**Sample agreements only – clients must consult legal counsel**

**Principal® Bonus Arrangement for individual Disability Income insurance on key employees (including owner employees)**

These sample agreements have been prepared as a guide to assist attorneys. **As a sample agreement, this document cannot be used as a final draft without modification and consultation with the client’s attorney.** Clients must seek legal counsel to review the agreements for the client’s particular circumstances. The client’s attorney is ultimately responsible for creation of the agreements necessary to implement the arrangement. The use of this agreement does not create an attorney-client relationship between the client and Principal Financial Group or any Principal employee.

Enclosed are two agreements for review by Client’s counsel: (1) a **Sample Board Resolution** authorizing implementation of a Bonus Arrangement for individual Disability Income coverage to reward and retain designated key employee(s); and, (2) a **Sample Bonus Disability Income Agreement,** outlining the terms under which an employer will provide an employee with a compensation bonus, to be used to purchase an individual Disability Income insurance policy from Principal National or Principal Life Insurance Company, subject to Principal underwriting approval.

[***Forward to counsel:*** *There is some disagreement among experts as to whether a bonus arrangement used for the purchase of an individual Disability Income policy is subject to ERISA as a welfare benefit plan. The attached sample document includes fiduciary provisions (paragraph 6), a provision concerning the allocation of fiduciary responsibilities (paragraph 7), a named plan administrator (paragraph 8), and a claims procedure (paragraph 9), all of which would be required for a welfare benefit plan under ERISA. If it is the position of counsel that the plan is not an ERISA plan, those provisions could be omitted.*

*From a reporting and disclosure standpoint, ERISA welfare benefit plans with 100 or more participants require the filing of an annual Form 5500 report with the Department of Labor (DOL) and IRS. Such plans would also be required to provide participants with a summary annual report, as well as an initial summary plan description and summary of any material modifications of the plan.*

*For an ERISA welfare benefit plan with less than 100 participants (funded through insurance contracts with premiums paid by employer from general company assets and/or the participating employee), annual Form 5500 reports are not required nor are summary annual reports to participants. However, an initial summary plan description is required.*

*An ERISA top hat welfare benefit plan is exempt from annual Form 5500 reporting, summary annual reports for participants, and initial summary plan description. A top hat welfare benefit plan is defined as a plan maintained by an employer primarily for a select group of management or highly compensated employees with plan benefits paid as needed from the general assets of the employer or exclusively through insurance contracts the premiums of which are paid by the employer from its general assets.]*

**Sample document only – clients must consult legal counsel**

**Resolution Authorizing
Principal® Bonus Arrangement for
individual Disability Income insurance**

I, (Name) , Secretary of (Name of Corporation) , **do hereby certify**: that on the \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_\_\_\_\_, a meeting of the Board of Directors of said Corporation was duly called and held at (Address) , at which a quorum was present, and the following resolution was unanimously adopted:

*[Optional wording for Board of Directors acting by unanimous consent without a meeting to serve as a substitute to the first paragraph*

We, the undersigned, being all of the Directors of (Name of Corporation) (the Board of Directors) a [Name of state] corporation (the Corporation) hereby take the actions set forth in this document by Unanimous Consent, effective \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_:

***Note:*** *If the Board of Directors unanimously consent without a meeting, the resolution should include the signatures of all Board of Directors members.]*

**Whereas**, Corporation believes the performance and contributions of certain key employees through their employment with Corporation is deserving of additional recognition and reward;

**Whereas**, Corporation has a business need to continue this employment relationship, the Board of Directors desires to establish a Bonus Arrangement for individual Disability Income insurance (hereafter “Arrangement”) to retain and reward certain key employees;

**Now therefore, be it resolved that** the Board of Directors agree to adopt the following provisions to be effective as of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_:

1. **Participation**. This Arrangement shall be for the benefit of some or all of the Employer’s key employee(s) as determined periodically by senior management and approved by its Board of Directors to retain and reward such key employee(s) for current performance. A participating employee shall be eligible to participate in this bonus arrangement for as long as the Employer deems him or her to be a key employee eligible to participate in the program.
2. **Employer bonus**. Employer will provide participating employee(s) with bonus compensation in recognition of the employee(s) status as valuable and effective key employee(s).
3. **Employee purchase**. It is intended that employee(s) will agree to use Employer bonuses, after tax withholding, to support the purchase of an individual Disability Income insurance policy from Principal® that may be used to provide benefits to the employee if the employee becomes too sick or hurt to work under the terms of the policy.
4. **Amendment procedure.** By resolution duly adopted, the Board of Directors may at any time amend or terminate the Arrangement.

**Further**, a Bonus Agreement between the Employer and each individual key employee will be prepared containing the complete implementation details in support of this resolution.

**In witness whereof**, I have hereunto set my hand and the seal of the Employer in the city of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, State [Commonwealth] of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, on this \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_\_.

(Corporate seal and other formalities

of execution in compliance with local law ) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Signature of Secretary)

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Name – print)

**Sample document only – clients must consult legal counsel**

**Principal® Bonus Agreement for
Individual Disability Income insurance**

This Agreement entered into this \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_\_ by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a domestic business having its principal office in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereinafter called “Employer,” and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ a key employee of the Employer and a resident of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereinafter called the “Employee”.

**Witnesseth:**

**Whereas**, Employer desires to retain the services of the Employee;

**Whereas**, Employer wishes to provide Employee with a valued reward for current services rendered by the Employee to the Employer;

**Whereas,** Employer desires to enhance Employee’s ability to receive Disability Income benefits in the event the Employee becomes disabled and eligible for benefits.

**Now therefore**, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. **Participation.** Employee is a key employee of the Employer for purposes of this Bonus Agreement for Disability Income Insurance, hereafter called the “Agreement,” and shall be entitled to participate under the terms of this Agreement until the Agreement is terminated by one or both of the parties to the Agreement or as otherwise provided in the Agreement. Nothing contained in this Agreement, nor participation in this Arrangement, shall be construed as a guarantee of employment for the Employee.
2. **Purchase of Principal Individual Disability Income insurance policy**. Employee shall apply for a Principal Individual Disability Income insurance policy (“Policy”), funded with Employer bonuses, as indicated below. The Employee shall be designated as sole owner of any Policy purchased pursuant to this Agreement. The purchase of such Policy shall be subject to the underwriting practices of Principal.
3. **Employer compensation bonus allocated between premium payment and tax withholding**. The Employer agrees to pay $\_\_\_\_\_\_\_\_\_\_\_ as a Compensation Bonus to the Employee each year this Agreement is in effect. [This Compensation Bonus shall be divided between a Policy premium payment of $\_\_\_\_\_\_\_\_\_ and income tax withholding of $\_\_\_\_\_\_\_\_\_\_\_.] [The Compensation Bonus shall be divided between Policy premium payment and income tax withholding as determined by the parties and applicable tax withholding requirements.] If any additional premiums are required under the Policy, such additional premiums shall be the responsibility of the Employee.

Notwithstanding any other provision in this Agreement, the Employer shall withhold sufficient income tax from the Compensation Bonus to meet minimum federal and state income tax withholding requirements.

(ALTERNATE PARAGRAPH 3 FOR TAX GROSS-UP FORMULA)

**[Employer compensation bonus formula tax gross-up**. The Employer agrees to pay $\_\_\_\_\_\_\_\_\_\_\_\_\_ as a premium payment for the life insurance policy, plus an additional amount as income tax withholding. The additional amount will be calculated as follows: X (premium amount) /
(1-Y) (Y = agreed income tax bracket) minus X (premium amount) = the additional amount. The total bonus compensation amount will be $\_\_\_\_\_\_\_\_\_ (premium amount plus additional amount). The parties agree that the income tax bracket to be used for this purpose is \_\_\_% and will not be changed without the approval of the parties to the Agreement.

Notwithstanding any other provision in this Agreement, the Employer shall withhold sufficient income tax from the Compensation Bonus to meet minimum federal and state income tax withholding requirements.]

**4. Ownership of the policy**. Except as otherwise provided in this Agreement, each and every right of ownership shall be possessed by the Employee. The Employer shall have no ownership rights in any Policy purchased pursuant to this Agreement.

**5.** **Failure to purchase**. In the event Employee does not purchase a Disability Income policy within\_\_\_\_\_\_\_\_\_ days following execution of this Agreement, the Employer shall have no obligation to provide the additional compensation that would have otherwise been available under this Agreement.

**6.** **Fiduciary provisions.** The (e.g., Secretary) of the Employer is hereby designated as the “Named Fiduciary” of this Agreement, and he or she shall have the authority to control and manage the operation and administration of the Bonus Agreement. Notwithstanding such discretionary authority, a claimant shall be determined to be disabled for purposes of receiving Disability Income benefits only if determined to be disabled by Principal under the terms of the Policy.

**7.** **Allocation of fiduciary responsibilities.** The Named Fiduciary may allocate his or her responsibilities for the operation and administration of the Agreement, including the designation of persons to carry out fiduciary responsibilities under the Agreement. The Named Fiduciary shall effect such allocation of his or her responsibilities by delivering to the Employer a written instrument signed by him or her that specifies the nature and extent of the responsibilities allocated, including the persons who are designated to carry out those fiduciary responsibilities under the Agreement, together with a signed acknowledgment of their acceptance.

**8.** **Plan administrator.** The Named Fiduciary is hereby also designated as the “Plan Administrator” of this Agreement.

**9.** **Claims procedure for benefit claims under the policy.** If there is a claim for benefits under the Policy, the following claims procedures shall apply to such claims:

**A.** **Filing of a claim for benefits.** The Employee shall make a claim for benefits under the Policy in the manner provided in the Policy.

**B.** **Claim approval or denial with respect to policy benefits.** With respect to a claim for benefits under the Policy, Principal shall review and make decisions on claims for benefits under the terms of the Policy.

**C.** **Notification of claimant of decision.** If a claim is wholly or partially denied, notice of the decision shall be furnished to the claimant within a reasonable period of time after the claim has been filed as provided under the terms of the Policy.

**D.** **Content of notice.** Principal shall provide to any claimant whose claim for benefits is denied in whole or in part a written notice setting forth in a manner calculated to be understood by the claimant, the following:

**(1)** The specific reason or reasons for the denial or partial denial;

**(2)** Specific reference to pertinent Policy provisions on which the denial is based;

**(3)** A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and

**(4)** An explanation of the claim review procedure, as set forth in paragraphs E. and F. following.

**E.** **Review procedure.** The purpose of the review procedure set forth in this paragraph and in paragraph F. following, is to provide a procedure by which a claimant may have a reasonable opportunity to appeal a denial or partial denial of a claim and request a full and fair review. To accomplish that purchase, the claimant or a duly authorized representative:

**(1)** Should request a review upon written application to Principal;

**(2)** Should review the Policy;

**(3)** Should submit issues and comments in writing.

**F. Decision on review.** The decision on review shall be in writing and shall include specific reasons for the decisions, written in a manner calculated to be understood by the claimant, and specific reference to the pertinent Policy provisions on which the decision is based.

**10.** **Liability of insurance company.** It is understood by the parties hereto that in providing a disability insurance policy pursuant to this Agreement, Principal shall have no liability, except as set forth within the terms of the disability insurance policy.

**11.** **Entire agreement**. This Agreement supersedes all other agreements previously made between the parties, written or oral, relating to its subject matter. The parties agree there are no other understandings or agreements, written or oral, relating to the purchase of a disability insurance policy pursuant to the Agreement by Employee other than those terms set out in this Agreement.

**12.** **Bonus payment process**. All bonus payments provided for by this Agreement shall be made in conformity with the regular payroll procedures in use by the Employer at the time of payment. In addition, Employee gives permission to the Employer to pay all or a portion of the Compensation Bonus directly to Principal, to be applied to the Employee’s individual Disability Income insurance policy.

***Note:*** *Regular and supplemental wages are subject to federal and state tax withholding. The Compensation Bonus and any tax gross-up will be considered supplemental wages.*

**13.** **Governing law**. This Agreement shall be governed and construed in accordance with the laws of the State [Commonwealth] of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**14.** **Amendment**. This Agreement may be amended at any time in whole or in part by the mutual written agreement of the parties; provided, however, that any amendment shall be prospective only and shall not affect any provisions of this Agreement effective prior to the date of the amendment.

**15.** **Termination of agreement**. Either party hereto, with or without the consent of the other, may terminate this Agreement by giving written notice to the other party. Notice shall be effective upon delivery. Termination of employment for any reason, including bankruptcy or dissolution of Employer, or failure of the Employer to remit contributions or provide bonus amounts for tax considerations, or failure of Employer to withhold agreed upon amounts shall automatically terminate this Agreement.

**16.** **Release of information.** The Employee’s signature below authorizes Principal to release information about the Individual Disability Income insurance policy to the Employer, which has been purchased under the terms of this arrangement with Compensation Bonuses from the Employer. Information about the insurance policy, as referred to under this paragraph, does not include specific medical or other health-related information about the insured.

**In witness whereof,** the parties hereto have set their names, the Employer by one of its duly authorized officers, the day and year first above written.

(Corporate seal and other

formalities of execution in By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

compliance with local law.) (For Employer)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature of Authorized Representative) (Signature of Employee)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Name/title of Authorized Representative – print) (Employee name – print)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Date signed) (Date signed)