

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is made and entered into by and between Julie A. Su, Acting Secretary of the United States Department of Labor, through her duly authorized representatives (the “Secretary”), and Mutual of Omaha Insurance Company (“Mutual”), United of Omaha Life Insurance Company (“United”), and Companion Life Insurance Company (“Companion”). Mutual, United, and Companion are referred to collectively as the “Companies,” and the Secretary and the Companies are referred to collectively as the “Parties.” The Agreement is effective as of the date it is signed by the last Party to execute the Agreement (the “Effective Date”).

WHEREAS, the Secretary is responsible for the administration and enforcement of Title I of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. § 1001 *et seq.*;

WHEREAS, the Secretary, through the Kansas City Regional Office of the Employee Benefits Security Administration of the United States Department of Labor (the “Department”), investigated United and Companion for potential violations of Title I of ERISA (the “Investigation”), and among other things issued a subpoena to United dated January 6, 2017;

WHEREAS, the Secretary’s Investigation revealed that United and Companion sold group life insurance plans to employers for the benefit of their employees, and that among the group life insurance plans sold by United and Companion are “employee benefit plans” as defined in 29 U.S.C. § 1002(3) (the “Plans”);

WHEREAS, the Secretary’s Investigation further revealed that, in certain instances, United and Companion require participants in the Plans to submit evidence of insurability (“EOI”) in order to be eligible for coverage, and that United and Companion have authority to determine eligibility based on the submitted EOI;

WHEREAS, the Secretary alleges that United and Companion have a fiduciary duty, pursuant to 29 U.S.C. § 1104(a)(1), to ensure that eligibility determinations for coverage requiring EOI are made at or near the time United and Companion receive premiums for such coverage;

WHEREAS, the Secretary alleges that United and Companion violated provisions of Title I of ERISA by accepting premiums collected and submitted by employers for coverage requiring EOI without timely ensuring they had received EOI from the participant, and then denying claims on the basis that they lacked EOI, as outlined in a letter sent by the Kansas City Regional Office of the Employee Benefits Security Administration of the Department, dated April 2, 2020 (the “Secretary’s Claims”);

WHEREAS, United responded to the Secretary’s Claims in a letter dated June 1, 2020; and

WHEREAS, the Parties have agreed to resolve the Secretary’s Claims and bring a close to the Secretary’s Investigation by abiding by mutually agreed-upon procedures, as described in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the Parties agree as follows:

1. **90-Day Period for EOI Determinations**. As of the Effective Date, the Companies shall have a 90-day period, starting on the date of the Companies’ first receipt of premiums from or on behalf of a participant for coverage under a Plan requiring EOI, to determine whether the participant is eligible for such coverage. After that 90-day period expires, the Companies shall not deem a participant ineligible for coverage under a Plan solely for reasons relating to EOI, where the Companies received premiums on behalf of the participant, except as provided below.

2. **One-Year Period for Living Participants.** In the event the Companies discover that a participant attempted to enroll for coverage under a Plan that requires EOI, but failed to submit any required EOI, the Companies may request that the participant submit EOI only if:

2.1. Such request by the Companies is made no later than one year from the date on which the Companies received the first premium payment for the coverage that requires EOI for such participant;

2.2. Such participant is still alive. To the extent that the Companies have actual knowledge that the participant cannot submit EOI, the Companies shall work with the employer and/or the participant to effect the proper submission;

2.3. With its request for such EOI, the Companies provide notice to the participant that:

i. The Companies will not consider any information regarding a medical issue, diagnosis, prescription, or any other relevant factual matter arising after the date of the Companies' receipt of the participant's first premium payment; and

ii. The participant need not provide information concerning their health status after the date that the Companies received the first premium payment on behalf of the participant for the coverage that required EOI.

2.4. The same procedures shall govern the review and processing of EOI submitted under this subsection as those governing EOI submitted as required under the Plan; further, the same rights of appeal available to employees for the Companies' eligibility determinations of EOI submitted under the terms of the Plan shall be available to any employees submitting EOI under this paragraph.

3. **Requirements Applicable to Denied Claims.**

3.1. Any notice denying a claim for benefits under a Plan for a reason relating to EOI shall notify the beneficiary to contact the Companies if the beneficiary believes that the Companies received premiums on behalf of the participant for 90 days or more, or if any required EOI was submitted.

3.2. For any benefit claim under a Plan denied for a reason relating to EOI, the Companies shall remit or credit to the employer all premiums submitted on behalf of the relevant participant for the portion of coverage requiring EOI at or shortly after the time it transmits the notice denying benefits with instructions for the employer to transmit to the participant (or beneficiary if the participant is no longer living) any portion of the premiums that were collected from the participant.

4. **Notice.**

4.1. Within 30 days of the Effective Date, the Companies will send a notice via their normal communication methods to their Plan policyholders that: (a) in the event the Plan policyholders collect premiums from any employee for coverage requiring EOI without first confirming that the applicable Company issuing the Plan (Mutual, United, or Companion) has approved that coverage requiring EOI, they may be liable for the benefit; and (b) the Companies will not deny claims for a reason relating to EOI if they have received premiums for coverage requiring EOI for 90 days or more prior to receiving the claim. Thereafter, the Companies shall send this notice annually to Plan policyholders.

4.2. Within 30 days of the Effective Date, the Companies will display the following information on any online portal for participants in a Plan: (a) in certain circumstances a Plan may require the Companies to approve EOI before coverage

takes effect; (b) if EOI is required, the employee should have received correspondence from the Companies indicating that the Companies approved the EOI before the employer deducted or submitted premiums for the portion of coverage requiring EOI; and (c) if the employee has any questions about whether EOI is required for coverage or has been approved, the employee should contact the Companies.

5. **Training and Internal Materials.** Within 60 days of the Effective Date, the Companies shall revise their relevant training materials, claims manuals, guidelines, or other documents in a manner sufficient to reflect the procedures required by the above paragraph 1.
6. **Notice.** Within 90 days of the Effective Date, the Companies will provide copies of the notices contemplated in paragraph 4 and any changes/additions contemplated in paragraph 5.

6.1. The copies will be sent to

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Plan Benefits Security Division
Office of the Solicitor
U.S. Department of Labor
200 Constitution Avenue, N.W.
Room N-4611
Washington, DC 20210
Holz.Sarah.D@dol.gov

7. **Covenant Not to Sue by the Department.** Upon the Effective Date, the Secretary and her agents, attorneys, representatives, assigns, predecessors and successors-in-interest, acting in their official capacities, do hereby waive and discharge any and all claims, demands, actions, causes of action, liabilities, penalties, and fines that they may have against the Companies, and their parent companies, subsidiaries, and affiliates and each of their respective directors, officers, employees, fiduciaries, committees, financial advisors, consultants, agents, attorneys, representatives, assigns, predecessors and successors-in-interest with respect to any of the Secretary's Claims related to EOI prior to the Effective Date.

7.1. The Companies agree to waive any timeliness defense, including statute of limitations and laches, with respect to any claim or action brought by the Secretary to enforce this Agreement, provided the Secretary brings such claim or action within six months from the date on which the Secretary discovers that the Companies have not fully complied with the terms of this Agreement.

8. **Covenant Not to Sue by the Companies.** Upon the Effective Date, except as necessary to enforce the rights and obligations in this Agreement, the Companies do hereby waive and discharge any and all claims, demands, actions, causes of action, liabilities, penalties, and fines, including those claims arising under the Equal Access to Justice Act or any other statute, rule or regulation, that the Companies may have against the Secretary and her agents, attorneys, representatives, assigns, predecessors and successors-in-interest that relate in any manner to the Secretary's Investigation of the Secretary's Claims, the Secretary's filing, prosecution or maintenance of the Investigation, or the settlement terms in this Agreement, that arose prior to the Effective Date.

8.1. The Secretary agrees to waive any timeliness defense, including statute of limitations and laches, with respect to any claim or action brought by the Companies to enforce this Agreement, provided that the Companies bring such claim or action within six months from the date on which the Companies discover that the Secretary has not fully complied with the terms of this Agreement.

9. **Private Litigation.** This Agreement does not limit the Secretary's authority to submit amicus curiae briefs in litigation brought against the Companies by private parties or the Secretary's

authority to disclose non-exempt information in response to requests that the Secretary receives under the Freedom of Information Act.

10. **No Admissions.** This Agreement, whether or not consummated, and any negotiations or proceedings in furtherance hereof are not, and shall not be construed as, deemed to be, or offered or received as evidence of an admission by or on the part of the Companies of any wrongdoing, fault, or liability, or give rise to any inference of any wrongdoing, fault, or liability or admission of any wrongdoing, fault, or liability in any other proceeding.

11. **General Provisions.**

11.1. To the extent that Congress, the Department, or the U.S Supreme Court issues any statute, rule, regulation or decision inconsistent with any provision of this Agreement, the Companies, upon the Secretary's express written consent (which shall not be unreasonably withheld), shall be relieved of any obligation to comply with such conflicting provision of this Agreement and shall be free to modify the policies reflected herein to the extent necessary to comply with any such statute, rule, regulation or guidance. If one or more provisions of this Agreement is deemed unlawful or unenforceable, the remaining provisions will remain in full force and effect.

11.2. This Agreement constitutes the entire agreement between the Parties and supersedes any prior agreement or understanding, whether oral or in writing, that any Party may claim exists with respect to the Secretary's Claims.

11.3. This Agreement may not be amended or modified except by a writing signed by all Parties, but its modification shall not require the consent of

any other person. A provision of this Agreement may be waived only by an instrument in writing executed by the waiving Party and specifically waiving such provision. The waiver of any breach of this Agreement by any Party shall not be deemed to be or construed as a waiver of any other breach of this Agreement.

- 11.4. This Agreement is a binding contract and all Parties hereto are bound to perform hereunder. The respective obligations of the Companies and the Secretary hereunder shall be binding upon each of them and their respective successors and assigns, and the obligations of each shall be fully enforceable by the other. The Companies and the Secretary waive any challenge that they may have to the enforceability of this Agreement.
- 11.5. The Secretary and the Companies shall bear their own costs, expenses, and attorneys and other professional fees in connection with this matter, the Secretary's Claims, the Investigation, and the settlement terms of this Agreement.
- 11.6. This Agreement is not binding on any governmental agency other than the Department.
- 11.7. The undersigned representatives each expressly acknowledge and represent that they are authorized and empowered to execute this Agreement on behalf of the Parties represented.
- 11.8. This Agreement shall be interpreted, construed, and enforced in accordance with applicable federal law.
- 11.9. The Parties agree that any and all disputes concerning compliance with the Agreement shall follow the process below:

11.9.1. If a Party has reason to believe that the other Party has not complied with the Agreement, it shall first promptly give written notice of such alleged non-compliance to the other Party and will use reasonable efforts to resolve the issue informally. If the issue cannot be resolved within 60 calendar days of the date of the written notice, the Parties have the option of seeking resolution by more formal means, including through mediation or an action to enforce the Agreement. In any mediation under this subparagraph 11.9.1, each Party shall bear its own fees and costs.

11.9.2. If the dispute is not resolved through mediation, either Party may file an action in the United States District Court for the District of Nebraska to resolve the dispute.

11.10. Each Party to this Agreement hereby acknowledges that they have consulted with and obtained the advice of counsel prior to executing this Agreement and that this Agreement has been explained to that Party by their counsel.

11.11. No provision of this Agreement shall be construed against or interpreted to the disadvantage of any Party to the Agreement because that Party is deemed to have prepared, structured, drafted, or requested the provision.

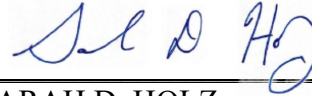
11.12. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

THE SECRETARY OF LABOR:

SEEMA NANDA
Solicitor of Labor

WAYNE R. BERRY
Associate Solicitor for Plan Benefits Security

DATED: September 29, 2023



SARAH D. HOLZ
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U.S. Department of Labor
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Plan Benefits Security Division
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**MUTUAL OF OMAHA INSURANCE
COMPANY:**



DATED: September 28, 2023

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3300 Mutual of Omaha Plaza
Omaha, Nebraska 68175

**UNITED OF OMAHA LIFE INSURANCE
COMPANY:**



DATED: September 28, 2023

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**COMPANION LIFE INSURANCE
COMPANY:**



DATED: September 28, 2023

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