

## 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 Lincoln Life & Annuity Company of New York (“LLANY”), Lincoln National Corporation (“LNC”) and The Lincoln National Life Insurance Company (“LNLIC”). LLANY, LNC, and LNLIC are referred to herein collectively as “Lincoln,” and the Secretary and Lincoln 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 and Philadelphia Regional Office of the Employee Benefits Security Administration of the United States Department of Labor (the “Department”), initiated an investigation of Lincoln under Title I of ERISA (the “Investigation”) by issuing a subpoena to Lincoln dated December 28, 2016;

WHEREAS, Lincoln sells group life insurance policies to employers (the “group life insurance policyholders” or “employers”), who use such policies to provide life insurance benefits to their employees, eligible dependents and beneficiaries (“participants”) under “employee benefit plans” as defined in ERISA Section 3, 29 U.S.C. § 1002(3) established by such employers (the “Plans”);

WHEREAS, in certain instances, Lincoln requires participants in the Plans to submit evidence of insurability (“EOI”) in order to be eligible for coverage, and Lincoln has authority to determine eligibility based on the submitted EOI;

WHEREAS, the Secretary alleges that Lincoln has 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 Lincoln receives premiums for such coverage;

WHEREAS, the Secretary alleges that Lincoln violated provisions of Title I of ERISA by accepting premiums collected and submitted by employers for coverage requiring EOI without timely ensuring it had received EOI from the participant, and then denying claims on the basis that it lacked EOI (the “Secretary’s Claims”); and

WHEREAS, the Parties have agreed to resolve the Secretary’s Claims and bring a close to the 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. **EOI Determinations and Coverage**. As of four months after the Effective Date of this Agreement set forth above, Lincoln shall not deny a claim under a group life insurance policy issued to an employer for its group insurance plan covered by ERISA solely on the basis that EOI for the participant was not submitted to or approved by Lincoln, where Lincoln has received the portion of required premiums for the coverage that requires EOI from the group life insurance policyholder for three months or more with respect to the coverage that requires EOI of such participant.

2. **One-Year Period for Living Participants**. In the event Lincoln discovers that a participant who enrolled for coverage that requires EOI, failed to submit any required EOI, Lincoln may request that the participant submit EOI only if:

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

- 2.2. Such participant is still alive at the time of discovery. To the extent that Lincoln has actual knowledge that the participant cannot submit EOI, Lincoln shall work with the employer and the participant to effect the proper submission;
- 2.3. With its request for such EOI, Lincoln provides the employer a notice to be delivered to the participant that:
  - 2.3.1. Lincoln is not requesting and will not consider any information regarding a medical issue, diagnosis, new prescription or any other relevant factual matter arising after the date of Lincoln's receipt of the participant's first premium payment; and
  - 2.3.2. The information requested is limited to the participant's health status as of the date that Lincoln 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 group life insurance policy; further, the same rights of appeal available to employees or their eligible dependents for Lincoln's eligibility determinations of EOI submitted under the terms of the group life insurance policy shall be available to any employee or their eligible dependents 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 clearly notify the beneficiary to contact Lincoln immediately if the beneficiary has reason to believe that the participant paid premiums for coverage requiring EOI for three months or more, or if any required EOI was submitted.
- 3.2. For any benefit claims under a Plan denied for a reason relating to EOI, Lincoln shall remit or credit to the policyholder all premiums submitted on behalf of the participant for the

portion of coverage requiring EOI at or near the time it transmits the notice denying benefits.

3.3. For any benefit claims denied due to Lincoln's determination that the participant is not eligible for coverage (whether relating to EOI or otherwise), those denials shall be without prejudice to any claims the beneficiary or Lincoln may assert against the group life insurance policyholder.

4. **Notice.**

4.1. Within 120 days of the Effective Date, Lincoln will send via its normal communication methods with group life insurance policyholders a written notice clearly advising its existing group life insurance policyholders that: (a) They must not collect premiums from or on behalf of any participant for coverage requiring EOI until Lincoln expressly provides notice that it has approved the participant's EOI, and that; (b) In the event they collect premiums from or on behalf of any participant for coverage requiring EOI without first confirming that Lincoln has approved such EOI, they may be liable to the beneficiaries of any such participant.

4.2. Thereafter, Lincoln shall send an annual notice regarding the EOI issues addressed in ¶ 4.1 to group life insurance policyholders. Lincoln further agrees that at the time it contracts with a new policyholder, it will provide this same notice to the new policyholder.

5. **Training and Internal Materials.** Within 120 days of the Effective Date, Lincoln shall revise any training materials, claims manuals, guidelines, or other applicable documents to reflect the procedures required by the above paragraphs in Sections 1-3 (inclusive of all subparagraphs).

6. **Proof of Notice.** Within 30 days of the deadline for sending notice in Paragraph 4, Lincoln will provide proof of the notice sent to employer group life insurance policyholders and any

applicable revisions to training materials, claims manuals, guidelines, or other applicable documents to reflect the new procedures agreed to in Sections 1-4.

- 6.1. Any proof provided under this paragraph will be sent to the Secretary's representatives (by both email and express overnight courier) at the following addresses:

Mark Underwood  
Employee Benefits Security Administration  
Kansas City Regional Office  
U.S. Department of Labor  
2300 Main St.  
Ste. 11093  
Kansas City, MO 64108-2415  
[Underwood.Mark@dol.gov](mailto:Underwood.Mark@dol.gov)

Norman Jackson  
Employee Benefits Security Administration  
Philadelphia Regional Office  
U.S. Department of Labor  
1835 Market Street, 21<sup>st</sup> Floor  
Mailstop EBSA/21  
Philadelphia, PA 19103-2968  
[Jackson.Norman@dol.gov](mailto:Jackson.Norman@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 Lincoln, and its 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 relating to EOI prior to the Effective Date.

- 7.1. Lincoln agrees 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 Lincoln has not fully complied with the terms of this Agreement.

8. **Covenant Not to Sue by Lincoln.** Upon the Effective Date, except as necessary to enforce the rights and obligations in this Agreement, Lincoln does 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 Lincoln 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 Lincoln to enforce this Agreement, provided that Lincoln brings such claim or action within six months from the date on which Lincoln discovers 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 Lincoln 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 or denial by or on the part of Lincoln 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, Lincoln 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 decision. 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, except that this Agreement does not supersede any tolling agreements between the Parties.

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 Lincoln 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. Lincoln and the Secretary waive any challenge that they may have to the enforceability of this Agreement.

11.5. The Secretary and Lincoln 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 United States Department of Labor.

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, 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.

**FOR THE SECRETARY OF LABOR:**

Dated: May 22, 2024

By: Mark Underwood  
Mark F. Underwood  
Regional Director  
U.S. Department of Labor  
Employee Benefits Security Administration  
2300 Main Street, Suite 1100  
Kansas City, MO 64108

**FOR LINCOLN LIFE & ANNUITY COMPANY OF NEW YORK:**

Dated: May 21, 2024

By: Michelle Hays  
Michelle L. Hays  
AVP, Chief Compliance Officer and Senior  
Counsel– Group Protection  
Lincoln Life & Annuity Company of New York  
8801 Indian Hills Drive  
Omaha, NE 68114

**FOR LINCOLN NATIONAL CORPORATION:**

Dated: May 21, 2024

By: Michelle Hays  
Michelle L. Hays  
AVP, Chief Compliance Officer and Senior  
Counsel– Group Protection  
Lincoln Life & Annuity Company of New York  
8801 Indian Hills Drive  
Omaha, NE 68114

**FOR THE LINCOLN NATIONAL LIFE INSURANCE COMPANY:**

Dated: May 21, 2024

By: Michelle Hays  
Michelle L. Hays  
AVP, Chief Compliance Officer and Senior  
Counsel– Group Protection  
Lincoln Life & Annuity Company of New York  
8801 Indian Hills Drive  
Omaha, NE 68114