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

**Principal® Bonus for individual life insurance coverage
(Tax-Exempt Employer)**

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 plan for tax-exempt organizations; and, (2) a **Sample Bonus Agreement for tax-exempt organizations** outlining the terms under which the organization, as employer, will provide an employee with a compensation bonus to be used to purchase a life insurance policy from Principal Life Insurance Company.

A third document, titled **Supplement to Bonus (Tax-Exempt) Agreement** is provided for when the employer has the additional objective of recovering some or all of the costs of the arrangement if the employee fails to satisfy an agreed service requirement. The language provided therein is for those situations in which the employer wishes to require repayment of such amounts.

The separate **Request and Agreement to Restrict Policy Owner’s Rights** Form (Form BB6217) from Principal is required if the Employer wishes to restrict the Employee’s access to cash value in the life insurance policy without Employer consent. The Request and Agreement to Restrict Policy Owner’s Rights does not provide the Employer a security interest in the policy.

[***Forward to counsel:*** *There is some disagreement among experts as to whether a bonus arrangement 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. An initial summary plan description is required, however.*

*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** **(Tax-Exempt) Organization Arrangement**

I, (Name) , Secretary of (Name of Organization) , (“Employer”) **do hereby certify**: that on the \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_\_, a meeting of the Board of Directors of said Organization 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]

The undersigned, being all of the Directors of [Name of Organization] (the Board of Directors) a [Name of state/Commonwealth] corporation (the Employer) hereby take the actions set forth in this document by Unanimous Consent, effective \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_\_.

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

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

**Whereas**, Employer has a business need to continue this employment relationship, the Board of Directors desires to establish an individual Principal Bonus (Tax-Exempt) Organization Arrangement (hereafter “Arrangement”) as a fringe benefit for 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. A participating employee shall be eligible to participate in this fringe benefit 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 to support the purchase of a life insurance policy from Principal that may be used to provide death benefit protection to the employee’s beneficiary(ies) and to increase savings for the participating employee.

**Further**, a Principal Bonus (Tax-Exempt) Organization 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 (Tax-Exempt) Organization Agreement**

This Agreement entered into this \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_\_ by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a tax-exempt organization 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 fringe benefit;

**Whereas,** Employer desires to enhance Employee’s ability to provide income to Employee’s survivors in the event of death and to increase savings of the Employee;

**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 Principal Bonus (Tax-Exempt) Organization Agreement, 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 life insurance policy**. Employee shall purchase a life insurance policy, funded with Employer bonuses, as indicated below, from Principal, Des Moines, Iowa. The Employee shall be designated as sole owner of any life insurance policy purchased pursuant to this Agreement. The purchase of this life insurance 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 premium payment of $\_\_\_\_\_\_\_\_\_ and income tax withholding of $\_\_\_\_\_\_\_\_\_\_\_.] [The Compensation Bonus shall be divided between premium payment and income tax withholding as determined by the parties and applicable tax withholding requirements.]

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 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.

*Comment: 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.*

**4. Ownership**. Except as otherwise provided in this Agreement, each and every right of ownership shall continue in the Employee, including the right to determine and change investment direction, to the extent allowed by the life insurance policy. The Employer shall have no ownership rights in any life insurance policy purchased pursuant to this Agreement.

**5.** **Failure to purchase**. In the event Employee does not purchase an individual life insurance policy from Principal 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.

**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’s beneficiary 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 be 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.** **Supplemental policy agreements**. If any life insurance policy purchased pursuant to this Agreement is issued with supplemental agreement provisions, such as waiver of disability, requiring an additional premium, such premium shall be paid by the Employer as part of the Employer’s Compensation Bonus. The purchase of any such supplemental policy agreement shall be subject to the conditions set forth in this Agreement.

**11. Waiver of premium**. If any life insurance policy purchased pursuant to this Agreement is issued with a supplemental policy agreement providing for Waiver of Premium in the event of disability and any premiums are waived pursuant to such waiver of premium provision, this Agreement will automatically terminate with respect to that life insurance policy on the date the first premium is waived or refunded under the supplemental agreement referred to above.

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

**13. 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 life insurance policy pursuant to the Agreement by Employee other than those terms set out in this Agreement [*Optional:* If a **Request and Agreement to Restrict Owner Rights** *is made part of the arrangement, add the following language*: , except the **Request and** **Agreement to Restrict Owner Rights** which has been agreed to, executed, and is attached hereto (a copy of which shall be filed with Principal)].

**14. 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 life insurance policy.

**15. Governing law**. This Agreement shall be governed and construed in accordance with the laws of the state [Commonwealth] of .

**16. 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.

**17. 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.

**18. Release of information.** The Employee’s signature below authorizes Principal to release information about the life 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)

*(****NOTE:*** *If the Employer wants to limit the Employee’s access to policy cash values for a specific period of time – usually for a set period of years –* ***Form BB6217*** *must be used to impose that restriction. This will place a restrictive endorsement on the policy and will limit the Employee’s ability to exercise certain policy rights without Employer consent until predetermined conditions are satisfied.)*

**Supplement to** **Principal® Bonus (Tax-Exempt) Organization Agreement**

This Agreement entered into this \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_\_ by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a tax-exempt organization 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 compensation bonus provided through a separate bonus agreement dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;

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

**Employee repayment obligation**

The amounts to be paid by the Employer that are subject to repayment by the Employee are as follows:

Compensation Bonus of $\_\_\_\_\_\_\_\_.

[OPTION A. **Rolling one-year repayment obligation.** If the Employee terminates employment voluntarily or is involuntarily terminated by the Employer for cause as determined by the Employer, Employee agrees to reimburse the Employer for amounts described above, received by the Employee during the calendar year immediately preceding the year in which employment terminates. Such reimbursement shall occur no later than 30 days after the date of Employee’s termination. Employer may offset any amounts owed to it under the terms of this Agreement against any amounts owed to the Employee.]

[OPTION B. **Five-year repayment obligation.** If the Employee terminates employment voluntarily or is involuntarily terminated by the Employer for cause as determined by the Employer, then Employee agrees to reimburse Employer for amounts described above, paid by Employer prior to termination of employment, according to the following schedule.

**Years from agreement date Repayment %**

 Within Year 1 100%

 Within Year 2 80%

 Within Year 3 60%

 Within Year 4 40%

 Within Year 5 20%

Such reimbursement shall occur no later than 30 days after the date of Employee’s termination. Employer may offset any amounts owed to it under the terms of this agreement against any amounts owed to the Employee.]

[OPTION C. **Rolling five-year repayment obligation.** If the Employee terminates employment voluntarily or is involuntarily terminated by the Employer for cause as determined by the Employer, Employee agrees to repay Employer a percentage of the amounts described above, paid within five years of Employee's termination of employment. The amount of such repayments shall be:

1. For amounts paid less than one calendar year prior to the date of termination of employment, 100 percent shall be repaid, and
2. For amounts paid at least one year, but less than two years from such date, 80 percent shall be repaid, and
3. For amounts paid at least two years, but less than three years from such date, 60 percent shall be repaid, and
4. For amounts paid at least three years, but less than four years from such date, 40 percent shall be repaid, and
5. For amounts paid at least four years, but less than five years from such date, 20 percent shall be repaid.

Such reimbursement shall occur no later than 30 days after the date of Employee’s termination. Employer may offset any amounts owed to it under the terms of this agreement against any amounts owed to the Employee.]

**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)