

**SPECIMEN AGREEMENT
FOR
DEFINED CONTRIBUTION SALARY
CONTINUATION AGREEMENT
(Various Life Insurance Funding Options)**

(This sample agreement/document is intended for use solely as a guide for client’s attorney.)

AGREEMENT made this _____ day of _____, 20____, by and between _____ of the City of _____, State [or Commonwealth] of _____, and organized as a business entity under the laws of the State [or Commonwealth] of _____ (hereinafter called the “Corporation”) and _____ residing in the City of _____, State [or Commonwealth] of _____ (hereinafter called the “Employee”).

WITNESSETH THAT:

WHEREAS, the Employee’s competent and faithful efforts on behalf of the Corporation have resulted in substantial growth and profits to the Corporation; and

WHEREAS, the Corporation values the efforts, abilities, and accomplishments of the Employee [as an important member of management] and recognizes that [his] [her] future services are vital to its continued growth and profits and that the loss of [his] [her] services would result in substantial financial losses; and

WHEREAS, the Corporation, in order to retain the services of the Employee, is willing to provide post-retirement benefits and/or post-death benefits for [his] [her] designated beneficiary as set out below.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is agreed between the parties hereto as follows:

ARTICLE 1

Salary Continuation Benefits. If the Employee dies while employed by the Corporation prior to attaining the retirement age of _____ years, the Corporation shall pay to such individual or individuals as the Employee shall have designated in writing filed with the Corporation or, in the absence of such designation, to the estate of the Employee, a benefit equal to that which would be available to the Corporation at the date of the Employee’s death under the assumption that the following [annual] investments, or a combination thereof, have been made:

\$ _____ in a [Traditional] [Variable] [Universal] type Life Insurance policy issued by (Massachusetts Mutual Life) (MML Bay State Life) (C.M. Life) Insurance Company upon the Employee’s life on the date of this Agreement, with all dividends credited to such policy (insert one of the following) used to purchase paid-up additional

insurance/accumulated at interest with the insurance company/applied to reduce the premiums on the policy/paid in cash to the Corporation.

The benefits provided under this article shall be paid by the Corporation in monthly installments beginning not later than ____ months after death for a period of ____ years.

ARTICLE 2

Retirement Benefits. In the event the Employee retires from employment upon attaining the retirement age of ____ years, [he] [she] shall be entitled to receive from the Corporation a retirement benefit calculated in the same manner as set forth in Article 1 above, except that the date of the Employee's retirement shall be substituted for the date of death. Such benefit shall be paid by the Corporation in monthly installments beginning not later than ____ months after retirement for a period of ____ years, following the date of such retirement until the Employee's death. If the Employee should die during said ____ year period, the Corporation shall continue to pay such monthly installments until the expiration of said ____ year period to such individual or individuals as the Employee has designated in writing filed with the Corporation or, in the absence of such designation, to the estate of the Employee.

ARTICLE 3

Severance Benefits. In the event the Employee terminates employment for reasons other than death, voluntary termination, termination for cause or retirement, [he] [she] shall be entitled to receive from the Corporation a severance benefit calculated in the same manner as set forth in Article 1 above, except that the date of the Employee's termination shall be substituted for the date of death. Such benefit shall be paid by the Corporation in monthly installments beginning not later than ____ months after severance for a period of ____ years, following the date of termination until the Employee's death. However, if the Employee is a key employee as defined in Section 416(i) without regard to paragraph (5) thereof, of the Internal Revenue Code, of a corporation any stock in which is publicly traded on an established securities market or otherwise, the payment may not be made before the date which is 6 months after the date of separation from service with the Corporation (or, if earlier, the date of death of the Employee). If the Employee should die during said ____ year period, the Corporation shall continue to pay such monthly installments until the expiration of said ____ year period to such individual or individuals as the Employee has designated in writing filed with the Corporation or, in the absence of such designation, to the estate of the Employee.

ARTICLE 4

Construction of Agreement. Any payments under this Agreement shall be independent of, and in addition to, those under any other plan, program or agreement which may be in effect between the parties hereto, or any other compensation payable to the Employee or the Employee's designated beneficiary by the Corporation. This Agreement shall not be construed as a contract of employment nor does it restrict the right of the Corporation to discharge the Employee for proper cause or the right of the Employee to terminate employment.

The Corporation shall be under no obligation whatsoever to purchase or maintain any contract, policy or other asset to provide the benefits under this Agreement, and any reference to a contract, policy or other asset is made solely for the purpose of computing the value of the benefits payable. Any contract, policy or other asset which the Corporation may utilize to assure itself of general assets with which to provide the benefits hereunder shall not serve in any way as security to the Employee for the Corporation's performance under this Agreement, and shall remain the general assets of the Corporation subject to the claims of its creditors.

The Corporation does not give, nor does the plan created by this Agreement give or the Employee receive a beneficial interest in any asset of the Corporation. All rights of ownership in any such assets are and remain in the Corporation.

ARTICLE 5

Employee's Rights. The rights of the Employee, any designated beneficiary of the Employee, or any person claiming through the Employee under this Agreement, shall be solely those of an unsecured general creditor of the Corporation. The Employee, the designated recipient of the Employee, or any other person claiming through the Employee, shall have the right to receive those benefits specified under this Agreement only from the Corporation, and shall have no right whatsoever to look to any specific or special property separated from the Corporation to satisfy a claim for benefit payments.

Neither the Employee nor any designated beneficiary shall have any right to sell, assign, transfer or otherwise convey the right to receive any payments hereunder.

The Employee acknowledges and agrees that neither such employee nor any designated recipient, or any person claiming through the Employee, shall have any rights or beneficial ownership interest in any general asset the Corporation may acquire or use to help support its financial obligation under this Agreement. Any such general asset used or acquired by the Corporation in connection with liabilities it has assumed under this Agreement, shall not be deemed to be held under any trust for the benefit of the Employee or [his] [her] designated recipients. Nor shall any such general asset be considered security for the performance of the obligations of the Corporation. Any such asset shall remain a general, unpledged, and unrestricted asset of the Corporation.

The Employee also understands and agrees that [his] [her] participation, in any way, in the acquisition of any such general asset for the Corporation shall not constitute a representation to the Employee, [his] [her] designated recipient, or any person claiming through the Employee that any of them has a special or beneficial interest in such general asset.

ARTICLE 6

Determination of Benefits, Claims Procedure and Administration. The determination of benefits, claims procedures, and plan administration shall be as follows:

(a) Claim.

A person who believes that [he] [she] is being denied a benefit to which [he] [she] is entitled under this Agreement (hereinafter called a "Claimant") may file a written request for such benefit with the Corporation, setting forth [his] [her] claim. The request must be addressed to the President of the Corporation, at its then principal place of business.

(b) Claim Decision.

Upon receipt of a claim, the Corporation shall advise the Claimant that a reply will be forthcoming within sixty (60) days (which may be extended for an additional thirty (30) days for reasonable cause).

If the claim is denied in whole or in part, the Corporation shall adopt a written opinion, using language calculated to be understood by the Claimant, setting forth:

- (1) The specific reason or reasons for such denial;
- (2) The specific reference to pertinent provisions of this Agreement upon which such denial is based;
- (3) A description of any additional material or information necessary for the Claimant to perfect [his] [her] claim and an explanation why such material or such information is necessary;
- (4) Appropriate information as to the steps to be taken if the Claimant wishes to submit the claim for review; and
- (5) The time limits for requesting such a review.

(c) Request for Review.

Within sixty (60) days after the receipt by the Claimant of the written opinion described above, the Claimant may request in writing that the Secretary of the Corporation review the determination of the Corporation. Such request must be addressed to the Secretary of the Corporation, at its then principal place of business. The Claimant or [his] [her] duly authorized representative may, but need not, review the pertinent documents and submit issues and comments in writing for consideration by the Corporation. If the Claimant does not request a review of the Corporation's determination by the Secretary of the Corporation within such sixty (60) day period, [he] [she] shall be barred from challenging the Corporation's determination.

(d) Review of Decision.

Within thirty (30) days after the Secretary's receipt of a request for review, [he] [she] will review the Corporation's determination. After considering all materials presented by the Claimant, the Secretary will render a written opinion, written in a manner calculated to be understood by the Claimant, setting forth the specific reasons for the decision and containing specific references to the pertinent provisions of this Agreement on which the decision is based. If special circumstances require that the thirty (30) day time period be extended, the Secretary will so notify the Claimant and will render the decision as soon as possible, but no later than sixty (60) days after receipt of the request for review.

ARTICLE 7

Notices. Any notice, consent or demand required or permitted to be given under the provisions of this Agreement shall be in writing, and shall be signed by the party giving or making the same. If such notice, consent or demand is mailed to a party hereto, it shall be sent by United States certified mail, postage prepaid, addressed to such party's last known address as shown on the records of the Corporation. The date of such mailing shall be deemed the date of notice, consent or demand.

ARTICLE 8

Inurement of Benefits. This Agreement shall be binding upon and inure to the benefit of the Corporation, its successors, and assigns and the Employee and [his] [her] heirs, executors, administrators, and legal representatives.

ARTICLE 9

Amendment. This Agreement may not be amended, altered or modified, except by a written instrument signed by the parties hereto, or their respective successors or assigns, and may not be otherwise terminated except as provided herein.

ARTICLE 10

Merger or Consolidation. The Corporation agrees that it will not merge or consolidate with any other company or organization, or permit its business activities to be taken over by any other organization unless and until the succeeding or continuing company or other organization shall expressly assume all obligations and liabilities herein set forth.

ARTICLE 11

State Law. This Agreement shall be construed in accordance with and governed by the laws of the State [Commonwealth] of _____.

IN WITNESS WHEREOF, the Corporation has caused this Agreement to be signed in its Corporate Name by its duly authorized officer, and impressed with its corporate seal, attested to by its Secretary, and Employee has hereunto set [his] [her] hand and seal, all on the day and year first written above.

ATTEST:

(Name) CORPORATION, INC.

Secretary

By: _____ (SEAL)

Title: _____

Witness:

Employee

Witness:

Specimen

EXHIBIT A
DESIGNATION OF BENEFICIARY

[Note: The Employee should complete the appropriate places on a Beneficiary Designation Form (see Documents #18A and 18B for specimen language of how such a form might be worded).]

Specimen

EXHIBIT B
ADDITIONAL CONSIDERATIONS FOR THE AGREEMENT

Note A: An Employer will generally not wish to obligate itself to make extensive Salary Continuation payments unless it is assured that it will receive the death proceeds from a life insurance policy on the Employee's life. Accordingly, some consideration should be given to those rare instances when the Employee may commit suicide during the initial contestability period after the insurance policy is issued. If the Corporation wishes to minimize its risk in such case, the following paragraph may be included in Article __ of the Agreement:

However, if the Employee should die prior to _____, and such death is the result of suicide, then the Corporation shall be under no obligation to make any payments whatsoever under this Agreement.

Note B: Although Revenue Ruling 60-31 makes it clear that forfeiture conditions are not necessary in a Deferred Compensation Agreement to avoid constructive receipt, they may be appropriate and useful in individual cases depending upon the needs of the parties and their relative bargaining positions. In addition, the inclusion of forfeiture provisions will assure that the deferred benefits will not be taxed until the time payments are received by the Employee or his Beneficiary.

Examples of such conditions which have been used in the past which are occasionally used include the following:

1. The Employee must remain with the Employer until [his] [her] normal retirement date in order to be entitled to the Deferred Compensation payments;
2. The Employee may not engage in any competitive practices or activity after retirement; and
3. The Employee must render advisory services from time to time during retirement when called upon by the Employer.

The insertion and operation of such provisions may serve the Employer's interests, but careful planning is necessary to be certain that they do not cause unexpected and unfortunate results for the Employee.

The first two conditions mentioned above should cause the Employee little disadvantage unless they are not clearly explained to [him] [her] in advance or unless the scope of "competitive practices" is not understood by the parties. On the other hand, non-compete clauses and consulting or advisory service clauses should not be included in Deferred Compensation plans without first considering the possibility of additional Social Security taxes during the Employee's retirement years (see the Technical and Tax Information Booklet of the sales kit for a more detailed discussion of the potential Social Security issues surrounding these types of provisions).