



# SIMPLE INDIVIDUAL RETIREMENT CUSTODIAL ACCOUNT AGREEMENT

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Form 5305-SA (Rev. March 2002) Under section 408(p) of the Internal Revenue Code Department of the Treasury - Internal Revenue Service

The Participant whose name appears on the attached application is establishing a savings incentive match plan for employees of small employers individual retirement account (SIMPLE IRA) under sections 408(a) and 408(p) to provide for his or her retirement and for the support of his or her beneficiaries after death. The custodian, *IRA Financial Trust Company*, has given the Participant the disclosure statement required under Regulations section 1.408-6. The Participant and the Custodian make the following agreement:

## Article I

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

## Article II

The Participant's interest in the balance in the custodial account is nonforfeitable.

## Article III

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

## Article IV

1. Notwithstanding any provision of this agreement to the contrary, the distribution of the participant's interest in the custodial account shall be made in accordance with the following requirements and shall otherwise comply with section 408(a)(6) and the regulations thereunder, the provisions of which are herein incorporated by reference.
2. The participant's entire interest in the custodial account must be, or begin to be, distributed not later than the participant's required beginning date, April 1 following the calendar year in which the participant reaches age 70½. By that date, the participant may elect, in a manner acceptable to the custodian, to have the balance in the custodial account distributed in:
  - a. A single sum or
  - b. Payments over a period not longer than the life of the participant or the joint lives of the participant and his or her designated beneficiary.
- 4.02 If the participant dies before his or her entire interest is distributed to him or her, the remaining interest will be distributed as follows:
  - a. If the participant dies on or after the required beginning date and:
    - i. the designated beneficiary is the participant's surviving spouse, the remaining interest will be distributed over the surviving spouse's life expectancy as determined each year until such spouse's death, or over the period in paragraph (a)(iii) below if longer. Any interest remaining after the spouse's death will be distributed over such spouse's remaining life expectancy as determined in the year of the spouse's death and reduced by 1 for each subsequent year, or, if distributions are being made over the period in paragraph (a)(iii) below, over such period.
    - ii. the designated beneficiary is not the participant's surviving spouse, the remaining interest will be distributed over the beneficiary's remaining life expectancy as determined in the year following the death of the participant and reduced by 1 for each subsequent year, or over the period in paragraph (a)(iii) below if longer.
    - iii. there is no designated beneficiary, the remaining interest will be distributed over the remaining life expectancy of the participant as determined in the year of the participant's death and reduced by 1 for each subsequent year.
  - b. If the participant dies before the required beginning date, the remaining interest will be distributed in accordance with (i) below or, if elected or there is no designated beneficiary, in accordance with (ii) below:
    - i. The remaining interest will be distributed in accordance with paragraphs (a)(i) and (a)(ii) above (but not over the period in paragraph (a)(iii), even if longer), starting by the end of the calendar year following the year of the participant's death. If, however, the designated beneficiary is the participant's surviving spouse, then this distribution is not required to begin before the end of the calendar year in which the participant would have reached age 70½. But, in such case, if the participant's surviving spouse dies before distributions are required to begin, then the remaining interest will be distributed in accordance with (a)(ii) above (but not over the period in paragraph (a)(iii), even if longer), over such spouse's designated beneficiary's life expectancy, or in accordance with (ii) below if there is no such designated beneficiary.
- (i) The remaining interest will be distributed by the end of the calendar year containing the fifth anniversary of the participant's death.
3. If the participant dies before his or her entire interest has been distributed and if the designated beneficiary is not the participant's surviving spouse, no additional contributions may be accepted in the account.
4. The minimum amount that must be distributed each year, beginning with the year containing the participant's required beginning date, is known as the "required minimum distribution" and is determined as follows:
  - (a) The required minimum distribution under paragraph 2(b) for any year, beginning with the year the participant reaches age 70½, is the participant's account value at the close of business on December 31 of the preceding year divided by the distribution period in the uniform lifetime table in Regulations section 1.401(a)(9)-9. However, if the participant's designated beneficiary is his or her surviving spouse, the required minimum distribution for a year shall not be more than the participant's account value at the close of business on December 31 of the preceding year divided by the number in the joint and last survivor table in Regulations section 1.401(a)(9)-9. The required minimum distribution for a year under this paragraph (a) is determined using the participant's (or, if applicable, the participant and spouse's) attained age (or ages) in the year.
  - (b) The required minimum distribution under paragraphs 3(a) and 3(b)(i) for a year, beginning with the year following the year of the participant's death (or the year the participant would have reached age 70½, if applicable under paragraph 3(b)(i)) is the account value at the close of business on December 31 of the preceding year divided by the life expectancy (in the single life table in Regulations section 1.401(a)(9)-9) of the individual specified in such paragraphs 3(a) and 3(b)(i).
  - (c) The required minimum distribution for the year the participant reaches age 70½ can be made as late as April 1 of the following year. The required minimum distribution for any other year must be made by the end of such year.
5. The owner of two or more IRAs (other than Roth IRAs) may satisfy the minimum distribution requirements described above by taking from one IRA the amount required to satisfy the requirement for another in accordance with the regulations under section 408(a)(6).

## Article V

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

## Article VI

Notwithstanding any other articles which may be added or incorporated, the provisions of Articles I through III and this sentence will be controlling. Any additional articles that are not consistent with sections 408(a) and 408(p) and the related regulations will be invalid.

## Article VII

This agreement will be amended as necessary to comply with the provisions of the Code and related regulations. Other amendments may be made with the consent of the persons whose signatures appear on the application.

Article VIII

8.01 **Definitions:** In this part of this Agreement (Article VIII), the words “you” and “your” mean the Participant, the words “we,” “us” and “our” mean the Custodian (including its subsidiaries, agents and administrator), “Code” means the Internal Revenue Code, and “Regulations” means the Treasury Regulations. The term “Broker” means the broker-dealer/financial representative selected by you to provide investment services to your SIMPLE IRA.

8.02 **Notices and Change of Address:** Any required notice regarding this SIMPLE IRA will be considered effective when we mail it to the last address of the intended recipient which we have in our records. Any notice to be given to you will be considered effective when we actually receive it. You must notify us in writing of a change of address.

8.03 **Representations and Responsibilities:** You represent and warrant to us that any information you have given or will give us, with respect to this Agreement is accurate. Further, you agree that any directions you give us, or action you take will be proper under this Agreement and that we are entitled to rely upon such information or directions.

We shall have no duty or responsibility to question any of your directions, review any securities or other property held in the SIMPLE IRA, or make any suggestions to you with respect to the investment, retention or disposition of any asset held in the SIMPLE IRA. We are entitled to act upon any instrument, certificate or form we believe is genuine and believe is signed or presented by the proper person or persons and we need not investigate or inquire as to any statement contained in any such document, but may accept it as true and accurate. We will not provide any tax, legal or investment advice.

We shall have no duty to monitor the sufficiency or adequacy of your actions or duties or those of your heirs, successors, agents, or assigns, nor shall we be required to monitor the acts of any paid consultant to whom we may have contractually delegated any duties or responsibilities pursuant to you or your agent’s direction.

We shall not be responsible for losses of any kind that may result from your directions to us or your actions or failures to act and you agree to reimburse us for any loss we may incur as a result of such directions, actions or failures to act. We shall not be responsible for any penalties, taxes, judgments or expenses you incur in connection with the SIMPLE IRA. We have no duty to determine whether your contributions or distributions comply with the Code, Regulations, rulings or this Agreement

(a) **Rollovers and Tax Consequences** - You are responsible for determining whether a distribution from another SIMPLE IRA may be rolled over to this SIMPLE IRA. You understand that we do not make any representation or warranty that any rollover contribution will be excludable from income for Federal or State income tax purposes.

(b) **Custodial –Account** - We shall maintain a custodial account for your benefit. The custodial account will consist of an interest bearing account with us and all other investments purchased at your direction. All assets in the custodial account will be registered in our name as custodian or in the name of our nominee. We may, by or through a Broker, or other such firm, hold any securities in bearer form or deposit them with a central clearing corporation or depository approved by the Securities and Exchange Commission; provided that our records show that all such investments are part of the custodial account.

(c) **Custodian’s Reservation of Rights** - Notwithstanding any other provision of this Article VIII, we reserve the right to refuse to follow any investment direction by you which we determine violates any Federal or State Law.

8.04 **Service Fees:** We have the right to charge an annual service fee or other designated fees (for example, a transfer, rollover, transaction, or termination fee) for maintaining this SIMPLE IRA. In addition, we have the right to be reimbursed or reserve funds for all reasonable expenses we incur in connection with the administration of the SIMPLE IRA. For more information on our fees, please refer to section 8.05(c)(9) and (10) and the current separate Schedule of Fees. Any brokerage commissions attributable to the assets in the SIMPLE IRA will be charged to the SIMPLE IRA. You cannot reimburse the SIMPLE IRA for those commissions.

8.05 **Your Investment Powers and Our Custodial Duties/Obligations**

(a) **Investment of SIMPLE IRA** - Subject to Section 8.05(f), you have sole authority and discretion, fully and completely, to select and to direct the investment of all assets in the SIMPLE IRA. You accept full and sole responsibility for the success or failure of any selection made. We shall have no discretion to direct any investment in the SIMPLE IRA. We will not act as investment advisor or counselor to you and will not advise you or offer any opinion or judgment on any matter pertaining to the nature, value, potential value or suitability of any investment or potential investment of the assets of the SIMPLE IRA, and are merely authorized to acquire and hold the particular investments specified by you. We shall not have any responsibility nor any liability for any loss of income or of capital, nor for any unusual expense which we may incur, relating to any investment, or to the sale or exchange of any asset which you or your authorized agent directs us to make.

After your death, your beneficiary(ies) shall have the right to direct the investment of the SIMPLE IRA assets, subject to the same conditions that applied to you during your lifetime under this Agreement (including, without limitations, Section 8.03 and 8.05). All transactions shall be subject to any and all applicable Federal and State laws and regulations and the rules, regulations, customs and usages of any exchange, market or clearing house where the transaction is executed and to our policies and practices.

(b) **Limitation of Investment Powers** - We, as Custodian of the SIMPLE IRA assets entrusted to us under the SIMPLE IRA, shall not commingle the SIMPLE IRA with any other property we hold except in a common trust fund or common investment fund. We retain the power to take such actions as are reasonable and necessary to carry out our duties under the SIMPLE IRA. We are under no duty to take any action other than as specified under this Agreement unless you provide us with instructions and agree to indemnify and hold us harmless from any claims arising out of such instructions. Subject to the rules imposed by us, and subject to investment directions given by you or your authorized agent, we are authorized and empowered, but not by way of limitation, with the following powers, rights and duties:

- 1) To hold or invest any part or all of the SIMPLE IRA in any asset permissible under law as an investment for an individual retirement account;
- 2) To manage, sell, contract to sell, grant options to purchase, convey, petition, divide, subdivide, exchange, transfer, abandon, improve, repair, insure, lease for any term even though commencing in the future or extending beyond the term of the SIMPLE IRA, and otherwise deal with all property, real or personal, in such manner for such considerations and on such terms and conditions as are in accordance with the written direction we receive;
- 3) To borrow money, to lend money, to assume indebtedness, extend mortgages and encumber by mortgage or pledge;
- 4) To retain in cash so much of the SIMPLE IRA as you or your authorized agent directs, or pending other instructions from you or your authorized agent, and to deposit such cash held in the SIMPLE IRA in a savings instrument at a reasonable rate of interest, including specific authority to invest in an individual savings account, an individual certificate of deposit, a money market account, or in other savings instruments which we offer and/or select. We may perform subaccounting functions related to the uninvested funds and may receive a fee directly from an investment sponsor for these services;
- 5) To transfer all or any part of the SIMPLE IRA funds from one type of savings instrument offered by us to another type of savings instrument offered by us, to the extent permitted by the applicable governmental regulations and our procedures;
- 6) To purchase and to hold annuity contracts and exercise all rights of ownership of the contracts; and
- 7) To make, execute and deliver as Custodian contracts, waivers, releases or other written instruments necessary to exercise the powers enumerated above.

(c) **Custodian’s Powers** - We shall have the power or duty:

- 1) To hold any securities or other property in the SIMPLE IRA in the name of the Custodian or its nominee, or in another form as we may deem best, with or without disclosing the custodial relationship;
- 2) To retain any funds or property subject to any dispute without liability for the payment of interest and to decline to make payment or delivery of the funds or property until a court of competent jurisdiction makes final adjudication;
- 3) To charge against and pay from the SIMPLE IRA all taxes of any nature levied, assessed, or imposed upon the SIMPLE IRA, and to pay all reasonable expenses and attorney fees which may be necessarily incurred by us with respect to the SIMPLE IRA;
- 4) To file any tax or information return required of us, and to pay any tax, interest or penalty associated with any such tax return;
- 5) To act pursuant to written blanket settlement authorization given by you on transactions executed by your designated agent. We are authorized to honor all trade confirmations received from such agent;
- 6) To furnish or cause to be furnished to you an annual calendar year report concerning the status of the SIMPLE IRA, including a statement of the assets of the SIMPLE IRA held at the end of the calendar year;
- 7) To begin, maintain or defend any litigation necessary in connection with the administration of the SIMPLE IRA, except that we shall not be obliged or required to do so unless indemnified to our satisfaction, including, without limitation, payment of such expenses out of SIMPLE IRA assets;
- 8) To exercise the voting rights and other shareholder rights with respect to securities in the SIMPLE IRA but only in accordance with the instructions you give to us;
- 9) To employ and pay from the SIMPLE IRA reasonable compensation to agents, attorneys, accountants and other professional persons for advice that in our opinion may be necessary. We may delegate to any agent, attorney, accountant and other persons selected by us any power or duty vested in us by this Agreement; and
- 10) To charge you separately for any fees or expenses or deduct the amount of the fees or expenses from the assets in the Traditional IRA at our discretion. We are also entitled to be reimbursed for any taxes and other expenses we assume or incur on behalf of your account. Our right to compensation and reimbursement from the account shall constitute a first prior lien against your account. We have the right to change our fee upon 30 days notice to you. We are authorized to liquidate assets of the Traditional IRA for any unpaid fee balance and can, at our discretion, require you to retain uninvested cash in the Traditional IRA in an amount not less than one year’s annual fees and termination fees and not more than \$1,000. The choice of the selling broker and assets to be sold shall be at our sole discretion. Should fees or expenses not be collected, we shall have the option to cease performing any functions, including, but not limited to, processing investment transactions until such time as all fees and expenses charged against the account are fully paid.

In addition to the fees reflected on the most recent fee schedule, The Custodian may receive compensation from a depository bank for necessary administrative services as part of the establishment of and maintenance of the custodial cash account including, but not limited to sub-accounting services, depository institution selection, record-keeping and transaction processing. This compensation may be paid separately by the depository institution or be deducted from the interest earned on the account. However, the Depositor will receive a rate of interest that shall be set by the Custodian's Board of Directors at least annually consistent with rates being offered by one or more depository institutions for similar accounts. The Custodian, at its discretion, may place deposits with one or more depository banks. All of these depository bank accounts will be FDIC insured up to the maximum allowed by law.

In addition, the Custodian may receive commissions, 12(b)1 fees, sub-transfer agent fees, marketing fees and other types of compensation from various entities relating to investments held in the Traditional IRA.

- (d) **Publicly-Traded Securities** - If publicly-traded securities are to be included in the specified investments, orders shall be executed through a securities broker/dealer registered under the Securities Exchange Act of 1934 designated by you upon such form as we may prescribe. Any brokerage account maintained in connection herewith shall be in our name as the Custodian of your account. We shall be authorized to honor transactions within the brokerage account without obligation to verify prior authorization of same by you. Any cash received by the brokerage account, whether as income or proceeds of transactions, may be held by the brokerage account pending directions, and we shall have no obligation to direct the broker to remit such cash until directed to do so by you, but may receive remittances without direction if the same are made by the broker. Investments outside the brokerage account shall be made in accordance with the other provisions of this Article.
- (e) Investment directions may be given by you directly to your designated broker (in such manner as the broker may require) and the broker shall be responsible for the execution of such orders. When securities are purchased within your brokerage account requiring that funds be remitted by us to make settlement, you agree to telephonically notify us or instruct your broker or agent to telephonically notify us on the trade date of the pending securities transaction, and to request delivery of the SIMPLE IRA account assets necessary to settle the trade. You agree to hold us harmless for any losses resulting from your failure to notify us of the pending trade and request for settlement in the above-prescribed manner.
- (f) **Alternative Investments** - You may, at your discretion, direct us to purchase "alternative" investments which shall include, but not be limited to, investments which are individually negotiated by you or your agent, or part of a private placement of securities offered in reliance upon exemptions provided by Sections 3(B) and 4(2) of the Securities Act of 1933 and Regulation D promulgated thereunder. It is your sole responsibility to determine whether or not your selected investment(s) is required to be registered as a security with any applicable federal and/or state regulatory authority. We reserve the right to not follow such direction or process such investment(s) for administrative reasons. Such action should not be construed as investment advice or an opinion by us as to the investment's prudence or viability. If you or your agent should direct us to purchase an alternative investment, as defined above, the following special certifications and provisions shall apply:
- 1) You agree to submit or cause to be submitted all offering documentation related to the alternative investment for an administrative review by us, if so requested. We reserve the right to charge a reasonable fee for such administrative review.
  - 2) If the alternative investment(s) contains a provision for future contractual payments or assessments, including margin calls, you acknowledge that such payments shall be borne solely by the SIMPLE IRA account, that authorization to make such payments shall come from you or your agent, and that making such payments may reduce or exhaust the value of the SIMPLE IRA account. You further agree to maintain sufficient liquid funds in the SIMPLE IRA account to cover any such payments or assessments, and agree that we are not responsible for monitoring the balance of the account to verify compliance with this Section.
  - 3) If the alternative investment(s) contain administrative and/or management requirements or duties beyond our capabilities or expertise to provide, then you agree to seek out suitable agents or counsel necessary to perform such duties and deliver a written service agreement acceptable to us for execution on behalf of the SIMPLE IRA account.
  - 4) If you direct us to enter into an individually-negotiated debt instrument, including a promissory note, deed of trust, real estate contract, mortgage note or debenture, we strongly encourage you retain the services of a third-party Note Servicing Agent Agreement with a third-party Agent, on a form acceptable to us. Said Note Servicing Agent shall be your agent and not ours, and shall be responsible for administering the terms of the debt instrument on behalf of the SIMPLE IRA account. Should the Note Servicing Agent ever become unwilling or unable to perform the duties outlined in the Note Servicing Agent Agreement, then you understand and agree that all duties of the Note Servicing Agent shall revert to you until a successor Agent is named. We will not act as a Note Servicing Agent, i.e., we do not monitor your account to ensure receipt of note payments, notify you in the event of default, prepare or compute payoff balances, prepare or file Form 1098, etc.
  - 5) We are responsible for safekeeping only those documents which you or your agent deliver to us.
  - 6) You agree to be responsible for any and all collection actions, including contracting with a collection agency or instituting legal action, and bring any other suits or actions which may become necessary to protect the rights of the account as a result of the operation or administration of the investment(s).
  - 7) Once you or your agent authorize funds to be distributed from your account for purposes of investment, you agree to be responsible for the following:
    - a) verifying that the individual or investment company that you selected placed your funds into the proper investment;
    - b) obtaining the necessary documentation from the individual or investment company to verify that the funds were correctly invested, including, but not limited to, shares or units, proper recordation, loan to value ratio, etc.; and
    - c) sending the original documentation evidencing the investment to us or, in the case of a promissory note investment, to a third party servicing agent. We will not monitor the account to ensure receipt of such documentation and will rely solely on you to provide this information.
- (g) **Delegation of Investment Responsibility** - We may, but are not required to, permit you to delegate investment responsibility for the SIMPLE IRA to another party. On a form or format acceptable to us, you may designate a representative for the purpose of communicating investment directions to us and receiving information from us regarding your account. Said representative may be a registered representative of a broker/dealer organization, a financial advisor or other person as may be acceptable to you. Such person shall be your authorized agent, and not ours. We shall construe any and all investment directions given by such person, whether written or oral, as having been authorized by you. You may appoint and/or remove such a person only by written notice to us provided that their removal shall not have the effect of canceling any notice, instruction, direction or approval received by us from the removed person before we receive notice of removal from you. We shall follow the proper written direction of any such party who is properly appointed and we shall be under no duty to review or question, nor shall we be responsible for, any of that party's directions, actions or failures to act. That party's instructions to us shall be deemed to be instructions by you for all purposes of this Article VIII.
- (h) **Broker** - You have the sole responsibility for the appointment, selection and retention of a Broker. You have the sole responsibility for determining whether the Broker is qualified to act in that capacity. We shall assume that the Broker appointed by you is at all times qualified to act. We shall further assume that the Broker possesses the authority to act in that capacity until such time as you have appointed another Broker.
- The Broker will be responsible for the execution of securities orders. The Broker may require that you sign an agreement which sets forth, among other things, its responsibilities and your responsibilities regarding securities transactions for the SIMPLE IRA.
- (i) **Authorization** - On a form or in a format acceptable to us, you may authorize us to accept written, verbal, fax, e-mail and other means of communication for investment directions from you or your designated representative. You agree that we are not responsible for verifying the propriety of any investment direction and that we are not responsible for unauthorized trades in your account that may be affected under this Section.
- (j) **Valuation of Assets** - We shall value assets of the account on a periodic basis utilizing various outside sources. However, we do not guarantee the accuracy of such prices obtained from quotation services, independent appraisal services, investment sponsors, or parties related thereto or other outside sources. Values for brokerage accounts shall be equal to the total equity value of the account and shall reflect only those assets that are priced by the brokerage firm. Individual assets held within your brokerage account may not be listed individually on our statements. Such information can be obtained directly from your brokerage statement.

We shall have no duty or responsibility to value illiquid assets such as promissory notes, real estate, privately held stocks, etc. These assets will be valued at cost (original purchase price) unless you provide us with documentation, in a form and from a source acceptable to us, which provides an alternative value. With respect to Limited Partnerships and Limited Liability Companies, we may solicit a value directly from the investment sponsor or other outside source. If the investment sponsor is unwilling or unable to provide a fair market value, then we may list the value of the asset at its original cost or as "Not Available."

Assets which have no readily determinable market value, are bankrupt, or for which no original cost or value is otherwise available may have their value reflected as "Not Available" on our statements. Should we be required to provide such information for illiquid assets we may obtain suitable and independent advisors. The costs of the independent valuation shall be at the expense of the SIMPLE IRA.

- (k) **Unrelated Business Taxable Income** - Certain investments may generate taxable income within the SIMPLE IRA account. This is referred to as Unrelated Business Taxable Income (UBTI). Such income must be considered in conjunction with all such income from all the SIMPLE IRA accounts and may be taxable to your account(s) to the extent that all UBTI for a given taxable year exceeds the threshold amount set by the IRS (currently \$1000). In such instances, the IRS requires that a Form 990-T be filed for the SIMPLE IRA account along with the appropriate amount of tax. We do not monitor the amount of UBTI in the SIMPLE IRA account with us and do not prepare Form 990-T. Therefore, you must monitor UBTI for this and any other SIMPLE IRA account which you may hold and prepare, or have prepared, the proper 990-T tax form and forward it to us for filing, along with authorization to pay any tax due from the SIMPLE IRA account.

(l) **Life Insurance and Collectible** - You may not direct the purchase of a life insurance contract or a "collectible" as defined in Code Section 4011(m).

8.06 **Beneficiary(ies):** If you die before you receive all of the amounts in your SIMPLE IRA, payments from your SIMPLE IRA will be made to your beneficiary(ies).

You may designate one or more persons or entities as beneficiary of your SIMPLE IRA. This designation can only be made on a form provided by or acceptable to us, and it will only be effective when it is filed with us during your lifetime or after as provided by law. Unless otherwise specified, each beneficiary designation you file with us will cancel all previous ones. The consent of a beneficiary(ies) shall not be required for you to revoke a beneficiary designation. If you have designated both primary and contingent beneficiaries and no primary beneficiary(ies) survives you, the contingent beneficiary(ies) shall acquire the designated share of your SIMPLE IRA. If you do not designate a beneficiary, or if all of your primary and contingent beneficiary(ies) predecease you, your estate will be the beneficiary.

A spouse beneficiary shall have all rights as granted under the Code or applicable Regulations to treat your IRA as his or her own.

We may allow, if permitted by state law, an original IRA beneficiary(ies) (the beneficiary(ies) who is entitled to receive distribution(s) from an inherited IRA at the time of your death) to name a successor beneficiary(ies) for the inherited IRA. This designation can only be made on a form provided by or acceptable to us, and it will only be effective when it is filed with us during the original IRA beneficiary's(ies') lifetime or after as provided by law. Unless otherwise specified, each beneficiary designation form that the original IRA beneficiary(ies) files with us will cancel all previous ones. The consent of a successor beneficiary(ies) shall not be required for the original IRA beneficiary(ies) to revoke a successor beneficiary(ies) designation. If the original IRA beneficiary(ies) does not designate a successor beneficiary(ies), his or her estate will be the successor beneficiary. In no event shall the successor beneficiary(ies) be able to extend the distribution period beyond that required for the original IRA beneficiary.

8.07 **Termination:** Either party may terminate this Agreement at any time by giving written notice to the other. We can resign as Custodian at any time effective 30 days after we mail written notice of our resignation to you. Upon receipt of that notice, you must make arrangements to transfer the SIMPLE IRA to another financial organization. If you do not complete a transfer of the SIMPLE IRA within 30 days from the date we mail the notice to you, we have the right to transfer the SIMPLE IRA assets to a successor SIMPLE IRA Custodian or Trustee that we choose in our sole discretion or we may pay the SIMPLE IRA to you in a single sum. We shall not be liable for any actions or failures to act on the part of the successor Custodian or Trustee nor for tax consequences you may incur that result from the transfer or distribution of the SIMPLE IRA assets pursuant to this section.

If this Agreement is terminated, we may hold back from the SIMPLE IRA a reasonable amount of money which we believe is necessary to cover any one or more of the following:

- (a) any fees, expenses or taxes chargeable against the SIMPLE IRA;
- (b) any penalties associated with the early withdrawal of any savings instrument or other investment in the SIMPLE IRA.

If our organization is merged with another organization (or comes under the control of any Federal or State agency) or if our entire organization (or any portion which includes the SIMPLE IRA) is bought by another organization, that organization (or agency) shall automatically become the Trustee or Custodian of the SIMPLE IRA, but only if it is the type of organization authorized to serve as a SIMPLE IRA Trustee or Custodian.

If we are required to comply with Section 1.408-2(e) of the Treasury Regulations and we fail to do so, or we are not keeping the records, making the returns or sending the statements as are required by forms or Regulations, the IRS may, after notifying you, require that a substitute Trustee or Custodian be appointed.

8.08 **Amendments:** We have the right to amend this Agreement at any time and charge a fee for IRS mandated amendments. Any amendment we make to comply with the Code and related Regulations does not require your consent. You will be deemed to have consented to any other amendment unless, within 30 days from the date we mail the amendment, you notify us in writing that you do not consent.

8.09 **Withdrawals:** All requests for withdrawal shall be in writing on a form provided by or acceptable to us. The method of distribution must be specified in writing. The tax identification number of the recipient must be provided to us before we are obligated to make a distribution.

8.10 **Required Minimum Distributions:** You may make an election to begin receiving payments from your IRA in a manner that satisfies the required minimum distribution rules no later than April 1<sup>st</sup> of the year following the year you reach age 70½ (this is called the "required beginning date"). If you fail to make such an election by your required beginning date, we can, at our complete and sole discretion, do any one of the following:

- (a) make no payment until you give us a proper payment request;
- (b) pay your entire IRA to you in a single sum payment or distribution in kind; or
- (c) calculate your required minimum distribution each year for your IRA based on an IRS approved method and pay those distributions to you until you direct otherwise.

We will not be liable for any penalties or taxes related to your failure to take a distribution.

8.11 **Transfers From Other Plans:** We can receive amounts transferred to the SIMPLE IRA from the Custodian or Trustee of another SIMPLE IRA. We reserve the right not to accept any transfer or rollover.

8.12 **Liquidation of Assets:** We have the right to liquidate assets in the SIMPLE IRA if necessary to make distributions or to pay fees, expenses or taxes properly chargeable against the SIMPLE IRA. If you fail to direct us as to which assets to liquidate, we will decide in our complete and sole discretion and you agree not to hold us liable for any adverse consequences that result from our decision.

**Restrictions On The Fund:** Neither you nor any beneficiary may sell, transfer or pledge any interest in the SIMPLE IRA in any manner whatsoever, except as provided by law or this Agreement. The assets in the SIMPLE IRA shall not be responsible for the debts, contracts or torts of any person entitled to distributions under this Agreement.

8.13 **What Law Applies:** This Agreement is subject to all applicable Federal and State laws and regulations. If it is necessary to apply any State law to interpret and administer this Agreement, the law of the state of South Dakota shall govern.

If any part of this Agreement is determined by a court of competent jurisdiction to be invalid, the remaining parts shall not be affected. Neither your nor our failure to enforce at any time or for any period of time any of the provisions of this Agreement shall be construed as a waiver of such provisions, or the parties' right thereafter to enforce each and every such provision. These rights and liabilities are continuous, covering individually and collectively, all accounts you may open with us or our agent for the same SIMPLE IRA, and inure to the benefit of us, our successors or assigns and are binding on you and your heirs, successors or assigns.

8.14 **Indemnity of Custodian:** To the extent not prohibited by Federal or State law, you agree to indemnify, defend and hold the Custodian, its subsidiaries and administrator (including their officers, agents and employees) harmless against and from any and all claims, demands, liabilities, costs and expenses (including reasonable attorneys' fees and expenses), arising in connection with this agreement, with respect to (A) any negligence or alleged negligence, whether passive or active, by the Custodian, its subsidiaries and administrator (including its officers, agents and employees), (B) any breach or alleged breach, whether passive or active, by the Custodian, its subsidiaries and administrator (including their officers, agents and employees) of any responsibilities under this Agreement, or (C) any breach or alleged breach, whether passive or active, by a third party of responsibilities under this Agreement. You further agree to pay for the defense of the Custodian, its subsidiaries and administrator, (including their officers, agents and employees) by independent counsel of the Custodian's choice against any such claims, demands, liabilities or costs referred to in the preceding sentence.

You agree to indemnify, defend and hold the Custodian, its subsidiaries and administrator (including their officers, agents and employees) harmless against and from any and all payments or assessments which may result from holding any publicly-traded security or alternative investment within the SIMPLE IRA account, and further agree that the Custodian, its subsidiaries and administrator (including their officers, agents and employees) shall be under no obligation whatsoever to extend credit or otherwise disburse payment beyond the cash balance of your account for any payment or assessment related to such investment(s).

8.15 **Adverse Claims:** If we receive any claim to the assets held in the SIMPLE IRA which is adverse to your interest or the interest of your beneficiary, and we in our absolute discretion decide that the claim is, or may be, meritorious, we may withhold distribution until the claim is resolved or until instructed by a court of competent jurisdiction. As an alternative, we may deposit all or any portion of the assets in the SIMPLE IRA into the court through a motion of interpleader. Deposit with the court shall relieve us of any further obligation with respect to the assets deposited. We have the right to be reimbursed from the funds deposited for our legal fees and costs incurred.

8.16 **Fund Not Guaranteed:** We do not guarantee the Fund (the SIMPLE IRA account) from loss or depreciation. Our liability to make payment to you at any time and all times is limited to the available assets of the Fund.

8.17 **Arbitration Claims:** Any controversy arising out of or relating to this Agreement or the breach thereof, or to the SIMPLE IRA or any transactions authorized by you and/or your agent, shall be settled by arbitration in Sioux Falls, South Dakota, according to the rules of The American Arbitration Association. Arbitration is final and binding on the parties. The parties are waiving their right to seek remedies in court, including the right to jury trial. The pre-arbitration discovery is generally more limited than and different from court proceedings.

8.18 **Attorneys' Fees**

(a) If either party to this Agreement commences any legal action, suit, counterclaim, appeal, arbitration, or other proceeding (an "Action") against the other party to this Agreement to enforce or interpret any of the terms of this Agreement, because of an alleged breach, default, or misrepresentation in connection with any of the terms of this Agreement, or because of a claim arising out of the terms of this Agreement, the losing or defaulting party shall pay to the prevailing party reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such Action.

(b) If the prevailing party shall obtain a judgment in its favor arising out of any Action against the other party to this Agreement, the party against whom such judgment is rendered shall pay to the prevailing party the attorneys' fees incurred by the prevailing party in the collection or enforcement of such judgment. The provisions of this paragraph (b) shall be severable from the other provisions of this Agreement, shall survive any judgment, and shall not be deemed merged into such judgment.