



# SIMPLE IRA Plus

## Employee Enrollment Guide

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This document explains the financial and tax consequences of contributions and distributions.

#### 7 SIMPLE IRA Plus Trust Agreement

This document defines Capital Bank and Trust Company's role as trustee and explains the provisions of the SIMPLE IRA trust.

### To establish your account

#### 1. Review the following documents (provided by your employer).

- *Fee and Fund Disclosure* — contains information specific to your plan, including fees, available investment options and default investment information
- *Notification to Eligible Employees* — specifies the contribution type(s) allowed by the plan (pre-tax only or pre-tax and Roth) and your employer's contribution amount
- *Summary Description* — explains eligibility requirements and plan provisions
- *Employee Enrollment Guide*

#### 2. Determine how much of your salary you want to save in your SIMPLE IRA and which American Funds to invest in. Retirement planning tools, calculators and fund information are available at [www.capitalgroup.com/retire](http://www.capitalgroup.com/retire).

#### 3. Complete the *Enrollment/Change* form. Make a copy for your files.

#### 4. Return the *Enrollment/Change* form to your employer, who will add you to the plan.

### To complete your enrollment

1. After you've been added to the plan, you'll receive an email with a link to our website and instructions for completing your enrollment. You'll need to visit [www.capitalgroup.com/retire](http://www.capitalgroup.com/retire). Click the LOG IN button; then click New User?.
2. Follow the prompts to verify investment elections and add beneficiaries. You'll need personal information, including Social Security numbers, for yourself and for your beneficiaries. If you need assistance, call us at (800) 421-6621, ext. 40.

## Important account information

### Eligibility

In general, if you expect to earn at least \$5,000 in the current calendar year AND you've earned at least \$5,000 during any two prior calendar years, you're eligible to participate in your company's SIMPLE IRA plan. Your employer may have less restrictive requirements, which would be outlined in your plan's *Summary Description*.

### Your contributions

You decide how much of your pay, up to IRS limits, you want to contribute. Your contributions will be deducted directly from your paycheck.

- **Pre-tax contributions** (available for all plans). You can reduce your current taxable income by making pre-tax contributions to the plan. This means you don't pay taxes on your contributions (or investment earnings) until you make a withdrawal.
- **Roth (after-tax) contributions** (if permitted). Review Section 2 of the *Notification to Eligible Employees* provided by your employer to determine if this option is available for your plan. If permitted, the Roth option allows you to make after-tax contributions. This means you pay the applicable taxes when money is contributed, but you won't pay taxes later on qualified withdrawals.

### Your employer's contributions

As described in the *Notification to Eligible Employees*, your employer will make one of two types of contributions:

- **Matching.** Your employer may match any contributions you make, dollar for dollar, up to a specified percent of eligible compensation.
- **Nonelective.** Your employer may contribute a specified percent of your eligible compensation to your SIMPLE IRA – regardless of whether you make any contributions.

Employer contributions are made on a pre-tax basis.

### Vesting

The money that you and your employer contribute to the plan is vested immediately – in other words, it's yours to keep.

### Your investment options

Review the *Fee and Fund Disclosure* to determine which investments are available for your plan.

### Monitoring your account

Check on your investment results with:

- [www.capitalgroup.com/retire](http://www.capitalgroup.com/retire)
- Your quarterly statement
- Our 24-hour automated phone service at **(877) 833-9322**

### Making changes to your account

Access your account at [www.capitalgroup.com/retire](http://www.capitalgroup.com/retire).

Once you sign in, you can:

- Process transactions
- View current and past account balances as well as dividend and capital gain information
- Manage your account information
- Sign up for paperless delivery of quarterly statements

### Withdrawals of pre-tax contributions and earnings

You may withdraw pre-tax money at any time, but any money you take out is subject to ordinary income tax. If you withdraw the money before you reach 59½, a 10% (25% if the withdrawal is made during the first 2 years of participation in the plan) federal tax penalty may apply.

### Withdrawals of Roth (after-tax) contributions and earnings

You may withdraw Roth contributions tax- and penalty-free at any time. Earnings may be withdrawn tax- and penalty-free if you meet the 5-year holding period requirement and the withdrawal is: **1**) made after you have reached age 59½; **2**) due to your disability or death; or **3**) used for certain expenses to purchase a first-time home. If you withdraw earnings before you reach 59½, a 10% (25% if the withdrawal is made during the first 2 years of participation in the plan) federal tax penalty may apply.

### Existing SIMPLE IRA participants

If you already have a SIMPLE IRA account, and your employer is moving the plan to a SIMPLE IRA Plus plan, your prior elections will not carry over. You'll need to re-enroll in the plan and make new elections. If you have money invested in an existing American Funds SIMPLE IRA, assets will remain in the existing account. You can complete the *IRA Rollover/Transfer Request* form to move the assets to your new account.



- Complete this form and return it to your employer. Do not send this form to American Funds Service Company or Capital Bank and Trust Company.
• After your employer adds you to the plan, visit www.capitalgroup.com/retire to verify investment selections and designate beneficiaries.
• For SIMPLE IRA plans, use the SIMPLE IRA Employee Guide.

1 Information about you

Note: If the owner is a minor, provide parent/legal guardian information on a separate page. Include the parent/legal guardian's name, Social Security number, date of birth, country of citizenship and residence address. The parent/legal guardian must sign Section 4.

SSN of SIMPLE IRA owner [ ] [ ] [ ] - [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ]
Date of birth (mm/dd/yyyy) [ ] [ ] - [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ]
Country of citizenship \_\_\_\_\_

First name \_\_\_\_\_ MI \_\_\_\_\_ Last \_\_\_\_\_

Residence address (physical address required — no P.O. boxes) \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

Mailing address (if different from residence address) \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

Email address\* \_\_\_\_\_ ( ) \_\_\_\_\_ Daytime phone \_\_\_\_\_

\* Your privacy is important to us. For information on our privacy policies, visit www.capitalgroup.com/retire.

2 Salary deferral election

Note: For contribution limits, refer to the Notification to Eligible Employees.

A. [ ] New election for NEW participants — I elect to have the following amount withheld from my compensation and contributed to the SIMPLE IRA plan.

Effective date \_\_\_\_\_ (mm/dd/yyyy)

Pre-tax deferrals — available for all plans.

[ ] \_\_\_\_\_% OR [ ] \$ \_\_\_\_\_

Roth deferrals — if permitted. Review Section 2 of the Notification to Eligible Employees to determine if this option is available for your plan.

[ ] \_\_\_\_\_% OR [ ] \$ \_\_\_\_\_

B. [ ] Change deferrals — I am currently participating in the SIMPLE IRA plan and wish to change my election.

Effective date \_\_\_\_\_ (mm/dd/yyyy)

Pre-tax deferrals — available for all plans.

[ ] \_\_\_\_\_% OR [ ] \$ \_\_\_\_\_

Roth deferrals — if permitted. Review Section 2 of the Notification to Eligible Employees to determine if this option is available for your plan.

[ ] \_\_\_\_\_% OR [ ] \$ \_\_\_\_\_

## 2 Salary deferral election

(continued)

- C.  **Maintain deferrals** — I am participating in the SIMPLE IRA plan and wish to maintain my current deferral election.
- D.  **Suspend deferrals** — I wish to stop deferring to the SIMPLE IRA plan as of the effective date specified below.

Effective date \_\_\_\_\_  
(mm/dd/yyyy)

Deferral type  Pre-tax deferrals **and/or**  Roth deferrals

- E.  I do not wish to make any salary deferrals at this time.

## 3 Investment instructions

Review the Fee and Fund Disclosure provided by your employer for a list of available funds. If you are a new participant, or if you are a participant in an existing plan that is moving to a SIMPLE IRA Plus plan, and you do not make a selection, contributions will be placed in the plan's default investment.

- A.  Invest 100% of my contributions in the American Funds Target Date Retirement Series® fund with the year closest to my 65th birthday.\*
- |  |  |
|--|--|
| <b>Target Date Fund 2070</b> (designed for those born 2003 or later) | <b>Target Date Fund 2035</b> (designed for those born 1968–1972)       |
| <b>Target Date Fund 2065</b> (designed for those born 1998–2002)     | <b>Target Date Fund 2030</b> (designed for those born 1963–1967)       |
| <b>Target Date Fund 2060</b> (designed for those born 1993–1997)     | <b>Target Date Fund 2025</b> (designed for those born 1958–1962)       |
| <b>Target Date Fund 2055</b> (designed for those born 1988–1992)     | <b>Target Date Fund 2020</b> (designed for those born 1953–1957)       |
| <b>Target Date Fund 2050</b> (designed for those born 1983–1987)     | <b>Target Date Fund 2015</b> (designed for those born 1948–1952)       |
| <b>Target Date Fund 2045</b> (designed for those born 1978–1982)     | <b>Target Date Fund 2010</b> (designed for those born 1947 or earlier) |
| <b>Target Date Fund 2040</b> (designed for those born 1973–1977)     |  |

\*A new fund is added to the series every five years. Depending on your date of birth and the date you're enrolled in the plan, your contributions may be invested in a fund within the series not listed above.

**OR**

- B.  Invest my contribution as instructed below. (You may customize your investment strategy by selecting a combination of funds. The percentage you elect must equal the minimum of \$25 per fund.)

Fund name or number	Percentage (whole % only)
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
<b>Total</b>	<b>===== %</b>

- Notes:**
- The \$25 setup fee will be deducted from your account.
  - To make changes to your fund selections and/or percentage allocations in the future, access your account at [www.capitalgroup.com/retire](http://www.capitalgroup.com/retire).



## 4 Employee signature

If electing salary deferrals, I authorize my employer to withhold the amount/percentage specified from each paycheck as of the effective date provided, which will reduce my compensation under this election (my elective deferral contributions). I may revoke or update this election at any time as permitted by my employer. I understand **1)** pre-tax salary deferral contributions are not subject to federal (and state, if applicable) income tax until distributed from the plan; and **2)** Roth salary deferral contributions will be made to a Roth IRA and are subject to federal (and state, if applicable) income tax at the time withheld from my paycheck. If I revoke this election, I acknowledge that, contingent upon the terms of the SIMPLE IRA plan, I may be prohibited from submitting another Salary Deferral Election until the enrollment period immediately preceding the next plan year. The revocation or update will be effective as soon as administratively possible by my employer after they have received the notice. I also understand that my elective deferral contributions are subject to gain or loss in accordance with my selected investments.

I understand the *Trust Agreement* default beneficiary will apply until I make a beneficiary designation.

I understand that to comply with federal regulations, information provided on this enrollment form will be used to verify my identity. For example, my identity may be verified through the use of a database maintained by a third party. If Capital Bank and Trust Company is unable to verify my identity, I understand it may need to take action, possibly including closing my account and withdrawing the shares at the current market price, and that such action may have tax consequences, including a tax penalty.

I understand that I and all shareholders at my address will receive one copy of fund documents (such as annual reports and proxy statements) unless I opt out by calling **(800) 421-4225, ext. 40**.

**X**

\_\_\_\_\_  
Signature of employee (parent or legal guardian, if applicable)

\_\_\_\_\_  
Date      /      /  
(mm/dd/yyyy)

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

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**Return this completed form to your employer.**

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If you did not receive this Disclosure Statement at least seven days before your interest in your traditional SIMPLE IRA and/or Roth SIMPLE IRA (collectively referred to as "SIMPLE IRA") commences, you may revoke your traditional and/or Roth SIMPLE IRA. Your interest in your SIMPLE IRA commences on the date the first contribution is made on your behalf. The seven-day right of revocation applies independently to your interest(s) in your traditional and/or Roth SIMPLE IRA. To revoke your traditional and/or Roth SIMPLE IRA, you must provide written notice of revocation within seven days after your interest in the applicable SIMPLE IRA commences. Written notice of revocation may be mailed to Capital Bank and Trust Company, P.O. Box 6007, Indianapolis, IN 46206-6007. The revocation will be considered given as of the postmark date. Upon revocation, the entire amount of your contribution will be returned to you without adjustment for administrative expenses or fluctuations in market value.

The following is a brief summary of some of the financial and tax consequences of establishing a SIMPLE IRA.

## **I. Contributions to the Account**

### **1. Limitation on Amount of Contributions.**

Contributions to the SIMPLE IRA may be either pre-tax or Roth (if permitted by your employer) salary deferral contributions or employer contributions. Contributions must be made in cash and cannot exceed the maximum amount allowed under the Internal Revenue Code.

Salary deferral contributions to your SIMPLE IRA are limited to \$15,500 in 2023 and \$16,000 in 2024. If you are age 50 or older before the end of the calendar year, the above limit is increased to \$19,000 for 2023 and \$19,500 for 2024.

Higher deferral limits (for 2024 \$17,500 or \$21,000 if you are age 50 or older) apply to employers with no more than 25 employees who earned at least \$5,000 in the prior year. The higher limits also apply to employers with more than 25 employees who earned at least \$5,000 in the prior year, but only if the employer elects to increase the required matching contribution from 3% to 4% or the nonelective contribution from 2% to 3%.

For later years, these limits may be periodically increased for cost-of-living adjustments.

Your employer is generally required to make a dollar-for-dollar match of your salary deferral contributions up to 3% of your compensation (although twice during any five-year period, your employer may reduce its match to as little as 1% for the year and must notify you of the reduction).

Your employer may, instead of the match, make a non-elective contribution on your behalf, equal to 2% of your compensation (compensation for this non-elective contribution is limited to \$330,000 for 2023 and \$345,000 for 2024).

Your employer may make additional non-elective contributions of up to 10% of compensation, not to exceed \$5,000 for 2024. For later years, this limit may be periodically increased for cost-of-living adjustments.

No other contributions may be made to your SIMPLE IRA. A rollover into your SIMPLE IRA may be made from another SIMPLE IRA at any time. A rollover into your SIMPLE IRA may be made from an employer-sponsored retirement

plan or another IRA only after the expiration of the two-year period beginning when you first contributed to the SIMPLE IRA. A rollover into your Roth SIMPLE IRA can only be made if your employer's SIMPLE IRA Plan permits Roth contributions.

- 2. Excess Contributions.** If contributions to your SIMPLE IRA for any taxable year are greater than the maximum amount, the excess amount will be subject to an annual 6% excise tax. However, this tax can be avoided if you withdraw your excess contributions plus any earnings on the excess on or before the due date, including extensions, for your federal tax return for the year in which the excess contributions are made. The earnings that are withdrawn must be included in your income for the year the excess contributions were made, and may also be subject to a 10% premature distribution penalty if you are under age 59½. The 10% penalty increases to 25% for distributions taken before you have participated in the SIMPLE IRA for at least two years.
- 3. Investment of Contributions.** Under the terms of the Trust Agreement, your contributions will be invested by the Trustee, Capital Bank and Trust Company, or any successor, in accordance with your written instructions or the written instructions of your employer on your behalf. No part of your SIMPLE IRA will be invested in life insurance contracts. The Trust Agreement provides that your entire interest in the assets held in your SIMPLE IRA is nonforfeitable at all times and that such assets will not be commingled with other property.
- 4. Transfer of Contributions Without Cost or Penalty.** The Trustee is the designated financial institution of your employer's SIMPLE IRA Plan. You may transfer your contributions (both your deferrals and your employer's contributions) to another financial institution, custodian or trustee, without cost or penalty, by notifying the Trustee when your SIMPLE IRA is initially established, or at any other time, by using the Trustee's SIMPLE IRA Plus Transfer Election form. The Trustee will process this request without cost or penalty provided you meet certain transfer requirements. When requesting a transfer, you must provide the dollar amount or percentage to be transferred and the frequency of such transfer (e.g., monthly, quarterly, annually). The election will continue in force until you revoke it.

## **II. Distributions from the Account**

- 1. Taxation of Distributions.** Provisions for 10-year income averaging and capital gain treatment are not available for "lump sum distributions" from your SIMPLE IRA.

### **(a) Pre-Tax Contributions and Earnings.**

Distributions of your pre-tax contributions and earnings thereon are taxed as ordinary income.

### **(b) Roth Contributions and Earnings.**

Distributions of Roth contributions are not taxed, but any associated earnings may be taxable if the distribution is not qualified. Qualified distributions are distributions made more than five years after you establish your first Roth IRA, if made after you reach age 59 ½ or due to your death or disability, or if used for certain expenses to purchase a first-time home.

### **2. Penalty Tax on Premature Distributions.**

Any distribution made before you reach age 59½ will be subject to a penalty tax of 10% of the taxable amount of the distribution, and 25% penalty tax for distributions made before you have participated in the SIMPLE IRA for more than two years except for distributions made:

- (a)** in the case of death or disability,
- (b)** for the return of excess contributions (including earnings) from your SIMPLE IRA,
- (c)** as payments for certain catastrophic medical expenses,
- (d)** as payments made after an extended period of unemployment to cover health insurance premiums,
- (e)** as payments for certain expenses incurred to purchase a first-time home up to a lifetime maximum of \$10,000,
- (f)** as payments for post-secondary education costs of your immediate family members and grandchildren,
- (g)** as payments made in substantially equal installments that may be based on, but not limited to, the following methods: life expectancy, amortization (using a rate between 80% and 120% of the long-term applicable federal rate) or annuitization (using an acceptable mortality table including, but not limited to, UP'84, '83 IAM or Annuity 2000),
- (h)** as payment in satisfaction of a levy under Code §6331,
- (i)** as payments of up to \$22,000 made in connection with federally declared disasters,
- (j)** for birth or adoption expenses (up to \$5,000),
- (k)** as payments made while you are terminally ill,
- (l)** for unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses up to the lesser of \$1,000 or the excess of your account balance over \$1,000; or
- (m)** in the case of domestic abuse (up to the lesser of \$10,000 as adjusted for inflation or 50% of your account balance).

### **3. Required Distributions From SIMPLE IRAs.**

#### **(a) Pre-Tax Contributions and Earnings.**

To begin receiving required minimum distributions from your SIMPLE IRA, you must notify the Trustee in writing. Your entire interest must be distributed beginning April 1 (your "Required Beginning Date") of the calendar year following the year in which you reach age 73. Your distributions can be taken over a period calculated on your life expectancy and that of a beneficiary assumed to be 10 years younger than you (the factors can be found in the IRS's Uniform Lifetime Table). If your sole beneficiary is your spouse who is more than 10 years younger than you, you may use your spouse's actual age (the factors can be found in the IRS Joint Life and Last Survivor Expectancy Table) to determine the payout period.

#### **(b) Roth Contributions and Earnings.**

No distributions are required to be made from your Roth contributions or earnings prior to your death.



- 4. Penalty Tax for Insufficient Distributions From SIMPLE IRAs.** If you take less than the minimum required to be distributed after you reach your Required Beginning Date, a 25% (possibly 10% if timely corrected within two years) penalty tax on the difference between the amount required to be distributed and the amount actually distributed in that year will be assessed. The Internal Revenue Service can waive the penalty tax if the insufficient distribution was due to reasonable error and steps are taken to correct the underdistribution.
- 5. Distributions Upon Your Death.** After your death (regardless of your age when you die), required minimum distribution rules apply to the beneficiaries of your SIMPLE IRA. How the required minimum distribution rules apply after your death depends on a number of factors, including whether you die before your Required Beginning Date and the identity of your beneficiaries. For more information on required minimum distributions for beneficiaries, refer to IRS Publication 590-B or consult your tax professional.
- 6. Issuance of a Check.** Upon the issuance of a check from the Account, no additional earnings will accrue to the Account with respect to the uncashed check. Earnings on uncashed checks may accrue to the Trustee at a money market rate of return. Such earnings will accrue from the date upon which a check is mailed, one business day after the redemption or sale is processed, until the date upon which the check is presented for payment.
- 7. Estate and Gift Taxes.** Upon your death, the value of your SIMPLE IRA is subject to federal estate taxes under §2039(a) of the Internal Revenue Code unless the account is left to a surviving spouse in a form that qualifies for the marital deduction.

For gift-tax purposes, beneficiary designations will not be treated as gifts.

### III. Tax Status of Custodial Account

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- 1. Tax-Exempt Status.** Generally, any pre-tax contributions and earnings thereon held in your SIMPLE IRA are exempt from federal income tax and will only be taxed when distributed to you, unless the tax-exempt status of the SIMPLE IRA is revoked.
- Generally, any earnings on your Roth contributions are exempt from federal income tax and will only be taxed when distributed to you in a nonqualified distribution, unless the tax-exempt status of the SIMPLE IRA is revoked.
- 2. Loss of Exemption.** The tax-exempt status of the SIMPLE IRA will be revoked as of the beginning of the year in which you engage in any of the prohibited transactions listed in §4975(c) of the Internal Revenue Code, such as borrowing money from your IRA, selling property to your IRA or exchanging property with your IRA. Generally, the fair market value of any pre-tax contributions and earnings thereon in your SIMPLE IRA will be includable in your taxable income in the year in which such prohibited transaction takes place and may also be subject to a 10% penalty tax (25% if you have not participated in the SIMPLE IRA for more than two years).

In the case of Roth contributions, to the extent the fair market value of your Roth assets exceeds aggregate Roth contributions made to your account, such value will be includable in

your taxable income in the year in which such prohibited transaction takes place and may also be subject to a 10% penalty tax (25% if you have not participated in the SIMPLE IRA for more than two years).

In addition, the SIMPLE IRA will lose its tax-exempt status if you use all or part of your interest in the IRA as security for a loan. Any portion of the IRA used as security for a loan will be treated as a distribution in the year in which such use occurs. If you are under age 59½, the amount of the loan may also be subject to a 10% penalty tax (25% if you have not participated in the SIMPLE IRA for more than two years) as a premature distribution.

### IV. Additional Tax Information

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For years in which excess contributions have been made to your SIMPLE IRA, or you received from your account premature distributions, or underdistributions from your SIMPLE IRA after reaching age 73, you are required to file with the IRS Form 5329 *Additional Taxes on Qualified Plans (including IRAs) and Other Tax-Favored Accounts* along with your individual tax return for that year.

Further information about your SIMPLE IRA can be obtained from any district office of the IRS. You may also refer to IRS Publications 560, 590-A, and 590-B, or visit the IRS website at [www.irs.gov](http://www.irs.gov).

### V. Financial Information

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To calculate earnings on the account, reinvested dividends and capital gain distributions are purchased at net asset value ("NAV") on the reinvestment date. The number of shares in the Account at the end of the period is multiplied by the NAV per share at the end of the period to determine the ending value. The difference between the ending value and the initial investment equals the earnings for the period.

In addition, there is a \$25 annual Trustee fee. The future growth results of your investment in mutual fund shares cannot be guaranteed or projected.

**Please retain for your records.**

Internal Revenue Service Letter Serial No. M102216a

**Section 1 — Definitions**

As used in this Trust Agreement (“Agreement”), the following terms shall have the meaning set forth below unless a different meaning is plainly required by the context:

- (a) **“Participant’s Account”** means the SIMPLE IRA established within the Trust under this Agreement. “SIMPLE IRA” means the Participant’s Account established in accordance with Code §§408(p) and 408(c), which is designated as a SIMPLE IRA upon establishment and which shall at all times be nonforfeitable.
- (b) **“Agreement”** means this agreement and the accompanying instrument executed by the Employer under which the Employer establishes the Trust and the underlying Participant Accounts as a SIMPLE IRA.
- (c) **“Beneficiary”** or **“Beneficiaries,”** unless preceded by the words “Primary,” “Contingent,” “Designated,” “Original” or “Subsequent,” means the person or entity (including a trust or estate) designated on the form described in Section 8(a), or otherwise entitled to receive a Participant’s Account after the death of the Participant. “Primary Beneficiary” means the beneficiary designated by a Participant to receive the Participant’s Account after the death of the Participant. “Contingent Beneficiary” means the beneficiary designated by a Participant to receive the Participant’s Account after the death of the Participant provided that no Primary Beneficiary survives the Participant. “Designated Beneficiary” means the person whose life expectancy is used for the measuring period for required minimum distributions under Section 8 of this Agreement. “Original Beneficiary” and “Subsequent Beneficiary” are defined in Section 8(m) of this Agreement.
- (d) **“Child”** or **“Children”** means the descendants of the designated person and include legally adopted children who are adopted during their minority only and descendants of such legally adopted children.
- (e) **“Code”** means the Internal Revenue Code of 1986, as amended.
- (f) **“Compensation”** shall have the meaning as defined under the provision of the SIMPLE IRA Plan as established by the Employer.
- (g) **“Disabled”** means disabled as defined in Code §72(m)(7).
- (h) **“Employer”** means the employer executing this Agreement with the Trustee.
- (i) **“Fund”** means shares of one or more of the investment companies for which the Trustee or an affiliate serves as investment adviser.
- (j) **“Issue”** of a person means all of his or her lineal descendants of all generations.
- (k) **“Participant”** means any employee of the Employer who has met the eligibility requirements for participation in the plan and who establishes a SIMPLE IRA under this Agreement.
- (l) **“Required Beginning Date”** means April 1 following the calendar year in which a Participant reaches age 70½.

- (m) **“Rollover Contribution”** means an amount contributed to a Participant’s Account that is derived from:
  - (i) all or any portion of a distribution from another SIMPLE individual retirement account established under Code §408(p);
  - (ii) all or any portion of a distribution from another individual retirement account established under Code §408(a) or an individual retirement annuity established under Code §408(b) (but not from a Roth individual retirement account established under Code §408A) which is made after the two-year period described Code §72(t)(6); or
  - (iii) all or any portion of an eligible rollover distribution as defined in Code §§402(c), 403(a)(4), 403(b)(8), or 457(e)(16) and the regulations thereunder which is made after the two-year period described in section Code §72(t)(6).

Such Rollover Contributions must be paid into the Participant’s Account not later than the 60th day following the receipt of such distribution by the Participant. If property other than money is distributed from a plan, the Rollover Contribution may consist of the property distributed, subject to the consent of the Trustee. Alternatively, the property may be sold and its proceeds rolled over. A Participant can make only one rollover from an IRA to another (or the same) IRA in any 12-month period, regardless of the number of IRAs owned. This limit will apply by aggregating all of a Participant’s IRAs, including SEP and SIMPLE IRAs as well as traditional and Roth IRAs, effectively treating them as one IRA for purposes of the limit.

- (n) **“Taxable Year”** is a Participant’s tax year for federal income tax purposes.
- (o) **“Trustee”** means Capital Bank and Trust Company or any successor thereto.

**Section 2 — Establishment of Participant’s Account**

By executing the Agreement, the Employer thereby establishes the Trust, which shall hold all assets deposited with the Trustee, for the exclusive benefit of the Participants and the Participants’ Beneficiaries. Pursuant to Code §408(c), this Agreement shall meet the requirements of Code §§408(a)(1)-(6) and there shall be a separate accounting for the interest of each Participant and Participant’s Beneficiary.

**Section 3 — Contributions and Transfers**

- (a) **Maximum Permissible Amount.** This SIMPLE IRA will accept only cash contributions made by the Employer on behalf of a Participant under a SIMPLE IRA Plan that meets the requirements under Code §408(p) and any rollover contribution defined in Section 1(m) above or a transfer of assets from another SIMPLE IRA a Participant may have. No other contributions will be accepted.

- (b) **Transfer.** Prior to the expiration of the two-year period beginning on the date a Participant first participated in any SIMPLE IRA Plan maintained by the Employer, the Participant may transfer all or any portion in such Participant’s Account into a SIMPLE IRA. After the expiration of this two-year period, a Participant may transfer or roll over funds to any IRA of the Participant that is qualified under Code §408(a), (b), (p), 408(A), or to another eligible retirement plan described in Code §402(c)(8)(B).

A rollover or trustee-to-trustee transfer from this SIMPLE IRA into another IRA or annuity before two years of participation will not be considered a valid rollover or tax-free transfer, but a distribution from this SIMPLE IRA and a contribution to the other IRA or annuity that does not qualify as a rollover contribution.

- (c) **Rollover and Transfer Contributions in Cash or Shares.** Rollover and Transfer Contributions must be received by the Trustee in the form of cash, Fund shares or any combination thereof. The Trustee may require that each Rollover and Transfer Contribution be accompanied by a properly completed transmittal provided by the Trustee.

**Section 4 — Investment of Participant’s Account**

- (a) **Investment Instructions.** Pursuant to a Participant’s written instructions, or the written instructions of the Employer on behalf of the Participant under a SIMPLE IRA Plan, each cash contribution to the Participant’s Account shall be applied to the purchase of shares of the Fund or Funds designated by the Participant or the Employer on behalf of the Employee at the applicable offering price in accordance with the terms of such Fund’s prospectus or any other investment permitted under Code §408 or 408A, that is acceptable to the Trustee. A Participant, or if the Participant is deceased, the Beneficiary, may change the designation of the investments of a Participant’s Account assets hereunder and may instruct the Trustee to exercise the exchange privilege set forth in the Fund’s prospectus. Notwithstanding the foregoing, the Employer (or other applicable Plan fiduciary) shall select the Funds, the share class and the investment menu from the available options that shall be available under this Agreement. Investment in any available option is subject to the terms of each option’s prospectus, participation agreement or other governing document. These governing documents may impose, for example, frequent trading restrictions, large purchase order requirements, minimum investment requirements, competing fund policies or other investment conditions. If a Participant fails to give direction as to the investment of his/her Participant Account or of any portion thereof which is subject to Participant direction, the Employer (or other applicable Plan fiduciary) may invest the undirected Participant Account assets in one or more default investments of the Employer’s (or other applicable Plan fiduciary’s) choosing. Any such default investments may, but are not





required to comply with ERISA Section 404(c)(5) and the regulations thereunder, relating to qualified default investment alternatives. To the extent the Trustee must substitute or replace an investment option, the Trustee shall provide the Employer (or other applicable Plan fiduciary) with advance notice and a reasonable opportunity to accept or reject the change.

- (b) **Reinvestment of Dividends and Capital Gain Distributions.** All dividends and capital gain distributions shall be reinvested. Once a Participant has reached age 59½, the Participant may request that dividends and capital gain distributions be distributed from the Participant's Account.
- (c) **Life Insurance Contracts.** No part of a Participant's Account shall be invested in life insurance contracts.
- (d) **Participant's Account Assets.** The assets of the Trust will not be commingled with other Trustee property and the purchase of Fund shares shall not be considered commingling.

## Section 5 — The Trustee

- (a) **Share Accumulation Participant's Accounts and Systematic Withdrawals.** The Trustee, or its designated agent ("Agent"), is authorized to establish share accumulation accounts and systematic withdrawal plans (as described in the prospectus of the Fund, and as customarily entered into with other shareholders of the Fund) for the purpose of receiving and investing the contributions made hereunder and reinvesting income dividends and capital gain distributions. The Trustee is not liable for any act or failure to act of such Agent.
- (b) **Safekeeping of Assets.** The Trustee is authorized to deposit certificates for shares with itself or the Agent for the purpose of safekeeping or otherwise or to permit shares to be credited to the Trustee. The Trustee shall not be obligated to secure certificates for such shares and in its discretion may permit such certificates to remain unissued. Fund shares and other assets acquired by the Trustee shall be owned by and registered in the name of the Trustee or its registered nominee.
- (c) **Authority to Sell.** The Trustee is authorized to sell or redeem shares at the direction of a Participant, Beneficiary or the legal representative of a Participant or Beneficiary.
- (d) **Statements of Participant's Account.** Periodically the Trustee shall furnish to the Participants, or the Beneficiary of a deceased Participant, a statement of the Participant's Account, showing amounts invested or redeemed and the number and price of such shares. The Trustee shall furnish an annual calendar-year statement to the Participants or Beneficiaries setting forth investments, disbursements, and other transactions. Upon expiration of 45 days after forwarding such statement, the Trustee shall be forever released and discharged from all liability and accountability to anyone with respect to its acts, transactions, duties, obligations, or responsibilities as shown in or reflected by such statement, except with respect to any such acts or transactions as to which a Participant or Beneficiary shall have filed written objections with the Trustee within such 45-day period.

- (e) **Notices and Proxies.** The Trustee shall furnish to each Participant, either directly or indirectly, notices, prospectuses, financial statements, proxies, and proxy-soliciting materials relating to all assets credited to the Participant's Account. Any notification to the Participant provided for under this Agreement shall be effective if sent by first class mail to the Participant's last address of record. The Trustee shall vote any shares held in the Participant's Account in accordance with the timely written instructions of the Participant. If the Trustee receives no such written instructions from the Participant, the Trustee may vote the shares of each fund held in the Participant's Account in the same proportion as the votes of the other shareholders of the fund(s) held in the Participant's Account.

- (f) **Government Reports.** The Trustee shall file such reports relating to the Participant's Account with the appropriate government agency as the Trustee is required to file by law. Each Participant shall furnish to the Trustee the information necessary to complete such reports.

- (g) **No Liability for Investments.** The Trustee shall not be liable to a Participant or Beneficiaries for any depreciation or similar loss of assets or for the failure of the Participant's Account to produce any or larger net earnings. The Trustee shall not be liable for any act or failure to act of itself, its agents, employees or attorneys, so long as it exercises good faith, is not guilty of negligence or willful misconduct, and has selected such agents, employees and attorneys with reasonable diligence.

The Trustee shall have no responsibility for the determination or verification of the offering or redemption prices or net asset values of Fund shares, and shall be entitled to rely for such prices and net asset values upon statements issued by or on behalf of the Fund.

The Trustee shall have no duty to inquire into the investment practices of the Fund; the Fund shall have the exclusive right to control the investment of its assets in accordance with its stated policies; and the investments shall not be restricted to securities of the character now or hereafter authorized for trustees by law or rules of court. The Trustee shall not be liable or responsible for any omissions, mistakes, acts or failures to act of the Fund, or their successors, assigns or agents.

- (h) **No Liability for Contributions and Distributions.** The Trustee shall not be responsible in any way for the purpose or propriety of any distribution made pursuant to instructions satisfactory to the Trustee, the collection of contributions provided for hereunder, or any action or nonaction taken pursuant to the request of a Participant, Beneficiary or legal representative of a Participant. The Trustee shall have no duty to determine whether contributions satisfy the applicable limits referenced in Section 3 of this Agreement.

The Trustee shall have no obligation to determine the amount of any excess contribution and the net income attributable thereto. The Trustee may make investment exchanges for the Participant's Account or any other account with the same registration in accordance with the instructions received from any person by telephone, telecopier or other electronic means and shall have no obligation to question any

instructions so received or liability for the transactions it performs pursuant to such instructions.

The Trustee will provide to each Participant information concerning required minimum distributions as prescribed by the Commissioner of Internal Revenue.

## Section 6 — Fees and Expenses

- (a) The Trustee shall receive fees for its services hereunder in such amount as it shall establish from time to time, including, but not limited to, services rendered for the processing of distribution requests and Beneficiary claims. In addition, the Trustee shall receive reasonable fees for any unusual or special services rendered. The compensation of the Trustee, any transfer taxes incurred in connection with the investment and reinvestment of the assets of the Trust, and all administrative expenses incurred by the Trustee in the performance of its duties, including fees for legal services rendered to the Trustee, shall either be reduced from contributions and charged to the Trust, or shall be paid by redeeming or surrendering the necessary assets credited to the Trust, unless otherwise paid by the Employer or a Participant, but until paid shall constitute a lien upon the assets of the Trust.
- (b) The Employer may direct the Trustee to charge to the Trust reasonable plan expenses, including financial professional compensation, brokerage fees, and consulting fees. The Employer shall direct the Trustee to allocate such expenses to Participant Accounts on either a pro rata or per capita basis. The Trustee will not review whether such expenses are reasonable plan expenses and shall be relieved of any liability for making any payment as directed by the Employer.
- (c) The Trustee may charge a Participant's Account for the reasonable expenses even if the charging of such expenses would result in the elimination of the Participant's Account or in the Participant's not receiving an actual distribution. However, if the actual Participant Account expenses exceed the Participant's Account Balance, the Trustee will not charge the Participant outside of the SIMPLE IRA Plan for such excess expenses.

## Section 7 — Withdrawal of Participant's Account Assets

- (a) **Taxation of Withdrawals From SIMPLE IRAs.** The same tax results apply to distributions from a SIMPLE IRA as to an IRA described in Code §408(a) or (b). Any withdrawals made from a Participant's Account are includable in the Participant's gross income.
- (b) **Premature Distribution Penalties.** A special rule applies to a payment or distribution received from a SIMPLE IRA during the two-year period beginning on the date on which a Participant first participated in any SIMPLE IRA Plan maintained by the Employer. Under this special rule, the additional tax on early distributions under Code §72(t) provides that the rate of additional tax is increased from 10% to 25%. If one of the exceptions, listed below, to the application of tax under Code §72(t) applies, the exception also applies to distributions made within the two-year period and the 25% additional tax does not apply.



**(c) Exceptions to Premature Distribution Penalties.** A distribution of all or part of a Participant's Account may be made to the Participant upon the Participant's request; however, tax penalties apply to amounts included in income that are treated as premature distributions, other than:

- (i) payments that are part of a series of substantially equal periodic payments that may be based on, but not limited to, the following three methods: life expectancy, amortization (using a rate between 80% and 120% of the long-term applicable federal rate) or annuitization (using an acceptable mortality table including but not limited to UP'84, '83 IAM or Annuity 2000);
- (ii) the return of excess contributions;
- (iii) payments for certain catastrophic medical expenses;
- (iv) payments made after an extended period of unemployment to cover health insurance premiums;
- (v) payments made to a Participant who has reached age 59½ or is Disabled;
- (vi) payments made on account of the death of a Participant;
- (vii) payments for expenses associated with a first-time home purchase in accordance with subparagraph (F) of Code §72(t)(2);
- (viii) payments for post-secondary education costs of the immediate family members and grandchildren of a Participant; or
- (ix) a levy under Code §6331.

If a Participant should become Disabled, the Participant's Account may be distributed to the Participant commencing as of the date of determination of such disability.

**(d) Excess Contributions to Participant's Account.** If the Employer contributes on behalf of a Participant more than allowed with respect to a Taxable Year, the Participant must notify the Trustee, in writing, to return to the Participant the excess contribution, together with any investment earnings on that amount.

**(e) Transfer of Contributions Without Cost or Penalty.** The Trustee is the designated financial institution of the Employer's SIMPLE IRA Plan. A Participant may transfer his or her contributions to another trustee without cost or penalty by notifying the Trustee when the Participant's account is initially established, or at any other time, on a form acceptable to the Trustee.

## Section 8 — Distributions to Participant and Participant's Designated Beneficiaries

### (a) Beneficiary Designations.

- (i) Participant's Right to Designate or Change Beneficiary. A Participant shall have the right to designate or change a Beneficiary to receive any benefit from the Participant's Account to which such Participant may be entitled in the event of the Participant's death prior to complete distribution of the Participant's Account. If no such designation is in effect at the time of the Participant's death, the Participant's Beneficiary shall be the Participant's

spouse or, if none, the Participant's children, equally. If any child does not survive the Participant, then the deceased child's share will be distributed to his or her children (the Participant's grandchildren), equally or, if none, the surviving children equally. If none of the foregoing survives the Participant, the Beneficiary will be the Participant's estate.

- (ii) Required Form of Beneficiary Designation. A Participant may designate or change a Beneficiary only by signed written notice to, and in a form acceptable to, the Trustee, but the Trustee shall have no responsibility to determine the validity of such beneficiary designation. The designation or change will take effect as of the date the written notice was executed, provided that the designation or change is delivered to the Trustee prior to the Participant's death. The beneficiary designation form shall be used solely for the purpose of designating a Beneficiary or Beneficiaries.
- (iii) Good Faith Payment by Trustee. The Trustee shall be relieved of any liability for making any payment in good faith to any person or entity that claims to be a Beneficiary. The Trustee shall be entitled to rely without liability on written notice from a Participant's personal representative or any Beneficiary as to the identity of the Beneficiaries of the Participant at the time of the Participant's death.

**(b) Distributions Before Required Beginning Date.** Before the Required Beginning Date, but only in a form acceptable to the Trustee, a Participant may elect to have the balance in the Participant's Account distributed in one of the following forms:

- (i) a single sum payment;
- (ii) payments over the life of the Participant;
- (iii) payments over the lives of the Participant and his or her Beneficiary; or
- (iv) payments over a specified period.

**(c) Required Distributions During Participant's Lifetime.**

- (i) **Timing of Distributions.** The first payment of a required distribution is not due until a Participant's Required Beginning Date. If a Participant takes the first required distribution in the year of his or her Required Beginning Date, another distribution is required by December 31 of the year containing the Required Beginning Date. In this event, the Participant may receive two required distributions in the first year distributions begin. If a Participant takes the first required distribution in the year in which he or she reaches 70½, the Participant need only take one distribution in the year in which his or her Required Beginning Date occurs. For each succeeding year, a distribution must be made on or before December 31. Distributions under this section are considered to have begun if the distributions are made on account of the Participant reaching his or her Required Beginning Date. If a Participant dies prior to the Required Beginning Date, distributions will not be considered to have begun even if the Participant receives distributions before the Participant's death.

- (ii) **Method of Calculating Lifetime Minimum Distributions.** The minimum amount to be distributed each year (commencing with the Required Beginning Date and each year thereafter, up to and including the year of the Participant's death) shall not be less than (and may be more if requested in writing by the Participant) an amount equal to the quotient obtained by dividing the prior year-end value (including the amount of any outstanding rollover, transfer and recharacterization under Q&As-7 and -8 of §1.408-8 of the Federal Income Tax Regulations) by the applicable factor (using the Participant's age as of his or her birthday in the year) in the Uniform Lifetime Table in Q&A-2 of §1.401(a)(9)-9 of the Federal Income Tax Regulations. However, if a Participant's sole Designated Beneficiary is the Participant's spouse and the spouse is more than 10 years younger than the Participant, then the distribution period is determined under the Joint Life and Last Survivor Expectancy Table in Q&A-3 of §1.401(a)(9)-9 of the Federal Income Tax Regulations, using ages of the Participant's and spouse's birthday in the year.

**(d) Required Distributions After Participant's Death.**

- (i) **Minimum Distributions to Beneficiaries.** If Participant Dies Before the Required Beginning Date. Upon the death of a Participant before his or her Required Beginning Date. The Beneficiary or Beneficiaries may elect to receive minimum distributions from the Participant's Account as follows:
  - a. *Nonspouse Beneficiary Is Designated Beneficiary; or Spouse Beneficiary Is Not Sole Designated Beneficiary* — If the Designated Beneficiary is not the spouse of the Participant, or if the spouse of the Participant is a Beneficiary but not the sole Designated Beneficiary, then the Beneficiary may elect to receive minimum distributions over the life expectancy of the Designated Beneficiary commencing no later than December 31 of the year following the year of the Participant's death.
  - b. *Spouse Beneficiary Is Sole Designated Beneficiary* — If the sole Designated Beneficiary is the spouse of the Participant, then such spouse may elect:
    - 1. To receive minimum distributions over the spouse's life expectancy commencing no later than December 31 of the year following the year of the Participant's death, or December 31 of the year in which the Participant would have reached age 70½. If the surviving spouse dies before distributions are required to begin, the remaining interest will be distributed to the spouse's Beneficiary or Beneficiaries in accordance with subparagraph a. of this Section 8(d)(i), as if the spouse were the Participant. If the surviving spouse dies after distributions are required to begin, any remaining interest in the Participant's Account

will be distributed over the spouse's remaining life expectancy determined using the spouse's age as of his or her birthday in the year of the spouse's death;

2. To receive minimum distributions in accordance with subparagraph c. of this Section 8(d)(i); or
  3. To treat the Participant's Account as his or her own. This election is deemed to be made if such spouse makes a contribution to the Participant's Account or fails to take required minimum distributions as the Beneficiary in any year following the year of the Participant's death.
- c. *No Designated Beneficiary* — If the Participant does not have a Designated Beneficiary, the entire interest will be distributed by December 31 of the year containing the fifth anniversary of the Participant's death (or surviving spouse's death if the surviving spouse dies before distributions are required to begin).
- (ii) Minimum Distributions to Beneficiaries if Participant Dies on or After the Required Beginning Date. If a Participant dies on or after the Required Beginning Date, the Beneficiary or Beneficiaries may elect to receive minimum distributions from the Participant's Account as follows:
- a. *Nonspouse Beneficiary Is Designated Beneficiary; or Spouse Beneficiary Is Not Sole Designated Beneficiary* — If the Designated Beneficiary is not the spouse of the Participant, or if the spouse of the Participant is a Beneficiary, but not the sole Designated Beneficiary, then the Beneficiary may elect to receive minimum distributions over the longer of the life expectancy of the Designated Beneficiary or the remaining life expectancy of the Participant, commencing no later than December 31 of the year following the year of the Participant's death.
  - b. *Spouse Beneficiary Is Sole Designated Beneficiary* — If the sole Designated Beneficiary is the spouse of the Participant, then such spouse may elect:
    1. To receive minimum distributions over the spouse's life expectancy or over the remaining life expectancy of the Participant, if such period is longer, commencing no later than December 31 of the year following the year of the Participant's death. Any remaining interest after the spouse's death will be distributed over such spouse's remaining life expectancy, or over the remaining life expectancy of the Participant if such period is longer.
    2. To treat the Participant's Account as his or her own. This election is deemed to be made if such surviving spouse makes a contribution to the Participant's Account or fails to take required minimum distributions as the Beneficiary in any year following the year of the Participant's death.

- c. *No Designated Beneficiary* — If the Participant does not have a Designated Beneficiary, then the Beneficiary may elect to receive minimum distributions over the remaining life expectancy of the Participant.
- (iii) Determination of Life Expectancy and Calculation of Minimum Distributions After Participant's Death — The minimum amount required to be distributed each year under Sections (i) and (ii) above is the quotient obtained by dividing the value of the Participant's Account as of the end of the preceding year by the applicable factor. The applicable life expectancy factor for the surviving spouse who is the sole Designated Beneficiary is the Single Life Expectancy Table factor in Q&A-1 of §1.401(a)(9)-9 of the Federal Income Tax Regulations for the spouse's age each year. The applicable factor in all other cases is the Single Life Expectancy Table factor in Q&A-1 of §1.401(a)(9)-9 of the Federal Income Tax Regulations corresponding to the Beneficiary's age (or Participant's age, if applicable) as of his or her birthday in the year distributions begin reduced by one in each succeeding year. The value of the Participant's Account includes the amount of any outstanding rollover, transfer and recharacterization under Q&As-7 and -8 of §1.408-8 of the Federal Income Tax Regulations.
- (e) **Requesting Distributions.** Except as provided in Section 5(h) above, the Trustee has no duty to advise a Participant or Beneficiary of the taxability of distributions. Moreover, the Trustee has no duty to commence distributions to a Participant or Beneficiary until receipt of written instructions, in a form acceptable to the Trustee, from the Participant or Beneficiary, as the case may be. The Trustee shall give no force and effect to any election made by a Participant or Beneficiary as to the distribution options allowable to the Participant or Beneficiary(ies), unless such election is made in a form acceptable to the Trustee.
- (f) **Satisfying Minimum Distributions From Two or More IRAs.** An individual may satisfy the minimum distribution requirements under §§408(a)(6) and 408(b)(3) of the Code by receiving a distribution from one IRA that is equal to the amount required to satisfy the minimum distribution requirements for two or more IRAs. For this purpose, a Participant or Beneficiary of two or more IRAs may use the "alternative method" described in Notice 88-38, 1988-1 C.B. 524 (as modified by §1.408-8, A-9 of the Federal Income Tax Regulations) to satisfy the minimum distribution requirements described above. If a Participant or Beneficiary does not provide the Trustee with timely notice that required distributions will be satisfied from the Participant's Account, then the Participant automatically will be deemed to have elected to satisfy the minimum distribution requirements from some other IRA.
- (g) **Treatment of Trust Beneficiaries as "Designated Beneficiaries."** If a trust is named as a Beneficiary of a Participant's Account, the beneficiaries of the trust with respect to the trust's interests in the Participant's Account will be treated as being "Designated Beneficiaries" (as that term is defined in the Code and corresponding Treasury Regulations) of a Participant solely for purposes of determining

the distribution period under §401(a)(9) of the Code; provided, however, such treatment as "Designated Beneficiaries" may occur only if, during any period during which required minimum distributions are being determined by treating beneficiaries of the trust as Designated Beneficiaries of a Participant, the following requirements are met:

- (i) the trust is a valid trust under state law, or would be but for the fact that there is no corpus;
- (ii) the trust is irrevocable or will, by its terms, become irrevocable upon the death of the IRA Participant;
- (iii) the beneficiaries of the trust who are beneficiaries with respect to the trust's interests in the Participant's Account are identifiable from the trust instrument; and
- (iv) the Trustee receives the documentation described in Q&A-6 of Treasury Regulations §1.401(a)(9)-4 by October 31 of the year following the year of the Participant's death.

If the foregoing requirements have been satisfied, and the Trustee receives such additional information as it may request, the Trustee of this Trust may treat such trust beneficiaries as "Designated Beneficiaries."

- (h) **Separate Participant Accounts.** The Trustee will recognize the timely creation of separate accounts by a Participant, Beneficiary or Beneficiaries (or a representative of the Beneficiary or Beneficiaries, including the trustee of a trust) to the extent permitted by law or applicable Treasury regulations. If a Participant designates multiple individuals or a trust with multiple beneficiaries as the Participant's Beneficiary, then the age of the oldest individual or trust beneficiary shall be used for purposes of calculating required minimum distributions hereunder unless separate accounts are timely established as aforesaid. To create separate accounts during the lifetime of a Participant, a separate application must be completed for each Participant's Account, delivered and accepted by the Trustee. To create separate Participant's Accounts after the death of the Participant, the Trustee must be notified by the Beneficiary or at least one of the Beneficiaries (or a representative of the Beneficiary or Beneficiaries, including the trustee of a trust, or the personal representative of an estate) in a form and manner acceptable to the Trustee.
- (i) **Trust Beneficiary Qualifying for Marital Deduction.** If a Beneficiary is a trust (other than an estate marital trust) that is intended to qualify for the federal estate tax marital deduction under §2056 of the Code ("Marital Trust"), then:
- (i) in no event shall the annual amount distributed from the Participant's Account to the Marital Trust be less than the minimum distribution required under §401(a)(9) of the Code;
  - (ii) the trustee of the Marital Trust shall be responsible for calculating the amount to be distributed under clause (i) above and shall instruct the Trustee in writing to distribute the amount so calculated;

(iii) the trustee of the Marital Trust may from time to time notify the Trustee in writing to accelerate payment of all or any part of the portion of such Participant's Account that remains to be distributed, and may also notify the Trustee to change the frequency of distributions (but not less often than annually); and

(iv) the trustee of the Marital Trust shall be responsible for characterizing the amounts so distributed from the Participant's Account as fiduciary accounting income or principal under the applicable state law.

(j) **Disclaimer.** The Trustee of a Participant's Account may accept a Beneficiary's disclaimer with respect to all or a portion of an interest in the Participant's Account provided that the disclaimant has not previously accepted any interest in the property to be disclaimed and the disclaimer:

- (i) is in a form acceptable to the Trustee;
- (ii) identifies the Participant of the Participant's Account;
- (iii) describes the interest (i.e., the Participant's Account) and the extent of the interest to be disclaimed;
- (iv) declines, refuses or renounces the interest to be disclaimed;
- (v) satisfies applicable state and federal law; and
- (vi) is received by the Trustee no later than September 30 of the year following the year of the Participant's death.

The Trustee of this Trust may accept a trust's disclaimer made by a trustee on behalf of (i) a trust that is the Beneficiary of a Participant's Account and (ii) the beneficiary(ies) of the trust (or made by a personal representative of an estate that is a Beneficiary of the Participant's Account), provided that (a) the disclaimer satisfies the foregoing requirements and either (b) the state law of the Participant's domicile or the instrument governing the trust or estate expressly gives the trustee or personal representative the right to disclaim an interest on behalf of the trust or estate and the beneficiary(ies) or (c) the beneficiary(ies) affected by the disclaimer consent.

The Trustee shall not be responsible for determining the validity of the disclaimer under any state or federal law and may rely on the disclaimant's good faith written statement of the disclaimer's validity. The Trustee shall not be liable to the disclaimant or any other person or entity for acting or refusing to act in good faith reliance on such a disclaimer.

(k) **Power of Attorney.** If the Trustee is asked to follow the instructions of an attorney-in-fact designated under a power of attorney, the Trustee may, but shall not be required to, follow such instructions without regard to whether the power of attorney expressly authorizes the specific act, transaction, or decision by the attorney-in-fact; provided, however, the power of attorney may not be construed to grant authority to an attorney-in-fact to change the designation of Beneficiaries to receive any property, benefit, or contract right on a Participant's death unless expressly authorized in the power of attorney.

When requested to follow the instructions of an attorney-in-fact, the Trustee, before incurring

any duty to comply with the power of attorney, may require the attorney-in-fact to provide identification, specimens of the signatures of the Participant and the attorney-in-fact, and any other information reasonably necessary or appropriate to identify the Participant and the attorney-in-fact and to facilitate the actions of the Trustee in following instructions of the attorney-in-fact.

The Trustee, in its sole and absolute discretion, may petition any applicable court to resolve any issue pertaining to the power of attorney, including, but not limited to, the validity of the power of attorney or the authority to engage in the proposed acts requested by the attorney-in-fact. All expenses of such a judicial determination, including the Trustee's reasonable attorney fees, shall be charged to the Participant's Account as provided in Section 6 of this Agreement.

The Trustee shall not be responsible for determining the validity of the power of attorney under any state or federal law and may rely on the attorney-in-fact's good faith written statement of the validity of the power of attorney. The Trustee shall not be liable to the attorney-in-fact, Participant or any other person for acting or refusing to act in good faith reliance on the power of attorney.

(l) **Receipt of Instructions From Conservator or Guardian.** If the Trustee is asked to follow the instructions of a conservator or guardian of the estate of any incapacitated Participant (hereinafter such conservator or guardian is referred to as a "Personal Representative"), the Trustee may, but shall not be required to, follow such instructions; provided, however, the Trustee may not act upon the instructions of such Personal Representative to change the designation of Beneficiaries to receive any property, benefit, or contract right on the conservatee's or ward's death without court authorization.

When requested to follow the instructions of a Personal Representative, the Trustee, before incurring any duty to comply with such instructions, may require any information reasonably necessary or appropriate to identify the Personal Representative and to facilitate the actions of the Trustee in following such instructions.

The Trustee, in its sole and absolute discretion, may petition any applicable court to resolve any issue pertaining to the instructions of the Personal Representative. Including, but not limited to, the authority to engage in the proposed acts requested by the Personal Representative. All expenses of such a judicial determination, including the Trustee's reasonable attorney's fees, shall be charged to the Participant's Account as provided in Section 6 of this Agreement.

The Trustee shall not be liable to any person for acting or refusing to act in good faith reliance on the instructions of the Personal Representative.

(m) **Payments Upon Death of Beneficiary.** If a Beneficiary is a natural person and is entitled to benefits under Participant's Account ("Original Beneficiary"), then upon the death of such Original Beneficiary, any remaining benefits shall be payable to one or more persons or entities ("Subsequent Beneficiary") designated by the Participant to receive such benefits. If the Participant fails to designate a Subsequent

Beneficiary, or to the extent that such designation does not make an effective disposition of all such remaining benefits in the Participant's Account, then such remaining benefits shall be payable to the Subsequent Beneficiary(ies) if so designated by the Original Beneficiary to receive such benefits, or, if none, to the Original Beneficiary's estate.

A Participant and Original Beneficiary's designation of a Subsequent Beneficiary to receive such remaining benefits may be acted upon by the Trustee if:

- (i) The designation is executed prior to the death of the Participant or Original Beneficiary, as the case may be, by a written instrument in a form acceptable to the Trustee;
- (ii) The designation expressly refers to the remaining benefits in the Participant's Account; and
- (iii) The designation is delivered to the Trustee prior to the Original Beneficiary's death.

If such remaining benefits are thus payable to such a Subsequent Beneficiary, they shall be paid over a period that does not extend beyond the applicable distribution period for the distribution of the Participant's Account.

If a Beneficiary is a trust and is receiving benefits under a Participant's Account over the life expectancy of a trust beneficiary (or over the remaining life expectancy, if any, of the Participant or of any prior Beneficiary or prior trust beneficiary), then upon the death of such trust beneficiary prior to the complete distribution of such benefits to the trust, such remaining benefits shall be payable to the trust, or directly to the successor trust beneficiary or beneficiaries if so instructed in writing by the trustee, over a period that does not extend beyond the applicable distribution period for the distribution of Participant's Account.

(n) **Notice of Events.** Until the Trustee shall receive from some person interested in a Participant's Account notice, in a form acceptable to the Trustee, of any event upon which the right to receive any benefits from the Participant's Account has occurred, the Trustee shall incur no liability for any disbursements or distributions made or omitted to be made in good faith.

## **Section 9 — Amendment and Termination**

The Employer, by the establishment of this Trust, delegates to the Trustee the power to make any retroactive or prospective modification of, or amendment to, this Agreement that is necessary to conform the Agreement to, or satisfy the conditions of, any law, governmental regulation or ruling, and any prospective amendment that is desirable for the administration of this Agreement, and by doing so shall be deemed to have consented to each such amendment or modification. This Agreement may also be amended or modified at any time by the Trustee upon sixty (60) days' written notice to the Employer, provided the Employer accepts the amendment by failure to object in writing in accordance with this section. A written objection must be sent to Capital Bank and Trust Company, 6455 Irvine Center Drive, Irvine, CA 92618-4518 and be received by the Service Provider within forty-five (45) days after the amendment's mailing date. Notwithstanding the preceding sentences,

no amendment shall be made that would have the effect of allowing any part of the Participant's Account to be used for any purpose other than for the exclusive benefit of the Participants and Beneficiaries nor shall any amendment increase or decrease the duties or liabilities of the Trustee without its consent. Any amendments inconsistent with Code §§408(a), 408(c) and/or 408(p) and/or Treasury regulations thereunder shall be invalid. If required by applicable law or otherwise determined to be in the best interests of Participants, the Trustee or the Employer shall be permitted to convert the Participant Accounts under the Trust into individual trusts in the name of each Participant with the Trustee (including into custodial accounts treated as trusts pursuant to Code §408(h)), each of which shall be a SIMPLE IRA within the meaning of Code §408(a), in which case this Trust shall be deemed to be a common investment fund within the meaning of Code §408(a)(5) and Treasury regulation §1.408-2(b)(5)(ii). The Trustee has no affirmative obligation to amend the Agreement for any purpose.

This Agreement may, at the Trustee's option, terminate upon the transfer or complete distribution of the Trust, or at the discretion of the Trustee at any time upon 30 days' prior written notice to the Employer and Participants.

### **Section 10 — Resignation or Removal of the Trustee**

The Trustee may resign at any time upon 30 days' prior written notice to the Employer, and may be removed by the Employer at any time upon 30 days' prior written notice to the Trustee. Upon such resignation or removal, the Employer shall appoint a qualified successor to the Trustee, and at the request of the Employer, the Trustee shall transfer and pay over to such successor the assets of the Trust or the proceeds from the sale of such assets. The Trustee may, in its discretion, make an independent determination as to such successor's qualified status. The Trustee is authorized, however, to reserve such sum of money as it may deem advisable for payment of any liability constituting a charge against the assets of the Trust or against the Trustee, with any balance remaining after the payment of all such items to be paid over to such successor.

If, within 30 days after the Trustee's resignation or removal a qualified successor has not been appointed, the Trustee shall distribute the assets in a lump sum to the Participant, or the Beneficiary of a deceased Participant.

### **Section 11 — Miscellaneous**

**(a) Spendthrift Clause.** Neither the assets nor the benefits provided for hereunder shall be subject to alienation, anticipation, assignment, garnishment, attachment, execution or levy of any kind, and any attempt subjected shall not be recognized. A Participant shall have no right to assign, transfer or pledge any market interest in the Participant's Account, and a Participant's interest in the Participant's Account shall not be subject to any claims of creditors.

**(b) Transfer Incident to Divorce or Legal Separation.** Notwithstanding anything to the contrary in the Agreement, including Section 11(a) above, a Participant may direct the Trustee to transfer all or a portion of the Participant's Account into an IRA of the Participant's spouse or former spouse incident to divorce or legal separation as provided in Code §408(d)(6) and incorporated by reference by Code §408A(a).

**(c) Creditor Redemption.** Notwithstanding anything to the contrary in this Agreement, including Section 11(a), to the extent permitted by applicable federal law, the Trustee, upon receipt of an Internal Revenue Service levy against a Participant or Participant's Account ("Levy"), may redeem shares, with or without notice to the Participant or Beneficiary, of the Fund or Funds in the Participant's Account and forward the proceeds to satisfy such a Levy. The Trustee may redeem the shares on a pro rata basis in the Fund or Funds. Except as otherwise provided by applicable law, the Trustee shall not be liable for any action taken in good faith and in exercise of due care. In the event of any action undertaken by the Trustee resulting from any order described herein, all court costs, legal expenses, reasonable compensation for the time expended by the Trustee and any other expenses and costs, including reasonable attorneys' fees, shall be collected by the Trustee from the Participant's Account(s) in accordance with Section 6 of this Agreement.

**(d) Alternative Distribution to Minors.** In the event a distribution is payable to a minor, the Trustee may transfer the proceeds to a trustee selected by the Trustee under the applicable state's Uniform Gifts (Transfers) to Minors Act.

**(e) Use of Electronic or Telephonic Media.** With the consent of the Trustee, a Participant, or the Beneficiary of a deceased Participant, may use electronic or telephonic media to satisfy the requirements for written consent or direction, to the extent permissible under regulations or other generally applicable guidance.

**(f) Issuance of a Check.** Upon the issuance of a check from the Participant's Account, no additional earnings will accrue to the Participant's Account with respect to the uncashed check.

Earnings on uncashed checks may accrue to the Trustee at a money market rate of return. Such earnings will accrue from the date upon which a check is mailed, one business day after the redemption or sale is processed, until the date upon which the check is presented for payment.

**(g) Governing Law/Resort to Judicial Determination.** This Agreement 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 Trustee, 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 Participant's Account, the Trustee may, in its sole and absolute discretion, resolve such doubt by judicial determination that shall be binding on all parties who may claim any interest in the Participant's Account. A judicial determination may include, but not be limited to, the Trustee petitioning the

appropriate court to remain as Trustee over the Participant's Account in order to preserve the Participant's Account's federal tax-deferred status pending the court's resolution of the Participant's Account. In the event of any such judicial determination, all court costs, legal expenses, reasonable compensation for the time expended by the Trustee and any other expenses and costs, including reasonable attorneys' fees, shall be collected by the Trustee from the Participant's Account(s) in accordance with Section 6 of this Agreement.

**(h) Additional Information/Documentation.**

The Trustee may, in the Trustee's sole and absolute discretion, require that a Participant, Beneficiary or any other person or entity provide the Trustee with additional information or documentation as the Trustee deems appropriate in order to satisfy the Trustee's duties under the Agreement.

**(i) Binding on Successors.** This Agreement shall bind and enure to the benefit of the representatives, successors and assigns of the Participants and the Trustee.