

SAMPLE DOCUMENT

SERP (SUPPLEMENTAL EXECUTIVE RETIREMENT PLAN) INFORMALLY FUNDED WITH LIFE INSURANCE

Nonqualified defined contribution plan with no reduction in compensation; contributions from employer only; also called a SERP (Supplemental Executive Retirement Plan); benefit measured by value of life insurance policy

— For the Use of Legal Counsel Only. Not for use by Financial Representatives with the public. —

Background Information:

- *This supplemental executive retirement plan (“SERP”) is a defined contribution, supplemental income plan, where the employee/Executive does not reduce current compensation, but the Employer provides supplemental benefits to be paid at a future date.*
- *This sample Plan calls for the Executive to become vested in the retirement benefits after a certain number of years, as well as ratable vesting in the case of a separation from service due to death or disability and accelerated vesting in the event of a change of control or Plan termination. There is optional language providing for the Executive to remain completely unvested and receive no benefits unless he or she remains employed by the Employer until age 65 (this is a form of “cliff vesting,” and here the vest date is pushed out to the traditional retirement age of 65). The drafting attorney can amend this if the parties so prefer (it could vest earlier but still pay at retirement, or vest and pay earlier, or vest over several years, etc.)*
- *After the Employer makes a contribution in the form of paying premiums on an Employer-owned life insurance policy, the benefit to be provided to the Executive is the value of that policy as of the payment date.*
- *Because the Employer intends to own a life insurance policy to informally fund the benefits of this plan, the Employer and Executive generally should satisfy the “notice and consent” requirements of IRC § 101(j) before the policy is issued, in order to avoid income taxation of death benefit.*
- *An upside of using the value of an insurance policy to measure the benefits to be paid to the Executive is that it can relieve the Employer of having to “aim” for a certain amount of growth in the deferred amounts, which the Employer generally would have to do if it had promised, say, 4% annual growth.*
- *The downside is that the Employer has to either (i) be disciplined enough to pay all premiums out-of-pocket and on time, and not to pull money from the policy (not even borrowing from the policy to pay premiums under an Automatic Premium Loan provision), or (ii) if the Employer wants the freedom to pay premiums late or pull money from the policy, it has to have confidence that the*

This sample document is intended only as guidance for the client's own legal counsel. The document is general in nature and does not reflect the specific circumstances of any individual or situation. The document does not constitute tax or legal advice and cannot be used to avoid any penalties that may be imposed on a taxpayer. It is intended that the client's legal counsel will modify the document where necessary to satisfy the client's objectives and the requirements of any applicable federal, state or local law. Northwestern Mutual does not guarantee the effectiveness of this document and is not responsible for any tax or legal consequences resulting from use.

insurance company will be able to, years later, “re-create” what the Policy’s value would have been if actions had not occurred (which is not always easy to do).

- *This nonqualified deferred compensation plan generally would be considered to be a “pension plan” under the Employee Retirement Income Security Act of 1974 (ERISA). Nonetheless, because this plan is designed for Executives who qualify as select management or highly paid, and because the plan is unfunded and unsecured (a so-called Top Hat plan), the ERISA requirements are generally few:*
 - *The employer must send an alternative reporting and disclosure statement (a short letter) to the Department of Labor (DOL) within 120 days of creating the plan;*
 - *The plan must contain certain “fiduciary” and “claims procedure” provisions (they are included in Section 9 of this sample document).*
- *This nonqualified deferred compensation plan also generally must comply with Internal Revenue Code (IRC) § 409A.*

**SERP (SUPPLEMENTAL EXECUTIVE RETIREMENT PLAN)
INFORMALLY FUNDED WITH LIFE INSURANCE**

Nonqualified defined contribution plan with no reduction in compensation; contributions from employer only; also called a SERP (Supplemental Executive Retirement Plan); benefit measured by value of life insurance policy

1. Establishment and Purpose of Plan

1.1 **Establishment and Duration of Plan.** The Board of Directors of [*Name of Employer*], a [*State of Employer*] corporation [*or limited liability company or partnership, or however organized*] (“Employer”), hereby establishes the Supplemental Benefit Plan of [*Name of Employer*], and its successors, effective as of the _____ day of _____, 20____. By executing a Participation Agreement, the Executive agrees to the terms of the Plan. The Plan shall continue until terminated by the Board of Directors of the Employer.

Comment: A nonqualified deferred compensation plan such as this SERP may be adopted by a variety of entity types – such as S corporations, limited liability companies and other unincorporated business forms. Such arrangements can benefit business owners of any entity type in facilitating buyouts. However, “partners” (including greater than 2% shareholders of an S corporation deemed to be “partners”) cannot avail themselves of the same tax deferral benefits that a SERP provides to shareholders of a corporation.

1.2 **Purpose of Plan.** The purpose of this Supplemental Income Plan is to provide the Executive with benefits upon retirement, termination of employment, or death, as provided herein.

2. Definitions

2.1 “Beneficiary” means the person or persons who are designated by the Executive, in his or her Participation Agreement, to receive payments under the Plan after the Executive’s death.

2.2 “Cause” shall mean the occurrence of any of the following events with respect to the separated Executive: (i) a willful attempt to cause injury to the Employer or any of its affiliates; (ii) being convicted of, or pleading guilty or *nolo contendere* to, a felony or any other crime of moral turpitude, other than a vehicular violation not involving loss of life; (iii) engaging in any grossly negligent or willful act or omission to act that is materially detrimental to the reputation, character or standing of the Employer or any of its affiliates or any of their respective customers or clients; (iv) breaching any confidentiality obligation or other restrictive covenant entered into between the Employer and the Executive excluding for this purpose an isolated and inadvertent breach that is promptly remedied; (v) failing or refusing to comply in any respect with the policies, standards or regulations applicable to the Employer, excluding for this purpose an isolated and inadvertent act or

failure to act that is promptly remedied; or (vi) habitual neglect, misconduct, negligence or failure by the Executive that interferes with the performance of the Executive's duties.

- 2.3 "Death Benefit" means, with respect to any Executive, a lump sum cash payment equal to \$ _____. Nevertheless, if the Executive dies as a result of suicide within [one (1) year] of his or her Entry Date, the amount of the Executive's Death Benefit shall be zero (0).

Comment: *The Death Benefit is zero if the Executive commits suicide within 1 year of entering into the Plan because, to the extent the Employer purchases a life insurance policy to informally fund the benefits provided by this Plan, the policy's "suicide clause" will likely prevent it from paying its death benefit if the insured commits suicide within 1 year of policy issuance. The practitioner should make sure that this provision is coordinated with the insurance policy.*

- 2.4 "Deferred Benefit Account" means an amount equal to whatever the cash surrender value of the Policy would be at any given time if:

- a. all scheduled premiums had been paid in full and remitted to the insurer on or before their due dates;
- b. there had been no amounts whatsoever surrendered or borrowed from the Policy and the Policy not had been otherwise encumbered in any manner; and
- c. all dividends on the Policy had been applied to purchase additional paid-up insurance.

Comment: *The parties should be aware that if the Employer simply transfers ownership of the policy to the Executive in fulfillment of what is owed under this plan, the cash value may be higher or lower than the value that the Executive may be required to report as income.*

Comment: *Also, if Employer owns a universal life policy, the above description (with its reference to paying all "scheduled premiums") can lose its relevance, as such policies generally do not require regular premium payments. As such, the parties will have to thoroughly discuss among themselves – and with the insurance company representative – how they want the policy to be managed (or be deemed to have been managed) for the purpose of measuring the Executive's benefit, and put forth those provisions in detail here. Generally, the overall objective will be that the Executive's benefit amount should not be reduced by the mere fact that the Employer tapped into the Policy for cash or failed to make premium payments as regularly as anticipated by this supplemental income /deferred compensation agreement.*

Comment: *In lieu of “cash surrender value,” the Deferred Benefit Account could also be measured by reference to its “fair market value.” For this purpose, the Policy’s fair market value should be determined under Treasury Regulation § 1.83-3(e) (or its successor provision). In making this determination, if the insurance company that issued the Policy certifies an amount as an accurate valuation of the Policy under the relevant safe harbor valuation formula found in Revenue Procedure 2005-25 (or successor IRS guidance), this amount should be accepted by the parties to this agreement, and by their successors, as being the Policy’s fair market value.*

- 2.5 “Employer” means [Name of Employer], a [State of Employer] corporation [or limited liability company or partnership, or however organized], or any successor thereto and its subsidiaries.
- 2.6 “Entry Date” means the effective date as of which an Executive first executes a Participation Agreement under the Plan.
- 2.7 “Executive” means [name of employee participating in this plan]. Executive is among the Employer’s management and highly paid employees within the meaning of the Employee Retirement Income and Security Act of 1974 (ERISA).
- 2.8 “Fiscal Year” shall mean the twelve-month period beginning on January 1 of each year.
- [2.9 “Normal Retirement Age” means with respect to each Executive, the date on which he or she attains age sixty-five (65).]
- [2.10 “Normal Retirement Date” means, with respect to each Executive, the later of the first day of the month following which he or she attains Normal Retirement Age or the first day of the first month following the termination of Executive’s employment with the Employer.]

Comment: *The terms Normal Retirement Age and Normal Retirement Date would be used if Employer opts to use a “cliff vesting” approach, in which Executive would only be entitled to the Deferred Benefit Account if he or she remains employed from the Date of Entry until Normal Retirement Age. The default provisions of this SERP call for vesting over a discrete period of years, as well as ratable vesting in the case of a separation from service due to death or disability.*

- 2.11 “Participation Agreement” means the agreement executed by the Executive upon being admitted to the Plan. The Participation Agreement shall be an integral part of the Plan with respect to the Executive who executes such Participation Agreement.
- 2.12 “Plan” means this Supplemental Income Plan of the Employer and its successors as described herein as the same may hereafter from time to time be amended.

2.13 "Policy" means Policy No. _____, which is a policy of life insurance issued by The Northwestern Mutual Life Insurance Company, of Milwaukee, Wisconsin on _____, 20____. The Policy and its scheduled premiums to be paid by Employer are described on Schedule A, attached at the end of this Plan and made an integral part of this Plan.

3. Vesting and Payment of Benefits

3.1 The entire Deferred Benefit Account shall vest on the _____ (____th) anniversary of the Executive's Entry Date; *provided, however*, that in the event of the occurrence of any of the following events:

- (a) death of the Executive;
- (b) disability of the Executive;
- (c) a change of control event (as defined in Treas. Reg. §1.409A-3(i)(5)); or
- (d) termination of the Plan

the Deferred Benefit Account, if not otherwise fully vested, shall vest as follows: (i) in the event of a change of control event (as defined below) or termination of the Plan, the entire Defined Benefit Account will immediately be fully vested; and (ii) in the event of the death or disability of the Executive, a portion of the Deferred Benefit Account shall be deemed to have vested in increments of _____ percent (____%) per year for each anniversary date elapsed prior to the Executive's disability and any unvested portion as of that time shall be forfeited. However, any vested interest in the Defined Benefit Account shall only be payable at the time and in the manner described in Section 3.2, below. In the event of the separation from service for any reason of an Executive other than on account of the death or disability of Executive or a change of control event, any portion of the Deferred Benefit Account which is not yet vested shall be forfeited. However, any such separation from service shall not affect the Executive's rights with respect to any portion of the Deferred Benefit Account vested on the date of such separation from service unless such separation from service is involuntary by the Employer for Cause, in which event any interest in the Deferred Benefit Account which is vested on the date of such separation from service shall be forfeited.

Optional "Cliff Vesting": *"If an Executive is actively and continuously employed by the Employer on a full-time basis from his or her Entry Date until he or she attains Normal Retirement Age, then the Employer will make a lump sum cash payment to the Executive on his or her Normal Retirement Date. The amount of such lump sum payment shall be equal to the value of the Executive's Deferred Benefit Account as of his or her Normal Retirement Date.*

Comment: *Under the above optional provision, an Executive remains completely unvested and receives no benefits unless he or she remains employed by the Employer until age 65, at which point a lump sum payment is made.*

Comment: *The above provision calls for a lump sum cash payment. If the Executive and Employer find that they would like this obligation to be satisfied by simply transferring ownership of the life insurance policy to the Executive – its value is what measures the Deferred Benefit Account anyway – they presumably could satisfy it that way too, or could pay the cash to the Executive who then could use it to buy the policy from the Employer.*

Comment: *If the Employer is a publicly traded company and the Executive is a key employee as defined in § 416(i) of the Internal Revenue Code, the plan document should provide that the payment of benefits must be postponed for six (6) months after termination of employment to comply with rules under § 409A.*

- 3.2 Upon an Executive's separation from service with the Employer, other than by the Employer for Cause, then the Employer will make a lump sum cash payment to the Executive on the first day of the of the sixth (6th) full calendar month after the date of Executive's separation from service. The amount of such lump sum payment shall be equal to the product of (i) the amount of the Executive's Deferred Benefit Account, multiplied by (ii) a fraction, the numerator of which is the amount of the Executive's Deferred Benefit Account in which the Executive is vested under Section 3.1, above, and the denominator of which is the total amount of the Executive's Deferred Benefit Account. If the Executive's Beneficiary dies before receiving all the payments due to him or her, then the remaining payments shall be made to the personal representative of the Beneficiary's estate.
- 3.3 If the Executive's employment with the Employer is terminated on account of his or her death and neither such Executive nor Executive's Beneficiary is entitled to benefits under Section 3.2 that are equal to or greater than the Death Benefit, then in lieu of any benefits under Section 3.2 the Employer shall make a lump sum payment to the Executive's Beneficiary. The amount of such lump sum payment shall be equal to the Executive's Death Benefit. Such payment shall be made no later than the date that is sixty (60) days after the date of the Executive's death.

Comment: *The Death Benefit amount payable here is chosen by the parties and set forth in the Definitions above and doesn't necessarily have to be related to the amount of the Deferred Benefit Account.*

Comment: *If the employer also provides a separate split dollar plan to the Executive through an Employer-owned life insurance policy, this supplemental income plan might want to provide a smaller amount, or no amount, payable at death. This is particularly*

true if the life insurance policy is meant to informally fund the Death Benefit under this supplemental income plan, as the Employer likely will not want to be obligated to pay total benefits under the two plans that exceed the total Death Benefit provided by the life insurance policy. The Employer should generally also make sure, however, that it's not the case that any taxable benefit owed under this supplemental income plan is being reduced in exchange for the providing of a welfare benefit – which generally includes a split dollar plan – as Treasury Regulation § 1.409A-2(b)(2) states that doing so would be treated as a taxable payment under the deferred compensation plan anyway.

- 3.4 If, at the death of the Executive, there is no properly designated living Beneficiary, or, if the Beneficiary is an entity (e.g., a trust) and such entity is not then in existence, then any payments due under this Plan shall be made to the Executive's estate.
- 3.5 The foregoing provisions of this Section 3 constitute the only conditions under which benefits are payable under the Plan.

Comment: *Internal Revenue Code § 409A also allows for payments to be made upon disability, change of ownership or control of the Employer, at a specified time, or upon the occurrence of an unforeseeable emergency. If a plan includes any of these allowable distribution triggers, the plan document should incorporate the specifications set forth in the Internal Revenue Code § 409A and its corresponding regulations.*

Comment: *In the event that a SERP fails to satisfy the requirements of § 409A, the Executive sustains a number of adverse consequences, namely: (i) inclusion of the deferred compensation is accelerated into the earliest open year, (ii) a 20% penalty tax is payable, and (iii) penalty interest (an additional 1% over the underpayment rate) is payable. Against this background, a sophisticated Executive is likely to negotiate for some sort of indemnification—especially where the Employer retains broad power to amend the Plan in a manner that could cause a failure. Below is a sample tax indemnity provision.*

[3.6. **Special Tax Indemnity.** *The Employer shall pay over to Executive an additional amount such that, when such additional amount is taken into account, the net amount retained by the from the payments under this Agreement, after taking into account the Executive's obligation to pay all taxes attributable thereto under section 4999 of the Code or 409A(a)(1)(B) of the Internal Revenue Code (the "Special Taxes") and the additional federal and state income taxes attributable to the inclusion of the additional amount itself (together with interest and penalties thereon), shall be equal to what such net amount retained would have been if none of the Special Taxes had been applicable. In calculation the additional amount payable under this subsection (g), the Executive shall be deemed to pay federal and state income taxes at the highest marginal rates.]*

Comment: While the consequences of a § 409A problem appear to fall almost entirely on the Executive, there are some consequences for the practice that are less obvious, but still very important. Specifically: If and when there is acceleration of the compensation into the earliest open year, the Employer would be regarded as having had a withholding obligation on the entire present value of the stream of payments for that year. Since this withholding would not have occurred, the Service would look to collect this amount — plus interest (and, perhaps, penalties)—from the Employer. The Employer would then be left to its remedies to recover the later year withholding that it did pay by filing a Form 941X.

4. Rights and Duties of Executives and Beneficiaries

- 4.1 No Executive or any other person shall have any interest in any fund or in any specific asset or assets of the Employer by reason of this Plan, or for any other reason, or have any right to receive any distributions under the Plan except as and to the extent expressly provided under the Plan. Any person entitled to a payment under the Plan is a general unsecured creditor of the Employer. In particular, both the Employer and the Executive hereby acknowledge that even though the Deferred Benefit Account is to be computed by reference to the fair market value of the Policy to be owned by the Employer, such Policy is and will remain the sole property of the Employer and the Employer is under no obligation, in whole or in part, to keep or maintain the Policy or to exercise any particular ownership options with respect to the Policy. Nothing in this Plan is intended to constrain or limit the Employer's rights to exercise any rights or powers that the Employer has as owner of the Policy.
- 4.2 Each Executive shall receive an updated copy of the Plan and shall receive copies of any amendments to the Plan within ten (10) days after their adoption.
- 4.3 No right of any Executive or any Beneficiary or any other person to receive payment hereunder shall be subject to alienation, transfer, sale, assignment, pledge, attachment, garnishment, or encumbrance of any kind. Any attempt to alienate, transfer, sell, assign, pledge, attach, or otherwise encumber any such payments whether presently or hereafter payable shall be void. No payment under this Plan shall be subject to debts or liabilities of any Executive or Beneficiary.
- 4.4 Every person receiving or claiming payments under the Plan shall be presumed to be mentally competent until the date on which the Employer receives a written notice in a form and manner acceptable to the Employer that such person is incompetent and that a guardian, conservator or other person legally vested with the interest of his or her estate has been appointed. If guardian or conservator of the estate or any person receiving or claiming payments under the Plan is appointed, payments under this Plan may be made to such guardian or conservator provided that the proper proof of appointment and

continuing qualification is furnished in a form and manner acceptable to the Employer. Any payments so made shall be a discharge of any liability of the Employer for such payments.

- 4.5 Each person entitled to receive a payment under this Plan, whether an Executive, Beneficiary, a guardian or otherwise, shall provide the Employer with such information it may from time to time deem necessary or in its best interest in administering the Plan. Any such person shall also furnish the Employer with such documents, evidence, data or other information as the Employer may from time to time deem necessary or advisable.

5. Duties of the Plan Administrator

- 5.1 The Plan shall be administered by the Plan Administrator.
- 5.2 The Plan Administrator may from time to time establish rules and regulations for the administration of the Plan and adopt standard forms for such matters as elections, beneficiary designations and applications for benefits, provided such rules and forms are not inconsistent with the provisions of the Plan.
- 5.3 All determinations of the Plan Administrator shall be binding on all parties. In construing or applying the provisions of the Plan, the Employer shall have the right to rely upon a written opinion of legal counsel, which may be independent legal counsel or legal counsel regularly employed by the Employer, whether or not any question or dispute has arisen as to any distribution from the Plan.
- 5.4 The Plan Administrator shall be responsible for maintaining books and records for the Plan.

6. Amendment

- 6.1 The Employer may not amend, modify, terminate, or discontinue the Plan at any time without the written consent of the Executive.
- 6.2 However, no such amendment shall have the effect of reducing the Deferred Benefit Account, computed as of the date of such amendment.

Comment: Internal Revenue Code § 409A generally prohibits payments to occur earlier than originally called for in the plan, and permits the postponement of payments only if certain requirements are met (generally, any amendment or election to delay payment must occur at least 1 year before the first payment is scheduled to be made, and the new payment date must be at least 5 years later than that which was originally scheduled). There are exceptions to the rules against accelerating payments, including those under the “termination and liquidation” exception or in the event of an unforeseen financial hardship suffered by the Employee, but only if several technical requirements are met.

Interested readers should particularly consult IRC § 409A(a)(2) and (4); Treas. Reg. §§ 1.409A-1(c)(3)(iii), -2(b)(1), and -3(j)(4)(ix)(C).

Comment: *Another alternative would be to give the Employer the unilateral right to amend the plan as long as such amendment complies with IRC § 409A. In such a case, this Amendment section could read as follows: “The Employer reserves the right to amend the Plan at any time and for any reason, provided that such amendment will not cause the Plan to violate Section 409A of the Internal Revenue Code or its corresponding regulations.*

7. Not a Contract of Employment

7.1 This Plan is not a contract of employment between an Executive and the Employer. No provision of this Plan restricts the right of the Employer to discharge an Executive or restricts the right of an Executive to terminate his or her employment.

8. Claims Procedure

8.1 If for any reason a claim for benefits under this Plan is denied by the Employer, the Plan Administrator shall deliver to the Claimant a written explanation setting forth the specific reasons for the adverse benefit determination; specific references to the Plan section on which the adverse benefit determination is based; 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 a description of the Plan’s review procedure including a statement of the Claimant’s rights to bring a civil action under Section 502 of ERISA following an adverse determination on review, all written in a manner calculated to be understood by the Claimant. For this purpose:

- (a) The Claimant’s claim shall be deemed filed when presented orally or in writing to the Plan Administrator.
- (b) The Plan Administrator’s explanation shall be in writing delivered to the Claimant within 90 days of the date the claim is filed unless the Plan Administrator determines that special circumstances require an extension of time for processing the claim. If such an extension of time for processing is required, written notice of the extension shall be furnished to the Claimant prior to the termination of the initial 90-day period. In no event shall such extension exceed a period of 90 days from the end of such initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the Plan Administrator expects to render the benefit determination. If the period of time is extended because the Claimant has failed to provide necessary information to decide the claim, the period for making the benefit determination shall be tolled from the date on which the notification of the extension is sent to the Claimant, until the date on which the Claimant provides the

© 2020 Northwestern Mutual is the marketing name for The Northwestern Mutual Life Insurance Company (NM), Milwaukee, WI and its subsidiaries. Client’s legal counsel is authorized to use, amend and modify this sample document in his or her own practice.

information. Failure to provide notice of decision in the time specified is the same as denial of the claim and the Claimant is entitled to require a review of the denial under the review procedures.

- 8.2 The Claimant (or his or her duly authorized representative) shall have 60 days following the receipt of the denial of the claim to file with the Plan Administrator a written request for review of the denial. For such review, Claimant shall have the opportunity to submit written comments, documents, records, and other information relating to the claim for benefits. Claimant shall be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claim for benefits. The review of the claim shall take into account all comments, documents, records, and other information submitted by the Claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.
- 8.3 In the case of a request for review of an adverse benefit determination, the Plan Administrator is designated, solely for purposes of this claims procedure, as the appropriately Named Fiduciary for a full and fair review. On review, the Plan Administrator shall notify the Claimant not later than 60 days after the Employer's receipt of the request for review, unless the Plan Administrator determines that special circumstances require an extension of time for processing the claim, in which case a decision shall be rendered as soon as possible, but not later than 120 days after receipt of the request for review. If such an extension of time for review is required because of special circumstances, written notice of the extension shall be furnished to the Claimant prior to the termination of the initial 60-day period. In no event shall any such extension exceed a period of 60 days from the end of the initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the Plan expects to render the determination on review. If the period of time is extended because the Claimant has failed to provide necessary information to decide the claim, the period for making the benefit determination shall be tolled from the date on which the notification of the extension is sent to the Claimant, until the date on which the Claimant provides the information. The decision on review shall be in writing and in the case of an adverse benefit determination shall include: (i) the specific reason or reasons for the decision; (ii) references to the specific Plan provisions on which the benefit determination is based; (iii) a statement that the Claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to the Claimant's claim for benefits; and (iv) a statement of the Claimant's right to bring an action under Section 502(a) of ERISA, all written in a manner calculated to be understood by the Claimant. If the decision on review is not furnished within such time, the claim shall be deemed denied on review.
- 8.4 The Secretary of the Employer is hereby designated as the Named Fiduciary and Plan Administrator of this Plan.

9. Construction and Expense

© 2020 Northwestern Mutual is the marketing name for The Northwestern Mutual Life Insurance Company (NM), Milwaukee, WI and its subsidiaries. Client's legal counsel is authorized to use, amend and modify this sample document in his or her own practice.

9.1 **Notices.** Any and all notices required or permitted hereunder shall be in writing and shall be delivered to the individual designated below for the recipient thereof or for such individual's attention during normal business hours to a receptionist or other person available to receive incoming deliveries at the address designated below for such recipient or sent to such recipient via facsimile or electronic mail to the facsimile number/e-mail address designated below for such recipient or by registered or certified mail, return receipt requested and postage prepaid, to the address designated below for such recipient:

To Employer: _____
Address: _____

Facsimile: () _____
Electronic Mail: _____

To Executive: _____
Address: _____

Facsimile: () _____
Electronic Mail: _____

Notices delivered as provided above shall be deemed given upon such delivery. Notices sent via facsimile or electronic mail as provided above shall be deemed given upon their successful transmission. Notices mailed as provided above shall be deemed given on the date of their deposit in the United States mail. Any party hereto may change the individual, facsimile number, e-mail address and/or street address to which notices thereto should be given hereunder by giving notice of such change to the other party hereto in accordance with the provisions of this Section.

9.2 **Further Assurance.** Each of the parties hereby agrees to execute and deliver such documents and to take such other actions at any time and from time to time hereafter as may be reasonably requested by the other party to carry out the provisions or purposes of this Plan.

9.3 **Governing Law.** This Plan is being delivered and is intended to be performed in [*Name of State*] and shall be construed and enforced in accordance with the laws of [*Name of State*].

9.4 **Interpretation.** The headings in this Plan are intended for convenience only and shall not affect the meaning or interpretation hereof. In interpreting this Plan, whenever the context so permits, (a) the singular shall include the plural and the plural shall include the singular, (b) any gender shall include all genders and (c) the term "including" shall mean "including,

© 2020 Northwestern Mutual is the marketing name for The Northwestern Mutual Life Insurance Company (NM), Milwaukee, WI and its subsidiaries. Client's legal counsel is authorized to use, amend and modify this sample document in his or her own practice.

SAMPLE DOCUMENT

without limitation." The word "including" shall mean "including, without limitation," and any exhibit, schedule or other document referred to herein is incorporated in this Plan and made a part hereof.

- 9.5 **Counterparts.** This Plan may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument, or with multiple signature pages which may be delivered electronically.
- 9.6 **Expenses.** All expenses of administering the Plan shall be paid by the Employer unless the Plan provides to the contrary.
- 9.7 **Integration.** This Plan constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes any and all oral, written or other negotiations, warranties, representations, agreements or other understandings in regard thereto.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Plan has been signed, entered into, and executed as of _____,
20____.

EMPLOYER: [NAME OF EMPLOYER]

By: _____
[Print Name]

Title: _____

EXECUTIVE: _____
[Print Name of Executive/Participant]

© 2020 Northwestern Mutual is the marketing name for The Northwestern Mutual Life Insurance Company (NM), Milwaukee, WI and its subsidiaries. Client's legal counsel is authorized to use, amend and modify this sample document in his or her own practice.

PARTICIPATION AGREEMENT
DEFINED CONTRIBUTION SUPPLEMENTAL INCOME PLAN
(BENEFIT MEASURED BY VALUE OF LIFE INSURANCE)

As provided in the above referenced Plan dated _____, 20____, you, [Name of Executive/Participant], are hereby invited to participate. By accepting this invitation, you acknowledge that you have read the Plan, understand its terms, understand that benefits will be paid pursuant to the Plan only under the specific circumstances described therein, understand that you are a general unsecured creditor of [Name of Employer], and that you have no interest in specific assets owned by [Name of Employer].

Today's date is _____, 20____.

[NAME OF EMPLOYER]

By: _____
[Signature Above; Print Name Here]

Title: _____

I hereby accept the invitation of [Name of Employer] to participate in its Elective Deferred Compensation Plan upon the terms and conditions set forth therein and in this Participation Agreement.

[Signature of Executive/Participant Above; Print Name Here]

For purposes of the plan, I hereby designate the following Beneficiary or Beneficiaries (if none named, the beneficiary will be the personal representative of my estate):

_____ Date of Birth: _____
(Beneficiary)

If the above-named beneficiary is not alive when payments are first due to be made under the Plan, I hereby designate the following Beneficiary or Beneficiaries:

_____ Date of Birth: _____
(Contingent Beneficiary)

© 2020 Northwestern Mutual is the marketing name for The Northwestern Mutual Life Insurance Company (NM), Milwaukee, WI and its subsidiaries. Client's legal counsel is authorized to use, amend and modify this sample document in his or her own practice.

**DEFINED CONTRIBUTION SUPPLEMENTAL INCOME PLAN
(BENEFIT MEASURED BY VALUE OF LIFE INSURANCE)**

SCHEDULE A

[Description of life insurance policy used to measure benefit, including schedule of premiums to be contributed/paid by Employer]

— For the Use of Legal Counsel Only. Not for use by Financial Representatives with the public. —