



**CAPITAL** | AMERICAN  
**GROUP**<sup>®</sup> | FUNDS<sup>®</sup>

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# SEP IRA

## Plan Sponsor Guide

Everything you  
need to establish  
an American Funds  
SEP IRA plan at  
your company

# Thank you for choosing an American Funds SEP IRA

## To establish your plan:

- 1. Complete the two required forms** – the *Online Group Investments (OGI) Contributions Agreement* and the *SEP Adoption Agreement* – and send them to American Funds.
- 2. Be sure to distribute the following materials to all eligible employees:**
  - *SEP IRA Employee Guide\**
  - A copy of the completed *SEP Adoption Agreement*
  - A copy of the SEP Plan Terms and Conditions
- 3. Send a completed *SEP IRA Application\** for each eligible employee.**

If the company is paying the account setup fees, include a check for \$10 for each new participant establishing an account.
- 4. In preparation for your plan's first contribution, review the contribution information on the next page.**

\* If you wish to establish a plan with Class F-2 shares and your financial professional's firm allows for this share class, employees will need to complete the *F-2 Share Account Application* and the *Traditional, Roth, SEP or SARSEP IRA F-2 Share Class Supplement*.

## Next steps

- Once the *SEP Adoption Agreement* and *Online Group Investments (OGI) Contributions Agreement* are completed and received, we will establish your retirement plan and provide you access to our OGI website.
- An email will be sent to each employer contact (and the third-party remitter, if applicable) with the website address, a user ID and instructions for getting started.

## Contribution information

**Employers may contribute up to 25% of an employee's compensation to a SEP. For current compensation limits go to [www.irs.gov](http://www.irs.gov).**

The amount of your tax-deductible contribution can vary depending on your organization's profitability, cash flow and other factors. The contribution is generally allocated to participant accounts pro rata based on each employee's compensation.

Self-employed? Your contribution should be based on self-employment income minus 50% of any self-employment taxes that have been paid. You'll need to further reduce that amount by any deductible plan contributions. For help calculating your self-employed contribution, contact your tax advisor.

## Employee qualifications

Generally, all of your employees may participate in your SEP IRA plan. However, if you choose, you can exclude:

- Employees with annual earnings below \$650
- Union members covered by a collective bargaining agreement
- Nonresident aliens with no U.S. source of income
- Employees under the age of 21
- Employees who have worked for your company for less than three of the immediately preceding five years

All accounts are immediately vested.

# Everything you need to establish an American Funds SEP IRA plan

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### 4 | **Online Group Investments (OGI) Contributions Agreement**

SEP IRA plan contributions are submitted electronically through the OGI website. Use this form to set up electronic submission via Automated Clearing House (ACH) and to designate the contacts who will have access to the OGI website.

### 6 | **SEP Adoption Agreement**

This form is required to open a SEP IRA plan with Capital Bank and Trust Company (CB&T) as custodian.

- A new plan is one that has not previously been established under the plan name you expect to use.
- An amended and restated plan is a SEP that has previously been established but is being moved to American Funds.
- For an amended and restated plan, you'll need to know the original effective date of the plan that is being moved.
- Read the attached Terms and Conditions document for additional information you'll need to understand to complete this form.
- Once completed, send the original SEP Adoption Agreement to American Funds, provide a copy to each plan participant, and keep a copy for your records.

### 8 | **Simplified Employee Pension (SEP) Plan Terms and Conditions**

This document defines the provisions of the American Funds SEP IRA. It should not be returned to American Funds, but kept with your records.



- Submit this form together with a completed Adoption Agreement and all completed employee applications.
• An email will be sent to each designated contact with instructions for getting started.
• To add or remove contacts after the Plan is established, the employer/business owner may call us at (800) 421-4225, ext. 39.

1 Employer contacts

Employer contacts will have access to the OGI website, and can use it to update employee investment allocations and fund contributions using a linked bank account. User IDs and passwords should not be shared with others. Employer contacts will continue to have website access until Capital Bank and Trust Company (CB&T) is instructed to remove or replace a contact.

Name of company

A. Name of plan sponsor (the employer/business owner responsible for plan oversight) ( ) Ext. Daytime phone

Email address\*— required

B. Name of plan administrator (individual employed with the company who is authorized to act on behalf of the plan) ( ) Ext. Daytime phone

Email address\*— required

\*We require an email address to send you a user ID and a link to the OGI website so that you can submit contributions online. Upon receiving the email, please log in within seven days to customize your password. We respect your privacy. For more information on our privacy policies, visit www.capitalgroup.com.

2 Third-party remitter — if applicable

Complete this section only if you are designating a third party to have access to plan information and make contributions to the plan. A separate user ID will be assigned.

Name of third-party remitter (business name) ( ) Ext. Daytime phone

Name of third-party contact Email address\*— required

Address City State ZIP

Relationship to the company (payroll company, financial professional, CPA, etc.) Existing OGI user ID (if applicable)

\*We require an email address to send you a user ID and a link to the OGI website so that you can submit contributions online. Upon receiving the email, please log in within seven days to customize your password. We respect your privacy. For more information on our privacy policies, visit www.capitalgroup.com.



### 3 Bank information

If not attaching a voided check here, you can submit bank information on the OGI website after receiving a user ID. If attaching a check, the unsigned, voided check you attach below **must** be preprinted with the bank name, registration, routing number and account number. **Please do not staple.**

Tape your check here.

John Doe DATE \_\_\_\_\_

**Bank account registration**

PAY TO THE ORDER OF \_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ DOLLARS

Anytown Bank ← **Bank name**

| : 999999999 | : 0000000000 | | :

**Bank routing number** **Bank account number**

VOID

### 4 Employer authorization

By signing below, I agree to submit contributions electronically via ACH through the OGI website.

I understand that **1)** the OGI contacts designated on this form are authorized users of the OGI website and will have access to the website to update employee investment allocations and to instruct CB&T to initiate ACH transactions to fund the contributions; **2)** immediate notification to CB&T is needed if a contact is to be removed and/or replaced; **3)** and a unique user ID will be provided to the contacts via email (as indicated within this form).

CB&T is hereby authorized to access the account listed on this form on behalf of the plan to withdraw money in respect of contributions via ACH.

If this document is signed electronically, I consent to be legally bound by this document and subsequent terms governing it. The electronically signed copy of this document should be considered equivalent to a printed form in that it is the true, complete, valid, authentic and enforceable record of the document, admissible in judicial or administrative proceedings. I agree not to contest the admissibility or enforceability of the electronically stored copy of this document. A copy of this document will be made available to me as required.

In consideration of CB&T acting on such instructions and processing such transactions, I agree to hold harmless and indemnify CB&T; any of their affiliates or mutual funds managed by such affiliates; and each of their respective directors; trustees; officers; employees; and agents from any losses, expenses, costs or liability (including attorney fees) that may be incurred as a result of CB&T establishing these privileges or acting on such instructions.

\_\_\_\_\_  
Name (print) \_\_\_\_\_  
Title

**X** \_\_\_\_\_  
Authorized signature Date (mm/dd/yyyy)

This document may not be signed using Adobe Acrobat Reader's "fill and sign" feature.

**For more information about submitting contributions,  
call (800) 421-4225, ext. 39.**



The undersigned employer hereby establishes a SEP plan for the exclusive benefit of employees who are eligible to participate. The terms of the plan are set forth in the SEP Adoption Agreement and the accompanying prototype plan, which is hereby adopted and incorporated by reference.

Employer: Please provide a completed copy of this Agreement and the Terms and Conditions (attached) to each of your plan participants.

1 Employer and plan information

Name of company, Daytime phone, Ext., Existing Plan ID, EIN

Address, City, State, ZIP

Form of business:

Sole proprietor, Corporation, Partnership, S corporation, LLC, Tax-exempt organization

Plan year: Calendar year, Other

2 Effective dates

To avoid delays, this section must be completed. Complete A or B.

A. This is a new plan that is effective as of Date (mm/dd/yyyy)

B. This is an amended and restated plan. The effective date of the original plan was Date (mm/dd/yyyy)

The effective date of the amended and restated plan is Date (mm/dd/yyyy)

3 Eligibility requirements

Complete A, B and C. If left blank, "No requirement" under A applies, "Three" under B applies, and "None" under C applies.

A. Age: No requirement, Minimum age (not over 21)

B. Service: Employees who have performed services for the employer during at least (maximum three) of the immediately preceding five plan years

C. Excluded classes of employees (select all applicable options):

- None, Employees covered by a collective bargaining agreement, Employees whose compensation as defined in Code §414(q)(4) is less than \$650, Nonresident aliens who receive no earned income from the employer that constitutes income from sources within the United States



## 4 Employer allocation formula

Select A or B. If left blank, A applies.

- A.  Proportionate allocation described in paragraph 3.3(a) of the Terms and Conditions (see page 9).
- B.  Integrated allocation described in paragraph 3.3(b) of the Terms and Conditions (see page 9). This allocation formula may not be adopted if the employer maintains any other plan that is integrated with Social Security.

## 5 Top-heavy minimum contributions

Select A or B. If left blank, A applies.

The top-heavy plan requirements under Code §416 shall be satisfied by:

- A.  This plan
- B.  Name of other qualified plan of the employer \_\_\_\_\_

## 6 Financial professional

This section **must** be filled out completely by the financial professional(s).

We authorize American Funds Service Company® (AFS) to act as our agent for this account and agree to notify AFS of purchases made under a Statement of Intention or Rights of Accumulation.

\_\_\_\_\_  
 Name(s) of financial professional(s)      Professional/team ID #      Branch number      (      )      Ext.  
 \_\_\_\_\_  
 Daytime phone

\_\_\_\_\_  
 Branch address      \_\_\_\_\_      City      \_\_\_\_\_      State      \_\_\_\_\_      ZIP

\_\_\_\_\_  
 Name of broker-dealer firm (as it appears on the Selling Group Agreement)      **X**      \_\_\_\_\_  
 Signature of person authorized to sign for the broker-dealer

## 7 Employer signature

This Agreement was signed by the employer on \_\_\_\_\_  
 Date (mm/dd/yyyy)

Signed for the employer by \_\_\_\_\_  
 Name (print)      \_\_\_\_\_      Title

**X** \_\_\_\_\_  
 Authorized signature

This document may not be signed using Adobe Acrobat Reader's "fill and sign" feature.

***In the event the prototype sponsor amends, discontinues or abandons this prototype plan, notification will be sent to the employer's address provided on the first page of this Agreement.***

Choose the service center for your state. Mail the form to the Indiana Service Center if you live outside the U.S.



**American Funds Service Company**  
 P.O. Box 6164  
 Indianapolis, IN 46206-6164  
  
**Overnight mail address**  
 12711 N. Meridian St.  
 Carmel, IN 46032-9181



**American Funds Service Company**  
 P.O. Box 2560  
 Norfolk, VA 23501-2560  
  
**Overnight mail address**  
 5300 Robin Hood Rd.  
 Norfolk, VA 23513-2430

For more information, contact your financial professional, visit [www.capitalgroup.com](http://www.capitalgroup.com) or call us at (800) 421-4225 | Fax (888) 421-4371



## Terms and Conditions

Internal Revenue Service Letter Serial No. K420554b

American Funds Distributors, Inc.\* hereby establishes a prototype plan for use in conjunction with the American Funds Distributors, Inc.\* Traditional Individual Retirement Account ("IRA") by Employers who wish to establish a Simplified Employee Pension Plan ("SEP") for their Employees. If the Employer executes an Adoption Agreement that meets the requirements of Code §408(k) and that incorporates this document by reference, Capital Bank and Trust Company will act as custodian of the IRAs established by Employees eligible to receive contributions under the terms of this Plan.

### Article I — Definitions

**1.1 Adoption Agreement.** The document attached hereto by which the Employer elects to establish a Simplified Employee Pension Plan under the terms of this Prototype Plan which meets the requirement of Code §408(k).

**1.2 Code.** The Internal Revenue Code of 1986, including any amendments thereto.

**1.3 Compensation.** Compensation means wages, and other compensation from the Employer that are subject to federal income tax withholding under Code §3401(a), and all other payments of compensation to an Employee by the Employer (in the course of the Employer's trade or business) for which the Employer is required to furnish the Employee a written statement under Code §§6041(d) and 6051(a)(3). Compensation must be determined without regard to any rules under Code §3401(a) that limits the remuneration included in wages based on the nature or location of the employment or the services performed.

Compensation also includes any elective deferrals described in Code §402(g)(3) or any amount that is contributed by the Employer at the election of the Employee and that is not includable in the gross income of the Employee under Code §§125, 132(f)(4) or 457.

For Self-Employed Individuals, Compensation is Earned Income from self-employment. "Earned Income" means the net earnings from self-employment with respect to the Employer determined under Code §1402(a) prior to subtracting any contributions made pursuant to the plan on behalf of the Individual.

Compensation taken into account for each Participant shall not exceed \$200,000, as adjusted for increases in the cost of living in accordance with Code §401(a)(17)(B). If a plan determines Compensation for a period of time that is less than 12 calendar months, then the annual compensation limit is an amount equal to the annual compensation limit for the calendar year in which the Compensation period begins multiplied by the ratio obtained by dividing the number of full months in the period by 12.

**1.4 Effective Date.** The date on which the Employer's Plan, or an amendment thereto, becomes effective.

**1.5 Employee.** Any individual including a Self-Employed Individual who is determined to be an Employee of the Employer as defined in paragraph 1.6.

**1.6 Employer.** Any corporation, partnership or proprietorship that adopts this SEP Plan, including any entity that succeeds the Employer and adopts this SEP Plan. For purposes of this SEP Plan, Employer shall also mean the Employer that adopts this SEP Plan and all members of a controlled group of corporations (as defined in Code §414(b)), all commonly controlled trades or businesses (as defined in Code §414(c)) and all affiliated service groups (as defined in Code §414(m)) of which the adopting Employer is a part. Employer shall also include any other entity required to be aggregated with the Employer pursuant to Code §414(o).

**1.7 Highly Compensated Employee.** An Individual described in Code §414(q) who:

- (a) was a 5% owner as defined in Code §416(i)(1)(B)(i) in the current or preceding Plan Year; or
- (b) received Compensation in excess of \$90,000 in 2002, as adjusted under Code §414(q)(1), in the preceding Plan Year, and was in the top-paid group (the top 20% of Employees ranked by Compensation).

**1.8 Key Employee.** Any Employee or former Employee (and the beneficiaries of these Employees) who, at any time during the current Plan Year, was:

- (a) an officer of the Employer who meets the compensation threshold;
- (b) a 5% owner of the Employer (as defined in Code §416(i)(1)(B)(i)); or
- (c) a 1% owner of the Employer (if the Employee's Compensation is greater than \$150,000) as defined in Code §416(i)(1)(B)(ii).

**1.9 Owner-Employee.** A sole proprietor or partner owning more than 10% of either the capital or profits interest of the partnership.

**1.10 Participant.** Any Employee of the Employer who is participating in the Plan.

**1.11 Plan Administrator.** The Employer is the Plan's named fiduciary and Plan Administrator.

**1.12 Plan Year.** The 12-consecutive-months period designated by the Employer in the Adoption Agreement.

**1.13 SEP Plan.** This Simplified Employee Pension Plan, including the attached Adoption Agreement.

**1.14 Self-Employed Individual.** A person who has Earned Income for the taxable year from the trade or business for which the SEP Plan is established, including an individual who would have had Earned Income but for the fact that the trade or business had no net profits for the Taxable Year.

**1.15 Sponsor.** American Funds Distributors, Inc.\* or any successor(s) or assign(s).

**1.16 Taxable Wage Base.** The maximum amount of earnings that may be considered wages at the beginning of the Plan Year under §230 of the Social Security Act.

**1.17 Taxable Year.** The taxable year of an Employer for federal income tax purposes.

**1.18 Custodian.** Capital Bank and Trust Company, or any successor thereto.

### Article II — Eligibility Requirements

**2.1 Participation.** Each Employee of the Employer shall automatically become a Participant under the Plan as of the first day of the Plan Year after such Employee meets the eligibility requirements selected by the Employer in the Adoption Agreement. The Employer may execute any necessary documents on behalf of an Employee who is entitled to an Employer contribution if the Employee is unable or unwilling to execute such documents or the Employer is unable to locate the Employee. A former Participant shall again become a Participant immediately upon returning to the employ of the Employer.

**2.2 Exclusion From Eligibility.** If elected in the Adoption Agreement, the following classification of Employees may be excluded from participation in the SEP Plan:

- (a) Employees who are part of a collective bargaining unit if retirement benefits have been the subject of good faith bargaining; and/or
- (b) Nonresident aliens with no taxable income from U.S. sources.

**2.3 Change in Employment Class.** In the event an Employee who is not a member of the eligible class of Employees becomes a member of the eligible class, such Employee shall participate immediately if such Employee has satisfied the minimum age and service requirements and would have become a Participant had he or she been in the eligible class. If a Participant becomes a member of an ineligible class of Employees, such Participant shall cease participation in the Plan effective as of the date such Participant becomes an ineligible Employee.

**2.4 Maximum Age.** The Plan shall not exclude Employees who have attained age 70½, provided such Employees meet the eligibility requirements in the Adoption Agreement.

**2.5 Employment Rights.** Participation in the Plan shall not confer upon an Employee any employment rights, nor shall it interfere with the Employer's right to terminate the employment of any Employee at any time.

**2.6 Withdrawal of Contributions.** Participation in the Plan shall not be terminated, suspended or in any way affected if a Participant withdraws all or any part of his or her IRA. This Plan shall not impose any prohibition on a Participant's right to make withdrawals from his or her IRA.

### Article III — Employer Contributions

**3.1 Amount.** Prior to the close of each Plan Year, the Employer shall determine in writing the amount of its contribution for such Plan Year. The Employer's contribution shall be discretionary, and the Employer shall be under no obligation to contribute on an annual basis. Contributions to the SEP are deductible by the Employer for the Tax Year with or within which the Plan Year of the SEP ends. Contributions made for a particular Taxable Year and contributed by the due date of the Employer's income tax return, including extensions, are deemed made in that Tax Year.

\* On 7/1/2024, American Funds Distributors, Inc. was renamed Capital Client Group, Inc.





**3.2 Limitations on Allocations.** The Employer's contribution when allocated to eligible Participants for any Plan Year shall not exceed the lesser of 25% of each Participant's Compensation or \$40,000, as adjusted under Code §415(d). For purposes of the 25% limitation described in the preceding sentence, a Participant's Compensation does not include any elective deferral described in Code §402(g)(3) or any amount that is contributed by the Employer at the election of the Employee and that is not includable in the gross income of the Employer under Code §§125, 132(f)(4) or 457. In addition, the Employer's contribution shall also bear a uniform relationship to the total Compensation of each Participant. At the election of the Employer in the Adoption Agreement, the Employer's contribution may be allocated taking into consideration integration with Social Security.

**3.3 Allocation Formulas.** The Employer's contribution shall be allocated among eligible Participants in accordance with one of the formulas provided below. Participants and former Participants employed by the Employer at any time during the Plan Year, who met the eligibility requirements at any time during the Plan Year, shall share in the Employer's contribution for such Plan Year, even though no longer employed. The Employer's contribution shall automatically be allocated in accordance with paragraph (a) unless paragraph (b) is selected in the Adoption Agreement.

- (a) *Proportionate Allocation.* The Employer's contribution for each Plan Year shall be allocated to the IRA of each eligible Participant in the same portion as such Participant's Compensation for such Plan Year bears to all eligible Participants' Compensation for that year.
- (b) *Integrated Allocation.* The Employer's contribution for the Plan Year shall be allocated to each eligible Participant (using his or her Compensation earned during the Plan Year) as follows:
- (i) first, to the extent contributions are sufficient, all Participants will receive an allocation of up to 3% of their Compensation.
  - (ii) next, any remaining Employer contributions will be allocated to Participants who have Compensation in excess of the Taxable Wage Base (excess Compensation) as in effect at the beginning of the Plan Year. Each such Participant will receive an allocation in the ratio that his or her excess Compensation bears to the excess Compensation of all Participants. Participants may only receive an allocation of up to 3% of excess Compensation. For purposes of this sub-paragraph (ii), in the case of any Participant who has exceeded the cumulative permitted disparity limit described below, such Participant's total Compensation for the calendar year will be taken into account.

- (iii) next, any remaining Employer contributions will be allocated to all Participants in the ratio that their Compensation plus excess Compensation bears to the total Compensation plus excess Compensation of all Participants. Participants may only receive an allocation of up to 2.7% of their Compensation plus excess Compensation, under this allocation method. For purposes of this sub-paragraph (iii), in the case of any Participant who has exceeded the cumulative permitted disparity limit described below, two times such Participant's total Compensation for the calendar year will be taken into account.

**NOTE:** If the Plan is not top-heavy or if the top-heavy minimum contribution or benefit is provided under another Plan (see Section 5 of the Adoption Agreement) covering the same Employees, sub-paragraphs (i) and (ii) above may be disregarded and 5.7% may be substituted for 2.7% where it appears in (iii) above.

- (iv) next, any remaining Employer contributions will be allocated to all Participants in the ratio that each Participant's Compensation bears to all Participants' Compensation.

*Annual overall permitted disparity limit:* Notwithstanding the preceding paragraphs, for any calendar year this SEP benefits any Participant who benefits under another SEP or qualified plan described in Code §401(a) maintained by the Employer that provides for permitted disparity (or imputes disparity), Employer contributions will be allocated to each Participant's IRA in the ratio that the Participant's total Compensation for the calendar year bears to all Participant's total Compensation for that year.

*Cumulative permitted disparity limit:* Effective for calendar years beginning on or after January 1, 1995, the cumulative permitted disparity limit for a Participant is 35 total cumulative permitted disparity years. Total cumulative permitted disparity years means the number of years credited to the Participant for allocation or accrual purposes under this SEP or any other SEP or any qualified plan described in Code §401(a) (whether or not terminated) ever maintained by the Employer. For purposes of determining the Participant's cumulative permitted disparity limit, all years ending in the same calendar year are treated as the same year. If the Participant has not benefited under a defined benefit or target benefit plan for any year beginning on or after January 1, 1994, the Participant has no cumulative permitted disparity limit.

**3.4 Responsibility for Contributions.** Neither the Sponsor nor the Custodian shall be required to determine if the Employer has made a contribution or if the amount contributed is in accordance with the Adoption Agreement or the Code. The Employer shall have sole responsibility in this regard.

## Article IV — Participant Accounts

**4.1 SEP Retirement Account.** This SEP Plan must be used in conjunction with the IRS-approved American Funds Distributors, Inc.\* Traditional IRA. Each Employee, upon becoming a Participant under the SEP Plan, shall establish an IRA in accordance with the rules and regulations established by agreement between the Custodian and the Employer.

**4.2 Determination of Deposit.** When making a contribution to the SEP Plan, the Employer shall calculate each Participant's proportionate share of the Employer's contribution as determined in the Adoption Agreement. The Employer shall then deliver the contribution to the Custodian indicating the amount to be credited to each Participant's IRA.

**4.3 Control of Account.** All contributions made under the SEP Plan by the Employer shall be irrevocable. After allocation to a Participant's IRA, the Employer shall have no further control of such contribution, and the terms of the Participant's IRA shall be fully effective.

## Article V — Limitations on Contributions

**Overall Limitations on Contributions.** In addition to the dollar limitation of Code §415(c)(1)(A) (\$40,000 in 2002, as adjusted under Code §415(d)), contributions to this Plan, when aggregated with contributions to all other SEPs and contributions plus forfeitures under other qualified plans of the Employer, generally may not exceed 25% of Compensation for any Participant.

## Article VI — Top-Heavy Rules

**6.1 Top-Heavy Minimum Contribution.** Each Plan Year for which the Plan is top-heavy under Code §416, each non-Key Employee shall receive an allocation of Employer contributions equal to the lesser of 3% of Compensation or the percentage of Compensation allocated to the Key Employee receiving the highest percentage allocation. The top-heavy minimum contribution shall be satisfied under this Plan unless the Employer designates another plan in the Adoption Agreement.

**6.2 Contributions Counted Towards Minimum.** For purposes of satisfying the minimum contribution requirements under Code §416, only Employer contributions shall be taken into account.

**6.3 Top-Heavy Determination.** This SEP Plan is top-heavy for a Plan Year if, as of the last day of the preceding Plan Year (or the current Plan Year if this is the first year of the Plan), the total non-elective contributions made on behalf of Key Employees for all years this Plan has been in existence exceeds 60% of such contributions for all Employees who were eligible to participate. Alternatively, the Employer may elect to consider whether the IRA balances of all Key Employees exceed 60% of the

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value of the IRA balances of all Employees to determine whether the Plan is top-heavy. If the Employer maintains (or maintained within the preceding Plan Year) any other SEP or qualified plan in which a Key Employee participates (or participated), the contribution, account balances or present value of accrued benefits, whichever is applicable, must be aggregated with the contributions made to this SEP Plan. The contributions, account balances and present value of accrued benefits, if applicable, of an Employee who ceases to be a Key Employee or of an individual who has not performed services for the Employer in the preceding Plan Year shall be disregarded. The identification of the Key Employees and the top-heavy calculation shall be determined in accordance with Code §416 and any guidance thereunder.

**Article VII — Administration**

**7.1 Plan Administrator.** The Employer shall be the Plan's named fiduciary and shall serve as Plan Administrator. As Plan Administrator, the Employer shall:

- (a) carry out the provisions of the SEP Plan including determining eligibility of Employees, allocating contributions and interpreting the SEP Plan when necessary;
- (b) deliver all contributions to the Custodian showing the amount to be allocated to each Participant's IRA;
- (c) communicate with Participants regarding their participation and benefits under the SEP Plan;
- (d) advise Participants in writing of all contributions to their IRAs;
- (e) perform any other duties required of the Plan Administrator;
- (f) insure that no contribution exceeds the limits imposed by Code §408(k) or any other applicable law, regulations or order; and
- (g) execute necessary documents to establish an IRA with the Custodian for eligible Employees.

**7.2 Custodian.** The Custodian shall be depository for Participant IRAs, established by or on behalf of Plan Participants. As depository, the Custodian shall:

- (a) accept for deposit contributions transmitted by the Employer; and
- (b) administer each Participant's IRA in accordance with the provisions of the IRA custodial agreement.

The Custodian need not verify the amount of the contributions received or the amounts allocated to each Participant's IRA.

**7.3 Use of IRS Compliance Programs.** Nothing in this SEP Plan should be construed to limit the availability of the IRS' voluntary compliance programs, the Employee Plans Compliance Resolution System (which encompasses the Administrative Policy Regarding Self-Correction, the Walk-in CAP, Audit CAP, and the Voluntary Compliance Resolution Program).

**Article VIII — Amendment and Termination**

**8.1 Amendment by Sponsor or Custodian.**

The Sponsor or Custodian may amend or terminate any or all provisions of this SEP Plan at any time without obtaining the approval or consent of any Employer or Participant(s), provided that no amendment shall authorize or permit any SEP Plan asset to be used for or diverted to purposes other than for the exclusive benefit of Participants and their beneficiaries. The Sponsor or Custodian will inform each adopting Employer of any amendments to or termination of the SEP Plan.

**8.2 Qualification of Prototype.** The Sponsor intends that this SEP Plan will meet the requirements of Code §408(k) and the regulations thereunder as a Simplified Employee Pension Plan. Should the Commissioner of Internal Revenue or any delegate of the Commissioner at any time determine that the SEP Plan fails to meet the requirements of said Code §408(k), the Sponsor will amend the SEP Plan to meet the requirements.

**8.3 Amendment by Employer.** The Employer may amend any option elected in the Adoption Agreement provided that no amendment shall authorize or permit any SEP Plan asset to be used for or diverted to purposes other than for the exclusive benefit of Participants and their beneficiaries. If the Employer amends the Adoption Agreement other than within the available options, the Employer may no longer participate in this SEP Plan.

**8.4 Termination.** The Employer may terminate its Plan upon 60 days' written notice with the Custodian. In such event, the Custodian shall continue to administer each Participant's IRA as provided under the IRA agreement. The Sponsor may also terminate the SEP Plan upon written notice to the Employer.

**Article IX — Governing Law**

Construction, validity and administration of this SEP Plan shall be governed by Federal law. Where there is no applicable Federal law, this SEP Plan shall be governed by, construed in accordance with and administered under the laws of the State of California. Each party agrees that all actions or proceedings instituted by the Custodian, Employer, Participant, beneficiary or any interested party arising under or growing out of this Agreement shall be brought in the state or federal courts of California. In the event of reasonable doubt respecting the proper course of action to be taken with respect to the SEP Plan, the Custodian may, in its sole and absolute discretion, resolve such doubt by judicial determination which shall be binding on all parties who may claim any interest in the SEP Plan. A judicial determination may include, but is not limited to, the trustee petitioning the appropriate court to remain as Custodian over the IRAs in order to preserve the IRA's federal tax-deferred status pending the court's resolution of the SEP Plan. In the event of any such judicial determination, all court costs, legal expenses, reasonable compensation for the time expended by the Custodian and any other expenses and costs, including reasonable attorney's fees, shall be collected by the Custodian from the IRA(s) in accordance with the terms of the IRA(s).