

AGREEMENT TO CLARIFY TERMS

This agreement is dated July 19th 2018, and is between Aetna Life Insurance Company, a Connecticut company in its role as a stop loss insurer ("Insurer"), and Lee County, a Florida county in its role as insured under a stop loss insurance policy ("Insured").

The Insured has purchased stop loss coverage from the Insurer and is covered under Stop Loss Policy SL-881673. In discussions between Insured and Insurer, both parties want to clarify the meaning and interpretation of certain terms in the Policy.

Insured and Insurer therefore agree as follows:

1. **Scope of Agreement; Binding Nature.** This agreement is a legally binding and enforceable contract between the parties and governed by Florida state law, without giving effect to its principles of conflicts of law. The Policy shall be interpreted and construed in accordance with the language contained in this agreement. In the event that the Policy and this agreement directly conflict, the terms of this agreement shall prevail. The terms of this agreement shall be incorporated into the Policy.
2. **Term.** The terms of this agreement shall be effective as of January 1, 2018 and shall remain in force for the term of the Policy.
3. **Clarifications.**
 - a. *Applicable Law.*
The Policy will be construed in accordance with Florida law.
 - b. *Optional Policy Renewal.*
The policy will renew on the policy anniversary date, only upon the insured's written acceptance of the renewal terms, unless it has otherwise terminated or is subject to termination in accordance with the termination provisions.
 - c. *Subrogation/Right of Recovery.*
Should the Plan refuse to pursue any claims or actions against a responsible party, then Plan Sponsor agrees that Aetna will be subrogated or assigned Plan Sponsors reimbursement rights and shall assume the plan's rights to pursue any claims against any parties.

Subject to the provisions of Florida Statutes section 768.28, should the Plan Sponsor refuse to pursue any claims or actions against a responsible party within 120 days after receipt of a written request from Aetna, the Plan will be responsible for any reasonable expenses incurred in the pursuit of such claims, including the fees and costs charged by a contracted subrogation vendor or attorney and any additional legal costs.
 - d. *Notice of Actions.*

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Subject to the provisions of Florida statute section 768.28, the Insured will be responsible for attorney's fees, expenses of experts and investigations, and any damages (excluding exemplary or punitive damages) payable by Aetna in connection with any litigation in which Aetna is determined by a Court of Law to have no fault or liability where Aetna becomes involved through or on account of this Policy or the Plan.

If any time limitation of this policy is less than that permitted by the law of Florida, the limitation is hereby extended to agree with the minimum permitted by the law Florida.

4. **Incorporation of Insured's Solicitation Documents.** To procure the products and services supplied by the Insurer, the Insured issued Lee County Solicitation No. RFP170465LKD on September 26, 2017, which is deemed incorporated into this agreement as if attached hereto. The Insurer's submission in response to the Insured's solicitation is also incorporated into this agreement as if attached hereto.
5. **Severability.** The parties intend as follows:
 - a. that if any provision of this agreement is to be held to be unenforceable, then that provision will be modified to the minimum extent to make it enforceable, unless that modification is not permitted by law, in which case that provision will be disregarded;
 - b. that if an unenforceable provision is modified or disregarded in accordance with this section, then the rest of the agreement will remain in effect as written; and
 - c. that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable.
6. **Counterparts.** If the parties sign this agreement in several counterparts, each will be deemed an original but all counterparts together will constitute one instrument.
7. **Entire Agreement.** This agreement supersedes all other agreement, whether written or oral, between the parties on clarifications and interpretation of the Policy. It does not supersede or limit the Insured's rights under the Policy, but provides common understanding between the parties regarding terms in the Policy.

The parties are signing this agreement on the date stated in the introductory clause.

WITNESS:

AETNA LIFE INSURANCE COMPANY

Signed By: *Rosa Christie*
Print Name: Rosa Christie

Signed By: *Catherine Aguirre*
Print Name: Catherine Aguirre
Title: Market Head, Florida
Date: 06/15/2018

**LEE COUNTY BOARD OF COUNTY
COMMISSIONERS OF LEE COUNTY, FLORIDA**

BY: *Jayla*
Vice- CHAIR
DATE: 7/19/18

ATTEST:

CLERK OF THE CIRCUIT COURT

Linda Doggett, Clerk

BY: *Missy Flint*
DEPUTY CLERK



**APPROVED AS TO FORM FOR THE RELIANCE
OF LEE COUNTY
ONLY:**

BY: *Andrea B. Jones*
OFFICE OF THE COUNTY ATTORNEY

Stop Loss Insurance Policy

Aetna Life Insurance Company
Hartford, Connecticut 06156

(A Stock Company herein called Aetna)

This Policy will be construed in accordance with the law of the jurisdiction in which it is delivered.

This Policy and the application of the Insured are the entire contract. A copy of the application is attached. All statements made by the Insured shall be deemed representations and not warranties. A misrepresentation or misstatement may prevent recovery under this Policy only if the misrepresentation or misstatement is fraudulent or material to the acceptance of the risk assumed. If the Premium Rate is affected by such misrepresentation or misstatement, a fair adjustment of premium will be made. If such misrepresentation or misstatement affects the amount of coverage, the true facts will be used in determining what coverage is in force.

In consideration of premium payments by the Insured in the amounts and at the times provided, Aetna agrees with the Insured to provide insurance in accordance with the Policy terms.

For the purpose of effective dates and termination dates under this Policy, all days begin and end at 12:00 midnight.

This Policy is non-participating.

In Witness Whereof, Aetna Life Insurance Company has signed this Policy at **Hartford, Connecticut**.



Mark T. Bertolini
Chairman, Chief Executive Officer and President



Registrar

Aetna Life Insurance Company
151 Farmington Avenue
Hartford, Connecticut 06156

Section 1. Declarations

STOP LOSS INSURANCE POLICY FOR:

INSURED:

Lee County Board of County Commissioners
2115 2nd Street
Ft. Myers, FL33901

POLICY NUMBER:

SL-881673

POLICY EFFECTIVE DATE:

January 01, 2018

DATE OF ISSUE:

June 4, 2018

POLICY DELIVERED IN:

Florida

Section 2. Schedule of Insurance

Individual Stop Loss Specifications:

FIRST POLICY YEAR:	January 01, 2018 through December 31, 2018
PREMIUM RATE:	\$38.46 per employee per month
INDIVIDUAL STOP LOSS AMOUNT:	\$400,000
INDIVIDUAL LIFETIME STOP LOSS PAYMENT AMOUNT:	Unlimited
CONTRACT BASIS:	Eligible Claim Expenses include claims paid between January 01, 2018 through December 31, 2018 (regardless of incurred date).
COVERED BENEFITS:	Medical Benefits Prescription Drug Benefits

The information provided in this Schedule of Insurance for each Policy Year after the first shall be indicated in a written notice sent to the Insured and shall be effective on the date stated in such notice.

Section 3. Insuring Agreement

Aetna will reimburse the Insured for Eligible Claim Expenses during a Policy Year, which are in excess of the Individual Stop Loss Amount for any one Participant.

Such payments are hereafter called Stop Loss payments.

In no event will Stop Loss payments for all Eligible Claim Expenses with respect to a Participant during his or her lifetime exceed the Individual Lifetime Stop Loss Payment Amount shown in the Schedule of Insurance.

In the event that the Insured becomes insolvent or otherwise unable to pay benefits under the Plan, Aetna will continue to pay benefits for which it is liable under the terms of this Policy.

Section 4. Definitions

As used in this Policy:

1. "Contract" means Master Services Agreement No. MSA-881673, an Agreement between the Insured and Aetna.
2. "Contract Basis" establishes the time period during which Eligible Claim Expenses must be incurred by a Participant through the Plan and the time period during which those expenses must be paid by Aetna in order for those Eligible Claim Expenses to be included in the calculation of benefits under this Policy.
3. "Covered Benefits" are the benefits provided for Participants by the Plan as indicated on the Schedule of Insurance.
4. "Eligible Claim Expenses" are expenses for Covered Benefits that are paid by the Insured pursuant to the Plan and are not excluded under the terms of this Policy. Payment for Eligible Claim Expenses is considered to be paid when the payment has been validly presented to the bank on which it is drawn or when a Benefit payment has been made by electronic funds transfer or other reasonable transfer method. Eligible Claim Expenses will include payments made in New York on behalf of the Insured to fund indigent care and graduate medical education when paid directly into the New York state pool.
5. "Employee" means a U.S. based employee of the Insured who is regularly working at least 20 hours per week and for whom the Insured is deducting any required U.S. FICA taxes.
6. "Experimental and Investigational" means a drug, device, procedure, or treatment that Aetna determines is not accepted as standard medical treatment of a condition or illness. Examples of Aetna's experimental and investigational determinations are found at Aetna.com under Clinical Policy Bulletins.
7. "Individual Lifetime Stop Loss Payment Amount" means the maximum amount of Eligible Claim Expenses funded by Individual Stop Loss under this Policy on any one Participant during his/her lifetime. In the event the Eligible Claim Expenses funded by Individual Stop Loss reach the Individual Lifetime Stop Loss Payment Amount, all subsequent Eligible Claim Expenses for that individual will be funded by the Insured.
8. "Individual Stop Loss Amount" is the dollar amount of Eligible Claim Expenses per Participant that must be paid by the Insured prior to any Individual Stop Loss Benefit becoming payable under this policy.
9. "Insured" is the plan sponsor identified in the Declarations section of the Policy.
10. "Medically Necessary" means a service or supply that is furnished by a provider that Aetna determines is appropriate for the diagnosis, the care or the treatment of a disease or injury. Examples of Aetna's medically necessary determinations are found at Aetna.com under Clinical Policy Bulletins.
11. "Participant" means an Employee (or retired employee) of the Insured, or a dependent of an Employee (or retired employee), on whose behalf Eligible Claim Expenses are payable under the Plan. "Participant" also means an employee or dependent who is entitled to extended benefits under the Plan or who elects COBRA coverage, following termination of eligibility. Employees who qualify for extended benefits under the Plan will include employees who are laid off, on leave of absence, Temporary Disability or Long Term Disability.

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12. "Plan" means the self-funded medical benefit plan established by the Insured and described in the Appendix which is attached to the Contract.
 13. "Policy" means all of the following:
 - (a) The Insured's Application for Stop Loss Insurance.
 - (b) This policy and any riders to it.
 14. A "policy month" shall coincide with a calendar month; except that the first policy month shall commence on the Effective Date of this Policy and the last policy month shall end on termination of this Policy.
 15. A "policy year" shall coincide with a Plan year under the Plan; except that the first policy year shall commence on the Effective Date of this Policy and the last policy year shall end on termination of this Policy.

Section 5. Exclusions

The following are not included as Eligible Claim Expenses:

1. Expenses paid on the direction of the Insured that Aetna determines are not payable under the Contract in accordance with Aetna's then current standard claim practices established for insured group accident and health insurance plan administered by Aetna. This includes expenses for services or supplies which are not Medically Necessary or expenses for drugs, treatment, services or supplies which are considered Experimental or Investigational.
2. If the Insured has valid and collectible insurance, reinsurance or indemnity or any reimbursement agreements covering a loss also covered by this Policy, the insurance afforded by this Policy shall be in excess of and shall not contribute with such other insurance, reinsurance or indemnity.
3. Expenses incurred by an individual who is not a Participant under the Plan when the expense is incurred.
4. Expenses paid with respect to an employee and his/her dependents who did not enroll in accordance with the terms of the Plan, until such time as they are enrolled in accordance with the terms of the Plan.
5. Expenses that are incurred prior to the Effective Date of this Policy unless otherwise specified in the Schedule of Insurance.
6. Expenses paid with respect to a Participant following termination of coverage under the Contract with respect to a class of employees and their dependents that includes the Participant. A class of employees may include a specific location, division, salaried, hourly, retiree or other employee designation that requires distinct and separate structure in Aetna's claim system.
7. Benefits paid for expenses incurred for treatment of an illness or injury for which a Participant is entitled to Benefits under any Workers' Compensation law, occupational disease law or under any other legislation of similar purpose.
8. Expenses paid for Covered Benefits not listed on the Schedule of Insurance.
9. Expenses for taxes, fees and surcharges that may be imposed on the Plan by any government body. This exclusion does not apply to New York Health Care Reform Act surcharges unless they are excess or punitive payments made on behalf of an Insured to fund indigent care and graduate medical education solely as a result of that Insured's decision not to pay directly into the New York state pool.
10. Incentive payments, care coordination payments, risk share payments and other non-fee for service payments paid or received in connection with an agreement with an accountable care or similar provider organization.
11. Expenses for any other benefits which the Insured and Aetna mutually agree will not be subject to the Stop Loss insurance.

Section 6. Conditions

Premiums

The first Policy Year's monthly premium rate is shown in Section 2. Schedule of Insurance.

Premium Calculation: An estimated premium will be calculated which will be payable on a monthly basis or any other basis mutually agreed upon by the Insured and Aetna. The estimated premium will be based on the Premium Rate shown in the Schedule of Insurance and the estimated number of employees.

Premium Payments: Aetna will issue a Stop Loss premium invoice for the payment of estimated premium. Within 120 days following the end of each Policy Year, Aetna will prepare and submit to the Insured a financial accounting as to the total actual premium for that Policy Year. The total actual premium will be the sum of the products, for each month of that Policy Year, of:

- (a) the Premium Rate, times
- (b) the number of employees.

Grace Period: The Insured will pay all estimated premium payments as directed on the invoice, but no later than 31 days after the due date shown on the invoice (the grace period).

Right to Recalculate: Aetna reserves the right to make adjustments in the premium rate or the estimated premium on the first day of any Policy Month, as of the date any of the following events occur:

- (a) any change of 10% +/- in the number of employees;
- (b) any change in the coverage or types or amounts of benefits offered under the Plan which will change expected cost of coverage;
- (c) any change in this Policy;
- (d) any addition or deletion of a unit, division, subsidiary, affiliated or associated company from this Policy; and
- (e) any other change in factors bearing on the risk assumed (including but not limited to: age, sex, geographic changes, occupations etc.) which Aetna determines change the nature of the risk by more than 10%.

Failure to adjust the Premium Rate or the estimated Premium during a Policy Year will not preclude making an adjustment during any subsequent Policy Year.

If the total actual Premium (determined at the financial accounting) is less than the amount of estimated premiums paid, the difference will be paid to the Insured at the time the accounting is submitted. If the total actual Premium exceeds the amount paid, the difference will be paid to Aetna within 31 days of the date the accounting is furnished to the Insured.

Modification of Policy

Changes in this Policy may be made by written mutual agreement between Aetna and the Insured.

Optional Policy Renewal

The Policy will renew on the Policy anniversary date, upon the Insured's acceptance of the renewal terms, unless it has otherwise terminated or is subject to termination in accordance with the Termination provisions. Changes to Section 2, Schedule of Insurance, for each Policy Year after the first shall be indicated in a written notice sent to the Insured and shall be effective on the date stated in such notice.

Stop Loss Payments

Aetna will make payment, not later than 120 days after the end of each Policy Year to or on behalf of the Insured of the Stop Loss payment due under the terms of this Policy. The amount of any premiums due but unpaid may be deducted from the Stop Loss payment otherwise payable to the Insured. This right will not prevent the termination, of this Policy, for non-payment of premium under the Termination provisions of this Policy.

Subrogation/Right of Recovery

The Plan is required to include a comprehensive provision for subrogation/reimbursement in its Summary Plan Description and the Plan must pursue enforcement of this provision. Should the Plan fail to pursue any claims or action against a responsible party, then Plan Sponsor agrees that Aetna shall be subrogated to or assigned Plan Sponsor's reimbursement rights and shall assume the Plan's rights to pursue any claims against any and all parties and the Plan will be responsible for any reasonable expenses incurred in the pursuit of such claims, including the fees and costs charged by any contracted subrogation vendor or attorney and any additional legal costs. Aetna has the right to pursue any and all claims covered under this Policy and paid by the Plan and to pursue recovery, in the name of the Plan, of the entire claim, including both the portion of the Plan benefits for which the Plan has been paid under this Policy and the portion of the claim consisting of benefits paid by the Plan but not payable under this Policy.

The Plan must notify Aetna within 30 days of receiving any information that may give rise to the Aetna's subrogation rights. Further, the Plan shall cooperate fully with Aetna and do all things necessary and required for Aetna to pursue any action to recover against a responsible party. The Plan may not take any action, or neglect to take any action, that will prejudice or impair the rights of Aetna to pursue recovery from any other responsible party. The Plan may not, without consent of Aetna, settle or give release for any claim to any other party if doing so would impair or prevent Aetna from exercising its rights of recovery.

Aetna is entitled to recover first, in full, any amount paid by Aetna under this Policy as well as any expenses of collection incurred by Aetna, before the Plan shares in any amounts so recovered. Aetna will reduce its recovery amount by a pro rata share to reflect the Net Recovery obtained by the Plan. Net Recovery is the gross amount recovered by the Plan, less such factors as costs incurred by the Plan in obtaining the recovery, comparative fault issues involving the Plan member or factors involving the Plan member's inability to fully recover for their injuries. In the event Aetna recovers an amount greater than its reimbursement, the excess, reduced by the costs to obtain the recovery, will be returned to the Plan. If the Plan recovers any such payment from a responsible party, the recovered amount cannot be used to satisfy any retention requirement, Individual Stop Loss Specifications noted in Section 2. Schedule of Insurance, until Aetna's recovery rights are satisfied.

If the Plan receives a recovery prior to Aetna reimbursing any covered expenses under the Policy, the Plan must deduct the amount of such recovery from any reimbursement request. If the Plan receives a recovery after Aetna has made payment to the Plan for some or all of a particular claim, then the Plan must reimburse Aetna to the full extent of the payment by the Aetna, less a pro rata reduction to reflect the Net Recovery obtained by the Plan. Net Recovery is the gross amount recovered by the Plan, less such factors as costs incurred by the Plan in obtaining the recovery, comparative fault issues involving the Plan member or factors involving the Plan member's inability to fully recover for their injuries. The obligation of the Plan to reimburse Aetna remains, regardless of whether this Policy is still in force on the date of recovery, and such reimbursement to Aetna must occur within 30 days of any recovery by the Plan or Plan Sponsor. The Plan shall account to Aetna for all amounts recovered. These rights and obligations imposed on the Plan and Aetna under this section shall survive termination of the Policy.

Stop Loss Overpayments

If Aetna determines that the Insured has been overpaid due to a claim credit which may be the result of a Coordination of Benefit change, a Subrogation Recovery, Audit and/or billing/payment error, the Insured will promptly refund such overpayment to Aetna. If this Policy terminates, any reimbursements made for claims paid by the Insured after the date of termination will immediately be refunded to Aetna. If the Insured fails to refund any overpayments to Aetna in a timely manner, Aetna reserves the right to obtain such overpayments from future payments due under this Policy.

Termination of Policy

Aetna may terminate this policy on any policy anniversary date by providing at least 45 days prior written notice to the Insured. The Insured may terminate this policy on any premium due date by providing at least 30 days prior written notice to Aetna. The policy may also be terminated on any date mutually agreed to by Aetna and the Insured.

If the Insured does not comply with any terms and conditions of the policy, including but not limited to providing required reports or other information reasonably requested by Aetna, Aetna reserves the right to terminate the Policy effective on the date of any such failure.

This Policy shall also terminate automatically upon the occurrence of any of the following:

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- a. If the Insured fails to pay any premium in full within the Grace Period, this Policy will terminate as of the due date shown on the invoice.
 - b. If the Contract terminates, this Policy will terminate on the same date and at the same time that the Contract terminates.
 - c. If the Insured fails to meet the underwriting requirements established by Aetna, including but not limited to the minimum number of 51 Employees, the policy will terminate as of the first day of the first month following the date the underwriting requirement was not met.
 - d. If the Insured fails to pay claims under the Plan or make available funds to pay claims as required by the Plan, the policy will terminate on the first day that the Insured failed to fund benefits.

Reports

The Insured shall furnish Aetna with all information Aetna determines to be necessary to carry out the provisions of the Policy.

Inspection and Audit

Aetna shall be permitted to inspect the Insured's records pertaining to the Contract at any reasonable time during the effectiveness of this Policy and within three years after termination of this Policy, to the extent that they relate to the premium basis or Eligible Claim Expenses under this Policy.

Fraud

This entire Policy will be void if, whether before or after a claim or loss, the Insured has concealed or misrepresented any material fact or circumstance concerning this Policy or the subject of this Policy, including any claim under this Policy, or in any case of fraud by the Insured relating to this Policy.

Incontestability

The validity of this Policy shall not be contested, except for non-payment of premium, after it has been in force for two years from the Policy Effective Date.

Liability and Indemnification

Aetna has neither the right nor the obligation under this Policy to directly pay any Participant or provider of covered services for any benefit the Insured has agreed to provide through the terms of the Plan(s). Aetna's sole liability under this Policy is to the Insured, subject to the terms, conditions, and limitations of this Policy.

Assignment

Assignment of interest under this Policy shall not bind Aetna without its written consent.

Notice of Actions

The Insured agrees to give Aetna prompt notice of any event or development which might result in an action at law or equity related to this Policy and to forward promptly to Aetna copies of any pleadings and reports of investigation that Aetna requests. A copy of any document filed by or against the Insured in any court in connection with such litigation under the Plan must immediately be furnished to Aetna.

The Insured shall pay all attorneys' fees, expenses of experts and investigations, and any damages (including exemplary or punitive damages) payable by Aetna in connection with any litigation in which Aetna shall, without Aetna's fault, become involved through or on account of this Policy or the Plan.

If any time limitation in this Policy is less than that permitted by the law of the state in which the Application was taken, the limitation is hereby extended to agree with the minimum period permitted by the law.

SPECIAL NOTICE

Important Information Regarding Your Insurance

Insurance Contact Notice

In the event you need to contact someone about this insurance for any reason please contact your local Aetna representative. If you have additional questions or need to resolve complaints you may contact the insurance company issuing this insurance at the following address and telephone number:

Aetna Life Insurance Company
151 Farmington Avenue
Hartford, CT 06156
1-800-872-3862

Aetna Life Insurance Company Application for Stop Loss Insurance

Application is hereby made to Aetna Life Insurance Company, of Hartford, Connecticut (herein called Aetna) for a policy of Stop Loss Insurance, to be issued to the undersigned applicant.

Lee County Board of County Commissioners

Applicant:

2115 2nd Street, Fort Myers, FL 33901

Address:

The policy form applied for is designated by Aetna as Form No. GR-96476.

Said Policy has been approved, and its terms are accepted by the applicant.

2115 2nd Street, Fort Myers, FL 33901

Lee County Board of County Commissioners

Signed at:

Applicant:

Date:

7-26-18

By:

Commissioner Cecil L. Pendergrass
Lee County Board of County Commissioners
District 2

Witness:

Missy Flinn
DEPUTY CLERK

Official Title:



Agent(s) of Record:

(If countersignature laws require commission sharing with a duly Licensed Resident Agent in another jurisdiction, the above designation will be modified to the extent required by law.)

Your premium purchases insurance coverage from Aetna, as well as the services of any Aetna-appointed licensed independent agent or broker herein identified. Aetna has various programs for compensating producers (agents, brokers and consultants). If you would like information regarding compensation programs for which your producer is eligible, payment (if any) which Aetna has made to your producer, or other material relationships your producer may have with Aetna, you may contact your producer or Aetna. Information regarding Aetna's programs for compensating producers is also available at www.aetna.com. We value your business and the chance to serve you.