



Supplemental executive
retirement plan

Sample plan document

Sample defined benefit SERP agreement

NATIONWIDE® BUSINESS SOLUTIONS GROUP

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SUPPLEMENTAL EXECUTIVE RETIREMENT PLAN (SERP) AGREEMENT

This Supplemental Executive Retirement Plan Agreement (“Agreement”) is made and entered into by and between _____ (“Employer”) and _____ (“Executive”) as of _____.

The Executive is a key employee who has contributed to the Employer’s success. The Employer believes that the Executive’s experience, knowledge and reputation are of such value that the Executive’s continued services are essential to the future growth and profits of the Employer.

The Employer desires to enter into this Agreement to reward the Executive for continuing service to the Employer by agreeing to make certain payments to the Executive upon separation from service or to the Beneficiary in the event of death.

This Agreement is maintained to provide nonqualified deferred compensation benefits to the Executive, who is a highly compensated management employee of the Employer for purposes of ERISA.

In consideration of the Executive’s continuing employment with Employer and based upon the mutual promises and covenants in this Agreement, the Employer and Executive agree as follows:

ARTICLE I - DEFINITIONS

1.1 Accrued Benefit

“Accrued Benefit” means the benefit amount earned by the Executive and accrued by the Employer each year under Generally Accepted Accounting Principles based on the following formula:

$$\text{Normal Retirement Benefit} \times \frac{\text{Years of Participation}}{\text{Years of Participation as of Normal Retirement Date}} \\ \text{(but never greater than one (1))}$$

1.2 Beneficiary

“Beneficiary” means the person or persons last designated in writing by the Executive to receive any benefits under this Agreement in the event of the Executive’s death.

1.3 Change in Control

“Change in Control” means a change in the ownership or effective control of the Employer, or in the ownership of a substantial portion of the assets of the Employer, all as defined in Internal Revenue Code Section 409A.

1.4 Code

“Code” means the Internal Revenue Code of 1986, as amended, and all regulations and guidance promulgated thereunder.

1.5 Effective Date

“Effective Date” means _____

1.6 ERISA

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and all regulations and guidance promulgated thereunder.

1.7 Normal Retirement Age

“Normal Retirement Age” means age _____.

1.8 Normal Retirement Benefit

“Normal Retirement Benefit” is the benefit described in Section 2.1 of this Agreement.

1.9 Normal Retirement Date

“Normal Retirement Date” means the first day of the month coincident with or immediately following the Executive’s date of Separation from Service that occurs on or after attaining Normal Retirement Age.

1.10 Separation from Service

“Separation from Service” means termination of the Executive’s employment with the Employer for any reason other than death. A Separation from Service may occur as of a specified date for purposes of this Agreement even if the Executive continues to provide services to the Employer after that date, provided that the facts and circumstances indicate that the Employer and the Executive reasonably anticipated at that date that either no further services will be performed after that date, or that the level of bona fide services the Executive will perform after such date (whether as an employee or as an independent contractor) would permanently decrease to no more than twenty percent (20%) of the average level of bona fide services performed over the immediately preceding thirty-six (36) month period (or the full period during which the Executive performed services for the Employer, if that is less than thirty-six (36) months). A Separation from Service will not be deemed to have occurred while the Executive is on military leave, sick leave or other bona fide leave of absence if the period of such leave does not exceed six (6) months or, if longer, the period for which a statute or contract provides the Executive with the right to re-employment with the Employer. If the Executive’s leave exceeds six (6) months but the Executive is not entitled to re-employment under a statute or contract, the Executive incurs a Separation of Service on the next day following the expiration of such six (6) month period.

1.11 Specified Employee

“Specified Employee” means a key employee (as defined in Code Section 416(i) without regard to paragraph (5) thereof) of a corporation in which any stock is publicly traded on an established securities market or otherwise. If the Executive is a key employee at any time during the twelve (12) months ending on December 31, the Executive is a Specified Employee for the twelve (12) month period commencing on the first day of the following April.

1.12 Year of Participation

“Year of Participation” means a 12-consecutive-month period or any fraction thereof during which the Executive performs services for the Employer commencing on the Effective Date and ending upon Separation from Service or death.

ARTICLE II - PAYMENT OF BENEFITS

2.1 Normal Retirement Benefit

Commencing on the Executive's Normal Retirement Date, the Employer shall pay a monthly benefit to the Executive of \$_____ for a period of _____ months.

2.2 Benefit Prior to Normal Retirement Date

If the Executive has a Separation from Service prior to attaining Normal Retirement Age, the Employer shall pay to the Executive the Accrued Benefit, calculated as of the date of Separation from Service, in _____ monthly installments commencing as of the first day of the month following Separation from Service.

2.3 Death Benefit

(a) If the Executive dies prior to the commencement of benefit payments under this Agreement, the Employer shall pay to the Beneficiary the Accrued Benefit in a lump sum within ninety (90) days of the Executive's date of death.

(b) If the Executive dies after monthly benefit payments have commenced, the Employer shall pay to the Beneficiary the remaining monthly payments that would otherwise have been paid to the Executive.

2.4 Change in Control Benefit

If the Executive is employed by the Employer on the date of a Change in Control, the Employer shall pay to the Executive the Accrued Benefit in a lump sum within ninety (90) days after the date of the Change in Control.

2.5 Small Benefit

Notwithstanding anything in this Agreement to the contrary, in the event the Accrued Benefit is less than \$_____ on the date payments are to commence, the Executive shall receive a lump-sum payment.

2.6 Delay in Payment

If the Executive is a Specified Employee on the date of Separation from Service, no distribution of benefits under this Agreement shall be made until the first day of the seventh (7th) month after the date of Separation from Service, or if earlier, upon the Executive's death. If payments are to be made in monthly installments, the first payment shall include any payments that would have been made but for this six (6) month delay.

ARTICLE III - BENEFICIARIES

3.1 Designation of Beneficiaries

The Executive may designate any person, trust or estate to receive any benefits payable under this Agreement upon the Executive's death, and the designation may be changed from time to time by the Executive by filing a new designation with the Employer. Each designation will revoke all prior designations by the Executive and shall be in the form prescribed by the Employer.

3.2 Absence of Beneficiary Designation

In the absence of a valid Beneficiary designation, or if, at the time any benefit payment is due to a Beneficiary, there is no living Beneficiary validly named by the Executive, the Employer shall pay the benefit payment to the Executive's estate.

ARTICLE IV - CLAIM PROCEDURE

If the Executive or Beneficiary believes any rights or benefits under the Agreement are being denied, such person may file a claim in writing with the Employer. If any such claim is wholly or partially denied, the Employer will notify such person of its decision in writing. Such notification will contain: (i) specific reasons for the denial, (ii) specific reference to pertinent provisions in the Agreement, (iii) a description of any additional material or information necessary for such person to perfect such claim and an explanation of why such material or information is necessary and (iv) information as to the steps to be taken if the person wishes to submit a request for review.

Such notification will be given within ninety (90) days after the claim is received by the Employer (or within one hundred eighty (180) days, if special circumstances require an extension of time for processing the claim, and if written notice of such extension and circumstances is given to such person within the initial ninety (90) day period). If such notification is not given within such period, the claim will be considered denied as of the last day of such period, and such person may request a review of the claim.

Within sixty (60) days after the date on which a person receives written notice of a denied claim (or, if applicable, within sixty (60) days after the date on which such denial is considered to have occurred) such person (or a duly authorized representative) may: (i) file a written request with the Employer for a review of the denied claim and of pertinent documents, and (ii) submit written issues and comments to the Employer.

The Employer will notify such person of its decision in writing. Such notification will be written in a manner calculated to be understood by such person and will contain specific reasons for the decision as well as specific references to pertinent provisions in the Agreement. The decision on review will be made within sixty (60) days after the request for review is received by the Employer (or within one hundred twenty (120) days, if special circumstances require an extension of time for processing the request, such as an election by the Employer to hold a hearing, and if written notice of such extension and circumstances is given to such person within the initial sixty (60) day period). If the decision on review is not made within such period, the claim will be considered denied.

ARTICLE V - AMENDMENT AND TERMINATION

5.1 Amendment.

The Employer and the Executive reserve the right to amend the provisions of this Agreement by mutual written consent and to any extent and in any manner that each deems advisable.

5.2 Termination

The Employer may terminate this Agreement at any time, provided such termination does not violate Code Section 409A and does not retroactively deprive the Executive of any benefit accrued before the date of the amendment. If this Agreement is terminated pursuant to a termination and liquidation as described in Code Section 409A, such termination and liquidation shall conform to the requirements of Code Section 409A.

ARTICLE VI - MISCELLANEOUS

6.1 Unfunded Plan

This Agreement is intended to be an unfunded deferred compensation arrangement for federal income tax purposes and for purposes of ERISA, maintained primarily to provide deferred compensation benefits to a select executive. The Executive and the Executive's Beneficiaries, heirs, successors and assigns shall have no legal or equitable rights, interest or claims in any property or assets of the Employer. Any and all assets of the Employer shall be, and remain, the general, unpledged, unrestricted assets of the Employer. The Employer's obligations under the Agreement shall be merely that of an unfunded and unsecured promise of the Employer to pay money in the future.

6.2 Unsecured General Creditor

The Executive and the Executive's Beneficiaries, heirs, successors and assigns shall have no legal or equitable rights, interest or claims in any property or assets of any Employer. Any and all assets of each Employer shall be, and remain, the general, unpledged, unrestricted assets of the Employer. An Employer's obligations under the Agreement shall be merely that of an unfunded and unsecured promise of the Employer to pay money in the future.

6.3 Nonalienability of Benefits

The benefits provided by this Agreement will not be subject to alienation, assignment, garnishment, attachment, execution or levy of any kind, and any attempt to cause such benefits to be so subjected will not be recognized, except to such extent as may be required by law. The preceding sentence will apply in general to the creation, assignment or recognition of a right to any benefit payable with respect to the Executive pursuant to a domestic relations order.

6.4 Governing Law

This Agreement will be construed, administered and enforced according to the laws of _____, to the extent such laws are not inconsistent with and pre-empted by ERISA.

6.5 Not a Contract of Employment

This Agreement does not constitute an employment contract between the Employer and the Executive. Nothing in this Agreement gives the Executive the right to be retained in the employ of the Employer or to interfere with the right of any Employer to discipline or discharge the Executive at any time.

6.6 Administration

The Board of Directors of the Employer shall have full power and authority to interpret, construe and administer this Agreement. The interpretation and construction of this Agreement by the Board of Directors, and any action taken under this Agreement, shall be binding and conclusive upon all parties in interest. No member of the Board of Directors shall, in any event, be liable to any person for any action taken or omitted to be taken in connection with the interpretation, construction or administration of this Agreement, so long as such action or omission to act be made in good faith.

6.7 Successor in Interest

This Agreement shall be binding upon and inure to the benefit of the Employer and its successors and assigns, and the Executive and the Executive's successors, assigns, heirs, executors, administrators and Beneficiaries.

6.8 Notice

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

6.9 Validity

In case any provision of this Agreement shall be held illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining parts hereof, but this Agreement shall be construed and enforced as if such illegal and invalid provision had never been inserted herein.

6.10 Code Section 409A

Notwithstanding anything to the contrary in the provisions of this Agreement regarding the benefits payable, this Agreement is intended to meet any applicable requirements of Code Section 409A, and shall be construed and administered in accordance with Code Section 409A, Department of Treasury regulations and other interpretive guidance issued thereunder, including without limitation any such regulations or other guidance that may be issued after the Effective Date. In the event that the Employer determines that any provision of this Agreement or the operation thereof may violate Code Section 409A and related Department of Treasury guidance, the Employer may in its sole discretion adopt such amendments to this Agreement and appropriate policies and procedures, including amendments and policies with retroactive effect, or take such other actions as the Employer determines necessary or appropriate to comply with the requirements of Code Section 409A.





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