

# FORM 5304-SIMPLE

SAVINGS INCENTIVE MATCH PLAN FOR EMPLOYEES OF SMALL EMPLOYERS (SIMPLE)



(Rev. March 2012)  
Department of the  
Treasury Internal  
Revenue Service

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 non-fiduciary trust company chartered under the laws of the state of Kansas (herein referred to as “NDTCO”), has been contracted by the grantor and/or account holder (herein referred to as “depositor”) and named herein as the Custodian for the depositor. All trust assets shall be titled in the name of NDTCO and shall evidence the fact that the asset is being held by NDTCO and/or the Administrator, New Direction IRA (herein referred to as “NDIRA”) for the benefit of the depositor. Depositor’s account may be referred to herein as the “Custodial Account,” and assets held in the Custodial Account may be referred to herein as “Custodial Assets.”

## 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%;

# FORM 5304-SIMPLE

SAVINGS INCENTIVE MATCH PLAN FOR EMPLOYEES OF SMALL EMPLOYERS (SIMPLE)



- 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. Amendment to the Agreement.

The depositor irrevocably delegates to NDTCO and/or NDIRA the right and power to amend this agreement. Except as hereafter provided, NDTCO and/or NDIRA will give the depositor 30 days prior written notice of any

# FORM 5304-SIMPLE

SAVINGS INCENTIVE MATCH PLAN FOR EMPLOYEES OF SMALL EMPLOYERS (SIMPLE)



1070 W. Century Drive, Louisville, CO 80027  
P: 877-742-1270 | F: 303-665-5962

amendment. In case of a retroactive amendment required by law, NDTCO and/or NDIRA will provide written notice to the depositor of the amendment within 30 days after the amendment is made, or if later, by the time that notice of the amendment is required to be given under regulations or other guidance provided by the IRS. The depositor shall have consented to any such amendment unless the depositor notifies NDTCO and/or NDIRA to the contrary within 30 days after notice to the depositor and requests a distribution or transfer of the balance in the account.

## 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 Administrator for the Depositor's Account.

The Custodian (NDTCO) has appointed the Administrator (NDIRA) to act as agent for the Custodian for the purpose of performing administrative or other custodial-related services with respect to the Custodial Account for which the Custodian otherwise has responsibility under this Agreement. All limitations of duties to the depositor, and releases or indemnifications of the Custodian by the depositor in this Agreement shall apply equally to the Administrator. The Administrator shall 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 for the benefit of the Depositor, depositing contributions and income, paying liabilities and distributions, and government reporting for Depositors who have established a Custodial Account with NDTCO and/or NDIRA.

## 4.08 Indemnification of NDTCO and NDIRA.

Depositor acknowledges that it is solely his or her responsibility to direct the investment of the depositor's IRA assets and that NDTCO and NDIRA 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 and/or NDIRA shall not be construed as a favorable opinion as to the prudence or suitability of the investment for the depositor's IRA. NDTCO and/or NDIRA's review of any asset the depositor desires to purchase and hold in their Custodial Account should in no way be construed as "due diligence" review by NDTCO and/or NDIA, and depositor agrees that he or she is not relying on such a review by NDTCO and/or NDIRA in any way. In other words, depositor acknowledges that NDTCO and/or NDIRA are not a fiduciary with respect to the Custodial Account or Custodial Assets. The depositor and their beneficiaries agree to indemnify and hold harmless NDTCO and/or NDIRA from any and all losses, expenses, settlement payments, or judgements incurred by, or entered against NDTCO and/or NDIRA as the result of any threatened or asserted claim against NDTCO that pertains in any way to: NDTCO's and/or NDIRA's activities with the depositor, their investments, any situation or matter associated with the Custodial Account or Custodial Assets, or in any way relates to the Custodial Account, Custodial Assets, or this Agreement. The depositor's indemnification obligations also include the responsibility to reimburse NDTCO and/or NDIRA for all attorneys' fees and cost incurred by NDTCO and/or NDIRA in responding to threatened claims by any party; and prosecuting, including an appeal, a claim or counterclaim against the depositor requesting payment of the indemnification obligation set forth herein. The depositor's indemnification obligation also applies to any threatened or asserted claims brought by the depositor against NDTCO and/or NDIRA resulting from wrongful conduct by any representative appointed by the depositor, including but not limited to; fraud, forgery, or any other illegal act engaged by your representative or

# FORM 5304-SIMPLE

SAVINGS INCENTIVE MATCH PLAN FOR EMPLOYEES OF SMALL EMPLOYERS (SIMPLE)



other agent retained by the depositor. The depositor agrees to indemnify and hold NDTCO and/or NDIRA harmless from and against 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 depositor or the depositor's representative. NDTCO and/or NDIRA shall be entitled to seek the advice of legal counsel in connection with any matter relating to the depositor's account or any Custodial Assets and may in good faith rely upon that advice. NDTCO and/or NDIRA 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 and/or NDIRA or the Custodial Account or Custodial Asset have been made a party. In such a case the depositor shall fully indemnify and defend NDTCO and/or NDIRA for any action taken by them in good faith. Should the depositor refuse to comply with NDTCO and/or NDIRA's demand for repayment of reasonable attorneys' fees, NDTCO and/or NDIRA reserves the right to liquidate some or all of the Custodial Assets in the depositor's account to satisfy the costs and reasonable attorneys' fees incurred by NDTCO and/or NDIRA because of any of the above-mentioned situations.

#### 4.09 Arbitration of All Claims

**ARBITRATION OF DISPUTES. PLEASE READ The Following ARBITRATION PROVISIONS CAREFULLY. They PROVIDE THAT ANY CONTROVERSY OR DISPUTE BE RESOLVED BY BINDING ARBITRATION. ARBITRATION REPLACES THE RIGHT TO GO TO THE COURT, INCLUDING THE RIGHT TO A JURY AND THE RIGHT TO PARTICIPATE IN A CLASS ACTION OR SIMILAR PROCEEDING.**

#### 4.10 Agreement to Arbitrate.

The depositor and NDTCO and/or NDIRA agree that either the depositor or NDTCO and/or NDIRA may, without the other party's consent, require that any claims between them be submitted to mandatory, binding arbitration.

#### 4.11 Claims Subject to Arbitration include but are not limited to:

Any and all claims or controversies that arise from or relate in any way to the Custodial Account; to the Custodial Assets; to this Agreement; to the depositor's relationship with NDTCO and/or NDIRA; or any actions taken by the depositor, his or her agent, or NDTCO and/or NDIRA.

#### 4.12 Arbitration location, finality, procedures, waiver of jury trial, class action or any representative action.

The depositor agrees that Arbitration shall only occur in Johnson County, Kansas, to the exclusion of all other venues, and shall be administered according to the Commercial Rules of the American Arbitration Association. However, the parties specifically agree that the arbitration will not be administered by the American Arbitration Association, notwithstanding the use of that organization's Commercial Rules. The parties agree that Arbitration is final and binding on all parties. By agreeing to arbitration, the depositor and NDTCO and/or NDIRA are voluntarily waving their right to seek remedies in court, including their right to a jury trial. The parties agree that the depositor cannot bring any claims against NDTCO and/or NDIRA as part of a class action or in any other representative action, and the arbitration of such Claims must proceed on an individual, non-class, and non-representative, basis. The depositor specifically waives his or her right to bring any claim against NDTCO and/or NDIRA as part of a class action or in any other representative action. If the depositor or NDTCO and/or NDIRA require arbitration of a particular claim, neither party nor any other person, may pursue the claim in any litigation, whether as an individual action, class action, private attorney general action, or any other representative action. Pre-arbitration discovery is 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.

#### 4.13 LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.

IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. THE PARTIES HEREBY

# FORM 5304-SIMPLE

SAVINGS INCENTIVE MATCH PLAN FOR EMPLOYEES OF SMALL EMPLOYERS (SIMPLE)



1070 W. Century Drive, Louisville, CO 80027  
P: 877-742-1270 | F: 303-665-5962

EXPRESSLY WAIVE ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY seek OR WHICH MAY ARISE IN CONNECTION WITH ANY PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY, OR OTHERWISE.

#### 4.14 **One (1) Year Claims Limitation.**

Any claim, action, or proceeding alleging breach of contract, negligence, misrepresentation, fraud, or any other controversy arising out of or in connection with any acts or omissions of NDTCO and/or NDIRA that in any way relates to or arises from the parties' relationship, the Custodial Account, the Custodial Assets, or this Agreement, including any acts or omissions authorized by depositor or depositor's agent, must be filed within one (1) year of the occurrence of the facts or circumstances that gave rise to the potential causes of action. Any claims that are not brought within the applicable time shall be forever barred without regard to any other limitations period set forth by law or statute.

#### 4.15 **Choice of Law.**

The parties agree that this Agreement, their relationship, and all claims that arise from or in any way relate to this Agreement, their relationship, the Custodial Account, or the Custodial Assets shall be governed by the laws of the State of Kansas, without regard to its choice of law rules.

#### 4.16 **Fraud Liability. LOST OR STOLEN LOGIN, PASSWORD, OR IDENTITY THEFT.**

The depositor agrees to safeguard his or her account information, including the depositor's username and password. The depositor agrees to notify NDTCO and/or NDIRA immediately, but not later than two (2) days after, any loss of login, password, compromise of email, or account information that may allow a fraudster to gain access to the Custodial Account or Custodial Assets. The depositor agrees to indemnify NDTCO and/or NDIRA from any losses sustained as a result of the depositor's delayed notification and for any losses related to the unauthorized use of the Custodial Account or Custodial Assets.

#### 4.17 **Enterprise Risk Assessment Only; No Due Diligence on Custodial Assets or Asset Provider(s).**

NDIRA and/or NDTCO may periodically conduct an enterprise risk assessment. This assessment is to evaluate the risks associated with NDTCO and/or NDIRA and to analyze NDTCO and/or NDIRA's business goals, and the risks impacting them only and shall not be deemed a due diligence review of the depositor's chosen Custodial Asset or Custodial Asset provider. Depositor specifically acknowledges that this review is for the benefit of NDTCO's and/or NDIRA's assessment of administrative feasibility only, and that the depositor is in no way relying on such review for any reason.

#### **Resignation and Removal of NDTCO as Custodian and/or NDIRA as Administrator.**

- (a) The NDTCO as Custodian and/or NDIRA as Administrator may resign and appoint a successor trustee, custodian, or administrator to serve under this agreement or under another governing agreement selected by the successor trustee, custodian, or administrator by giving the depositor written notice at least 30 days prior to the effective date of such resignation and appointment, which notice shall also include or be provided under separate cover a copy of such other governing instrument, if applicable. The depositor shall then have 30 days from the date of such notice to either request a distribution of the entire account balance or designate a different successor trustee, custodian, or administrator and shall notify NDTCO and NDIRA of such designation. If the depositor does not request distribution of the account balance or notify NDTCO and NDIRA of the designation of a different successor trustee, custodian, or administrator within such 30 day period, the depositor shall be deemed to have consented to the appointment of the successor trustee, custodian, or administrator 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,

# FORM 5304-SIMPLE

SAVINGS INCENTIVE MATCH PLAN FOR EMPLOYEES OF SMALL EMPLOYERS (SIMPLE)



1070 W. Century Drive, Louisville, CO 80027  
P: 877-742-1270 | F: 303-665-5962

custodian, or administrator. The successor trustee, custodian, or administrator may rely on any information, including beneficiary designations, previously provided by the depositor to NDTCO and/or NDIRA.

- (b) The depositor may at any time remove NDTCO and replace it with a successor trustee or custodian of the depositor's choice by giving 30 days' notice of such removal and replacement. NDTCO shall then deliver the assets of the account as directed by the depositor. However, NDTCO and/or NDIRA may retain a portion of the Custodial Assets 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.
- (c) NDTCO and/or NDIRA may resign and demand that the depositor appoint a successor trustee, custodian, or administrator of the Custodial Account or Custodial Assets for any reason 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, custodian, or administrator; to notify NDTCO and NDIRA of the name and address of the successor trustee, custodian, or administrator; and to provide NDTCO and NDIRA with appropriate evidence that such successor has accepted the appointment and is qualified to serve as trustee, custodian, or administrator of the Custodial Account or Custodial Assets.
  - 1. If the depositor designates a successor trustee, or custodian and provides NDTCO evidence of the successor's acceptance of appointment and qualification within such 30-day period, NDTCO shall then deliver all of the assets held by it in the Custodial Account (whether in cash or personal or real property, wherever located, and regardless of value) to the successor trustee or custodian.
  - 2. If the depositor does not notify NDTCO of the appointment of a successor trustee or custodian within such 30 day period, then NDTCO may distribute all of the assets held by it in the Custodial 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.
- (d) NDTCO and/or NDIRA may expend any Custodial Assets 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, custodian, administrator, or the depositor. In addition, NDTCO and/or NDIRA may retain a portion of the Custodial Assets as a reserve for payment of any anticipated remaining fees and expenses. Upon satisfaction of such fees and expenses, NDTCO shall pay over any remainder of the reserve to the successor trustee or custodian or to the depositor, as the case may be.

## 4.18 Custodian and Administrator's Fees and Expenses.

- (a) The depositor agrees to pay NDTCO and/or NDIRA all fees specified in the then-current published fee schedule for establishing and maintaining the Custodial Assets and the Custodial Account, including any fees for distributions from, transfers from, and terminations of the Custodial Account. NDTCO and/or NDIRA may change its fee schedule at any time by giving the depositor 30 days' prior written notice.
- (b) 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, such as legal and accounting fees, a valuation fee from a qualified independent third-party appraiser and any taxes of any kind whatsoever that may be levied or assessed with respect to such an account.
- (c) All fees and other outstanding expenses are due prior to the execution of your transaction and shall be collected either from the assets in the account or will be charged to the credit card provided by the Depositor. All fees are due upon invoicing. If depositors designated payment method fails, NDTCO and/or NDIRA reserves the right to apply other authorized payment methods to pay your fees without prior notice to depositor. Invoices and fees will be deemed accepted by the depositor if the depositor does not object in writing within 90 days of invoice date. Annual Administration fees are charged and due based upon the custodial services provided and are not dependent upon the Custodial Assets performance.
- (d) The NDCO and/or NDIRA shall be entitled to fees for account opening, asset purchases and sales, distributions, transfers, terminations, and annual administration of the Custodial Account, along with other miscellaneous fees,

# FORM 5304-SIMPLE

SAVINGS INCENTIVE MATCH PLAN FOR EMPLOYEES OF SMALL EMPLOYERS (SIMPLE)



as disclosed in a fee schedule provided by the Custodian to the Depositor. NDTCO and/or NDIRA charges fees in advance of any transactions and reserves the right to refuse to process any requested transactions without payment first. Additionally, assets may be liquidated from the account, without notice, for any outstanding fee which has not been paid. If fees are not paid within thirty (30) days after the invoice date, NDTCO 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 taxes and penalties. Accounts with past due fees, and accounts with zero value will continue to incur administration fees until such time as depositor notifies NDTCO and/or NDIRA (on a form prescribed by NDTCO and/or NDIRA) of depositor's intent to close the account or until NDTCO resigns.

- (e) NDTCO and/or NDIRA has the right to be reimbursed for all reasonable expenses, including various transaction and legal expenses NDTCO and/or NDIRA incur 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 depositors IRA at NDTCO's discretion.

## 4.19 Cash Management.

NDTCO and/or NDIRA 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 depositor) which has been deposited by NDTCO and/or NDIRA into FDIC or other United States government insured financial institutions, United States government securities, or securities that are insured or guaranteed by the United States government. NDTCO and/or NDIRA's fees from the 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. NDTCO and/or NDIRA retain the right, but do 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 NDTCO and/or NDIRA as compensation for the services provided under this Agreement. NDTCO and/or NDIRA reserve the right to change all or part of the custodial fee schedule at its discretion with 30 days advance written notice to depositor.

Depositor acknowledges that services rendered by NDTCO and/or NDIRA as described in this document and elsewhere in the agreement, include assumption by NDTCO and/or NDIRA of certain risks and liabilities with respect to the cash account, which are not assumed by the depositor. The risks and liabilities include, but are not limited to, guaranteeing minimum duration and cash deposits levels in eligible institution accounts while providing depositor with access to distributions from their account, and assuming penalties pursuant to the eligible Institutional Agreements.

NDTCO and/or NDIRA receive a fee from interest paid by each eligible institution on aggregate deposits in connection with NDTCO and/or NDIRA's Cash Management program. The fee varies from eligible institution to eligible institution, based on the prevailing interest rate environment. The depositor acknowledges that they have reviewed NDTCO and/or NDIRA's direct and indirect compensation and determined the compensation they receive is reasonable for the services it provides. The Depositor has further determined that such services are necessary for the establishment and maintenance of NDTCO and/or NDIRA's Cash Management program.

Depositor hereby acknowledges and agrees that NDTCO and/or NDIRA will deposit all Undirected Cash in the custodial account into pooled deposit accounts at one or more FDIC or other United States government insured institutions or in United States government securities or in securities that are insured or guaranteed by the United States government pending further investment direction by depositor. All income generated by Undirected Cash in NDTCO and/or NDIRA's pooled deposit accounts shall be retained by NDTCO and/or NDIRA as fees. Depositor authorizes NDTCO and/or NDIRA to transfer any Undirected Cash in the custodial account into any FDIC insured financial institution or in

# FORM 5304-SIMPLE

SAVINGS INCENTIVE MATCH PLAN FOR EMPLOYEES OF SMALL EMPLOYERS (SIMPLE)



1070 W. Century Drive, Louisville, CO 80027  
P: 877-742-1270 | F: 303-665-5962

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.

## 4.20 Agent/Representative.

By notifying NDTCO and/or NDIRA on a form acceptable to them, the depositor may delegate the investment responsibility for all of the Custodial Account and the Custodial Assets to an authorized agent. NDTCO and/or NDIRA shall assume that such agent is at all times qualified to act in that capacity. NDTCO and/or NDIRA shall further assume the agent possesses the authority to direct the investment and/or manage the trading of the Custodial Account until such time as (a) the depositor notifies NDTCO and NDIRA in writing that the depositor has appointed another agent or that the depositor has assumed sole responsibility for directing investment of the Custodial Account and Custodial Assets, or (b) NDTCO and NDIRA are officially notified of the death of the depositor. The depositor specifically acknowledges that any agent the depositor appoints is exclusively the depositor's agent and is not in any way an agent of NDTCO or of NDIRA. The depositor further acknowledges that NDTCO and NDIRA do not endorse or perform any due diligence with respect to the depositor's selection of an agent. By appointing an agent pursuant to this paragraph, the depositor acknowledges and confirms that it is not relying on any representation by NDTCO or NDIRA regarding the depositor's selected agent. In connection with certain investments, the depositor may execute certain ancillary documents. If the depositor has agreed to provide services or has appointed an agent to provide services pursuant to such ancillary documents, NDTCO and NDIRA shall not have any responsibility for the performance or non-performance of those services.

## 4.21 No Liability for Third-Party Conduct.

NDTCO and/or NDIRA shall not be liable for the acts or omissions of the plan sponsor or its agent, or of any asset sponsor, or any former trustee, custodian, or administrator, or any of their respective agents, or the depositor or any of the depositor's agents. NDTCO and NDIRA shall not have any responsibility or liability for any loss of income or of capital relating to any investment, or to the sale or exchange of any asset that a plan sponsor, asset sponsor, or a former custodian, the depositor or the depositor's agent directs NDTCO and/or NDIRA to make or that is made or held under this Agreement, including without limitation the initial investment of the Custodial Account at the direction of a plan sponsor or a former trustee, custodian, or administrator, if applicable. NDTCO and NDIRA are not, and will not act as, an investment advisor to the depositor and have no duty to question, review or investigate the depositor's or the depositor's agent's directions regarding the purchase, retention or sale of any asset. NDTCO and NDIRA do not assume or incur any liability by reason of, or have any duty or responsibility to inquire into, or take action with respect to, any acts performed or omitted or to be performed by the plan sponsor, asset sponsor, or by a former trustee, custodian, or administrator of any qualified plan or IRA that has transferred any assets to the Custodian or Account. Where the depositor and NDTCO and/or NDIRA have agreed that the depositor may give investment instructions for execution directly to a broker, any issues that arise with the broker shall be handled directly by the depositor. NDTCO and NDIRA shall not be liable to the depositor for any statements, representations, actions or inactions of any investment sponsor, broker or other salesperson or principal of any investment purchased for this Custodial Account, and such sponsors, brokers, or other salespersons or principals are not agents of NDTCO or NDIRA and have no authority to speak or act on behalf of NDTCO or NDIRA. The Custodian shall not be liable to the depositor for any statements, representations, actions or inactions of any agent of the depositor.

## 4.22 Annual Accounting.

NDTCO and/or NDIRA shall, at least annually, provide the depositor, the designated agent, or the beneficiary (in the case of death) with an accounting of such depositor's account. Such accounting shall be deemed to be accepted by the depositor, their designated agent, or their beneficiary if they do not object in writing within 90 days after such



# FORM 5304-SIMPLE

SAVINGS INCENTIVE MATCH PLAN FOR EMPLOYEES OF SMALL EMPLOYERS (SIMPLE)



1070 W. Century Drive, Louisville, CO 80027  
P: 877-742-1270 | F: 303-665-5962

accounting statement. Depositor agrees that NDTCO and/or NDIRA shall have no liability for and will be held harmless for any errors, omissions, or other losses that are apparent on an accounting statement unless the depositor objects to the contents of the accounting statement within 90 days after the statement has been sent to the depositor or his or her representative.

## 4.23 Notices and Change of Address.

Any required notice regarding the depositor's Custodial Account or any Custodial Assets will be considered sent and effective at the earlier of (a) NDTCO and/or NDIRA sends said notice to the depositor's last known address within NDTCO's and/or NDIRA's records; or (b) NDTCO and/or NDIRA post the notice to the depositor's account via the online client portal. Any notice given to NDTCO and/or NDIRA will be considered effective only upon actual receipt at NDTCO's or NDIRA's place of business. The depositor and the depositor's representatives or agents must notify NDTCO and/or NDIRA of any change of address or email address immediately but no later than within 30 days of change of address. If the depositor or the depositor's representative or agent fails to timely update their address or email address, the depositor agrees to indemnify and hold NDTCO and/or NDIRA harmless for any liability or causes of actions that may arise because of their failure to timely update their address. NDTCO and/or NDIRA shall not be liable for its good faith reliance on an address, or any information with respect thereto, provided by any commercial address locator service. For all purposes of this Agreement, an email transmission is deemed to be in writing, and the term "address" includes a party's email address. NDTCO and NDIRA are entitled to rely on the information disclosed to them until they have received written notice of a change in such information and have had a reasonable period of time to react thereto. If the depositor has consented to the terms and conditions of NDTCO's and/or NDIRA's consent to conduct transactions electronically and to receive electronic delivery of notices and disclosures, as may be in effect from time to time, (the "Electronic Disclosure"), or if the depositor accesses the Custodial Account through its online account access and has instructed NDTCO and/or NDIRA to deliver notices and disclosures electronically, the depositor has agreed that: (a) all Custodial Account statements, disclosures, depositor's directions and transactions, and notices to the depositor will be provided electronically as described in the Electronic Disclosure; and (b) the depositor's or the depositor's authorized agent's use of an electronic signature serves as an "original" signature and will bind the depositor to the terms of any document executed with an electronic signature. The depositor and NDTCO and/or NDIRA retain their respective rights as provided in the Electronic Disclosure. If the depositor has not consented to the Electronic Disclosure or later withdraws consent, then any notice provided by NDTCO and/or NDIRA to the depositor for any circumstance shall be sent to the depositor's address by regular mail or as otherwise permitted by applicable law, and for purposes of this Agreement shall be considered delivered as provided in this section.

## 4.24 Reliance.

NDTCO and NDIRA will not be required to determine the validity of any receipt, affidavit, notice or other paper or agreement required to be delivered to them under this Agreement, and NDTCO and NDIRA will be relieved of any liability or responsibility for the sufficiency thereof as long as it purports on its face to be such receipt, affidavit, notice or other paper or agreement and purports to be executed by such person as required by this Agreement.

## 4.25 Withdrawal Requests:

All requests for withdrawal shall be in writing. Such written notice must also contain the reason for the withdrawal and the method of distribution requested. NDTCO and/or NDIRA reserves the right to reject any withdrawal request it may deem appropriate and to apply to a court of competent authority to decide with respect to the proper party eligible to receive a distribution from the account. NDTCO and NDIRA will reject any personal distribution within sixty days of account opening.

# FORM 5304-SIMPLE

SAVINGS INCENTIVE MATCH PLAN FOR EMPLOYEES OF SMALL EMPLOYERS (SIMPLE)



## 4.26 Amendment to the Agreement.

The depositor irrevocably delegates to NDTCO and/or NDIRA the right and power to amend this agreement. Except as hereafter provided, NDTCO and/or NDIRA will give the depositor 30 days prior written notice of any amendment. In case of a retroactive amendment required by law, NDTCO and/or NDIRA will provide written notice to the depositor of the amendment within 30 days after the amendment is made, or if later, by the time that notice of the amendment is required to be given under regulations or other guidance provided by the IRS. The depositor shall have consented to any such amendment unless the depositor notifies NDTCO and/or NDIRA to the contrary within 30 days after notice to the depositor and requests a distribution or transfer of the balance in the account.

## 4.27 Death Benefit Provisions.

- (a) If the depositor dies before his or her 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, then 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 paid until the beneficiary provides NDTCO and/or NDIRA with a proper distribution request acceptable to NDTCO and/or NDIRA and other documentation that may be required by them. A beneficiary may at any time request a complete distribution of his or her remaining interest in the custodial account. The NDTCO and/or NDIRA reserves the right to require a minimum balance in the account to make periodic payments from the account.
- (b) If the depositor dies on or after his or her required beginning date, distribution shall be in accordance with Article IV, Section 4.03(a). However, no payment will be paid until the beneficiary provides NDTCO and/or NDIRA with a proper distribution request acceptable to NDTCO and/or NDIRA and other documentation that may be required by them. A beneficiary may at any time request a complete distribution of his or her remaining interest in the Custodial Account. NDTCO and/or NDIRA reserves the right to require a minimum balance in the account to make periodic payments from the account.
- (c) In the event that for any reason NDTCO and/or NDIRA is not certain as to who is entitled to receive all or part of the Custodial Funds, the NDTCO and/or NDIRA reserves the right to withhold any payment from the Custodial account, to request a court ruling to determine the disposition of the Custodial account assets, and to charge the Custodial account for any expenses incurred in obtaining such legal determination.

## 4.28 Responsibilities.

Depositor agrees that all information and instructions given to NDTCO and/or NDIRA by the depositor are complete and accurate and that neither the NDTCO and/or NDIRA shall not be responsible for any incomplete or inaccurate information provided by the depositor beneficiary agree to be responsible for all tax consequences arising from contributions to and distributions from this Custodial Account and acknowledges that no tax advice has been provided by NDTCO and/or NDIRA.

## 4.29 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 NDTCO and/or NDIRA. The depositor may change the depositor's beneficiary or beneficiaries at any time by filing a new beneficiary designation with NDTCO and/or NDIRA. If no beneficiary designation is in effect, if none of the named beneficiaries survive the depositor, or if NDTCO and/or NDIRA cannot locate any of the named beneficiaries after reasonable search, any balance in the account will be payable to the depositor's estate.

# FORM 5304-SIMPLE

SAVINGS INCENTIVE MATCH PLAN FOR EMPLOYEES OF SMALL EMPLOYERS (SIMPLE)



- (b) If NDTCO and/or NDIRA permits, in the event of the depositor's death, any beneficiary may name a subsequent beneficiary 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 NDTCO and/or NDIRA. Payments to such subsequent beneficiary 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, if any, designated by the original spouse beneficiary where the depositor dies before his or her 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.

## 4.30 Disclosures and Voting.

- (a) NDTCO and/or NDIRA shall deliver, or cause to be executed and delivered, to depositor all notices, prospectuses, financial statements, proxies, and proxy soliciting materials relating to assets credited to the account. NDTCO and/or NDIRA shall not vote on any shares of stock or take any other action, pursuant to such documents, with respect to such assets except upon receipt by NDTCO and/or NDIRA of adequate written instructions from the depositor.
- (b) NDTCO and/or NDIRA does not serve as a fiduciary to your Custodial Account, Broadridge Financial Solutions will be used by NDTCO and/or NDIRA to vote for proxies for depositor's publicly traded custodial assets. Unless NDTCO and/or NDIRA is given prior notice by the depositor 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.
- (c) NDTCO and/or NDIRA 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 and/or NDIRA is given prior notice by the depositor 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 depositor.

## 4.31 Yearly Valuation of Depositors Account.

The Depositor must furnish to NDTCO and/or NDIRA in writing the fair market value of each Investment annually by the 15th day of each January, valued as of the preceding December 31st, and within twenty days of any other written request from NDTCO and/or NDIRA, valued as of the date specified in such request. The depositor acknowledges, understands, and agrees that a statement that the fair market value is undeterminable, or that cost basis should be used is not acceptable and the depositor agrees that the fair market value furnished to NDTCO and/or NDIRA will be obtained from the issuer of the Investment (which includes the general partner or managing member thereof). The depositor acknowledges, understands, and agrees that if the issuer is unable or unwilling to provide a fair market value, the depositor shall obtain the fair market value from an independent, qualified appraiser and the valuation shall be furnished on the letterhead of the person providing the valuation. The depositor acknowledges, understands and agrees that NDTCO and/or NDIRA shall have no obligation to investigate or determine whether the fair market value so furnished is the correct fair market value (without regard to any actual or constructive knowledge that NDTCO and/or NDIRA may otherwise have), but if NDTCO and/or NDIRA otherwise has a different value for such Investment, NDTCO and/or NDIRA may use such other value in its reports to the depositor and to the Internal Revenue Service if NDTCO and/or NDIRA (in its sole discretion) so chooses. The

# FORM 5304-SIMPLE

SAVINGS INCENTIVE MATCH PLAN FOR EMPLOYEES OF SMALL EMPLOYERS (SIMPLE)



1070 W. Century Drive, Louisville, CO 80027  
P: 877-742-1270 | F: 303-665-5962

depositor acknowledges, understands, and agrees that NDTCO and/or NDIRA shall rely upon the depositor's continuing attention, and timely performance, of this responsibility. The depositor acknowledges, understands, and agrees if NDTCO and/or NDIRA does not receive a fair market value as of the preceding December 31, NDTCO and/or NDIRA shall distribute the Investment to the depositor and issue an IRS Form 1099-R for the last available value of the Investment.

## 4.32 Asset Reports.

NDTCO and/or NDIRA from time to time may receive various reports such as statements, valuation reports, annual reports, audited financial statements, amendments to offering memoranda, prospectuses or similar documents, IRS Form K-1s and the like related to Custodial Assets (collectively, "Asset Reports"). It shall be the depositor's responsibility to obtain such Asset Reports from a source other than NDTCO and/or NDIRA. NDTCO and/or NDIRA shall not forward Asset Reports to the depositor. The depositor agrees that it is the responsibility of the depositor to (i) review such Asset Reports, (ii) know what Asset Reports are due and when from each Custodial Asset in the Custodial Account, and (iii) follow up with the sponsor of the Custodial Asset whenever an Asset Report is not provided in a timely manner to the depositor. The depositor acknowledges that NDTCO and/or NDIRA has no duty to (i) request Asset Reports or (ii) to review any Asset Report for accuracy or content or otherwise.

## 4.33 Forwarding Records.

The depositor acknowledges and agrees that, unless required by applicable law, NDTCO and/or NDIRA are not responsible for communicating, forwarding or notifying any party, including the depositor, with respect to any communication or matter that comes to the attention of or is received by NDTCO and/or NDIRA with respect to the Custodial Account and Custodial Assets, and that the depositor is responsible for making separate arrangements for receiving such communications. Depositor agrees that NDTCO and NDIRA have no duty to inform the depositor of any information on an asset held in the Custodial Account, including information NDTCO and/or NDIRA may have learned in connection with another account or client or from any other source.

## 4.34 Severability.

If any part of this Agreement is held to be illegal, unenforceable, or invalid, the remaining parts will not be affected and will remain in full force and effect. Neither the depositor's nor NDTCO's and/or NDIRA's failure to enforce at any time or for any period of time any of the provisions of the Agreement shall be construed as a waiver of such provisions, or of NDTCO's and/or NDIRA's right thereafter to enforce each and every such provision.

## 4.35 Depositor's Representations.

The depositor represents and warrants that any information given or that will be given with respect to this Custodial Account is complete and accurate. Further, the depositor agrees that any directions the depositor or the depositor's agent give NDTCO and/or NDIRA, or any actions the depositor or the depositor's agent take will be proper under this Agreement and that NDTCO and/or NDIRA are entitled to rely upon any such information or directions. NDTCO and/or NDIRA shall not be responsible for losses of any kind that may result from such directions to NDTCO and/or NDIRA or from the depositor's actions, or the depositor's agent's actions, or failures to act of both. The depositor agrees to reimburse NDTCO and/or NDIRA for any losses that NDTCO and/or NDIRA may incur as a result of such directions, actions or failures to act.

## Self-Directed IRA Provisions

### 1. Non-Fiduciary Passive Custodian.

# FORM 5304-SIMPLE

SAVINGS INCENTIVE MATCH PLAN FOR EMPLOYEES OF SMALL EMPLOYERS (SIMPLE)



By accepting this account agreement, the depositor creates an Individual Retirement Arrangement (herein "IRA") to establish the IRA you as the depositor contracted with NDTCO and/or NDIRA to function as the depositor's directed passive non-discretionary Custodian. As such, NDTCO and/or NDIRA cannot solicit investments, nor provide advice or recommendations to the depositor regarding the investments acquired by or in depositor's account. Additionally, NDTCO and/or NDIRA has no authority to take any action regarding depositor's investments acquired by, or held in, depositors IRA without the express direction of the depositor. The depositor acknowledges a Self-directed IRA is unique in that the depositor or beneficiary of the IRA acts as the trustee. You as the depositor acknowledge that self-directed IRAs necessarily play dual roles in that depositor exercises control and directs IRA investments as an account fiduciary while also receiving the benefits under the plan as beneficiaries. The relationship between NDTCO and/or NDIRA and depositor is confined to NDTCO and/or NDIRA's performance in the transactions selected by their depositors; NDTCO and/or NDIRA have absolutely no responsibility to advise depositor regarding the wisdom of the depositor's investment choices. NDTCO and/or NDIRA perform the duties of a directed custodian, and as such do not provide due diligence to third parties on prospective investments, platforms, sponsors or service providers, and does not offer or sell investments or provide investment, legal or tax advice.

## 2. Registration of Custodial Assets.

All assets of the account shall be registered in the name of NDTC O and/or NDIRA or of a suitable nominee. The same nominee may be used with respect to assets of other investors whether held under agreements like this one or in any capacity whatsoever. However, each depositor's account shall be a separate and distinct account and shall be maintained by NDTCO and/or NDIRA, and the assets thereof shall be held by NDTCO and/or NDIRA in individual or bulk segregation either in NDTCO and/or NDIRA's vaults or in depositories approved by the Securities and Exchange Commission under the Securities Exchange Act of 1934. The depositor acknowledges that the owner of any asset held in the Custodial Account is NDTCO, as Custodian of the Account, and not the depositor individually. Therefore the depositor agrees not to invest any funds into or receive or withdraw any funds from any investment held in the Custodial Account other than through NDTCO and/or NDIRA, and NDTCO and/or NDIRA are authorized to take any action necessary to provide that any investment directed to be purchased by the depositor, or the depositor's authorized agent, is correctly documented as being purchased in and owned by the Custodial Account.

## 3. 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 his IRA. The depositor shall notify NDTCO and/or NDIRA in writing of any such appointment by providing them 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. NDTCO and/or NDIRA 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. NDTCO and/or NDIRA 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 they shall not be liable for any investment losses sustained by the depositor.

## 4. No Investment Advice.

NDTCO and/or NDIRA do not assume any responsibility for rendering advice with respect to the investment and reinvestment of depositor's account and shall not be liable for any loss which results from the depositor's exercise of control over his account, and NDTCO and/or NDIRA shall not have any duty to question his investment directives.

The depositor recognizes and agrees that certain investment directions may result in penalties or charges, potential

# FORM 5304-SIMPLE

SAVINGS INCENTIVE MATCH PLAN FOR EMPLOYEES OF SMALL EMPLOYERS (SIMPLE)



distribution delays, loss of equity or other consequences adverse to the Custodial Account or Custodial Assets, and NDTCO and/or NDIRA are relieved from responsibility, therefore. NDTCO and/or NDIRA shall not be held liable or otherwise accountable for losses related to actions by any third party, including, but not limited to losses incurred by reason of investment selections in accordance with directions or actions of a plan sponsor, any former custodian, servicer, administrator, or trustee (collectively, "Former Custodian"), the depositor or any of their respective agents, or of any broker.

## 5. Prohibited Transactions.

Notwithstanding anything contained herein to the contrary, depositor shall not lend any part of the corpus or income of the account to; pay any compensation for personal services rendered to the account to; make any part of its services available on a preferential basis to; acquire for the account any property, other than cash, from; or sell any property to, any depositor, any member of a depositor's family, or a corporation controlled by any depositor through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote, or of 50 percent or more of the total value of shares of all classes of stock of such corporation. Nor shall the depositor cause NDTCO and/or NDIRA to invest any part of the corpus or income of the account into any investment that is illegal under state or federal law. If the Custodial Account is involved in a prohibited transaction at any time during the year, the Custodial Account stops being an IRA as of the first day of that year and IRS taxes and penalties may apply. It is the depositor's responsibility to pay all taxes and penalties that are incurred due to a prohibited transaction with the IRA. NDTCO and NDIRA shall not be liable for losses, taxes, penalties or other consequences resulting from any IRA investment or transaction that constitutes a prohibited transaction. NDTCO and NDIRA are not responsible for alerting the depositor to actions that may lead to or involve a prohibited transaction. The depositor acknowledges and agrees that the IRS places certain reporting requirements upon NDTCO and/or NDIRA as to prohibited transactions. It is the responsibility of the depositor and not NDTCO or NDIRA to determine whether any investment or transaction directly or indirectly involving or relating to the Custodial Account or the Custodial Assets or income constitutes a prohibited transaction. The depositor will consult with tax or legal professionals to determine whether any IRA investment and any transaction concerning the Custodial Account or its assets or income will create a prohibited transaction. NDTCO and/or NDIRA reserve the right to request certification from the depositor that the direction provided by the depositor does not create a prohibited transaction. If such certification is not forthcoming, NDTCO and/or NDIRA reserve the right to take whatever action it deems within its discretion to be appropriate, including but not limited to resigning from the Custodial Account and/or distributing Custodial Assets from the Custodial Account. Not requesting such a certification does not represent that NDTCO and/or NDIRA have concluded that no prohibited transaction exists or that NDTCO and/or NDIRA has even reviewed the transaction in question, and the receipt or acceptance of such a certification by NDTCO and/or NDIRA is not an acknowledgement by either that no prohibited transaction exists. If the depositor pledges any portion of the IRA as collateral for a loan, such pledge could constitute a prohibited transaction, and the amount pledged will be treated as an IRA distribution that must be included in the depositor's gross income. NDTCO and/or NDIRA shall not be responsible for and the depositor agrees to indemnify NDTCO and NDIRA for any adverse consequences or for failing to comply with any applicable reporting or other requirements on behalf of the depositor and/or other persons relating to any such prohibited transaction

## 6. Unrelated Business Income Tax.

If the depositor directs investment of the account in any investment which results in unrelated business taxable income, it shall be the responsibility of the depositor to so advise NDTCO and/or NDIRA and to provide them with all information necessary to prepare and file any required returns or reports for the account. As NDTCO and/or NDIRA may deem necessary, and at the depositor's expense, the NDTCO and/or NDIRA may request a taxpayer identification number for the Custodial account, file any returns, reports, and applications for extension, and pay any

# FORM 5304-SIMPLE

SAVINGS INCENTIVE MATCH PLAN FOR EMPLOYEES OF SMALL EMPLOYERS (SIMPLE)



taxes or estimated taxes owed with respect to the account. NDTCO and/or NDIRA may retain suitable accountants, attorneys, or other agents to assist it in performing such responsibilities and charge the depositor a special services fee to complete the necessary work for the UBIT filing.

## 7. Miscellaneous Expenses.

In addition to those expenses set out in this agreement, the depositor agrees to pay any and all expenses incurred by NDTCO and/or NDIRA in connection with the investment of the account, including expenses of preparation and filing any returns and reports with regard to unrelated business income, including taxes and estimated taxes, as well as any transfer taxes incurred in connection with the investment or reinvestment of the assets of the account. The depositor also agrees to pay any all expenses related to the valuation of their account.

## 8. Non-bank Trustee Provision.

If NDTCO and/or NDIRA is a nonbank Trustee, the depositor shall substitute another custodian or trustee in place of NDTCO and/or NDIRA upon receipt of notice from the Commissioner of the Internal Revenue Service or his delegate that such substitution is required because NDTCO and/or NDIRA 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 NDTCO and/or NDIRA 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 Article VIII, Section 8.05 of the Custodial Agreement).

## 9. Right to Revoke Account.

The depositor may revoke your IRA within 7 days after the depositor signs the IRA Agreement by hand-delivering or mailing a written notice to the name and address indicated on the Agreement. If you revoke your account by mailing a written notice, such notice must be postmarked by the seventh day after you sign the Adoption Agreement. If you revoke your IRA within the 7-day period you will receive a refund of the entire amount of your contributions to the IRA without any adjustment for market performance, earnings, or any administrative expenses. If you exercise this revocation, we are still required to report the contribution on Form 5498 (except transfers) and the revoked distribution on Form 1099-R.

## 10. Active Participant.

The depositor is considered an active participant if the participate in your employer's qualified pension, profit-sharing, or stock bonus plan qualified under Section 401(a) of the Internal Revenue Code ("the Code"); qualified annuity under Section 403(a) of the Code; a simplified employee pension plan (SEP) under Section 408(k) of the Code; a retirement plan established by a government for its employees (this does not include a Section 457 plan); Tax-Sheltered Annuities (TSA) or custodial accounts under Section 403(b) of the Code; pre-1959 pension trusts under Section 501(c)(18) of the Code; and SIMPLE IRA plans under Section 408(p) of the Code. If you are not sure whether you are covered by an employer-sponsored retirement plan, check with your employer, or check your Form W-2 for the year in question. The W-2 form will have a check in the "retirement plan" box if you are covered by a retirement plan. You can also obtain IRS Notice 87-16 for more information on active participation in retirement plans for IRA deduction purposes. You as an active participant agree that custodian reserves the right to resign from any client if a current Fair market valuation is due and is not received within 3 months from the FMVs due date.

## 11. General Requirements of an Individual Retirement Arrangement.

# FORM 5304-SIMPLE

SAVINGS INCENTIVE MATCH PLAN FOR EMPLOYEES OF SMALL EMPLOYERS (SIMPLE)



- (a) Your contributions must be made in cash unless you are making a rollover or transfer contribution and NDTCO and/or NDIRA accepts non-cash rollover or transfer contributions.
- (b) The annual contributions the depositor makes on their behalf may not exceed less than 100% of your compensation or the "applicable annual dollar limitation" (defined below), unless you are making a rollover, transfer, or SEP contribution. If contributions are made under an employer's SIMPLE Retirement Plan, you must establish a separate SIMPLE-IRA document to which only SIMPLE contributions may be made. This type of IRA is called a "SIMPLE-IRA". "SIMPLE-IRA" contributions may not be made into this account. Roth IRA contributions may not be made into this account.
- (c) The depositor's regular annual contributions for any taxable year may be deposited at any time during that taxable year and up to the due date for the filing of your federal income tax return for that taxable year, no extensions. This means April 15th of the following year.
- (d) The Custodian of your 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.
- (e) No portion of the depositor's IRA funds may be invested in life insurance contracts, nor shall the depositor invest your funds in any custodial assets that are illegal under state or federal law.
- (f) The depositor's interest in their IRA is always nonforfeitable.
- (g) The depositor may not invest the assets of their 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, silver and platinum coins and certain state-issued coins are permissible IRA investments. You may also invest in certain gold, silver, platinum, or palladium bullion. Such bullion must be permitted by NDTCO and/or NDIRA and held in the physical possession of NDTCO and/or NDIRA.

## 12. Administrative Feasibility.

NDTCO and/or NDIRA reserves the right to refuse to fund investments that are not administratively feasible and/or would place an undue financial or administrative burden on it.

## 13. Growth in the Value of Your IRA.

Growth in the value of the depositor's IRA is neither guaranteed nor projected. The value of the depositor's IRA will be computed by totaling the fair market value of the assets credited to your account. At least once a year NDTCO and/or NDIRA will send you a written report stating the current value of your IRA assets based on the valuation the depositors provide to NDTCO and/or NDIRA. NDTCO and/or NDIRA shall disclose separately a description of the type and amount of each charge, the method of computing and allocating earnings, and any portion of the contribution, if any, which may be used for the purchase of life insurance.

## 14. IRA Tax Withholding.

All withdrawals from the depositor's IRA (except for certain transactions and any recharacterizations) are subject to Federal Income Tax withholding. All distributions are subject to ten percent (10%) Federal Income tax withholding. However, the depositor may elect to have no withholding withheld from their distribution. The depositor's distribution may also be subject to additional state income tax withholding. The depositor is encouraged to seek a qualified tax professional should they have questions about their withholding.

## 15. IRA Distributions Delivered Outside the United States.



# FORM 5304-SIMPLE

SAVINGS INCENTIVE MATCH PLAN FOR EMPLOYEES OF SMALL EMPLOYERS (SIMPLE)



1070 W. Century Drive, Louisville, CO 80027  
P: 877-742-1270 | F: 303-665-5962

In general, if depositor is a US citizen or resident alien and your home address is outside of the United States or its possessions, the depositor cannot choose exemption from withholding on distributions from the depositor's traditional IRA. To choose exemption from withholding, the depositor 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.

## 16. No Duty to Monitor Contributions.

NDTCO and/or NDIRA shall not be responsible in any way for determining the amount or validity of the rollover contribution from any retirement plan. NDTCO and/or NDIRA shall not be responsible for determining whether contributions to the Custodial Account are within limits prescribed by the then-prevailing IRC or for any excise tax that may be imposed for excess contributions. Further, the Custodian shall not be responsible for ensuring that contributions are made to the Account.

## 17. Additional Information about IRAs.

The depositor may obtain further information on IRAs from your District Office of the Internal Revenue Service. You may wish to obtain IRS Publication 590-A Contributions to Individual Retirement Arrangements (IRAs), and 590-B Distributions from Individual Retirement Arrangements (IRAs).

## 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.

# FORM 5304-SIMPLE

SAVINGS INCENTIVE MATCH PLAN FOR EMPLOYEES OF SMALL EMPLOYERS (SIMPLE)



## 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.

### 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

# FORM 5304-SIMPLE

SAVINGS INCENTIVE MATCH PLAN FOR EMPLOYEES OF SMALL EMPLOYERS (SIMPLE)



1070 W. Century Drive, Louisville, CO 80027  
P: 877-742-1270 | F: 303-665-5962

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.

# FORM 5304-SIMPLE

SAVINGS INCENTIVE MATCH PLAN FOR EMPLOYEES OF SMALL EMPLOYERS (SIMPLE)



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

TAX YEAR	CONTRIBUTION LIMIT
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:

TAX YEAR	CATCH-UP LIMIT
2002	\$500
2003	\$1,000
2004	\$1,500
2005	\$2,000

# FORM 5304-SIMPLE

SAVINGS INCENTIVE MATCH PLAN FOR EMPLOYEES OF SMALL EMPLOYERS (SIMPLE)



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

# FORM 5304-SIMPLE

SAVINGS INCENTIVE MATCH PLAN FOR EMPLOYEES OF SMALL EMPLOYERS (SIMPLE)



1070 W. Century Drive, Louisville, CO 80027  
P: 877-742-1270 | F: 303-665-5962

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 30th. 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.

# FORM 5304-SIMPLE

SAVINGS INCENTIVE MATCH PLAN FOR EMPLOYEES OF SMALL EMPLOYERS (SIMPLE)



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

# FORM 5304-SIMPLE

SAVINGS INCENTIVE MATCH PLAN FOR EMPLOYEES OF SMALL EMPLOYERS (SIMPLE)



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.

1. PLAN INFORMATION	
Name of Employer:	Address of Employer:
Name of Trustee/Custodian:	Address of Trustee/Custodian:

2. ELIGIBILITY REQUIREMENTS
All Employees of the Employer shall be eligible to participate under the Plan except: <input type="radio"/> a. Employees included in a unit of employees covered under a collective bargaining agreement described in Section 2.02(a) of the Plan. <input type="radio"/> b. Non-resident alien employees who did not receive US source income described in Section 2.02(b) of the Plan. <input type="radio"/> 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. <input type="radio"/> 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.

3. WRITTEN ALLOCATION FORMULA
The Employer has agreed to provide contributions for the _____ Plan Year as follows (complete only one choice): <input type="radio"/> a. Matching Contribution - The amount of the Participant's Elective Deferral not in excess of 3% of such Participant's Compensation. <input type="radio"/> 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.



# FORM 5304-SIMPLE

SAVINGS INCENTIVE MATCH PLAN FOR EMPLOYEES OF SMALL EMPLOYERS (SIMPLE)



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.

## 4. 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:

### Acceptable Annual Dollar Limitations

# FORM 5304-SIMPLE

SAVINGS INCENTIVE MATCH PLAN FOR EMPLOYEES OF SMALL EMPLOYERS (SIMPLE)



1070 W. Century Drive, Louisville, CO 80027  
P: 877-742-1270 | F: 303-665-5962

TAX YEAR	CONTRIBUTION LIMIT
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.

TAX YEAR	CATCH-UP LIMIT
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.

# FORM 5304-SIMPLE

SAVINGS INCENTIVE MATCH PLAN FOR EMPLOYEES OF SMALL EMPLOYERS (SIMPLE)



1070 W. Century Drive, Louisville, CO 80027  
P: 877-742-1270 | F: 303-665-5962

## 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 DEDICATION

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.

# FORM 5304-SIMPLE

SAVINGS INCENTIVE MATCH PLAN FOR EMPLOYEES OF SMALL EMPLOYERS (SIMPLE)



## 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 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

1. The financial institution must provide you with a disclosure statement that contains the following items of information in plain nontechnical language.
2. The statutory requirements that relate to the SIMPLE IRA;
3. The tax consequences that follow the exercise of various options and what those options are;
4. Participation eligibility rules and rules on the deductibility and nondeductibility of retirement savings;
5. 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);
6. Explanations of when penalties may be assessed against you because of specified prohibited or penalized activities concerning the SIMPLE IRA; and
7. 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.