not be construed as creating a relationship of employment, agency, partnership, joint venture, or any other form of legal association. Neither Party has any power to bind the other Party or to assume or to create any obligation or responsibility on behalf of the other Party or in the other Party's name.

Section 15.2 Assignment. No Party may, without the prior written consent of the other Party, assign any of its rights or delegate any of its duties under this Agreement. Any attempted assignment without the other Party's consent will be void and invalid. Notwithstanding the foregoing, Voya may assign its duties under this Agreement to WEX Health without prior written consent of the Employer. Employer may, upon written notice to Voya and at no additional charge to Employer, assign this Agreement to a Employer Affiliate; to any entity that acquires all or substantially all of Employer's assets or capital stock or results from one or more mergers or initial public offerings or any other corporate reorganization; or to the purchaser of any Employer Affiliate, including the purchaser of any division, department, or line of business of such Employer Affiliate.

Section 15.3 Severability. If a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable in any circumstances, such provision will be enforced to the maximum extent permissible, and the remainder of this Agreement, and the application of such provision in any other circumstances, will not be affected thereby.

Section 15.4 Dispute Resolution. All disputes between the Parties arising out of this Agreement will first be submitted for informal resolution between the designated officers of Employer and Voya. If the Parties are still unable to reconcile their differences, they may seek relief from a court of competent jurisdiction. The foregoing will not be construed to prohibit either Party from directly seeking injunctive relief without first complying with this Section.

Section 15.5 Construction of Agreement. This Agreement will not be presumptively construed for or against either Party. Section titles are for convenience only. As used in this Agreement, "will" means the same thing as "shall," and the words "include," "includes," and "including," will always be construed as if followed by the words "without limitation."

Section 15.6 Changes and Modifications. The terms and conditions of this Agreement and any other documents referenced herein may not be amended, waived, or modified, except in a writing signed by authorized representatives of both Parties or as otherwise provided in this Agreement.

Section 15.7 Survival. Those provisions of this Agreement that, by their nature, are intended to survive the termination or expiration of this Agreement will remain in full force and effect following the termination or expiration of this Agreement. Such provisions include Term and Termination; Payment; Intellectual Property Rights and Reports; Confidential Information Indemnification; Exclusion of Damages and Remedies; Non-Solicitation; and Governing Law; Venue – Entire Agreement.

Section 15.8 Waiver/Consent. Failure by either Party to exercise or enforce any right under this Agreement, no matter how long the same may continue, will not be deemed a waiver of such right by such Party. No waiver of any provision of, or consent to any breach of, this Agreement will be deemed a waiver of any other provision of, or consent to any subsequent breach of, this Agreement. A Party's consent to or approval of an act or omission on any one occasion will not be deemed a consent to or approval of said act or omission on any subsequent occasion, or a consent to or approval of any other act or omission on the same or any subsequent occasion. To be effective, a Party's waiver of any right or remedy must be documented in a writing signed by the waiving Party.

Section 15.9 No Third-Party Beneficiaries. Nothing in this Agreement will confer any right, remedy, or obligation upon anyone other than Employer, the Employer's Affiliates, Voya, and Voya's Affiliates.

Section 15.10 Notices. All notices relating to this Agreement must be in writing and must reference this Agreement. Such notices will be deemed sufficient if sent (i) by postage-prepaid registered or certified U.S. mail, then five business days after sending; or (ii) by commercial courier, then at the time of receipt confirmed by the recipient to the courier on delivery. All notices to a Party will be sent to its address set forth below, or to such other address as may be designated by that Party by notice to the other Party.

If to Voya:

Voya Benefits Company, LLC
Attn: Nate Black
20 Washington Ave. S
Minneapolis, MN 55401

With copy to:

Voya Financial, Inc.
Law Department
Employee Benefits
20 Washington Ave. S.
Minneapolis, MN 55401

If to Employer:

County of Nevada
950 Maidu Ave
Nevada City, NV 95959

With copy to:

Section 15.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, and all of which together constitute a single

agreement.

Section 15.13 Entire Agreement. This Agreement, including all exhibits and documents referenced herein, constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes and replaces all other prior agreements, communications, and understandings (written and oral) regarding its subject matter. Terms and conditions on or attached to quotes, Employer Purchase Orders, or preprinted forms will be of no force or effect, even if acknowledged or accepted by Employer.

Voya Benefits Company, LLC
20 Washington Avenue South
Minneapolis, MN 55401

By Nate Black
Nate Black (Sep 30, 2021 07:59 CDT)
Authorized Signature

Print Name Nate Black

Print Title Vice President, Voya Benefits Co.

County of Nevada
950 Maidu Ave
Nevada City, NV 95959

By Steve Rose
Steve Rose (Sep 30, 2021 06:26 PDT)
Authorized Signature

Print Name Steven Rose

Print Title Human Resources Director

Exhibit A – Services

This Exhibit A is attached to and made a part of the Employer Services Agreement between Voya and Employer. If not otherwise defined, capitalized terms in this Exhibit A have the same meaning as in the Employer Services Agreement.

Overview of the Plan Services

Under the Plan, Voya provides administrative services to Employer in connection with the Accounts and customer. These services include:

General:

- Implementation of web-based Application and supporting services, including periodic updating with changes in status, connecting Participants to Accounts through the Application, and providing training tools for Employers and Participants.
- Completing initial enrollment set up and ongoing account maintenance of Participants on the Application.
- Providing administration services in support of mid-year enrollment scenarios including Employer's hiring of new employees and existing employees experiencing a qualified life event, and administering changes in elections for Accounts.
- Providing the Employer with an enrollment report via e-mail upon completion of initial enrollment.
- Providing standard instructions to Employer regarding payroll application, contribution submission and any other applicable Employer responsibilities.
- Providing open enrollment communication materials to Employer and processing new enrollments and enrollment changes.
- Providing Participants with access to a debit card as a payment method, if requested by Employer.
- Educational materials provided including Employer Guide and Employee Guide for guidance through their respective portals
- Voya will maintain a call center for both participants and employers
 - Participant call center number: (833) 232-4673
 - Employer call center number: (833) 232-4674
- Employers will have access to the following reporting types in the portal: Banking Reports, Plan Management Reports, Employer Event-Based Notifications, Debit Card Reports, Consumer Data Reports, Consumer Statements,
- Employers will receive the following standard reports with corresponding standard frequency:
 - All plan types-Bank Reconciliation Report-weekly
 - All plan types-Fee Funding Notification-monthly (if there are fees)

- All plan types- Enrollment Report- monthly
- Processing reimbursement claims and appeals in the manner required under ERISA.
- Receiving and adjudicating for payment, claims and other requests for payment in accordance with IRS guidance regarding substantiation, the terms of the Accounts, and any written claim procedures or other practices established by the Employer and communicated to Voya.

Flexible Spending Accounts

- If requested, loading non-discrimination data provided by the Employer per standard nondiscrimination import file format parameters, and running Section 125 and certain other non-discrimination tests and executing plan year close-out balance reporting.
- Auto-substantiating claims using pursuant to Voya's standard Plan procedures and IRS guidance.
- Employers will receive the following standard reports with corresponding standard frequency:
 - Notional Repayments Report-monthly
 - Notional Account Balance Detail Report-Monthly
 - Notional Payment History Report-Monthly
 - Notional Plan Closing Report-annual (taxable claims, paid but unsubstantiated)

Exhibit B – Service Fees

This schedule applies for the term of the contract and may be updated at the time of renewal.

Administrative Fees (per participant per month fee)

Account type	Employer responsibility	Participant responsibility
FSA and/or HRA	\$3.50	\$0

- Once a participant elects one FSA, there are no additional costs to add additional FSAs

Ancillary fees:

Fee Type	Employer responsibility	Participant responsibility
Card Replacement (per package of two)	\$0	\$5.00

Invoicing and fee collection

- Fees charged to the participant will be collected from the participant's account on a monthly basis
- Implementation fees will be invoiced in the month following successful go-live
- Other one-time fees (e.g., integrations, customizations, plan document creation) will be invoiced in the month following completion of desired work
- All fees paid by the employer will be collected monthly via ACH pull from the employer's designated account

Performance guarantee

Voya Financial is willing to place up to 9% of employer administrative fees from Health Spending Accounts at risk against achieving specified performance measures (see metrics below). The credit does not apply to fees paid by the employee. If applicable, the credit will be calculated and applied quarterly following the evaluation.

Performance area	% of Fees at Risk
Implementation (e.g., set-up efficiency and quality)	1%
Customer service (e.g., call center support)	3%
Account Management (e.g., response time)	1%
Administrative Services (e.g., file, forms, and claims processing and quality)	4%

Exhibit C – Business Associate Agreement FSA and/or HRA

This Business Associate Agreement (the “**BAA**”), effective on the last signature date below, is incorporated into and made part of the [**Employer Services Agreement**] (the “**Agreement**”) by and between **County of Nevada** (“**Covered Entity**”) and Voya Benefits Voya, LLC (“**Voya**”). Covered Entity and Voya may be referred to individually as a “**Party**” or collectively as the “**Parties**.”

WHEREAS, Covered Entity and Voya have entered the Agreement dated 01/01/2022 in connection with which Voya is required to provide assurances that Voya will appropriately safeguard all health information protected under the Privacy Rule and Security Rule (as defined below) that is disclosed by, or created or received by, Voya on behalf of such Covered Entity;

NOW, THEREFORE, and in consideration for the mutual benefit provided to each Party under the Agreement, the Parties agree as follows:

1. **BACKGROUND AND PURPOSE.** The Parties have entered into, and may in the future enter into, one or more written agreements, that require Voya to create, receive, maintain and/or transmit “protected health information” (the “**Underlying Contract(s)**”), as the term is defined under 45 C.F.R. § 160.103 but is limited to the protected health information that Voya creates, receives, maintains, or transmits from or on behalf of the Covered Entity as the Covered Entity’s “Business Associate” as defined at 45 C.F.R. § 160.103 (“**PHI**”). Such PHI is subject to protection under the Health Insurance Portability and Accountability Act of 1996, as amended (“**HIPAA**”), Title XIII, Subtitle D, of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5), known as the Health Information Technology for Economic and Clinical Health Act, as amended (the “**HITECH Act**”), and the implementing regulations for HIPAA and the HITECH Act, including, without limitation, the Standards for Privacy of Individually Identifiable Health Information, set forth at 45 C.F.R. Part 160 and Part 164 (Subparts A and E) (the “**Privacy Rule**”), the Security Standards for the Protection of Electronic Protected Health Information, set forth at 45 C.F.R. Part 160 and Part 164 (Subparts A and C) (the “**Security Rule**”), the Standards for Electronic Transactions, set forth at 45 C.F.R. Parts 160 and 162 (the “**Electronic Transactions Rule**”), and the Breach Notification for Unsecured Protected Health Information, set forth at 45 C.F.R. Parts 160 and 164 (Subpart D) (the “**Breach Notification Rule**”), as such implementing regulations may have been or may in the future be amended from time to time (the Privacy Rule, the Security Rule, the Electronic Transactions Rule and the Breach Notification Rule, as amended from time to time, are referred to collectively as the “**Rules**”) (HIPAA, the HITECH Act, and the Rules, collectively, the “**HIPAA Laws**”).

This BAA shall supplement and/or amend the Agreement only with respect to Voya’s Use, Disclosure, and creation of PHI under the Underlying Contract(s) to allow Covered Entity to comply with the HIPAA Laws. Except as so supplemented and/or amended, the terms of the Agreement shall continue unchanged and shall apply with full force and effect to govern the matters addressed in this BAA and in the Agreement.

DEFINITIONS. Unless otherwise defined in this BAA, all capitalized terms used in this BAA have the meanings given in the HIPAA Laws.

2. **VOYA’S OBLIGATIONS WITH RESPECT TO PHI.**

2.1 Permitted Uses and Disclosures of PHI. Except as otherwise specified in this BAA, Voya may make any and all Uses and Disclosures of PHI necessary to perform its obligations under the Underlying Contract(s), or as Required by Law. Unless otherwise limited herein, Voya may, as a Business Associate of Covered Entity:

- (a) Provide Data Aggregation services relating to the Health Care Operations of the Covered Entity;

(b) Use or Disclose PHI as Required by Law;

(c) De-identify any and all PHI obtained by Voya under this BAA in accordance with the de-identification requirements of the Privacy Rule guidance issued by the Secretary from time to time, and use and disclose such de-identified data for any of Voya's purposes in a manner solely determined by Voya, for an indefinite period including beyond the termination of this BAA or the Underlying Contract. This BAA shall not apply to such de-identified data, the de-identified data will cease to be considered the confidential information or property of the Covered Entity including pursuant to any Underlying Contract.

(d) Use or Disclose PHI for the proper management and administration, such as audits and for other compliance requests from federal or state agencies, of Voya or to carry out the legal responsibilities of Voya, pursuant to 45 C.F.R. §164.504(e)(4), provided that (i) such Use or Disclosure is Required by Law, (ii) Voya obtains reasonable assurances from the person or entity which does not qualify as a subcontractor that is a Business Associate under the Rules and to which Voya discloses PHI for such purposes permitted under this Section 3.1(d) that such PHI will be held confidentially, Used or further Disclosed only as required by law or the purpose for which it was disclosed to such person or entity, and that such third party shall notify Voya of any instances of which the third party is aware in which the confidentiality of the PHI received pursuant to this provision has been or third party reasonably believes has been breached.

Under no circumstances may Voya Use or further Disclose PHI in a manner that would violate the HIPAA Laws if done by the Covered Entity.

2.2 Voya's Obligations. With regard to its Use and/or Disclosure of PHI, Voya agrees to:

(a) Use or Disclose only the minimum necessary PHI to perform or fulfill a specific function required or permitted hereunder, in accordance with the HIPAA Laws as stated in 45 CFR 164.502(b) and 45 CFR 164.514.

(b) Not Use or Disclose PHI other than as permitted or required by this BAA or as Required By Law.

(c) Use appropriate safeguards and with respect to PHI transmitted by or maintained in Electronic Media, comply with subpart C of 45 C.F.R. Part 164 regarding provisions of the Security Rule applicable to such information, to prevent the Use or Disclosure of PHI other than as provided for by this BAA.

(d) Ensure that any subcontractor that is a Business Associate, as included in the definition of Business Associate at 45 C.F.R. 160.103, (each a "Subcontractor") enters into an agreement or similar arrangement which complies with the HIPAA Laws requirements for agreements between "Business Associates" and "Covered Entities", as each term is used under the HIPAA Laws, and subject to restrictions and limitations at least as restrictive as those imposed upon Voya in this BAA.

(e) Within thirty (30) days of receiving a written request from Covered Entity, make available to the Covered Entity such PHI necessary for Covered Entity to comply with its obligations under 45 C.F.R. § 164.524 in responding to an Individual's request for access to his or her PHI where Voya maintains PHI in a Designated Record Set. In the event any individual requests access to PHI directly from Voya, Voya shall within ten (10) business days forward such request to Covered Entity. Any denials of access to the PHI requested shall be the exclusive responsibility of the Covered Entity.

(f) Within thirty (30) days of receiving a written request from Covered Entity, make available

to the Covered Entity such PHI necessary for Covered Entity to comply with its obligations under 45 C.F.R. § 164.526 in responding to an Individual's request for amendment and Voya shall incorporate any amendments to the PHI as directed or instructed by Covered Entity in accordance with 45 C.F.R. § 164.526 where Voya maintains PHI in the Designated Record Set. In the event any Individual requests an amendment to PHI directly from Voya, Voya shall within ten (10) business days forward such request to Covered Entity.

(g) Within forty-five (45) days of receiving a written request from Covered Entity, make available to the Covered Entity the information required for the Covered Entity to provide an accounting of disclosures of PHI as required by the Privacy Rule. In the event the request for an accounting is delivered directly to Voya, Voya shall within thirty (30) business days forward such request to the Covered Entity. Voya shall retain its records regarding Uses and Disclosures of PHI that are required to be maintained in a Designated Record Set for no less than six (6) years following the termination of this BAA.

(h) To the extent that Voya carries out Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, Voya shall comply with the HIPAA Laws that apply to the Covered Entity in performance of such obligation(s), as required under 45 C.F.R. § 164.504(e)(2)(ii)(H).

(i) Promptly notify the Covered Entity of Voya's receipt of any request for production or subpoena of PHI, in connection with any governmental investigation or governmental or civil proceeding. If the Covered Entity decides to challenge the validity of or assume responsibility for responding to such request or subpoena, Voya shall reasonably cooperate with the Covered Entity in connection therewith.

(j) Make its internal practices, books and records relating to the Use and Disclosure of PHI available to the Secretary for purposes of determining Covered Entity's compliance with the HIPAA Laws.

(k) Use reasonable commercial efforts to mitigate any harmful effect that is known to Voya of a Use or Disclosure of PHI by Voya in violation of the requirements of this BAA.

(l) Voya agrees to use appropriate safeguards to prevent any unauthorized or unlawful Use, access or Disclosure of the PHI, including but not limited to any Use, access or Disclosure not provided for by this BAA. Voya shall implement administrative, physical and technical safeguards required by the HIPAA Laws and comply with the policies, procedures and documentation requirements of the Security Rule.

(m) Report promptly and without unreasonable delay to Covered Entity any Use or Disclosure of PHI not provided for or permitted by this BAA and any Breach or Successful Security Incident, but in no event no more than sixty (60) days after it is discovered. Such notification shall include the information required under 45 C.F.R. § 164.410. "Successful Security Incident" shall mean any Security Incident that results in the unauthorized use, access, disclosure, modification or destruction of electronic PHI.

3. OBLIGATIONS OF COVERED ENTITY.

3.1 Covered Entity agrees to timely notify Voya, in writing, of any arrangements of the Covered Entity including any limitation(s) in the notice of privacy practices of Covered Entity under 45 CFR § 164.520 that may impact in any manner the Use and/or Disclosure of that PHI by Voya under this BAA.

3.2 Covered Entity further agrees not to request Voya to Use or Disclose PHI in any manner

that would not be permissible under Subpart E of 45 C.F.R. Part 164 if done by the Covered Entity, except to the extent that Voya will use or disclose Protected Health Information for the management and administration and legal responsibilities of the Voya.

3.3 Covered Entity shall notify Voya of any changes in, or revocation of, the permission by an Individual to Use or Disclose his or her Protected Health Information, to the extent that such changes may affect Voya's Use or Disclosure of Protected Health Information.

3.4 Covered Entity shall notify Voya of any restriction on the Use or Disclosure of Protected Health Information that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Voya's Use or Disclosure of Protected Health Information.

3.5 Covered Entity shall disclose to Voya only the minimum amount of Protected Health Information necessary to allow Voya to fulfill its obligations to Covered Entity under the Underlying Contract.

4. **TERM.** This BAA shall commence as of the Effective Date and expire, unless earlier terminated pursuant to Section 6 hereof, at such time as the Underlying Contract(s) is terminated or expires and Voya returns or destroys PHI in accordance with the terms of this BAA.

5. **TERMINATION.** Should a Party become aware of a material breach of this BAA, including without limitation a pattern of activity or practice that constitutes a breach of a material term of this BAA, the non-breaching Party shall provide the breaching Party with written notice of such breach in sufficient detail to enable the breaching Party to understand the specific nature of the breach. The non-breaching Party shall be entitled to immediately terminate this BAA and the Underlying Contract associated with such breach if, after the non-breaching Party provides such notice of breach to the breaching Party, the breaching Party fails to cure the breach within a reasonable time period not to exceed thirty (30) days from the breaching Party's receipt of such notice; provided, however, the non-breaching Party shall have the discretion to agree to such longer cure period based on the nature of the breach involved and subject to the HIPAA Laws.

6. **RETURN OR DESTRUCTION OF PHI.** Upon the expiration or termination of this BAA and/or the Underlying Contract(s), Voya, with respect to PHI received from Covered Entity, or created, maintained or received by Voya on behalf of Covered Entity, including any and all PHI in the possession of Voya's Subcontractors and such third parties permitted to receive such PHI under and in accordance with the terms of this BAA and the HIPAA Laws, shall:

- (a) Retain only that PHI which is necessary for Voya to continue its proper management and administration or to carry out its legal responsibilities;
- (b) Return to Covered Entity or destroy, as agreed to by Covered Entity, the remaining PHI that Voya still maintains in any form;
- (c) Continue to use appropriate safeguards and comply with the Security Rule with respect to PHI transmitted by or maintained in Electronic Media to prevent Use or Disclosure of the PHI, other than as provided for in this Section, for as long as Voya retains the PHI;
- (d) Not Use or Disclose the PHI retained by Voya other than for the purposes for which such PHI was retained and subject to the same conditions set forth in Section 2 hereof which applied prior to termination;
- (e) Return to Covered Entity or destroy, as agreed to by Covered Entity, the PHI retained by Voya when it is no longer needed by Voya for its proper management and administration or to carry out its legal responsibilities; and

(f) Where the return or destruction of PHI is infeasible, Voya shall notify Covered Entity in a writing of sufficient specificity of the circumstances which make such return or destruction infeasible, and upon acceptance and agreement by Covered Entity, Voya shall continue to extend the protections of this BAA to such PHI and limit further use or disclosure of PHI to those purposes which make the return or destruction infeasible, for as long as Voya retains the PHI.

7. MISCELLANEOUS.

7.1 Survival. The respective rights and obligations of Voya and Covered Entity under this BAA which by their nature shall survive this BAA shall survive the expiration or termination of this BAA indefinitely, including without limitation Section 6.

7.2 Interpretation. The terms of this BAA shall prevail in the case of any conflict with the terms of any Underlying Contract to the extent necessary to allow Covered Entity to comply with the HIPAA Laws. Any ambiguity in this BAA shall be resolved in favor of a meaning that permits Covered Entity and Voya to comply with the HIPAA Laws. The citations to the HIPAA Laws in several paragraphs of this BAA are for reference only and shall not be relevant in interpreting any provision of this BAA.

7.3 No Third Party Beneficiaries. Nothing in this BAA shall confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

7.4 Amendment. This BAA constitutes the entire agreement between the Parties with respect to PHI, and may not be modified, nor will any provision be waived or amended, except in a writing duly signed by authorized representatives of the Parties.

7.5 Waiver. A waiver with respect to one event will not be construed as continuing, or as a bar or waiver of any right or remedy as to subsequent events.

7.6 Changes in the HIPAA Laws. To the extent that any relevant provision of the HIPAA Laws is materially amended in a manner that changes the obligations of Voya or Covered Entities, the Parties agree to negotiate in good faith appropriate amendment(s) to this BAA to give effect to those revised obligations.

7.7 Governing Law. The Parties hereby agree that this BAA shall be governed by, and in construed in accordance with, the laws of Connecticut, without giving effect to its conflicts of laws principles, and the Parties hereby submit themselves to the jurisdiction and venue of the federal and state courts of Connecticut.

7.8 Regulatory References. A reference in this BAA to a section of the Code of Federal Regulations, the Privacy Rule, the Security Rule, or to another section of HIPAA means the section, as amended from time to time.

7.9 Notices. All notices and communications required by this BAA shall be in writing. Such notices and communications shall be given in one of the following forms: (i) by delivery in person; (ii) by a nationally-recognized, next-day courier service; (iii) by first-class, registered or certified mail, postage prepaid; or (iv) by electronic mail to the address that each party specifies in writing.

7.10 Confidentiality. The terms of this BAA shall remain confidential except as described hereunder and in the Underlying Contract, except that Voya may disclose the terms of this BAA to entities that Voya reasonably believes are other Business Associates of Covered Entity.

7.11 Severability. The invalidity or unenforceability of any provisions of this BAA shall not affect the validity or enforceability of any other provision of this BAA or the Underlying Contract, which shall remain in full force and effect.

7.12 Construction and Interpretation. The section headings contained in this BAA are for reference purposes only and shall not in any way affect the meaning or interpretation of this BAA. This BAA has been negotiated by the parties at arm's-length and each of them has had an opportunity to modify the language of the BAA. Accordingly, the BAA shall be treated as having been drafted equally by the parties, and the language shall be construed as a whole and according to its fair meaning. Any presumption or principle that the language is to be construed against any party shall not apply. This BAA may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

7.13 Entire Agreement. This BAA constitutes the entire and full agreement between the Parties with respect to the subject matter hereof and supersedes and replaces any previous version of this agreement.

IN WITNESS WHEREOF, each of the undersigned has caused this BAA to be duly executed in its name and on its behalf.

County of Nevada (Covered Entity) <u>Steve Rose</u> By: <small>Steve Rose (Sep 30, 2021 06:26 PDT)</small> Print Name: Steven Rose Print Title: Human Resources Director Date: _____	Voya Benefits Company, LLC <u>Nate Black</u> By: <small>Nate Black (Sep 30, 2021 07:59 CDT)</small> Print Name: Nate Black Print Title: Vice President, Voya Benefits Co. Date: _____
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