

Split-dollar tax and legal guide

# Foreword to counsel and specimen documents



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# What is a split-dollar arrangement?

A split-dollar arrangement is a strategy in which a life insurance policy's premium, cash values and/or death benefits are split between two parties (policy owner and non-owner). Split-dollar typically involves a business and key employee, or between a trust and a grantor.

A split-dollar arrangement is not a type of life insurance, or a reason to buy life insurance. It's a method of financing the life insurance purchase. As a business solution, split-dollar arrangements are generally most appropriate when one party (the company) has the cash to pay the life insurance premiums and the other party (the employee) needs life insurance.

## **It has been used in various forms to help individuals in estate planning:**

To minimize income and gift taxes connected with the funding of large premiums;

To reduce the cash required to fund a life insurance policy;

## **It has been used by businesses:**

As an executive benefit that encourages employees to remain with the company;

To help attract new employees for business expansion or to fill vacancies;

To pay the business owner's or key employees' personal life insurance premiums at a potentially lower after-tax cost.

## **What is the definition of a split-dollar arrangement?**

Internal Revenue Service (IRS) Final Regulations<sup>1</sup> define it as any arrangement between an owner and a non-owner of a life insurance contract that satisfies these criteria:

1. Either party to the arrangement pays all or a portion of the premiums on the life insurance contract. This includes payment by a loan to the other party that is secured by the life insurance contract; and
2. At least one of the parties paying premiums is entitled to recover all or some of the premiums, and the recovery is to be made from or secured by the proceeds of the life insurance contract; and
3. The arrangement is not part of a group term life insurance plan, unless the plan provides permanent benefits.

## **What are the requirements for a basic split-dollar arrangement?**

A split-dollar arrangement requires:

1. A corporate resolution or other business documentation; and
2. A written split-dollar agreement signed by the business sponsor, the insured employee and/or the trustee if a trust is involved.

# The two split-dollar ownership structures

Depending upon the method used, the policy owner may be the employer, the insured/employee, the insured's trust or a third party.

Typically, ownership of split-dollar life insurance is structured using either the endorsement method (business/employer owned) or the collateral assignment method (employee owned).

## 1. Endorsement arrangement

With the endorsement method, the corporation owns the insurance policy. The corporation endorses to the employee the right to name the beneficiaries of all or a part of the death benefit. Typically, the beneficiary receives the total death benefit, minus the greater of the cash value or premiums paid by the employer.

The employee's rights are spelled out in a split-dollar agreement with the employer. The insurance proceeds are split by beneficiary designation. Generally, the employer is designated as the beneficiary of the greater of the policy's cash value or the premiums the employer has paid. The employee's spouse or other family member is generally designated as the beneficiary of the remainder of the insurance proceeds.

### When is this method used?

The endorsement method is often preferred when:

- The employer wants the policy's entire cash value to show as a corporate asset.
- The corporation intends to use the policy to informally fund a deferred compensation benefit for the employee's retirement (Protection Supplemental Executive Retirement Plan, or Protection SERP). In that case, an entirely separate non-qualified deferred compensation (NQDC) agreement is required and the rules of IRC Section 409A must be met.
- The employer wants absolute control over all aspects of the policy other than the right to name the beneficiary of the employee's portion of the death benefit.

## 2. Collateral assignment arrangement

With this arrangement, the employee or the employee's trust is designated as the policy's owner. The employee's spouse, other family member or the trust is named as the policy's beneficiary. The employer pays for and makes the premium payments, which are secured by a collateral assignment on the policy.

As in the endorsement method, the rights and duties of the two parties are spelled out in a split-dollar agreement.

### When is this method used?

Typically, collateral assignment arrangements are used when:

1. It is generally easier to keep the death benefit out of the controlling shareholder's estate. (See the discussion of estate tax treatment.)
2. The collateral assignment method makes it easier for the employee to take over the policy unencumbered. The employee owns the policy from the outset, so it is not necessary to transfer ownership from the corporation. The collateral assignment, however, would be released when the split-dollar is terminated, creating a taxable event.

# Split-dollar taxation approaches

Because the policy is being split between two people/entities, the IRS requires that a split-dollar policy fall under either the economic benefit approach or the loan approach to taxation. A third approach, switch-dollar, combines these two approaches.

With either approach, because the business is entitled to some of the policy's benefit, the business cannot deduct the premium for tax purposes.

## Economic benefit approach

<b>Definition</b>	The economic benefit is measured by the insurance protection provided, based on IRS Table 2001* or on one-year term rates if the life insurance carrier provides them. Minnesota Life Insurance Company ("Minnesota Life") provides one-year term rates (also called Annually Renewable Term (ART) rates).
<b>Repayment to non-owner</b>	Greater of policy cash value or premiums paid.
<b>Tax value (income and gift)</b>	Based on the economic value of the death benefit (otherwise known as Reportable Economic Benefit (REB)).

\*As of publication, the IRS has not indicated when it will determine Table 2017 costs for these arrangements.

### Who owns the policy under the economic benefit approach?

With this approach, typically the employer (i.e., endorsement split dollar) or an irrevocable life insurance trust (ILIT) (i.e., private split-dollar) owns the policy's entire cash value. A collateral assignment arrangement can be taxed using the economic benefit approach if the policy and its entire cash value are assigned to the employer (i.e., non-equity collateral assignment).

### What are the income tax ramifications?

Under the Final Regulations, the IRS treats the economic benefit portion of the arrangement as rent, and the entire basis accrues to the contract owner. This means the non-owner is renting the net death benefit from the owner.

### Example: Economic benefit for \$1 million death benefit

Age	Table 2001 rate	Minnesota Life Insurance Company ART rate
45	\$1,530	\$840
50	\$2,300	\$1,110
55	\$4,150	\$1,340
60	\$6,510	\$1,950
65	\$11,900	\$3,120

With endorsement and non-equity collateral assignment arrangements, the employer receives the entire basis in the contract. The cost of the arrangement will increase at termination to the extent the non-owner is bonused the policy. Under IRS Final Regulations, a bonus would result in income tax on the full cash value because the non-owner has no basis in the contract.

The value of a transferred policy is now the full cash value, which is not reduced by surrender charges.

## What is the tax impact of non-owner premium contributions?

Under the Final Regulations, the payment of the economic benefit by the non-owner (i.e., employee) results in income to the owner. In keeping with the rent analogy, a non-owner payment is considered to be a taxable rent payment to the owner.

## Loan regime approach

<b>Definition</b>	Annual premiums paid by the company are considered an annual loan. The employee or the employee's ILIT must pay loan interest annually on cumulative premiums paid or loan interest can be capitalized.
<b>Repayment to non-owner</b>	Cumulative premiums paid (including any capitalized interest).
<b>Tax value (income and gift)</b>	Based on the annual loan interest.

## What is the loan regime approach?

The employer pays the policy's premium, and the premium payment is treated as a loan to the employee. Because it is a loan, the employee must pay back both the interest and the principal. The interest rate is typically based on the IRS' applicable federal interest rates (AFR). If the employee is not charged at least the AFR, taxable income equals the difference between the AFR and the rate the employee is charged, and is imputed to the employee. Upon termination of the loan arrangement, if the employee does not repay the outstanding loan balance, they are taxed on the amount of the loan balance forgiven.

## Is the loan regime approach also known as equity split-dollar?

Yes. Equity collateral assignment split-dollar arrangements entered into after September 17, 2003, require the parties to use the loan regime.

The employee owns the policy and collaterally assigns the cash value (not to exceed the outstanding loan balance) of the policy to the business. The employee retains the cash value over and above the outstanding loan balance (i.e., equity).

If cash value grows enough, once the employer is reimbursed for the loaned premiums, the employee could potentially use that amount as a retirement income supplement.

## What is a demand loan?

A demand loan is callable in full at any time upon the demand of the lender. If a demand loan is a below market loan (i.e., the interest on the loan is less than the short-term blended rate, which is an average of the January and July short-term rates), the foregone interest is deemed to be transferred annually from the lender to the borrower.

### Advantages

- Easy to administer. Foregone interest is calculated by multiplying the outstanding loan balance by the blended short-term rate. This income is imputed to the borrower annually.
- The interest rate is generally much lower than the mid-term or long-term AFRs used with term loans.

### Disadvantages

- Inability to lock in the interest rate creates uncertainty over future interest costs.

## What is a term loan?

A term loan is due at the end of a certain term of years or upon an individual's death. The split-dollar term loan is tested on the day the loan is made to determine if it has adequate stated interest.

A loan's term is the period from the date the loan is made to its stated maturity date. The federal rate applied to determine whether the split-dollar term loan is a below market loan depends on the loan's term.

<b>Short-term</b>	Less than 3 years
<b>Mid-term</b>	Between 3-9 years
<b>Long-term</b>	Greater than 9 years

If term loans are desired, generally, it may be best to enter into a loan arrangement with a stated interest rate that at least equals the applicable federal rate. The parties can then avoid the complexities of Section 7872 of the Code, including the possibility of having foregone interest accelerated into the year that the loan is made.

### Advantages

- Ability to lock in the interest rate during periods of low interest.
- May be desirable where the insured is a majority shareholder or a party to a private split-dollar arrangement.

### Disadvantages

- Interest rate is higher than demand loans.
- Can be cumbersome to administer since each premium payment is considered a new term loan with a new interest rate.

When it is important to keep the proceeds out of the insured's estate, care must be exercised not to give the corporation (or the insured) any incident of ownership. Any right to demand payment may be considered an incident of ownership, causing proceeds to be included in the insured's estate.

## Can the interest rate be locked for future premiums using a term loan?

Yes. The employer can loan a large amount of money to the employee (or trust) so future premiums could be paid with the loan proceeds. By making a single loan to the employee, the interest rate on the lump sum amount can be locked in at today's rate.

## Can the interest on the loan be accrued and paid at some later time?

Yes, as long as the loan is structured so that a rate of interest is equal to or greater than the AFR, the interest can be accrued until the end of the term.<sup>2</sup>

## Can the employer bonus or pay the interest directly or indirectly on the loan?

If the employer pays the interest to the borrower — either directly or indirectly — the interest paid will be ignored, and the loan will be treated as an interest-free loan with adverse tax consequences.

## Can the parties refinance an existing split-dollar loan?

The parties to the split-dollar loan arrangement can agree to refinance the outstanding indebtedness by substituting a new note with a lower interest rate for the existing note.

While refinancing should not result in income or gift tax consequences, some commentators believe that the new, lower interest rate note should alter one or more terms of the loan to help justify it.

## Switch-dollar arrangement

### What is a switch-dollar arrangement?

A switch-dollar arrangement combines the advantages of the economic benefit and loan regimes. When the economic benefit regime becomes less economical, the collateral assignment is terminated. A promissory note is established with an initial loan balance that includes all prior premiums paid. It can also be used immediately before the policy moves into a gain position.

Equity transferred to the employee at the time of the switch will be taxable to the employee and deductible to the employer (if considered reasonable compensation). Any gain in the contract will be taxable to the employer upon transfer of the policy. If the switch occurs before equity is created, there will be no transferred equity to tax.

Below is a deeper look at each approach.

## Endorsement split-dollar (Key Person Plus)

	Owner of the policy	Regime	Uses
Endorsement split-dollar	Employer	Economic benefit	<ul style="list-style-type: none"><li>• Pre-retirement survivor benefits</li><li>• Key person protection</li><li>• Buy-sell strategies</li><li>• Non-qualified deferred compensation</li></ul>

### What is endorsement split-dollar?

It's an agreement where the employee splits the cost of a life insurance policy on their life with the employer. It is a cost-effective way for the employer to provide a pre-retirement survivorship benefit. It can also be incorporated into a non-qualified deferred compensation plan or a key person plan.

### Who owns and has access to the cash value of the life insurance policy?

The employer owns the life insurance policy on the employee. The employee has no interest in the policy other than the right to designate the beneficiary of their portion of the death benefit.

If the employee has a current or future right or current access to the cash values, and the employer's creditor does not have current access to the cash values, the employee will have to recognize those cash values as income as they accrue.

### What if the employee doesn't pay annually or include the economic benefit in income?

Failure will cause the proceeds to be taxable as income. The IRS Final Regulations assume that if the economic benefit has not been taken into consideration by the non-owner (employee), the death proceeds are paid first to the owner (employer) and then by the owner (employer) as income in respect of a decedent to the non-owner's (employee's) beneficiary.



### What is the amount of death benefit endorsed to the employee?

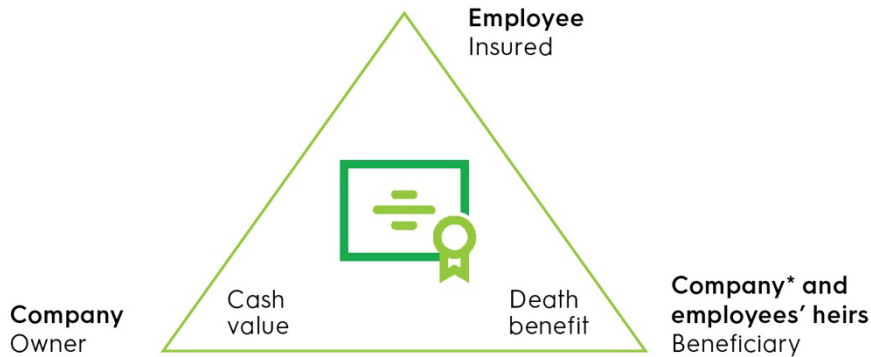
This can be a fixed amount, a multiple of the employee’s earnings, or the death benefit in excess of the cash value.

### How does endorsement split-dollar work?

#### Step One

The employee and the employer enter into an endorsement split-dollar agreement.

#### Endorsement split-dollar



\*Greater of cash value or premiums advanced.

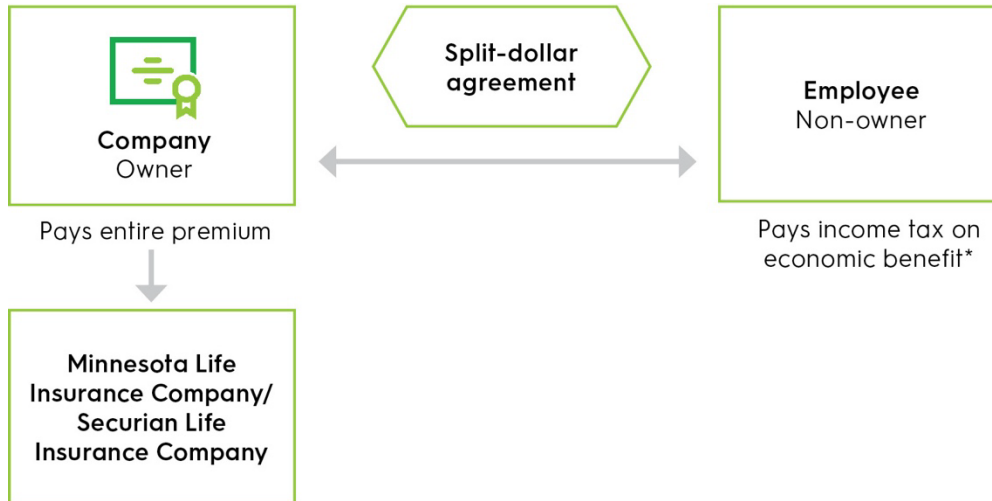
#### Step Two

The employer acquires and owns a life insurance policy insuring the employee’s life. The employer then endorses a portion of the death benefit to the employee as a pre-retirement survivor benefit to their heirs in the event of the employee’s premature death.<sup>3</sup>



### Step Three

The employer makes the entire premium payment on the policy. The employee will be taxed on the reportable economic benefit. As an alternative, the employee can pay the economic benefit portion of the premium to the life insurance company.

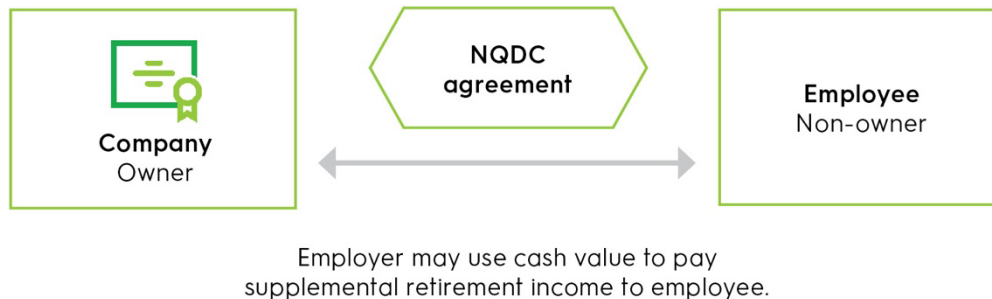


\*IRS Table 2001 term rates or ART.

### Step Four

When the employee retires, the split-dollar agreement terminates and the employer retains ownership of the policy. The employer may use the cash value to pay supplemental retirement income to the employee.

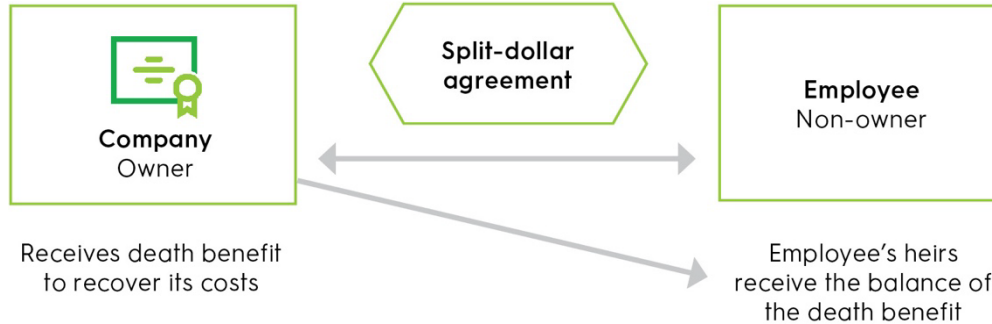
#### Supplemental retirement benefit



## Step Five

If the employee dies during the arrangement, the employer will receive a portion of the death benefit and the employee's heirs will receive the remainder.

### Employee's death



### Employer (owner)

#### Benefits

- Policy cash value is a company asset
- Simple to implement
- Cost recovery
- Provide benefits to select executives

#### Considerations

- Premiums are not deductible
- Legal split-dollar agreements are necessary
- The company will receive the life insurance death benefit income tax-free if it meets the requirements of Internal Revenue Code Section 101(j)
- Split-dollar arrangements may be subject to IRC 409A

### Employer (owner)

#### Benefits

- Low-cost death benefit coverage
- Flexibility to meet changing financial needs
- Can be coordinated with an ILIT or SLAT to take the death benefit outside the employee's estate

#### Considerations

- May be taxed annually on the economic value of the death benefit
- No access or control of the policy
- Unless an ILIT is used, death benefit proceeds will be included in the estate of the employee for estate tax purposes

# Combining endorsement split-dollar with Nonqualified Deferred Compensation (NQDC) — Protection SERP

Employers often combine an endorsement split-dollar with an NQDC plan. Minnesota Life and Securian Life refer to these arrangements as Protection SERP. In general, NQDC plans must meet three major requirements:

1. Assets used to informally fund the executive's account balance must always be reachable by the business creditors. The company's promise to pay must be unsecured. To remain unsecured, the plan must be considered unfunded (or informally funded).<sup>4</sup> The Internal Revenue Code's definition of unfunded means plan assets must be general assets of the business and subject to the claims of creditors. With a Protection SERP, the promise to pay at retirement is informally funded with the life insurance contract on the key executive.
2. All deferrals must be made before the executive is in actual or constructive receipt of them. To avoid constructive receipt of the account balance, the agreement to defer must be entered into prior to the services being rendered. In Protection SERP, there are no executive deferrals.
3. If ERISA applies, NQDC plan eligibility must be limited to the "top-hat" group. The regulations define a top-hat group as a "select group of management or highly compensated employees."<sup>5</sup> The top-hat exception aims at removing those employees from ERISA who do not need its protection.<sup>6</sup> For Protection SERP to comply with ERISA, only key executives may participate.

# Non-equity collateral assignment — economic benefit

	Owner of the policy	Regime	Uses
Non-equity collateral assignment	Insured or trust	Economic benefit	Estate planning

## What is a non-equity collateral assignment split-dollar arrangement — economic benefit?

Under this arrangement, the employee (or a trust) owns the policy and collaterally assigns all of the cash value of the contract to the company as security for the company's premium payments. If the agreement is terminated, the company is entitled to receive the greater of the policy's cash value or premiums paid.

When the business owner or the key executive doesn't have the cash flow to fund premiums, or if the company is looking for a way to provide the executive or owner a fringe benefit, this strategy makes sense. Typically, this arrangement is used when the policy is owned by a third party, such as the employee's irrevocable life insurance trust (ILIT).

In order to remove the death proceeds from a majority shareholder's estate for federal estate tax purposes, a restricted collateral assignment is necessary.

## For tax purposes, who owns the policy?

IRS Final Regulations state that the taxpayer can select one party or the other as the contract owner.

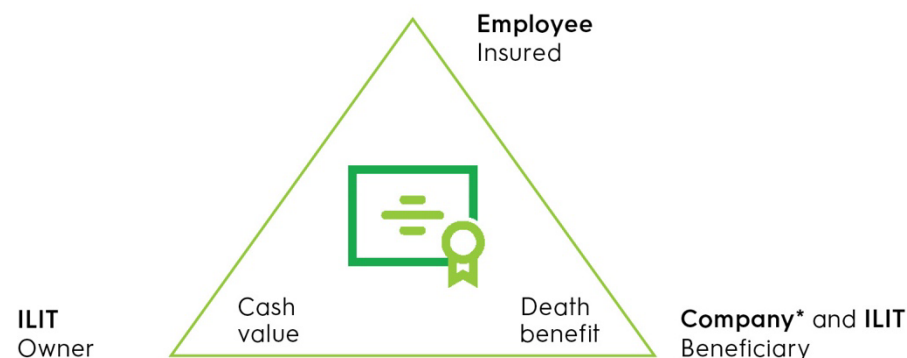
However, they provide an important exception to the general rule. If a non-equity collateral assignment split-dollar arrangement is entered in connection with the performance of services, the employer is treated as the owner of the contract. The only benefit to the employee under this arrangement would be the value of the current life insurance protection. The IRS will treat it as an endorsement split-dollar.

## How does a non-equity collateral assignment split-dollar arrangement — economic benefit work?

### Step One

The employee creates an ILIT, which applies for and owns the life insurance policy.

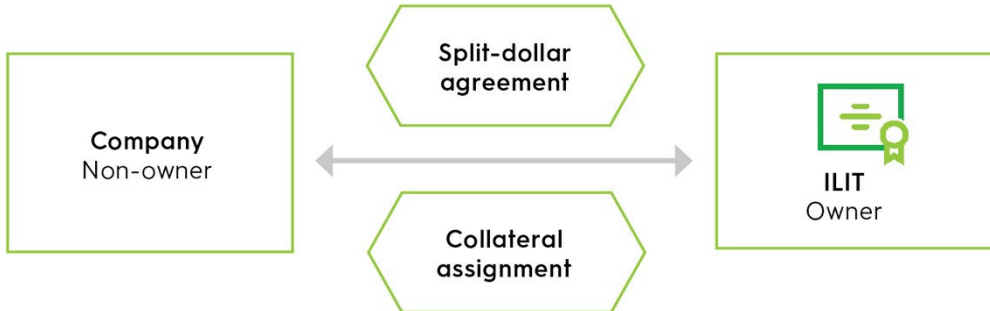
### Non-equity collateral assignment



\*Greater of cash value or premiums advanced.

### Step Two

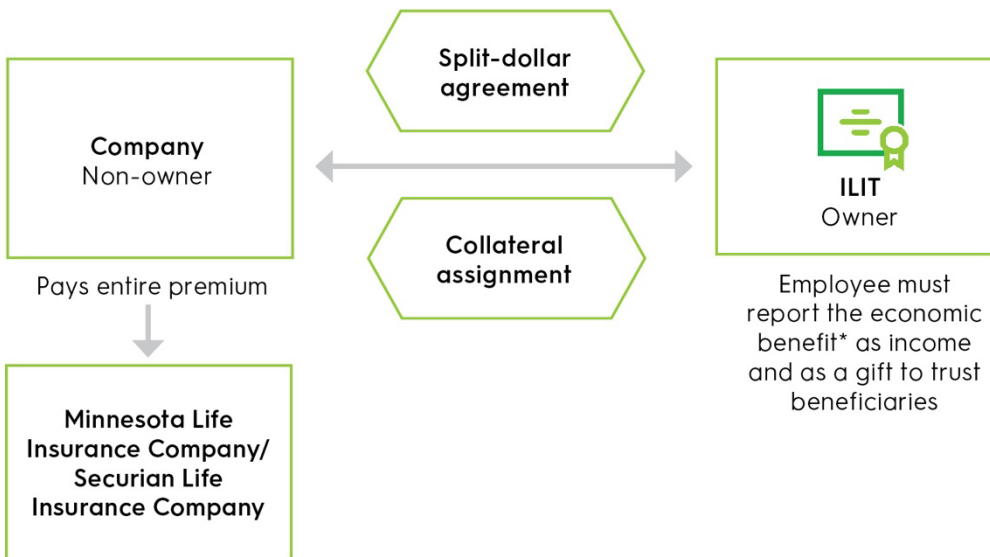
The company and the ILIT enter into a non-equity collateral assignment split-dollar agreement. If the employee is a majority shareholder of the company, the ILIT provides



a restricted collateral assignment of the policy cash value to the corporation as security.

### Step Three

Premiums are paid by the company and the economic benefit is treated as a gift from



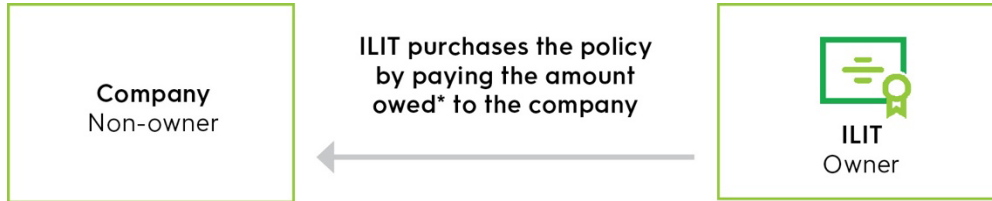
the employee to the ILIT.

\*IRS Table 2001 term rates or ART.

### Step Four

Once the arrangement is terminated, the company receives the greater of the premiums paid or the policy cash value.

#### Termination during the employee's lifetime

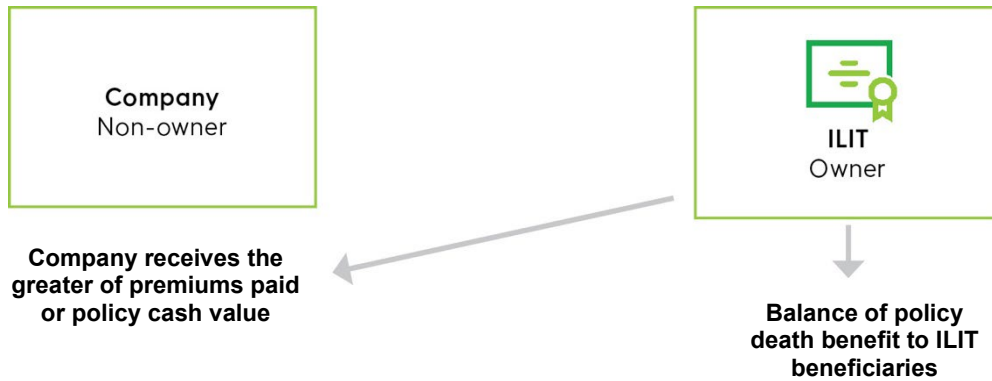


\*Greater of premiums or cash value.

### Step Five

Or, if the employee dies during the split-dollar agreement, the death benefit is paid partially to the company and partially to the ILIT.

#### Termination at employee's death during agreement



# Special note for pass-through entities

- S Corporations, Partnerships and LLCs (taxed as either an S Corporation or a Partnership) are pass-through entities.
- In a pass-through entity, all income is taxed to the owner.
- Split-dollar arrangements result in the business owner paying income tax on a greater amount than income used for premium payments.
- Example: \$20,000 premium with a \$500 term cost
  - Business owner will pay income tax on the \$20,000 of business income used to pay premium because it is non-deductible business expense.
  - The business owner must also report the \$500 value of economic benefit.
  - This means the business owner will pay income tax on an amount greater than the annual premium.
- That's why this strategy is typically used by owners of C Corporations.

# Equity collateral assignment — loan regime

	<b>Owner of the policy</b>	<b>Regime</b>	<b>Uses</b>
Loan arrangement	Insured or trust	Loan regime	Estate planning

This strategy makes sense when an employee either doesn't have the cash flow to fund premiums or the company is looking for a way to provide a fringe benefit to a key executive.

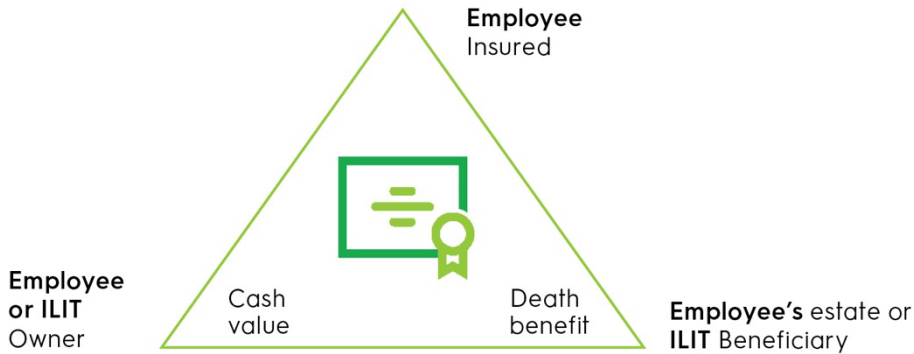


## How do loan regime arrangements work?

### Step One

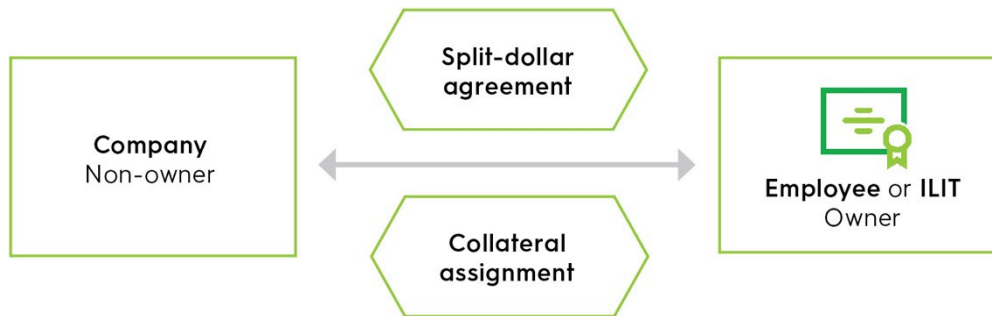
The employee (or an ILIT) applies for and owns the life insurance policy.

### Loan arrangement



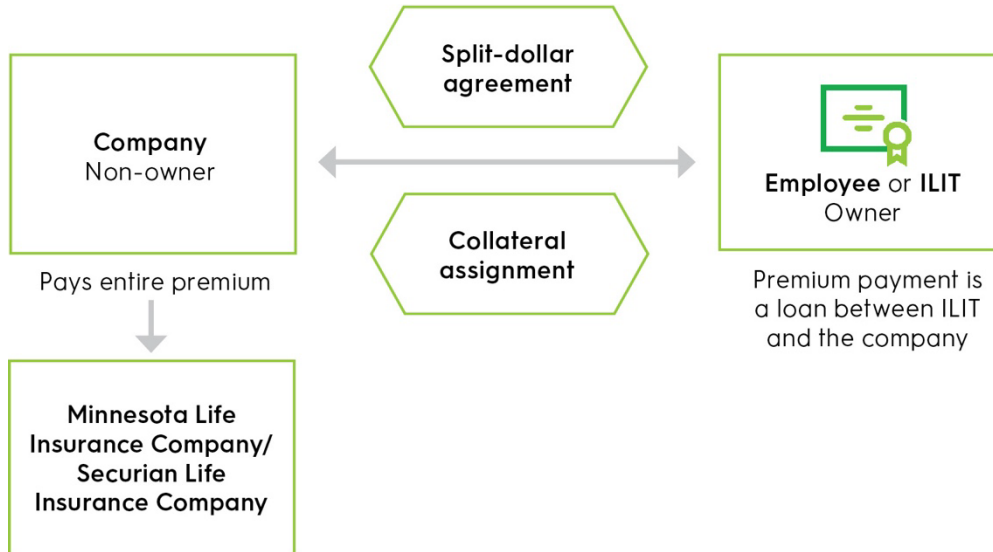
### Step Two

The company and the employee (or ILIT) enter into an equity collateral assignment split-dollar agreement. The employee (or ILIT) provides a restricted collateral assignment of the policy cash value to the corporation as security. The employee (or ILIT) retains cash value above the outstanding loan balance.



### Step Three

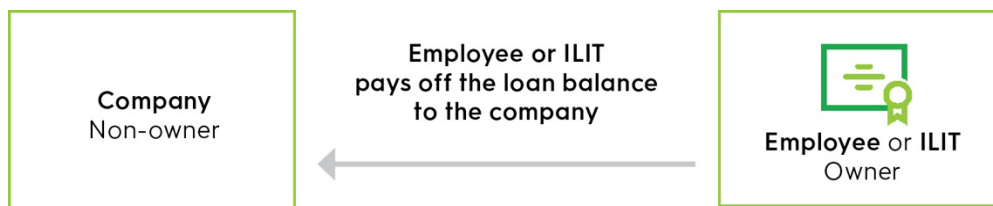
The company pays the premiums, which are treated as a loan to the employee. If the employee is not charged at least the government established interest rate (applicable federal rate or AFR) on the loan, the reduction will be treated as taxable income for the employee.



### Step Four

Once the loan arrangement is terminated (during the employee's lifetime or at death), the employee will need to pay off the loan balance to the company, either from the policy's cash value or through policy death benefit. If the employee doesn't repay the outstanding loan balance, the loan balance forgiven will be treated as taxable income for the employee.

### Termination



# Income tax considerations

## When was the split-dollar arrangement entered into?

The income tax treatment of split-dollar arrangements depends on when the arrangement was entered into. IRS Final Regulations apply to arrangements entered into after September 17, 2003, or to older arrangements materially modified after that date.<sup>7</sup> The taxation of arrangements entered into before September 17, 2003, is subject to prior law.

## Can the business deduct the premiums?

Regardless of when the split-dollar arrangement was executed, the business cannot income tax-deduct the life insurance premium because it is directly or indirectly a beneficiary of the policy.<sup>8</sup> The business also cannot deduct the one-year term costs or Table 2001 costs taxed to the insured employee.

## Can publicly traded companies participate in split-dollar arrangements?

The Sarbanes-Oxley Act questions the validity of split-dollar arrangements for employees of publicly traded companies. Therefore, most publicly traded companies no longer offer split-dollar arrangements. As a result, split-dollar arrangements are generally used only by privately held companies.

## How about second-to-die life insurance contracts in a split-dollar arrangement?

Split-dollar arrangements using second-to-die insurance are subject to the same taxation rules as other split-dollar arrangements. But the measure of the economic benefit differs. Second-to-die insurance is much less expensive than single-life insurance, which means the economic benefit should be lower.

The IRS informally issued a formula approach for valuing second-to-die policies.<sup>9</sup> When applied to the P.S. 58 table, the formula produced a second-to-die table referred to as P.S. 38.

While neither Notice 2001-10 nor Notice 2002-8 issued a replacement for the P.S. 38 rates, a similar formula which generated the original P.S. 38 table can be applied to Table 2001. This can determine the economic benefit for future split-dollar arrangements using second-to-die life insurance.

Some life carriers provide second-to-die one-year term rates. These may be used subject to the rules of IRS Final Regulations. For periods after 2003, an insurer's rates may not be used unless the insurer generally makes the availability of the rates known to those who apply for the insurer's term coverage. The insurer must regularly sell term insurance at those rates to people who apply for term coverage through the insurer's normal distribution channels.<sup>10</sup>

When using a second-to-die policy to design a split-dollar strategy, consider the effect of the first death of using the economic benefit approach. At the first death, the taxable economic benefit increases because life insurance protection is no longer based on joint life expectancy.

After the first death, the economic benefit must be calculated using the single-life rates, not the lower second-to-die rates. This changes the valuation of the economic benefit for both income and gift tax purposes.<sup>11</sup>

## How about Notice and Consent Requirement under Section 101(j)?

IRC §101(j) defines an employer-owned life insurance (EOLI) contract as a life insurance policy issued after August 17, 2006, that:

- Is owned by a person engaged in a trade or business, and that person (or a related person) is directly or indirectly a beneficiary under the contract, and,
- Insures an employee of the policy owner's trade or business or a related person (collectively the "applicable policyholder") on the date of the contract's issuance.<sup>12</sup>

Unless an exception applies, the policyholder must include in gross income the EOLI contract death benefits that exceed the total premiums and other amounts the policyholder pays for the contract.

There are two exceptions:

1. **Insured's status as an employee.** The insured under the contract was (1) an employee at any time during the 12 months prior to their death, or (2) a director or a highly compensated employee or individual at the time the contract was issued.<sup>13</sup>
2. **Death benefits paid to the insured's heirs.** The contract's death benefits are either (1) paid to the insured's estate, family members, or other designated beneficiaries (other than the policyholder), or a trust for the benefit of any of those individuals, or (2) used by any person described above to purchase an equity (or capital or profits) interest in the policyholder. These exceptions only apply if the notice and consent requirements are met before an EOLI contract is issued.

These rules apply whenever a business entity owns a life insurance policy (including wholly owned corporations and sole proprietorships). Specifically:

- **Entity redemption buy-sell** – The business owns the policy insuring the business owner and receives the death benefits to fund the owner's buyout.
- **LifeCycle LLC buy-sell** – A separate partnership or LLC holds life insurance on the owners of an operating business in order to fund the business's buy-sell arrangement.
- **Key person life insurance** – A business owns the policy to protect it against the loss of a key employee, owner, director, etc.
- **Non-qualified deferred compensation plans** – Any policy used to fund a non-qualified plan owned by the business. IRC §457(f) plans may have similar considerations.
- **SERPs** – Policies purchased as general asset reserves to fund non-qualified voluntary salary/bonus deferral plans or supplemental executive retirement plans.
- **Endorsement split-dollar arrangements** – Any policy where the business owns the policy, and the business (or a related person) will receive the death benefits.
- **Changes or exchanges of grandfathered policies** – Any change to a grandfathered policy or an IRC §1035 exchange of a grandfathered policy for a new policy if there is (1) a material increase in the death benefit, or (2) another material change in the policy.

In Notice 2009-48, the IRS stated that for purposes of IRC §101(j), life insurance policies issued in the following situations generally would not qualify as EOLI contracts:

- **Cross-purchase arrangements** – Policies owned by the owner of an entity engaged in a trade or business for purposes of financing the purchase of another owner's equity interest.
- **Qualified plans and VEBAs** – Policies held in a qualified plan or voluntary employees' beneficiary association (VEBA) that is sponsored by an entity engaged in a trade or business.

To fit within any exception to EOLI taxation, policyholders must satisfy certain notice and consent requirements before issuing the EOLI contract. In Notice 2009-48, the IRS issued this guidance regarding compliance with the notice and consent requirements:

**Notice** – The employee must receive written notification that the applicable policyholder:

- Intends to insure the employee's life;
- Reasonably expects to purchase a specified maximum amount of life insurance (stated either in dollars or as a multiple of salary) on the employee during the employee's tenure; and
- Will be a beneficiary of any proceeds payable upon the death of the employee.

**Consent** – The employee must provide written consent to be the insured and to the continuation of coverage after termination of the insured's employment. The contract must be issued (1) within one year after the employee's consent, or (2) before the termination of employment, whichever is earlier.

**Policyholder's responsibility** – EOLI compliance is the policyholder's responsibility. Any potential EOLI situation involving a Minnesota Life or Securian Life policy requires two steps:

1. The employer must sign a copy of Minnesota Life's form F66015 or Securian Life's form FSL-66015, "Employer Notification Regarding the Potential Taxation of Death Benefits" and return it to the financial representative before the policy is issued. This form notifies the employer of its potential obligations under these rules. It does not relieve the employer of the obligation to obtain a signed notice and consent from the prospective insured.
2. The client should discuss the EOLI rules with an attorney and, if the EOLI rules apply, obtain a signed Notice and Consent from the insured before the policy is issued. Minnesota Life and Securian Life have a sample "Insured's Acknowledgement of Notice and Consent – Employer-Owned Life Insurance Policy" at the end of this Foreword to Counsel. It is the employer's obligation to obtain a signed form from each prospective insured before the policy is issued. The employer should retain these signed forms and file them with their life insurance policies. The employer must also report these policies to the IRS annually by attaching completed Form 8925 to the employer's annual income tax return.

**Form of compliance.** Notice 2009-48 presumes that an employee will receive a separate form for notice and consent. But PLR 201217017 held that a separate document was not required where the policyholder's EOLI contract documentation showed that all the notice and consent requirements were met before the contract was issued.

That requires specifically that a buy-sell agreement and a life insurance application were both executed by the insured employee before the contract was issued, and that together those contained all the required notice and consent information.

For existing EOLI contracts, an employer may be able to show notice and consent without separate documentation if it can demonstrate that all required notice and consent information was included in one or more documents that were provided to and/or executed by the insured employee before the contract was issued.

For newly issued contracts, however, obtaining a separately executed Notice and Consent form from the insured employee more easily and clearly documents compliance.

**Additional reporting requirements.** For each year an EOLI contract is owned, policyholders must file Form 8925 with their annual federal tax returns. This reports EOLI contract information, including the number of employees insured, the total insurance held under EOLI contracts and the number of non-consenting insured employees (if any). The policyholder must also keep whatever records may be necessary to show compliance with IRC §§ 101(j) and 6039I.

### How can I correct an EOLI issue?

Per Notice 2009-48, the IRS will not challenge inadvertent failures to satisfy the notice and consent requirements only when:

- The policyholder made a good faith effort to satisfy the notice and consent requirements (e.g., maintains a formal system for notice and consent for new employees);
- The failure to satisfy the requirements was inadvertent; and
- The failure to obtain the notice and consent was discovered and corrected by the due date of the tax return for the taxable year in which the EOLI contract was issued (failure to obtain consent cannot be corrected if the insured employee has died).

Otherwise, removing the taint of an improperly issued EOLI contract often involves:

1. Cancelling the existing policy and issuing a new one, or
2. Material increase in the policy death benefit or making other material changes in the contract.

The notice and consent requirements must be satisfied prior to issuing a new policy or making a material change in an existing policy.

# Estate and gift tax considerations

## **When will life insurance proceeds be included in the gross estate of the insured?**

In general, life insurance proceeds will be included in the insured's gross estate if the insured possesses any incidents of ownership in the policy, or if the policy is payable to the insured's estate.<sup>14</sup> It is possible to keep the policy out of the insured's estate if the insured has no incidents of ownership in the policy, and the policy is not payable to the insured's estate.

The split-dollar arrangement most often used to exclude the proceeds from estate taxes is for an irrevocable life insurance trust (ILIT) to own the policy with a restricted collateral assignment back to the business.

## **Are there special problems when the insured is a controlling shareholder of the corporation?**

To the extent the insurance proceeds are not payable to the corporation, corporate incidents of ownership will be attributed to an insured who is a controlling shareholder.<sup>15</sup>

The IRS generally defines a controlling shareholder as someone who owns more than 50 percent of the voting power of the corporation. A decedent is considered to own stock in his own name or jointly with another. If all the stock in a corporation is owned by a husband and wife as community property, neither spouse is a controlling shareholder.

In an endorsement split-dollar arrangement, the corporation's incidents of ownership will always be attributed back to an insured who is a controlling shareholder. In a collateral assignment arrangement, careful drafting can avoid giving the corporation any incidents of ownership which would be attributed to the insured controlling shareholder.

The IRS indicated that any incidents of ownership held by a corporation would be attributed to the insured, who is a controlling stockholder in a split-dollar arrangement.<sup>16</sup> This includes a corporate right to borrow money from the contract. As a result of this ruling, it is generally recommended that all corporate policy rights be eliminated.

Since that Revenue Ruling, many split-dollar strategies for controlling shareholders have attempted to avoid inclusion in the insured's estate by limiting the corporation's interest in the policy. The corporation then has no incidents of ownership. It only has the right to recover premium advances when the policy terminates or the insured dies. These split-dollar strategies prohibit the corporation from borrowing or otherwise exercising any ownership rights in the policy. Most secured the corporation's interest with a limited collateral assignment.

In a subsequent ruling, the IRS held that the death proceeds paid from a policy owned by an irrevocable trust and subject to a split-dollar arrangement would not be included in the taxable estate of the controlling shareholder insured when a limited (or restricted) collateral assignment was utilized.<sup>17</sup> In the ruling, an irrevocable trust was both the owner and beneficiary of the life insurance policy.

The insureds were husband and wife, who each owned 50 percent of the S corporation. Upon the death of either spouse, the surviving spouse would become owner of 100 percent of the corporation and, therefore, would be a “controlling shareholder.”

An independent trustee was entitled to all “benefits, rights and privileges” of the policy. The corporation was prohibited from borrowing any of the cash value and had an interest in the policy cash value only if it was surrendered or terminated. The corporation also had an interest in the death proceeds. The trustee executed a collateral assignment securing the corporation’s interest in the policy. Other rulings have been similar.<sup>18</sup>

### **What are the gift tax ramifications of a split-dollar arrangement?**

- If the collateral assignment method is used and the policy is owned by someone other than the insured (i.e., a trust), an actual or constructive gift from the insured employee to the owner will take place.
- If the arrangement uses the economic benefit approach to taxation, the amount of the gift will equal the economic benefit amount that the employee realizes as income.
- If the loan approach to taxation is used, the amount of the gift will equal the annual interest on the loan if the insured gifts that amount to the trust, or if the loan is interest-free, the deemed interest amount.



# ERISA requirements

Under ERISA,<sup>19</sup> a split-dollar life insurance agreement is considered a welfare benefit plan. The strategy is subject to these ERISA<sup>20</sup> provisions:

- It must be established and maintained pursuant to a written agreement.
- It must provide for one or more named fiduciaries who have authority to control and manage the plan's operation. This requirement is typically met by designating the employer (acting through one of its officers) as the named fiduciary.
- It must provide a procedure for establishing and carrying out a funding policy and method consistent with the plan's objectives.
- It must describe a procedure for allocating the responsibilities for the plan's operation and administration.
- It must provide a procedure for amending the plan's strategy and for identifying those with the authority to amend the plan.
- It must specify the basis for making payments to and from the plan.

A split-dollar arrangement maintained by an employer for a select group of management or highly compensated employees (where benefits are provided through insurance contracts and premiums are paid directly by the employer from its general assets) is exempt from all ERISA reporting and disclosure requirements. This total exemption apparently applies solely to the employer pay-all split-dollar arrangements.<sup>21</sup>

But a split-dollar plan with fewer than 100 participants which provides benefits through insurance contracts (the premiums for which are paid solely by the employer or partly with employee contributions) qualifies for a partial exemption from the reporting and disclosure requirements of ERISA.<sup>22</sup>

Under this partial exemption, unless the U.S. Department of Labor makes a special request for a copy of the document or other books and records of the strategy, no reporting is required to the Department of Labor. Participants and their beneficiaries, however, must be provided with a Summary Plan Description.

The description is to be kept up-to-date in the event of any changes in the strategy.<sup>23</sup> Employers should provide copies of the final signed split-dollar agreement and any other related materials to covered employees. These materials may help meet the Summary Plan Description requirements.

Every employee benefit plan must also establish and maintain reasonable claims procedures. Related requirements include written explanations of claim denials.<sup>24</sup> Also, the plan administrator must make available for inspection by a participant or beneficiary any plan documents, and provide copies for a reasonable charge upon written request.

# Split-dollar arrangements entered into prior to September 18, 2003

When the IRS published the Final Regulations, it separated split-dollar arrangements made before and after January 28, 2002. It also provided limited “grandfathering” for existing split-dollar arrangements. Clients with existing split-dollar arrangements were given the option to convert to the new tax regime or terminate arrangements without taxation by December 31, 2003. However, many clients did nothing.

## Is an existing split-dollar an equity or a non-equity arrangement?

Equity refers to the cash value in excess of premiums paid. There are two components of a cash value permanent life insurance policy: premiums paid and the excess cash value over the premium paid.

For example, Client A pays a total of \$200,000 in premiums for a policy that will pay a \$1 million death benefit, and the policy has a cash value of \$300,000. The policy has equity of \$100,000 (\$300,000 cash value minus \$200,000 total premium paid).

### Elements of cash value life insurance policy

Premiums Paid \$200,000	Equity \$100,000
Cash Value \$300,000	

In order to determine whether your client's split-dollar arrangement is an equity or non-equity arrangement, you need to review the underlying agreement to see who is entitled to the equity portion of the life insurance policy.

Type of arrangement	Agreement reads:
Non-equity agreement	If the employer is entitled to an amount equal to the greater of the total premiums paid or the policy's cash value.
Equity agreement	If the employer is only entitled to an amount equal to the total premiums paid.

## Non-equity arrangements

Non-equity split-dollar arrangements were permanently grandfathered.<sup>25</sup> If an arrangement is modified after January 28, 2002, IRS Final Regulations apply instead. These regulations took away the ability of parties in split-dollar arrangements to freely choose to use the insurance carrier's one-year term rates as a substitute for the rates published by the IRS in Table 2001.

For arrangements entered into on or after January 28, 2002, the insurance carrier's one-year term rates cannot be used unless the:

1. "Insurer generally makes the availability of such rates known to persons who apply for term insurance coverage from the insurer, and
2. The insurer regularly sells term insurance coverage through the insurer's normal distribution channels."<sup>26</sup>

Currently, Minnesota Life Insurance Company and Securian Life Insurance Company's ART rates qualify under this two-part test.

## Equity arrangements

Prior to the IRS Final Regulations, employers and employees could establish split-dollar arrangements where a portion of the policy's cash value would be transferred to the employee income tax-free, as long as the employee paid income taxes on the economic benefits associated with the death benefit coverage.

After the Final Regulations, any equity split-dollar arrangement will be treated only under the loan regime.

For existing equity split-dollar arrangements, there is limited grandfathering.

Participants had until December 31, 2003, to avoid taxation of the existing equity buildup, convert to the loan regime or terminate the arrangements. Many participants did nothing.

Does the client's failure to convert or terminate their arrangement mean they owe taxes for the policy's equity buildup? According to the IRS Final Regulations, it does.

Missing the window for limited grandfathering means your client has lost the opportunity to access whatever income tax-free equity existed. But it does not force your client to recognize that equity buildup as income until the client accesses the policy's cash value or until the split-dollar is terminated.

The employee must continue to pay taxes on the economic benefits for the death benefit coverage under the arrangement.<sup>27</sup> If the client terminates the arrangement or accesses cash from the policy, all of the equity buildup will have to be recognized as income in that year.

The first issue to review when examining a grandfathered equity arrangement is whether there is any equity in the policy (i.e., is the policy's cash value greater than the total premiums paid?).

**If there is no equity**

A grandfathered arrangement with no equity indicates you may need to re-evaluate your client's needs and start from scratch.

**If there is equity**

Any changes to a grandfathered equity split-dollar can have immediate adverse tax consequences. If the client wanted to make changes, they would recognize income on the equity buildup.

They have four options:

1. Leave the plan intact and keep paying the economic benefit each year.
2. Roll out policy and terminate the plan and incur income and gift tax consequences.
3. Recast as a loan. This is possible with low AFRs (and economic benefit cost goes up as the client gets older), but it brings in 409A consequences.
4. Roll in policy and terminate the plan.

# Employer Owned Life Insurance Policy Insured's Acknowledgment of Disclosure and Consent



Minnesota Life Insurance Company - a Securian Financial company  
Life New Business • 400 Robert Street North • St. Paul, Minnesota 55101-2098

## Employee/Proposed Insured - Information (please print)

Name			Date of birth
Address	City	State	Zip code
Telephone number			

## Employer Information

Legal name			
Address	City	State	Zip code
Telephone number			

### I, the employee/proposed insured, acknowledge disclosure and consent that:

- The employer intends to insure my life.
- I authorize and allow the employer to purchase such life insurance on my life.
- The maximum face amount for which I will be insured is: \$\_\_\_\_\_
- The employer will be the beneficiary of all or part of the life insurance policy proceeds.
- Such life insurance coverage may continue after my employment with employer has terminated.
- I have received this written Acknowledgment of Disclosure and Consent form from the employer.

Signature of employee/proposed insured <b>X</b>	Date
--	------

### Employer - please review the following:

- This form must be executed and signed before the policy is issued.
- The execution of this form must involve an appropriate insured under IRC Section 101(j).
- Copies of this Acknowledgment of Disclosure and Consent form are retained by the Employer.
- For survivor life insurance policies, a separate form must be completed and retained for each of the proposed insureds.
- This form and information is not intended as tax, legal or accounting advice. It is provided only as a convenience. Taxpayers should consult with their own legal counsel for guidance in order to determine IRC Section 101(j) requirements and whether a specific planning strategy is suitable for any particular individual.

# Employer Owned Life Insurance Policy Insured's Acknowledgment of Disclosure and Consent



## Securian Life Insurance Company

Life New Business • 400 Robert Street North, St. Paul, MN 55101-2098

### Employee/Proposed Insured - Information (please print)

Name	Date of birth
Street address, city, state, zip code	Telephone number

### Employer Information

Legal name	
Street address, city, state, zip code	Telephone number

### I, the employee / proposed insured, acknowledge disclosure and consent that:

- The employer intends to insure my life.
- I authorize and allow the employer to purchase such life insurance on my life.
- The maximum face amount for which I will be insured is: \$ \_\_\_\_\_
- The employer will be the beneficiary of all or part of the life insurance policy proceeds.
- Such life insurance coverage may continue after my employment with employer has terminated.
- I have received this written Acknowledgment of Disclosure and Consent form from the employer.

Signature of employee/proposed insured <b>X</b>	Date
--	------

### Employer - please review the following:

- This form must be executed and signed before the policy is issued.
- The execution of this form must involve an appropriate insured under IRC Section 101(j).
- Copies of this Acknowledgment of Disclosure and Consent form are retained by the Employer.
- For survivor life insurance policies, a separate form must be completed and retained for each of the proposed insureds.
- This form and information is not intended as tax, legal or accounting advice. It is provided only as a convenience. Taxpayers should consult with their own legal counsel for guidance in order to determine IRC Section 101(j) requirements and whether a specific planning strategy is suitable for any particular individual.

## SAMPLE

# Resolution authorizing split-dollar life insurance

*(This specimen resolution should only be used as a guide. The drafting of the final resolution is the sole responsibility of the attorneys representing the parties.)*

I, [NAME OF SECRETARY], Secretary of [NAME OF CORPORATION], a Corporation duly organized and existing under and by virtue of the laws of the state of [NAME OF STATE], DO HEREBY CERTIFY:

That on the [DAY] day of [MONTH], [YEAR], 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 by said Board of Directors, to wit:

WHEREAS, [NAME OF 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 in order to retain the services of [NAME OF EMPLOYEE] is willing to establish a Split-dollar Strategy of Insurance on the life [NAME OF EMPLOYEE].

THEREFORE, BE IT RESOLVED that the officers of this Corporation are hereby authorized and directed to enter into a Split-dollar Agreement on behalf of the Corporation with [NAME OF EMPLOYEE] , with said agreement to call for the purchase of a life insurance policy from [Minnesota Life Insurance Company/ Securian Life Insurance Company], St. Paul, Minnesota, upon the life of [NAME OF EMPLOYEE] in the amount of \$[MAXIMUM FACE AMOUNT ] with [NAME OF OWNER] designated as owner and [NAME OF BENEFICIARY ] designated as beneficiary of the policy; and

BE IT FURTHER RESOLVED, that the Secretary of this Corporation is hereby authorized and directed to advance to **[Minnesota Life Insurance Company/ Securian Life Insurance Company]** each year, as the initial and each subsequent premium becomes due from said policy, (specify the amount to be advanced in accordance with terms of Split-dollar Agreement), such amounts advanced to be secured by a collateral assignment of the policy to the Corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Corporation in the city of [NAME OF CITY], State of [NAME OF STATE], on the [DAY ] day of [MONTH], [YEAR].

(Corporate Seal and other formalities of execution in compliance with local law.)

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Signature of secretary

## SAMPLE

# Endorsement method split-dollar life insurance agreement

*(This specimen agreement should only be used as a guide. The drafting of the final agreement is the sole responsibility of the attorneys representing the parties. This specimen agreement should not be used if an attempt will be made to exclude the policy from the gross estate of a controlling shareholder.)*

THIS AGREEMENT is entered into this [DAY] day of [MONTH], [YEAR], by and between [NAME OF CORPORATION] (hereinafter called "the Employer") and between [NAME OF EMPLOYEE] (hereinafter called "the Employee").

WHEREAS, the Employee is a valued employee of the Employer and the Employer wishes to retain him/her in its employ; and

WHEREAS, the Employer, as an inducement to such continued employment, wishes to assist the Employee with their personal life insurance program;

NOW THEREFORE, the Employer and the Employee agree as follows:

### **Section 1 Policy title and ownership**

The Employer will purchase and own a life insurance policy on the life of the Employee, being Policy No. [POLICY NUMBER] issued by the [Minnesota Life Insurance Company/Securian Life Insurance Company] (hereinafter called "the Insurer") with an initial face amount of \$ [FACE AMOUNT] (said policy being hereinafter called "the Policy"). The Employer alone shall be able to exercise all rights of ownership with respect to the Policy; including, but not limited to, the right to borrow or withdraw upon the policy cash values.

In addition, to the extent the Insurer declares dividends on the Policy, the Employer shall have the right to choose the option or combination of options it desires from among those offered by the Insurer. The Employer shall notify the Insurer of its choice.

### **Section 2 Beneficiary designation rights**

Employee shall have the right and power to designate a beneficiary or beneficiaries to receive his or her share of the proceeds payable on his or her death and to elect and change a payment option for such beneficiaries but subject to any right or interest the Employer may have in such proceeds as provided in the Agreement.

### **Section 3 Payment of premiums**

Each premium on the Policy shall be paid in full by the Employer as it becomes due. Premiums shall be payable annually.



#### **Section 4 Division of death proceeds of the policy**

The division of death proceeds of the policy is as follows:

- A. The Employer shall be entitled to an amount equal to the cumulative premiums paid as of the date of death or, if greater, the policy's cash value determined as of the date to which premiums are paid, less any indebtedness, and interest on such indebtedness determined as of the date of death. Such cash value shall include any outstanding accumulations or cash value of any paid-up additions and any postmortem dividends determined as of the date of death.
- B. The Employee's beneficiary or beneficiaries, designated in accordance in Section 2, shall be entitled to the remainder of such proceeds.
- C. Employer and Employee's beneficiary or beneficiaries shall share in any interest due on the death proceeds as their respective share of the proceeds as defined above bears to the total proceeds excluding any such interest.

#### **Section 5 Division of the cash surrender value of the policy**

If the policy is surrendered while this Agreement is in effect, the Employer shall be entitled to an amount equal to the policy's cash surrender value, determined as of the date to which premiums are paid less any indebtedness and interest on such indebtedness determined as of the date of the surrender. Such cash value shall include any outstanding dividend accumulations or cash value of any paid-up additions determined as of the date of surrender.

#### **Section 6 Disability waiver of premium**

If the policy contains a premium waiver provision, any premium waived shall be considered for all purposes of this Agreement as having been paid by the Employer.

#### **Section 7 Termination of agreement**

This Agreement will terminate when the first of any of the following events occurs:

- A. Termination of the Employee's employment with the Employer for reasons other than death;
- B. At either party's submission of thirty (30) day written notice to the other party of intent to terminate the Agreement;
- C. Performance of the Agreement's terms following the death of the Employee; or
- D. Failure by either the Employer or the Employee, for any reason, to make the premium contributions required under Section 3 of this Agreement.

## **Section 8 Disposition of policy upon termination of agreement**

Upon the termination of this Agreement for any reason other than Section 7(C) above, the Employee shall have a thirty (30) day option to purchase the Policy from the Employer. The purchase price of the Policy shall be an amount equal to the greater of (a) the total premium contributions made by the Employer (pursuant to Section 3 herein) or (b) the cash surrender value, including dividend accumulations and the cash value of dividend additions existing in the Policy at the end of the period for which premiums have been paid. If the Policy shall then be encumbered by assignment, policy loan, or otherwise, the Employer shall either remove such encumbrance or reduce the sale price to the Employee by the total amount of indebtedness outstanding against the Policy. If the Employee exercises such an option to purchase, the Employer shall execute all necessary documents required by the Insurer to affect a transfer of ownership, or absolute assignment, of the Policy over to and in favor of the Employee. If the Employee does not exercise their right to acquire the policy, continued ownership by the Employer shall constitute satisfaction of any obligation the Employee has to the Employer with respect to the Policy and arising out of its purchase and premium payments.

## **Section 9 Taxable income**

The Employee is responsible for determining the amount, if any, includable in their gross income for tax purposes as a result of this Agreement.

## **Section 10 Employee's right to assign interest**

The Employee shall have the right to assign their entire interest in this Agreement by written notice of assignment, which executed assignment shall then be attached to this Agreement and made a part hereof. The provisions of such assignment shall be binding on the Employee and the Employer notwithstanding any provisions herein to the contrary, provided that such assignment shall be effective only if all rights and interests of the Employee herein are assigned in full and irrevocably.

## **Section 11 Insurer's obligations**

The Insurer is not a party to this Agreement. It is understood by the parties hereto that in issuing such policy of insurance, the Insurer shall have no liability except as set forth in the policy and except as set forth in Sections 12 and 14 of this Agreement. Except as set forth in Sections 12 and 14, the Insurer shall not be bound to inquire into, or take notice of, any of the covenants herein contained as to the policy of insurance or as to application of proceeds of such policy. Except as set forth in Sections 12 and 14, upon the death of the Insured, the Insurer shall be discharged from all liability on payment of the proceeds in accordance with the policy provisions and without regard to this Agreement or any amendment hereof.

## **Section 12 Fiduciary provisions**

[NAME OF NAMED FIDUCIARY] is hereby designated as the "Named Fiduciary" for this Agreement, and they shall have the authority to control and manage the operation and administration of such strategy. However, [Minnesota Life Insurance Company/Securian Life Insurance Company], St. Paul, Minnesota, shall have the sole authority with regard to the review and final decision on the claim for benefits under its policy, as provided in the claims procedure set forth in Section 14.

### Section 13 Allocation of fiduciary responsibilities

[NAME OF 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 such strategy. [NAME OF 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 under this Agreement, together with a signed acknowledgment of their acceptance by the persons to whom the responsibilities were allocated.

### Section 14 Claims procedure

The following claims procedure shall apply to this Split-dollar Agreement:

- A. **Filing of a claim for benefits.** The Employee or the beneficiary of the Policy shall make a claim for the benefits provided under the Policy in the manner provided in the Policy.
- B. **Claim denial.** With respect to a claim for benefits under said Policy, [Minnesota Life Insurance Company/Securian Life Insurance Company] shall be the entity which reviews and makes decisions on claim denials according to the terms of the Policy.
- C. **Notification to claimant of decisions.** If a claim is wholly or partially denied, notice of the decision, meeting the requirements of Section (D) following, shall be furnished to the claimant within a reasonable period of time after a claim has been filed.
- D. **Content of notice.** The Insurer shall provide, to any claimant who is denied a claim for benefits 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;
  - 2. Specific reference to pertinent Policy or provisions of this agreement 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 this Agreement's claim review procedure, as set forth in Sections (E) and (F) below.
- E. **Review procedure.** The purpose of the review procedure set forth in this Section and Section (F) below is to provide a method by which a claimant under the Split-dollar Agreement may have a reasonable opportunity to appeal a denial of claim for a full and fair review. To accomplish that purpose, the claimant or their duly authorized representative:
  - 1. May request a review upon written application to the Insurer;
  - 2. May review pertinent Split-dollar Agreement documents or agreements; and
  - 3. May submit issues and comments in writing. A claimant or their duly authorized representative shall request a review by filing a written application for review at any time within sixty (60) days after receipt by the claimant of written notice of the denial of the claim.

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

1. The decision on review shall be made by the Insurer, which may, in its discretion, hold a hearing on the denied claim. The Insurer 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 not 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 policy or provisions of this Agreement on which the decision is based.

**Section 15 Amendments**

Amendments may be added to this Agreement by a written agreement signed by each of the parties and attached hereto.

**Section 16 Choice of law**

This Agreement shall be subject to and construed according to the laws of the State of [STATE].

**Section 17 Binding agreement**

This Agreement shall bind the Employer and its successors and assigns, this Employee and their heirs, executors, administrators, and assigns, and any Policy beneficiary.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

\_\_\_\_\_  
Employee name

\_\_\_\_\_  
Employer name

By \_\_\_\_\_

By \_\_\_\_\_

## SAMPLE

# Non-equity collateral assignment arrangement: economic benefit approach (minority owner or key executive owned)

**An exception to the general rule of split-dollar ownership occurs where at all times, the only economic benefit being provided by the non-owner to the owner is current life insurance protection. In that case, the employer is treated as the owner for split-dollar purposes. As long as the Agreement never gives the employee a current or future right in the cash values, the plan will be taxed as a split-dollar arrangement under the economic benefit regime and not the loan regime. See Reg. Section 1.61-22(c)(1)(ii).**

(This specimen agreement should only be used as a guide. The drafting of the final agreement is the sole responsibility of the attorneys representing the parties. This specimen agreement should not be used if an attempt will be made to exclude the policy from the estate of a controlling shareholder.)

THIS AGREEMENT is entered into this [DAY] day of [MONTH], [YEAR], by and between [NAME OF CORPORATION] (hereinafter called "the Employer") and between [NAME OF EMPLOYEE] (hereinafter called "the Employee").

WHEREAS, the Employee is a valued Employee of the Employer and the Employer wishes to retain them in its employ; and

WHEREAS, the Employer, as an inducement to such continued employment, wishes to assist the Employee with their personal life insurance program;

NOW, THEREFORE, the Employer and the Employee agree as follows:

### **Section 1 Description of policy: policy ownership**

In furtherance of the purposes of this Agreement, the Employee will purchase and own a certain policy of life insurance on his own life, being Policy No. [POLICY NUMBER], issued by the [Minnesota Life Insurance Company/Securian Life Insurance Company] (hereafter called "the Insurer") in a face amount of \$[FACE AMOUNT] (said policy being hereinafter called "the Policy"). The Employee's ownership shall be subject to the terms and conditions contained in this Agreement.

### **Section 2 Premium payment method**

Premiums shall be paid annually as of the date of issue and upon each subsequent premium due date. The Employer shall pay the entire premium and the Employee shall recognize the plan's economic benefit as taxable income.

### **Section 3 Collateral assignment and possession of policy**

To secure the advance provided for in Section 2, the Employee shall execute a collateral assignment of the Policy and transfer possession of the Policy to the Employer. A copy of said collateral assignment is attached hereto as Schedule A. The Employer covenants that it will not exercise its rights under the collateral assignment in such a manner as to defeat the rights of the Employee or the policy beneficiary under this Agreement. Specifically, the Employer covenants that it will not surrender the Policy unless the Employee has defaulted on their obligations under this Agreement, or the Agreement has terminated as provided in Section 9.

The Employer shall have all incidents of ownership of the Policy during the period of the advances. The Employee shall have the right to name the Policy beneficiary. The Employer shall make the Policy available to the Insurer, in order to make any change desired by the Employee as to the designation of beneficiary subject to the collateral assignment.

To the extent that the Insurer declares dividends on the Policy, the Employer shall have the right to choose the option or combination of options it desires from among those offered by the Insurer. The Employer shall notify the Employee and Insurer of its choice, and the Employee agrees to execute any documents necessary to choose or change the policy's dividend option.

### **Section 4 Division of death proceeds of the policy**

The division of death proceeds of the policy is as follows:

- A. The Employer shall be entitled to an amount equal to the cumulative premiums paid as of the date of death or, if greater, the policy's cash value determined as of the date to which premiums are paid, less any indebtedness, and interest on such indebtedness determined as of the date of death. Such cash value shall include any outstanding accumulations or cash value of any paid-up additions and any postmortem dividends determined as of the date of death.
- B. The Employee's beneficiary or beneficiaries, designated in accordance in Section 2, shall be entitled to the remainder of such proceeds.
- C. Employer and Employee's beneficiary or beneficiaries shall share in any interest due on the death proceeds as their respective share of the proceeds as defined above bears to the total proceeds excluding any such interest.

### **Section 5 Incident of ownership in policy cash values**

While this Agreement is in effect, the Employee shall retain all incidents of ownership in the policy except those assigned to the Employer. Through collateral assignment from the Employee, the Employer shall have all incidents of ownership in policy cash values, including the right to surrender or cancel the policy and the right to borrow against the policy.

### **Section 6 Disability waiver of premium**

If the policy contains a premium waiver provision, any premium waived shall be considered for all purposes of this Agreement as having been paid by the Employer.

## **Section 7 Division of the cash surrender value of the policy**

If the policy is surrendered while this Agreement is in effect, the Employer shall be entitled to an amount equal to the policy's cash surrender value, determined as of the date to which premiums are paid less any indebtedness and interest on such indebtedness determined as of the date of the surrender. Such cash value shall include any outstanding dividend accumulations or cash value of any paid-up additions determined as of the date of surrender.

## **Section 8 Employer's loan rights**

The Employer shall have the right to obtain policy loans from the Insurer, subject to the policy's maximum value.

Note: The inclusion of this language will likely cause the inclusion of the death benefit proceeds for a Controlling Owner. Please use the SAMPLE - Collateral assignment method split-dollar life insurance agreement economic benefit approach (trust owned).

## **Section 9 Termination of agreement**

This Agreement will terminate when the first of any of the following events occurs:

- A. Termination of the Employee's employment with the Employer for reasons other than death;
- B. Either party's submission of written notice, to the other party, of intent to terminate the Agreement;
- C. Performance of the Agreement's terms, following the death of the Employee; or
- D. Failure by either the Employer or the Employee, for any reason, to make the premium contributions required under Section 2 of this Agreement.

## **Section 10 Disposition of policy upon termination of agreement**

Upon the termination of this Agreement for any reason other than Section 9(C) above, the Employee shall have a ninety (90) day option to receive from the Employer a release of the Employer's interest in the policy in consideration of a cash payment to the Employer, whereupon this Agreement shall terminate. Such cash payment shall be the greater of the Employer's share of the cash value of the policy on the date of such release of assignment as defined in this Agreement, or the amount of the premiums which have been paid by the Employer prior to the date of such release of assignment. These provisions are subject to the terms of Section 6, which covers situations in which the Policy's supplemental agreements have been activated.

If the Employee exercises such an option, the Employer shall execute all necessary documents required by the Insurer to remove and satisfy the collateral assignment outstanding on the Policy.

If the Employee does not exercise their right to acquire the Policy, they shall execute all documents necessary to transfer ownership of the Policy to the Employer. Such transfer shall constitute satisfaction of any obligation the Employee has to the Employer with respect to this Agreement.

## **Section 11 Taxable income**

The Employee is responsible for determining the amount, if any, includable in his or her gross income for tax purposes as a result of this Agreement.

## Section 12 Employee's right to assign his or her interest

The Employee shall have the right to transfer their entire interest in the Policy (other than rights assigned to the Employer pursuant to this Agreement). If the Employee makes such a transfer, all his or her rights shall be vested in the Transferee and the Employee shall have no further interest in this Policy and Agreement.

## Section 13 Insurer's obligations

The Insurer is not a party to this Agreement. It is understood by the parties hereto that in issuing such policy of insurance, the Insurer shall have no liability except as set forth in the Policy and except as set forth in any assignment of the Policy filed at its Home Office and in Sections 14 and 16 of this Agreement. Except as set forth in Sections 14 and 16, the Insurer shall not be bound to inquire into or take notice of any of the covenants herein contained as to the policy of insurance or as to application of proceeds of such policy. Upon the death of the insured, the payment of the proceeds in accordance with Sections 14 and 16 of this agreement, the Insurer shall be discharged from all liability.

## Section 14 Fiduciary provisions

[NAME OF NAMED FIDUCIARY] is hereby designated as the "Named Fiduciary" for this Split-dollar Agreement, and they shall have the authority to control and manage the operation and administration of such strategy. However, [Minnesota Life Insurance Company/Securian Life Insurance Company], St. Paul, Minnesota, shall have sole authority with regard to the review and final decision on the claim for benefits under its policy, as provided in the claims procedure set forth in Section 16.

## Section 15 Allocation of fiduciary responsibilities

[NAME OF NAMED FIDUCIARY] may allocate their responsibilities for the operation and administration of this Split-dollar Agreement, including the designation of a person to carry out fiduciary responsibilities under such strategy. [NAME OF NAMED FIDUCIARY] shall effect such allocation of their responsibilities by delivering to the Employer a written instrument signed by them that specifies the nature and extent of the responsibilities allocated under this Split-dollar Agreement, together with a signed acknowledgment of their acceptance by the persons to whom the responsibilities were allocated.

## Section 16 Claims procedure

The following claims procedure shall apply to this Split-dollar Agreement:

- A. **Filing of a claim for benefits.** The Trust or the beneficiary of the Policy shall make a claim for the benefits provided under the Policy in the manner provided in the Policy.
- B. **Claim denial.** With respect to a claim for benefits under said Policy, [Minnesota Life Insurance Company/Securian Life Insurance Company] shall be the entity that reviews and makes decisions on claims denials according to the terms of the Policy.
- C. **Notification to claimant of decisions.** If a claim is wholly or partially denied, notice of the decision, meeting the requirements of Section (D) following, shall be furnished to the claimant within a reasonable period of time after a claim has been filed.



D. **Content of notice.** The Insurer shall provide, to any claimant who is denied a claim for benefits, 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;
2. Specific reference to pertinent Policy or provisions of this Agreement 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 this Agreement's claim review procedure, as set forth in Sections (E) and (F) below.

E. **Review procedure.** The purpose of the review procedure set forth in this Section and Section (F) below is to provide a method by which a claimant under this Split-dollar Agreement may have a reasonable opportunity to appeal a denial of claim for a full and fair review. To accomplish that purpose, the claimant or their duly authorized representative:

1. May request a review upon written application to the Insurer;
2. May review pertinent Split-dollar documents or agreements; and
3. May submit issues and comments in writing. A claimant (or their duly authorized representative), shall request review by filing a written application for review at any time within sixty (60) days after receipt by the claimant of written notice of the denial of the 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 Insurer, which may, at its discretion, hold a hearing on the denied claim. The Insurer 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 not 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 Policy or provisions of this Agreement on which the decision is based.

## **Section 17 Amendments**

Amendments may be added to this Agreement by a written agreement signed by each of the parties and attached hereto.

**Section 18 Choice of law**

This Agreement shall be subject to and construed according to the laws of the State of [STATE].

**Section 19 Binding agreement**

This Agreement shall bind the Employer and its successors and assigns, this Employee and their heirs, executors, administrators, and assigns, and any Policy beneficiary.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

\_\_\_\_\_  
Employee name

\_\_\_\_\_  
Employer name

By \_\_\_\_\_  
Signature

By \_\_\_\_\_  
Signature

## Schedule A

# Collateral assignment

For value received the undersigned hereby assign, transfer and set over to [NAME OF EMPLOYER] of [EMPLOYER'S ADDRESS], and its successors (herein called the "Assignee"), Policy No. [POLICY NUMBER] issued by [Minnesota Life Insurance Company/Securian Life Insurance Company], (herein called the "Policy"), upon the life of [NAME OF EMPLOYEE] of [EMPLOYEE'S ADDRESS] and all claims, options, privileges, rights, title and interest therein and thereunder (except as provided in Paragraph C hereof), subject to all the terms and conditions of the Policy and to all superior liens, if any, which the Insurer may have against the Policy. The undersigned by this instrument jointly and severally agree and the Assignee by the acceptance of this assignment also agrees to the conditions and provisions set forth herein.

- A. It is expressly agreed that, without detracting from the generality of the foregoing, the following specific rights are included in this agreement and pass by virtue hereof:
1. The sole right to collect from the Insurer the net proceeds of the Policy when it becomes a claim by death or maturity;
  2. The sole right to surrender the Policy and receive the surrender value thereof at any time provided by the terms of the Policy and at such other times as the Insurer may allow;
  3. The sole right to obtain one or more loans or advances on the Policy, either from the Insurer, or, at any time, from other persons, and to pledge or assign the Policy as security for such loans or advances;
  4. The sole right to collect and receive all distributions or shares of surplus, dividend deposits or additions to the Policy now or hereafter made or apportioned thereto, and to exercise any and all options contained in the Policy with respect thereto; provided, that unless and until the Assignee shall notify the Insurer in writing to the contrary, the distributions or shares of surplus, dividend deposits and additions shall continue on the strategy in force at the time of this assignment; and
  5. The sole right to exercise all nonforfeiture rights permitted by the terms of the Policy or allowed by the Insurer and to receive all benefits and advantages derived therefrom.
- B. It is expressly agreed that the following specific rights, as long as the Policy has not been surrendered, are reserved and excluded from this assignment and do not pass by virtue hereof:
1. The right to collect from the Insurer any disability benefits payable in cash that does not reduce the amount of insurance;
  2. The right to designate any change in the beneficiary;
  3. The right to elect any optional mode of settlement permitted by the Policy or allowed by the Insurer; but the reservation of these rights shall in no way impair the right of the Assignee to surrender the Policy completely with all its incidents or impair any other right of the Assignee hereunder, and any designation or change of beneficiary or election of a mode of settlement shall be made subject to this assignment and to the rights of the Assignee hereunder.
- C. This assignment is made and the Policy is to be held as collateral security for any and all liabilities of the undersigned, or any of them, to the Assignee, arising under an

Agreement dated [DATE OF AGREEMENT], (all of which liabilities secured or become secured are herein called "Liabilities"). It is expressly agreed that all sums received by the Assignee hereunder either in event of death of the Insured, the maturity or surrender of the Policy, the obtaining of a loan or advance on the Policy, or otherwise, shall first be applied to the payment of one or more of the following in such order of preference as the Assignee shall determine: (a) principal of and/or interest on Liabilities; (b) premiums paid by the Assignee on the Policy.

D. The Assignee covenants and agrees with the undersigned as follows:

1. That any balance of sums received hereunder from the Insurer remaining after payment of the existing Liabilities, matured or unmatured, shall be paid by the Assignee to the persons entitled thereto under the terms of the Policy had this assignment not been executed;
2. That the Assignee will not exercise either the right to surrender the Policy or the right to obtain policy loans from the Insurer, until there has been either default in any of the Liabilities pursuant to said Agreement or termination of said Agreement as therein provided; and
3. That the Assignee will upon request forward without reasonable delay to the Insurer the Policy for endorsement of any designation or change of beneficiary or any election of an optional mode of settlement.

E. Each of the undersigned declares that no proceedings in bankruptcy are pending against him/her and that their property is not subject to any assignment for the benefit of creditors.

Signed and sealed this [DAY] day of [MONTH], [YEAR].

\_\_\_\_\_  
Policy owner

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Witness name

\_\_\_\_\_  
Witness name

**Individual Acknowledgment**

State of [STATE]

County of [COUNTY]

On the [DAY] day of [MONTH], [YEAR], before me personally came [NAME OF EMPLOYEE] to me known to be the individual described in and who executed the assignment above and acknowledged to me that they executed the same.

\_\_\_\_\_  
Notary Public



## SAMPLE

# Non-equity collateral assignment: economic benefit approach (limited collateral assignment for controlling owners – trust owned)

**An exception to the general rule of split-dollar ownership occurs where at all times, the only economic benefit being provided by the non-owner to the owner is current life insurance protection. In that case, the employer is treated as the owner for split-dollar purposes. As long as the Agreement never gives the employee a current or future right in the cash values, the plan will be taxed as a split-dollar arrangement under the economic benefit regime and not the loan regime. See Reg. Section 1.61-22(c)(1)(ii).**

*(This specimen agreement should only be used as a guide. The drafting of the final agreement is the sole responsibility of the attorneys representing the parties.)*

THIS AGREEMENT is entered into this [DAY] day of [MONTH], [YEAR], by and between [NAME OF EMPLOYER] (hereinafter called “the Employer”) and between [NAME OF TRUSTEE] or its successors in trust as trustee of [NAME OF TRUST] dated [DATE OF TRUST] (hereinafter called “the Trust”).

WHEREAS, the Employer in recognition of the unique and essential services of [NAME OF EMPLOYEE] (hereinafter called “the Employee”) to the Employer and their contributions to the Employer, has determined that its best interests would be served by entering into this Agreement with the Trust, (hereinafter called “the Agreement”), whereby the Employer will assist the Trust in maintaining certain life insurance for the benefit and protection of the Employee’s family, subject to the condition that certain rights be assigned to the Employer as security for repayment of the Employer’s premium contributions;

NOW, THEREFORE, the Employer and the Trustee agree as follows:

### **Section 1 Policy ownership**

In furtherance of the purposes of this Agreement, the Trust will purchase and own a policy of life insurance on the Employee’s life, that is Policy Number [POLICY NUMBER], issued by the [Minnesota Life Insurance Company/Securian Life Insurance Company] (hereinafter called “the Insurer”) in a face amount of \$[FACE AMOUNT] (said policy being hereinafter called “the Policy”). The Trust’s ownership shall be subject to the terms and conditions contained in this Agreement.

## **Section 2 Advance to trust**

The Employer shall advance to the Trust each year, without interest, the entire amount necessary to pay the entire premium due each year for the Policy, less any dividend applied to reduce premiums. The Employer shall pay this amount directly to the Insurer. The Employee will recognize the plan's economic benefit as taxable income and is deemed to have made a gift of that amount to the Trust.

## **Section 3 Limited collateral assignment**

To secure the advance provided for in Section 2, the Trust shall execute a Limited Collateral Assignment of certain rights of the Policy. A copy of said Limited Collateral Assignment is attached hereto as Schedule A. The Employer covenants that it will not exercise its rights under the Limited Collateral Assignment in such a manner as to defeat the rights of the Trust or the policy beneficiary under this Agreement.

## **Section 4 Division of death proceeds of the policy**

The division of death proceeds of the policy is as follows:

- A. The Employer shall be entitled to an amount equal to the cumulative premiums paid as of the date of death or, if greater, the policy's cash value determined as of the date to which premiums are paid. Such cash value shall include any outstanding accumulations or cash value of any paid-up additions and any postmortem dividends determined as of the date of death.
- B. The Employee's beneficiary or beneficiaries, designated in accordance with Section 2, shall be entitled to the remainder of such proceeds.
- C. Employer and Employee's beneficiary or beneficiaries shall share in any interest due on the death proceeds as their respective share of the proceeds as defined above bears to the total proceeds excluding any such interest.

## **Section 5 Incident of ownership in policy cash values**

While this Agreement is in effect, the Trust shall retain all incidents of ownership in the policy except those assigned to the Employer. Through collateral assignment from the Trust to the Employer, the Employee shall have no current or future right in the cash values, and, while this Agreement is in effect, neither the Trust nor the Employer shall have the power to access or pledge cash values for purposes of making a loan, partial surrender or withdrawal of policy values.

Notwithstanding anything to the contrary, to the extent that the Insurer declares dividends on the Policy, the Trustee shall have the right to choose the option or combination of options it desires from among those offered by the Insurer.

## **Section 6 Disability waiver of premium**

If the policy contains a premium waiver provision, any premium waived shall be considered for all purposes of this Agreement as having been paid by the Employer.

## **Section 7 Division of the cash surrender value of the policy**

If the policy is surrendered while this Agreement is in effect, the Employer shall be entitled to an amount equal to the policy's cash surrender value, determined as of the date to which premiums are paid less any indebtedness and interest on such indebtedness determined as of the date of the surrender. Such cash value shall include any outstanding dividend accumulations or cash value of any paid-up additions determined as of the date of surrender.

## **Section 8    Loan, partial surrender and withdrawal rights**

Neither the Trust nor the Employer shall have the right to obtain policy loans, partial surrenders or withdrawals from the Policy while this Agreement is in effect.

## **Section 9    Termination of agreement**

This Agreement will terminate when the first of any of the following events occurs:

- A. Termination of the Employee's employment with the Employer for reasons other than death;
- B. The Trust's submission of written notice, to the Employer, of intent to terminate the Agreement;
- C. Performance of the Agreement's terms, following the death of the Employee; or
- D. Failure by either the Employer or the Trust, for any reason, to make the premium contributions required under Section 2 of this Agreement.

## **Section 10    Disposition of policy upon termination of agreement**

Upon the termination of this Agreement for any reason other than Section 9(C) above, the Trustee shall have a ninety (90) day option to receive from the Employer a release of the Employer's interest in the policy in consideration of a cash payment to the Employer, whereupon this Agreement shall terminate. Such cash payment shall be the greater of the Employer's share of the cash value of the policy on the date of such release of assignment as defined in this Agreement, or the amount of the premiums which have been paid by the Employer prior to the date of such release of assignment. These provisions are subject to the terms of Section 6, which covers situations in which the Policy's supplemental agreements have been activated.

If the Trustee exercises such an option, the Employer shall execute all necessary documents required by the Insurer to remove and satisfy the Limited Collateral Assignment outstanding on the Policy.

If the Trustee does not exercise their right to acquire the Policy, they shall execute all documents necessary to transfer ownership of the Policy to the Employer. Such transfer shall constitute satisfaction of any obligation the Employee has to the Employer with respect to this Agreement.

## **Section 11    Taxable income**

The Employee is responsible for determining the amount, if any, includable in their gross income for tax purposes and for determining the value of any gifts for gift tax purposes, as a result of this Agreement.

## **Section 12    Trust's right to assign its interest**

The Trust shall have the right to transfer its entire interest in the Policy (other than rights assigned to the Employer pursuant to this Agreement). If the Trust makes such a transfer, all its rights shall be vested in the Transferee and the Trust shall have no further interest in this Policy and Agreement.

### Section 13 Insurer's obligations

The Insurer is not a party to this Agreement. It is understood by the parties hereto that in issuing such Policy of insurance, the Insurer shall have no liability except as set forth in the Policy and except as set forth in any assignment of the Policy filed at its Home Office and in Sections 14 and 16 of this Agreement. Except as set forth in Sections 14 and 16, the Insurer shall not be bound to inquire into, or take notice of any of the covenants herein contained as to the policy of insurance or as to application of proceeds of such policy. Upon the death of the Insured, and payment of the proceeds in accordance with Sections 14 and 16 of this Agreement, the Insurer shall be discharged from all liability.

### Section 14 Fiduciary provisions

[NAME OF NAMED FIDUCIARY] is hereby designated as the "Named Fiduciary" for this Agreement, and they shall have the authority to control and manage the operation and administration of such strategy. However, [Minnesota Life Insurance Company/Securian Life Insurance Company], St. Paul, Minnesota, shall have the sole authority with regard to the review and final decision on the claim for benefits under its policy, as provided in the claims procedure set forth in Section 16.

### Section 15 Allocation of fiduciary responsibilities

[NAME OF NAMED FIDUCIARY] may allocate their responsibilities for the operation and administration of the Split-dollar Agreement, including the designation of persons to carry out fiduciary responsibilities under such strategy. [NAME OF NAMED FIDUCIARY] shall effect such allocation of their responsibilities by delivering to the Employer a written instrument signed by them that specifies the nature and extent of the responsibilities allocated under this Agreement, together with a signed acknowledgment of their acceptance by the persons to whom the responsibilities were allocated.

### Section 16 Claims procedure

The following claims procedure shall apply to this Split-dollar Agreement:

- A. **Filing of a claim for benefits.** The Trust or the beneficiary of the Policy shall make a claim for the benefits provided under the Policy in the manner provided in the Policy.
- B. **Claim denial.** With respect to a claim for benefits under said Policy, [Minnesota Life Insurance Company/Securian Life Insurance Company] shall be the entity which reviews and makes decisions on claims denials according to the terms of the Policy.
- C. **Notification to claimant of decisions.** If a claim is wholly or partially denied, notice of the decision, meeting the requirements of Section (D) below following, shall be furnished to the claimant within a reasonable period of time after a claim has been filed.



D. **Content of notice.** The Insurer shall provide, to any claimant who is denied a claim for benefits, 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;
2. Specific reference of this agreement 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 this Agreement's claim review procedure, as set forth in Sections (E) and (F) below.

E. **Review procedure.** The purpose of the review procedure set forth in this Section and Section (F) below is to provide a method by which a claimant under this Split-dollar Agreement may have a reasonable opportunity to appeal a denial of claim for a full and fair review. To accomplish that purpose, the claimant or their duly authorized representative:

1. May request a review upon written application to the Insurer;
2. May review pertinent Split-dollar documents or agreements; and
3. May submit issues and comments in writing. A claimant, or their duly authorized representative, shall request review by filing a written application for review at any time within sixty (60) days after receipt by the claimant of written notice of the denial of the 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 Insurer, which may, at its discretion, hold a hearing on the denied claim. The Insurer 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 not 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 Policy or provisions of this Agreement on which the decision is based.

## **Section 17 Amendments**

Amendments may be added to this Agreement by a written agreement signed by each of the parties and attached hereto.

## **Section 18 Choice of law**

This Agreement shall be subject to, and construed according to, the laws of the State of [STATE].

**Section 19 Binding agreement**

This Agreement shall bind the Employer and the Employer’s successors and assigns, the Trust and its successors and assigns, and any Policy beneficiary.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

\_\_\_\_\_  
Trustee

\_\_\_\_\_  
Employer

## Schedule A

# Limited collateral assignment

THIS ASSIGNMENT, made and entered into effective this [DAY ] day of [MONTH], [YEAR], by the undersigned as owner (hereinafter called “the Trust”) of the certain Life Insurance Policy No. [POLICY NUMBER] issued by [Minnesota Life Insurance Company/Securian Life Insurance Company], St. Paul, Minnesota (hereinafter called “the Insurer”), and any supplementary contracts issued in connection therewith (said policy and contracts being herein called “the Policy”), upon the life of [NAME OF EMPLOYEE] (hereinafter called “the Insured”), to the [NAME OF EMPLOYER] (hereinafter called “the Assignee”).

WHEREAS, the Insured is a valued employee of the Assignee, and

WHEREAS, said Assignee desires to assist the Insured with his personal life insurance program by advancing to the Trust all or a portion of the annual premium due on the Policy, as more specifically provided for in the Split-dollar Insurance Agreement entered into between the Trust and the Assignee (hereinafter called “the Agreement”); and

WHEREAS, in consideration of the Assignee’s agreement to make said advances, the Trust agrees to grant the Assignee a security interest in said Policy as collateral security for the repayment of said advances by the Trust;

NOW THEREFORE, for value received, the undersigned hereby assigns, transfers and sets over to the Assignee, its successors and assigns the following specific rights in the Policy, subject to the following terms and conditions:

1. The Assignee’s interest in the policy shall be limited to:
  - A. The right to be repaid the greater of (a) the total value of the advances made by the Assignee, or its transferee, pursuant to Section 2 of the Agreement as of the date to which premiums have been paid, or (b) the total cash value of the policy, including dividend accumulations and the cash value of the dividend additions at the last Policy anniversary, in the event the Policy is surrendered or canceled by the Trust or its transferee, as provided in Section 9 of the Agreement.
  - B. The right to be repaid the greater of (a) the total value of the advances made by the Assignee, or its transferee, pursuant to Section 2 of the Agreement as of the date to which premiums have been paid, or (b) the total cash value of the policy, including dividend accumulations and the cash value of the dividend additions at the last Policy anniversary as of the date of death, in the event of the death of the Employee as provided in Section 4 of the Agreement; and
  - C. The right to be repaid the greater of (a) the total value of the advances made by the Assignee, or its transferee, pursuant to Section 2 of the Agreement as of the date to which premiums have been paid, or (b) the total cash value of the policy, including dividend accumulations and the cash value of the dividend additions at the last Policy anniversary as of the date to which premiums have been paid, in the event the waiver-of-premium benefit becomes operational, as provided in Section 6 of the Agreement.
2. The Trust retains no current or future rights to policy cash values. Policy cash values as assigned to the Employer, except that while this Agreement is in effect neither the Trust nor the Employer shall have the power to access or pledge cash values for

purposes of making a loan, partial surrender or withdrawal of policy values.

3. Except as specifically herein granted to the Assignee and Section 3, the Trust shall retain all other incidents of ownership in the Policy, including but not limited to:
  - A. The sole and exclusive right to cancel or surrender the Policy;
  - B. The right to assign its interest in the Policy;
  - C. The right to change the beneficiary of that portion of the proceeds to which it is entitled under Section 4 of the Agreement; and
  - D. The right to exercise all settlement options permitted by the terms of the Policy, provided, however, that all rights retained by the Trust shall be subject to the terms and conditions of the Agreement.
4. The Insurer is hereby authorized to recognize the Assignee's claims to rights hereunder without investigating the reason for any action taken by the Assignee, the validity or amount of any of the liabilities of the Trust to the Assignee under the Agreement, the existence of any default therein, the giving of any notice required herein, or the application to be made by the Assignee of any amounts to be paid to the Assignee. The signature of the Assignee shall be sufficient for the exercise of any rights under the Policy assigned to the Assignee and the receipt of the Assignee for any sums received by it shall be a discharge and release therefore to the Insurer.
5. The Insurer shall be fully protected in recognizing the requests made by the Trust for surrender of the Policy with or without the consent of the Assignee, and upon such surrender the Policy shall be terminated and shall be of no further force of effect.
6. Upon the full payment of the liabilities advanced pursuant to the Agreement, the Assignee shall reassign to the Trust all specific rights included in this Collateral Assignment.
7. In the event of any conflict between the provisions of this assignment and the Agreement, or any other evidence of any liability with respect to the Policy or the rights of collateral security therein, the provisions of this Assignment shall prevail, as to the Insurer, and this Agreement shall prevail between the parties thereto.
8. It is the intent of the undersigned to assign an interest in proceeds becoming payable under the Policy as security for certain advances from the Assignee, without giving the Assignee any incidents of ownership (as defined in Treasury Regulation 20.2042-1(c)(6)) in the Policy. It is agreed that this Assignment shall be construed so as to accomplish this intent.

Signed and sealed this [DAY] day of [MONTH], [YEAR].

\_\_\_\_\_  
Policy owner

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Witness name

\_\_\_\_\_  
Witness name

**Individual Acknowledgment**

State of [STATE]

County of [COUNTY]

On the [DAY] day of [MONTH], [YEAR], before me personally came [NAME OF EMPLOYEE] to me known to be the individual described in and who executed the assignment above and acknowledged to me that they executed the same.



\_\_\_\_\_  
Notary Public

## Sample

# Equity collateral assignment: loan regime approach

*(This specimen agreement should only be used as a guide. The drafting of the final agreement is the sole responsibility of the attorneys representing the parties.)*

[NAME OF EMPLOYER], hereinafter referred to as the “Employer,” and [NAME OF TRUSTEE OR EMPLOYEE], hereinafter referred to as the “Owner,” agree for themselves, their successors and assigns, as follows:

The purpose of this Agreement is for the Employer to assist [NAME OF EMPLOYEE], hereinafter referred to as the “Key Employee” or “Insured,” in purchasing a life insurance policy. To do so, the Owner has purchased policy number [POLICY NUMBER] with an initial face amount of \$[FACE AMOUNT] on the Key Employee’s life from [Minnesota Life Insurance Company/Securian Life Insurance Company], hereinafter referred to as the “Insurer.”

### **Section 1 Premium loans from employer**

The Employer agrees to pay the premiums due on the above referenced life insurance policy which premiums shall be considered loans from the Employer to the Owner of the policy. The loans will be subject to the following conditions and as further described in Section 3 of this Agreement.

If the loan is a Demand Loan, include the following language:

Each premium payment made by the Employer shall be a new loan that is added to all prior loans from the Employer. The Owner shall pay any balance of a scheduled premium not payable by the Employer as required by Section 2. In addition to any premium they may be required to pay, the Owner promises to pay to the order of the Employer at such place as the Employer may designate in writing interest annually on the cumulative loan at an annual, short-term interest rate as shown on the attached Schedule A. The unpaid principal of the cumulative loan shall be payable by the Owner at any time on demand of the Employer. Loan principal and unpaid interest shall be secured by policy death benefits and cash values. If the policy values are not sufficient to secure full repayment of the loan when due, the Employer shall have recourse against the Owner to obtain full payment of the loan.

If the loan is a Term Loan, include the following language:

Each premium payment made by the Employer shall be a new loan that is added to all prior loans from the Employer. The Owner shall pay any balance of a scheduled premium not payable by the Employer as required by the preceding selection. In addition to any premium they may be required to pay, the Owner promises to pay to the order of the Employer at its domicile (or at such other place as the Employer may designate in writing) interest annually on the cumulative loan at an annual interest rate as shown on attached Schedule A. When a lump-sum loan is made to include the payment of more than one premium, the entire lump sum shall be secured by policy death benefits and cash values at the time the loan is made; and if policy values are not sufficient to secure full repayment of the loan when due, the Lender shall have recourse against the Borrower to obtain full payment of the loan.

Borrower agrees to repay this loan and any accrued interest to Lender, or Lender's successor or assigns, at the end of [YEARS] years from the date of this Agreement (or on [DATE])

Note: To avoid application of the below-market-rate rules of Section 7872, the parties should use a stated loan rate at or above the applicable federal rate in effect at the time the loan is made, and which is appropriate for the selected term. The Section 7872(f)(2)(A) loan interest rate varies each month in accordance with the applicable federal rates provided by the IRS, depending upon whether the loan is considered a short-term loan (three years or less), mid-term loan (over three years but not over nine years) or long-term loan (over nine years).

## Section 2 Premium payment method

The Employer shall pay the annual premium due on the policy as:

**For Scheduled Premium Loans, include the following language:** an amount equal to the full, scheduled annual premium due on the life insurance policy.

**For Flexible Premium Loans, include the following language:** an amount equal to [PERCENTAGE] percent of Employee's compensation for the prior year for a period of [YEARS] on the life insurance policy.

**For a single loan amount (using Minnesota Life's Premium Deposit Account (not available in all states)), include the following language:** as a single loan amount to be placed into the Premium Deposit Account attached to the life insurance policy.

## Section 3 Beneficiary designation rights

The Owner may designate a beneficiary or beneficiaries to receive any proceeds payable on death of the Insured which are in excess of the Employer's share of such proceeds.

## Section 4 Owner's retained incidents of ownership

Except as to the limited security rights specifically granted the Employer in a separate Collateral Assignment, the Owner retains all incidents of ownership, including the right to surrender or cancel the policy and the right to borrow against the policy. The Owner's right to borrow shall be limited to an amount equal to the maximum policy loan value reduced by the cumulative premium loan provided by the Employer under the split-dollar arrangement described above.

## Section 5 Policy death benefit

The death benefit of the policy shall be divided into two parts: one part for the Employer and the other part for the beneficiary designated by the Owner as allowed in Section 3. The Employer shall be entitled to an amount equal to its cumulative premium loan payments, plus any outstanding interest. The beneficiary(s) designated by the Owner in accordance with Section 3 above shall be entitled to the balance of the death benefit, if any.

If any interest is due upon the death proceeds under the terms of the insurance contract, the Owner and the Employer shall share such interest as their respective share of the death proceeds (as defined in the preceding paragraph) bears to the total death proceeds excluding such interest.

## Section 6 Policy cash surrender value

The cash surrender value of the policy shall be divided into two parts: one part for the Employer and one part for the Owner. The Employer shall be entitled to an amount equal to its cumulative share of premium loan payments plus any outstanding interest due, or the entire cash surrender value of the policy, if less. The Owner shall be entitled to the remainder of the cash surrender value, if any. If the cash surrender value of the policy is less than the Employer's cumulative premium loan payments when the policy is surrendered, the Owner is obligated to pay the difference due on the loan to the Employer out of assets other than those contained in the policy.

## Section 7 Employer's limited policy rights

The Employer shall have no right to obtain policy loans, make withdrawals or otherwise access cash values from the policy.

**Note:** When the insured is a controlling shareholder, any rights to take loans or withdrawals from the policy provided to the corporation will be attributed to the controlling shareholder as an incidence of ownership and included in the shareholder's estate. Rev. Rul. 82-145.

## Section 8 Termination of agreement

This Agreement will terminate when the first of any of the following events occurs:

- A. Termination of the Key Employee's employment with the Employer for reasons other than death;
- B. The Owner's submission of written notice, to the Employer, of intent to terminate the Agreement;
- C. Performance of the Agreement's terms, following the death of the Key Employee; or
- D. Failure by either the Employer or the Owner, for any reason, to make the premium contributions required under Section 2 of this Agreement.

## Section 9 Disposition of policy upon termination of agreement

Upon the termination of this Agreement for any reason other than Section 8(C) above, the Owner shall have a sixty (60) day period to satisfy the repayment obligation to the Employer. The repayment obligation shall be an amount equal to its cumulative share of premium loan payments plus any outstanding interest due, or the entire cash surrender value of the policy, if less. If the cash surrender value of the policy is less than the Employer's cumulative premium loan payments when the policy is surrendered, the Owner is obligated to pay the difference due on the loan to the Employer out of assets other than those contained in the policy.

If the Owner satisfies the repayment obligation, the Employer shall execute all necessary documents required by the Insurer to remove and satisfy the Limited Collateral Assignment outstanding on the Policy. If the Owner does not satisfy the repayment obligation, it shall execute all documents necessary to transfer ownership of the Policy to the Employer. Such transfer shall constitute satisfaction of any obligation the Owner has to the Employer with respect to this Agreement.



## **Section 10 Taxable income**

The Key Employee is responsible for determining the amount, if any, includable in their gross income for tax purposes and for determining the value of any gifts for gift tax purposes, as a result of this Agreement.

## **Section 11 Owner's right to assign its interest**

The Owner shall have the right to transfer its entire interest in the Policy (other than rights assigned to the Employer pursuant to this Agreement). If the Owner makes such a transfer, all its rights shall be vested in the Transferee and the Owner shall have no further interest in this Policy and Agreement.

## **Section 12 Disability waiver of premium benefit**

If the policy contains a disability waiver of premium benefit, any premium waived shall be considered as having been paid by the Owner.

## **Section 13 Insurer's obligations**

The Insurer is not a party to this Agreement. It is understood by the parties hereto that in issuing such Policy of insurance, the Insurer shall have no liability except as set forth in the Policy and except as set forth in any assignment of the Policy filed at its Home Office. The Insurer shall not be bound to inquire into or take notice of any of the covenants herein contained as to the policy of insurance or as to application of proceeds of such policy except as may be provided in any assignment of the Policy filed at its Home Office.

## **Section 14 Fiduciary provisions**

(Named fiduciary, e.g., President of Employer) is hereby designated as the "Named Fiduciary" for the Split-dollar Loan Agreement established herein, and they shall have the authority to control and manage the operation and administration of such strategy. However, [Minnesota Life Insurance Company/ Securian Life Insurance Company], St. Paul, Minnesota, shall have the sole authority with regard to the review and final decision on the claim for benefits under its policy, as provided in the claims procedure set forth in Section 16.

## **Section 15 Allocation of fiduciary responsibilities**

(Named fiduciary) may allocate their responsibilities for the operation and administration of the Split-dollar Loan Agreement, including the designation of persons to carry out fiduciary responsibilities under such strategy. (Named fiduciary) shall effect such allocation of their responsibilities by delivering to the Employer a written instrument signed by them that specifies the nature and extent of the responsibilities allocated under the Split-dollar Loan Agreement, together with a signed acknowledgment of their acceptance by the persons to whom the responsibilities were allocated.

## Section 16 Claims procedure

The following claims procedure shall apply to this Split-dollar Loan Agreement:

- A. **Filing of a claim for benefits.** The Owner or the beneficiary of the Policy shall make a claim for the benefits provided under the Policy in the manner provided in the Policy.
- B. **Claim denial.** With respect to a claim for benefits under said Policy, [Minnesota Life Insurance Company/Securian Life Insurance Company] shall be the entity which reviews and makes decisions on claims denials according to the terms of the Policy.
- C. **Notification to claimant of decisions.** If a claim is wholly or partially denied, notice of the decision, meeting the requirements of Section (D) below following, shall be furnished to the claimant within a reasonable period of time after a claim has been filed.
- D. **Content of notice.** The Insurer shall provide, to any claimant who is denied a claim for benefits, 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;
  2. Specific reference of this agreement 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 this Agreement's claim review procedure, as set forth in Sections (E) and (F) below.
- E. **Review procedure.** The purpose of the review procedure set forth in this Section and Section (F) below is to provide a method by which a claimant under the Split-dollar Loan Agreement may have a reasonable opportunity to appeal a denial of claim for a full and fair review. To accomplish that purpose, the claimant or their duly authorized representative:
1. May request a review upon written application to the Insurer;
  2. May review pertinent Split-dollar Loan Agreement documents or agreements; and
  3. May submit issues and comments in writing. A claimant, or their duly authorized representative, shall request review by filing a written application for review at any time within sixty (60) days after receipt by the claimant of written notice of the denial of the 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 Insurer, which may, at its discretion, hold a hearing on the denied claim. The Insurer 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 not 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 Policy or provisions of this Agreement on which the decision is based.

**Section 17 Amendments**

Amendments may be added to this Agreement by a written agreement signed by each of the parties and attached hereto.

**Section 18 Choice of law**

This Agreement shall be subject to, and construed according to, the laws of the State of [STATE].

**Section 19 Binding agreement**

This Agreement shall bind the Employer and the Employer’s successors and assigns, the Owner and its successors and assigns, and any Policy beneficiary.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

\_\_\_\_\_  
Owner name

\_\_\_\_\_  
Employer name

By \_\_\_\_\_  
Signature

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

(Use this Schedule A for a Demand Loan)

**Schedule A – Demand Loan**

<b>Date of loan</b>	<b>Amount of loan</b>	<b>Interest rate</b>	<b>Current AFR</b>

(Use this Schedule A for a Term Loan)

**Schedule A – Term Loan**

<b>Date of loan</b>	<b>Term of loan</b>	<b>Amount of loan</b>	<b>Interest rate</b>	<b>Current AFR</b>

## Schedule A

# Limited collateral assignment

THIS ASSIGNMENT made and entered into effective this [DAY ] day of [MONTH], by the undersigned as owner (hereinafter called “the Trust”) of the certain Life Insurance Policy No. [POLICY NUMBER] issued by [Minnesota Life Insurance Company/Securian Life Insurance Company], St. Paul, Minnesota (hereinafter called “the Insurer”), and any supplementary contracts issued in connection therewith (said policy and contracts being herein called “the Policy”), upon the life of [INSURED’S NAME] (hereinafter called “the Insured”), to the [NAME OF COMPANY ], a corporation (hereinafter called “the Assignee”).

WHEREAS, the Insured is a valued employee of the Assignee, and WHEREAS, said Assignee desires to assist the Insured with his personal life insurance program by lending to the Trust all or a portion of the annual premium due on the Policy, as more specifically provided for in the Split-dollar Loan Agreement entered into between the Trust and the Assignee (hereinafter called “the Agreement”); and

WHEREAS, in consideration of the Assignee’s agreement to make said advances, the Trust agrees to grant the Assignee a security interest in said Policy as collateral security for the repayment of said loans by the Trust;

NOW THEREFORE, for value received, the undersigned hereby assigns, transfers and sets over to the Assignee, its successors and assigns the following specific rights in the Policy, subject to the following terms and conditions:

1. The Assignee’s interest in the policy shall be limited to:
  - A. The right to be repaid the total value of the outstanding loans made by the Assignee, or its transferee, pursuant to Sections 1 and 2 of the Agreement as of the date to which premiums have been paid, in the event the Policy is surrendered or canceled by the Trust or its transferee, as provided in Section VI of the Agreement.
  - B. The right to be repaid the total value of the outstanding loans made by the Assignee pursuant to Sections 1 and 2 of the Agreement as of the date to which premiums have been paid, in the event of the death of the Employee as provided in Section 5 of the Agreement; and
  - C. The right to be repaid the total value of the outstanding loans made by the Assignee pursuant to Sections 1 and 2 of the Agreement as of the date to which premiums have been paid, in the event the waiver-of-premium benefit becomes operational, as provided in Section 7 of the Agreement.
2. Except as specifically herein granted to the Assignee, the Trust shall retain all incidents of ownership in the Policy, including but not limited to:
  - A. The sole and exclusive right to borrow against the Policy;
  - B. The sole and exclusive right to cancel or surrender the Policy;
  - C. The right to assign its interest in the Policy;
  - D. The right to change the beneficiary of that portion of the proceeds to which it is entitled under Sections 3 and 4 of the Agreement; and
  - E. The right to exercise all settlement options permitted by the terms of the Policy, provided, however, that all rights retained by the Trust shall be subject to the terms and conditions of the Agreement.

3. The Insurer is hereby authorized to recognize the Assignee's claims to rights hereunder without investigating the reason for any action taken by the Assignee, the validity or amount of any of the liabilities of the Trust to the Assignee under the Agreement, the existence of any default therein, the giving of any notice required herein, or the application to be made by the Assignee of any amounts to be paid to the Assignee. The signature of the Assignee shall be sufficient for the exercise of any rights under the Policy assigned to the Assignee and the receipt of the Assignee for any sums received by it shall be a discharge and release therefore to the Insurer.
4. The Insurer shall be fully protected in recognizing the requests made by the Trust for surrender of the Policy with or without the consent of the Assignee, and upon such surrender the Policy shall be terminated and shall be of no further force of effect.
5. Upon the full payment of the liabilities advanced pursuant to the Agreement, the Assignee shall reassign to the Trust all specific rights included in this Collateral Assignment.
6. In the event of any conflict between the provisions of this assignment and the Agreement, or any other evidence of any liability with respect to the Policy or the rights of collateral security therein, the provisions of this Assignment shall prevail, as to the Insurer, and the Agreement dated [DATE OF AGREEMENT] shall prevail between the parties thereto.
7. It is the intent of the undersigned to assign an interest in proceeds becoming payable under the Policy as security for certain loans from the Assignee, without giving the Assignee any incidents of ownership (as defined in Treasury Regulation 20.2042-1(c)(6) in the Policy. It is agreed that this Assignment shall be construed so as to accomplish this intent.

Signed and sealed this [DAY] day of [MONTH], [YEAR].

\_\_\_\_\_  
Policy owner

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Witness name

\_\_\_\_\_  
Witness name

**Individual Acknowledgment**

State of [STATE]  
County of [COUNTY]

On the [DAY] day of [MONTH], [YEAR], before me personally came [NAME OF EMPLOYEE] to me known to be the individual described in and who executed the assignment above and acknowledged to me that he/she executed the same.

\_\_\_\_\_  
Notary Public



## Sample

# Non-equity loan regime split-dollar agreement (minority owners and key executives)

(This specimen agreement should only be used as a guide. The drafting of the final agreement is the sole responsibility of the attorneys representing the parties.)

[NAME OF EMPLOYER], hereinafter referred to as the “Employer,” and [NAME OF TRUSTEE OR EMPLOYEE], hereinafter referred to as the “Owner,” agree for themselves, their successors and assigns, as follows:

The purpose of this Agreement is for the Employer to assist [NAME OF EMPLOYEE], hereinafter referred to as the “Key Employee” or “Insured,” in purchasing a life insurance policy. To do so, the Owner has purchased policy number [POLICY NUMBER] with an initial face amount of \$[FACE AMOUNT] on the Key Employee’s life from Minnesota Life Insurance Company, hereinafter referred to as the “Insurer.”

### Section 1 Premium loans from employer

The Employer agrees to pay the premiums due on the above referenced life insurance policy which premiums shall be considered loans from the Employer to the Owner of the policy. The loans will be subject to the following conditions and as further described in Section 3 of this Agreement.

#### **If the loan is a Demand Loan, include the following language:**

Each premium payment made by the Employer shall be a new loan that is added to all prior loans from the Employer. The Owner shall pay any balance of a scheduled premium not payable by the Employer as required by Section 2. In addition to any premium he/she may be required to pay, the Owner promises to pay to the order of the Employer at such place as the Employer may designate in writing interest annually on the cumulative loan at an annual, short-term interest rate as shown on the attached Schedule A. The unpaid principal of the cumulative loan shall be payable by the Owner at any time on demand of the Employer.

#### **If the loan is a Term Loan, include the following language:**

Each premium payment made by the Employer shall be a new loan that is added to all prior loans from the Employer. The Owner shall pay any balance of a scheduled premium not payable by the Employer as required by the preceding selection. In addition to any premium he/she may be required to pay, the Owner promises to pay to the order of the Employer at its domicile (or at such other place as the Employer may designate in writing) interest annually on the cumulative loan at an annual interest rate as shown on attached Schedule.

A. When a lump-sum loan is made to include the payment of more than one premium, the entire lump sum shall be secured by policy death benefits and cash values at the time the loan is made; and if policy values are not sufficient to secure full repayment of the loan when due, the Lender shall have recourse against the Borrower to obtain full payment of the loan.

Borrower agrees to repay this loan and any accrued interest to Lender, or Lender's successor or assigns, at the end of [YEARS] years from the date of this Agreement (or on [DATE]).

**Note:** To avoid application of the below-market-rate rules of Section 7872, the parties should use a stated loan rate at or above the applicable federal rate in effect at the time the loan is made, and which is appropriate for the selected term. The Section 7872(f) (2)(A) loan interest rate varies each month in accordance with the applicable federal rates provided by the IRS, depending upon whether the loan is considered a short-term loan (3 years or less), mid-term loan (over 3 years but not over 9 years) or long-term loan (over 9 years).

## **Section 2 Premium payment method**

The Employer agrees to pay the planned annual premiums due on the life insurance policy to the Insurer on behalf of the Owner as a scheduled premium loan equal to the full, planned annual premium due on the life insurance policy [OR The Employer agrees to pay a portion of the planned annual premiums due on the life insurance policy to the Insurer on behalf of the Owner as a level premium loan in the level amount of \$\_\_\_\_\_ towards the planned annual premium due on the life insurance policy.]

## **Section 3 Beneficiary designation rights**

The Owner may designate a beneficiary or beneficiaries to receive any proceeds payable on death of the Insured which are in excess of the Employer's share of such proceeds.

## **Section 4 Owner's retained incidents of ownership**

Except as to the limited security rights specifically granted the Employer in a separate Limited Collateral Assignment (Schedule B), the Owner retains all incidents of ownership including the right to surrender or cancel the policy and the right to borrow against the policy. The Owner's right to borrow shall be limited to an amount equal to the maximum policy loan value reduced by the cumulative premium loan provided by the Employer under the split-dollar arrangement described above.

## **Section 5 Policy death benefit**

The death benefit of the policy shall be divided into two parts, one part for the Employer and the other part for the beneficiary designated by the Owner as allowed in Section 3. The Employer shall be entitled to an amount equal to its cumulative premium loan payments, plus any outstanding interest. The beneficiary(s) designated by the Owner in accordance with Section 3 above shall be entitled to the balance of the death benefit, if any.

If any interest is due upon the death proceeds under the terms of the insurance contract, the Owner and the Employer shall share such interest as their respective share of the death proceeds (as defined in the preceding paragraph) bears to the total death proceeds excluding such interest.



## **Section 6 Policy cash surrender value**

The cash surrender value of the policy shall be divided into two parts, one part for the Employer and one part for the Owner. The Employer shall be entitled to an amount equal to its cumulative share of premium loan payments plus any outstanding interest due, or the entire cash surrender value of the policy, if less. The Owner shall be entitled to the remainder of the cash surrender value, if any. If the cash surrender value of the policy is less than the Employer's cumulative premium loan payments when the policy is surrendered, the Owner is obligated to pay the difference due on the loan to the Employer out of assets other than those contained in the policy.

## **Section 7 Employer's limited policy rights**

The Employer shall have no right to obtain policy loans, make withdrawals or otherwise access cash values from the policy.

Note: When the insured is a controlling shareholder, any rights to take loans or withdrawals from the policy provided to the corporation will be attributed to the controlling shareholder as an incidence of ownership and included in the shareholder's estate. Rev. Rul. 82-145.

## **Section 8 Termination of agreement**

This Agreement will terminate when the first of any of the following events occurs:

- A. Termination of the Key Employee's employment with the Employer for reasons other than death;
- B. The Owner's submission of written notice, to the Employer, of intent to terminate the Agreement;
- C. Performance of the Agreement's terms, following the death of the Key Employee; or
- D. Failure by either the Employer or the Owner, for any reason, to make the premium contributions required under Section 2 of this Agreement.

## **Section 9 Disposition of policy upon termination of agreement**

Upon the termination of this Agreement for any reason other than Section 8(C) above, the Owner shall have a sixty (60) day period to satisfy the repayment obligation to the Employer. The repayment obligation shall be an amount equal to its cumulative share of premium loan payments plus any outstanding interest due, or the entire cash surrender value of the policy, if less. If the cash surrender value of the policy is less than the Employer's cumulative premium loan payments when the policy is surrendered, the Owner is obligated to pay the difference due on the loan to the Employer out of assets other than those contained in the policy.

If the Owner satisfies the repayment obligation, the Employer shall execute all necessary documents required by the Insurer to remove and satisfy the Limited Collateral Assignment outstanding on the Policy. If the Owner does not satisfy the repayment obligation, it shall execute all documents necessary to transfer ownership of the Policy to the Employer. Such transfer shall constitute satisfaction of any obligation the Owner has to the Employer with respect to this Agreement.

## **Section 10 Taxable income**

The Key Employee is responsible for determining the amount, if any, includable in their gross income for tax purposes and for determining the value of any gifts for gift tax purposes, as a result of this Agreement.

## **Section 11 Owner's right to assign its interest**

The Owner shall have the right to transfer its entire interest in the Policy (other than rights assigned to the Employer pursuant to this Agreement). If the Owner makes such a transfer, all its rights shall be vested in the Transferee and the Owner shall have no further interest in this Policy and Agreement.

## **Section 12 Disability waiver of premium benefit**

If the policy contains a disability waiver of premium benefit, any premium waived shall be considered as having been paid by the Owner.

## **Section 13 Insurer's obligations**

The Insurer is not a party to this Agreement. It is understood by the parties hereto that in issuing such Policy of insurance, the Insurer shall have no liability except as set forth in the Policy and except as set forth in any assignment of the Policy filed at its Home Office. The Insurer shall not be bound to inquire into or take notice of any of the covenants herein contained as to the policy of insurance or as to application of proceeds of such policy except as may be provided in any assignment of the Policy filed at its Home Office.

## **Section 14 Fiduciary provisions**

(Named fiduciary, e.g., President of Employer) is hereby designated as the "Named Fiduciary" for the Split-dollar Loan Agreement established herein, and shall have the authority to control and manage the operation and administration of such strategy. However, [Minnesota Life Insurance Company/ Securian Life Insurance Company], St. Paul, Minnesota, shall have the sole authority with regard to the review and final decision on the claim for benefits under its policy, as provided in the claims procedure set forth in Section 16.

## **Section 15 Allocation of fiduciary responsibilities**

(Named fiduciary) may allocate their responsibilities for the operation and administration of the Split-dollar Loan Agreement, including the designation of persons to carry out fiduciary responsibilities under such strategy. (Named fiduciary) shall effect such allocation of their responsibilities by delivering to the Employer a written instrument signed by them that specifies the nature and extent of the responsibilities allocated under the Split-dollar Loan Agreement, together with a signed acknowledgment of their acceptance by the persons to whom the responsibilities were allocated.

## Section 16 Claims procedure

The following claims procedure shall apply to this Split-dollar Loan Agreement:

- A. **Filing of a claim for benefits.** The Owner or the beneficiary of the Policy shall make a claim for the benefits provided under the Policy in the manner provided in the Policy.
- B. **Claim denial.** With respect to a claim for benefits under said Policy, [Minnesota Life Insurance Company/Securian Life Insurance Company] shall be the entity which reviews and makes decisions on claims denials according to the terms of the Policy.
- C. **Notification to claimant of decisions.** If a claim is wholly or partially denied, notice of the decision, meeting the requirements of Section (D) below following, shall be furnished to the claimant within a reasonable period of time after a claim has been filed.
- D. **Content of notice.** The Insurer shall provide, to any claimant who is denied a claim for benefits, 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;
  2. Specific reference of this agreement 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 this Agreement's claim review procedure, as set forth in Sections (E) and (F) below.
- E. **Review procedure.** The purpose of the review procedure set forth in this Section and Section (F) below is to provide a method by which a claimant under the Split-dollar Loan Agreement may have a reasonable opportunity to appeal a denial of claim for a full and fair review. To accomplish that purpose, the claimant or their duly authorized representative:
1. May request a review upon written application to the Insurer;
  2. May review pertinent Split-dollar Loan Agreement documents or agreements; and
  3. May submit issues and comments in writing. A claimant, or their duly authorized representative, shall request review by filing a written application for review at any time within sixty (60) days after receipt by the claimant of written notice of the denial of the 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 Insurer, which may, at its discretion, hold a hearing on the denied claim. The Insurer 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 not 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 Policy or provisions of this Agreement on which the decision is based.

**Section 17 Amendments**

Amendments may be added to this Agreement by a written agreement signed by each of the parties and attached hereto.

**Section 18 Choice of law**

This Agreement shall be subject to, and construed according to, the laws of the State of [STATE].

**Section 19 Binding agreement**

This Agreement shall bind the Employer and the Employer’s successors and assigns, the Owner and its successors and assigns, and any Policy beneficiary.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

\_\_\_\_\_  
Owner name

\_\_\_\_\_  
Employer name

By \_\_\_\_\_  
Signature

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

(Use this Schedule A for a Demand Loan)

**Schedule A – Demand Loan**

<b>Date of loan</b>	<b>Amount of loan</b>	<b>Interest rate</b>	<b>Current AFR</b>

(Use this Schedule A for a Term Loan)

**Schedule A – Term Loan**

<b>Date of loan</b>	<b>Term of loan</b>	<b>Amount of loan</b>	<b>Interest rate</b>	<b>Current AFR</b>

## Schedule B

# Limited collateral assignment

THIS ASSIGNMENT made and entered into effective this [DAY ] day of [MONTH], [YEAR] by the undersigned as owner (hereinafter called "the Trust") of the certain Life Insurance Policy No. [POLICY NUMBER] issued by [Minnesota Life Insurance Company/Securian Life Insurance Company], St. Paul, Minnesota (hereinafter called "the Insurer"), and any supplementary contracts issued in connection therewith (said policy and contracts being herein called "the Policy"), upon the life of [NAME OF EMPLOYEE] (hereinafter called "the Insured"), to the [NAME of EMPLOYER] Company, a [CORPORATION TYPE] corporation (hereinafter called "the Assignee").

WHEREAS, the Insured is a valued employee of the Assignee, and WHEREAS, said Assignee desires to assist the Insured with his personal life insurance program by lending to the Trust all or a portion of the annual premium due on the Policy, as more specifically provided for in the Split-dollar Loan Agreement entered into between the Trust and the Assignee (hereinafter called "the Agreement"); and

WHEREAS, in consideration of the Assignee's agreement to make said advances, the Trust agrees to grant the Assignee a security interest in said Policy as collateral security for the repayment of said loans by the Trust;

NOW THEREFORE, for value received, the undersigned hereby assigns, transfers and sets over to the Assignee, its successors and assigns the following specific rights in the Policy, subject to the following terms and conditions:

1. The Assignee's interest in the policy shall be limited to:
  - A. The right to be repaid the total value of the outstanding loans made by the Assignee, or its transferee, pursuant to Sections 1 and 2 of the Agreement as of the date to which premiums have been paid, in the event the Policy is surrendered or canceled by the Trust or its transferee, as provided in Section 6 of the Agreement;
  - B. The right to be repaid the total value of the outstanding loans made by the Assignee pursuant to Sections 1 and 2 of the Agreement as of the date to which premiums have been paid, in the event of the death of the Employee as provided in Section 5 of the Agreement; and
  - C. The right to be repaid the total value of the outstanding loans made by the Assignee pursuant to Sections 1 and 2 of the Agreement as of the date to which premiums have been paid, in the event the waiver-of-premium benefit becomes operational, as provided in Section 12 of the Agreement.
2. Except as specifically herein granted to the Assignee, the Trust shall retain all incidents of ownership in the Policy, including but not limited to:
  - A. The sole and exclusive right to borrow against the Policy;
  - B. The sole and exclusive right to cancel or surrender the Policy;
  - C. The right to assign its interest in the Policy;
  - D. The right to change the beneficiary of that portion of the proceeds to which it is entitled under Sections 3 and 5 of the Agreement; and
  - E. The right to exercise all settlement options permitted by the terms of the Policy, provided, however, that all rights retained by the Trust shall be subject to the terms

and conditions of the Agreement.

3. The Insurer is hereby authorized to recognize the Assignee's claims to rights hereunder without investigating the reason for any action taken by the Assignee, the validity or amount of any of the liabilities of the Trust to the Assignee under the Agreement, the existence of any default therein, the giving of any notice required herein, or the application to be made by the Assignee of any amounts to be paid to the Assignee. The signature of the Assignee shall be sufficient for the exercise of any rights under the Policy assigned to the Assignee and the receipt of the Assignee for any sums received by it shall be a discharge and release therefore to the Insurer.
4. The Insurer shall be fully protected in recognizing the requests made by the Trust for surrender of the Policy with or without the consent of the Assignee, and upon such surrender, the Policy shall be terminated and shall be of no further force of effect.
5. Upon the full payment of the liabilities advanced pursuant to the Agreement, the Assignee shall reassign to the Trust all specific rights included in this Collateral Assignment.
6. In the event of any conflict between the provisions of this assignment and the Agreement, or any other evidence of any liability with respect to the Policy or the rights of collateral security therein, the provisions of this Assignment shall prevail, as to the Insurer, and the Agreement dated [DATE OF AGREEMENT] shall prevail between the parties thereto.
7. It is the intent of the undersigned to assign an interest in proceeds becoming payable under the Policy as security for certain loans from the Assignee, without giving the Assignee any incidents of ownership (as defined in Treasury Regulation 20.2042-1(c)(6) in the Policy. It is agreed that this Assignment shall be construed so as to accomplish this intent.

Signed and sealed this [DAY] day of [MONTH], [YEAR].

\_\_\_\_\_  
Policy owner

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Witness name

\_\_\_\_\_  
Witness name

**Individual Acknowledgment**

State of [STATE]

County of [COUNTY]

On the [DAY] day of [MONTH], [YEAR], before me personally came [NAME OF EMPLOYEE] to me known to be the individual described in and who executed the assignment above and acknowledged to me that they executed the same.



\_\_\_\_\_  
Notary Public



01. Treas. Reg. §1.61-22(b)(1).
02. It must be structured so that the loan falls outside of section 7872 of the Code.
03. The life insurance death benefit will be received income tax-free to the Company if the Company meets the requirements of Internal Revenue Code Section 101(j).
04. Treas. Reg. §1.451-2(a); Rev. Rul. 60-31, 1960-1 CB 174; Rev. Proc. 92-65, 1992-2 CB 428.
05. DOL Reg. § 2520.104-23.
06. DOL Adv. Op. 90-14A.
07. Treas. Reg. §1.61-22(j).
08. IRC §264(a).
09. Based on an unofficial informational letter of Norman Greenberg, Chief, Actuarial Branch, Department of the Treasury, August 1983.
10. IRS Notice 2002-08.
11. Greenberg letter, supra note xxiv.
12. For this purpose: (1) a "related person" is any person with a relationship to the policy owner as specified in IRC §§267(b), 707(b)(1), 52(a) or 52(b); and (2) an "employee" is a U.S. citizen or resident who is an officer, director or certain highly compensated employees as defined in IRC §414(q).
13. For this purpose, (1) a "highly compensated employee" is defined in Code §414(q) but ignoring paragraph (1)(B) (ii) (i.e., any employee who is a 5% owner or had compensation from the employer in excess of \$130,000 (inflation adjusted)), and (2) "highly compensated individual" is defined in Code §105(h)(5), but substituting 35% for 25% (i.e., an individual who is (a) one of the five highest paid officers, (b) a shareholder who owns (with the application of the constructive ownership rules of IRC §318 ) more than 10% of the employer's stock, or (c) among the highest paid 35% of all employees).
14. IRC §2042.
15. Treas. Reg. §20.2042-1(c)(6).
16. Rev. Rul. 82-145.
17. PLR 9511046.
18. PLRs 9651030, 9709027, 9746006, 9808024.
19. ERISA, §3(1).
20. ERISA, Title I, Subtitle B, Part 4.
21. DOL Reg. §2520.104-24.
22. DOL Reg. §2520.104-20.
23. DOL Reg. §2520.102.
24. DOL Reg. §2560.503-1(b).
25. Notice 2002-8.
26. Notice 2002-8.

27. Notice 2002-8, section IV.1 and IV.2.

Please keep in mind that the primary reason to purchase a life insurance product is the death benefit.

Life insurance products contain charges, such as Cost of Insurance Charge, Cash Extra Charge, and Additional Agreements Charge (which we refer to as mortality charges), and Premium Charge, Monthly Policy Charge, Policy Issue Charge, Transaction Charge, Index Segment Charge, and Surrender Charge (which we refer to as expense charges). These charges may increase over time, and these policies may contain restrictions, such as surrender periods. Policyholders could lose money in these products.

Additional agreements may be available. Agreements may be subject to additional costs and restrictions. Agreements may not be available in all states or may exist under a different name in various states and may not be available in combination with other agreements.

Policy loans and withdrawals may create an adverse tax result in the event of lapse or policy surrender, and will reduce both the surrender value and death benefit. Withdrawals may be subject to taxation within the first 15 years of the contract. You should consult your tax advisor when considering taking a policy loan or withdrawal.

This information is a general discussion of the relevant federal tax laws provided to promote ideas that may benefit a taxpayer. It is not intended for, nor can it be used by any taxpayer for the purpose of avoiding federal tax penalties. Taxpayers should seek the advice of their own advisors regarding any tax and legal issues specific to their situation.

This is a general communication for informational and educational purposes. The information is not designed, or intended, to be applicable to any person's individual circumstances. It should not be considered investment advice, nor does it constitute a recommendation that anyone engage in (or refrain from) a particular course of action. If you are seeking investment advice or recommendations, please contact your financial professional.

Insurance products are issued by Minnesota Life Insurance Company in all states except New York. In New York, products are issued by Securian Life Insurance Company, a New York authorized insurer. Minnesota Life Insurance Company is not a New York authorized insurer. Both companies are headquartered in St. Paul, MN. Product availability and features may vary by state. Each insurer is solely responsible for the financial obligations under the policies or contracts it issues.

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