

## **Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)**

Not for use with a Designated Financial Institution  
(under Section 408(p) of the Internal Revenue Code)

The Employer establishes the following SIMPLE IRA plan under section 408(p) of the Internal Revenue Code and pursuant to the instructions contained in this form. New Direction Trust Company, a limited purpose trust company chartered under the laws of the state of Kansas, with offices at 5901 College Blvd.#100, Overland Park KS 66211 and administrative offices located at 1070 W. Century Drive, Louisville CO 80027, has been contracted by the Depositor and named herein as the Custodian for the Depositor.

### **ARTICLE I. EMPLOYEE ELIGIBILITY REQUIREMENTS**

- 1.01 **General Eligibility Requirements.** The Employer agrees to permit salary reduction contributions to be made in each calendar year to the SIMPLE IRA established by each employee who meets the requirements selected in the Adoption Agreement.
- 1.02 **Excludable Employees.** If elected in the Adoption Agreement, the Employer shall exclude employees covered under a collective bargaining agreement for which retirement benefits were the subject of good faith bargaining. If the Employer maintains a qualified plan covering only such employees, the Employer is deemed to select this provision.

### **ARTICLE II. SALARY REDUCTION AGREEMENTS**

- 2.01 **Salary Reduction Election.** An eligible employee may make an election to have his or her compensation for each pay period reduced. The total amount of the reduction in the employee's compensation for a calendar year cannot exceed the applicable amount for that year.
- 2.02 **Timing of Salary Reduction Elections.**
- (a) For a calendar year, an eligible employee 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 the employee becomes eligible to make salary reduction contributions, the period during which the employee may make or modify the election is a 60-day period that includes either the date the employee becomes eligible or the day before.
  - (b) No salary reduction election may apply to compensation that an employee received, or had a right to immediately receive, before execution of the salary reduction election.
  - (c) An employee may terminate a salary reduction election at any time during the calendar year.

### **ARTICLE III. CONTRIBUTIONS**

- 3.01 **Salary Reduction Contributions.** The amount by which the employee agrees to reduce his or her compensation will be contributed by the Employer to the employee's SIMPLE IRA.
- 3.02 **Matching Contributions.**
- (a) For each calendar year, the Employer will contribute a matching contribution to each eligible employee's SIMPLE IRA equal to the employee's salary reduction contributions up to a limit of 3% of the employee's compensation for the calendar year.
  - (b) The Employer may reduce the 3% limit for the calendar year in (i) only if:
    - (i) The limit is not reduced below 1%;
    - (ii) The limit is not reduced for more than 2 calendar years during the 5-year period ending with the calendar year the reduction is effective; and
    - (iii) Each employee is notified of the reduced limit within a reasonable period of time before the employees' 60-day election period for the calendar year (described in Article II, section 2.02(a)).
- 3.03 **Nonelective Contributions**
- (a) For any calendar year, instead of making matching contributions, the Employer may make nonelective contributions equal to 2% of compensation for the calendar year to the SIMPLE IRA of each eligible employee who has at least the amount of compensation indicated in the Adoption Agreement, but not more than \$5,000, in compensation for the calendar year. No more than \$250,000 in compensation can be taken into account in determining the nonelective contribution for each eligible employee. This is the amount for 2012. For 2013 this amount was increased to \$255,000; for 2014 this amount was \$260,000 and for 2015 and 2016 this amount is \$265,000. For later years, the limit may be increased for cost-of-living adjustments. The IRS announces the increase, if any, in a news release, in the Internal Revenue Bulletin, and on the IRS's internet website at [www.irs.gov](http://www.irs.gov).
  - (b) For any calendar year, the Employer may make 2% nonelective contributions instead of matching contributions only if:
    - (i) Each eligible employee is notified that a 2% nonelective contribution will be made instead of a matching contribution; and
    - (ii) This notification is provided within a reasonable period of time before the employees' 60-day election period for the calendar year (described in Article II, section 2.02(a)).
- 3.04 **Time and Manner of Contributions.**
- (a) The Employer will make the salary reduction contributions (described in section 2.02(a) above) for each eligible employee to the SIMPLE IRA established at the financial institution selected by that employee no later than 30 days after the end of the month in which the money is withheld from the employee's pay. See SIMPLE IRA Plan Disclosure.
  - (b) The Employer will make the matching or nonelective contributions (described in sections 3.02(a) and 3.02(b) above) for each eligible employee to the SIMPLE IRA established at the financial institution selected by that employee no later than the due date for filing the Employer's tax return, including extensions, for the taxable year that includes the last day of the calendar year for which the contributions are made.

### **ARTICLE IV. OTHER REQUIREMENTS AND PROVISIONS**

- 4.01 **Contributions in General.** Prior to December 19, 2015, the Employer will make no contributions to the SIMPLE IRAs other than salary reduction contributions (described in Article III, section 3.01) and matching or nonelective contributions (described in Article III, sections 3.02 and 3.03. Effective December 19, 2015, this SIMPLE Plan will accept rollover contributions as described in section 408(p)(1)(B) of the Code including any subsequent guidance provided by the IRS.

- 4.02 **Vesting Requirements.** All contributions made under this SIMPLE IRA plan are fully vested and nonforfeitable.
- 4.03 **No Withdrawal Restrictions.** The Employer may not require the employee to retain any portion of the contributions in his or her SIMPLE IRA or otherwise impose any withdrawal restrictions.
- 4.04 **Selection of IRA Trustee.** The employer must permit each eligible employee to select the financial institution that will serve as the trustee, custodian, or issuer of the SIMPLE IRA to which the employer will make all contributions on behalf of that employee.
- 4.05 **Amendments to This SIMPLE IRA Plan.** This SIMPLE IRA plan may not be amended except to modify the entries inserted in the blanks or boxes provided in the Adoption Agreement.
- 4.06 **Effects of Withdrawals and Rollovers.**
- (a) An amount withdrawn from the SIMPLE IRA is generally includible in gross income. However, a SIMPLE IRA balance may be rolled over or transferred on a tax-free basis to another IRA designed solely to hold funds under a SIMPLE IRA plan. In addition, an individual may roll over or transfer his or her SIMPLE IRA balance to any IRA after a 2-year period has expired since the individual first participated in any SIMPLE IRA plan of the Employer. Any rollover or transfer must comply with the requirements under section 408. If an individual withdraws an amount from a SIMPLE IRA during the 2-year period beginning when the individual first participated in any SIMPLE IRA plan of the Employer and the amount is subject to the additional tax on early distributions under section 72(t), this additional tax is increased from 10% to 25%.
- 4.07 **Applicable Law:** This Custodial Agreement is subject to all applicable Federal and State laws and regulations. Account Holder agrees that where state law applies, Kansas Law will govern this instrument, any other instrument executed in connection with the Custodial Account, and the Account Holder, the Account Holder's agent and NDTCO's respective rights and obligations here under or otherwise with respect to the Custodial Account or any and all Custodial Assets. The Account Holder acknowledges and understands that NDTCO's duties and undertakings will be carried out in the state of Kansas and agree that any claims or disputes that arise in connection with your account or any assets or any transactions requested by the Account Holder or the Account Holder's agent must be brought in arbitration as described below. If it is necessary to apply any state law to interpret and administer the Custodial Agreement, the law of Kansas will govern. If any part of this agreement is held to be invalid or illegal, the remaining parts of this Custodial Agreement will not be affected. Neither party's failure to enforce at any time for any period of time any of the provisions of this agreement will not be construed as a waiver of such provisions, nor a waiver of either party's right thereafter to enforce each and every provision.
- 4.08 **Arbitration of Claims—ARBITRATION OF DISPUTES.** PLEASE READ THIS ARBITRATION PROVISION CAREFULLY. IT PROVIDES THAT ANY CONTROVERSY OR DISPUTE BE RESOLVED BY BINDING ARBITRATION. ARBITRATION REPLACES THE RIGHT TO GO TO COURT, INCLUDING THE RIGHT TO A JURY AND THE RIGHT TO PARTICIPATE IN A CLASS ACTION OR SIMILAR PROCEEDING.
- 4.09 **Agreement to Arbitrate.** The Account Holder and NDTCO agree that either the Account Holder or NDTCO may, without the other parties consent, require that any claims between the Account Holder and NDTCO be submitted to mandatory, binding arbitration except for certain matters excluded below. This arbitration provision is made pursuant to a transaction involving interstate commerce, and will be governed by, and enforceable under the Federal Arbitration Act (FAA), 9 U.S.C. § 1 et. Seq., and, to the extent State law is applicable, the state law governing this transaction.
- 4.10 **Claims Subject to Arbitration included but are not limited to:** Any controversy arising out of or relating to this agreement or the breach thereof, or to the IRA or any transactions authorized by you and/or your agent as well as any claim that may arise regarding your Custodial Assets.
- 4.11 **Arbitration location, finality, procedures, waiver of jury trial, class action or any representative action.** The Account Holder agrees that Arbitration will occur in Johnson County, Kansas according to the rules of the American Arbitration Association. The Account Holder agrees that Arbitration is final and binding on both parties. The Account Holder and NDTCO are voluntarily waiving their right to seek remedies in court, including their right to a jury trial. Claims made as part of a class action or other representative action, and the arbitration of such Claims must proceed on an individual, non-class, and non-representative, basis. If the Account Holder or NDTCO require arbitration of a particular Claim, neither the Account Holder or NDTCO, nor any other person, may pursue the Claim in any litigation, whether as a class action, private attorney general action, or other representative action. Pre-arbitration discovery is generally more limited than and different from court proceedings. If any portion of this arbitration provision is deemed invalid or unenforceable, the remaining portions will nevertheless remain in force.
- (a) **Indemnification of NDTCO.** Account Holder acknowledges that it is the Account Holders sole responsibility to direct the investment of the Account Holders IRA assets and that NDTCO will have no responsibility or involvement in evaluating or selecting any assets for acquisition or disposition and shall have no liability for any loss or damage that may result from or be associated with any requested investment transaction. Acceptance of a Custodial Asset by NDTCO should not be construed as a favorable opinion as to the prudence or suitability of the investment for the Account Holder's IRA. NDTCO's review of any asset the Account Holder desires to purchase and hold in your Custodial Account should in no way be construed as "due diligence" review by NDTCO. The Account Holder and their beneficiaries agree to indemnify and hold harmless NDTCO from any and all losses, expenses, settlement payments, or judgements incurred by, or entered against NDTCO as the result of any threatened or asserted claim against NDTCO that pertains in any way to: NDTCO's activities with the Account Holder, the Account Holders investments, and any situation or matter associated with this account. The Account Holder indemnification obligations also include the responsibility to reimburse NDTCO for all attorneys' fees and cost incurred by NDTCO in responding to threatened claims by any party; and prosecuting, including an appeal, a claim or counterclaim against Account Holder requesting payment of the indemnification obligation set forth herein. The Account Holder agrees to indemnify and hold NDTCO harmless from and against any and all claims, liabilities, causes of action, losses, and expenses, including reasonable attorneys' fees and other related expenses, asserted against or incurred by us as a result of, or in any way relating to, any action requested or directed by the Account Holder or the Account Holders representative. NDTCO shall be entitled to seek the advice of legal counsel in connection with any matter relating to the Account Holders account or any Custodial Assets and may in good faith rely upon that advice. NDTCO may at its election when deemed by counsel as appropriate, respond and participate in any; bankruptcy or receivership proceeding, or other litigation to which NDTCO or the Account Holders account or Custodial Asset has been had a party. In such a case the Account Holder shall fully indemnify and protect NDTCO for any action taken by NDTCO in good faith. Should the Account Holder refuse to comply with NDTCO's demand for repayment of reasonable attorneys' fees, NDTCO reserves the right to liquidate any and all custodial assets in the Account Holders account to satisfy the costs incurred by NDTCO as a result of any of the above-mentioned situations. NDTCO has the right to be reimbursed for all reasonable expenses, including various transaction and legal expenses, NDTCO incurs in connection with the administration of your IRA. NDTCO may charge you separately for any fees or expenses, or we may deduct the amount of the fees or expenses from the assets in the Account Holders IRA at NDTCO's discretion.
- 4.12 **Notices and change of Address—**Any required notice regarding the Account Holders IRA or any Custodial assets held within the Account Holders Custodial account will be considered effective when NDTCO sends said notice to the intended recipient at the last address that NDTCO has on its records. Any notice given to NDTCO will be considered effective when NDTCO actually receives it. The Account Holder or the intended recipient, must notify NDTCO of any change of address.
- 4.13 **Proxy Voting:** As NDTCO does not serve as a fiduciary to your Custodial Account, Broadridge Financial Solutions will be used by NDTCO to vote proxies for the Account Holder's publicly traded custodial assets. Unless NDTCO is given prior notice by the Account Holder of its election of an alternative, Broadridge has been given the default instruction that all proxies are to be voted in accordance with the recommendation of the issuing security's management.

4.14 **Class Action Services:** NDTCO appoints Broadridge Financial Solutions as the administrative agent to process and administer asset recovery cases which cover global securities class action lawsuits, bankruptcies, and disgorgements. Unless NDTCO is given prior notice by the Account Holder of its election to opt-out, Broadridge will file claims for asset recovery cases as a class member on behalf of the Account Holder. As a contingency fee, Broadridge retains 20% of the total reimbursement of assets settlements it collects for the Account Holder.

## ARTICLE V. DEFINITIONS

### 5.01 Compensation.

- (a) **General Definition of Compensation.** Compensation means the sum of the wages, tips, and other compensation from the Employer subject to federal income tax withholding (as described in section 6051(a)(3)) the amounts paid for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, and the employee's salary reduction contributions made under this Plan, and, if applicable, elective deferrals under a section 401(k) plan, a SARSEP, or a section 403(b) annuity contract and compensation deferred under a section 457 plan required to be reported by the Employer on Form W-2 (as described in section 6051(a)(8)).
- (b) **Compensation for Self-Employed Individuals.** For self-employed individuals, compensation means the net earnings from self-employment determined under section 1402(a), without regard to section 1402(c)(6), prior to subtracting any contributions made pursuant to this plan on behalf of the individual.

5.02 **Employee.** Employee means a common-law employee of the Employer. The term employee also includes a self-employed individual and a leased employee described in section 414(n) but does not include a nonresident alien who received no earned income from the Employer that constitutes income from sources within the United States.

5.03 **Eligible Employee.** An eligible employee means an employee who satisfies the conditions in the Adoption Agreement and is not excluded under section 1.02.

5.04 **SIMPLE IRA.** A SIMPLE IRA is an individual retirement account described in section 408(a), or an individual retirement annuity described in section 408(b), to which the only contributions that can be made are contributions under a SIMPLE IRA plan and rollovers or transfers from another SIMPLE IRA. Effective December 19, 2015, this SIMPLE Plan will accept rollover contributions as described in section 408(p)(1)(B) of the Code including any subsequent guidance provided by the IRS.

## ARTICLE VI. PROCEDURES FOR WITHDRAWAL

6.01 The Employer will provide each Employee with the procedures for withdrawals of contributions received by the financial institution selected by that Employee, and that financial institution's name and address by attaching that information to this Plan unless: (1) that financial institution's procedures are unavailable, or (2) that financial institution provides the procedures directly to the employee.

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### General Instructions

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

### Purpose of Form

Form 5304-SIMPLE is a model Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) plan document that an employer may use to establish a SIMPLE IRA plan described in section 408(p), under which each eligible employee is permitted to select the financial institution for his or her SIMPLE IRA.

These instructions are designed to assist in the establishment and administration of the SIMPLE IRA plan. They are not intended to supersede any provision in the SIMPLE IRA plan.

**Do not** file Form 5304-SIMPLE with the IRS. Instead, keep it with your records.

For more information, see **Pub. 560**, Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans), and **Pub. 590**, Individual Retirement Arrangements (IRAs).

# SIMPLE IRA PLAN DISCLOSURE

## IN GENERAL

### Which Employers May Establish and Maintain a SIMPLE IRA Plan?

To establish and maintain a SIMPLE IRA plan, you must meet **both** of the following requirements:

1. Last calendar year, you had no more than 100 employees (including self-employed individuals) who earned \$5,000 or more in compensation from you during the year. If you have a SIMPLE IRA plan but later exceed this 100-employee limit, you will be treated as meeting the limit for the 2 years following the calendar year in which you last satisfied the limit.
2. You do not maintain during any part of the calendar year another qualified plan with respect to which contributions are made, or benefits are accrued, for service in the calendar year. For this purpose, a qualified plan (defined in section 219(g)(5)) includes a qualified pension plan, a profit-sharing plan, a stock bonus plan, a qualified annuity plan, a tax-sheltered annuity plan, and a simplified employee pension (SEP) plan.

A qualified plan that only covers employees covered under a collective bargaining agreement for which retirement benefits were the subject of good faith bargaining is disregarded if these employees are excluded from participating in the SIMPLE IRA plan.

If the failure to continue to satisfy the 100-employee limit or the one-plan rule described in 1 and 2 above is due to an acquisition or similar transaction involving your business, special rules apply. Consult your tax advisor to find out if you can still maintain the plan after the transaction.

Certain related employers (trades or businesses under common control) must be treated as a single employer for purposes of the SIMPLE IRA requirements. These are:

- (a) a controlled group of corporations under section 414(b);
- (b) a partnership or sole proprietorship under common control under section 414(c); or
- (c) an affiliated service group under section 414(m). In addition, if you have leased employees required to be treated as your own employees under the rules of section 414(n), then you must count all such leased employees for the requirements listed above.

### What is a SIMPLE IRA Plan?

A SIMPLE IRA plan is a written arrangement that provides you and your employees with an easy way to make contributions to provide retirement income for your employees. Under a SIMPLE IRA plan, employees may choose whether to make salary reduction contributions to the SIMPLE IRA plan rather than receiving these amounts as part of their regular compensation. In addition, you will contribute matching or nonelective contributions on behalf of eligible employees (see **Employee Eligibility Requirements** and **Contributions** below). All contributions under this plan will be deposited into a SIMPLE individual retirement account or annuity established for each eligible employee with the financial institution selected by him or her.

### When to Use Form 5304-SIMPLE

A SIMPLE IRA plan may be established by using this Model Form or any other document that satisfies the statutory requirements.

**Do not** use Form 5304-SIMPLE if:

1. You want to require that all SIMPLE IRA plan contributions initially go to a financial institution designated by you. That is, you do not want to permit each of your eligible employees to choose a financial institution that will initially receive contributions. Instead, use Form 5305-SIMPLE, Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—for Use With a Designated Financial Institution.
2. You want employees who are nonresident aliens receiving no earned income from you that constitutes income from sources within the United States to be eligible under this plan; or
3. You want to establish a SIMPLE 401(k) plan.

### Completing Form 5304-SIMPLE

The Form 5304-SIMPLE along with the Adoption Agreement contain the operative provisions of your SIMPLE IRA plan. This SIMPLE IRA plan is considered adopted when you have completed all applicable boxes and blanks in the Adoption Agreement, and it has been executed by you.

The SIMPLE IRA plan is a legal document with important tax consequences for you and your employees. You may want to consult with your attorney or tax advisor before adopting this Plan.

## ANALYSIS OF PLAN ARTICLES

### Employee Eligibility Requirements (Article I)

Each year, for which this SIMPLE IRA plan is effective, you must permit salary reduction contributions to be made by all of your employees who are reasonably expected to receive at least \$5,000 in compensation from you during the year, and who received at least \$5,000 in compensation from you in any 2 preceding years. However, you can expand the group of employees who are eligible to participate in the SIMPLE IRA plan by completing the options provided in Item 5 of the Adoption Agreement. To choose full eligibility, check the box 5(a) in the Adoption Agreement. Alternatively, to choose limited eligibility, check the box 5(b) in the Adoption Agreement, and then complete the blank boxes in Item 5(b)(i) and (ii) as instructed on the Adoption Agreement.

In addition, you can exclude from participation those employees covered under a collective bargaining agreement for which retirement benefits were the subject of good faith bargaining. You may do this by checking the box in Item 6 of the Adoption Agreement. Under certain circumstances, these employees

must be excluded. See **Which Employers May Establish and Maintain a SIMPLE IRA Plan?** above.

### *Salary Reduction Agreements (Article II)*

As indicated in Article II, section 2.01, a salary reduction agreement permits an eligible employee to make a salary reduction election to have his or her compensation for each pay period reduced by a percentage (expressed as a percentage or dollar amount). The total amount of the reduction in the employee's compensation cannot exceed the applicable amount for any calendar year. The applicable amount since 2002 is:

#### *Applicable Annual Dollar Limitations*

<u>Tax Year</u>	<u>Contribution Limit</u>
2002	\$7,000
2003	\$8,000
2004	\$9,000
2005 - 2006	\$10,000
2007 - 2008	\$10,500
2009 - 2012	\$11,500
2013 - 2014	\$12,000
2015 - 2018	\$12,500

In the case of an eligible employee who will be 50 or older before the end of the calendar year, the above limitation is increased by the following:

<u>Tax Year</u>	<u>Catch-Up Limit</u>
2002	\$500
2003	\$1,000
2004	\$1,500
2005	\$2,000
2006 - 2014	\$2,500
2015 - 2018	\$3,000

### **Timing of Salary Reduction Elections**

For any calendar year, an eligible employee 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 the employee becomes eligible to make salary reduction contributions, the period during which the employee may make or modify the election is a 60-day period that includes either the date the employee becomes eligible or the day before.

You can extend the 60-day election periods to provide additional opportunities for eligible employees to make or modify salary reduction elections using the blank in Item 7 of the Adoption Agreement. For example, you can provide that eligible employees may make new salary reduction elections or modify prior elections for any calendar quarter during the 30 days before that quarter.

You may use the **Model Salary Reduction Agreement** to enable eligible employees to make or modify salary reduction elections.

Employees must be permitted to terminate their salary reduction elections at any time. They may resume salary reduction contributions for the year if permitted under the Adoption Agreement. However, by checking the box in Item 8 of the Adoption Agreement, you may prohibit an employee who terminates a salary reduction election outside the normal election cycle from resuming salary reduction contributions during the remainder of the calendar year.

### *Contributions (Article III)*

Only contributions described below may be made to this SIMPLE IRA plan. No additional contributions may be made.

### *Salary Reduction Contributions*

As indicated in Article III, section 3.01, salary reduction contributions consist of the amount by which the employee agrees to reduce his or her compensation. You must contribute the salary reduction contributions to the financial institution selected by each eligible employee.

### *Matching Contributions*

In general, you must contribute a matching contribution to each eligible employee's SIMPLE IRA equal to the employee's salary reduction contributions. This matching contribution cannot exceed 3% of the employee's compensation. See **Definition of Compensation**, below.

You may reduce this 3% limit to a lower percentage, but not lower than 1%. You cannot lower the 3% limit for more than 2 calendar years out of the 5-year period ending with the calendar year the reduction is effective.

**Note:** *If any year in the 5-year period described above is a year before you first established any SIMPLE IRA plan, you will be treated as making a 3% matching contribution for that year for purposes of determining when you may reduce the employer matching contribution.*

To elect this option, you must notify the employees of the reduced limit within a reasonable period of time before the applicable 60-day election periods for the year. See **Timing of Salary Reduction Elections** above.

## *Nonelective Contributions*

Instead of making a matching contribution, you may, for any year, make a nonelective contribution equal to 2% of compensation for each eligible employee who has at least \$5,000 in compensation for the year. Nonelective contributions may not be based on more than \$260,000 for 2014 limit (\$265,000 for 2015 and 20164) of compensation. To elect to make nonelective contributions, you must notify employees within a reasonable period of time before the applicable 60-day election periods for such year. See **Timing of Salary Reduction Elections** above.

**Note:** Insert "\$5,000" in Item 10 of the Adoption Agreement to impose the \$5,000 compensation requirement. You may expand the group of employees who are eligible for nonelective contributions by inserting a compensation amount lower than \$5,000.

## *Rollover Contributions*

Effective December 19, 2015, this SIMPLE Plan will accept rollover contributions from qualified plans under section 401(a); qualified annuities under 403(a); tax-sheltered annuities and custodial accounts under 403(b); governmental plans under section 457(b); and from traditional IRAs. Such rollovers are permitted after the SIMPLE IRA has been in existence for 2 years measured from the date of the initial contribution to the account.

## *Effective Date (Article VII)*

Insert in Item 11 of the Adoption Agreement, the date you want the provisions of the SIMPLE IRA plan to become effective. You must insert January 1 of the applicable year unless this is the first year for which you are adopting any SIMPLE IRA plan. If this is the first year for which you are adopting a SIMPLE IRA plan, you may insert any date between January 1 and October 1, inclusive of the applicable year.

## **ADDITIONAL INFORMATION**

### **Timing of Salary Reduction Contributions**

The employer must make the salary reduction contributions to the financial institution selected by each eligible employee for his or her SIMPLE IRA no later than the 30th day of the month following the month in which the amounts would otherwise have been payable to the employee in cash.

The Department of Labor has indicated that most SIMPLE IRA plans are also subject to Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Under Department of Labor regulations at 29 CFR 2510.3-102, salary reduction contributions must be made to each participant's SIMPLE IRA as of the earliest date on which those contributions can reasonably be segregated from the employer's general assets, but in no event later than the 30-day deadline described above.

These rules also apply in the case of self-employed individuals. Thus, the latest day for the deposit of salary reduction contributions made on behalf of a self-employed individual for a calendar year is 30 days after the end of such year, which is January 30<sup>th</sup>. In order to meet the "as soon as you can reasonably segregate" standard, the DOL regulations provide for a 7-business day deadline for depositing the employee's salary deferral into their account.

## *Definition of Compensation*

"Compensation" means the amount described in section 6051(a)(3) (wages, tips, and other compensation from the employer subject to federal income tax withholding under section 3401(a), and, amounts paid for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority. Usually, this is the amount shown in box 1 of **Form W-2**, Wage and Tax Statement. For further information, see **Pub. 15**, Circular E, Employer's Tax Guide. Compensation also includes the salary reduction contributions made under this plan, and, if applicable, compensation deferred under a section 457 plan. In determining an employee's compensation for prior years, the employee's elective deferrals under a section 401(k) plan, a SARSEP, or a section 403(b) annuity contract are also included in the employee's compensation.

For self-employed individuals, compensation means the net earnings from self-employment determined under section 1402(a), without regard to section 1402(c)(6), prior to subtracting any contributions made pursuant to this SIMPLE IRA plan on behalf of the individual.

## *Employee Notification*

You must notify each eligible employee prior to the employee's 60-day election period described above that he or she can make or change salary reduction elections and select the financial institution that will serve as the trustee, custodian, or issuer of the employee's SIMPLE IRA. In this notification, you must indicate whether you will provide:

1. A matching contribution equal to your employees' salary reduction contributions up to a limit of 3% of their compensation;
2. A matching contribution equal to your employees' salary reduction contributions subject to a percentage limit that is between 1 and 3% of their compensation; or
3. A nonelective contribution equal to 2% of your employees' compensation.

You can use the **Model Notification to Eligible Employees** to satisfy these employee notification requirements for this SIMPLE IRA plan.

A **Summary Description** must also be provided to eligible employees at this time. This summary description requirement may be satisfied by providing a completed copy of Form 5304-SIMPLE (including the information described in Article VI - Procedures for Withdrawal) and the executed Adoption Agreement.

If you fail to provide the employee notification (including the summary description) described above, you will be liable for a penalty of \$50 per day until the notification is provided. If you can show that the failure was due to reasonable cause, the penalty will not be imposed.

If the financial institution's name, address, or withdrawal procedures are not available at the time the employee must be given the summary description, you must provide the summary description without this information. In that case, you will have reasonable cause for not including this information in the summary description, but only if you ensure that it is provided to the employee as soon as administratively feasible.

### Reporting Requirements

You are not required to file any annual information returns for your SIMPLE IRA plan, such as Forms 5500 or 5500-EZ. However, you must report to the IRS which eligible employees are active participants in the SIMPLE IRA plan and the amount of your employees' salary reduction contributions to the SIMPLE IRA plan on Form W-2. These contributions are subject to social security, Medicare, railroad retirement, and federal unemployment tax.

### Deducting Contributions

Contributions to this SIMPLE IRA plan are deductible in your tax year containing the end of the calendar year for which the contributions are made.

Contributions will be treated as made for a particular tax year if they are made for that year and are made by the due date (including extensions) of your income tax return for that year.

### Summary Description

Each year the SIMPLE IRA plan is in effect, the financial institution for the SIMPLE IRA of each eligible employee must provide the employer the information described in section 408(l)(2)(B). This requirement may be satisfied by providing the employer a current copy of Form 5304-SIMPLE (including instructions) together with the financial institution's procedures for withdrawals from SIMPLE IRAs established at that financial institution, including the financial institution's name and address. The summary description must be received by the employer in sufficient time to comply with the **Employee Notification** requirements above.

There is a penalty of \$50 per day imposed on the financial institution for each failure to provide the summary description described above. However, if the failure was due to reasonable cause, the penalty will not be imposed.

## SUMMARY DESCRIPTION

### PLAN INFORMATION

1. Name of Employer: \_\_\_\_\_  
Address of Employer: \_\_\_\_\_
2. Name of Trustee/Custodian: \_\_\_\_\_  
Address of Trustee/Custodian: \_\_\_\_\_

### ELIGIBILITY REQUIREMENTS

3. 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.
4. 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

5. 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.
  - 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.
  - c. Nonelective Employer Contribution - 2% of each Eligible Employee's Compensation, who receives at least \$5,000, or \_\_\_\_\_, if lesser, in Compensation from the Employer for the Plan Year.

## ADDITIONAL INFORMATION

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 SIMPLE Retirement Plan document itself, the completed Adoption Agreement and the accompanying "Employer Disclosure".

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 on the Adoption Agreement, 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 SIMPLE Individual Retirement Account or Annuity ("SIMPLE IRA"). You may base these "elective deferrals" on a salary reduction basis that, at your election, may be contributed to a SIMPLE 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 SIMPLE 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 indicated in the Deferral Form or "the applicable annual dollar limitation" described below:

#### Applicable Annual Dollar Limitations

<u>Tax Year</u>	<u>Contribution Limit</u>
2002	\$7,000
2003	\$8,000
2004	\$9,000
2005 - 2006	\$10,000
2007 - 2008	\$10,500
2009 - 2012	\$11,500
2013 - 2014	\$12,000
2015 - 2016	\$12,500

The maximum amount will be adjusted for cost-of-living increases in multiples of \$500.

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 listed below. The maximum additional amount will be adjusted for cost-of-living increases in multiples of \$500.

<u>Tax Year</u>	<u>Catch-Up Limit</u>
2002	\$500
2003	\$1,000

2004	\$1,500
2005	\$2,000
2006 - 2014	\$2,500
2015 - 2016	\$3,000

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 listed below and is indexed according to the cost of living.

\$11,000 for 2002
\$12,000 for 2003
\$13,000 for 2004
\$14,000 for 2005
\$15,000 for 2006
\$15,500 for 2007 - 2008
\$16,500 for 2009 - 2011
\$17,000 for 2012
\$17,500 for 2013 - 2014
\$18,000 for 2015 - 2016

#### **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 ("the applicable annual dollar limitation" described in Section III above) or the section 402(g) limit) are made, you are responsible for calculating whether you have exceeded these limits in the calendar year. The section 402(g) limit for contributions made to all elective deferral plans is listed in Section III above.

#### **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 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.

#### **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, if you are under age 70 1/2 you may contribute to a separate Traditional IRA the lesser of 100% of compensation or the regular IRA contribution dollar limit to a Traditional 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. Instead of a Traditional IRA, you may be eligible to make a regular contribution to a Roth IRA. See Publications 590-A and 590-B, "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) or to an employer plan 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% 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.

If the Adoption Agreement indicates that all initial SIMPLE contributions will be made to a single designated Trustee or Custodian, you may transfer your SIMPLE IRA without cost or penalty to another SIMPLE IRA (if within the 2-year period) or thereafter to any other IRA.

After the 2-year restriction described above 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, SIMPLE IRA, qualified plan, 403(b) plan, or 457 plan. This is called a "rollover" and may not be done without penalty more frequently than at one-year intervals, if you are rolling to another SIMPLE IRA or IRA. 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 trustees/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. SIMPLE IRA Amounts - Rollover Contributions into this SIMPLE IRA**

Beginning December 19, 2015, you may roll over from a qualified plan, qualified annuity, 403(b) plan, governmental 457(b) Plan or from a traditional IRA into your SIMPLE IRA account. Such rollover may only be made after the 2-year period has expired measured from the date of the first contribution made to your SIMPLE IRA.

## **XI. Filing Requirements**

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

## **XII. Employer to Provide Information on SIMPLE IRAs and the SIMPLE Agreement**

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

## **XIII. Financial Institution Where IRA is Established to Provide Information**

The financial institution must provide you with a disclosure statement that contains the following items of information in plain nontechnical language.

1. The statutory requirements that relate to the SIMPLE IRA;
2. The tax consequences that follow the exercise of various options and what those options are;
3. Participation eligibility rules and rules on the deductibility and nondeductibility of retirement savings;
4. The circumstances and procedures under which you may revoke the SIMPLE IRA, including the name, address, and telephone number of the person designated to receive notice of revocation (this explanation must be prominently displayed at the beginning of the disclosure statement);
5. Explanations of when penalties may be assessed against you because of specified prohibited or penalized activities concerning the SIMPLE IRA; and
6. Financial disclosure information which:
  - a) Either projects value, growth, rates of the SIMPLE IRA under various contribution and retirement schedules, or describes the method of computing and allocating annual earnings and charges which may be assessed;
  - b) Describes whether, and for what period, the growth projections for the plan are guaranteed or a statement of earnings rate and terms on which these projections are based, and;
  - c) States the sales commission to be charged in each year expressed as a percentage of \$1,000.

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. IRS Publication 560 also contains more information regarding SIMPLE IRA Plans.

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 SIMPLE IRA and in order that you will know how to report SIMPLE IRA distributions for tax purposes.