



NONQUALIFIED DEFERRED COMPENSATION AGREEMENT (SALARY CONTINUATION OR SERP-SUPPLEMENTAL EXECUTIVE RETIREMENT PLAN)

FOR FINANCIAL PROFESSIONAL USE ONLY-NOT FOR PUBLIC DISTRIBUTION. Specimen documents are made available for educational purposes only. This specimen form may be given to a client's attorney for consideration as a sample document, when requested. This specimen form shall not be given to a client. This document should not be used as drafted. It has not been adapted to the specific circumstances or objectives of any individual client, nor has it been prepared to meet the legal requirements of any particular state. **Clients should be advised to seek legal counsel when entering into any transaction and in the preparation of all legal documents. All formalities required under applicable local law should be observed.**

Employer-Owned Life Insurance: In arrangements where an employer will own life insurance on an employee, Notice and Consent requirements must be met to avoid having the death proceeds taxable as ordinary income. See the Notice and Consent—Employer-Owned Life Insurance under Other Documents.

DEFERRED COMPENSATION AGREEMENT

This agreement is made this (day) of (month), (year) by and between (name of corporation), of (locality), County of (name), State of (name), hereinafter referred to as "Corporation," and (name of executive), a resident of (locality), County of (name), State of (name), hereinafter referred to as "Executive."

WHEREAS, Executive is employed by Corporation and has been for (number of) years, during which time Executive has performed valuable services for Corporation; and

WHEREAS, Executive currently serves as (title) of Corporation, and Corporation wishes to benefit from (his or her) continued loyalty, service, and counsel in years to come, to the continued profit of Corporation;

NOW, THEREFORE, in order to reward and encourage such continued loyal and valuable service, and to assist Executive in adequately planning for the financial demands of retirement, and to provide also for (his or her) family security in the event of disability or death, the parties agree as follows:

ARTICLE I

- A. Disability. If Executive, prior to the (day) of (month), (year), while employed by the Corporation, should become unable to engage in any substantial activity for remuneration or profit by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months. Corporation will begin to pay to Executive, within six months of the date of disability, (amount in words) dollars (\$_____) per month for the duration of Executive's disability, or until (his or her) age 65, whichever comes first. Notwithstanding the above, the Executive will also be deemed to be disabled if determined to be totally disabled by the Social Security Administration..
- B. Death during Employment. If Executive dies before (his or her) separation from service and while a fulltime employee of Corporation, irrespective of disability under Article I.A., or absence pursuant to Article II.C. of this agreement, Corporation shall pay, beginning in the month following the month of Executive's death, monthly installments of (amount in words) dollars (\$_____) for a continuous period of 120 months to the Executive's beneficiary as specified below.
- C. Separation from Service. If Executive continues employment with the Corporation as a fulltime employee until (his or her) separation from service on or after the first day of the month following the month of Executive's (specify number, e.g., 65th) birthday, irrespective of disability under Article I.A. or absence pursuant to Article II.C. of this agreement, then beginning in the first month of said retirement, Corporation will pay monthly installments of (amount in words) (\$_____) to Executive for a continuous period of 120 months. In the event that Executive should die after retirement but before receiving the full 120 monthly installments, the remaining payments will be paid by Corporation, as they fall due, to Executive's beneficiary as specified below.

NOTE: The following language only applies if the Corporation's stock is publicly traded.

If the Executive is a "specified employee" as of the date of (his/her) separation from service, (he/she) may not receive payments upon separation from service earlier than the date that is six months after the date of the separation from service, or, if earlier, (his/her) death. The required delay in payment is met if payments to which the affected Executive would

otherwise be entitled during the first six months following the date of separation are accumulated and paid on the first day of the seventh month following the date of separation from service, or if each payment to which the Executive is otherwise entitled upon a separation from service is delayed by six months.

The Executive will be deemed to be a "specified employee" if, as of the date of (his/her) separation from service, (he/she) is a key employee of the Corporation, provided that any stock of which is publicly traded on an established securities market or otherwise. The Executive is a key employee if (he/she) meets the requirements of Code §416(i)(1)(A)(i), (ii), or (iii) (applied in accordance with the regulations thereunder and disregarding Code §416(i)(5)) at any time during the 12-month period ending on December 31. If the Executive is a key employee as of a December 31, the Executive is treated as a key employee for the entire 12-month period beginning on April 1.

- D. No Other Payments. Corporation shall make no payments to Executive under this agreement other than those specified in paragraphs A., B. and C. of this Article I.

ARTICLE II

- A. Forfeiture of Benefits. Notwithstanding anything to the contrary contained in Article I, Executive shall forfeit all rights to any and all benefits to be paid to (him or her) under this agreement if:
1. Suicide. Executive dies by suicide within two years after the execution of this agreement.
 2. Resignation. Executive voluntarily leaves Corporation's service prior to attainment of age_____.
 3. Termination. Executive is discharged for any just and lawful cause prior to attainment of age_____.
 4. Violation of Agreement Not to Compete. Executive competes with Corporation in violation of the Agreement Not to Compete specified in paragraph B following.
- B. Agreement Not to Compete. Executive agrees that after retirement, and during the period in which (he or she) continues to receive monthly payments under this agreement, Executive will not directly or indirectly enter into or in any manner promote, support, take part in, or encourage any business, profession or other endeavor, either as an employee, agent,

independent contractor, owner or otherwise which, in the reasonable opinion of the board of directors of Corporation, is in competition with the business of Corporation without first obtaining written consent of the board of directors. If Executive does compete in violation of this provision, then (he or she) will forfeit all rights to benefits payable under Article I.C. of this agreement.

- C. Leave of Absence. Corporation may, in its sole discretion, permit Executive to take a leave of absence for a period not to exceed one year. During this period Executive will be deemed an employee of Corporation for all purposes of this agreement.
- D. No Acceleration of Benefits. The benefits provided for under Article I. of this agreement may not be accelerated and paid at an earlier time than specified in Article I., neither at the option of the Executive nor in the discretion of Corporation or any other person.

ARTICLE III

- A. Assignment of Benefits. Except to the extent that this provision may be contrary to law, no assignment, pledge, hypothecation, collateralization, lien or attachment of any of the benefits payable pursuant to the provisions of this agreement shall be valid or recognized by Corporation. None of the payments provided for by this agreement shall be subject to seizure for payment of any debts or judgments against Executive or any beneficiary, nor shall Executive or any beneficiary have the right to transfer, modify, anticipate, or in any way encumber any rights or benefits under this agreement.
- B. Amendment. During the lifetime of Executive, this Agreement may be altered, amended, or revoked at any time in whole or in part by written agreement of the parties. Notwithstanding the foregoing sentence, no alteration, amendment, or revocation of this Agreement may be made in a manner that would cause the benefits payable hereunder to be accelerated or to be deferred in a manner that would cause this Agreement not to be in compliance with IRC §409A.
- C. Designation of Beneficiary. In the event of Executive's death, any installments provided for in Article I.C. of this agreement, or any payments due under the terms of Article I.B., shall be paid to (name of beneficiary) if living, or, if (name of beneficiary) predeceases Executive, then to Executive's then living issue, per stirpes and not per capita. The beneficiary named in this agreement may be changed at any time by Executive, with the agreement of Corporation, by a written amendment attached to this agreement and signed by the parties to this agreement.

- D. Unsecured Promise. The provisions of this agreement represent the unsecured promises of Corporation. Executive understands and acknowledges that the benefits herein are not secured by any rights to specific assets of Corporation.
- E. Employee Retirement Income Security Act ("ERISA"). For purposes of Title I of ERISA, the arrangement described in this agreement is an unfunded excess benefit plan for a select highly compensated employee. The plan fiduciary is the Secretary of Corporation. Any claim under the plan should be filed in writing with said Secretary, and the Secretary shall respond to such claim in writing, in plain understandable language, making detailed and specific reference to material facts and to the terms of this agreement, and explaining how and when benefits will be paid, or why they will not be paid, and outlining timely and reasonable procedures for appeal. If a claim under the plan is denied, notice of such denial shall be provided within 90 days or less following the receipt of a claim by the Secretary of the Corporation.
- F. Internal Revenue Code ("IRC"). For purposes of the IRC, this Agreement has been drafted to comply with and to be governed by IRC §409A and the regulations thereunder. The Corporation shall administer this Agreement with the intent to comply with IRC §409A, as interpreted in accordance with the regulations thereunder.
- G. Binding on Heirs, etc. This agreement is solely between Corporation and Executive, and shall be binding upon the parties to this agreement, their heirs, assigns, successors, executors, and administrators.
- H. Governing Law. This agreement and all distributions under it shall be governed by the laws of the State of (name).
- I. Severability. If any portion of this agreement is held to be invalid or otherwise not enforceable, the remainder shall have force and effect to the full extent permitted by law.
- J. Entire Agreement. This agreement represents the final and entire agreement between the parties, and supersedes all prior or contemporaneous agreements, express or implied, written or unwritten.

IN WITNESS WHEREOF, the parties have executed this agreement at (locality), County of (name), State of (name) on the day, month, and year first above written.

CORPORATION

BY: _____
(typed name of officer)

EXECUTIVE

(typed name of executive)

SAMPLE DOCUMENT

This information is provided by American General Life Insurance Company (AGL) and The United States Life Insurance Company in the City of New York (US Life), members of American International Group, Inc. (AIG).

All companies mentioned, their employees, financial professionals, and other representatives, are not authorized to give legal, tax, or accounting, advice, including the drafting or execution of any legal document. Applicable laws and regulations are complex and subject to change. Any tax statements in this material are not intended to suggest the avoidance of U.S. federal, state or local tax penalties. AGL and US Life shall not be liable for any loss or damage caused by the use of, or reliance on, the tax, accounting, legal, investment or financial items contained in this material.

FOR FINANCIAL PROFESSIONAL USE ONLY-NOT FOR PUBLIC DISTRIBUTION

©2018-2019. All rights reserved.