**Sample Documents for**

**Principal**® **Death Benefit Only Plan**

**Forward to Counsel**

These sample documents have been prepared as a guide to assist attorneys. These sample agreements cannot be used as final drafts. Clients must seek legal counsel to modify these agreements for the client’s particular circumstances. The client’s attorney is responsible for drafting all agreements needed to implement the arrangement.

**Sample documents** enclosed are: (1) a sample Board Resolution establishing the Principal Death Benefit Only Plan; (2) a sample Principal Death Benefit Only Plan document; and, (3) a Beneficiary Election Form.

Under a Principal Death Benefit Only Plan (“Plan”), the employer makes an unsecured promise to provide a death benefit to the participating employee’s designated beneficiary(s) under circumstances provided in the plan document.

ERISA Implications

A death benefit only plan is considered a welfare benefit plan for ERISA purposes. For an unfunded welfare benefit plan (such as a death benefit only plan) that is maintained only for a select group of management or highly compensated employees (known as “top hat” employees), ERISA welfare benefit plan requirements are limited. They include the naming of a plan fiduciary in the plan document or through a procedure described in the plan document and a claims paying procedure. There is also an obligation to provide plan documents to Department of Labor (DOL) upon DOL request.

If the plan includes non-top hat participants (meaning employees who are not part of a select group of management or highly compensated) and has less than 100 total plan participants, ERISA also requires that a Summary Plan Description (SPD) be delivered to each plan participant within 90 days after coverage begins. An SPD is a plain language explanation of the plan and must be comprehensive enough to apprise participants of their rights and responsibilities under the plan. The SPD requirement is in addition to the ERISA requirements listed in the first paragraph above.

If the plan includes non-top hat participants and has 100 or more plan participants, a Summary Annual Report (SAR) must also be given to each plan participant each year. This is in addition to the ERISA requirements listed in the first and second paragraphs above.

A death benefit only plan is not an ERISA pension plan,\* because it provides life insurance protection, rather than retirement income. This means that a Top Hat notice (a notice required to be filed with the DOL for nonqualified pension plans) is not necessary or appropriate.

\*ERISA pension plans are defined as plans that provide retirement income to employees (or result in a deferral of income by employees) for periods extending to the termination of covered employment. ERISA pension plan rules are not covered by this Forward to Counsel.

Income Tax Consequences to the Employer

1. Payments of death benefits under a DBO plan put in place prior to the death of the employee will generally be income tax deductible to the employer in the year the death benefit is paid, provided the payments are deemed to be reasonable compensation for the employee’s services and the plan is for a substantial business purpose.
2. If life insurance is purchased to informally fund the employer obligation, life insurance premiums paid by the employer will not be tax deductible. However, the death benefit will generally be received income-tax free by the employer, assuming compliance with IRC Section 101(j), including timely completion of insured notice and consent requirements. The employer should be policy owner and beneficiary of such coverage.

Income Tax Consequences to the Employee

A death benefit only plan will not create taxable income to the employee during his or her lifetime.

Income Tax Consequences to the Designated Beneficiary Receiving a Death Benefit

1. The death benefit will be taxable income (and subject to income tax withholding by the employer) to the designated beneficiary in the tax year received by the designated beneficiary as “income in respect of a decedent.”
2. The death benefit will not be subject to Federal Insurance Contributions Act (FICA) or Federal Unemployment Tax Act (FUTA) taxes, so no employer withholding of such taxes is necessary.

***Comment****: Endorsement split dollar is an alternate means by which an employer might provide a death benefit to a beneficiary designated by an employee. A properly structured split dollar plan will result in an income-tax free life insurance death benefit to the designated beneficiary. Endorsement split dollar will, however, result in taxable annual income to the employee equal to the economic benefits costs of the insurance coverage. In addition, the death benefit received by the named beneficiary will not result in an income tax deduction to the employer.*

Estate Tax Consequences to the Employee

Death Benefit Only benefits are includible in a deceased employee’s estate for federal estate tax purposes if the employee has any rights to direct or change the plan terms, including the ability to name or change the designated beneficiaries.

Under the sample plan document, the plan participant maintains the right to change his or her beneficiary prior to death. This means the death proceeds would be includable in his or her estate for federal estate tax purposes. There may also be state death tax implications.

***Comment****: If federal estate tax is a concern, the participating employee’s rights in the plan need to be limited. For example, beneficiaries might be specified by class (such as surviving spouse followed by children) with the participating employee not given the right to change such beneficiary designation. This would require significant document revisions.*

# SAMPLE CORPORATE RESOLUTION ESTABLISHING

**A DEATH BENEFIT ONLY PLAN**

I, (Name) , Secretary of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (hereafter, the “Company”) duly organized and existing under and by virtue of the laws of the State [Commonwealth] of \_\_\_\_\_\_\_\_\_\_\_\_, DO HEREBY CERTIFY;

That on the day of , 20\_\_\_\_\_ , a meeting of the Board of Directors of the Company was duly called and held at \_\_\_\_\_\_\_ (address)\_\_\_\_\_ , at which a quorum was present, and the following resolution was unanimously adopted by said Board of Directors:

***Comment****: Instead of an actual Board of Directors meeting, the plan might be established through unanimous written consent of the Board of Directors. If this approach is used, the below paragraph might be substituted for the above two paragraphs:*

*“The undersigned, being all of the Board of Directors of (name of Company) (hereafter, the “Company”) hereby take the actions set forth in this document by unanimous written consent, effective \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_:”*

**WHEREAS**, the Company desires to establish a Death Benefit Only Plan (hereafter, the “Plan”) for certain key employees (hereafter, the “Participants”) with such Plan providing a promise of cash benefits to the family and/or other named beneficiaries of a Participant upon the death of such Participant under terms and conditions established in a written agreement between the Company and the Participant; and

**WHEREAS,** the Plan shall be compliant with applicable law including the Employee Retirement Security Act of 1974 (ERISA), the Internal Revenue Code, and other governing authority;

**THEREFORE, BE IT RESOLVED**, that the Company hereby establishes the Plan as an executive benefit for Participants in accordance with the following:

1. **Purpose**. To motivate and retain Participants through the promise of cash benefits to their families and/or other named beneficiaries upon the death of a Participant under terms and conditions established in a written agreement between the Company and Participants.

2. **Eligibility**. The Plan is available for certain key employees of the organization, as approved by its Board of Directors.

3. **Agreement**. The Company shall enter into a written agreement with each Participant substantially identical to the plan document attached hereto to include ERISA fiduciary provisions, allocation of fiduciary responsibilities, and a claims procedure.

4. **Amendment and Termination**. The Plan shall be subject to any future amendment or termination at any time by the Board of Directors.

5. **Company Cash Flow Needs under the Plan**. The Board of Directors hereby directs the Company’s officers to take appropriate actions to prepare for the possible payment of benefits under this Plan, including the purchase of employer-owned life insurance on the life of each Participant.

**IN WITNESS WHEREOF**, I have hereunto set my hand and the seal of the Organization in the City of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, on the day of , 20\_\_ .

 (Signature of Secretary)

 (Name)

(Formalities of execution will be

governed by \_\_\_\_\_\_\_\_\_\_\_\_law and should be

in accordance therewith.)

***Comment****: If the resolution is passed through unanimous written consent of the Board of Directors without a meeting (as discussed above), the names and signatures of the members of the Board of Directors should be substituted for the name and signature of the Company Secretary.*

**DEATH BENEFIT ONLY PLAN**

**SAMPLE DOCUMENT**

This Death Benefit Only Plan (“Plan”), entered into this day of , 20 \_\_\_ , by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereafter called the “Company”, and (Name) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , hereafter called the "Participant".

**WITNESSETH:**

**WHEREAS,** the Participant is now employed by the Company in the capacity of (Title of Position);

**WHEREAS**, the Company desires to retain the services of the Participant and is aware that it would suffer financial loss should the Participant enter the employment of another company or organization; and,

**WHEREAS**, the Company wishes to offer an inducement to the Participant to remain an employee of the Company; and,

**WHEREAS,** the Company agrees to pay the named beneficiary(s) of the Participant cash payment(s) upon the death of the Participant upon fulfillment of certain terms and conditions as stated herein.

**NOW, THEREFORE,** in consideration of the services heretofore rendered and to be rendered by the Participant and the mutual covenants contained herein, the parties hereto agree as follows:

1. **ELIGIBLE PAYMENT EVENT.**

[Eligible Payment Event means the death of the Participant while employed by the Company on a full-time basis.]

[Eligible Payment Event means the death of the Participant while employed by the Company on a full-time basis or death of the Participant at any time following termination of employment because of Total Disability. Total Disability means a finding of disability of the Participant by the Social Security Administration or under any insured long-term disability plan maintained by the Company.]

[Eligible Payment Event means the death of the Participant while employed by the Company on a full-time basis or death of the Participant at any time following termination of employment caused by Total Disability or death of the Participant following Eligible Retirement of the Participant. Total Disability means a finding of disability of the Participant by the Social Security Administration or under any insured long-term disability plan maintained by the Company. Eligible Retirement means termination of employment by the Participant after attaining age \_\_\_ and a minimum of \_\_\_ Years of Service. Years of Service means complete years of service by the Participant following the Participant’s entry into the Plan.]

***Note to Counsel: Selection of an Eligible Payment Event definition is an extremely important decision. Brackets indicate possible option to offer a benefit during employment only, or to continue the benefit following a termination of employment due to retirement or disability. The Agreement should include only one of the above three options as decided by Company Board of Directors or authorized Company officer.***

1. **PAYMENT OF BENEFIT.** If an Eligible Payment Event occurs, the Company shall, beginning within 60 days following the Eligible Payment Event,

[make a lump sum payment of $ \_\_\_\_\_\_\_, payable to the beneficiary designated by the Participant]

 [make annual payments of $ \_\_\_\_\_\_\_for \_\_\_ years, payable to the beneficiary designated by the Participant]

***Note to Counsel: The Plan should include only one of the two options above, to be completed by the Company. The benefit amount can be paid either as a lump sum, or annual payments over a specified period of years.***

1. **DESIGNATING A BENEFICIARY.** The Participant shall name his or her beneficiary(s) to receive death benefits under this Plan on a Beneficiary Election form provided by the Company or its designee. The beneficiary designation may be changed or revoked only by completing a new Beneficiary Election form and delivering such form to the Company or its designee.

1. **PURCHASE OF LIFE INSURANCE.** The Company may, in its sole discretion, purchase life insurance on the life of the Participant to provide a possible source of cash flow for its obligations under this Agreement. The Company shall be sole policyowner and beneficiary of such coverage. The Participant agrees to provide his or her consent to be insured and to cooperate in all manner necessary to obtain the agreed-upon life coverage and any life coverage to be acquired in the future. If the Participant dies by suicide within two years from the policy date of said life insurance or the statements made by the Participant in the Company’s life application are fraudulent resulting in a loss of insurance coverage, then this Agreement shall be null and void and the Company shall have no liability or obligation hereunder.
2. **FIDUCIARY PROVISIONS.** The \_\_\_[e.g. President of the Company] \_\_ shall be designated as the “Named Fiduciary” for the Plan and shall have the authority to control and manage the operation and administration of the Plan.
3. **ALLOCATION OF FIDUCIARY RESPONSIBILITIES.** The Named Fiduciary may allocate his or her responsibilities for the operation and administration of this 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 Company a written statement signed by him or her that specifies the nature and extent of the responsibilities allocated, including the persons who are designated to carry out these fiduciary responsibilities under the Agreement, together with a signed acknowledgement of their acceptance.

**7. CLAIMS PROCEDURE.** The following claims procedure shall apply to the Plan.

a. Filing of a Claim for Benefits. The Participant or the beneficiary designated by the participant shall make a claim for benefits by delivering a written request to the Plan Administrator.

 b. Claim Approval or Denial. With respect to a claim for benefits, the Plan Administrator shall review and make decisions on claims for benefits. The Plan Administrator shall have complete and sole discretionary authority to determine eligibility for benefits and to construe the terms of the Plan.

 c. Notification to Claimant of Decision. If a claim is wholly or partially denied, notice of the decision, meeting the requirements of paragraph d. following, shall be furnished to the claimant within a reasonable period of time after the claim has been filed.

 d. Content of Notice. The Plan Administrator shall provide to any claimant whose claim 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 Plan 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 Plan's 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 under the Plan may have a reasonable opportunity to appeal a denial of a claim and request a full and fair review. To accomplish that purpose, the claimant or a duly authorized representative:

 (1) may request a review by written application to the Plan Administrator;

 (2) may review pertinent plan documents or agreements; and

 (3) may submit issues and comments in writing.

A claimant (or duly authorized representative) shall request a review at any time within sixty (60) days by filing a written application after receipt by the claimant of written notice of denial of his or her claim.

 f. Decision on Review. A decision on review of a denial of a claim shall be made in the following manner:

 (1) The decision on review shall be made by the Plan Administrator, who may in its discretion hold a hearing on the denied claim. The Plan Administrator shall make its decision promptly, unless special circumstances (such as the need to hold a hearing) require an extension of time for processing, in which case a decision shall be rendered as soon as possible, but no later than one hundred twenty (120) days after receipt of the request for review.

 (2) The decision on review shall be in writing and shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, and specific references to the pertinent Plan provisions on which the decision is based.

1. For purposes of implementing this claim procedure (but not for any other purpose) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_is hereby designated as the Named Fiduciary and Plan Administrator of this Plan and Agreement.

**8. OTHER BENEFITS.** Nothing contained herein shall in any way limit the Participant's right to participate in or benefit from any pension, profit‑sharing or other employee benefit plan for which said Participant is or may become eligible by reason of his or her employment with the Company. Nor shall this Agreement replace any contract of employment, whether oral or written, between the Company and the Participant but shall be considered a supplement thereto.

**9. UNFUNDED PLAN.** For purposes of this Plan, Company funds, including insurance proceeds paid to the Company on the death of the Participant, shall be considered a part of the general funds of the Company and no person, including the beneficiary named by the Participant, shall have a secured interest in such funds.

**10. PAYMENT OF BENEFITS.** All payments provided for by this Plan shall be made in conformity with the regular payroll procedures in use by the Company at the time of payment.

**10. LEAVE OF ABSENCE**. The Company may, in its sole discretion, permit the Participant to take a leave of absence for a period not to exceed one year. During this time the Participant will still be considered an employee of the Company for purposes of this Agreement.

**11. WITHHOLDING.** Notwithstanding any of the foregoing provisions hereof, the Company may withhold from any payment to be made hereunder such amount as it may be required to withhold under any applicable federal, state or other law, and transmit such withheld amounts to the applicable taxing authority.

**12. GOVERNING LAW.** This Plan shall be governed and construed in accordance with the laws of the [State or Commonwealth] of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**13. BINDING EFFECT OF AGREEMENT.** This Agreement shall be binding upon the parties hereto, their heirs, assigns, successors, executors and administrators. In the event the Company becomes a party to any merger, consolidation or reorganization, this Agreement shall remain in full force and effect as an obligation of the Company or its successors in interest.

**14. AUTOMATIC TERMINATION OF PLAN.** This Plan shall terminate for any reason which causes the termination or dissolution of the Company, other than a merger, consolidation or reorganization as described in Article 13 above. This Plan shall also terminate for a Participant if the Participant terminates employment prior to death and prior to meeting any other requirements of Article 1 above.

**15. AMENDMENT OR TERMINATION OF PLAN BY COMPANY.** The Company reserves the right to amend or terminate this Plan at any time in whole or in part, by duly adopted resolution of the Board of Directors. No such amendment or termination, however, shall affect the rights of a Participant or his or her beneficiary to receive benefits under the Plan for

[the death]

[the death or Total Disability as defined in Article 1]

[the death or Total Disability or Eligible Retirement as defined in Article 1]

of a Participant occurring prior to said amendment or termination.

***Note to Counsel: Brackets indicate possible options. The option selected should be consistent with options selected in Article 1 above. Plan document should include only one of the above three options as decided by the Company Board of Directors or authorized Company officer.***

**16. AMENDMENT OR TERMINATION OF PLAN BY MUTUAL CONSENT.** This Plan may be amended or revoked at any time in whole or in part by the mutual consent of the Company and the Participant.

**17. COUNTERPARTS.** This Plan may be executed in an original and any number of counterparts, each of which shall constitute an original of one and the same instrument.

**18. NO TRUST.** Nothing contained in this Plan and no action taken pursuant to the provisions of this Plan shall create or be construed to create a trust of any kind, or a fiduciary relationship between the Company and the Participant, his or her designated beneficiary, or any other person, except as provided in Article 7. hereof in regard to the claims procedure.

**19. NONASSIGNABLE.** None of the payments provided for by this Plan shall be subject to seizure for payment of any debts or judgments against the Participant or any beneficiary; nor shall the Participant or any beneficiary have any right to transfer, modify, anticipate or encumber any rights or benefits hereunder; provided, however, the undistributed portion of any benefit payable hereunder shall at all times be subject to set‑off for debts owed by the Participant to the Company.

**20. INCAPACITY OF BENEFICIARY.** If the Plan Administrator shall find that any person to whom any payment is payable under this Agreement is unable to care for his or her affairs because of illness or accident, or is a minor, any payment due (unless a prior claim therefor shall have been made by a duly appointed guardian, committee, or other legal representative) may be paid to the spouse, a child, parent, or brother or sister, a Uniform Transfers to Minors (or Uniform Gifts to Minors) account under applicable state law, or to any person deemed by the Company to have incurred expense for such person otherwise entitled to payment, in accordance with the applicable provisions of this Plan. Any such payment shall be a complete discharge of the Company’s liabilities under this Plan.

**21. ENTIRE AGREEMENT**. This Plan document supersedes all other plan documents previously made between the parties relating to its subject matter, if any. There are no other understandings or agreements.

**20. NOTICE.** Any notice to be delivered under this Plan shall be given in writing and delivered, personally or by certified mail, postage prepaid, addressed to the Company at its last known address.

**21. NON‑WAIVER.** No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right.

**22. HEADINGS.** Headings in this Plan document are for convenience only and shall not be used to interpret or construe its provisions.

**IN WITNESS WHEREOF**, the parties hereto have set their names, the Company through its duly authorized officer, the day and year first above written.

(Name of Company) \_\_\_\_\_\_\_\_\_\_\_\_\_\_

**BY**\_\_\_\_\_(Name) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Authorized Officer

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

Printed Name of Authorized Officer

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

Signature of Participant

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

Printed Name of Participant

**Note to Counsel:** *Principal Form BB\*\*\*\*\*, attached below, is available as a convenience to the employer, for the participant to indicate his/her beneficiary wishes for the DBO plan death benefit. It is not designed to directly pass death proceeds of a Principal policy to a beneficiary. The actual policy beneficiary would be the employer, but this form can be provided to each participant (and may be changed, from time to time, as needed), to track the participant’s desired beneficiary.*

Principal Death Benefit Only Plan

Beneficiary Election Form under the Plan

|  |  |
| --- | --- |
| Participant name: |       |

 First M.I. Last

Note: If (a) no beneficiary is designated below, or (b) all beneficiaries pre-decease you (both primary and contingent), then your surviving spouse (if applicable) will be considered your sole designated beneficiary. But, if there is no surviving spouse, then your estate will be considered the sole designated beneficiary. **You may change your beneficiary arrangement only by filing a new beneficiary designation with your Employer.**

**Primary beneficiary(s):**

If two or more primary beneficiaries are named, and if the percent sections below are not complete, the benefits will be paid in equal shares to the primary beneficiaries who are living on your date of death, unless otherwise designated.

|  |  |
| --- | --- |
| Beneficiary 1: |  |

 Full name Address

|  |  |
| --- | --- |
|  |  |

 Relationship to Participant Date of birth Social Security or taxpayer ID # Percentage

|  |  |
| --- | --- |
| Beneficiary 2: |  |

 Full name Address

|  |  |
| --- | --- |
|  |  |

 Relationship to Participant Date of birth Social Security or taxpayer ID # Percentage

|  |  |
| --- | --- |
| Beneficiary 3: |  |

 Full name Address

|  |  |
| --- | --- |
|  |  |

 Relationship to Participant Date of birth Social Security or taxpayer ID # Percentage

\_\_\_\_ Yes, apply “per stirpes” designation to all primary beneficiaries listed above. (Per stirpes definition: If any beneficiary pre-deceases the Participant and leaves children, by birth or legal adoption, who survive the Participant, such children of the beneficiary shall receive in equal portions the share of the proceeds the beneficiary would have received if living.)

**If any primary beneficiary dies before you (with no surviving children if the per stirpes designation has been selected), that primary beneficiary’s share will be divided proportionately among any surviving primary beneficiaries.**

**Contingent beneficiary(s):**

If all primary beneficiaries pre-decease you, then the remaining benefits will be paid to the contingent beneficiary(s).

If two or more contingent beneficiaries are named, and if the percent sections below are not complete, the benefits will be paid in equal shares to the contingent beneficiaries who are living on your date of death, unless otherwise designated.

|  |  |
| --- | --- |
| Beneficiary 1: |  |

 Full name Address

|  |  |
| --- | --- |
|  |  |

 Relationship to participant Date of birth Social Security or taxpayer ID # Percentage

|  |  |
| --- | --- |
| Beneficiary 2: |  |

 Full name Address

|  |  |
| --- | --- |
|  |  |

 Relationship to participant Date of birth Social Security or taxpayer ID # Percentage

|  |  |
| --- | --- |
| Beneficiary 3: |  |

 Full name Address

|  |  |
| --- | --- |
|  |  |

 Relationship to participant Date of birth Social Security or taxpayer ID # Percentage

\_\_\_\_ Yes, apply “per stirpes” designation to all primary beneficiaries listed above. (Per stirpes definition: If any beneficiary pre-deceases the Participant and leaves children, by birth or legal adoption, who survive the Participant, such children of the beneficiary shall receive in equal portions the share of the proceeds the beneficiary would have received if living.)

**If any contingent beneficiary dies before you (with no surviving children if the per stirpes Designation has been selected), that contingent beneficiary’s share shall be divided proportionately among any surviving contingent beneficiaries.**

|  |  |  |  |
| --- | --- | --- | --- |
| Participant signature: | X | Date: |       |
| Participant name (please print): |       |
| Witness signature(Other than a named beneficiary): | X | Date: |       |
| Witness name (please print): |       |

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