

# SIMPLE IRA Custodial Account Agreement and Disclosure Statement

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The Participant named on the Application is establishing a savings incentive match plan for employees of small employers individual retirement account (SIMPLE IRA) under sections 408(a) and 408(p) to provide for his or her retirement and for his or her retirement and for the support of his or her beneficiaries after death.

The Custodian named on the Application has given the Participant the disclosure statement required by Regulations section 1.408-6.

The Participant and the Custodian make the following agreement:

#### ARTICLE I

The Custodian will accept only cash contributions made on behalf of the participant by the participant's employer under the terms of a SIMPLE IRA plan described in section 408(p). In addition, the Custodian will accept transfers or rollovers from other SIMPLE IRAs of the participant and, after the 2-year period of participation defined in section 72(t)(6), transfers or rollovers from any eligible retirement plan (as defined in section 402(c)(8)(B)) other than a Roth IRA or a designated Roth account. No other contributions will be accepted by the Custodian.

#### ARTICLE II

The Participant's interest in the balance in the custodial account is non-forfeitable.

#### ARTICLE III

3.1 No part of the custodial account funds may be invested in life insurance contracts, nor may the assets of the custodial account be commingled with other property except in a common trust fund or common investment fund (within the meaning of section 408(a)(5)).

3.2 No part of the custodial account funds may be invested in collectibles (within the meaning of section 408(m)) except as otherwise permitted by section 408(m)(3), which provides an exception for certain gold, silver and platinum coins, coins issued under the laws of any state, and certain bullion.

#### ARTICLE IV

4.1 Notwithstanding any provision of this Agreement to the contrary, the distribution of the Participant's interest in the custodial account shall be made in accordance with the following requirements and shall otherwise comply with section 408(a)(6) and the regulations thereunder, the provisions of which are herein incorporated by reference.

4.2 The Participant's entire interest in the custodial account must be, or begin to be, distributed not later than the Participant's required beginning date, April 1 following the calendar year in which the Participant reaches age 70 1/2. By that date, the Participant may elect, in a manner acceptable to the Custodian, to have the balance in the custodial account distributed in:

- (a) A single sum or
- (b) Payments over a period not longer than the life of the Participant or the joint lives of the Participant and his or her designated beneficiary.

4.3 If the Participant dies before his or her entire interest is distributed to him or her, the remaining interest will be distributed as follows:

- (a) If the Participant dies on or after the required beginning date and:
  - (i) the designated beneficiary is the Participant's surviving spouse, the remaining interest will be distributed over the surviving spouse's life expectancy as determined each year until such spouse's death, or over the period in paragraph (a)(iii) below if longer. Any interest remaining after the spouse's death will be distributed over such spouse's remaining life expectancy as determined in the year of the spouse's death and reduced by 1 for each subsequent year, or, if distributions are being made over the period in paragraph (a)(iii) below, over such period.
  - (ii) the designated beneficiary is not the Participant's surviving spouse, the remaining interest will be distributed over the beneficiary's remaining life expectancy as determined in the year following the death of the Participant and reduced by 1 for each subsequent year, or over the period in paragraph (a)(iii) below if longer.
  - (iii) there is no designated beneficiary, the remaining interest will be distributed over the remaining life expectancy of the Participant as determined in the year of the Participant's death and reduced by 1 for each subsequent year.
- (b) If the Participant dies before the required beginning date, the remaining interest will be distributed in accordance with (i) below or, if elected or there is no designated beneficiary, in accordance with (ii) below:
  - (i) the remaining interest will be distributed in accordance with paragraphs (a)(i) and (a)(ii) above (but not over the period in paragraph (a)(iii), even if longer), starting by the end of the calendar year following the year of the Participant's death. If, however, the designated beneficiary is the

Participant's surviving spouse, then this distribution is not required to begin before the end of the calendar year in which the Participant would have reached age 70 1/2. But, in such case, if the Participant's surviving spouse dies before distributions are required to begin, then the remaining interest will be distributed in accordance with (a)(ii) above (but not over the period in paragraph (a)(iii), even if longer), over such spouse's designated beneficiary's life expectancy, or in accordance with (ii) below if there is no such designated beneficiary.

- (ii) the remaining interest will be distributed by the end of the calendar year containing the fifth anniversary of the Participant's death.

4.4 If the Participant dies before his or her entire interest has been distributed and if the designated beneficiary is not the Participant's surviving spouse, no additional contributions may be accepted in the account.

4.5 The minimum amount that must be distributed each year, beginning with the year containing the Participant's required beginning date, is known as the "required minimum distribution" and is determined as follows:

- (a) the required minimum distribution under Article IV, Section 4.2(b) for any year, beginning with the year the Participant reaches age 70 1/2, is the Participant's account value at the close of business on December 31 of the preceding year divided by the distribution period in the uniform lifetime table in Regulations section 1.401(a)(9)-9. However, if the Participant's designated beneficiary is his or her surviving spouse, the required minimum distribution for a year shall not be more than the Participant's account value at the close of business on December 31 of the preceding year divided by the number in the joint and last survivor table in Regulations section 1.401(a)(9)-9. The required minimum distribution for a year under this paragraph (a) is determined using the Participant's (or, if applicable, the Participant and spouse's) attained age (or ages) in the year.
- (b) the required minimum distribution under Article IV, Sections 4.3(a) and 4.3(b)(i) for a year, beginning with the year following the year of the Participant's death (or the year the Participant would have reached age 70 1/2, if applicable under Article 4.3(b)(i)) is the account value at the close of business on December 31 of the preceding year divided by the life expectancy (in the single life table in Regulation Section 1.401(a)(9)-9 of the individual specified in such Article 4.3(a) and 4.3(b)(i).
- (c) the required minimum distribution for the year the Participant reaches age 70 1/2 can be made as late as April 1 of the following year. The required minimum distribution for any other year must be made by the end of such year.

4.6 The owner of two or more IRAs (other than Roth IRAs) may satisfy the minimum distribution requirements described above by taking from one IRA the amount required to satisfy the requirement for another in accordance with the Regulations under section 408(a)(6).

#### ARTICLE V

5.1 The Participant agrees to provide the Custodian with all information necessary to prepare any reports required by section 408(i) and Regulations sections 1.408-5 and 1.408-6.

5.2 The Custodian agrees to submit to the Internal Revenue Service (IRS) and Participant the reports prescribed by the IRS.

5.3 The Custodian also agrees to provide the participant's employer the summary description described in section 408(l)(2) unless this SIMPLE IRA is a transfer SIMPLE IRA.

#### ARTICLE VI

Notwithstanding any other articles which may be added or incorporated, the provisions of Articles I through III and this sentence will be controlling. Any additional articles inconsistent with section 408(a) and 406(p) and the related Regulations will be invalid.

#### ARTICLE VII

This Agreement will be amended as necessary to comply with the provisions of the Code and the related regulations. Other amendments may be made with the consent of the persons whose signatures appear on the Application, as provided in Article XVIII, Section 18.3 below.

#### ARTICLE VIII - DEFINITIONS

The below words and phrases, when used in this SIMPLE IRA Custodial Account Agreement (the "Agreement"), shall have the following meaning:

- 8.1 "You" and "Your" means the Participant and SIMPLE IRA Owner.
- 8.2 "We", "Us" and "Our" mean the Custodian.
- 8.3 "Code" means the Internal Revenue Code.

8.4 "Regulations" means the Treasury Regulations.

8.5 "SIMPLE IRA", "Custodial Account", "Account" or "SIMPLE IRA Account" means the Simple Incentive Match Plan for Employees of small employers' individual retirement account you set up with us under this Agreement.

**ARTICLE IX - CUSTODIAN RIGHTS AND DUTIES**

**9.1 Custodian's Limited Duties**

- (a) Our duties as Custodian of your SIMPLE IRA Account are limited to those set forth in this Agreement. Our duties are limited to (i) receiving funds or investments from you or your designated/appointed representative,
  - (ii) following your directions concerning your SIMPLE IRA Account, and
  - (iii) carrying out our ministerial duties as Custodian as set forth in this Agreement below.
- (b) It shall be our duty to maintain an account in your name and to effect administrative tasks at your direction. Such tasks include the following:
  - (i) holding and/or investing/re-investing any part of your SIMPLE IRA Account at your direction;
  - (ii) selling, conveying, transferring and otherwise following your directives concerning property held in your SIMPLE IRA Account;
  - (iii) borrowing and lending money and extending mortgages at your direction;
  - (iv) retaining cash and assets in your SIMPLE IRA Account, which Account shall reflect the amounts contributed by you from rollover, transfers, investments and distributions, disbursements and all other transactions directed by you;
  - (v) holding any securities or other property which has been properly registered to your SIMPLE IRA Account;
  - (vi) filing certain tax forms such as 5498s and 1099s required of us as Custodian;
  - (vii) unless otherwise directed by you, depositing all undirected and un-invested cash from any source into the Program as set forth and defined in Article XII, Section 12.1(b) of this Agreement, and then to place such deposited cash into one or more financial institutions as described in those sections;
  - (viii) making payments, disbursements or distributions from your SIMPLE IRA Account at your instruction;
  - (ix) furnishing to you, on at least an annual basis, a statement of your assets and transactions in your SIMPLE IRA Account; and
  - (x) making, executing and delivering any and all contracts, waivers, releases and any other document necessary for effecting a transaction directed by you.

**9.2 Custodian's Rights**

- (a) We have the right to not process or accept a transaction or investments. For example, if we determine that an investment, or transaction poses risk to us, is no longer administratively feasible, is inconsistent with internal practices and standards, or is beyond the scope of our administrative responsibilities, capabilities or expertise, we have the right to not process the transaction or investment and we have the right to resign from our role as Custodian of the particular asset or the assets in your SIMPLE IRA Account. If we choose to resign, we may distribute this asset to you at its last known value, which could subject you to fees for us having to re-register the asset and process the transaction. We shall have no liability for any tax, financial, or other consequences related to such distribution.
- (b) The decision to not process or accept an investment should not be interpreted as us endorsing or conducting due diligence on an investment, investment company or investment strategy. Further, the decision to review any documents related to your investment be whether to accept or not accept an investment does not impose any fiduciary duties on us and should not be construed as us making a determination concerning the suitability or legality of the investment. Rather, any review performed by us with respect to an investment shall be solely for our own purposes of determining whether such investment poses administrative burdens on us or whether accepting such investment complies with our internal policies, practices and standards.
- (c) We shall use reasonable efforts to acquire or sell investments in accordance with your directions within a reasonable period of time after we have received an investment direction and we shall make reasonable efforts to notify you if we are unable or unwilling to comply with an investment direction. Subject to the foregoing, we shall remit funds as directed, but have no responsibility to verify or assure that such funds have been invested to purchase or acquire the asset selected by you.

- (d) If we (1) fail to receive directions from you regarding any transaction; (2) receive ambiguous directions regarding any transaction; or (3) believe that

any transaction requested is in dispute or is being challenged by a third party, we have the right to take no action and/or freeze your SIMPLE IRA Account until further clarification acceptable to us is received from you or the appropriate government or judicial authority.

- (e) We have the right to close your SIMPLE IRA Account if the Account drops below the minimum balance we establish and/or if your SIMPLE IRA Account remains inactive with no assets or new investments for a period of time designated under our internal policies.
- (f) We may require that your SIMPLE IRA Account maintain a minimum balance of cash and assets, and we have the right to distribute the entire balance of your SIMPLE IRA Account to you or assess a fee if the balance of your SIMPLE IRA Account drops below a minimum balance we establish.

**ARTICLE X – RESPONSIBILITIES OF THE SIMPLE IRA OWNER**

**10.1 In General**

- (a) You represent and warrant to us that any information you have given or will give us with respect to this Agreement, your SIMPLE IRA Account or the Application is complete, accurate and up to date. Further, you agree that any directions you give us, or action you take will be proper under this Agreement, and that we are entitled to rely and/or act upon any such information or direction upon receipt. We shall not be responsible for losses of any kind that may result from your direction to us or your action or failure to act, and you agree to reimburse and indemnify us for any loss we may incur as a result of such direction, action or failure to act.
- (b) We have the right to assume that any document you submit relative to your SIMPLE IRA Account is enforceable, authorized and approved by you. You acknowledge that it is your duty to ensure that any documents relating to any investment are signed, recorded, genuine, and legally enforceable to establish legal interest, including but not limited to title or a security interest. You agree that we are not liable for any damages as a result of us accepting a document that we believe is authorized and approved by you.
- (c) The investment selected by you may lack liquidity, may be speculative and may involve a high degree of risk. You represent to us that any loss sustained in your SIMPLE IRA Account will not affect your retirement income standard, and if a mandatory distribution arises, you will have the ability through your SIMPLE IRA Account and/or other retirement accounts to meet any mandatory distribution requirements.
- (d) We are responsible for safekeeping only those documents which are delivered to us by you or your agent. If the original documents are to be held by your agent or another third party, you must ensure that the agent or third party agrees to safeguard the original documents and forward copies of the signed and recorded documents to us as evidence of ownership.

**10.2 Investment Conforms to All Applicable Regulations and Securities Laws**

- (a) You are responsible for ensuring that the assets within your SIMPLE IRA Account and all transactions connected with your SIMPLE IRA Account comply with South Dakota regulations, other applicable federal and state regulations, rulings and this Agreement. By signing the SIMPLE IRA Account application and receiving this Agreement, you acknowledge that none of the assets in your SIMPLE IRA Account violate any federal or state Regulation. We have no duty to determine whether your contributions or distributions comply with the relevant laws.
- (b) You represent to us that if any investment by your SIMPLE IRA is a security under applicable federal or state securities laws, such investment has been registered or is exempt from registration under federal and state securities laws; and you release and waive all claims against us for our role in carrying out your instructions with respect to such investment.
- (c) You acknowledge that the foregoing representation is being relied upon by us in accepting your investment directions and you agree to indemnify us with respect to all costs, expenses (including attorneys' fees), fines, penalties, liabilities, damages, actions, judgments and claims arising out of such investment and/or a breach of the foregoing representation, including, without limitation, claims asserted by you.

**10.3 Investment of Amounts in Your SIMPLE IRA – Your Responsibility**

- (a) **In General.** You have exclusive responsibility for and control over the investment of the assets of your SIMPLE IRA Account. All transactions shall be subject to any and all restrictions or limitations, direct or indirect, which are imposed by our charter, articles of incorporation, or bylaws; any and all applicable federal and state laws and regulations; the rules, regulations, customs and usages of any exchange, market or clearing house where the transaction is executed; our internal policies, standards and practices; and this Agreement.

- (b) **Selection of Investment and Investment Due Diligence.** You are responsible for conducting any and all due diligence related to your investment, and for the selection of the investment for your SIMPLE IRA assets. We will not select or recommend any investment, nor will we act.

as a broker dealer or advisor in completing any purchase or sale of an investment for you. However, your selection of investments shall be limited to those types of investments that we are authorized by our charter, articles of incorporation, or bylaws to custody and that comport with our internal policies, practices, and standards and that are deemed administratively feasible by us, as set forth in Article IX, Section 9.2. Cash balances in your SIMPLE IRA for which no investment instructions have been received shall be placed in a financial institution as set forth in Article X, Sections 10.3(f) and 10.3(g).

- (c) **Third Party Due Diligence.** It is your responsibility to perform proper due diligence with regard to any such representative, investment advisor, broker or other party. We will follow the directions of any such investment advisor, representative, broker or other party authorized by you in a manner acceptable to us, and we will be entitled to all the same protections and indemnities in our reliance upon and execution of the directives of such agent or other party as if such directives were given by you. We may permit you to appoint, through written notice acceptable to us, an authorized agent to act on your behalf with respect to this Agreement (e.g., attorney-in-fact, administrator, advisor or investment manager), however, we have no duty to determine the validity of such appointment or any instrument appointing such authorized agent.

- (d) **Interested Party/Designated Representative.** You may appoint an Interested Party or Designated Representative to your SIMPLE IRA Account in any form or manner that is acceptable to us. Those individuals will have abilities to view your SIMPLE IRA Account, access your SIMPLE IRA Account information and/or perform the actions as set forth on your account application or other form where you appointed ad designated the third party. You shall be responsible for investigating, selecting, instructing, and monitoring the Interested Party and/or Designated Representative and to perform whatever due diligence as may be appropriate before selecting or retaining that individual. That Interested Party and/or Designated Representative shall be the authorized agent of you and shall not be treated as an affiliate, agent, or employee of the Custodian. The Custodian has no duty to supervise or monitor the Interested Party or Designated Representative. You may remove an Interested Party and/or Designated Representative from your account by providing written notice to us, on a form that is acceptable to us, but that removal shall not have the effect of canceling any notice or direction we received prior to us receiving written notice of cancellation. You are solely responsible for removing the responsible party/designated representative once you appoint that person by notifying us of such request to remove that third party through the process we require. We do have the right to remove an Interested Party and/or Designated Representative from your SIMPLE IRA Account at our discretion.

- (e) **Custodian Acting at Your Direction – No Investment or Tax Advice**

- (i) We are acting solely as a directed Custodian to hold SIMPLE IRA assets and we have no discretion to direct any investment in your SIMPLE IRA. Accordingly, we are not a fiduciary (as said term is defined in the Internal Revenue Code, ERISA, or any other applicable federal, state or local laws) with respect to your SIMPLE IRA Account.
- (ii) It is not our responsibility to review the prudence, merits, viability or suitability of any investment directed by you or your agent(s) or to determine whether the investment is suitable for you or acceptable under ERISA, the Internal Revenue Code or any other applicable law.
- (iii) We do not offer any investment advice, nor do we endorse any investment, investment product or investment strategy; and we do not endorse any investment advisor, representative, broker, dealer or other third party selected by you. By agreeing to custody an asset, such action does not constitute marketing or endorsing that asset by us. It also does not speak to the viability of that asset.
- (iv) We do not provide legal or tax advice with respect to the assets in your SIMPLE IRA Account.
- (v) We have no duty to inform you of any information on an asset held in your SIMPLE IRA Account which we may have learned in connection with another account or customer or from any source.
- (vi) By performing services under this Agreement, we are acting at your direction and on your behalf. We shall not be required to perform any additional services unless specifically agreed to under the terms and conditions of this Agreement, or as required under the Code and the Regulations promulgated thereunder with respect to SIMPLE IRAs. We employ agents and organizations, including but not limited to Equity Administrative Services, Inc., for the purpose of performing administrative or other custodial-related services with respect to your SIMPLE IRA for which we otherwise have responsibility under this Agreement, and the

limitations on our duties to you under this Agreement or otherwise shall also apply with respect to each agent or organization so employed.

- (vii) We shall be under no obligation or duty to investigate, analyze, monitor, verify title to, or otherwise evaluate any investment directed by you or your investment advisor, representative or agent; nor shall we be responsible to notify you or take any action should there be any default with regard to any investment.
- (viii) We are not responsible for communicating, forwarding or notifying you or any third party of any information which we receive pertaining to your investments, SIMPLE IRA Account or relationships. For example, we have no duty or obligation to notify you with respect to any information, knowledge, irregularities or our concerns relating to your investment or your investment advisor, broker, agent, promoter, or representative. Any failure of us to communicate such information to you does not result in any liability on us as Custodian.
- (ix) We may receive documentation from investment providers or asset holders regarding assets in your SIMPLE IRA. We may, but are not obligated to, forward this information to you. It will remain your sole responsibility to request and ensure that you receive all applicable documentation regarding your investments.
- (f) **Deposit Investments.** The deposit investments available through us may include savings, and/or money market accounts, and certificates of deposit (CDs). Any cash in your SIMPLE IRA shall be invested in accordance with the instructions of the Participant, or those of its designated representative, subject to the other terms of this Agreement. If you do not instruct us with regard to any un-invested cash, such cash will be deposited into the Program, as defined in Article XII, Section 12.1(b). You may direct us to transfer any un-invested funds to an institution of your choice at any time.

- (g) **Uninvested Cash Fund**

- (i) The Participant hereby directs the Custodian, pending further investment instruction, to deposit all undirected and un-invested cash from any source, including, but not limited to contributions, transfers and income from assets held in the SIMPLE IRA Account, into the Program, as defined in Article XII, Section 12.1(b) of this Agreement, and then place such deposited cash into one or more financial institutions which qualify as well-capitalized under federal bank regulatory agency definitions. The bank accounts in the Program include checking, savings, money market and/or CD accounts. Interest earned on such cash balances net of the Program fee shall be credited to your SIMPLE IRA as of the end of each month, provided your SIMPLE IRA is open on the last business day of the month.
- (ii) You direct us to sweep available free credit balances automatically into the Program utilizing such well-capitalized financial institutions until such time as further direction is received from you or your designated representative(s).
- (iii) You also authorize us to transfer any such funds to a different well-capitalized financial institution without any further approval from you. Information on interest earned net of the Program fee is available online at [www.trustetc.com/interest](http://www.trustetc.com/interest) and reported on your quarterly statement as appropriate, or can be obtained by contacting a Client Service Representative.

#### 10.4 **Investment Documentation**

- (a) In directing us with respect to any investment, you must utilize our Direction of Investment form suitable to such investment or such other form acceptable to us. We may remit funding for your investment upon receipt of such Direction of Investment or other form acceptable to us, without regard to any supporting documentation.
- (b) We shall be fully protected in acting upon any instrument, certificate, paper or transmission believed to be genuine and to be signed or presented by the proper person or persons whether or not by facsimile, email or other form acceptable to the Custodian, and the Custodian shall be under no duty to make any investigation or inquiry as to any statement contained in any such communication, but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained.
- (c) You authorize and direct us to execute and deliver, on behalf of your SIMPLE IRA Account, any and all documents delivered to us in connection with your assets in your SIMPLE IRA Account; although we have no duty to deliver such documents and we shall have no responsibility to verify or determine that any such documents are complete, accurate or constitute the documents necessary to comply with your investment direction. You authorize and direct us to correct errors in investment titling without notice to you and to correct other minor clerical errors with telephone or email consent from you upon verification of your identity.

#### 10.5 **Statement Review.** You have sixty (60) days after either: (1) the date of mailing of a

paper statement; or (2) the posting of our statement online, if you receive electronic statements, to give us notice of any errors or inaccuracies reflected on the statements. You acknowledge that if you fail to give us notice of any discrepancies on your statements within that time period, we have the right to assume that you approve of the statement and you are, therefore, preclude from making future objections to the statement. You agree that if your statement overstates an asset's value or inaccurately includes an asset, you will notify us within that sixty (60) day period. We have no obligation to you based on the overvaluation or inaccurate inclusion of an asset in your statement. We shall have no liability for the content reported or not reported on any statement unless you give us notice within that sixty (60) day period.

**10.6 Prohibited Transactions**

- (a) You understand that certain transactions are prohibited in SIMPLE IRAs and qualified retirement plans under Section 4975 of the Internal Revenue Code (a "prohibited transaction"). You further understand that the determination of a prohibited transaction depends on the facts and circumstances that surround the particular transaction. A prohibited transaction can occur with an improper use of the SIMPLE IRA such as a transaction involving a "disqualified person", which is defined in the Code. If your SIMPLE IRA Account contains a prohibited transaction, the SIMPLE IRA Account typically loses its non-taxable status and a taxable distribution and penalty may result. We have no responsibility to make a determination as to whether any investment or transaction is a prohibited transaction. Rather, you are responsible for consulting with your own tax or legal professional to ensure that none of your SIMPLE IRA investments constitute a prohibited transaction. We have no duty to inform you that your transaction is or could lead to a prohibited transaction.
- (b) By submitting an investment for processing, you affirm that the investment does not constitute a prohibited transaction and it complies with all applicable federal and state laws, regulations and requirements. We reserve the right, however, to not process a transaction, resign from the account or issue a distribution if we have a good faith belief that a transaction in your SIMPLE IRA Account constitutes a prohibited transaction.

**10.7 Duty to Indemnify**

- (a) You agree to release, indemnify, hold harmless and defend us from any and all claims, damages, liability, actions, loss, costs and expenses (including, without limitation, attorneys' fees) resulting to the SIMPLE IRA, against you, any beneficiary or incurred by or asserted against us, in connection with or by reason of any sale or investment made or other action taken (or omitted to be taken) at you or your agent's direction resulting from us serving as the Custodian hereunder. This includes claims, damages, liability, actions and losses asserted by you.
- (b) You agree to reimburse or advance to us, on demand, all legal fees, expenses, costs, fines, penalties and obligations incurred or to be incurred in connection with the defense, contest, prosecution or satisfaction of any claims made, threatened or asserted pertaining to any investment or action you or your agent directed through the Custodian, including, without limitation, claims asserted by you, any state or federal regulatory authority or self-regulatory organization.
- (c) You release and indemnify and agree to hold harmless and defend us in the event that any investment or sale of your SIMPLE IRA assets violates any federal or state law or regulation or otherwise results in a loss of tax-exempt status, penalty, fine or tax imposed upon you, your SIMPLE IRA, or us.
- (d) We shall not be responsible for investment losses or diminution of the SIMPLE IRA assets resulting from the changes in the market value of an asset; or resulting from reliance or action taken in reliance upon notice, instruction, direction or approval received from you or your authorized agent.
- (e) You agree to reimburse and indemnify us for any loss we may incur as a result of such directions, actions or failures to act by you or your authorized agent. You release us from any liability for any price fluctuations of the asset during the processing of a transaction directed by you. The indemnification provisions will survive the expiration of this Agreement.

**10.8 Legal Proceedings**

- (a) You agree that you are solely responsible for the prosecution or defense, including the retention of legal counsel, of all legal actions ("Legal Proceedings") involving your SIMPLE IRA, which arise or become necessary for the protection of the investments in your SIMPLE IRA, including any actions where we are named as a result of being Custodian of your SIMPLE IRA. If we are named as a defendant in any Legal Proceedings, which includes state, federal and local court or arbitration, as a result of the assets in your IRA being the subject of the litigation, you agree to retain legal counsel to represent us, in our custodial capacity, or however named in the Legal Proceedings. If you initiate Legal Proceedings against a third party regarding the assets in your SIMPLE IRA, and your SIMPLE IRA is the plaintiff, you agree to initiate suit by titling the plaintiff as "Equity Trust Company, Custodian FBO (Your Name) SIMPLE IRA." You agree to provide us with copies of all pleadings, motions, discovery, orders and final resolution documents upon request.

- (b) As you are the owner of the SIMPLE IRA held with us, you understand that we will not initiate Legal Proceedings on behalf of you or your SIMPLE IRA and will not participate in such Legal Proceedings without direction from you. You understand that you have sole authority to direct and make all decisions related to the Legal Proceedings and you shall defend, indemnify and hold Equity Trust, its officers, directors and employees harmless from any loss, legal expense and liability that arise out of such Legal Proceedings, including our legal costs, if we deem separate counsel is necessary. Should we incur costs or expenses associated with such Legal Proceedings, we have the right to charge you separately for any fees or expenses, or we may deduct the amount of the fees or expenses from the assets held in your SIMPLE IRA.

**10.9 Insurance**

- (a) It is your duty, as the SIMPLE IRA owner, to secure or maintain fire, casualty, liability or other insurance coverage on any personal or real property held by your SIMPLE IRA or which serves as collateral under any mortgage or other security instrument held by your SIMPLE IRA with respect to any promissory note or other evidence of indebtedness. It is incumbent upon you to arrange for such insurance as you determine necessary or appropriate to protect your SIMPLE IRA assets and to direct us in writing as to the payment of any premiums therefor. Furthermore, it is your responsibility to determine that payment has been made upon your written request by verifying same with your SIMPLE IRA statements.
- (b) You, as the SIMPLE IRA owner, are responsible for notification or payments of any insurance premiums, real estate taxes, utilities, or other charges (including penalties) with respect to any investment held in your SIMPLE IRA, unless you specifically direct us to pay the same in writing and sufficient funds are available to pay the same from your SIMPLE IRA Account. Furthermore, it is your responsibility to determine that payment has been made from your SIMPLE IRA Account. You must utilize an appropriate payment directive form available from us within a sufficient period of time for such direction to be accomplished in accordance with our normal business practices (without regard to whether we have undertaken efforts to comply with such directive).

**10.10 Account Security**

- (a) You will be required to establish confidential account security credentials, such as a user name, password, and/or PIN code, to access and conduct transactions in your SIMPLE IRA Account. It is your duty, as the SIMPLE IRA Account owner, to select strong account security credentials that, at a minimum, comply with our security credential requirements, and keep the credentials you select private and inaccessible to unauthorized users. You must select account security credentials that are unique to your SIMPLE IRA Account, meaning you have not used and will not use the same or similar credentials for other online accounts. We recommend that you also routinely change your account security credentials.
- (b) You are responsible for any access to or transactions conducted in your SIMPLE IRA Account with your account security credentials, whether or not such access or transactions were authorized by you. You must notify us immediately if you believe any of your account security credentials have been lost, stolen or compromised or if you become aware of any unauthorized access to or activity in your SIMPLE IRA Account. We shall not be responsible for losses of any kind that may result from unauthorized access to or activity in your SIMPLE IRA Account using your account security credentials or your other personal information.

**10.11 Third Parties**

- (a) We may delegate certain administrative, operational or other custodial related services with respect to your SIMPLE IRA Account for which we otherwise have responsibility under this Agreement to affiliated and un-affiliated third parties, including, but not limited to Equity Administrative Services, Inc. The limitations on our duties for you under this Agreement or otherwise shall also apply with respect to each third party so employed or retained on our behalf.
- (b) We may, from time to time, establish independent contractor relationships with third parties whereby SIMPLE IRA Owners can have access to third parties for products and services that may be beneficial to the SIMPLE IRA Owner and whereby we receive a fee paid from the general assets of the third parties pursuant to a services agreement between us and the third party for offering their services. These third parties may be affiliates with whom we have common ownership. You should consult with your financial and legal advisors before purchasing any such product or service, and it is your responsibility to perform proper due diligence with regard to any product or service offered by any such third parties (including without limitations all potential legal and tax consequences), and we make no recommendations and provide no investment advice regarding any such product or services or of the needs of the IRA owner or your IRA Account. IRA Owners are in no way obligated to purchase products or services generally or to purchase products or services from any such third parties. No SIMPLE IRA Owner may rely on any statement made by us or any of our officers, directors, employees, or agents for any decisions regarding the

purchase of any product or service from any such third party.

- (c) We may receive fees from unrelated third parties as a result of an agreement for servicing your SIMPLE IRA Account. We also may, from time to time, offer non-custodial services, such as the right to use our licensed proprietary software and investment platforms to unrelated third parties for a fee (including, without limitation, a transaction-based fee) paid from the general assets of the third parties, to enable SIMPLE IRA Owners the ability to make investment purchases and sales through such platforms or use of these services.
- (d) We may pay unrelated third parties for marketing or other services they provide to us or in connection with the servicing of your SIMPLE IRA Account.

#### 10.12 Investment of the SIMPLE IRA & Financial Disclosure

- (a) We are acting solely as a directed Custodian to assets in your SIMPLE IRA Account and do not offer investment, tax, or legal advice, as that is solely your responsibility. As Custodian, we do not buy or sell investment products without your direction. As part of your self-directed SIMPLE IRA Account, you choose the investments that will fund your SIMPLE IRA Account. The investments available include a wide range of potential assets and you certify that the assets you invest in through your SIMPLE IRA Account are permissible investments under applicable laws. Even if permissible, we have the option to decline accepting an asset if it is not administratively feasible. Given the type of assets that you may invest in, it is impossible to accurately estimate the value of the SIMPLE IRA assets at any given future point in time. Therefore, no projection of the growth of your SIMPLE IRA Account can reasonably be shown, predicted, or guaranteed. Willingness to custody an asset in your SIMPLE IRA Account does not constitute a determination by us of the viability of the investment nor do we provide investment advice or recommend or evaluate the merits or suitability of any investment, for your benefit. Please contact your asset provider for information on how to calculate and allocate earnings on your investment. This method may vary depending on the provider and type of investment you have chosen. There are fees that we may charge in connection with the investments you selected for your SIMPLE IRA Account. Please consult the fee schedule for more information.

### ARTICLE XI – OTHER TAX CONSIDERATIONS

#### 11.1 Unrelated Business Taxable Income (UBTI)

- (a) Since your SIMPLE IRA is a tax-exempt organization under federal tax law, if your SIMPLE IRA earns income from an investment which utilizes debt-financing or which is derived from a business regarded as not related to the exempt purpose of your SIMPLE IRA, that income is called unrelated business taxable income (“UBTI”) and may be subject to taxation if it is in excess of permitted deductions. We have no responsibility for determining whether an investment made in your SIMPLE IRA Account earned income that may be considered unrelated business taxable income which is subject to this federal income tax. Rather, it is your responsibility to file the required Form 990-T when such unrelated business taxable income is earned.
- (b) In the event that your SIMPLE IRA earns unrelated business taxable income in excess of the \$1,000 exclusion (as that amount may be adjusted under the Code) for any taxable year, you agree to prepare or have prepared the required Form 990-T tax return, an application for employer identification number (if not previously obtained), any other documents that may be required and to file these forms with the Internal Revenue Service and pay the applicable unrelated business income tax from your SIMPLE IRA. Additionally, if requested by us, you agree to: (1) send us documentation which evidences that the investments in your SIMPLE IRA Account did not earn unrelated business taxable income; or (2) provide evidence of the filing of the required Form 990-T for such tax; or (3) authorize us to prepare the tax for you. Should you fail to provide us with such requested documentation within the time proscribed by us, you may be subject to a Late Documentation Fee as set forth on the Fee Schedule.

### ARTICLE XII – SERVICE FEES

#### 12.1 Service Fees

##### (a) Fee Schedule

- (i) We shall charge you fees for our services under this Agreement as is fully set forth in the Fee Schedule as it may be amended from time to time. Our Fee Schedule may be amended upon 30 days’ advance written notice to you and in accordance with Section 18.4 hereof.
- (ii) We will charge fees consistent with the direction you specify on your Account Application (credit card, if applicable, deduct from account or invoice you) or as modified by you or your Designated Representative.
- (iii) Any fees that are based upon the fair market value of non-marketable investments or assets that do not have a readily available market value, shall be based upon cost or the estimated fair market value of such assets, whichever is greater. Fees will continue to accrue and be payable even if your IRA

Account contains no assets other than uninvested cash. Publicly traded securities shall be valued at their fair market value. If cost is not reflective of fair market value with respect to the assets held in your SIMPLE IRA, you may provide us with a qualified independent valuation of such assets for purposes of determining an appropriate

fee; and we will give consideration to such independent valuation. Our determination shall be binding and conclusive for purposes of SIMPLE IRA fees based upon value.

- (iv) As set forth in the Fee Schedule, renewal fees, such as the retail Gold Level Service Fee, will be automatically renewed and withdrawn from your SIMPLE IRA Account, charged to your credit card, or invoiced each year on the anniversary date of your membership, unless you provide written notice of cancellation within 30 days prior to your anniversary date.
- (v) We have the right to select another alternate form of payment, such as a credit card you have on file with us, for payment of all fees if your chosen form of payment fails.
- (vi) Certain custodial fees may be paid for a limited time under a special fee schedule arrangement with a service provider as a result of a certain type of investment. If that arrangement is modified, that fee schedule may be discontinued and you will be responsible for payment for fees associated with your Account outside of any special fee schedule.
- (b) Deposit Management Program Fees. Other fees may be paid to us or our affiliates by third parties for assistance in performing certain transactions with respect to our Deposit Management Program (“Program”). Program fees are associated with cash management activities, such as account maintenance, participant bank selection, transaction processing, sub-accounting, record keeping, and any other services performed for the Program. Program fees for bank accounts maintained by the Custodian for all SIMPLE IRAs shall be deducted solely from interest earned on the un-invested Program cash prior to the crediting of such interest to the individual custodial account. For these services, the Custodian charges each bank account in the Program, a monthly fee at an annualized rate of up to 4.00% on the average assets maintained in the bank accounts, payable solely from interest earned on un-invested cash from the Program. The Program fees will be charged regardless of which bank accounts are being used by your SIMPLE IRA. The Custodian has no obligation to ensure that all such bank account pay the same rate of interest; however, the Custodian has the right, but not an obligation, to reduce (rebate) a portion of this fee to your SIMPLE IRA as to the balances in a specific bank’s bank account. The Program fee for administering the bank accounts can change from time to time without notice, but cannot exceed the annualized rate of 4.00% without 30 days prior notice to you and in accordance with Section 20.4 hereof. The Program fee is deducted directly from any interest paid on each bank account in the Program, and the net amount is paid to your SIMPLE IRA monthly.
- (c) Other Fees. We may utilize third party services to obtain data necessary to serve as Custodian regarding the Investments in your SIMPLE IRA Account and you agree that we may charge your SIMPLE IRA Account a fee for utilization of such services. We may charge you and/or your SIMPLE IRA Account for any reasonable expenses incurred by us in connection with any services that we deem necessary or which are directed by you for the administration of your SIMPLE IRA. These include, but are not limited to, attorney fees and expenses associated with the defense of or on behalf of your SIMPLE IRA or your interest involving your SIMPLE IRA Account or its assets and in defense of us if we are named in any proceeding involving you or your account.
- (d) Third Party Fees. You may incur third party fees associated with a transaction or investment as a result of your relationship with such third party and you acknowledge that these third party fees will not be disclosed on our fee schedule. You acknowledge that you are solely responsible for these third party fees.
- (e) Brokerage Commissions. Through our affiliate, we may receive a commission in connection with the unsolicited purchase or sale of a publicly-traded security. Any brokerage commissions attributable to the assets in your SIMPLE IRA will be charged to your SIMPLE IRA through your brokerage account. You cannot reimburse your IRA for those commissions. Commissions or other fees may be received by our affiliates from third parties for assistance in performing certain services for your SIMPLE IRA.
- (f) Miscellaneous. If you have provided us with information we consider sufficient to demonstrate that an asset(s) in your SIMPLE IRA Account is subject to bankruptcy, reorganization, receivership or similar proceedings, or otherwise impaired, or if we receive notice of such information, the fee based upon such asset may be reduced by us at the time we receive notice of this information. However, you understand that any fees accrued and due prior to us receiving notice of information we deem acceptable continue to be owed by you.
- (g) Right to Collect Fees. We have the right to freeze the assets held in your SIMPLE IRA to ensure that we are protected from any loss involving your SIMPLE IRA. We also have the right to liquidate, change dividend options and/or freeze assets for

any unpaid fee balance. Should fees or expenses not be collected, we have the right to cease acting as Custodian, close your account and force distribute any assets held in your SIMPLE IRA.

## 12.2 Credit Card

Upon establishment of your SIMPLE IRA or at such time thereafter, you may

be required to furnish us with a valid credit card account number and related information. Consistent with your designation on your Account Application and this Section, if you select to have your credit card pay fees, You authorize us to charge that account for any account-related fees and expenses. As provided above, should your chosen form of payment fail, we have the right to select another alternate payment for fees, including charging the credit card you have provided to us.

(a) You authorize us to charge your credit card on file for all current and subsequent annual maintenance fees/account-related fees, unless you revoke this authorization in writing. If fees are not paid directly from your IRA Account or charged to your credit card, we will submit an invoice to you for all outstanding fees and expenses plus any applicable late charges. If you do not pay any invoice upon receipt, we may liquidate sufficient investments in your SIMPLE IRA in accordance with Article XII of this Agreement to pay any fees and expenses due to us.

(b) If your credit card on file with us expires or otherwise is or becomes invalid, you shall immediately inform us and provide us with another valid credit card and related information and hereby authorize us to charge that credit card. We have the right, consistent with industry standard practices, to use a third party service to obtain updated credit card details if your credit card on file has expired.

## ARTICLE XIII – BENEFICIAR(IES) & POWER OF ATTORNEY

13.1 If you die before you receive all of the amounts in your SIMPLE IRA, payments from your SIMPLE IRA will be made to your beneficiary(ies). You may designate one or more persons or entities as beneficiary of your SIMPLE IRA. This designation can only be made on a form provided by or acceptable to us, and it will only be effective when it is accepted by us during your lifetime. Unless otherwise specified, each beneficiary designation you provide to us will cancel all previous ones. The consent of a beneficiary(ies) shall not be required for you to revoke a beneficiary designation.

13.2 If you have designated both primary and contingent beneficiaries and no primary beneficiary(ies) survives you, the contingent beneficiary(ies) shall acquire the designated share of your SIMPLE IRA. If no beneficiary should survive you, or if all beneficiaries renounce their rights to receive any benefit from the SIMPLE IRA, or if you fail to provide a beneficiary and none is listed on the SIMPLE IRA at the time of your death, we shall distribute the SIMPLE IRA in the following order: (1) to your spouse, but if you have no spouse or if your spouse does not survive you, then to (2) your estate.

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

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

13.5 After your death, your beneficiary(ies) shall have the right to direct the investment of your SIMPLE IRA assets, subject to the same conditions that applied to you during your lifetime under this Agreement. We have no obligation to locate or contact your beneficiaries after your death. If you name multiple beneficiaries, we may require instructions close in time from all the beneficiaries or a court order prior to processing any beneficiary request. To the extent a court order is required, we shall not be named in that proceeding but shall be presented a copy of the court order concerning the handling of the assets in the IRA.

13.6 If you sign a power of attorney appointing an attorney or agent to conduct business for your IRA Account, you must do so on a form acceptable to us. We reserve the right to refuse to honor any power of attorney presented to us, as well as to refuse to recognize a successor attorney-in-fact at any time, whether or not the successor attorney-in-fact is specifically identified in the power of attorney. In addition, we reserve the right to refuse to follow the instructions of a power of attorney. The person you appoint will be subject to all the provisions of the Agreement. Any person appointed, is not an owner of your IRA Account. We may honor a power of attorney until we receive written notice from you that you have revoked the power of attorney and have had a reasonable time to act on such notice. You shall be responsible for

investigating, selecting, instructing and monitoring the Power of Attorney and to perform whatever due diligence as may be appropriate before selecting or retaining that individual.

## ARTICLE XIV – REQUIRED MINIMUM DISTRIBUTIONS

14.1 Regulation Section 1.401(a)(9)-9 sets forth the uniform lifetime table for calculating your required minimum distribution. However, if your spouse is your sole designated beneficiary and is more than 10 years younger than you, you are to use the joint and survivor table in Regulation Section 1.401(a)(9)-9 for calculating your required minimum distribution each year.

14.2 If you fail to request your required minimum distribution by your required beginning date, we can, at our complete and sole discretion, do any one of the following:

- (a) make no distribution until you give us a proper withdrawal request;
- (b) distribute your entire SIMPLE IRA to you in a single sum payment; or
- (c) determine your required minimum distribution from your SIMPLE IRA with us each year based on your life expectancy, calculated using the uniform lifetime table in Regulation Section 1.401(a)(9)-9, and pay those distributions to you until you direct otherwise.

14.3 We will not be liable for any penalties or taxes related to your failure to take a required minimum distribution or to your receipt of an amount in excess of the required minimum distribution.

## ARTICLE XV - VALUATION & POLICY

15.1 On an annual basis (or more frequently), we will request updated valuation information from you and/or your asset sponsor or third party designated to provide such updated valuation. It is your duty to ensure that the fair market value of the assets in your SIMPLE IRA Account are accurate. We report the value of the assets in your SIMPLE IRA Account on your account statements and we will report the value as accurately as possible using the resources available to us. Where the fair market value of an asset in your SIMPLE IRA Account is readily ascertainable on either an established exchange or generally recognized market used in the financial services industry, we will report such valuations. Where the fair market value of an asset in your SIMPLE IRA Account is not readily ascertainable, you agree that you will provide to us a qualified independent appraisal or other acceptable valuation of the asset. The frequency with which we update valuations depends upon the asset type and the frequency with which we are provided with updated valuation information.

15.2 If you do not provide a valuation or appraisal, we may report that asset's value at its last known fair market value, at its acquisition cost, or we may, at our discretion, use a third-party source to value the asset. We may charge your SIMPLE IRA Account a fee if you fail to provide us with a valuation or appraisal and/or if we use a third-party source to value the asset.

15.3 We may require that you provide such an appraisal or validation with an updated valuation of the asset for any transaction which results in a taxable event, such as a distribution. You are solely responsible for the tax consequences of asset values reported to the Internal Revenue Service in connection with a distribution of any assets in your SIMPLE IRA Account or any other taxable event.

15.4 We have no obligation to conduct appraisals or valuations of assets in your SIMPLE IRA Account and we have no duty to verify the values provided to us. We neither provide a guarantee of value nor an opinion with regard to any independent appraisal and we assume no responsibility for the valuations reported or their accuracy. Valuation information should not be used as a basis for making investment decisions, including but not limited to purchasing, retaining or disposing of an asset. The reported value of any asset may differ materially from its actual value. We reserve the right to reject a valuation change if the information is inconsistent with our procedure or process requirements. For assets that have passed their maturity date, we may require you to provide information to show the current status of the asset.

15.5 We may use the value of the asset to determine fees owed to us. If you believe that an asset in your SIMPLE IRA Account should be reported at a different value, or does not have any value, it is your responsibility to provide us with information sufficient to demonstrate that the asset's reported value should be changed. You may provide us with this information through a qualified appraisal or through means we consider acceptable to evidence the new value of the asset. If this is the only asset held in your SIMPLE IRA Account, we have the right to devalue, distribute the asset and close your SIMPLE IRA Account. If you do not provide sufficient information to devalue the asset, we may continue to report the asset at the last known value given to us or use a third-party source to value the asset. If we become aware that an asset has lost value or is no value, we may notify you of such information and may reduce the value of such asset/or distribute the asset to you.

**ARTICLE XVI - TERMINATION OF AGREEMENT, RESIGNATION, OR REMOVAL OF CUSTODIAN**

- 16.1 Either party may terminate this Agreement at any time by giving written notice to the other party. We can resign as Custodian at any time effective 30 days after we mail written notice of our resignation to you. Upon receipt of that notice, you must make arrangements to transfer your SIMPLE IRA Account to another financial organization. If you do not complete a transfer of your SIMPLE IRA Account within 30 days from the date we mail the notice to you, we have the right to transfer your SIMPLE IRA assets to a successor SIMPLE IRA Custodian or trustee that we choose in our sole discretion, or we may pay or distribute your SIMPLE IRA assets to you in a single sum or assignment. If we transfer your SIMPLE IRA, the existing SIMPLE IRA documents will govern your SIMPLE IRA relationship with the new Custodian or trustee unless the successor Custodian/ trustee notifies you in writing of any changes and/or requires new SIMPLE IRA documents to be signed by you. We shall not be liable for any actions or failures to act on the part of any successor Custodian or trustee, nor for any tax consequences you may incur that result from the transfer or distribution of your assets pursuant to this section.
- 16.2 If this Agreement is terminated, we may charge to your SIMPLE IRA a reasonable amount necessary to cover any associated costs, including but not limited to, one or more of the following:
- any fees, expenses or taxes chargeable against your SIMPLE IRA; and
  - any penalties or surrender charges associated with the early withdrawal of any savings instrument or other investment in your SIMPLE IRA.
- 16.3 After your SIMPLE IRA with us is closed, you are responsible for ensuring that all assets previously in your Account are properly titled, registered and transferred out of our name.
- 16.4 If we are required to comply with Regulation Section 1.408-2(e), and we fail to do so, or we are not keeping the records, making the returns or sending the statements as are required by forms or Regulations, the IRS may, after notifying you, require you to substitute another trustee or Custodian.
- 16.5 If our organization changes its name, reorganizes, merges with another organization (or comes under the control of any federal or state agency), or if our entire organization (or any portion which includes your SIMPLE IRA) is bought by another organization, that organization (or agency) shall automatically become the trustee or Custodian of your SIMPLE IRA, but only if it is the type of organization authorized to serve as a SIMPLE IRA trustee or Custodian.

**ARTICLE XVII – APPLICABLE LAW; WAIVER; AND VENUE**

- 17.1 This Agreement is subject to all applicable federal laws and regulations and shall be governed by and construed under the applicable laws of the State of South Dakota. The laws of the State of South Dakota shall not govern any procedural matters, including but not limited to any applicable limitation period.
- 17.2 **YOU AGREE THAT ANY CLAIM OR CAUSE OF ACTION AGAINST CUSTODIAN ARISING OUT OF OR RELATING IN ANY WAY TO THIS AGREEMENT, CUSTODIAN'S DUTIES OR RESPONSIBILITIES THEREUNDER, OR YOUR IRA ACCOUNT MUST BE FILED WITHIN ONE (1) YEAR AFTER THE CLAIM OR CAUSE OF ACTION ACCRUED, OR IF THE APPLICABLE LAW REQUIRES A LONGER LIMITATIONS PERIOD, WITHIN THE SHORTEST PERIOD OF TIME PERMITTED BY THAT LAW. YOU AGREE TO WAIVE ANY STATUTE OF LIMITATIONS TO THE CONTRARY.**
- 17.3 **YOU FURTHER AGREE THAT CUSTODIAN SHALL NOT BE LIABLE FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES, AND YOU AGREE TO WAIVE ANY SUCH CLAIMS OR DAMAGES AGAINST CUSTODIAN TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.**
- 17.4 If any part of this Agreement is held to be illegal or invalid, the remaining parts shall not be affected. No waiver of any part of this Agreement shall be deemed to constitute a waiver of any other part, and any such waiver shall not constitute a continuing waiver and shall not affect you or our ability to thereafter enforce any and all parts of this Agreement.
- 17.5 **YOU AGREE THAT ANY ACTION FILED AGAINST CUSTODIAN ARISING OUT OF OR RELATING IN ANY WAY TO THIS AGREEMENT OR OUR ROLE AS CUSTODIAN, SHALL BE EXCLUSIVELY BROUGHT IN THE COUNTY COURTS OF CUYAHOGA COUNTY, OHIO OR IN THE U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO EASTERN DIVISION-CLEVELAND, AND YOU AGREE TO SUBMIT TO THE JURISDICTION OF THESE COURTS BOTH IN CONNECTION WITH ANY SUCH ACTION YOU MAY FILE AND IN CONNECTION WITH ANY ACTION WHICH CUSTODIAN MAY FILE AGAINST YOU.**

**ARTICLE XVIII – IMPORTANT MISCELLANEOUS PROVISIONS**

- 18.1 **Security.** We take the protection of your personal information seriously. Access to account information is provided only to authorized parties after proper authentication procedures are successful. It is your responsibility to promptly report any suspected or actual security breach or unauthorized transaction.
- 18.2 **Confidentiality.** Our Privacy Notice, sent to SIMPLE IRA Account owners annually,

sets forth the type of information we collect and whether and how we share your nonpublic personal information. We restrict access to your nonpublic personal information to those employees, third parties and agents who need to know what information to provide services made available under this Agreement and to evaluate business operations and analyze service or process improvements. Your information may also be shared to respond to

court orders and subpoenas without prior notice to you.

- 18.3 **Notices and Change of Address.** If you have not agreed to electronic consent or you later withdraw your consent, any required notice regarding this SIMPLE IRA Account will be considered delivered as of the date of the mailing and will be mailed to your last known address. You are responsible for notifying us in writing of any change of address to your account. Any notice to be given to us will be considered effective when we actually receive it.
- 18.4 **Amendments.** We have the right to amend this Agreement at any time. Any amendment we make to comply with the Code and related Regulations does not require your consent. You will be deemed to have consented to any other amendment unless, within 30 days from the date we mail or electronically transmit the amendment, you notify us in writing that you do not consent. If you timely notify us in writing that you do not consent to the amendment, you will have 30 days from the date your notification is received by us to secure a new custodian for your SIMPLE IRA Account and you are responsible for ensuring that all assets in your SIMPLE IRA Account are properly titled, registered, and transferred out of our name and into the name of the new custodian.
- 18.5 **Withdrawals or Transfers.** All requests for withdrawal or transfer shall be in writing on a form provided by or acceptable to us. The method of distribution must be specified in writing. The tax identification number of the recipient must be provided to us before we are obligated to make a distribution. Withdrawals shall be subject to all applicable tax and other laws and regulations, including possible early withdrawal penalties or surrender charges and withholding requirements.
- 18.6 **Transfers from Other Plans.** We can receive amounts transferred to this SIMPLE IRA from the Custodian or trustee of another SIMPLE IRA. In addition, we can accept direct rollovers of eligible rollover distributions from employer- sponsored retirement plans as permitted by the Code. We reserve the right not to accept any transfer or direct rollover.
- 18.7 **Liquidation of Assets.** We have the right to liquidate assets in your SIMPLE IRA if necessary to make distributions, pay our fees, expenses, indemnities, taxes, federal tax levies, and penalties or surrender charges chargeable against your SIMPLE IRA Account. If we are forced to liquidate assets for one of the above reasons, we will decide, in our complete and sole discretion, which asset to liquidate. You agree not to hold us liable for any damages or loss associated with such liquidation of assets.
- 18.8 **Restrictions on the Assets.** Neither you nor any beneficiary may sell, transfer, pledge or place a lien on the assets in your SIMPLE IRA in any manner whatsoever, except as provided by law or this Agreement. The assets in your SIMPLE IRA shall not be responsible for the debts, contracts or torts of any person entitled to distributions under this Agreement.
- 18.9 **Acknowledgment of and Authorization for Telephone Recordings.** We reserve the right to install and/or maintain automatic telephone recording equipment on telephone lines used by personnel servicing the custodial account in connection with trading functions and customer inquiries. By signing this Agreement, you acknowledge our right and expressly authorize us to record and play back any and all such telephone calls.
- 18.10 **SIMPLE IRA Account and Assets Not Guaranteed.** We do not guarantee the assets in your SIMPLE IRA Account, nor do we ensure against any loss or depreciation. Your investments are subject to investment risk, including the possible loss of the principal invested, and your investments may lose value.
- 18.11 **Account Holder Verification.** To help the government fight the funding of terrorism and money laundering activities, Federal law requires us to obtain, verify and record information that identifies who opens an account with us. You acknowledge that, to comply with Federal law, we will require certain information, such as, but not limited to the name, address, date of birth and tax identification number of the Account Holder before a SIMPLE IRA Account can be opened.
- 18.12 **Dividend Options.** We have a right to change dividend options on investments held in your SIMPLE IRA to pay our fees and/or expenses. We are not liable for the impact of changing dividend options nor required to change the dividend option(s) back to their prior selection. It is the SIMPLE IRA Owner's responsibility to monitor and provide acceptable instructions to update their dividend option(s).

**General Instructions**

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

**Purpose of Form**

Form 5305-S is a model custodial account agreement that meets the requirements of section 408(a) and 408(p). However, only Articles I through VII have been reviewed by the IRS. A SIMPLE individual retirement account (SIMPLE IRA) is established after the form is fully executed by both the individual (Participant) and the Custodian. This account must be

created in the United States for the exclusive benefit of the Participant and his or her beneficiaries.

Do not file Form 5305-S with the IRS. Instead, keep it with your records.

For more information on SIMPLE IRAs, including the required disclosures the Custodian must give the Participant, see Pub. 590-A, Contributions to Individual Retirement Arrangements (IRAs); Pub. 590-B, Distributions from Individual Retirement Arrangements (IRAs); and Pub 560, Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans).

**Definitions**

**Participant.** The Participant is the person who establishes the custodial account.

**Custodian.** The Custodian must be a bank or savings and loan association, as defined in Section 408(n), or any person who has the approval of the IRS to act as Custodian.

**Transfer SIMPLE IRA**

This SIMPLE IRA is a “transfer SIMPLE IRA” if it is not the original recipient of contributions under any SIMPLE IRA plan. The summary description requirements of section 408(l)(2) do not apply to transfer SIMPLE IRAs.

**Specific Instructions**

**Article IV.** Distributions made under this article may be made in a single sum, periodic payment, or a combination of both. The distribution option should be reviewed in the year the Participant reaches age 70 1/2 to ensure that the requirements of section 408(a(6)) have been met.

**Article VIII.** Article VIII and any that follow it may incorporate additional provisions that are agreed to by the Participant and Custodian to complete the agreement. They may include, for example, definitions, investment powers, voting rights, exculpatory provisions, amendment and termination, removal of the Custodian, Custodian’s fees, state law requirements, beginning date of distributions, accepting only cash, treatment of excess contributions, prohibited transactions with the Participant, etc. Attach additional pages if necessary.

Equity Trust Company's SIMPLE IRA Disclosure Statement is a summary of the general requirements set forth by the Internal Revenue Service Regulations. These Regulations require that certain information is disclosed to individuals who are establishing an Savings Incentive Match Plan for Employees ("SIMPLE IRA"). By executing the Equity Trust Company Application, you acknowledge receipt of this Disclosure Statement. This Disclosure Statement is not to be construed as giving or replacing legal advice. Please consult with a tax professional concerning any questions related to your SIMPLE IRA with us.

**RIGHT TO REVOKE YOUR SIMPLE IRA**

If you receive this Disclosure Statement at the time you establish your SIMPLE IRA, you have the right to revoke your account within seven (7) days of its establishment. If you do not exercise this right within the seven days, we will assume that you have accepted the terms and conditions of the account you have established.

If revoked, you are entitled to a full return of the contribution you made to your SIMPLE IRA. The amount returned to you would not include an adjustment for such items as sales commissions, administrative expenses, or fluctuation in market value. You may make this revocation only by mailing or delivering a written notice to the Custodian at the address listed on the application.

If you send your notice by first class mail, your revocation will be deemed mailed as of the postmark date.

If you have any questions about the procedure for revoking your SIMPLE IRA, please call the Custodian at the telephone number listed on the application.

**REQUIREMENTS OF A SIMPLE IRA - IRC Section 408(p)**

- A. **CASH CONTRIBUTIONS** - Your contribution must be in cash, unless it is a rollover contribution.
- B. **MAXIMUM CONTRIBUTION** - The only contributions that may be made to your SIMPLE IRA are employee elective deferrals under a qualified salary reduction agreement, employer contributions, and other contributions allowed by the Code or related regulations, that are made under a SIMPLE IRA plan maintained by your employer.

Employee elective deferrals may not exceed the lesser of 100 percent of your compensation for the calendar year or \$13,500 for 2021. The contribution limit increased to \$14,000 for tax years 2022, with possible cost-of-living adjustments in future years. Your employer may make additional contributions to your SIMPLE IRA within the limits prescribed in Internal Revenue Code Section [IRC Section 408(p)]. Your employer is required to provide you with information that describes the terms of its SIMPLE IRA plan.

Your employer is required to either contribute to your SIMPLE IRA through either a matching contribution or a non-elective contribution. For a matching contribution, the employer must make a dollar-for-dollar match, not to exceed 3% of your compensation (to a maximum of \$14,000, or \$17,000 for participants over the age of 50). For a non-elective contribution, your employer can make a contribution of 2% of your compensation, limited to \$290,000 for 2021 and \$305,000 for 2022, this limit is subject to cost-of-living adjustments in future years.

- C. **CATCH-UP CONTRIBUTIONS** - If you are age 50 or older by the close of the taxable year, you may make an additional contribution to your SIMPLE IRA. The maximum additional contribution to your SIMPLE IRA is \$3,000 per year, with possible cost-of-living adjustments in each subsequent year.
- D. **NON-FORFEITABILITY** - Your interest in your SIMPLE IRA is non-forfeitable.
- E. **ELIGIBLE CUSTODIANS** - The Custodian of your SIMPLE IRA must be a bank, savings and loan association, credit union, or a person or entity approved by the Secretary of the Treasury.
- F. **COMMINGLING ASSETS** - The assets of your SIMPLE IRA cannot be commingled with other property except in a common trust fund or common investment fund.
- G. **LIFE INSURANCE** - No portion of your SIMPLE IRA may be invested in life insurance contracts.
- H. **COLLECTIBLES** - You may not invest the assets of your SIMPLE IRA in collectibles [within the meaning of IRC Section 408(m)]. A collectible is defined as any work of art, rug or antique, metal or gem, stamp or coin, alcoholic beverage, or other tangible personal property specified by the Internal Revenue Service (IRS). However, specially minted United States gold and silver coins, and certain state-issued coins are permissible investments. Platinum coins and certain gold, silver, platinum or palladium bullion [as described in IRC Section 408(m)(3)] also are permitted as SIMPLE IRA investments.

- I. **REQUIRED MINIMUM DISTRIBUTIONS** - You are required to take minimum distributions from your SIMPLE IRA at certain times in accordance with Treasury Regulation 1.408-8. Below is a summary of the SIMPLE IRA distribution rules.

- 1. if you were born before July 1, 1949, you are required to take a minimum

distribution from your SIMPLE IRA for the year in which you reach age 70 1/2 and for each year thereafter. You must take your first distribution by your required beginning date, which is April 1 of the year following the year you reach age 70 1/2. However, if you were born on or after July 1, 1949, you are required to a minimum distribution from your SIMPLE IRA for the year in which you reach age 72 and for each year thereafter. You must take your first distribution by your required beginning date, which is April 1 of the year following the year you reach age 72. The minimum distribution for a taxable year is equal to the amount obtained by dividing the SIMPLE IRA Account balance at the end of the prior year by the applicable divisor.

- 2. The applicable divisor is generally determined using the uniform lifetime table provided by the IRS. If your spouse is your sole designated beneficiary, and is more than 10 years younger than you, the required minimum distribution is determined annually using joint life expectancy of you and your spouse obtained from the joint and last survivor table provided by the IRS, rather than the life expectancy divisor from the uniform lifetime table.

We reserve the right to do any one of the following by the date in which you are required to take a distribution:

- (a) make no distribution until you give us a proper withdrawal request;
- (b) distribute your entire SIMPLE IRA to you in a single sum payment; or
- (c) determine your required minimum distribution from your SIMPLE IRA with us each year based on your life expectancy calculated using the uniform lifetime table and pay those distributions to you until you direct otherwise.

If you fail to take a required minimum distribution for the year in which you were required to take one, a penalty tax of 50 percent is imposed on the amount of the required minimum distribution that should have been taken. You are required to file IRS Form 5329 along with your income tax return to report and pay any additional taxes to the IRS.

- J. **BENEFICIARY DISTRIBUTIONS** - Upon your death, your beneficiaries of your SIMPLE IRA Account are required to take distributions pursuant to Sections 401(a)(9) of the IRC and Treasury Regulation 1.408-8. These requirements are summarized as follows:

- 1. **Death of SIMPLE IRA Owner Before January 1, 2020** - Your designated beneficiary is determined based on the beneficiaries designated as of the date of your death, who remain your beneficiaries as of September 30 of the year following the year of your death. If you die,
  - (a) on or after your required beginning date, distributions must be made to your beneficiaries over the longer of the single life expectancy of your designated beneficiaries, or your remaining life expectancy. If a beneficiary other than a person or qualified trust as defined in the Treasury Regulations is named, you will be treated as having no designated beneficiary of your SIMPLE IRA for purposes of determining the distribution period. If there is no designated beneficiary of your SIMPLE IRA, distributions will commence using your single life expectancy, reduced by one in each subsequent year.
  - (b) before your required beginning date, the entire amount remaining in your Account will, at the election of your designated beneficiaries, either:
    - (i) be distributed by December 31 of the year containing the fifth anniversary of your death, or
    - (ii) be distributed over the remaining life expectancy of your designated beneficiaries.

If your spouse is your sole designated beneficiary, he or she must elect either option (i) or (ii) by the earlier of December 31 of the year containing the fifth anniversary of your death, or December 31 of the year life expectancy payments would be required to begin. Your designated beneficiaries, other than a spouse who is the sole designated beneficiary, must elect either option (i) or (ii) by December 31 of the year following the year of your death. If no election is made, distribution will be calculated in accordance with option (ii). In the case of distributions under option (ii), distributions must commence by December 31 of the year following the year of your death. Generally, if your spouse is the designated beneficiary, distributions need not commence until December 31 of the year you would have attained

age 72 (age 70 1/2, if you would have reached age 70 1/2 before 2020), if later. If a beneficiary other than a person or qualified trust as defined in the Treasury Regulations is named, you will be treated as having no designated beneficiary of your SIMPLE IRA for purposes of determining the distribution period. If there is no designated beneficiary of your SIMPLE IRA, the entire SIMPLE IRA must be distributed by December 31 of the year containing the fifth anniversary of your death.

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

If we so choose, for any reason (e.g., due to limitations of our charter or bylaws), we may require that a beneficiary of a deceased SIMPLE IRA account owner take total distribution of all SIMPLE IRA assets by December 31 of the year following the year of death.

If your beneficiary fails to take a required minimum distribution after your death, an additional penalty tax of 50 percent is imposed on the amount of the required minimum distribution that should have been taken but was not. Your beneficiary must file IRS Form 5329 along with his or her income tax return to report and remit any additional taxes to the IRS.

You should consult a tax advisor and IRS Publication 590 for specific tax rules and consequences regarding your SIMPLE IRA.

2. **Death of SIMPLE IRA Owner On or After January 1, 2020** - Upon your death, the entire amount in your SIMPLE IRA Account will be distributed by December 31 of the year containing the 10th anniversary of your death unless you have an eligible designated beneficiary under Treasury Regulations or you have no designated beneficiary for purposes of determining a distribution period. This requirement applies to beneficiaries regardless of whether you die before, on, or after your required beginning date. If your beneficiary is an eligible designated beneficiary, the entire amount in your SIMPLE IRA Account can be distributed over the remaining life expectancy of your eligible designated beneficiary (or a period not exceeding that life expectancy).

An eligible designated beneficiary under Treasury Regulations is a designated beneficiary who is (1) your surviving spouse; (2) your child who has not yet reached the age of majority; (3) disabled [determined by a physician that the impairment can be expected to result in death or to be of long, continued and indefinite duration]; or (4) chronically ill [defined as someone who is (1) unable to perform without substantial assistance from another individual at least two activities of daily living for an indefinite period due to a loss of functional capacity, (2) has a level of disability similar to the level of disability described above requiring assistance with daily living based on loss of functional capacity, or (3) requires substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.] Special rules apply to trust beneficiaries and distributions for those trust beneficiaries.

Life expectancy distributions to an eligible designated beneficiary must begin by December 31 of the year following the year of your death. If your spouse, however, is the eligible designated beneficiary, distributions need not begin until the year you would have reached the age of 72. If your eligible designated beneficiary is your minor child, the life expectancy payments must begin by December 31 of the year following the year of your death and will continue until your child reaches the age of majority. Then, the eligible designated beneficiary will have 10 years from that date to distribute the SIMPLE IRA Account.

If you name a beneficiary other than a person (such as a trust, estate or charity), we will treat you as having not designated a beneficiary for your IRA Account for purposes of determining the distribution period. If you die before your required beginning date and there is no designated beneficiary of your SIMPLE IRA Account, the entire SIMPLE IRA must be distributed by December 31 of the year containing the fifth anniversary date of your death. If you die on or after your required beginning date and there is no designated beneficiary of your SIMPLE IRA Account, distributions will begin using your single life expectancy, reduced by one in each subsequent year.

A spouse who is the sole designated beneficiary of your entire SIMPLE IRA will be deemed to elect to treat your SIMPLE IRA as his or her own by either (i) making contributions to your SIMPLE IRA or (ii) failing to timely remove a required minimum distribution from your SIMPLE IRA. Regardless of whether or not the spouse is the sole designated beneficiary of your SIMPLE IRA, a spouse beneficiary may roll over his or her share of the assets to his or her own SIMPLE IRA.

If your beneficiary fails to take a required minimum distribution after your death, an additional penalty tax of 50 percent is imposed on the amount of the required minimum distribution that should have been taken but was not. Your beneficiary must file IRS Form 5329 with his or her income tax return to report and pay any additional penalty taxes to the IRS.

- K. **QUALIFYING LONGEVITY ANNUITY CONTRACTS AND RMDs** - A qualifying longevity annuity contract (QLAC) is a deferred annuity contract that, among other

requirements, must guarantee lifetime income starting no later than age 85. The total premiums paid to QLACs in your IRAs must not exceed 25 percent (up to \$130,000) of the combined value of your IRAs (excluding Roth IRAs). The \$130,000 limit is subject to cost-of-living adjustments each year.

When calculating your RMD, you may reduce the prior year end account value by the value of QLACs that your SIMPLE IRA holds as investments.

For more information on QLACs, you may wish to refer to the IRS website at [www.irs.gov/Form1098Q](http://www.irs.gov/Form1098Q).

**INCOME TAX CONSEQUENCES OF ESTABLISHING A SIMPLE IRA**

- A. **DEDUCTIBILITY FOR SIMPLE IRA CONTRIBUTIONS** - You may not take a deduction for the amounts contributed to your SIMPLE IRA as either employee elective deferrals or employer contributions. However, employee elective deferrals to a SIMPLE IRA will reduce your taxable income. Further, employer SIMPLE IRA contributions, including earnings, will not be taxable to you until you take a distribution from your SIMPLE IRA.

Participation in your employer's SIMPLE IRA plan renders you an active participant for purposes of determining whether or not you can deduct contributions to a Traditional IRA.

- B. **CONTRIBUTION DEADLINE** - SIMPLE IRA deferral contributions must be deposited into the SIMPLE IRA as soon as administratively possible, but in no event later than 30 days following the month in which you would have otherwise received the money in cash. Employer matching or nonelective contributions must be deposited no later than the due date for filing the employer's tax return, including extensions.

- C. **TAX CREDIT FOR CONTRIBUTIONS** - You may be eligible to receive a tax credit for your SIMPLE IRA deferrals. You may be eligible for this tax credit if you are (1) age 18 or older as of the close of the taxable year; (2) not a dependent of another taxpayer; and (3) not a full-time student. This credit may be up to \$1,000 but is subject to limitations based upon modified adjusted gross income and filing status. The credit is based upon your income and will range from 0 to 50 percent of eligible contributions. In order to determine the amount of your contributions, please refer to IRS Form 8880 to determine your credit rate.

- D. **TAX-DEFERRED EARNINGS** - The investment earnings of your SIMPLE IRA are not subject to federal income tax until distributions are made (or, in certain instances, when distributions are deemed to be made).

- E. **EXCESS CONTRIBUTIONS** - If you contribute more than the maximum allowable limit for the tax year, you have an excess contribution and must correct it. Excess deferrals, adjusted for earnings, must be distributed from your SIMPLE IRA.

If your employer mistakenly contributes too much to your SIMPLE IRA as an employer contribution, your employer may effect distribution of the employer excess amount, adjusted for earnings through the date of distribution. The amount distributed to the employer is not includable in your gross income.

Excess contributions not returned could subject you to an excise tax.

- F. **INCOME TAX WITHHOLDING** - Any withdrawal from your SIMPLE IRA is subject to federal income tax withholding. You may, however, elect not to have withholding apply to your SIMPLE IRA withdrawal. If withholding is applied to your withdrawal, not less than 10 percent of the amount withdrawn must be withheld from your SIMPLE IRA.

- G. **EARLY DISTRIBUTION PENALTY TAX** - Generally, if you receive a distribution from your SIMPLE IRA before you attain age 59½, an additional early distribution penalty tax of 10 percent (25 percent if less than two years have passed since you first participated in a SIMPLE IRA plan sponsored by your employer) will apply to the taxable amount of the distribution. However, you will not receive an early distribution penalty tax if the distribution is due to: (1) death [no penalty payment for your beneficiary]; (2) a disability [evidenced by physician attestation that your impairment can be expected to result in death or to be of long, continued, and indefinite duration]; (3) substantially equal periodic payments at least annually by you over your life expectancy or the joint life expectancy of your designated beneficiary so long as you continue these payments for the longer of five years or until you reach age 59½; (4) unreimbursed medical expenses in excess of 10% of your adjusted gross income; distribution penalty tax. The medical expenses may be for you, your spouse, or any dependent listed on your tax return; (5) health insurance premiums paid by qualified unemployed individuals; (6) qualified higher education expenses; (7) acquisition costs for a first-time homebuyer for a principal residence subject to certain requirements; (8) an IRS levy; or (9) qualified reservist distributions if you are called to active duty for more than 179 days or an indefinite period.

You must file IRS Form 5329 along with your income tax return to the IRS to report and remit any additional taxes or to claim a penalty tax exception.

- H. **ROLLOVERS AND CONVERSIONS** - Your SIMPLE IRA may be rolled over to another SIMPLE IRA, Traditional IRA, or an eligible employer-sponsored retirement plan of yours, may receive rollover contributions, or may be converted to a Roth IRA, so long as you comply with the applicable rollover and conversion rules established by the IRS. A rollover occurs when your cash or assets are moved to a SIMPLE IRA from another SIMPLE IRA, Traditional IRA, or from your employer's qualified retirement plan, 403(a) annuity plan, 403(b) tax-sheltered annuity, or 457(b) eligible governmental deferred compensation plan. The amount rolled over is not subject to taxation or the additional

10 percent early distribution penalty tax. Conversion on the other hand is a taxable event where assets in a SIMPLE IRA are moved to a Roth IRA. As the requirements can be complicated, you should see a tax advisor if you have questions.

1. **SIMPLE IRA to SIMPLE IRA Rollover.** Assets distributed from your SIMPLE IRA may be rolled over to a SIMPLE IRA if you meet the requirements of IRC Section 408(d)(3). For example, a SIMPLE IRA rollover to a SIMPLE IRA is required to be completed within 60 days after the distribution is received.

Regardless of the number of IRAs you own, you are only permitted to roll over one distribution from an IRA (Traditional, Roth, or SIMPLE) in a 12-month period.

2. **Traditional IRA to SIMPLE IRA Rollovers.** Funds distributed from your Traditional IRA may be rolled over to a SIMPLE IRA if you meet the requirements of IRC Section 408(d)(3) and two years have passed since you first participated in a SIMPLE IRA plan sponsored by your employer. A Traditional IRA rollover to SIMPLE IRA must occur within 60 days after you receive the distribution.

Regardless of the number of IRAs you own, you are only permitted to roll over one distribution from an IRA (Traditional, Roth, or SIMPLE) in a 12-month period.

3. **Employer-Sponsored Retirement Plan to SIMPLE IRA Rollovers.** You may roll over, directly or indirectly, any eligible rollover distribution from an eligible employer-sponsored retirement plan to a SIMPLE IRA provided two years have passed since you first participated in the SIMPLE IRA plan sponsored by your employer. An eligible rollover distribution is defined generally as any distribution from a qualified retirement plan, 403(a) annuity, 403(b) tax-sheltered annuity, 457(b) eligible governmental deferred compensation plan, or federal Thrift Savings Plan unless it is a required minimum distribution, hardship distribution, part of a certain series of substantially equal periodic payments, corrective distributions of excess contributions, excess deferrals, excess annual additions and any income allocable to the excess, deemed loan distribution, dividends on employer securities, the cost of life insurance coverage, or a distribution of Roth elective deferrals from a 401(k), 403(b), governmental 457(b), or federal Thrift Savings Plan.

If you elect to receive your rollover distribution prior to placing it in a SIMPLE IRA, thereby conducting an indirect rollover, your plan administrator generally will be required to withhold 20 percent of your distribution as a payment of income taxes. When completing the rollover, you may make up out of pocket the amount withheld, and roll over the full amount distributed from your employer-sponsored retirement plan. To qualify as a rollover, your eligible rollover distribution must be rolled over to your SIMPLE IRA not later than 60 days after you receive the distribution. Alternatively, you may claim the withheld amount as income, and pay the applicable income tax, and if you are under age 59 1/2, the 10 percent early distribution penalty tax (unless an exception to the penalty applies).

As an alternative to the indirect rollover, your employer generally must give you the option to directly roll over your employer-sponsored retirement plan balance to a SIMPLE IRA. If you elect the direct rollover option, your eligible rollover distribution will be paid directly to the SIMPLE IRA (or other eligible employer-sponsored retirement plan) that you designate. The 20 percent withholding requirements do not apply to direct rollovers.

4. **SIMPLE IRA to Traditional IRA Rollovers.** Assets distributed from your SIMPLE IRA may be rolled over to your Traditional IRA without IRS penalty tax, provided two years have passed since you first participated in a SIMPLE IRA plan sponsored by your employer. As with SIMPLE IRA-to-SIMPLE IRA rollovers, the requirements of IRC Section 408(d)(3) must be met. A SIMPLE IRA to-Traditional IRA rollover must be completed within 60 days after you receive the distribution.

Regardless of the number of IRAs you own, you are only permitted to roll over one distribution from an IRA (Traditional, Roth, or SIMPLE) in a 12-month period.

5. **SIMPLE IRA-to-Employer-Sponsored Retirement Plan Rollovers.** You may roll over, directly or indirectly, any eligible rollover distribution from a SIMPLE IRA to an employer's qualified retirement plan, 403(a) annuity, 403(b) tax-sheltered annuity, or 457(b) eligible governmental deferred compensation plan, provided two years have passed since you first participated in a SIMPLE IRA plan sponsored by your employer. The employer-sponsored retirement plan, however, must allow for such rollover contributions. A SIMPLE IRA may not receive rollovers from employer-sponsored retirement plans.

6. **SIMPLE IRA to Roth IRA Conversions.** You are eligible to convert all or any portion of your existing SIMPLE IRA(s) into your Roth IRA(s), provided two years have passed since you first participated in a SIMPLE IRA plan sponsored by your employer. If you convert to a Roth IRA, the amount of the conversion from your SIMPLE IRA to your Roth IRA will be treated as a distribution for income tax purposes, and is includible in your gross income. Although the conversion amount generally is included in income, the 10 percent early distribution penalty tax will not apply to conversions from a SIMPLE IRA to a Roth IRA, regardless of whether you qualify for any exceptions to the 10 percent early

distribution penalty tax. If you are age 70½ or older you must remove your required minimum distribution before converting your SIMPLE IRA.

7. **Written Election.** At the time you make a rollover to a SIMPLE IRA, you must designate in writing to the Custodian your election to treat that contribution as a rollover. Once made, the rollover election is irrevocable.

- I. **RECHARACTERIZATIONS** – If you make a contribution to a SIMPLE IRA and later recharacterize either all or a portion of the original contribution to a Roth IRA along with net income, you may elect to treat the original contribution as having been made to the Roth IRA. You can also recharacterize a contribution from a Roth IRA to a SIMPLE IRA. The deadline for completing a recharacterization is your tax filing deadline for the year for which the original contribution was made. You may not recharacterize a Roth IRA conversion.

- J. **NOT TAX ADVICE** - Nothing contained within this Disclosure Statement or Custodial Agreement should be construed as tax or investment advice. Due to the specific and complex tax rules under Publication 590 and other regulations, you should seek advice from your tax or investment advisor for details on the specific rules and the tax treatment of your assets.

**LIMITATIONS AND RESTRICTIONS**

- A. **DEDUCTION OF ROLLOVERS AND TRANSFERS** – A deduction is not allowed for rollover or transfer contributions.
- B. **GIFT TAX** – Transfers of your SIMPLE IRA assets to a beneficiary made during your life and at your request may be subject to federal gift tax under IRC Section 2501.
- C. **SPECIAL TAX TREATMENT** – Capital gains treatment and 10-year income averaging authorized by IRC Sec. 402 do not apply to SIMPLE IRA distributions.
- D. **PROHIBITED TRANSACTIONS** – If you or your beneficiary engage in a prohibited transaction with your SIMPLE IRA, as described in IRC Section 4975, your entire account will lose its tax-deferred status, and you must include the fair market value of your account in your gross income for that taxable year. You may also incur a tax penalty. Examples of a prohibited transaction include using your SIMPLE IRA assets to buy property for personal use, lending money from your SIMPLE IRA to a disqualified person and taking a loan from your SIMPLE IRA. Please refer to a tax consultant for advice on questions of prohibited transactions.
- E. **PLEDGING/SECURITY** – If you pledge any portion of your SIMPLE IRA as collateral for a loan, the amount so pledged will be treated as a distribution and will be included in your gross income for that year.

**OTHER INFORMATION**

- A. **IRS PLAN APPROVAL** – The agreement used to establish this SIMPLE IRA has been approved by the IRS. The IRS approval is a determination only as to form. It is not an endorsement of the plan in operation or of the investments offered.
- B. **NO PREDICTION, REPRESENTATION OR GUARANTEE OF FUTURE VALUE** - The value of your SIMPLE IRA at any time will depend on the amount of contributions to it, the performance of its investments as selected by you or your Authorized Agent, and the time and amount of charges to and payments from it. Equity Trust does not predict, represent or guarantee the value of your IRA at any future time.
- C. **NON-DEPOSIT INVESTMENTS NOT INSURED BY FDIC** - Non-deposit investments, such as, but not limited to stocks, bonds, mutual funds, real property and private placements, of the SIMPLE IRA are not FDIC insured and are subject to investment risks, including the loss of principal.
- D. **DISASTER RELATED RELIEF** – If you qualify for disaster related relief as specifically provided by Congress, you may be eligible for favorable tax treatment on distributions, rollovers, and other transactions related to your SIMPLE IRA Account. Publication 590-B, Distributions from Individual Retirement Arrangements (IRAs) from the IRS will provide additional information for you for these favorable tax treatment opportunities, as well as the IRS website at [www.irs.gov](http://www.irs.gov). Qualified disaster relief may include penalty-tax free early distributions made during specified time frames for each disaster, the ability to include distributions in your gross income ratably over multiple years, the ability to roll over distributions to an eligible retirement plan without regard to the 60-day rollover rule, and more.
- E. **ADDITIONAL INFORMATION** – You may obtain further information on SIMPLE IRAs from your District Office of the IRS. In particular, you may wish to obtain IRS Publication 590-A, Contributions to Individual Retirement Arrangements (IRAs), and Publication 590-B, Distributions from Individual Retirement Arrangements (IRAs), by calling 1-800-TAX-FORM, by visiting any district office of the Internal Revenue Service or by visiting [www.irs.gov](http://www.irs.gov) on the Internet.

