

**SIMPLE Individual Retirement Account**  
Custodial Agreement and Disclosure Statement

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Retirement Account***

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Form **5305-SA**

(March 2002)  
Department of the Treasury  
Internal Revenue Service

## **SIMPLE Individual Retirement Custodial Account**

(under Sections 408(a) and 408(p) of the Internal Revenue Code)

### **Article I**

The individual whose name appears on the accompanying IRA Application Form (hereinafter called "Depositor" and/or "Participant") is establishing a SIMPLE Individual Retirement Account (hereinafter a "Custodial Account", "Depositor's Account", "Participant Account", "Account" and/or "Plan") with New Vision Trust Company, a State Chartered South Dakota Trust Company (herein referenced to as "Custodian"). This SIMPLE I Individual Retirement Plan is established, under 408(a) of the Internal Revenue Code, for the exclusive benefit of the Depositor (or his or her beneficiaries) within the meaning of §408(a) and §408(p) of the Internal Revenue Code ("Code") and the related Treasury regulations ("Regulation(s)"). The Custodian has delegated certain Custodial Account recordkeeping and administrative functions ("Administrative Services") to American IRA, LLC, a North Carolina limited liability company (the "Administrator"). The Custodian and the Depositor hereby make the following agreement ("Agreement"):

- 1.1 The custodian will accept cash contributions made on behalf of the participant by the participant's employer under the terms of a SIMPLE IRA plan described in section 408(p). In addition, the custodian will accept transfers or rollovers from other SIMPLE IRAs of the participant. No other contributions will be accepted by the custodian.

### **Article II**

- 2.1 The participant's interest in the balance in the custodial account is nonforfeitable.

### **Article III**

- 3.1 No part of the custodial account funds may be invested in life insurance contracts, nor may the assets of the custodial account be commingled with other property except in a common custodial fund or common investment fund (within the meaning of section 408(a)(5)).
- 3.2 No part of the custodial account funds may be invested in collectibles (within the meaning of section 408(m)) except as otherwise permitted by section 408(m)(3), which provides an exception for certain gold, silver, and platinum coins, coins issued under the laws of any state, and certain bullion.

### **Article IV**

- 4.1 Notwithstanding any provision of this agreement to the contrary, the distribution of the participant's interest in the custodial account shall be made in accordance with the following requirements and shall otherwise comply with section 408(a)(6) and the regulations thereunder, the provisions of which are herein incorporated by reference.
- 4.2 The participant's entire interest in the custodial account must be, or begin to be, distributed not later than the participant's required beginning date, April 1 following the calendar year in which the participant reaches age 70 1/2. By that date, the participant may elect, in a manner acceptable to the custodian, to have the balance in the custodial account distributed in:
  - (a) A single sum or
  - (b) Payments over a period not longer than the life of the participant or the joint lives of the participant and his or her designated beneficiary.
- 4.3 If the participant dies before his or her entire interest is distributed to him or her, the remaining interest will be distributed as follows:
  - (a) If the participant dies on or after the required beginning date and:
    - (i) the designated beneficiary is the participant's surviving spouse, the remaining interest will be distributed over the surviving spouse's life expectancy as determined each year until such spouse's death, or over the period in paragraph (a)(iii) below if longer. Any interest remaining after the spouse's death will be distributed over such spouse's remaining life expectancy as determined in the year of the spouse's death and reduced by 1 for each subsequent year, or, if distributions are being made over the period in paragraph (a)(iii) below, over such period.
    - (ii) the designated beneficiary is not the participant's surviving spouse, the remaining interest will be distributed over the beneficiary's remaining life expectancy as determined in the year following the death of the participant and reduced by 1 for each subsequent year, or over the period in paragraph (a)(iii) below if longer.
    - (iii) there is no designated beneficiary, the remaining interest will be distributed over the remaining life expectancy of the participant as determined in the year of the participant's death and reduced by 1 for each subsequent year.
  - (b) If the participant dies before the required beginning date, the remaining interest will be distributed in accordance with (i) below or, if elected or there is no designated beneficiary, in accordance with (ii) below:
    - (i) The remaining interest will be distributed in accordance with paragraphs (a)(i) and (a)(ii) above (but not over the period in paragraph (a)(iii), even if longer), starting by the end of the calendar year following the year of the participant's death. If, however, the designated beneficiary is the participant's surviving spouse, then this distribution is not required to begin before the end of the calendar year in which the participant would have reached age 70 1/2. But, in such case, if the participant's surviving spouse dies before distributions are required to begin, then the remaining interest will be distributed in accordance with (a)(ii) above (but not over the period in paragraph (a)(iii), even if longer), over such spouse's designated beneficiary's life expectancy, or in accordance with (ii) below if there is no such designated beneficiary.
    - (ii) The remaining interest will be distributed by the end of the calendar year containing the fifth anniversary of the participant's death.
- 4.4 If the participant dies before his or her entire interest has been distributed and if the designated beneficiary is not the participant's surviving spouse, no additional contributions may be accepted in the account.
- 4.5 The minimum amount that must be distributed each year, beginning with the year containing the participant's required beginning date, is known as the "required minimum distribution" and is determined as follows:
  - (a) The required minimum distribution under paragraph 2(b) for any year, beginning with the year the participant reaches age 70 1/2, is the participant's account value at the close of business on December 31 of the preceding year divided by the distribution period in the uniform lifetime table in Regulations section 1.401(a)(9)-9. However, if the participant's designated beneficiary is his or her surviving spouse, the required minimum distribution for a year shall not be more than the participant's account value at the close of business on December 31 of the preceding year divided by the number in the joint and last survivor table in Regulations section 1.401(a)(9)-9. The required minimum distribution for a year under this paragraph (a) is determined using the participant's (or, if applicable, the participant and spouse's) attained age (or ages) in the year.
  - (b) The required minimum distribution under paragraphs 3(a) and 3(b)(i) for a year, beginning with the year following the year of the participant's death (or the year

the participant would have reached age 70 1/2, if applicable under paragraph 3(b)(i) is the account value at the close of business on December 31 of the preceding year divided by the life expectancy (in the single life table in Regulations section 1.401(a)(9)-9) of the individual specified in such paragraphs 3(a) and 3(b)(i).

- (c) The required minimum distribution for the year the participant reaches age 70 1/2 can be made as late as April 1 of the following year. The required minimum distribution for any other year must be made by the end of such year.
- 4.6 The owner of two or more IRAs (other than Roth IRAs) may satisfy the minimum distribution requirements described above by taking from one IRA the amount required to satisfy the requirement for another in accordance with the regulations under section 408(a)(6).

#### Article V

- 5.1 The participant agrees to provide the custodian with all information necessary to prepare any reports required by sections 408(i) and 408(l)(2) and Regulations sections 1.408-5 and 1.408-6.
- 5.2 The custodian agrees to submit to the Internal Revenue Service (IRS) and participant the reports prescribed by the IRS.
- 5.3 The custodian also agrees to provide the participant's employer the summary description described in section 408(l)(2) unless this SIMPLE IRA is a transfer SIMPLE IRA.

#### Article VI

- 6.1 Notwithstanding any other articles which may be added or incorporated, the provisions of Articles I through III and this sentence will be controlling. Any additional articles inconsistent with sections 408(a) and 408(p) and the related regulations will be invalid.

#### Article VII

- 7.1 This agreement will be amended from time to time to comply with the provisions of the Code and related regulations. Other amendments may be made with the consent of the persons whose signatures appear on the SIMPLE IRA Adoption Agreement.

#### Article VIII

##### 8.1 Custodian and Administrator:

- (a) The Custodian for the Custodial Account is New Vision Trust Company, a State Chartered South Dakota Trust Company.
- (b) The Administrator for the Custodial Account is American IRA, LLC., a North Carolina Limited Liability Company.

- 8.2 **Accuracy of Information:** The Depositor represents and warrants that all information and instructions given to the Custodian by the Depositor will be complete and accurate and agrees that the Custodian shall not be responsible for any incomplete or inaccurate information provided by the Depositor or Depositor's beneficiary(ies). The Depositor and the Depositor's beneficiary(ies) agree to be responsible for all tax consequences arising from contributions to, and distributions from, the Depositor's Custodial Account and acknowledge that no tax advice has been, nor will any tax advice be, provided by the Custodian.

- 8.3 **Affiliated Business Disclosure and Conflict of Interest Waiver:** The Custodian, New Vision Trust Company, a State Chartered South Dakota Trust Company and American IRA, LLC, a North Carolina limited liability company (Administrator) are affiliated companies by reason of their common ownership and management. Because the two companies are under common ownership and management, the owners of American IRA, LLC, a North Carolina limited liability company will enjoy a direct and/or indirect financial benefit from the fees the Depositor pays to New Vision Trust Company, a State Chartered South Dakota Trust Company. By signing the Account Application, the Depositor acknowledges and understands that: 1) New Vision Trust Company, a State Chartered South Dakota Trust Company and American IRA, LLC, a North Carolina limited liability company are under common ownership and control, 2) by retaining New Vision Trust Company, a State Chartered South Dakota Trust Company, the Depositor is providing a financial benefit to the owners of American IRA, LLC, a North Carolina limited liability company 3) The Depositor is under no obligation to retain New Vision Trust Company, a State Chartered South Dakota Trust Company and that the Depositor is free to retain the services of another, unaffiliated Custodian, and 4) the Depositor, does acknowledge and confirm that the Depositor chose New Vision Trust Company, a State Chartered South Dakota Trust Company freely and with no influence from the Custodian and/or Administrator.

- 8.4 **Agent for the Custodian:** The Custodian has appointed the Administrator to act as agent and/or nominee for the Custodian to perform administrative and/or custodial-related services with respect to the Custodial Account for which the Custodian otherwise has responsibility under this Agreement. All limitations of, and duties owed to the Depositor by the Custodian, and releases or indemnifications of the Custodian by the Depositor in this Agreement shall apply equally to the Administrator. Except where the Depositor is a resident of North Carolina, where all assets shall be vested solely in the name of the Custodian for the benefit of ("FBO") the Depositor, the Administrator may, for administrative convenience, perform duties on behalf of the Custodian which include, but are not limited to, executing applications or adoption agreements, transfers, stock powers, escrow accounts, purchase agreements, notes, deeds, conveyances, liens, placing assets or liabilities in the Administrator's name as Nominee for the Custodian and FBO the Depositor to provide administrative convenience for such transactions, depositing contributions, and income, paying liabilities and distributions and government reporting for Depositors who have established a Custodial Account with the Custodian. Notwithstanding the foregoing, the Custodian shall maintain control over all Account assets.

- 8.5 **Annual Accounting:** The Custodian shall, at least annually, provide the Depositor or Beneficiary (in the case of Depositor's death) with an accounting of the Depositor's account, consistent with the valuation provisions of 9.11 herein. Such accounting shall be deemed to be accepted by the Depositor or the Depositor's Beneficiary, if the Depositor or Beneficiary do not object in writing within 60 days after delivery of such accounting statement.

- 8.6 **Amendment:** The Depositor irrevocably delegates to the Custodian the right and power to amend this Custodial Agreement. In the case of an amendment required by law, Depositor's consent is not required. For amendments made by Custodian, Depositor shall be deemed to have consented where Custodian has provided the Depositor 30 days' prior written notice of the amendment, unless the Depositor notifies the Custodian in writing to the contrary no later than 30 days after delivery of notice of the change and Depositor requests a distribution or transfer of the balance in the Depositor's account(s).

##### 8.7 Termination of Agreement, Resignation and/or Removal of Custodian:

- (a) Depositor and Custodian may terminate this Agreement at any time upon delivery of written notice to the other party.

(b) Resignation of Custodian.

- i. The Custodian may resign and appoint a successor trustee or custodian to serve under this Agreement, or under another governing agreement selected by the successor trustee or custodian, by delivering written notice to Depositor at least 30 days prior to the effective date of such resignation and appointment. The Depositor shall then have 30 days from the date of such notice to either: 1) request a distribution of the entire balance of Depositor's Account or 2) designate a different successor trustee or custodian and notify the Custodian of such designation. If the Depositor does not request distribution of the account balance or notify the Custodian of the designation of a different successor trustee or custodian within such 30-day period, the Depositor shall be deemed to have consented to the appointment of the successor trustee or custodian and the terms of any new governing instrument, and neither the Depositor nor the successor shall be required to execute any written document to complete the transfer of the account to the successor trustee or custodian. The successor trustee or custodian may rely on any information, including beneficiary designations, previously provided by the Depositor to the Custodian. Where a new governing agreement is selected by the successor trustee or custodian said agreement and related disclosure will be provided to Depositor together with or under separate cover from the notice required in this provision.
  - ii. The Custodian may resign and demand that the Depositor appoint a successor trustee or custodian for the Custodial Account by giving the Depositor written notice at least 30 days prior to the effective date of such resignation. The Depositor shall then have 30 days from the date of such notice to designate a successor trustee or custodian, notify the Custodian of the name and address of the successor trustee or custodian, and provide the Custodian with appropriate evidence that such successor has accepted the appointment and is qualified to serve as trustee or custodian of an individual retirement account.
    - A. If the Depositor designates a successor trustee or custodian and provides the Custodian evidence of the successor's acceptance of appointment and qualification within such 30-day period, the Custodian shall then deliver all of the assets held by the Custodian in the account (whether in cash or personal or real property, wherever located, and regardless of value) to the successor trustee or custodian.
    - B. If the Depositor does not notify the Custodian of the appointment of a successor trustee or custodian within such 30-day period, then the Custodian may distribute all of the assets held by the Custodian in the account (whether in cash or personal or real property, wherever located, and regardless of value) to the Depositor, outright and free of trust, and the Depositor shall be wholly responsible for the tax consequences of such distribution.
    - C. In either case, the Custodian may expend any assets in the account to pay expenses of transfer (including re-registering the assets and preparation of deeds, assignments, and other instruments of transfer or conveyance) to the successor trustee or custodian or the Depositor, as the case may be. In addition, the Custodian may retain a portion of the assets as a reserve for payment of any anticipated remaining fees and expenses. Upon satisfaction of such fees and expenses, the Custodian shall pay over any remainder of the reserve to the successor trustee or custodian or to the Depositor, as the case may be.
- (c) The Depositor may, at any time, remove the Custodian and replace the Custodian with a successor trustee or custodian of the Depositor's choice by giving 30 days' notice of such removal and replacement. The Custodian shall then deliver the assets of the account as directed by the Depositor. However, the Custodian may retain a portion of the assets of Depositor's Account as a reserve for payment of any anticipated remaining fees and expenses and shall pay over any remainder of this reserve to the successor trustee or custodian upon satisfaction of such fees and expenses.
- (d) Successor Custodian: If the Custodian's organization changes its name, reorganizes, merges with another organization (or comes under the control of any federal or state agency), or if Custodian's entire organization (or any portion which includes Depositor's Account) is bought by another organization, that organization (or agency) shall automatically become the trustee or custodian of Depositor's Account, but only if it is the type of organization authorized to serve as a trustee or custodian as set forth in the Code and/or Regulations.
- (e) After the Depositor's Account with the Custodian is closed, if there are additional assets remaining in, or subsequently credited to, the Depositor's Account, the Custodian will endeavor to distribute or transfer such assets in accordance with the Depositor's prior direction, but after offsetting any applicable administrative expenses and custodial fees.
- (f) The Custodian may establish a policy requiring distribution of the entire balance of the Depositor's Account to the Depositor in cash or property if the balance of the Depositor's Account drops below the minimum balance required under the applicable investment or policy established.

8.8 **Custodian's and Administrator's Fees and Expenses:**

- (a) Depositor agrees, that by opening an account with Custodian, to pay all fees and charges that are made against Depositor's Account in accordance with the Fee Schedule provided and incorporated by reference herein. All fees are due upon presentation. If your Account is unfunded with zero value, Depositor understands that Depositor's Account will continue to incur fees until Depositors provides written notice to Custodian to close the account. Fees shall not be prorated, and the full amount will be due and payable for any year during which the Depositor's Account is open.
- (b) The Depositor agrees to pay the Custodian any and all fees specified in the Custodian's published fee schedule, as amended from time to time by the Custodian in accordance with this Agreement, for establishing and maintaining this Custodial Account, including any fees for distributions from, transfers to and/or from and terminations of this Custodial Account. The Custodian reserves the right to change its fee schedule at any time, in its sole discretion, by giving 30 days' prior notice to Depositor.
- (c) The Depositor agrees to pay any expenses incurred by the Custodian in the performance of its duties in connection with the account. Such expenses include, but are not limited to, administrative expenses, legal fees, accounting fees, regulatory fees and any taxes or assessments of any kind whatsoever that may be levied with respect to the Custodial Account.
- (d) All such fees, taxes, and other administrative expenses charged to the account shall be collected either from the assets in the Custodial Account or from any contributions to or distributions from such Custodial Account if not paid by the Depositor. The Depositor shall be responsible for any deficiency.
- (e) In the event that for any reason the Custodian is not certain as to who is entitled to receive all or part of the assets in the Custodial Account, the Custodian reserves the right to withhold any payment from the Custodial Account, to request a court ruling to determine the disposition of the Custodial assets, and to charge the Custodial Account for any expenses incurred in obtaining such legal determination.
- (f) The Custodian shall be entitled to receive, from the assets held in the Custodial Account, a fee equal in amount to all income that is generated from any Undirected Cash (defined as any cash in the Custodial Account not invested pursuant to a specific investment direction by the Depositor) which has been deposited by the Custodian into State and/or Federal banking institutions. Fees collected by the Custodian in accordance with this provision related to Undirected Cash in the Custodial Account are associated with cash management activities, including, but not limited to, account maintenance, depository bank selection, transaction processing, sub-accounting, record keeping, and other services performed under the terms of this Agreement. The Custodian retains the right, but does not have the obligation, to reduce this fee by rebating a portion of the fee into the Custodial Account. The Depositor agrees that this fee may be retained by the Custodian as compensation for the services provided by the Custodian under this Agreement. The Custodian may pay all or an agreed portion of this fee to the Administrator as agreed between the Custodian and the Administrator. The Custodian makes no representations or warranties as to the financial status of any depository bank or its ability to satisfy its obligations to the Depositor. The Custodian has sole discretion, without any further approval from the Depositor, as to which third party financial organizations to deposit the Depositor's Undirected Cash. The Depositor hereby indemnifies and agrees to hold such financial organization(s) harmless from following the directions received from the Custodian on the Depositor's behalf including, but not limited to, honoring checks drawn on the Depositor's portion of the pooled custodial accounts that are written by the Custodian and agrees that the duties and powers described herein that are exercised by the Custodian are ministerial in nature and will not operate to cause the Custodian to become a fiduciary with respect to the Depositor's account.

- (g) In addition to any portion of the fee collected by the Custodian as provided in Section 8.8(f), the Custodian shall be entitled to fees from the Depositor for account opening, asset purchases and sales, distributions, transfers, terminations, and annual administration of the Custodial Account, along with other miscellaneous fees, as disclosed in a fee schedule provided by the Custodian to the Depositor. If payment is not received within thirty (30) days from the due date reflected on an invoice, a past due notice will be sent to the Depositor and a late fee equal to (a) \$25.00 for every month or partial month that the invoice is outstanding or (b) the maximum late penalty permitted under the state law of South Dakota where the Custodian is organized, shall be assessed to the Custodial Account. Additionally, assets may be liquidated from the account, without further notice, for any outstanding fees which have not been paid within 30 days of the initial past due notice. If fees are not paid within thirty (30) days after the Custodian has provided the past due notice, the Custodian will begin the process of closing the Custodial Account. Any asset distributed directly to the Depositor as part of closing the Custodial Account will be reported to the IRS on Form 1099-R and may subject the Depositor to possible taxes and penalties. Accounts with past due fees, unfunded accounts, and accounts with zero value will continue to incur administration fees until such time as the Depositor notifies the Custodian (on a form prescribed by the Custodian) of the Depositor's intent to close the account and the Depositor's account is closed or until the Custodian resigns.

8.10 **Age 70<sup>1/2</sup> Default Provisions:** If the Depositor does not choose any of the distribution methods under Article IV of this Custodial Agreement by April 1st following the calendar year in which the Depositor reaches age 70<sup>1/2</sup> (the "Beginning Date") distribution shall be determined based upon the distribution period in the uniform lifetime distribution period table in Regulation section 1.401(a)(9)-9. However, no payment will be made until the Depositor provides the Custodian with a proper distribution request acceptable to the Custodian. The Custodian reserves the right to require a minimum balance in the Depositor's Account in order to make periodic payments from the account. Upon receipt of such distribution request, the Depositor may switch to a joint life expectancy in determining the required minimum distribution if the Depositor's spouse was the sole beneficiary as of the January 1st of the distribution calendar year and such spouse is more than 10 years younger than the Depositor. Depositor's required minimum distribution is calculated using the uniform lifetime table in Regulations section 1.401(a)(9)-9, However, if the Depositor's spouse is the sole designated beneficiary and is more than 10 years younger than the Depositor, the required minimum distribution is calculated each year using the joint and last survivor table in Regulations section 1.401(a)(9)-9. The Custodian shall not be liable for any penalties or taxes related to the Depositor's failure to take a required minimum distribution or to the Depositor's receipt of an amount in excess of the required minimum distribution.

8.11 **Death Benefit Default Provisions:**

- (a) If the Depositor dies before the Depositor's required Beginning Date, and the beneficiary does not select a method of distribution described in Article IV, Section 4.03(b)(i) or (ii) by the December 31st following the year of the Depositor's death, distributions will be made pursuant to the single life expectancy of the Designated Beneficiary determined in accordance with IRS regulations. However, no payment will be made until the beneficiary provides the Custodian with a proper distribution request acceptable to the Custodian and other documentation that may be required by the Custodian. A beneficiary may at any time request a complete distribution of the Depositor's remaining interest in the Custodial Account. The Custodian reserves the right to require a minimum balance in the account in order to make periodic payments from the Custodial Account.
- (b) If the Depositor dies on or after the Depositor's required Beginning Date, as required by the Code, a distribution shall be made in accordance with Article IV, Section 4.03(a). However, no payment will be made until the beneficiary provides the Custodian with a proper distribution request acceptable to the Custodian and other documentation that may be required by the Custodian. A beneficiary may at any time request a complete distribution of the Depositor's remaining interest in the Custodial Account. The Custodian reserves the right to require a minimum balance in the account in order to make periodic payments from the Custodial Account.

8.12 **Transitional Rule for Determining Required Minimum Distributions for Calendar Year 2002:** Unless the Custodian provides otherwise, if a Depositor (or beneficiary) is subject to required minimum distributions for calendar year 2002, such individual may elect to apply the 1987 proposed regulations, the 2001 proposed regulations, or the 2002 final regulations in determining the amount of the 2002 required minimum. However, the Custodian, in its sole discretion, reserves the right to perform any required minimum distribution calculations through its data systems or otherwise based upon any of the three sets of regulations delineated in the previous sentence.

8.13 **Investment Provisions:** Pursuant to IRS Notice 97-6, Q&A J-4, if the Custodian is the Designated Financial Institution (DFI) and the Depositor timely elects that his or her balance be transferred without cost or penalty to another SIMPLE IRA in accordance with the provisions described in the accompanying SIMPLE IRA Disclosure Statement, the Custodian reserves the right to restrict the Participant's choice of investment alternatives as determined by the Custodian.

8.14 **Designation of Beneficiary:**

- (a) Except as may be otherwise required by state law, in the event of the Depositor's death, the balance in the account shall be paid to the beneficiary, or beneficiaries, designated by the Depositor on a Beneficiary Designation Form acceptable to, and filed with, the Custodian. The Depositor may change the Depositor's beneficiary or beneficiaries at any time by filing a new Beneficiary Designation Form with the Custodian. If no beneficiary designation is in effect, if none of the named beneficiaries survive the Depositor or if the Custodian cannot locate any of the named beneficiaries after reasonable search, any balance in the account will be payable to the Depositor's estate.
- (b) If the Custodian permits, in the event of the Depositor's death, any beneficiary may name a subsequent beneficiary(ies) to receive the balance of the account to which such beneficiary is entitled upon the death of the original beneficiary by filing a Subsequent Beneficiary Designation Form acceptable to and filed with the Custodian. Payments to such subsequent beneficiary(ies) shall be distributed in accordance with the payment schedule applicable to the original beneficiary or more rapidly if the subsequent beneficiary requests. In no event, can any subsequent beneficiary be treated as a designated beneficiary of the Depositor. The preceding sentence shall not apply with respect to the subsequent beneficiary(ies), if any, designated by the original spouse beneficiary where the Depositor dies before the Depositor's required Beginning Date. In this case, the original spouse beneficiary is treated as the Depositor. If the balance of the account has not been completely distributed to the original beneficiary and such beneficiary has not named a subsequent beneficiary or no named subsequent beneficiary is living on the date of the original beneficiary's death, such balance shall be payable to the estate of the original beneficiary.

8.14 **Terms and Conditions of Designating a Representative:** The Depositor understands that the Custodian may permit, but shall not be required to accept, the appointment by the Depositor of a designated representative ("Representative") on the Custodial Account by completing a Representative Designation form acceptable to the Custodian. The Depositor understands that if the Depositor appoints a Representative, such Representative cannot be an individual or firm in which the Depositor's Custodial Account has invested or has an interest. The Depositor understands that it is the Depositor's responsibility to ensure that the Representative is independent of, and in no way connected with the investments held in the Depositor's Custodial Account and/or is not a "Disqualified Person," as defined in section 4975 of the Internal Revenue Code. The Custodian shall not be responsible for determining the relationship between the Depositor's Representative and the Custodial Account. It is the Depositor's responsibility to communicate all trade and/or investment instructions to the Depositor's Representative and all instructions received by the Custodian from the Depositor's Representative (including Representative's agents, employees and/or broker dealer) shall be assumed by Custodian to have been authorized by the Depositor. The Depositor understands that the Depositor may change or remove a Representative at any time by communicating in writing to the Custodian the Depositor's desire to remove such Representative. The Depositor understands that all instructions received from the Depositor's Representative, prior to receipt by the Custodian of the Depositor's written request for the removal of the then designated Representative are deemed authorized by the Depositor and will be executed by Custodian. Custodian has no responsibility to make and has made no investigation or recommendation with respect to the Depositor's Representative and will not compensate any Representative, except as specifically instructed by the Depositor. The Depositor understands

and agrees that such Representative is not in any way an agent, employee, representative, or affiliate of the Custodian. The Depositor acknowledges and agrees that the Custodian shall not be responsible for, nor bound by any representations, warranties, statements, or agreements made by any such Representative beyond the terms and provisions contained in this Agreement. The Depositor further understands that the Custodian has not made and will not make any recommendation or investigation with respect to the Depositor's Representative. Furthermore, the Custodian shall not compensate any of the Depositor's Designated Representative, or any other financial representative, broker, advisor, or issuer in any manner. The Depositor agrees to indemnify and hold harmless, the Custodian for any loss arising from and/or related to the appointment by the Depositor of any Representative and/or which may result from any action or inaction it takes in accordance with any written instructions received from the Depositor's Representative on behalf of the Depositor's Account.

## Article IX SELF-DIRECTED IRA PROVISIONS

### 9.1 Investments, Transfers and Withdrawals of Assets in the Custodial Account:

- (a) **Depositor's Account is "Self-Directed"** What does "Self-Directed" mean? Self-Directed means Depositor, as the Holder of the Custodial Account, is solely responsible for the investment of all assets within Depositor's Account by giving Custodian directives to take any action on behalf of the Custodial Account. That means Depositor is responsible for the selection, management, monitoring and retention of all investments held within Depositor's Account. The investments Depositor selects may involve a high degree of risk, and the Custodian will provide no investment advice nor make any investigation or determination as to the prudence, viability, suitability, legality, or safety of the investments that Depositor selects. The assets selected for investment are solely Depositor's responsibility. This requires that Depositor assures themselves of the financial soundness and appropriateness of the investment for Depositor's Account and retirement objectives and Depositor should have all investments reviewed by a competent legal, tax, and/or financial advisor.
- (b) **The Depositor shall have exclusive responsibility for, and control over, any and all investment of the assets of the Depositor's Custodial Account.** All transactions shall be subject to any and all restrictions or limitations, direct or indirect, which are imposed by the Custodian's charter, articles of incorporation, or bylaws; any and all applicable federal and state laws and regulations; the rules, regulations, customs and usages of any exchange, market or clearing house where the transaction is executed; the Custodian's internal policies, standards and practices; and this Agreement. After the Depositor's death, Depositor's beneficiary(ies) shall have the right to direct the investment of the Depositor's Custodial Account assets, subject to the same conditions that applied to the Depositor in the Depositor's lifetime under this Agreement. The Custodian shall be under no obligation to and will not exercise the voting rights and other shareholder rights with respect to investments in the Depositor's account unless the Depositor provides timely written directions acceptable to the Custodian in accordance with the Custodian's then current policies and procedures. The Depositor shall select the type of investment for the Depositor's assets, provided, however, that the Depositor's selection of investments shall be limited to those types of investments that the Custodian is authorized by its charter, articles of incorporation, or bylaws to offer and comply with the Custodian's internal policies, practices, and standards and are deemed administratively feasible by the Custodian. Cash balances in the Depositor's account, for which no investment instructions have been received, shall be placed in one or more state or federal banking institutions.
- (c) **Responsibility for determining eligibility and tax consequences:** Depositor assumes complete responsibility for 1) determining that Depositor is eligible to make a contribution to Depositor's Account; 2) ensuring that all contributions Depositor makes are within the limits set forth by the relevant sections of the Internal Revenue Code; and 3) the tax consequences of any contribution (including a rollover contribution) and distributions.
- (d) **Custodian Acting in Passive Capacity Only.**
- i. **The Custodian is acting solely as a passive custodian** to hold the Depositor's assets and the Custodian shall have no discretion to direct any investment in the Depositor's Custodial Account. Accordingly, the **Custodian is not a fiduciary (as said term is defined in the Internal Revenue Code, The Employee Retirement Income Security Act of 1974 ("ERISA"),** or any other applicable federal, state or local laws) with respect to the Depositor's Custodial Account. However, through the Custodian's affiliates, the Custodian may receive a commission in connection with the unsolicited purchase or sale of publicly-traded securities.
  - ii. The Custodian shall bear no responsibility to review the prudence, merits, viability or suitability of any investment directed by Depositor and/or Depositor's agent(s) or to determine whether the investment is suitable for the Depositor or acceptable under ERISA, the Internal Revenue Code or any other applicable law. The Custodian shall not offer any investment advice, nor endorse any investment, investment product or investment strategy; and the Custodian does not endorse any investment advisor, representative, broker, or other party selected by the Depositor. The Custodian shall have no responsibility to question any investment directions given by the Depositor and/or by any representative/agent appointed by the Depositor.
  - iii. It is the Depositor's sole responsibility to perform any and all prudent due diligence with regard to any such representative, investment advisor, broker or other party. The Custodian will follow the directions of any such investment advisor, representative, broker or other party authorized by the Depositor in a manner acceptable to the Custodian, and the Custodian will be entitled to all the same protections and indemnities in our reliance upon and execution of the directives of such agent or other party as if such directives were given by the Depositor.
  - iv. The Custodian shall be under no obligation or duty to investigate, analyze, monitor, verify title to, or otherwise evaluate or perform due diligence for any investment directed by the Depositor and/or the Depositor's investment advisor, representative or agent; nor shall the Custodian be responsible to notify the Depositor or take any action should there be any default with regard to any investment.
  - v. Any review performed by the Custodian with respect to an investment shall be solely for the Custodian's own purposes of determining compliance with our internal policies, practices and standards, as are determine from time to time and the administrative feasibility of the investment and neither such review nor its acceptance should be construed in any way as an endorsement of any investment, investment company or investment strategy. The Custodian also has the right to refuse any transaction/investment which the Custodian deems, in its sole discretion, to be beyond the scope of the Custodian's administrative responsibilities, capabilities or expertise or that the Custodian determines in its sole discretion does not comport with the Custodian's internal policies, practices or standards.
  - vi. The Custodian shall have no duty or obligation to notify you with respect to any information, knowledge, irregularities or our concerns relating to the Depositor's investment or the Depositor's investment advisor, broker, agent, promoter, or representative, and any failure to do so shall not result in any liability as the Custodian.
  - vii. The Custodian will use reasonable efforts to acquire or sell investments in accordance with the Depositor's directions within a reasonable period of time after the Custodian has received an acceptable investment direction and the Custodian will make reasonable efforts to notify the Depositor if the Custodian is unable or unwilling to comply with an investment direction. Subject to the foregoing, the Custodian shall remit funds as directed, but has no responsibility to verify or assure that such funds have been invested to purchase or acquire the asset selected by the Depositor.
  - viii. The Custodian reserves the right to refuse to follow any investment direction made by the Depositor that the Custodian determines may be a violation of any Federal or State Law.
- (e) **Investment Documentation.** Any direction from the Depositor, the Depositor's agent and/or Designated Representative to the Custodian with respect to any investment, withdrawal and/or transfer of an asset from the Depositor's Custodial Account, shall be in writing on a form acceptable to the Custodian ("Direction of Investment"). The **Custodian may remit funding for the Depositor's investment upon receipt of such Direction of Investment, without regard to any supporting documentation.** The Custodian shall be fully protected in acting upon any instrument, certificate, paper or transmission believed to be genuine and to be signed or presented by the proper person or persons whether or not by facsimile or other form acceptable to the Custodian, and the Custodian shall be under no duty to make any investigation or inquiry as to any statement contained in any such communication, but may accept the same as conclusive evidence of the truth and accuracy of the

statements therein contained. The Depositor authorizes and directs the Custodian to execute and deliver, on behalf of the Depositor's Custodial Account, any and all documents delivered to the Custodian in connection with the Depositor's investments; although the Custodian shall have no duty to deliver such documents and the Custodian shall have no responsibility to verify or determine that any such documents are complete, accurate or constitute the documents necessary to comply with the Depositor's Investment Direction, unless said directions from the Depositor comply with the requirements of this Agreement. Depositor authorizes and directs the Custodian to correct scrivener errors in investment titling and other minor clerical errors with telephone or email consent from the Depositor, the Depositor's agent and/or Designated Representative upon verification of the Depositor, Depositor's agent and/or Designated Representative's identity.

- (f) **Deposit Investments.** The deposit investments available through the Custodian may include, but are not limited to, marketable securities traded on a recognized exchange or "over the counter" (excluding any securities issued by the Custodian), covered call options, certificates of deposit, real estate, deeds of trust, mortgages, unsecured notes, limited partnerships, limited liability companies, private stock, other private placement offerings, and other investments to which the Custodian consents. Any cash in the Depositor's Custodial Account shall be invested in accordance with the instructions of the Depositor, or the Depositor's designated representative, subject to the other terms of this Custodial Agreement. If the Depositor does not instruct the Custodian with regard to any Undirected Cash, such cash will be deposited pursuant to paragraph 8.8(f). The Depositor may direct the Custodian to transfer any un-invested funds to an institution of the Depositor's choice at any time.
- (g) **Any Request for a withdrawal or transfer must include the following:** 1) the method of distribution, and 2) the tax identification number of the recipient. Withdrawals and transfers shall be subject to all applicable tax and other laws and regulations, including possible early withdrawal penalties or surrender charges and withholding requirements. The Depositor acknowledges that a distribution of a non-traditional asset, such as real estate, requires an appraisal prior to distribution and all associated fees shall be the sole responsibility of the Depositor. **For those custodial assets where fair market value is not readily ascertainable, the Depositor agrees that the Depositor will provide to the Custodian a qualified independent appraisal of the asset. If the Depositor does not provide such an appraisal, we may report the asset's value at its last known fair market value or at its acquisition cost.** The Custodian reserves the right to reject any withdrawal and/or transfer request it may deem, in its sole discretion, not an appropriate withdrawal and/or transfer and to apply to a court of competent jurisdiction to make a determination with respect to the proper party eligible to receive a distribution from the account. All fees and/or costs, including all reasonable attorney fees incurred by the Custodian associated with an application to the court for a determination distribution subject to a request for withdrawal and/or transfer shall be the responsibility of the Depositor and may be collected by the Custodian from the assets of the Depositor's Account.
- (h) **Payment Instructions** Depositor agrees to furnish payment instructions to the Custodian regarding any invoice, assessment, fee or any other disbursement notification received the Custodian on behalf of Depositor's investments, and Depositor understands that the Custodian has no duty or responsibility to disburse any payment until such instructions are received from Depositor and/or Depositor's Designated Representative. Written direction shall include signature by facsimile or by electronic signature.
- (i) **Investment Funding Requirements** Depositor understands and agrees that Depositor cannot make investments without having available liquid funds in Depositor's Account. In addition, if any investment contains provisions for future contractual payments or assessments, (including margin calls), Depositor acknowledges and agrees that such payments or assessments shall be borne solely by Depositor's Account to the extent such payment is authorized by Depositor and/or Depositor's Designated Representative and may reduce or exhaust the value of Depositor's Account. Depositor further agrees to indemnify the Custodian for any and all payments or assessments which may be imposed as a result of holding the investment within Depositor's Account, and Depositor agrees that the Custodian shall be under no obligation to extend credit to Depositor's Account or otherwise disburse payment beyond the cash balance of Depositor's Account for any payment or assessment related to the investment. Depositor agrees that Depositor is solely responsible for verifying that any bills to be paid from Depositor's Account, and accompanying payment instructions, have been received by the Custodian. Depositor further agrees that the Custodian shall not be responsible for late fees assessed by any third party where Depositor has not verified that payment instructions have been received, or where the receipt of instructions or documentations has been delayed.
- (j) **Investment Funds Availability** Any funds received into Depositor's Account which are made by check may be subject to an eleven (11) business day clearing period before funds are available to invest. ALL NEW ACCOUNTS are subject to a seven (7) calendar day waiting period before any funds can be invested.

## 9.2 Investment Contributions:

- (a) At the direction of the Depositor (or the direction of the beneficiary upon the Depositor's death), and in accordance with the Custodian's obligations under this Agreement, the Custodian shall invest all contributions to the Custodial Account, and earnings thereon, in investments that are acceptable to the Custodian, and that are considered administratively feasible by the Custodian, which may include, but are not limited to, marketable securities traded on a recognized exchange or "over the counter" (excluding any securities issued by the Custodian), covered call options, certificates of deposit, real estate, deeds of trust, mortgages, unsecured notes, limited partnerships, limited liability companies, private stock, other private placement offerings, and other investments to which the Custodian consents, in such amounts as are specifically selected and specified by the Depositor in a Direction of Investment, without any duty to diversify and without regard to whether such property is authorized by the laws of any jurisdiction as a trust investment. The Custodian shall be responsible for the execution of such orders and for maintaining adequate records thereof. However, if any such orders are not received as required, or, if received, are unclear in the opinion of the Custodian, or if there is insufficient Undirected Cash in the Custodial Account to comply with such orders, all or a portion of the contribution may be held un-invested without liability to Custodian for loss of income or appreciation, and without liability to Custodian for interest pending receipt of such orders or clarification, or the contribution may be returned to the Depositor. The Custodian shall have no duty other than to follow the written investment directions of the Depositor and shall be under no duty to question said instructions and shall not be liable for any investment losses sustained by the Depositor under any circumstances.
- (b) The Depositor hereby acknowledges and agrees that the Custodian will deposit all Undirected Cash in the Custodial Account into pooled deposit accounts at one or more State and Federal banking institutions or in United States government securities pending further investment direction by the Depositor. All income generated by Undirected Cash in the Custodian's pooled deposit accounts shall be retained by the Custodian as fees, as described in paragraph 8.8(e) above. The Depositor authorizes the Custodian to transfer any Undirected Cash in the Custodial Account into any State and Federal banking institution or in United States government securities or in securities that are insured or guaranteed by the United States government without any further approval or direction by the Depositor.
- (c) **Non- FDIC Insurance for Investments:** Depositor recognizes that investments purchased and/or held within Depositor's Account: 1) are not insured by the Federal Deposit Insurance Corporation (FDIC); 2) are not a deposit or other obligation of, or guaranteed by, the Custodian; and 3) are subject to substantial risk, may lack liquidity, and may result in a total loss of the investment. You acknowledge and confirm that all risk and loss sustained in your Retirement Account will not affect your retirement income standard; and if a mandatory distribution arises, that Depositor will meet any mandatory distribution requirements by utilizing Depositor's Account and/or other retirement accounts.

- 9.3 **Indemnification:** The Custodian shall have no duty other than to follow the written instructions of the Depositor, the Depositor's agents, investment advisors and/or Designated Beneficiaries, and shall be under no duty to question said instructions and shall not be liable for any investment losses sustained by the Depositor under any circumstances. By performing services under this Agreement, the Custodian is acting as the agent of the Depositor, and nothing in this Agreement shall be construed as conferring fiduciary status on the Custodian. The Depositor agrees to release, defend, indemnify and hold harmless the Custodian from any and all liability, claims, damages, actions, costs, expenses (including, without limitation, all reasonable attorneys' fees) arising from or related to the Custodial Agreement and/or Custodial Account, including but not limited to, losses to the Depositor and/or to the Depositor's beneficiary(ies) as a result of any action taken (or omitted to be taken) pursuant to and/or in connection with any investment transaction directed by the Depositor, the Depositor's agents, investment advisors and/or Designated Beneficiaries, including, without limitation, claims, damages, liability, actions and losses asserted by the Depositor or the Depositor's beneficiary(ies). The Depositor agrees to reimburse and/or advance to us, on demand, all legal fees, expenses, costs, fines, penalties and obligations incurred or to be incurred in connection with the defense, contest, prosecution or satisfaction of any claim made, threatened or asserted pertaining to any investment or action the Depositor, or the Depositor's agent, directed through the Custodian, including, without limitation, claims asserted by the Depositor, any state or federal regulatory authority or self-regulatory organization. In the event of claims by others related to the Depositor's account and/or investment wherein the Custodian is named as a party, the Custodian shall have the full and unequivocal right, at their sole discretion, to select their own attorneys to represent them in such litigation and deduct from the Depositor's account any amounts to pay for any costs and expenses, including, but not limited to, all reasonable attorneys' fees, and costs and internal costs (collectively "Litigation Costs"), incurred by the Custodian in the defense of such claims and/or litigation. The Custodian shall have the full and unequivocal right to freeze the Depositor's account, liquidate the Depositor's assets, and/or initiate legal action in order to obtain the Custodian's Litigation Costs. The Depositor also understands and agrees that the Custodian will not be responsible to take any action should there be any default with regard to any investment directed by the Depositor. The Depositor understands that no one at the Custodian has authority to agree to anything different than the Depositor's foregoing understandings of the Custodian's policy. No changes to the Custodian's policy are effective unless made in accordance with the terms of this Agreement. The term Custodian includes New Vision Trust Company, a State Chartered South Dakota Trust Company, its agents, assigns, nominees, delegates, joint ventures and/or affiliates including, but not limited to American, IRA, LLC a North Carolina limited liability Company, its affiliates and/or assigns.
- 9.4 **Registration:** All assets of the Custodial Account shall be registered in the name of the Custodian or of a suitable nominee. The Custodian reserves the right to appoint a nominee for the purposes of holding title to assets of the Custodial Account. The same nominee of the Custodian, with respect to the holding of assets of other investors, whether held under agreements similar to this one or in any capacity whatsoever; and the Custodian may commingle the assets so held to the extent permitted by law. However, the Custodial Account and each other account or asset so held shall each be separate and distinct; a separate account therefore shall be maintained by the Custodian (or by the nominee on behalf of the Custodian). The assets of the Custodial Account may be held by the Custodian in individual or bulk segregation either in the Custodian's vaults or vaults of the Custodian's agent or through brokerage accounts of entities permitted to hold assets of the applicable type under the Securities Exchange Act of 1934 or the Commodities Exchange Act.
- 9.5 **Investment Advisor:** The Depositor may appoint an Investment Advisor, qualified under Section 3(38) of the Employee Retirement Income Security Act of 1974, to direct the investment of the Custodial Account or any specified portion of the Custodial Account. The Depositor shall notify the Custodian in writing of any such appointment by providing the Custodian a copy of the instruments appointing the Investment Advisor and evidencing the Investment Advisor's acceptance of such appointment, an acknowledgment by the Investment Advisor that it is a fiduciary of the account, and a certificate evidencing the Investment Advisor's current registration under the Investment Advisor's Act of 1940. The Custodian shall comply with any investment directions furnished to it by the Investment Advisor, unless and until it receives written notification from the Depositor that the Investment Advisor's appointment has been terminated. The Custodian shall have no duty other than to follow the written investment directions of such Investment Advisor and shall be under no duty to question said instructions, and the Custodian shall not be liable for any investment losses sustained by the Depositor as a result of following the written investment directions of the Depositor's Investment Advisor.
- 9.6 **No Investment Advice:** The Depositor acknowledges and agrees that the Custodian does not provide or assume responsibility for any tax, legal or investment advice with respect to the investments and assets in the Custodial Account and shall not be liable for any loss which results from the Depositor's exercise of control over the Custodial Account. The Depositor further understands and agrees that the Custodian neither sells or endorses any investment products. If the services of the Custodian were marketed, suggested or otherwise recommended by any person or entity, such as a financial representative or investment promoter, the Depositor understands that such promoters and/or marketers are not in any way agents, employees, representatives, affiliates, partners, independent contractors, consultants, or subsidiaries of the Custodian, and that the Custodian is not responsible for and are not bound by any statements, representations, warranties or agreements made by any such promoter, marketer or entity. The Depositor agrees to consult with the Depositor's own CPA, attorney, financial planner and/or any other professionals the Depositor deems necessary or advisable, prior to directing the Custodian to make any investment in the Depositor's account. The Depositor and the Depositor's beneficiary(ies) release, indemnify and agree to hold the Custodian harmless in the event that any investment or sale of the assets in the Custodial Account, pursuant to a direction by the Depositor or the Depositor's Investment Advisor, violates any federal or state law or regulation or otherwise results in a disqualification, penalty, tax or fine imposed upon the Custodian, the Administrator, the Depositor or the Custodial Account.
- 9.7 **Alternative Investments:** The Depositor may, at the Depositor's discretion, direct the Custodian to purchase "alternative" investments which shall include, but not be limited to, investments which are individually negotiated by the Depositor and/or the Depositor's agent, or part of a private placement of securities offered in reliance upon exemptions provided by Sections 3(B) and 4(2) of the Securities Act of 1933 and Regulation D promulgated thereunder. It is the Depositor's sole responsibility to determine whether or not the Depositor's selected investment(s) is required to be registered as a security with any applicable federal and/or state regulatory authority. The Custodian reserves the right to not follow such direction or process such investment(s) for administrative reasons. Such action should not be construed as investment advice or an opinion by the Custodian as to the investment's prudence or viability. If the Depositor or the Depositor's agent should direct the Custodian to purchase an alternative investment, as defined above, the following special certifications and provisions shall apply:
- The Depositor agrees to submit or cause to be submitted all offering documentation related to the alternative investment for an administrative review by the Custodian, if so requested. The Custodian reserves the right to charge a reasonable fee for such administrative review.
  - If the alternative investment(s) contains a provision for future contractual payments or assessments, including margin calls, the Depositor acknowledges that such payments shall be borne solely by the Depositor's Account, that authorization to make such payments shall come from the Depositor or the Depositor's agent, and that making such payments may reduce or exhaust the value of the Depositor's Account. The Depositor further agrees to maintain sufficient liquid funds in the Depositor's Account to cover any such payments or assessments and agrees that the Custodian is not responsible for monitoring the balance of the account to verify compliance with this Section.
  - If the alternative investment(s) contain administrative and/or management requirements or duties beyond the Custodian's capabilities or expertise to provide, then the Depositor agrees to seek out suitable agents or counsel necessary to perform such duties and deliver a written service agreement acceptable to the Custodian for execution on behalf of the Depositor's Account.
  - If the Depositor directs the Custodian to enter into an individually-negotiated debt instrument, including a promissory note, deed of trust, real estate contract, mortgage note or debenture, the Custodian strongly encourages the Depositor to retain the services of a third-party Note Servicing Agent Agreement

with a third-party Agent, on a form acceptable to the Custodian. Said Note Servicing Agent shall be the Depositor's agent and not the Custodian's agent and shall be responsible for administering the terms of the debt instrument on behalf of the Depositor's Account. Should the Note Servicing Agent ever become unwilling or unable to perform the duties outlined in the Note Servicing Agent Agreement, then the Depositor understands and agrees that all duties of the Note Servicing Agent shall revert to the Depositor until a successor Agent is named. The Custodian will not act as a Note Servicing Agent, i.e., the Custodian does not monitor the Depositor's account to ensure receipt of note payments, notify the Depositor in the event of default, prepare or compute payoff balances, prepare or file Form 1098, etc.

- e) The Custodian is responsible for safekeeping only those documents which the Depositor or the Depositor's agent deliver to the Custodian.
- f) The Depositor agrees to be responsible for any and all collection actions, including contracting with a collection agency or instituting legal action, and bring any other suits or actions which may become necessary to protect the rights of the account as a result of the operation or administration of the investment(s).
- g) Once the Depositor or the Depositor's agent authorize funds to be distributed from the Depositor's account for purposes of investment, the Depositor agrees to be responsible for the following:
  - i. verifying that the individual or investment company that the Depositor selected placed the Depositor's funds into the proper investment;
  - ii. obtaining the necessary documentation from the individual or investment company to verify that the funds are correctly invested, including, but not limited to, shares or units, proper recordation, loan to value ratio, etc.; and
  - iii. sending the original documentation evidencing the investment to the Custodian or, in the case of a promissory note investment, to a third-party servicing agent. The Custodian will not monitor the account to ensure receipt of such documentation and will rely solely on the Depositor to provide this information.

9.8 **Prohibited Transactions:** The Depositor acknowledges and agrees that the Custodial Account is subject to the provisions of section 4975 of the Code which defines certain prohibited transactions. The Depositor acknowledges and agrees that the Custodian shall make no determination as to whether any transaction or investment in the Custodial Account is prohibited under sections 4975, 408(e) or 408A of the Code, or under any other state or federal law. The Depositor understands that should the Custodial Account engage in a prohibited transaction and depending on the type of prohibited transaction, certain assets of the Custodial Account will be deemed to have been distributed and will be subject to taxes as well as possible penalties. The Depositor agrees that the Depositor will consult with a tax and/or legal professional of the Depositor's choice to ensure that none of the investments in the Custodial Account will constitute a prohibited transaction and that the investments in the Custodial Account comply with all applicable federal and state laws, and/or regulations. The Custodian shall bear no responsibility for determining any investment directed by the Depositor is compliant with any applicable regulations, federal, state and/or local laws. The Depositor understands and acknowledges that the Plan can lose its exemption from federal income tax if the Depositor and/or the Depositor's beneficiary engages in a "Prohibited Transaction." If any other "Disqualified Person" engages in a Prohibited Transaction with The Plan, the Disqualified Person will be subject to an excise tax equal to 15% of the amount involved each year until the transaction is corrected.

**A Disqualified Person may be any of the following:**

- (a) The Depositor, (as the owner of the plan);
- (b) A member of the Depositor's family (i.e., the Depositor's spouse, ancestors, lineal descendants and their spouses);
- (c) The Custodian of the plan;
- (d) Any person providing services or is a fiduciary to the plan;
- (e) Any corporation, partnership, trust, or estate in which the Depositor owns (either directly or indirectly) 50% or more; and/or
- (f) An officer, director, shareholder holding 10% or more, or highly compensated employee of the 50% or more owned entity described above.

The above list is for reference purposes only and the Depositor acknowledges and agrees to review IRS Code Section 4975(e) for the complete definition of "Disqualified Person."

**The term Prohibited Transaction means any direct or indirect:**

- (a) sale or exchange, or leasing, of any property between a plan and a Disqualified Person;
- (b) lending of money or other extension of credit between a plan and a Disqualified Person;
- (c) furnishing of goods, services, or facilities between a plan and a Disqualified Person;
- (d) transfer to, or use by or for the benefit of, a Disqualified Person of the income or assets of a plan;
- (e) act by a Disqualified Person who is a fiduciary whereby he deals with the income or assets of a plan in his own interest or for his own account; or
- (f) receipt of any consideration for his own personal account by any Disqualified Person who is a fiduciary from any party dealing with the plan in connection with a transaction involving the income or assets of the plan.

The above list is for reference purposes only and the Depositor acknowledges and agrees to review IRS Code Section 4975(c) for the complete definition of "Prohibited Transaction."

If the Custodial Account loses its tax exemption because of a prohibited transaction, the fair market value of the Custodial Account assets (net of any nondeductible contributions remaining in the Custodial Account) as of the first day of the year of the transaction must be included in the Depositor's gross income for the taxable year in which the loss of exemption occurs. If this takes place before the Depositor has attained age 59½, the Depositor will also be subject to the 10% premature distribution penalty tax on the amount so included in gross income unless there is an applicable exception. If the Depositor pledges any part of The Plan as security for a loan, the part so pledged will be treated as a distribution in the taxable year in which the pledging occurs and will be taxed accordingly.

9.9 **Unrelated Business Income Tax:** The Depositor acknowledges and agrees that the Custodial Account is subject to the provisions of Internal Revenue Code Sections 511-514 relating to Unrelated Business Taxable Income (UBTI) of tax-exempt organizations. If the Depositor directs the Custodian to make an investment in the Custodial Account which generates UBTI, the Depositor agrees to prepare or have prepared the required IRS Form 990-T tax return, an application for an Employer Identification Number (EIN) for the Custodial Account (if not previously obtained), and any other documents that may be required, and to submit them to the Custodian for filing with the Internal Revenue Service at least ten (10) days prior to the date on which the return is due, along with an appropriate directive authorizing the Custodian to execute the forms on behalf of the Custodial Account and to pay the applicable tax from the assets in the Custodial Account. The Depositor understands and acknowledges that the Custodian will not make any determination of whether or not investments in the Custodial Account generate UBTI; has no duty to and does not monitor whether or not the Custodial Account has incurred UBTI; and does not prepare Form 990-T on behalf of the Custodial Account.

9.10 **Disclosures and Voting:** The Custodian, where requested by the Depositor in writing, shall deliver, or cause to be executed and delivered, to the Depositor all notices, prospectuses, financial statements, proxies and proxy soliciting materials relating to assets credited to the account. The Custodian shall not vote any shares of stock or take any other action, pursuant to such documents, with respect to such assets except upon receipt from the Depositor to the Custodian of written instructions acceptable to the

Custodian. Nothing in this provision releases Depositor of Depositor's obligation to monitor any and all assets in Depositor's Account, and Depositor does hereby agree to release, defend, indemnify and hold harmless the Custodian from any and all liability, claims, damages, actions, costs, expenses (including, without limitation, all reasonable attorneys' fees) arising from or related to the delivery of documents by Custodian under this paragraph of the Agreement.

- 9.11 **Miscellaneous Expenses:** In addition to those expenses set out in Article VIII, section 8.8 of this Agreement, the Depositor agrees to pay any and all expenses incurred by the Custodian in connection with the Custodial Account, including expenses of preparation and filing any returns and reports with regard to UBTI, including taxes and estimated taxes, as well as any transfer taxes incurred in connection with the investment or reinvestment of the assets of the Custodial Account. The Custodian, in its sole discretion, and at the Depositor's expense, may request a taxpayer identification number for the Custodial Account, file any returns, reports, and applications for extension, and pay any taxes or estimated taxes owed with respect to the Custodial Account. The Custodian may retain suitable accountants, attorneys, or other agents to assist it in performing such responsibilities.
- 9.12 **Valuations:** The assets in the Custodial Account shall be valued annually at the end of each calendar year in accordance with Section 408(i) and other guidance provided by the IRS, and that the total value of Depositor's Account will be reported to the IRS on Form 5498 each year. However, the Custodian retains the right to value the assets in the Custodial Account more frequently. In valuing the assets of the Custodial Account for record keeping and government reporting purposes, the Custodian will ascertain the fair market value of each investment, where such valuation is readily ascertainable, through utilizing various third-party pricing sources and designated valuation agents. However, the Custodian does not guarantee the accuracy of prices obtained from these sources. Where assets are illiquid, or their value is not readily ascertainable on either an established exchange or generally recognized market, the valuation is by necessity not a true market value and is merely an estimate of value, and the Depositor agrees not to rely on any such valuation for any other purposes. The Depositor agrees to provide the year end value of any illiquid and/or non-publicly traded investments, which may include without limitation limited partnerships, limited liability companies, privately held stock, real estate investment trusts, hedge funds, real estate, secured and unsecured promissory notes, and any other investments as the Custodian shall designate, by no later than the following January 31st. If the Custodian does not receive a current year end fair market value by the following January 31st for any such investment, the Custodian may, within its sole discretion take appropriate actions to receive the fair market value from an independent third party that specializes in valuations, paying the cost of such valuation from the liquid assets held in the Custodial Account, or in the alternative after having first received the cost of the valuation from the Depositor or the Depositor's beneficiary(ies) if liquid investments in the Custodial Account are otherwise insufficient. Unless the Custodian has received a written fair market valuation to the contrary, promissory notes and privately offered corporate debt will have valuations reflected at the face value shown on the original note or debt instrument, or if the note is subject to an amortization schedule and the amortization schedule has been provided to the Custodian by the Depositor, valuation may be shown at the principal amount shown on the amortization schedule as of the end of the previous year. For those custodial assets where fair market value is not readily ascertainable, the Depositor agrees that the Depositor will provide to the Custodian a qualified independent appraisal of the asset. If the Depositor does not provide such an appraisal, the Custodian may report the asset's value at its last known fair market value or at its acquisition cost. The Depositor shall have no recourse against the Custodian for any damages arising from and/or related to such valuation. The Depositor, and upon the Depositor's death, the Depositor's beneficiary(ies), agree to indemnify and hold harmless the Custodian from any and all losses, expenses, settlements, or claims with regard to investment decisions, distribution values, tax reporting or any other financial impact or consequence arising from or arising from the valuation of assets in the Custodial Account.
- 9.13 **Insurance, Tax and Other Payments:** The Depositor bears sole responsibility for obtaining insurance coverage for the assets in the Custodial Account. The Custodian shall not bear or assume any responsibility to notify the Depositor or to secure or maintain any fire, casualty, liability or other insurance coverage, including but not limited to title insurance coverage, on any real or personal property owned in the Custodial Account or on any property which serves as collateral under any mortgage, deed of trust, or other security instrument with respect to any promissory note or other evidence of indebtedness in the Custodial Account. The Depositor acknowledges and agrees that it is the sole responsibility of the Depositor to decide what insurance is necessary or appropriate for any investment in the Custodial Account, and to direct the Custodian in writing (on a form acceptable to the Custodian) to pay the premiums for any such insurance. The Custodian shall not be responsible for notification or payments of any real estate taxes, homeowners' association dues, utilities or other charges with respect to any investment held in the Custodial Account unless the Depositor specifically directs the Custodian to pay the same in writing (on a form acceptable to the Custodian) within a sufficient period of time for such direction to be accomplished in accordance with the Custodian's normal business practices, and sufficient funds are available to pay the same from the Custodial Account. The Depositor acknowledges and agrees that it shall be the Depositor's responsibility to provide to the Custodian and/or to ensure that the Custodian has received any and all bills for insurance, taxes, homeowners' dues, utilities or other amounts due for assets held in the Custodial Account. Furthermore, the Depositor agrees that it shall be the Depositor's responsibility to determine that payments have been made by verifying the payments on the Depositor's Custodial Account statements. The Depositor shall bear any, and all risk associated with the failure to obtain and/or maintain proper insurance coverage to protect the assets of the Custodial Account and/or fees and penalties associated with the Depositor's failure to pay taxes or other payments related to the assets of the Custodial Account.

## Article X Miscellaneous Provisions

- 10.1 **Electronic Communications, Signatures, and Records:** Subject to any limitations contained in Treasury Regulation section 1.401(a)-21 and any other applicable federal or state law or regulation, the Depositor acknowledges and agrees that the Custodial Account shall be subject to the provisions of the Uniform Electronic Transactions Act, as passed in the state where the Custodian is organized (South Dakota Codified Law Sections 53-12 et. seq.), and the federal Electronic Signature in Global and National Commerce Act (ESIGN Act, as contained in 15 U.S.C. 7001), as those laws pertain to electronic communication, electronic signatures, and electronic storage of Custodial Account records. In lieu of the retention of the original records, the Custodian may cause any, or all, of its records, and records at any time in its custody, to be photographed or otherwise reproduced to permanent form, and any such photograph or reproduction shall have the same force and effect as the original thereof and may be admitted in evidence equally with the original.
- 10.2 **Applicable Law; Waiver; Venue and Arbitration:**
- This Agreement is subject to all applicable federal laws and regulations and shall be governed by and construed under the applicable laws of the state of South Dakota. The laws of the State of South Dakota shall govern any procedural matters, excluding any applicable limitation period.
  - EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDINGS RELATING TO THIS AGREEMENT OR ANY PERFORMANCE OR FAILURE TO PERFORM OF ANY OBLIGATION HEREUNDER.
  - The Depositor agrees that any claim or cause of action against the Custodian, arising out of or relating in any way to this Agreement or the Custodian's role as custodian, must be filed within one (1) year after the claim or cause of action accrued, or the shortest duration permitted under applicable law if such period is greater than one (1) year. The Depositor agrees to waive any statute of limitation to the contrary. The Depositor further agrees that the Custodian shall not be liable for special, indirect, consequential or punitive damages, and the Depositor agrees to waive any such claims or damages against the Custodian to the maximum extent permitted by applicable law. The Depositor agrees that any action filed against the Custodian, arising out of or relating in any way to this Agreement or the

Custodian's role as the Custodian, shall be exclusively brought in the county courts of Minnehaha County, South Dakota or in the U.S. District court for the Second Circuit of South Dakota Southern Division-Sioux Falls, and the Depositor agrees to submit to the jurisdiction of these courts both in connection with any such action the Depositor, or the Depositor's beneficiaries may file and in connection with any action which the Custodian may file against the Depositor or the Depositor's beneficiaries.

- d) **MANDATORY ARBITRATION:** Any dispute, claim or controversy arising out of or relating to this Agreement or the Custodial Account or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement or the Custodial Account to arbitrate, shall be determined by binding arbitration in Sioux Falls, South Dakota before a former judge. The arbitration shall be administered either by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures or at the sole discretion of the Custodian by an arbitrator, who is a former judge, acceptable to the Custodian pursuant to its rules that shall govern. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a Court of appropriate jurisdiction. Allocation of Fees and Costs: The arbitrator may, in the Award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party.
- 10.3 **Severability:** If any provision of this Custodial Account Agreement is found to be illegal, invalid, void or unenforceable, such provision shall be severed and such illegality or invalidity shall not affect the remaining provisions which shall remain in full force and effect. Neither the Depositor's or the Custodian's failure to enforce, at any time or for any period of time, any of the provisions of this Agreement shall be construed as a waiver of such provisions, or the Depositor's right or the Custodian's right to enforce each and every such provision
- 10.4 **Telephone Recording Acknowledgment of and Authorization for Telephone Recordings:** The Custodian reserves the right to install and/or maintain automatic telephone recording equipment on telephone lines used by personnel servicing the Custodial Account. By signing this Agreement, the Depositor acknowledges the Custodian's rights and expressly authorize the Custodian to record, play back and use for the Custodian's interest any and all telephone calls between the Depositor, the Depositor's agents and/or designated beneficiaries and the Custodian.
- 10.5 **Nonbank Custodian Provision:** If the Custodian is a nonbank custodian, the Depositor shall substitute another trustee or custodian in place of the Custodian upon receipt of notice from the Commissioner of the Internal Revenue Service or his delegate that such substitution is required because the Custodian has failed to comply with the requirements of Income Tax Regulations Section 1.408-2(e), or is not keeping such records, making such returns, or rendering such statements as are required by applicable law, regulations, or other rulings. The successor trustee or custodian shall be a bank, insured credit union, or other person satisfactory to the Secretary of the Treasury pursuant to Section 408(a)(2) of the Code. Upon receipt by the Custodian of written acceptance by its successor of such successor's appointment, Custodian shall transfer and pay over to such successor the assets of the account (less amounts retained pursuant to Section 8.04 of the Custodial Agreement) and all records (or copies thereof) of the Custodian pertaining thereto, provided that the successor trustee or custodian agrees not to dispose of any such records without the Custodian's consent.
- 10.6 **Publicly-Traded Securities:** If publicly-traded securities are to be included in the Depositor's Custodial Account, orders shall be executed through a securities broker/dealer registered under the Securities Exchange Act of 1934 and designated by the Depositor upon such form as the Custodian may require. Any brokerage account maintained in connection herewith shall be in the Custodian's name as the custodian of the Depositor's account. The Custodian shall be authorized to honor transactions within the brokerage account without obligation to verify prior authorization of same by the Depositor. Any cash received by the brokerage account, whether as income or proceeds of transactions, may be held by the brokerage account pending directions, and the Custodian shall have no obligation to direct the broker to remit such cash until directed to do so by the Depositor, in writing, but may receive remittances without direction if the same are made by the broker. Investments outside the brokerage account shall be made in accordance with the other provisions of this Agreement. Any brokerage commissions attributable to the assets in the Depositor's Account will be charged to the Depositor's Account through the Depositor's brokerage account. The Depositor cannot reimburse the Custodial Account for such commissions. Commissions or other fees may be received by the Custodian and/or the Custodian's affiliates from third parties for assistance in performing certain services for the Depositor's Account.
- 10.7 **Notices and Method of Notice:** All notices required under this Agreement must be in writing, signed by a person duly authorized to provide such notice and delivered by one of the following methods: (i) personal delivery, (ii) a nationally-recognized, next-day courier service, with signature of recipient required, (iii) first-class registered or certified mail, postage prepaid, (iv) facsimile/fax or (v) electronic mail to the party's address specified as follows:  
(a) **If to Depositor** – Notice shall be provided to the address, fax and/or email provided by the Depositor on the Depositor's Application unless a different address is provided by the Depositor in writing to the Custodian.  
(b) **If to Custodian** – Notice shall be provided to New Vision Trust Company, a State Chartered South Dakota Trust, East 8th Street, Suite 200R, Sioux Falls, South Dakota, 57103, with a copy mailed to Administrator, American IRA, LLC at 135 Broad Street, Asheville, NC 28801.  
Notice shall be deemed effective (a) upon receipt, (b) when delivered in person, (c) upon confirmation of receipt when transmitted by facsimile transmission or by electronic mail (d) upon delivery where dispatch by registered or certified mail, postage prepaid or (e) on the next Business Day if transmitted by national overnight courier with confirmation of delivery.
- 10.8 **Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Furthermore, signatures delivered via facsimile or E-mail shall have the same force and effect as the originals thereof.
- 10.9 **Entire Agreement:** This Agreement sets forth the entire agreement between the Parties and supersedes any prior agreements between the Parties pertaining to the subject matter of this Agreement, including the Contract.
- 10.10 **No Representations:** The Depositor acknowledges that, except as expressly set forth herein, no representations of any kind or character have been made by the Custodian and/or the Custodian's agents, and/or representatives to induce the execution of this Agreement.
- 10.11 **No Modification:** No modification of the terms of this Agreement shall be effective unless in a writing signed by the Custodian.
- 10.12 **USA Patriot Act Notice: IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT UNDER THE USA PATRIOT ACT OF 2001.** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means for Depositor: When Depositor opens an account, Custodian will ask for Depositor's name, address, date of birth, and other information that will allow us to identify you. Custodian will also ask to see a photo-bearing, government-issued identification, such as driver's license, military, passport, veteran or similar ID.

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## FINANCIAL DISCLOSURE

**In General:** IRS regulations require the Custodian to provide you with a financial projected growth of your SIMPLE IRA account based upon certain assumptions.

**Growth in the Value of Your SIMPLE IRA:** Growth in the value of your SIMPLE IRA is neither guaranteed nor projected. The value of your SIMPLE IRA will be computed by totaling the fair market value of the assets credited to your account. At least once a year the Custodian will send you a written report stating the current value of your SIMPLE IRA assets. The Custodian shall disclose separately a description of:

- (a) The type and amount of each charge;
- (b) the method of computing and allocating earnings, and
- (c) any portion of the contribution, if any, which may be used for the purchase of life insurance.

**Custodian Fees:** The Custodian may charge reasonable fees or compensation for its services and it may deduct all reasonable expenses incurred by it in the administration of your SIMPLE IRA, including any legal, accounting, distribution, transfer, termination or other designated fees. Any charges made by the Custodian will be separately disclosed on an attachment hereto. Such fees may be charged to you or directly to your custodial account. In addition, depending on your choice of investment vehicles, you may incur brokerage commissions attributable to the purchase or sale of assets.

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### General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

#### Purpose of Form

**Note:** Users of the December 1996 version of Form 5305-SA or of subsequent revisions are not required to use the January 2000 revision of this form.

Form 5305-SA is a model custodial account agreement that meets the requirements of sections 408(a) and 408(p) and has been automatically approved by the IRS. A SIMPLE individual retirement account (SIMPLE IRA) is established after the form is fully executed by both the individual (participant) and the Custodian. This account must be created in the United States for the exclusive benefit of the participant or his or her beneficiaries. Do not file Form 5305-SA with the IRS. Instead, keep it for record purposes.

For more information on SIMPLE IRAs, including the required disclosures the Custodian must give the participant, get Pub. 590, Individual Retirement Arrangements (IRAs)(including Roth IRAs and Education IRAs).

#### Definitions

**Participant/Depositor** - The participant/depositor is the person who establishes the custodial account.

**Custodian** -The Custodian must be a bank or savings and loan association, as defined in section 408(n), or any person who has the approval of the IRS to act as custodian.

#### Transfer SIMPLE IRA

This SIMPLE IRA is a "transfer SIMPLE IRA" if it is not the original recipient of contributions under any SIMPLE IRA plan. The summary description requirements of section 408(l)(2) do not apply to transfer SIMPLE IRAs.

#### Specific Instructions

Article IV.--Distributions made under this article may be made in a single sum, periodic payment, or a combination of both. The distribution option should be reviewed in the year the participant reaches age 70 1/2 to ensure that the requirements of section 408(a)(6) have been met.

Article VIII.--Article VIII and any that follow it may incorporate additional provisions that are agreed to by the participant and Custodian to complete the agreement. They may include, for example, definitions, investment powers, voting rights, exculpatory provisions, amendment and termination, removal of the Custodian, Custodian's fees, state law requirements, beginning date of distributions, accepting only cash, treatment of excess contributions, prohibited transactions with the participant, etc. Use additional pages if necessary and attach them to this form.

**Note:** Form 5305-SA may be reproduced and reduced in size.

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## SIMPLE IRA DISCLOSURE STATEMENT

**RIGHT TO REVOKE YOUR SIMPLE IRA ACCOUNT:** You may revoke your SIMPLE IRA within 7 days after you sign the SIMPLE IRA Adoption Agreement by hand-delivering or mailing a written notice to the name and address indicated on the SIMPLE IRA Adoption Agreement. If you revoke your account by mailing a written notice, such notice must be postmarked by the 7th day after you sign the Adoption Agreement. If you revoke your SIMPLE IRA within the 7 day period you will receive a refund of the entire amount of your contributions to the SIMPLE IRA without any adjustment for earnings or any administrative expenses. If you exercise this revocation, we are still required to report certain information to the IRS.

### GENERAL REQUIREMENTS OF A SIMPLE IRA:

- All SIMPLE contributions must be made in cash, unless you are making a rollover contribution or transfer, and the Custodian accepts such non-cash assets.
- Prior to December 19, 2015, the only types of contributions permitted to be made to this SIMPLE IRA are salary reduction contributions and employer contributions under the employer's SIMPLE Retirement Plan. Beginning December 19, 2015, if your Employer's Plan permits, your SIMPLE IRA will accept rollover contributions from a qualified plan, a qualified annuity, a 403(b) plan, a 457(b) plans or from a traditional IRA, but only after you have maintained the SIMPLE IRA for 2 years, measured from the first contribution made to your SIMPLE IRA.
- The Custodian of your SIMPLE IRA must be a bank, savings and loan association, credit union or a person who is approved to act in such a capacity by the Secretary of the Treasury.
- No portion of your SIMPLE IRA funds may be invested in life insurance contracts.
- Your interest in your SIMPLE IRA must be fully vested and is nonforfeitable at all times.
- The assets in your SIMPLE IRA may not be commingled with other property except in a common trust fund or common investment fund.
- You may not invest the assets of your SIMPLE IRA in collectibles (as described in Section 408(m) of the Internal Revenue Code.) A collectible is defined as any work of art, rug or antique, metal or gem, stamp or coin, alcoholic beverage, or any other tangible personal property specified by the IRS. However, if the Custodian permits, specially minted US Gold and Silver bullion coins and certain state-issued coins are permissible SIMPLE IRA investments.
- Your interest in your SIMPLE IRA must begin to be distributed to you by the April 1st following the calendar year you attain the age of 70 1/2. The methods of distribution, election deadlines, and other limitations are described in detail below.
- For purposes of the SIMPLE Plan rules, in the case of an individual who is not a self-employed individual, compensation means the amount described in section 6051(a)(3) which includes wages, tips and other compensation from the employer subject to income tax withholding under section 3401(a), and amounts described in section 6051(a)(8), including elective contributions made under a SIMPLE plan, and compensation deferred under a section 457 plan. In the case of a self-employed individual, compensation means net earnings from self-employment determined under section 1402(a), prior to subtracting any contributions made under the SIMPLE plan on behalf of the individual.
- Contributions to a SIMPLE IRA are excludible from federal income tax and not subject to federal income tax withholding when made to the SIMPLE IRA. Salary reduction contributions are subject to FICA, FUTA or RRTA tax when made and must be reported on the employee's Form W-2 wage statement. Matching and nonelective employer contributions made to a SIMPLE IRA are not subject to FICA, FUTA or RRTA and are not required to be reported on Form W-2.
- A SIMPLE IRA must be established by or on behalf of an employee prior to the first date by which a contribution is required to be deposited into the SIMPLE IRA.

**ELIGIBLE EMPLOYEES:** Under a SIMPLE Retirement Plan established by an Eligible Employer, all employees of the employer who received at least \$5,000 in compensation from the employer during any 2 preceding calendar years, whether or not consecutive, and who are reasonably expected to receive at least \$5,000 in compensation during the calendar year, must be eligible to participate in the SIMPLE Plan for the calendar year. An employer may impose less restrictive eligibility requirements, such as eliminating or reducing the prior year compensation requirements, the current year compensation requirement, or both, under its SIMPLE Plan.

An employer, at its option, may exclude from eligibility employees who are included in a unit of employees covered by an agreement that the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that retirement benefits were the subject of good faith bargaining between such employee representatives and such employer or employers; in the case of a trust established or maintained pursuant to an agreement that the Secretary of Labor finds to be a collective bargaining agreement between air pilots represented in accordance with Title II of the Railway Labor Act and one or more employees, all employees not covered by that agreement; and employees who are nonresident aliens and who received no earned income from the employer that constitutes income from sources within the United States.

**PARTICIPATION IN ANOTHER PLAN:** An eligible employee may participate in an employer's SIMPLE Plan, even if he or she also participates in a plan of a different employer for the same year. However, the employee's salary reduction contributions are subject to the limitation of section 402(g), which provides an aggregate limit on the exclusion for elective deferrals for any individual. The employee is responsible for monitoring compliance with these limitations.

**ELIGIBLE EMPLOYERS:** SIMPLE plans may be established by employers (including tax-exempt employers and governmental entities) that had no more than 100 employees who earned \$5,000 or more in compensation during the preceding calendar year. For purposes of the 100-employee limitation, all employees employed at any time during the calendar year are taken into account, regardless of whether they are eligible to participate in the SIMPLE plan. This means that otherwise excludible employees (i.e. certain union employees, nonresident aliens with no U.S. source income, and those employees who have not met the plan's minimum eligibility requirements) must be taken into account.

### SIMPLE PLAN CONTRIBUTIONS:

**Elective Deferrals (Salary Reduction Contributions)** - A salary reduction contribution is a contribution made pursuant to an employee's election to have an amount contributed to his or her SIMPLE IRA, rather than have the amount paid directly to the employee in cash. An eligible employee must be permitted to elect to have salary reduction contributions made at the level specified by the employee, expressed as a percentage of compensation for the year or as a specific dollar amount. The maximum salary reduction contribution per calendar year may not exceed "the applicable annual dollar limitation" described below. Salary reduction contributions may not begin until the eligible employee completes a form provided by the employer designed to permit the employee to elect the salary reduction percentage or specific dollar amount. An employer may not place any restrictions on the amount of an employee's salary reduction contributions (e.g. by limiting the contribution percentage), except to the extent needed to comply with the annual limit.

#### Applicable Annual Dollar Limitation

<u>Tax Year</u>	<u>Contribution Limit</u>	<u>Tax Year</u>	<u>Contribution Limit</u>
2001	\$ 6,500	2010 - 2012	\$11,500

2002	\$ 7,000	2013 - 2014	\$12,000
2003	\$ 8,000	2015 - 2017	\$12,500
2004	\$ 9,000		
2005 - 2006	\$10,000		
2007 - 2009	\$10,500		

The annual limit will be subject to cost-of-living increases in increments of \$500, rounded to the lower increment.

**Catch-up Contributions** - Beginning for 2002, if an individual has attained the age of 50 before the close of the taxable year for which an annual contribution is being made and meets the other eligibility requirements for making regular SIMPLE IRA contributions, the annual SIMPLE IRA deferral limit for that individual would be increased as follows:

<u>Tax Year</u>	<u>Normal Limit</u>	<u>Additional Catch-up</u>	<u>Total Contribution</u>
2002	7,000	500	7,500
2003	8,000	1,000	9,000
2004	9,000	1,500	10,500
2005	10,000	2,000	12,000
2006	10,000	2,500	12,500
2007	\$10,500	\$2,500	\$13,000
2008	\$10,500	\$2,500	\$13,000
2009 - 2012	\$11,500	\$2,500	\$14,000
2013 - 2014	\$12,000	\$2,500	\$14,500
2015 - 2017	\$12,500	\$3,000	\$15,500

The additional catch-up amount for SIMPLE IRAs is subject to cost-of-living increases in increments of \$500, rounded to the lower increment.

**Employer Contributions - 2 Options**

1. **Matching Contributions:** Under a SIMPLE plan, an employer is generally required to make a contribution on behalf of each eligible employee in an amount equal to the employee's salary reduction contributions, up to a limit of 3% of the employee's compensation for the entire calendar year.

The 3% limit on matching contributions is permitted to be reduced for a calendar year at the election of the employer, but only if: the limit is not reduced below 1%; the limit is not reduced for more than 2 years out of the 5-year period that ends with and includes the year for which the election is effective; and employees are notified of the reduced limit within a reasonable period of time before the 60-day election period during which employees can enter into salary reduction agreements as described below.

In determining whether the limit was reduced below 3% for a year, any year before the first year in which an employer (or a predecessor employer) maintains a SIMPLE plan will be treated as a year for which the limit was 3%. If an employer chooses to make nonelective contributions for a year in lieu of matching contributions, that year also will be treated as a year for which the limit was 3%.

2. **Nonelective Contributions:** Under a SIMPLE plan, an employer may make nonelective contributions in lieu of matching contributions. These nonelective contributions must be equal to 2% of each eligible employee's compensation for the entire calendar year, regardless of whether the employee elects to make salary reduction contributions for the calendar year. The employer may, but is not required to, limit nonelective contributions to eligible employees who have at least \$5,000 (or some lower amount selected by the employer) of compensation for the year. For purposes of this 2% nonelective contribution only, the compensation taken into account must be limited to the amount of compensation under section 401(a)(17) for the year. This compensation limit is subject to cost-of-living increases in increments of \$5000, rounded to the lower increment as follows:

\$220,000 for 2006	\$245,000 for 2011
\$225,000 for 2007	\$250,000 for 2012
\$230,000 for 2008	\$255,000 for 2013
\$245,000 for 2009	\$260,000 for 2014
\$245,000 for 2010	\$265,000 for 2015-2016
	\$270,000 for 2017

An employer may substitute the 2% nonelective contribution for the matching contribution for a year only if eligible employees are notified within a reasonable period of time before the 60-day election period during which employees can enter into salary reduction agreements that a 2% nonelective contribution will be made instead of a matching contribution.

**EMPLOYEE ELECTIONS:** During the 60-day period immediately preceding January 1st of a calendar (i.e. November 2 to December 31 of the preceding calendar year), an eligible employee must be given the right to enter into a salary reduction agreement for the calendar year, or to modify a prior agreement (including reducing the amount subject to this agreement to \$0). However, for the year in which the employee becomes eligible to make salary reduction contributions, the period during which the employee may enter into a salary reduction agreement or modify a prior agreement is a 60-day period that includes either the date the employee becomes eligible or the day before that date. For example, if an employer establishes a SIMPLE plan effective as of July 1, 2014, each eligible employee becomes eligible to make salary reduction contributions on that date and the 60-day period must begin no later than July 1 and cannot end before June 30, 2014.

During these 60-day periods, employees have the right to modify their salary reduction agreements without restrictions. In addition, for the year in which an employee becomes eligible to make salary reduction contributions, the employee must be able to commence these contributions as soon as the employee becomes eligible, regardless of whether the 60-day period has ended. An employer may, but is not required to, provide additional opportunities or longer periods for permitting eligible employees to enter into salary reduction agreements or to modify prior agreements.

An employee must be given the right to terminate a salary reduction agreement for a calendar year at any time during the year even if this is outside a SIMPLE plan's normal election period. The employer's SIMPLE plan may, however, provide that an employee who terminates a salary reduction agreement at any time other than the normal election period is not eligible to resume participation until the beginning of the next calendar year.

**EMPLOYER ADMINISTRATIVE AND NOTIFICATION REQUIREMENTS:** An employer must notify each employee, immediately before the employee's 60-day election period, of the employee's opportunity to enter into a salary reduction agreement or to modify a prior agreement. If applicable, this notification must disclose an employee's ability to select the financial institution that will serve as the trustee or custodian of the employee's SIMPLE IRA. Such notification must also include the Summary Description required under section 408(l)(2)(B). Such notification must also include whether the employer will be making either matching contributions (including the employer's election to reduce the matching contribution below 3%) or nonelective contributions as previously described.

If an eligible employee who is entitled to a contribution under the employer's SIMPLE plan is unwilling or unable to establish a SIMPLE IRA with any financial institution prior to the date on which the contribution is required to be made to the SIMPLE IRA of the employee, the employer may execute the necessary SIMPLE IRA documents on the employee's behalf with a financial institution selected by the employer.

The employer must deliver the salary reduction contributions to the financial institution maintaining the SIMPLE IRA as of the earliest date on which the contributions can reasonably be segregated from the employer's general assets, but no later than the close of the 30-day period following the last day of the month in which amounts would otherwise have been payable to the employee in cash.

Matching and nonelective employer contributions must be made to the financial institution maintaining the SIMPLE IRA no later than the due date for filing the employer's income tax return, including extensions, for the taxable year that includes the last day of the calendar year for which the contributions are made.

#### **ROLLOVERS:**

**Rollover Contributions from Another SIMPLE IRA** - A rollover contribution to this SIMPLE IRA is only permitted from another SIMPLE IRA. A rollover contribution from another SIMPLE IRA is any amount the participant receives from one SIMPLE IRA and redeposits some or all of it into this SIMPLE IRA. The participant is not required to roll over the entire amount received from the first SIMPLE IRA. However, any amount you do not roll over will be taxed at ordinary income tax rates for federal income tax purposes and may also be subject to an additional tax if the distribution is a premature distribution described below.

**Rollover Distributions from a SIMPLE IRA** - A distribution from any SIMPLE IRA may be rolled over only to another SIMPLE IRA during the 2-year period the participant first participated in the employer's SIMPLE plan. Thus, a distribution from a SIMPLE IRA during that 2-year period qualifies as a rollover contribution (and is not includible in gross income of the participant) only if the distribution is paid into another SIMPLE IRA and satisfies the other requirements that apply to all IRA rollovers under section 408(d)(3). After this 2-year period, a distribution from a SIMPLE IRA may be rolled over to any IRA maintained by the individual or to an employer plan, including a qualified plan, a 403(b) or a 457(b) that accepts these types of rollovers. This 2-year period begins on the first day on which contributions made by the individual's employer are deposited in the individual's SIMPLE IRA.

**Rollover Contributions from Another Plan into this SIMPLE IRA** - Beginning December 19, 2015, if your Employer's Plan permits, you are permitted to rollover from a qualified plan, a qualified annuity, a 403(b) Plan, a governmental 457(b) Plan and from a Traditional IRA. Your SIMPLE IRA may only accept these rollovers after your SIMPLE IRA has been in existence for 2 years measured from the date of the first contribution into your SIMPLE IRA account.

#### **Special Rules that Apply to Rollovers -**

- The rollover must be completed no later than the 60th day after the day the distribution was received by you.
- Beginning in 2015, you can make only one rollover from an IRA to another (or the same) IRA in any 12-month period, regardless of the number of IRAs you own. The limit will apply by aggregating all of an individual's IRAs, including SEP and SIMPLE IRAs as well as traditional and Roth IRAs, effectively treating them as one IRA for purposes of the limit. (See IRS Publication 590-A for more information).
- The same property you receive in a distribution must be the same property you roll over into the second IRA. For example, if you receive a distribution from an IRA of property, such as stocks, that same stock must be rolled over into the second IRA.
- You are required to make an irrevocable election indicating that this transaction will be treated as a rollover contribution.
- You are not required to receive a complete distribution from your IRA in order to make a rollover contribution into another IRA, nor are you required to roll over the entire amount you received from the first IRA.
- If you inherit an IRA due to the death of the participant, you may not roll this IRA into your own IRA unless you are the spouse of the decedent.
- If you are age 70 1/2 or older and wish to roll over to another IRA, you must first satisfy the minimum distribution requirement for that year and then the rollover of the remaining amount may be made.

**EXCESS DEFERRALS:** Excess elective deferrals (amounts in excess of the "applicable") SIMPLE elective deferral limit for the year) are includible in your gross income in the calendar year of deferral. Income on the excess elective deferrals is includible in your income in the year of withdrawal from the SIMPLE IRA. You should withdraw excess elective deferrals and any allocable income, from your SIMPLE-IRA by April 15 following the year to which the deferrals relate. These amounts may not be transferred or rolled over tax-free to another SIMPLE-IRA. If you fail to withdraw excess elective deferrals, and any allocable income, by the following April 15th, the excess elective deferrals will be subject to the IRA contribution limitations of sections 219 and 408 of the Code and thus may be considered an excess contribution to your IRA. Such excess deferrals may be subject to a 6% excise tax for each year they remain in your SIMPLE-IRA. Income on excess elective deferrals is includible in your gross income in the year you withdraw it from your IRA and must be withdrawn by April 15 following the calendar year to which the deferrals relate. Income withdrawn from the IRA after that date may be subject to a 10% tax (or 25% if withdrawn within the first 2 years of participation) on early distributions. The rules for determining and allocating income attributable to excess elective deferrals and other excess SIMPLE contributions are the same as those governing regular IRA excess contributions. The trustee or custodian of your SIMPLE-IRA will inform you of the income allocable to such excess amounts.

**DISTRIBUTIONS:** In general, all distributions from a SIMPLE IRA are subject to federal income tax by the payee or distributee, whichever the case may be. When you start withdrawing from your SIMPLE IRA, you may take the distributions in regular payments, random withdrawals or in a single sum payment. Generally, all amounts distributed to you from your SIMPLE IRA are included in your gross income in the taxable year in which they are received. However, if you have made nondeductible contributions to any regular IRA as permitted under section 408(o) of the Code, the nontaxable portion of the distribution, if any, will be a percentage based upon the ratio of your unrecovered nondeductible

contributions to the aggregate of all IRA balances, including SEP, SIMPLE and rollover contributions, as of the end of the year in which you take the distribution, plus distributions from the account during the year. All taxable distributions from your SIMPLE IRA are taxed at ordinary income tax rates for federal income tax purposes and are not eligible for either capital gains treatment or 5/10 year averaging. An employer may not require an employee to retain any portion of the contribution in the SIMPLE IRA or otherwise impose any withdrawal restrictions.

**Premature Distributions** - In general, if you are under age 59 1/2 and receive a distribution from your SIMPLE IRA account, a 10% additional income tax will apply to the taxable portion of the distribution, unless the distribution is received due to death; disability; a series of substantially equal periodic payments at least annually over your life expectancy or the joint life expectancy of you and your designated beneficiary; medical expenses that exceed 10% of your adjusted gross income; health insurance premiums paid by certain unemployed individuals; qualified acquisition costs of a first time home buyer; qualified higher education expenses; a qualifying rollover distribution; the timely withdrawal of an excess deferral plus income attributable; or due to an IRS Levy; qualified hurricane distributions received prior to January 1, 2007; qualified disaster recovery distributions; or qualified reservist distributions. . If you request a distribution in the form of a series of substantially equal payments and you modify the payments before 5 years have elapsed and before attaining age 59 1/2, the 10% additional income tax will apply retroactively to the year payments began through the year of such modification. In addition, if you request a distribution from your SIMPLE-IRA within your first 2 years of participation in the SIMPLE plan and none of the exceptions listed above applies to the distribution, the normal 10% additional income tax referred to earlier is increased to 25%.

**Age 70 1/2 Required Minimum Distributions** - You are required to begin receiving minimum distributions from your SIMPLE IRA by your required beginning date (the April 1 of the year following the year you attain age 70 1/2). The year you attain age 70 1/2 is referred to as your "first distribution calendar year". Your minimum distribution for each year beginning with the calendar year you attain the age of 70 1/2 is generally based upon the value of your account at the end of the prior year divided by the factor for your age derived from the Uniform Lifetime Distribution Period Table regardless of who or what entity is your named beneficiary. This uniform table assumes you have a designated beneficiary exactly 10 years younger than you. However, if your spouse is your sole beneficiary and is more than 10 years younger than you, your required minimum distribution for each year is based upon the joint life expectancies of you and your spouse. The account balance that is used to determine each year's required minimum amount is the fair market value of each IRA you own as of the prior December 31<sup>st</sup>, adjusted for outstanding rollovers (or transfers) as of such prior December 31<sup>st</sup>.

However, no payment will be made from this SIMPLE IRA until you provide the Custodian with a proper distribution request acceptable by the Custodian. Upon receipt of such distribution request, you may switch to a joint life expectancy in determining the required minimum distribution if your spouse was your sole beneficiary as of the January 1<sup>st</sup> of the calendar year that contains your required beginning date and such spouse is more than 10 years younger than you. The required minimum distribution for the second distribution calendar year and for each subsequent distribution calendar year must be made by December 31 of each such year.

In any distribution calendar year you may take more than the required minimum. However, if you take less than the required minimum with respect to any distribution calendar year, you are subject to a Federal excise tax penalty of 50% of the difference between the amount required to be distributed and the amount actually distributed. If you are subject to that tax, you are required to file IRS Form 5329.

**Reporting the Required Minimum Distribution** - Beginning for minimum distributions that are required for calendar 2003, the Custodian must provide a statement to each SIMPLE IRA owner who is subject to required minimum distributions that contains either the amount of the minimum or an offer by the Custodian to perform the calculation if requested by the SIMPLE IRA owner. The statement must inform the SIMPLE IRA owner that required minimum distributions apply and the date by which such amount must be distributed. The statement must further inform the SIMPLE IRA owner that beginning in 2004; the Custodian must report to the IRS that the SIMPLE IRA owner is required to receive a minimum for the calendar year.

**Death Distributions** - If you die before your required beginning date and you have a designated beneficiary, the balance in your SIMPLE IRA will be distributed to your beneficiary over the beneficiary's single life expectancy. These distributions must commence no later than December 31<sup>st</sup> of the calendar year following the calendar year of your death. However, if your spouse is your sole beneficiary, these distributions are not required to commence until the December 31<sup>st</sup> of the calendar year you would have attained the age of 70 1/2, if that date is later than the required commencement date in the previous sentence. If you die before your required beginning date and you do not have a designated beneficiary, the balance in your SIMPLE IRA must be distributed no later than the December 31<sup>st</sup> of the calendar year that contains the fifth anniversary of your death.

If you die on or after your required beginning date and you have a designated beneficiary, the balance in your SIMPLE IRA will be distributed to your beneficiary over the beneficiary's single life expectancy. These distributions must commence no later than December 31<sup>st</sup> of the calendar year following the calendar year of your death. If you die on or after your required beginning date and you do not have a designated beneficiary, the balance in your SIMPLE IRA must be distributed over a period that does not exceed your remaining single life expectancy determined in the year of your death. However, the required minimum distribution for the calendar year that contains the date of your death is still required to be distributed. Such amount is determined as if you were still alive throughout that year.

If your spouse is your sole beneficiary, your spouse may elect to treat your SIMPLE IRA as his or her own SIMPLE IRA, whether you die before or after your required beginning date. If you die after your required beginning date and your spouse elects to treat your SIMPLE IRA as his or her own SIMPLE IRA, any required minimum that has not been distributed for the year of your death must still be distributed to your surviving spouse and then the remaining balance can be treated as your spouse's own SIMPLE IRA

**Prohibited Transactions** - If you or your beneficiary engage in a prohibited transaction (as defined under Section 4975 of the Internal Revenue Code) with your SIMPLE IRA, it will lose its tax exemption and you must include the value of your account in your gross income for that taxable year. If you pledge any portion of your SIMPLE IRA as collateral for a loan, the amount so pledged will be treated as a distribution and will be included in your gross income for that year.

**Income Tax Withholding** - All withdrawals from your SIMPLE IRA (except a direct transfer) are subject to federal income tax withholding. You may, however, elect not to have withholding apply to your SIMPLE IRA distribution in most cases. If withholding does apply to your distribution, it is at the rate of 10% of the amount of the distribution. In addition to Federal income tax withholding, distributions from IRAs may also be subject to state income tax withholding.

**SIMPLE IRA distributions delivered outside the United States** - In general, if you are a US citizen or resident alien and your home address is outside of the United States or its possessions, you cannot choose exemption from withholding on distributions from your traditional IRA.

To choose exemption from withholding, you must certify to the payer under penalties of perjury that you are not a U.S. citizen, a resident alien of the United States, or a tax-avoidance expatriate. Even if this election is made, the payer must withhold tax at the rates prescribed for nonresident aliens.

For more information on withholding on pensions and annuities, see "Pensions and Annuities" in Chapter 1 of *Publication 505, Tax Withholding and Estimated Tax*. For more information on withholding on nonresident aliens and foreign entities, see *Publication 515, Withholding of tax on Nonresident Aliens and Foreign Entities*.

**DESIGNATED FINANCIAL INSTITUTION "DFI":** In general, under section 408(p), an employer must permit an employee to select the financial institution for the SIMPLE IRA to which the employer will make all contributions on behalf of the employee. In this case, the financial institution is referred to as a "Non-DFI". Alternatively, under section 408(p)(7), an employer may require that all SIMPLE contributions initially be made to a single designated financial institution selected by the employer. In this case, the financial institution is referred to as a "DFI". Refer to your employer's SIMPLE Retirement Plan document to determine if the financial institution is a DFI or a Non-DFI.

**Use of a Designated Financial Institution "DFI"** - If an employer requires that all SIMPLE contributions initially be made to a DFI, the following requirements must be met:

1. The employer and the financial institution must agree that the financial institution will be a DFI for the employer's SIMPLE plan;
2. The DFI must agree that, if a participant elects before the expiration of the employee's 60-day election period, the participant's balance will be transferred without cost or penalty to another SIMPLE IRA (or after the 2-year period no longer applies, to any IRA) to a financial institution selected by the participant; and
3. Each participant is given written notification describing the procedures under which, if a participant so elects, the participant's balance will be transferred without cost or penalty to another SIMPLE IRA (or after the 2-year period no longer applies, to any IRA) to a financial institution selected by the participant.

If the participant elects before the expiration of the 60-day election period to have the balance transferred without cost or penalty as described above, such election is valid only with respect to the balance attributable to SIMPLE contributions for the calendar year following that 60-day election period (or, for the year in which an employee becomes eligible to make salary reduction contributions for the remainder of that year) and subsequent calendar years if such election so provides.

If the participant timely elects the transfer of the balance without cost or penalty as described above, the participant's balance must be transferred on a reasonably frequent basis, such as on a monthly basis. If a participant timely elects this transfer without cost or penalty, the Custodian reserves the right to restrict the investment to a specified investment option until transferred, even though a variety of investment options are available with respect to contributions that the participant has not elected to transfer.

A transfer is deemed to be made without cost or penalty if no liquidation, transaction, redemption or termination fee, or any commission, load (whether front-end or back-end) or surrender charge or similar fee or charge is imposed with respect to the balance being transferred that the participant has filed a timely election with the DFI. However, the DFI can charge a reasonable annual administrative fee to a SIMPLE IRA from which balances must be transferred in accordance with the participant's timely transfer election.

In order to timely elect a transfer without cost or penalty, the participant must indicate such election on the SIMPLE IRA Adoption Agreement attached hereto and must be received by the DFI no later than the expiration of the 60-day election period applicable to the employee. If the participant fails to timely elect such transfers without cost or penalty, the DFI reserves the right to charge any or all fees and expenses described in Section 8.05 of this SIMPLE IRA plan agreement.

**Use of a Non Designated Financial Institution "Non-DFI"** - If the employer's SIMPLE plan permits the participants to select their own financial institution to serve as trustee or custodian of the SIMPLE IRA, the rules explained above do not apply and the Custodian may charge any and all fees described in Section 8.05 of the SIMPLE IRA plan agreement.

**Transfers Defined** - A direct transfer is a payment from this SIMPLE IRA directly to another trustee or custodian of a SIMPLE IRA (or, after the 2-year period no longer applies, to the trustee or custodian of any IRA). Transfers do not constitute a distribution since you are never in receipt of the funds. The monies are transferred directly to the new trustee or custodian. If you should transfer all or a portion of your SIMPLE IRA to your former spouse's IRA under a divorce decree (or under a written instrument incident to divorce) or separation instrument, you will not be deemed to have made a taxable distribution, but merely a transfer. The portion so transferred will be treated at the time of the transfer as the IRA of your spouse or former spouse. If your spouse is the beneficiary of your SIMPLE IRA, in the event of your death, your spouse may "assume" your SIMPLE IRA. The assumed IRA is then treated as your surviving spouse's IRA.

**SUMMARY DESCRIPTION REQUIREMENTS:** In general, the Custodian of any SIMPLE IRA must annually provide to the employer maintaining the SIMPLE plan a Summary Description early enough to allow the employer to meet its notification obligations. If the Custodian of this SIMPLE IRA is a DFI, the Summary Description will be provided directly to the employer by the Custodian in the underlying SIMPLE plan agreement. If the Custodian of this SIMPLE IRA is a Non-DFI, the Summary Description will be provided directly to the employee by the Custodian. The employee agrees to have the employer complete certain information contained on the Summary Description with respect to the employer's SIMPLE plan provisions. A sample Summary Description for a Non-DFI is located on the following page. The Custodian of a "transfer SIMPLE IRA" is not required to provide this Summary Description. A SIMPLE IRA is a "transfer SIMPLE IRA" if it is not a SIMPLE IRA to which the employer has made contributions under the SIMPLE plan.

**PROCEDURES FOR WITHDRAWALS:** All distributions from this SIMPLE IRA must be requested in writing on a form provided to the participant by the Custodian. After the withdrawal form has been completed and executed by the recipient, the form must be either hand-delivered to the Custodian during normal business hours or mailed to the Custodian by first class mail, certified or registered mail prepaid through the U.S. Postal Service, or through any means of an expedited delivery service. After receipt of a properly executed withdrawal form, the Custodian will process the distribution as soon as administratively feasible.

**FEDERAL ESTATE AND GIFT TAXES:** Generally, there is no specific exclusion for SIMPLE IRAs under the estate tax rules. Therefore, in the event of your death, your SIMPLE IRA balance will be includible in your gross estate for federal estate tax purposes. However, if your surviving spouse is the beneficiary of your SIMPLE IRA, the amount in your SIMPLE IRA may qualify for the marital deduction available under Section 2056 of the Internal Revenue Code. A transfer of property for federal gift tax purposes does not include an amount which a beneficiary receives from a SIMPLE IRA plan.

**PENALTIES:** If you are under age 59 1/2 and receive a premature distribution from your SIMPLE IRA, an additional 10% (or 25% for certain SIMPLE IRA distributions) income tax will apply on the taxable amount of the distribution. If you make an excess deferral to your SIMPLE IRA and it is not corrected on a timely basis, an excise tax of 6% is imposed on the excess amount. This tax will apply each year to any part or all of the excess which remains in your account. If you are age 70 1/2 or over or if you should die, and the appropriate required minimum distributions are not made from your SIMPLE IRA, an additional tax of 50% is imposed upon the difference between what should have been distributed and what was actually distributed.

**IRS APPROVAL AS TO FORM:** This SIMPLE IRA Custodial Agreement has been approved by the Internal Revenue Service as to form. This is not an endorsement of the plan in operation or of the investments offered.

**ADDITIONAL INFORMATION:** You may obtain further information on IRAs and SIMPLE IRAs from your District Office of the Internal Revenue Service. In particular you may wish to obtain IRS Publications 590-A and 590-B (Individual Retirement Arrangements).

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Sioux Falls, South Dakota 57103  
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## SUMMARY DESCRIPTION FOR NON-DESIGNATED FINANCIAL INSTITUTION

Employer must complete the following:

### ELIGIBILITY REQUIREMENTS

All Employees of the Employer shall be eligible to participate under the Plan except:

- a. Employees included in a unit of employees covered under a collective bargaining agreement described in Section 2.02(a) of the Plan.
- b. Non-resident alien employees who did not receive US source income described in Section 2.02(b) of the Plan.
- c. Employees who are not reasonably expected to earn \$ \_\_\_\_\_ (not to exceed \$5,000) during the Plan Year for which the contribution is being made.
- d. There are no eligibility requirements. All Employees are eligible to participate upon the later of the plan's effective date or the employee's date of hire.

Each Eligible Employee will be eligible to become a Participant after having worked for the Employer during any \_\_\_\_\_ prior years (not to exceed 2) and received at least \$ \_\_\_\_\_ in compensation (not to exceed \$5,000), during each of such prior years.

### WRITTEN ALLOCATION FORMULA

The Employer has agreed to provide contributions for the \_\_\_\_\_ Plan Year as follows (complete only one choice):

- a. Matching Contribution - The amount of the Participant's Elective Deferral not in excess of 3% of such Participant's Compensation (not to exceed \$12,500 for 2016 and 2017).
- b. Matching Contribution - The amount of the Participant's Elective Deferral not in excess of \_\_\_\_\_% (not less than 1% nor more than 3%) of each Participant's Compensation (not to exceed \$12,500 for 2016 and 2017).
- c. Nonelective Employer Contribution - 2% of each Participant's Compensation.

The Employer has designated \_\_\_\_\_ (insert Name & Title) to provide additional information to participants about the Employer's SIMPLE Plan.

### GENERAL DISCLOSURE INFORMATION

The following information explains what a Savings Incentive Match Plan for Employees ("SIMPLE") is, how contributions are made, and how to treat these contributions for tax purposes. For more specific information, refer to the employer's SIMPLE Retirement Plan document itself. For a calendar year, you may make or modify a salary reduction election during the 60-day period immediately preceding January 1 of that year. However, for the year in which you first become eligible to make salary reduction contributions, the period during which you may make or modify the election is a 60 day period that includes either the date you become eligible or the day before. If indicated in your employer's SIMPLE plan, you may have additional opportunities during a calendar year to make or modify your salary reduction election.

#### I. SIMPLE Retirement Plan and SIMPLE IRA Defined

A SIMPLE Retirement Plan is a retirement income arrangement established by your employer. Under this SIMPLE Plan, you may choose to defer compensation to your own Individual Retirement Account or Annuity ("IRA"). You may base these "elective deferrals" on a salary reduction basis that, at your election, may be contributed to an IRA or received in cash. This type of plan is available only to an employer with 100 or fewer employees who earned at least \$5,000 during the prior calendar year. A SIMPLE IRA is a separate IRA plan that you establish with an eligible financial institution for the purpose of receiving contributions under this SIMPLE Retirement Plan. Your employer must provide you with a copy of the SIMPLE agreement containing eligibility requirements and a description of the basis upon which contributions may be made. All amounts contributed to your IRA belong to you, even after you quit working for your employer.

#### II. Elective Deferrals - Not Required

You are not required to make elective deferrals under this SIMPLE Retirement Plan. However, if the Employer is matching your elective deferrals, no Employer contribution will be made on your behalf unless you elect to defer under the plan.

#### III. Elective Deferrals - Annual Limitation

The maximum amount that you may defer under this SIMPLE Plan for any calendar year is limited to the lesser of the percentage of your compensation that you select or \$12,500 (for 2016 and 2017), subject to cost-of-living increases. If you work for other employers (unrelated to this Employer) who also maintain a salary deferral plan, there is an overall limit on the maximum amount that you may defer in each calendar year to all elective SEPs, cash or deferred arrangements under section 401(k) of the Code, other SIMPLE plans and 403(b) plans regardless of how many employers you may have worked for during the year. This limitation is referred to as the section 402(g) limit. The section 402(g) limit on elective deferrals is currently \$18,000 for 2016 and 2017 and is indexed according to the cost of living. If you attain age 50 or over by the end of a calendar year, you can elect to have your compensation reduced by an additional "catch-up" amount of \$3,000 for 2016 and 2017, subject to cost-of-living adjustments.

#### IV. Elective Deferrals - Tax Treatment

The amount that you may elect to contribute to your SIMPLE IRA is excludible from gross income, subject to the limitations discussed above, and is not includible as taxable wages on Form W-2. However, these amounts are subject to FICA taxes.

#### V. Elective Deferrals - Excess Amounts Contributed

When "excess elective deferrals" (i.e., amounts in excess of the SIMPLE elective deferral limit or the section 402(g) limit) are made, you are responsible for calculating whether you have exceeded these limits in the calendar year. For 2016 and 2017, the section 402(g) limit for contributions made to all elective deferral plans is \$18,000. Excess elective deferrals are calculated on the basis of the calendar year.

#### VI. Excess Elective Deferrals - How to Avoid Adverse Tax Consequences

Excess elective deferrals are includible in your gross income in the calendar year of deferral. Income on the excess elective deferrals is includible in your income in the year of

withdrawal from the IRA. You should withdraw excess elective deferrals and any allocable income, from your SIMPLE IRA by April 15 following the year to which the deferrals relate. These amounts may not be transferred or rolled over tax-free to another SIMPLE IRA. If you fail to withdraw excess elective deferrals, and any allocable income, by the following April 15th, the excess elective deferrals will be subject to the IRA contribution limitations of sections 219 and 408 of the Code and thus may be considered an excess contribution to your IRA. Such excess deferrals may be subject to a 6% excise tax for each year they remain in your SIMPLE IRA. Income on excess elective deferrals is includible in your gross income in the year you withdraw it from your IRA and must be withdrawn by April 15 following the calendar year to which the deferrals relate. Income withdrawn from the IRA after that date may be subject to a 10% tax (or 25% if withdrawn within the first 2 years of participation) on early distributions.

#### VII. Income Allocable To Excess Amounts

The rules for determining and allocating income attributable to excess elective deferrals and other excess SIMPLE contributions are the same as those governing regular IRA excess contributions. The trustee or custodian of your SIMPLE IRA will inform you of the income allocable to such excess amounts.

#### VIII. Availability of Regular IRA Contribution Deduction

In addition to any SIMPLE contribution, you may contribute to a separate IRA the lesser of 100% of compensation or the regular IRA contribution dollar limit to an IRA as a regular IRA contribution. However, the amount that you may deduct is subject to various limitations since you will be considered an "active participant" in an employer-sponsored plan. See Pub. 590-A, "Individual Retirement Arrangement", for more specific information.

#### IX. SIMPLE IRA Amounts - Rollover or Transfer to Another IRA

You may not roll over or transfer from your SIMPLE IRA any SIMPLE contributions (or income on these contributions) made during the plan year to another IRA (other than a SIMPLE IRA) until the 2 years following the date you first participated in the SIMPLE plan. Also, any distribution made before this time will be includible in your gross income and may also be subject to a 25% percent additional income tax for early withdrawal. You may, however, remove excess elective deferrals and income allocable to such excess amounts from your SIMPLE IRA before this time, but you may not roll over or transfer these amounts to another IRA.

After the 2-year restriction no longer applies, you may withdraw, or receive, funds from your SIMPLE IRA, and no more than 60 days later, place such funds in another IRA or SIMPLE IRA. This is called a "rollover" and may not be done without penalty more frequently than at one-year intervals. Effective December 19, 2015, if your Employer's Plan permits, you may also roll over from a qualified plan, qualified annuity, 403(b) Plan, governmental 457(b) or from an IRA to your SIMPLE IRA as long as the 2-year restrict is satisfied. However, there are no restrictions on the number of times that you may make "transfers" if you arrange to have such funds transferred between the Custodians so that you never have possession of the funds. You may not, however, roll over or transfer excess elective deferrals and income allocable to such excess amounts from your SIMPLE IRA to another IRA. These excess amounts may be reduced only by a distribution to you.

#### X. Filing Requirements

You do not need to file any additional forms with the IRS because of your participation in your employer's SIMPLE Plan.

#### XI. Employer to Provide Information

Your employer must provide you with a copy of the executed SIMPLE agreement, a Summary Description, the form you should use to elect to defer amounts to your SIMPLE IRA, and a statement for each taxable year showing any contribution to your SIMPLE IRA.

#### XII. Financial Institution Where IRA is established to Provide Information

The financial institution must provide you with a disclosure statement that contains information described in section 1.408-6 of the regulations. The Disclosure Statement that is a part of this

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Custodian's SIMPLE IRA account documentation must be read in conjunction with this Summary Description for Non-Designated Financial Institutions. The Disclosure Statement contains important information about the SIMPLE plan rules and the contents of such Disclosure Statement are incorporated herein by reference.

See Publications 590-A and 590-B, "Individual Retirement Arrangements", which is available at most IRS offices, for a more complete explanation of the disclosure requirements. In addition to the disclosure statement, the financial institution is required to provide you with a financial statement each year. It may be necessary to retain and refer to statements for more than one year in order to evaluate the investment performance of your IRA and in order that you will know how to report IRA distributions for tax purposes.

# SIMPLE IRA ADOPTION AGREEMENT

## PARTICIPANT INFORMATION

Name: \_\_\_\_\_ Account No.: \_\_\_\_\_

Address: \_\_\_\_\_

SSN: \_\_\_\_\_ Home Phone #: \_\_\_\_\_ Bus. Phone #: \_\_\_\_\_

Birthdate: \_\_\_\_\_ Date Age 59½: \_\_\_\_\_ Year Age 70½: \_\_\_\_\_ Check one  Married  Unmarried

## EMPLOYER INFORMATION

Name: \_\_\_\_\_ Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_ Phone #: \_\_\_\_\_

## ACCOUNT INFORMATION

Date of Initial Deposit \_\_\_\_\_

Elective Deferral Amount \$ \_\_\_\_\_

Employer Contribution Amount \$ \_\_\_\_\_

Rollover from another Plan \$ \_\_\_\_\_

Indicate Plan: \_\_\_\_\_

Transfer from SIMPLE IRA \$ \_\_\_\_\_

Transfer received from \_\_\_\_\_

## CUSTODIAN INFORMATION

Name: \_\_\_\_\_

Notice of revocation must be delivered or mailed to: \_\_\_\_\_

Contact Person's Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone #: \_\_\_\_\_

The Custodian is the:

Non-DFI (Employer must complete the enclosed Summary

Description)

## BENEFICIARY DESIGNATION

Primary  Contingent  Name: \_\_\_\_\_ SSN: \_\_\_\_\_ Birthdate: \_\_\_\_\_

Address: \_\_\_\_\_ Relationship: \_\_\_\_\_ Share: \_\_\_\_\_%

Primary  Contingent  Name: \_\_\_\_\_ SSN: \_\_\_\_\_ Birthdate: \_\_\_\_\_

Address: \_\_\_\_\_ Relationship: \_\_\_\_\_ Share: \_\_\_\_\_%

Primary  Contingent  Name: \_\_\_\_\_ SSN: \_\_\_\_\_ Birthdate: \_\_\_\_\_

Address: \_\_\_\_\_ Relationship: \_\_\_\_\_ Share: \_\_\_\_\_%

In the event of my death, the balance in the account shall be paid to the Primary Beneficiaries who survive me in equal shares (or in the specified shares, if indicated). If the Primary or Contingent Beneficiary box is not checked for a beneficiary, the beneficiary will be deemed to be a Primary Beneficiary. If none of the Primary Beneficiaries survive me, the balance in the account shall be paid to the Contingent Beneficiaries who survive me in equal shares (or in the specified shares, if indicated).

**CONSENT OF SPOUSE** (if required) I consent to the above Beneficiary Designation. \_\_\_\_\_

Signature of Spouse \_\_\_\_\_ Date \_\_\_\_\_

(Note: Consent of the Participant's Spouse may be required in a community property or marital property state to effectively designate a beneficiary other than or in addition to the Participant's Spouse.)

**Disclaimer for Community and Marital Property States:** The Participant's Spouse may have a property interest in the account and the right to dispose of the interest by will. Therefore, the custodian disclaims any warranty as to the effectiveness of the Participant's beneficiary designation or as to the ownership of the account after the death of the Participant's Spouse. For additional information, please consult your legal advisor.

## SIGNATURES AND TRANSFER ELECTION

Under penalties of perjury, I certify that the above information (including my social security number) is correct. I hereby agree to participate in the SIMPLE IRA offered by the Custodian. I acknowledge receipt of a copy of the plan document under which this SIMPLE IRA is established, a copy of this Adoption Agreement, and a copy of the Disclosure Statement with respect to this SIMPLE IRA. I direct that my contribution be invested as indicated above, and I direct that all benefits upon my death be paid as indicated above. In the event that this is a rollover contribution, the undersigned hereby irrevocably elects, pursuant to the requirements of Section 1.402(a)(5)-IT of the IRS regulations, to treat this contribution as a rollover contribution.

Witness: \_\_\_\_\_ Participant: \_\_\_\_\_ Date: \_\_\_\_\_

Attest: \_\_\_\_\_ Custodian: \_\_\_\_\_ Date: \_\_\_\_\_