

# SIMPLE IRA Custodial Account Agreement

Form 5305-SA (Revised April 2017) under section 408(p) of the Internal Revenue Code ("Code")

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

Pershing LLC, the Custodian, 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 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 nonforfeitable.

## Article III

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

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

## Article IV

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

2. The Participant's entire interest in the Custodial Account must be, or begin to be, distributed no later than the Participant's required beginning date, April 1 following the calendar year in which the Participant reaches the age of 70½. By that date, the Participant may elect, in a manner acceptable to the Custodian, to have the balance in the Custodial Account distributed in:

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

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 paragraph (i) below or, if elected or there is no designated Beneficiary, in accordance with paragraph (ii) below:

(i) The remaining interest will be distributed in accordance with paragraphs (a)(i) and (a)(ii) above (but not over the period in paragraph (a)(iii), even if longer), starting by the end of the calendar year following the year of the Participant's death. If, however, the designated Beneficiary is the Participant's surviving spouse, then this distribution is not required to begin before the end of the calendar year in which the Participant would have reached age 70½. But, in such case, if the Participant's surviving spouse dies before distributions are required to begin, then the remaining interest will be distributed in accordance with paragraph (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 paragraph (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. 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.

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 paragraph 2(b) for any year, beginning with the year the Participant reaches age 70½, is the Participant's account value at the close of business on December 31 of the preceding year divided by the distribution period in the Uniform Lifetime table in

Regulations section 1.401(a) (9)-9. However, if the Participant's designated Beneficiary is his or her surviving spouse, the required minimum distribution for a year shall not be more than the Participant's account value at the close of business on December 31 of the preceding year divided by the number in the Joint and Last Survivor table in Regulations section 1.401(a)(9)-9. The required minimum distribution for a year under this paragraph (a) is determined using the Participant's (or, if applicable, the Participant's and spouse's) attained age (or ages) in the year.

b. The required minimum distribution under paragraphs 3(a) and 3(b)(i) for a year, beginning with the year following the year of the Participant's death (or the year the Participant would have reached age 70½, if applicable under paragraph 3(b)(i)) is the account value at the close of business on December 31 of the preceding year divided by the life expectancy (in the single life table in Regulations section 1.401(a)(9)-9 of the individual specified in such paragraphs 3(a) and 3(b)(i).

c. The required minimum distribution for the year the Participant reaches age 70½ can be made as late as April 1 of the following year. The required minimum distribution for any other year must be made by the end of such year.

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

1. The Participant agrees to provide the trustee with all information necessary to prepare any reports required by sections 408(i) and 408(l)(2) and Regulations sections 1.408-5 and 1.408-6.

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

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

## Article VI

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

## Article VII

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

## Article VIII

### 1. Definitions

a. "Account", "Custodial Account," or "Plan" shall mean the SIMPLE individual retirement custodial account (SIMPLE IRA) established hereunder for the benefit of the Participant and/or his or her Beneficiary or Beneficiaries.

b. "Account Application," "Application," or "Adoption Agreement" shall mean the application by which this Account is established by the Agreement between the Participant and the Custodian. The statements contained

therein shall be incorporated into this Agreement.

c. "Agreement" shall mean this SIMPLE Individual Retirement Custodial Agreement and Disclosure Statement, including the information and provisions set forth in any Application that goes with this Agreement, as may be amended from time to time. This Agreement, including the Application and the designation of Beneficiary filed with the Custodian, may be proved either by an original copy or a reproduced copy thereof, including, without limitation, a copy reproduced by photocopying, facsimile transmission, electronic imaging, or other means of electronic transmission.

d. "Beneficiary" shall mean the person, persons, entity, or entities (for instance, a trust), designated from time to time by a Participant to receive benefit by reason of the death of the Participant, or the person or persons described in Article VIII, section 4b, of the Agreement who would otherwise be entitled to receive such benefit.

e. "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

f. "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. For purposes of this Custodial Account Agreement, the Custodian is Pershing LLC, or BNY N.A., or such other entity identified in the Custodial Account Application or its successor who is qualified to serve as custodian.

g. "Participant" shall mean person who establishes the Custodial Account.

h. "Financial Institution" shall mean the financial organization, introducing broker-dealer, or Registered Investment Advisor who introduced this Custodial Account to the Participant.

i. "Mutual Fund Only IRA" shall mean an Account, established hereunder for the benefit of the Participant and/or his or her Beneficiary or Beneficiaries, in which the Participant shall limit the investments in his or her Account to shares issued by a domestic Regulated Investment Company.

j. "Transfer SIMPLE IRA" shall mean a SIMPLE IRA if it is not the original recipient of contributions under any SIMPLE plan. The summary description requirements of section 408(l)(2) do not apply to Transfer SIMPLE IRAs.

### 2. Notices and Changes of Address

Any required notice regarding this Account will be considered effective when mailed or electronically communicated by the Custodian to the recipient that is on the records of the Custodian. Any notice to be given to the Custodian will be effective when actually received by the Custodian. The last address of the Participant on the records of the Custodian will be the address used for any tax withholding, disbursement, and reporting required by taxing authorities. The Participant will notify the Custodian of any change of address.

### 3. Representations and Responsibilities

The Participant represents and warrants to the Custodian that any information the Participant has given or will give to the Custodian with respect to this Agreement is complete and accurate. Further, the Participant promises that any direction given by the Participant to the Custodian, or any action taken by the Participant will be proper under this Agreement. The Custodian will not be responsible for the Participant's actions or failures to act. Likewise, the Participant shall not be responsible for the Custodian's actions or failures to act; provided however, that the Custodian's duties and responsibilities under this Agreement are limited to those specifically stated in the Agreement, and no other or further duties or responsibilities shall be implied.

## 4. Investment of Contributions

a. **Direction by Participant.** All investment instructions of the Participant shall be accepted by the Custodian subject to and in accordance with the Custodian's established customs and procedures. Each Participant shall direct the Custodian with respect to the investment of all contributions to his or her Account and the earnings thereon. Such direction shall be limited to investments, to the extent that they are obtainable through and subject to the custody of the Custodian in the Custodian's regular course of business, and subject to such other limitations as may be agreed to by the Participant and Financial Institution. In the absence of such directions, the Custodian shall have no investment responsibility. If a Participant selects a Mutual Fund Only IRA, the Participant shall limit investments in the Account to shares issued by a domestic Regulated Investment Company. However, funds in a Mutual Fund Only IRA can be held in a cash or money market account while awaiting investment. In the event the Participant elects a Mutual Fund Only IRA and does not limit investments to mutual funds only, the Custodian in the Custodian's sole discretion and without prior consent of the Participant may convert the Account from a Mutual Fund Only IRA to the appropriate Account type. All transactions directed by the Participant shall be subject to the rules, regulations, customs, and usages of the exchange, market, or clearing house where executed, and to all applicable federal and state laws and regulations, and to internal policies of the Custodian. The Custodian reserves the right not to accept assets intended for deposit to the Account and may at any time require liquidation or transfer of any asset held in the Account if the Custodian determines that maintaining custody of any such asset is not in accordance with the Custodian's administrative or operational requirements and regular business practices. The Participant understands that the Custodian shall attribute earnings only to assets held in the Account while in the custody of the Custodian. The Participant understands that the income from, and gain or loss on, each investment the Participant selects for the Account will affect the value of the Account, and that the growth in value of the Account cannot be guaranteed or projected.

(i) If the Participant directs the Account to acquire an alternative investment, private investment or any other such investment that requires special handling by the Custodian, the Participant agrees that such investments are subject to the Custodian's administrative and operational requirements, including but not by way of limitation, valuation or reconciliation requirements. If the issuer or sponsor of such investment fails to comply with the Custodian's requirements, the Custodian may, in its sole discretion, distribute the investment from the Account. The Participant agrees that a distribution of the investment is a distribution from the Account, reportable on an IRS Form 1099-R. The Participant agrees that Custodian may use the last known price for reporting purposes, and if no pricing information is available, the Custodian is authorized to determine the fair market value in its sole discretion or to value the investment at the original purchase price for reporting purposes.

b. **Direction by Beneficiary.** Upon notification of death of the Participant, the Account may be divided into separate shares for each Beneficiary who is entitled to receive a share of the Participant's Account, and each Beneficiary's share will be transferred into a separate Account. This permits each Beneficiary to provide investment and distribution directions

as to his or her share of the Account. The transfer to separate Account(s) does not create a taxable event for the Beneficiary(ies). In such event, except as otherwise provided in this Agreement or by applicable law or regulations, all rights, duties, obligations and responsibilities of the Participant under the Agreement will extend to the Beneficiary(ies) following the death of the Participant. Likewise, if requested in a form and manner acceptable to the Custodian, a Beneficiary may request a reportable distribution of their share of the Participant's Account if they choose not to transfer into a separate Account.

If a transfer or distribution upon the Participant's death is payable to a Beneficiary known by the Custodian to be a minor or under a legal disability, the Custodian may in its sole discretion take instruction from the parent, guardian, conservator, or other legal representative of such minor or legally disabled person.

c. **No Duty to Review.** The Custodian shall not be under any duty to review or question any direction of the Participant with respect to investments, to review any securities or other property held in trust, or to make suggestions to the Participant with respect to investments. The Custodian will not be liable for any loss that may result by reason of investments made by the Custodian in accordance with the directions of the Participant. Notwithstanding the foregoing, the Custodian may review the investments in a Mutual Fund Only IRA in order to confirm the Participant's compliance with Article VIII, section 4(a), of this Agreement, which limits investments in the Mutual Fund Only IRA to shares issued by a domestic Regulated Investment Company.

d. **Delegation of Investment Responsibility.** Regardless of any other provision of this Agreement to the contrary, the Participant may appoint an investment professional or other person to act as the Participant's representative with authority to direct the Custodian with respect to the investment of assets in the Account. The appointment, however, will be effective only if (1) the Custodian has received an executed copy of an agreement between the Participant and the representative in a form and manner acceptable to the Custodian that specifies the authority of the representative to act on behalf of the Participant, and (2) the Custodian does not object to acting on the direction of that person, which objection the Custodian may assert for any reason at any time. If the Participant appoints a representative, as provided for above, references to the Participant in this section ("Investment of Contributions") of this Agreement and in the "Powers, Duties, and Obligations of Custodian" section (Article VIII, section 7) of this Agreement (insofar as pertinent to securities with respect to which the representative has investment authority) are also to that representative. However, all references in this Agreement to the individual whose Account is involved and to the making of contributions and the receipt of distributions are only to the Participant. The Participant may revoke the authority of any representative at any time by notifying the Custodian in a form and manner acceptable to the Custodian and the Custodian shall not be liable in any way for the transactions initiated prior to its receipt of such notice.

e. **Uninvested Cash.** The Participant or their Financial Institution shall direct the Custodian as to the investment of all cash that is not currently invested in assets described in Article VIII, section 4(a), of the Agreement. The Participant or his or her legal representative shall direct the Custodian with respect to the investment of the cash pending distribution. In the absence of such direction, the Custodian shall have no investment responsibility for such cash and the Custodian

shall not be liable for holding such cash uninvested.

## 5. Withdrawals

- a. **Withdrawal Request.** The Participant may withdraw all or part of his or her Account balance at any time. All requests for withdrawal shall be in a form and manner provided by or acceptable to the Custodian. Any withdrawals shall be subject to all applicable tax and other laws and regulations, including possible early withdrawal penalties and withholding requirements. If payment is made outside of the United States, special federal income tax withholding rules may apply. Withdrawals from the Account may be made in a single sum, periodic payment, or a combination of both. The Participant authorizes the Custodian to retain such sums as the Custodian may deem necessary for payment of all the Financial Institution's or Custodian's fees, compensation, costs, and any expenses, including, but not limited to, annual maintenance fees and account termination fees, or for payment of any other liabilities which might constitute a charge to either the Account, Financial Institution or the Custodian. The balance of any such reserve remaining after the payment of the above items shall be paid or distributed upon satisfaction of any such charge. The Custodian shall have no duty to ascertain whether any payment or distribution as directed by the Participant is proper under the provisions of the Code, this Agreement, or otherwise. The Custodian shall not be responsible for the purpose, sufficiency, or propriety of any distribution. The Custodian is only authorized to make distributions in accordance with instructions of the Participant, or after the Participant's death, of his or her Beneficiary, or as otherwise provided for in this Agreement. Such instructions must be given in a form and manner acceptable to the Custodian. If the Custodian is unable to make a distribution to a Participant, a Beneficiary, or other distributee because the Custodian cannot ascertain such distributee's whereabouts by writing to the last known mailing address shown on the Custodian's records, if any, the Custodian reserves the right to liquidate any investment and hold the proceeds in a noninterest-bearing account until such funds escheat by operation of law. The IRS requires that IRAs paid to a state's unclaimed property fund are subject to the federal income tax withholding rules. The Custodian will report these payments on IRS Form 1099-R. If the Custodian must liquidate assets in the account in order to withhold taxes from the IRA, such assets may be liquidated in the following order (to the extent held in the IRA): (1) any shares of a money market fund or money market-type fund; including foreign currency, (2) mutual funds, starting with largest position, (3) securities, and (4) other assets. The Custodian will not be liable for any losses related to liquidations made in order to comply with the IRS rules. The Beneficiary or Beneficiaries are responsible to ensure that distributions are made in accordance with the provisions of Article IV of the Agreement.
- b. **Required Distributions.** The Custodian may notify the Participant of the need to take required minimum distributions once he or she reaches age 72 or such other age as may be provided under the Code and, if requested by the Participant, will calculate the required minimum distribution amount for the Account. The Participant shall be responsible for causing the required minimum distribution amount to be withdrawn from his or her Account each year. Notwithstanding anything in Article IV to the contrary, the Custodian shall not, without the consent of the Participant, distribute the value of the Account where the Participant fails

to choose any method of distribution by April 1st of the year following the year the Participant reaches age 72, or such other age as may be provided under the Code.

- c. **Beneficiary Distributions.** A Participant may designate a Beneficiary or Beneficiaries of the Account at any time and any such designation may be changed or revoked at any time, by written designation executed by the Participant in a form and manner prescribed by or acceptable to, and filed with, the Custodian. Such designation, change, or revocation shall be effective only upon receipt and acceptance by the Custodian and only if such receipt shall be during the Participant's lifetime. The latest such accepted designation, change, or revocation shall control. A Beneficiary designation will NOT automatically be revoked or modified due to the Participant's divorce, legal separation, annulment or other dissolution of marriage. Following the death of the Participant, the balance of the Participant's Account shall be distributed to the Participant's designated Beneficiary or Beneficiaries, if any, in accordance with the provisions of Article IV of the Agreement and in accordance with the Custodian's administrative or operational requirements and regular business practices which may change from time to time. The Participant may request additional information concerning the Beneficiary policies and procedures from the Financial Institution. If there is no primary Beneficiary living at the time of the Participant's death, the balance of the Participant's Account will be payable to the surviving contingent Beneficiary or Beneficiaries designated by the Participant. If there is no Beneficiary designation on file with the Custodian, or if no primary or contingent Beneficiaries survive the Participant, the Custodian shall distribute the Account in the following order of preference:

- (i) The Participant's surviving spouse, if any
- (ii) The Participant's children, if any, in equal shares
- (iii) The Participant's estate

If the Participant designates more than one primary or contingent Beneficiary but does not specify the percentages to which such Beneficiary or Beneficiaries are entitled, payment will be made to the surviving Beneficiary or Beneficiaries in equal shares.

Unless otherwise designated by the Participant in a form and manner acceptable to the Custodian, if a primary or contingent Beneficiary designated by the Participant predeceases the Participant, the deceased Beneficiary's percentage allocation will be divided among the surviving Beneficiaries in accordance with the ratio of each surviving Beneficiary's percentage allocation relative to the percentage allocation of all other surviving Beneficiaries.

If a Beneficiary does not predecease the Participant but dies before receiving his or her entire interest in the Account, his or her remaining interest in the Account shall be paid to the Beneficiary or Beneficiaries designated by the deceased Beneficiary. If there is no Beneficiary designation of the deceased Beneficiary on file with the Custodian, the Custodian shall distribute the Account to the survivors of the deceased Beneficiary in the following order of preference:

- (i) The deceased Beneficiary's surviving spouse, if any
- (ii) The deceased Beneficiary's children, if any, in equal shares
- (iii) The deceased Beneficiary's estate

In instances of distributions to the Beneficiary's estate, the Custodian shall be permitted to rely on direction from the personal representative of the Beneficiary's estate regarding the appropriate parties to be paid under this designation.

Under no circumstances may a Participant restrict the right of a Beneficiary to name successor Beneficiary(ies) of an inherited Account. Except as otherwise provided in this Agreement or by applicable law or regulations, all rights, duties, obligations and responsibilities of the Participant under the Agreement will extend to spouse and non-spouse Beneficiary(ies) following the death of the Participant.

Custodian reserves the right to take the steps it deems appropriate in validating Beneficiary(ies) after the Participant's death.

- d. Account Only Source of Benefits. The only source of benefit for the Participant or Beneficiary(ies) of this SIMPLE IRA shall be the Account.

## 6. Transfer

- a. Transfer. The Custodian shall transfer the Account balance in accordance with the Participant's written instructions and in accordance with this Agreement. The Participant authorizes the Custodian to retain such sums as the Custodian may deem necessary for payment of all fees, compensation, costs, and any expenses, including, but not limited to, annual maintenance fees and account termination fees, or for payment of any other liabilities which might constitute a charge to either the Account, Financial Institution or the Custodian. The balance of any such reserve remaining after the payment of the above items shall be transferred upon satisfaction of any such charge. The Custodian shall have no duty to ascertain whether any payment, distribution, or transfer as directed by the Participant is proper under the provisions of the Code, this Agreement, or otherwise.
- b. Reopening of Account. In the event a security is not transferred to a new trustee or custodian, residual assets are not automatically moved to a new trustee or custodian, or checks representing a total Account distribution are not cashed, the Custodian reserves the right to reopen the Account.

## 7. Powers, Duties, and Obligations of Custodian

- a. No Investment Discretion. The Custodian shall have no discretion to direct any investments of the Account and is merely authorized to acquire and hold the particular contributions and corresponding investments specified by the Participant. The Custodian will not act as investment advisor or counselor to a Participant and will not advise a Participant or offer any opinion or judgment on any matter pertaining to the nature, value, potential value, or suitability of any investment or potential investment by a Participant.
- b. Administrative Powers. The Custodian may hold any securities acquired hereunder in the name of the Custodian without qualification or description or in the name of any nominee. Pursuant to the Participant's direction, the Custodian shall have the following powers and authority with respect to the administration of the Account:
- (i) To invest and reinvest the assets of the Account without any duty to diversify and without regard to whether such investment is authorized by the laws of any jurisdiction for fiduciary investments.
  - (ii) To exercise or sell options, conversion privileges, or rights to subscribe for additional securities and to make payments therefore.
  - (iii) To consent to or participate in dissolutions,

reorganizations, consolidations, mergers, sales, leases, mortgages, transfers, reregistrations of securities, or other changes affecting securities held by the Custodian.

(iv) To make, execute, and deliver as Custodian any and all contracts, waivers, releases, or other instruments in writing necessary or proper for the exercise of any of the foregoing powers.

(v) To grant options to purchase securities held by the Custodian or to repurchase options previously granted with respect to securities held by the Custodian.

- c. Proxies. All proxy and solicitation materials, notices of shareholders' meetings, current prospectuses and other annual or regular shareholder reports shall, to the extent furnished to the Custodian by the issuers of the securities in the Account, be sent by the Custodian or the Custodian's delegate to the Participant.
- d. Records and Reports. The Custodian shall keep accurate records of all contributions, receipts, investments, distributions, disbursements, and all other transactions of the Account. Within 120 days (or such other deadline imposed by applicable law) after the close of each calendar year (or after a distribution or transfer of a Participant's Account or upon the Custodian's resignation or removal), the Custodian shall file with the Participant a written report (which may consist of copies of the Custodian's regularly issued Account statements) reflecting all transactions affecting the Account for the period in question and including a statement of the assets in the Account and their fair market values. Unless the Participant files a written statement of exceptions or objections to the report with the Custodian within 60 days after mailing of the report, the Participant shall be deemed to have approved such report and the Custodian shall be released from all liability to anyone (including any Participant's spouse or Beneficiary) with respect to all matters set forth in the report. No person, other than the Participant or a Beneficiary may require an accounting.
- e. Right to Request Judicial Assistance. The Custodian shall have the right at any time to apply to a court of competent jurisdiction for judicial settlement of the Custodian's accounts or for determination of any questions of construction which may arise or for instructions. The only necessary party defendant to any such action shall be the Participant, but the Custodian may join any other person or persons as a party defendant. The cost, including attorney's fees, of any such proceeding shall be charged as an administrative expense under Article VIII, section 10, of this Agreement.
- f. Scope of Custodian's Duties. The Custodian shall only have the duties which are specifically set forth in this Agreement. The Custodian shall have no duty to ascertain whether contributions or distributions comply with the Agreement or the Code. The Custodian shall not make any investments or dispose of any investments held in an Account, except upon the direction of the Participant or in accordance with Article VIII, sections 5(a), 8(c), 10(c) or 11(c), of the Agreement. The Custodian shall not question any such directions of the Participant, review any securities or other property held in the Account, or make suggestions to the Participant with respect to the investment, retention, or disposition of any assets held in the Account. Notwithstanding the foregoing, the Custodian may review the investments in a Mutual Fund Only IRA in order to confirm the Participant's compliance with Article VIII, section 4(a), of this Agreement, which limits investments in the Mutual Fund Only IRA to shares issued by a domestic Regulated Investment Company.

g. **Scope of Custodian's Liability.** The Custodian shall not be liable for any loss of any kind that may result from any action taken by the Custodian in accordance with the directions of the Participant, the Participant's Beneficiary or Beneficiaries, or his or her designated agent or attorney in fact or from any failure to act because of the absence of any such directions. The Custodian shall not be responsible for determining whether any contribution or rollover contribution satisfies the requirements of the Code. The Custodian shall not be liable for any taxes (or interest thereon) or penalties incurred by the Participant, or the Participant's Beneficiary or Beneficiaries in connection with the Account or in connection with any contribution to or distribution from the Account. The Custodian is entitled to act upon any instrument, certificate, or form the Custodian believes is genuine and believes is executed or presented by the proper person or persons, and the Custodian need not investigate or inquire as to any statement contained in such document, but may accept it as true and accurate. The Custodian is not liable for any losses directly or indirectly caused by acts of war, acts of terrorism, labor disputes, exchange, or market decisions, including the suspension of trading, market volatility, trade volume, or by government restriction. The Participant shall duly indemnify and hold harmless the Custodian from any liability which may arise hereunder except liability arising from the gross negligence or willful misconduct of the Custodian.

## 8. Resignation or Removal of Custodian

a. **Resignation.** The Custodian may resign as Custodian of this Account, or any asset held in the Account, by mailing or actually delivering notice to the Participant 30 days prior to the resignation. Upon the Custodian's resignation the Custodian may, but shall not be required to, appoint a corporation or other organization as the successor custodian or trustee under this Agreement.

If the Custodian appoints a successor custodian or trustee, the Participant, after the receipt of the resignation, shall have 30 days to appoint an alternative successor custodian or trustee. If the Participant does not appoint an alternative successor custodian or trustee, the Participant will be deemed to have accepted the Custodian's appointed successor custodian or trustee. Upon acceptance of appointment by the successor, the Custodian shall assign, transfer, and deliver to the successor custodian or trustee all assets held in the Account to which such resignation or removal relates. The Custodian is authorized, however, to reserve such amounts as the Custodian deems advisable to provide for the payment of expenses and fees then due or to be incurred in connection with the settlement of the Custodian's account, and any balance remaining after the settlement of the Custodian's account shall be paid to the successor custodian or trustee. At the sole discretion of the Custodian, any successor custodian or trustee appointed by the Custodian may, with the approval of the Custodian, amend the Agreement by giving notice to the Participant.

If the Custodian does not choose to appoint a successor custodian or trustee, the Participant has 30 days after receiving notification of the Custodian's resignation to appoint a qualifying successor custodian or trustee. If the Participant does not appoint a successor custodian or trustee within this time period, the Custodian shall have the right to terminate the Account and distribute the assets directly to the Participant.

The Custodian shall not be liable for the acts or omissions of the Custodian's successor.

b. **Removal.** The Participant shall substitute another custodian or trustee in place of the Custodian upon notification by the IRS that such substitution is required because the Custodian has failed to comply with the requirement of Treasury Regulation section 1.408- 2(e), or is not keeping such records, or making such returns, or rendering such statements as are required by that regulation.

c. **Custodian's Right to Close Account.** If an Account value falls below a certain minimum threshold or has no activity after a certain time period, the Custodian reserves the right to close the Account, and assess appropriate fees. In the event the Financial Institution no longer has a relationship with the Custodian, the Custodian reserves the right to liquidate any investment.

## 9. Amendment and Termination of the Account

a. **Amendment.** Pursuant to Article VII, the Custodian may amend this Agreement at any time to comply with legal and regulatory changes and to modify the Agreement as the Custodian determines advisable. The amendment will be effective on the date specified in the notice to the Participant. At the Participant's discretion, the Participant may direct that the Custodial Account be transferred to another trustee or custodian. The Custodian will not be liable for any losses for any actions or inactions of any successor trustee or custodian.

A Participant may change an election or designation made with respect to the Account, provided such change is made in a form and manner prescribed by and acceptable to the Custodian.

b. **Notification of Amendment.** The Custodian may provide notice of any amendments to this Account by notifying the Participant of such amendment, and posting the amended language and any restated documents, if applicable, on a website maintained by the Custodian. The Participant consents to the delivery of the applicable notices using an electronic medium and confirms that the Participant is capable of accessing websites. The Participant may request a written copy of any amendments or any restated documents, if applicable, from the Custodian via a phone number maintained by the Custodian or by sending a letter to Pershing LLC, Retirement Processing Department, One Pershing Plaza, Jersey City, New Jersey 07399.

c. **Distribution on Termination.** The Account may be terminated for any reason by the Custodian. If the Account is terminated by the Custodian, the balance held in each Account for the benefit of a Participant, or Beneficiary or Beneficiaries shall be distributed by the Custodian, in accordance with Article VIII, section 8, of the Agreement.

## 10. Fees, Expenses, and Indebtedness

a. **Payment of Fees and Expenses.** The annual maintenance, termination, mutual fund conversion and other administration fees shall be charged by the Custodian and/or Financial Institution in accordance with the fee schedule that is then in effect. The fee schedule may be amended by the Custodian and/or Financial Institution from time to time. Any administrative expenses, including fees for legal and/or accounting services incurred by the Custodian at the request of or necessitated by the actions of the Participant or Beneficiary or Beneficiaries, including, but not by way of limitation, the direction of investment of Account assets in an investment that causes the Account to realize unrelated business taxable income within the meaning of the Code, which are over and above the services set forth in the fee schedule shall be paid by the Participant or the Account, as

required. Any Custodian's or Financial Institution's fees and administrative expenses when due may be automatically charged to the Account. Alternatively, the Participant may choose to pay the fees and administrative expenses in a timely manner before the Account has been so charged. The Custodian or the Financial Institution reserves the right to liquidate any assets of the Account to collect any charge for which payment may at any time be past due. In the event the Account is terminated by the Participant, Financial Institution or the Custodian for any reason (including closing the Account and opening a new account with the same Custodian), the Custodian or Financial Institution shall be entitled to receive the full termination fee, along with the full, non-prorated current year maintenance fees, regardless of the date during the year that the Account is terminated. Such amounts will be automatically charged against the Account. Any reimbursement of fees charged against the Account will be recorded as a contribution to the Account and reported to taxing authorities accordingly. Specific fee details are provided in the current fee schedule available from the Financial Institution. In the event the Financial Institution no longer has a relationship with the Custodian, the Custodian reserves the right to charge its standard maintenance and termination fee, which changes from time to time. In the event this Account becomes abandoned property, the Custodian reserves the right to charge its standard maintenance and termination fee, which changes from time to time.

- b. Taxes. Any taxes of any kind whatsoever that may be levied or assessed upon the Account or that the Custodian may otherwise be charged with the responsibility of collecting or remitting shall be paid from the assets of the Account involved.
- c. If required, the Custodian is authorized to file the IRS Form 990-T for the Account, and any related tax forms including, but not limited to requests for extension, in the event that an investment(s) in the Account causes the Account to realize unrelated business taxable income within the meaning of the Code. The Custodian shall have the right to retain tax or other professionals to assist in the preparation and filing of any such tax forms, and may charge a fee to the Account or the Participant for such services. If there is sufficient cash, money market fund or similar funds in the Account, the Custodian is authorized to pay the full amount of any tax liability, interest, fees or penalties. If there is insufficient cash, money market fund, or similar funds in the Account, upon notice from the Custodian or the Participant's Financial Institution, the Participant is responsible for directing the Financial Institution on the liquidation of assets in the Account for purposes of paying the applicable tax, interest, fees or penalties. The Custodian is not financially responsible for the tax obligations of the Account.
- d. Brokerage Commissions. The Account will be charged brokerage commissions and other securities transaction related charges for the transactions in the Account in accordance with the Custodian's usual practice.
- e. Indebtedness. The Participant shall pay any debit balance or other obligation owing to the Custodian on demand.

## 11. Miscellaneous

- a. Prohibition Against Assignment of Benefits. Except to the extent otherwise required by law, none of the benefits, payments, or proceeds held in the Account on behalf of any Participant, or Beneficiary shall be subject to the claims of any creditor of such Participant, spouse, or Beneficiary, nor

shall any Participant, spouse, or Beneficiary have any right to anticipate, sell, pledge, option, encumber, or assign any of the benefits, payments, or proceeds to which he or she is or may be entitled under the Agreement.

- b. Applicable Law. The Agreement shall be construed, administered, and enforced according to the laws of the State of New York, except to the extent preempted by federal law. All contributions to the Account shall be deemed to take place in the State of New York. The terms and conditions of the Agreement shall be applicable without regard to the community property laws of any state.
- c. Liquidation of Assets. If the Custodian or Financial Institution must liquidate assets in order to make distributions, transfer assets, or pay fees, expenses, or taxes assessed against the Account, and the Participant fails to instruct the Custodian as to the liquidation of such assets, assets may be liquidated in the following order to the extent held in the Account: (1) any shares of a money market fund or money market type fund, (2) mutual funds, starting with largest position, (3) securities, (4) other assets. The Custodian shall not be liable for any losses arising out of or as a result of assets liquidated in accordance with the provisions of this Agreement.
- d. Purpose of Form. Form 5305-SA is a model Custodial Account Agreement that meets the requirements of sections 408(a) and 408(p) and has been pre-approved by the IRS. A SIMPLE individual retirement account (SIMPLE IRA) is established after the Application is fully executed by the individual (Participant) and entered in the records of the Custodian. This Account must be created in the United States for the exclusive benefit of the Participant and his or her Beneficiaries.
- e. Identifying Number. The Participant's Social Security number will serve as the identification number of his or her Custodial Account. An employer identification number is required only for a Custodial Account for which a return is filed to report unrelated business taxable income.
- f. The Custodian or its delegee will be deemed to have satisfied its summary description reporting requirements under Section 408(l)(2) of the Code by annually providing the Participant's employer with the Custodian's name, address, the requirements for eligibility for participation, the benefits provided with respect to the arrangement, the time and method of making election with respect to the arrangement, and the effects of and procedures for withdrawals. The Participant's employer shall be responsible for providing the Participant with all such required information.

## Article IX

**WHEN PERSHING LLC OR ANOTHER FINRA ELIGIBLE MEMBER ACTS AS CUSTODIAN UNDER THIS AGREEMENT, THE FOLLOWING ARBITRATION DISCLOSURES APPLY:**

### 1. ARBITRATION DISCLOSURES

**THIS AGREEMENT CONTAINS A PREDISPUTE ARBITRATION CLAUSE. BY SIGNING AN ARBITRATION AGREEMENT THE PARTIES AGREE AS FOLLOWS:**

- **ALL PARTIES TO THIS AGREEMENT ARE GIVING UP THE RIGHT TO SUE EACH OTHER IN COURT, INCLUDING THE RIGHT TO A TRIAL BY JURY, EXCEPT AS PROVIDED BY THE RULES OF THE ARBITRATION FORUM IN WHICH A CLAIM IS FILED.**
- **ARBITRATION AWARDS ARE GENERALLY FINAL AND BINDING; A PARTY'S ABILITY TO HAVE A COURT REVERSE OR MODIFY AN ARBITRATION**

## **AWARD IS VERY LIMITED.**

- **THE ABILITY OF THE PARTIES TO OBTAIN DOCUMENTS, WITNESS STATEMENTS, AND OTHER DISCOVERY IS GENERALLY MORE LIMITED IN ARBITRATION THAN IN COURT PROCEEDINGS.**
- **THE ARBITRATORS DO NOT HAVE TO EXPLAIN THE REASON(S) FOR THEIR AWARD, UNLESS, IN AN ELIGIBLE CASE, A JOINT REQUEST FOR AN EXPLAINED DECISION HAS BEEN SUBMITTED BY ALL PARTIES TO THE PANEL AT LEAST 20 DAYS PRIOR TO THE FIRST SCHEDULED HEARING DATE.**
- **THE PANEL OF ARBITRATORS WILL TYPICALLY INCLUDE A MINORITY OF ARBITRATORS WHO WERE OR ARE AFFILIATED WITH THE SECURITIES INDUSTRY.**
- **THE RULES OF SOME ARBITRATION FORUMS MAY IMPOSE TIME LIMITS FOR BRINGING A CLAIM IN ARBITRATION. IN SOME CASES, A CLAIM THAT IS INELIGIBLE FOR ARBITRATION MAY BE BROUGHT IN COURT.**
- **THE RULES OF THE ARBITRATION FORUM IN WHICH THE CLAIM IS FILED, AND ANY AMENDMENTS THERETO, SHALL BE INCORPORATED INTO THIS AGREEMENT.**

## **2. ARBITRATION AGREEMENT**

**ANY CONTROVERSY BETWEEN ME, FINANCIAL INSTITUTION AND PERSHING SHALL BE SUBMITTED TO ARBITRATION BEFORE THE FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA).**

**NO PERSON SHALL BRING A PUTATIVE OR CERTIFIED CLASS ACTION TO ARBITRATION, NOR SEEK TO ENFORCE ANY PREDISPUTE ARBITRATION AGREEMENT AGAINST ANY PERSON WHO HAS INITIATED IN COURT A PUTATIVE CLASS ACTION; OR WHO IS A MEMBER OF A PUTATIVE CLASS WHO HAS NOT OPTED OUT OF THE CLASS WITH RESPECT TO ANY CLAIMS ENCOMPASSED BY THE PUTATIVE CLASS ACTION UNTIL; (I) THE CLASS CERTIFICATION IS DENIED; (II) THE CLASS IS DECERTIFIED; OR (III) THE CUSTOMER IS EXCLUDED FROM THE CLASS BY THE COURT. SUCH FORBEARANCE TO ENFORCE AN AGREEMENT TO ARBITRATE SHALL NOT CONSTITUTE A WAIVER OF ANY RIGHTS UNDER THIS AGREEMENT EXCEPT TO THE EXTENT STATED HEREIN. THE LAWS OF THE STATE OF NEW YORK GOVERN.**

## **SIMPLE IRA Disclosure Statement**

The Disclosure Statement provides a general description of the terms, conditions and federal laws associated with this SIMPLE IRA (IRA). Terms used in this Disclosure Statement are set forth in Article VIII of this Account's Custodial Agreement. This Disclosure Statement is not intended to replace the advice of your own tax and legal advisors. You are encouraged to consult your advisors and/or your state taxing authority concerning any tax and/or compliance questions. You are responsible for complying with the laws that apply to this IRA. The Custodian does not act as your advisor. In addition to the transactions outlined in this SIMPLE IRA Disclosure Statement, the federal government may authorize permissible transactions from time to time. Unless expressly prohibited by the Custodian's policies, such additional federally authorized transactions are hereby incorporated by this reference.

## **1. Right of Revocation By Participant**

- a. You have the right to revoke the Agreement for a period of seven (7) calendar days following the date you sign the Application to establish the Account. To revoke the Agreement, you must mail or personally deliver a written notice of revocation to Pershing LLC, Retirement Products Department, One Pershing Plaza, Jersey City, New Jersey 07399. Pershing LLC must receive your revocation notice no later than 7 days after you signed the Application. If your revocation notice is mailed, the notice will be deemed received as of the date of the postmark (or if sent by certified or registered mail, the date of certification or registration) if it is deposited in the United States mail in an envelope, or other appropriate wrapper, first-class postage prepaid, and properly addressed.
- b. If the Agreement is revoked, the Custodian will return your entire contribution to you without penalty, service charge, administrative expenses, or any other reduction. The contribution to a SIMPLE IRA that is revoked, and the distribution from a SIMPLE IRA that is revoked, must be reported to the IRS.

## **2. General Requirements of a SIMPLE IRA**

A SIMPLE IRA plan is a tax-favored retirement plan that certain small employers may establish for the benefit of their employees. Your employer has chosen to establish a SIMPLE IRA plan and will make plan contributions on your behalf to your SIMPLE IRA for each year you are eligible. Specific information regarding your eligibility to participate in your employer's SIMPLE IRA plan is included in the summary description provided to you by your employer.

## **3. Requirements of a SIMPLE IRA**

- a. Cash Contributions. Your contribution to your SIMPLE IRA must be in cash, unless it is a rollover or transfer contribution.
- b. Contribution Type. Contributions under a SIMPLE IRA plan are in the form of employee salary deferrals, employer contributions (either matching or non-elective) and any other type permitted by the Code or Regulations.
- c. Employee Deferrals. Employee salary deferrals may not exceed the lesser of 100% of your compensation or \$13,500 for 2020 and 2021. If you are age 50 or older by the close of the plan year, you may make an additional contribution to your SIMPLE IRA. The maximum additional contribution is \$3,000 for 2020 and 2021.  
The maximum employee salary deferral amounts listed above will be increased annually to reflect cost-of-living adjustments, if any.
- d. Employer Contributions. There are two types of employer contributions: matching or non-elective employer contributions. Your employer will notify you each year of the contribution type and amount. If your employer elects matching contributions, your employer will match your deferrals up to 3% of your compensation. However, in some years, a lesser amount may be contributed. Your employer will notify you if a lesser amount is contributed. Instead of matching contributions, your employer may make non-elective contributions equal to 2% of your compensation (taking into account the applicable compensation IRS limit in a given year, which is \$285,000 for 2020 and \$290,000 for 2021).
- e. Nonforfeitable. Your interest in your SIMPLE IRA is nonforfeitable.
- f. Commingling of 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 as described in section 408(m) of the Internal Revenue Code (Code). A collectible is defined as any work of art, rug or antique, metal or gem, stamp or coin, alcoholic beverage, or any other tangible personal property specified by the IRS. However, specially minted United States gold and silver bullion coins and certain state-issued coins are permissible SIMPLE IRA investments. Platinum coins and certain gold, silver, platinum, or palladium bullion as described in section 408(m)(3) of the Code are also permitted as SIMPLE IRA investments.

- i. Required Minimum Distributions At Age 72. You are required to take minimum distributions from your SIMPLE IRA for the year in which you reach age 72, or such other age as may be provided under the Code, and for subsequent years. You must take your first year's distribution by April 1 of the calendar year following the year in which you attain age 72 or such other age as may be provided under the Code. All subsequent year's distributions must be taken by December 31 of the distribution year.

The minimum distribution for any taxable year is equal to the amount obtained by dividing the account balance at the end of the prior year (by the applicable divisor). The applicable divisor is generally determined using the Uniform Lifetime table under Treasury Regulations 1.401(a)(9)-9. If your spouse is your sole designated beneficiary and is more than ten years younger than you, the required minimum distribution may be calculated using the actual joint life expectancy of you and your spouse obtained from the Joint and Last Survivor Table rather than the life expectancy divisor from the Uniform Lifetime table.

Each year you are subject to the RMD requirements, your Custodian will provide you with a notice. Along with the distribution deadline, the notice will either inform you of your RMD amount or provide you with guidance on how to contact the Custodian for assistance in determining your RMD. Your Custodian is also required to notify the IRS each year you are required to take an RMD. However, the Custodian will make distributions to you or your Beneficiary only upon specific instructions to do so. If you have more than one IRA, determine the RMD separately for each IRA. However, you may total the RMDs and take the total from any one or more of your IRAs.

If you do not take the required minimum distribution (RMD) or the distribution is not large enough, you may be subject to a 50% excess accumulation penalty tax on the amount not distributed as required. You must report the 50% excess accumulation penalty tax by filing a completed Form 5329 with the IRS along with your payment.

- j. Distributions to your Beneficiary or Beneficiaries for non-inherited IRA owners. Any amounts remaining in your IRA at your death will be paid to your Beneficiary(ies). The rules that determine the distribution of the IRA balance after your death largely depends on whether the Beneficiary is considered an "eligible designated beneficiary".

Eligible Designated Beneficiary: An eligible designated beneficiary includes a surviving spouse, a disabled individual, a chronically ill individual, a minor child, or an individual who is not more than 10 years younger than the account owner. Certain trusts created for the exclusive benefit of disabled or chronically ill beneficiaries are included.

Other factors that impact the beneficiary(ies) distribution

requirements include your relationship to the Beneficiary (i.e., spouse, non-spouse, or other), whether you died before or after RMDs were required to begin, and if the SIMPLE IRA has a "designated beneficiary" as defined under federal regulations.

Designated Beneficiary: A "designated beneficiary" is a person (or a qualified trust that "looks through" to a beneficiary that is a person) that is a Beneficiary as of the date of your death, and has a balance in the SIMPLE IRA as of September 30th of the year following the year of your death. Any person who is a Beneficiary as of the date of your death and dies during the period between the date of your death and September 30th of the year following the year of your death is also a designated beneficiary. A SIMPLE IRA will be treated as not having a designated beneficiary if a Beneficiary that is not a person, or a qualified trust that "looks through" to a beneficiary that is not a person is a Beneficiary as of the date of your death and continues to have a balance in the SIMPLE IRA as of September 30th of the year following the year of your death. The rules concerning qualified trusts are complex and set forth in applicable Treasury Regulations.

Generally, eligible designated beneficiaries may take their distributions over the beneficiary's life expectancy, or fully distribute the account over a 10-year period. However, minor children must still take remaining distributions within 10 years of reaching age 18. Additionally, a surviving spouse who is the sole beneficiary may delay the commencement of distributions until the end of the year that you would have attained age 72. If required minimum distributions had begun prior to your death, a spouse beneficiary may use the longer of their life expectancy calculation or your life expectancy calculation (reduced by one each year).

Eligible designated beneficiaries must generally elect between the 10-year rule option and the life expectancy payment option by December 31 of the year following the year of your death. If life expectancy payments are elected, the payments must generally begin by December 31 of the first calendar year following the year of your death (except where the surviving spouse is the sole beneficiary, as provided above). If an eligible designated beneficiary dies before their portion of the account is entirely distributed, the remainder of such portion must be distributed within 10 years after the death of such eligible designated beneficiary.

Generally, designated beneficiaries, who are not an eligible designated beneficiary, must withdraw the entire account by the 10th calendar year following the year of your death. Generally, non-designated beneficiaries must withdraw the entire account by the end of the 5th year following the year of your death, if required minimum distributions had not begun prior to your death. However, if required minimum distributions had begun prior to your death, life expectancy payments utilizing your single life expectancy calculation (reduced by one each year) may be utilized.

If your surviving spouse is the sole designated beneficiary of your SIMPLE IRA, he or she may elect to treat your SIMPLE IRA as his or her own SIMPLE IRA by redesignating your SIMPLE IRA as his or her own SIMPLE IRA, failing to take a required distribution as a Beneficiary, or by making a contribution. Regardless of whether your spouse is the sole designated beneficiary, he or she may be eligible to roll distributions from your SIMPLE IRA into his or her own IRA within 60 days of receipt, and subject to any applicable limitations. If your Beneficiary(ies) does not withdraw the required amount within the prescribed timeframe, he or she may be subject to the 50% excess accumulation penalty tax on the amount that should have been withdrawn but was not

distributed. The 50% excess accumulation penalty tax must be reported by filing a completed Form 5329 with the IRS along with the penalty payment.

#### 4. Income Tax Consequences of Establishing a SIMPLE IRA

- a. **SIMPLE IRA Deductibility.** 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 receive 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. **Tax Credit for Contributions.** You may be eligible for a tax credit for your SIMPLE IRA contribution if you are age 18 or older, not a dependent of another taxpayer, and not a full-time student. The maximum annual tax credit is \$1,000 -(or up to \$2,000 if married, filing jointly, unless modified by Congress). If you are eligible for the credit, it will reduce your federal income tax you owe dollar for dollar.
- c. **Tax Deferred Earnings.** The investment earnings of your SIMPLE IRA are generally not subject to federal income tax until distributions are made (or, in certain instances, when distributions are deemed to be made).
- d. **Excess Contributions.** An excess may be created from your salary deferrals or from your employer's contributions (either matching or nonelective).
- e. **Tax Treatment of Distributions.** In general, distributions from your SIMPLE IRA are taxed as ordinary income in the year you receive them. Some amounts are not taxable. Examples include rollovers, direct transfers and corrections of certain excess contributions. In addition, certain distributions may be subject to additional penalties as explained below. If you have made nondeductible contributions to a Traditional IRA, a portion of each distribution from your SIMPLE IRA is nontaxable. The nontaxable amount is the pro rata portion of the distribution that represents your remaining nondeductible contributions based upon the value of all your IRAs. For assistance in determining the nontaxable portion, consult your tax advisor, instructions to IRS Forms 1040 and 8606, and IRS Publication 590-B.
- f. **Early Distribution Penalty.** If you are under the age of 59½ and receive a SIMPLE IRA distribution, an additional tax of 10% may apply to amounts includible in gross income, unless the distribution is made on account of death, disability (as defined by the Code), a qualifying rollover, a direct transfer, the timely withdrawal of an excess contribution, or if the distribution is part of a series of substantially equal periodic payments (at least annual payments) made over your life expectancy or the joint life expectancy of you and your Beneficiary. Certain other payments and distributions (as outlined in the Code) are also generally exempt from the 10% tax. More information on these early distribution penalty exceptions can be found in IRS Publication 590-B, Distributions from Individual Retirement Arrangements (IRAs).  
If less than two years have passed since you first participated in a SIMPLE IRA plan sponsored by your employer, the early distribution penalty will increase from 10% to 25%.  
You may have to report the IRS early distribution penalty tax and/ or exemption from this penalty by filing a completed Form 5329 with the IRS along with your payment.
- g. **Rollovers.** Generally, a rollover is a movement of cash or

assets from one retirement plan to another. If you are required to take minimum distributions because you are age 72 or older, you may not roll over any required minimum distributions. Both the distribution and the rollover contribution are reportable when you file your income taxes. You must irrevocably elect to treat such contributions as rollovers.

**IRA-to-IRA Rollover.** You may withdraw, tax free, all or a portion of your SIMPLE IRA if you contribute the amount withdrawn within 60 days from the date you receive the distribution into the same or another SIMPLE IRA (or a Traditional IRA) as a rollover. To complete a rollover of a SIMPLE IRA distribution to your Traditional IRA, at least two years must have elapsed from the date on which you first participated in any SIMPLE IRA Plan maintained by the employer, and you must contribute the distribution within 60 days from the date you receive it. Only one IRA distribution within any 12-month period may be rolled over in an IRA-to-IRA 60 day rollover transaction. The 12-month waiting period begins on the date you receive an IRA distribution that you subsequently roll over, not the date you complete the rollover transaction.

If you roll over the entire amount of a SIMPLE IRA distribution (including any amount withheld for federal, state, or other income taxes that you did not receive), you do not have to report the distribution as taxable income. Any amount not properly rolled over within the 60-day period will generally be taxable in the year distributed (except for any part that represents basis) and may be, if you are under age 59½, subject to the premature distribution penalty tax. However, if you inadvertently fail to complete the rollover of a distribution within 60 days, you may be able to obtain a waiver of the 60-day time limit through a self-certification procedure if you meet certain requirements. Additionally, for certain qualified plan loan offsets (which is generally the amount an employer retirement plan account balance is reduced, or offset, to repay a loan from such plan, when the employer plan terminates, or because the participant severed from employment), you may have until the due date (including extensions) for your tax return for the tax year in which the offset occurs to complete the rollover to your IRA. If your plan loan offset is not "qualified," then you have 60 days from the date the offset occurs to complete your rollover.

**SIMPLE IRA-to-Employer Retirement Plan Rollover.** If your employer's retirement plan accepts rollovers from IRAs, you may complete a direct or indirect rollover of your SIMPLE IRA assets to your employer retirement plan if at least two years have elapsed from the date on which you first participated in any SIMPLE IRA Plan maintained by the employer. If you are required to take minimum distributions because you are age 72 or older, you may not roll over any required minimum distributions.

**Employer Retirement Plan-to-SIMPLE IRA Rollover.** After the 2-year period of participation defined in section 72(t)(6), rollovers from any eligible retirement plan (as defined in section 402(c)(8)(B)), other than a Roth IRA or a designated Roth account, are eligible to roll over to your SIMPLE IRA.

- h. **SIMPLE IRA to Roth IRA Conversions.** Generally, if after you have been a SIMPLE IRA plan participant for two years, you may convert all or a portion of your SIMPLE IRA to a Roth IRA provided you meet any applicable eligibility requirements as defined in the Code and Regulations. Except for amounts that represent basis, amounts converted are generally treated as taxable distributions. However, the premature distribution penalty that typically applies to taxable withdrawals taken

prior to age 59½, does not apply to amounts converted from a SIMPLE IRA to a Roth IRA. Required minimum distributions may not be converted. SIMPLE IRA-to-Roth IRA conversions are not subject to the 12-month rollover restriction that typically applies to rollovers between IRAs.

- i. Transfers. You may move your SIMPLE IRA from one trustee or custodian to a SIMPLE IRA maintained by another trustee or custodian by requesting a direct transfer. Because the transfer is done directly between IRA trustees or custodians and no distribution is made to you, the transfer is neither taxable nor reportable. Federal law does not limit the number of transfers you may make during any one year.
- j. Transfers Incident to Divorce. In a form and manner acceptable to the Custodian, under a valid divorce decree, separate maintenance decree, or other valid court order, all or part of your SIMPLE IRA may be transferred to your ex-spouse or you may receive all or part of your ex-spouse's SIMPLE IRA.
- k. Repayment of Qualified Reservist Distributions. If you are a qualified reservist called to active duty and you have taken penalty-free qualified reservist distributions from your SIMPLE IRA, you may be able to contribute (repay) those amounts to an IRA generally within a two-year period from your date of return. For further detailed information, you may wish to obtain IRS Publication 590-A, Contributions to Individual Retirement Arrangements (IRAs) and IRS Publication 590-B, Distributions from Individual Retirement Arrangements (IRAs) from the IRS.
- l. Disaster Relief. If you qualify (e.g., sustain an economic loss or are otherwise affected by certain disasters designated by the IRS), you may be eligible for favorable tax treatment on certain IRA transactions as prescribed by the Internal Revenue Code, regulations or the IRS. Favorable tax treatment may include (but is not necessarily limited to) relief from the early distribution penalty tax, the option to include a distribution in your gross income ratably over a prescribed number of years, repayment of distributions, and the ability to roll over distributions without regard to rollover restrictions (e.g. 60-day roll over rule). Additional information regarding tax relief for IRA-related transactions due to qualifying disasters including information on how to identify qualifying disasters, may be found in Publication 590-A, Contributions to Individual Retirement Arrangements (IRAs), and Publication 590-B, Distributions from Individual Retirement Arrangements (IRAs), as well on the IRS's website at [www.irs.gov](http://www.irs.gov).

## 5. Limitations and Restrictions

- a. Inherited IRA. An Inherited IRA is an IRA established by or maintained for the benefit of a nonspouse Beneficiary of a deceased IRA owner or a nonspouse beneficiary of a deceased participant in a qualifying retirement plan. Contributions to Inherited IRAs: Except for employer retirement plan to Inherited IRA rollovers, Inherited IRA to Inherited IRA transfers and certain recharacterized contributions from Inherited Roth IRAs, no other contribution types are allowed to be contributed to the Inherited IRA, unless defined as allowable under the Code or regulations. Eligible rollover distributions from a deceased participant's qualifying employer retirement plan(s) may be rolled over by a nonspouse beneficiary to an Inherited IRA. Otherwise, rollovers to an Inherited IRA must be sent directly from the plan administrator to the Inherited IRA custodian. Qualifying employer retirement plans include qualified plans (e.g.,

401(k)) plans or profit sharing plans), governmental 457(b) plans, 403(b) arrangements and 403(a) arrangements. Amounts that may not be rolled over include any required minimum distributions.

Distributions to Inherited IRA Owners: A nonspouse Beneficiary (including a Beneficiary of a SIMPLE IRA that was established with a rollover of inherited employer plan assets) must withdraw required distributions as prescribed by the Internal Revenue Code and regulations. Generally, if PRIOR to January 1, 2020 you inherited assets from someone other than your spouse, or you are the spouse beneficiary of these assets and you choose not to treat this account as your own, you are generally required to take a minimum distribution from the inherited account by December 31 of each year. The required minimum distribution (RMD) amount is generally based on the IRS Single Life Expectancy (SLE) table. Alternatively, if the original retirement account owner was not yet subject to RMDs, you can choose to fully distribute the balance of your inherited retirement account within five years of the owner's death. However, if you inherited retirement assets ON OR AFTER January 1, 2020, you may be subject to the 10-year distribution rule (i.e., that you must take all distributions within 10 years of the death of the IRA owner). Exceptions, including inheritance by spouses, do apply and you would continue to be subject to RMDs over your lifetime. If you do not take enough to satisfy the requirement, the IRS may impose a 50% excise tax on the shortfall. Due to the complexity of RMD requirements for inherited accounts, you should speak with your tax professional regarding the options available to you.

- b. Gift Tax. Transfer of your IRA assets to a named Beneficiary or Beneficiaries made during your life and at your request may be subject to federal gift tax under section 2501 of the Code. However, the naming of a Beneficiary or Beneficiaries generally will not subject you to gift tax liability.
- c. Estate Tax. Generally, for federal estate tax purposes, amounts held in your IRA are included in your gross estate when you die. However, if your spouse is your Beneficiary, the IRA may qualify for the marital deduction. Consult your tax and/or legal advisors for specific guidance.
- d. No Special Tax Treatment. IRA distributions are not eligible for capital gains treatment or lump-sum income averaging.
- e. Federal Income Tax Withholding. Any withdrawal from your SIMPLE IRA, except a direct transfer to another IRA or a direct rollover to a qualified plan, may be 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, no less than 10% of the amount withdrawn must be withheld for federal income tax purposes. Special federal income tax withholding rules may apply if the distribution is sent outside of the United States.
- f. Prohibited Transactions. If you (or, following your death, Beneficiaries) engage in a "prohibited transaction" with your SIMPLE IRA, the IRA will be disqualified and the entire balance in your IRA will be treated as a distribution. If you are under age 59½, the early distribution penalty tax may apply. Prohibited transactions are defined in Internal Revenue Code section 4975. Examples include borrowing money from the IRA, selling property to the IRA, receiving unreasonable compensation for managing the IRA, or buying property with IRA funds for your personal use.
- g. Pledging IRA. If you pledge any portion of your SIMPLE IRA as collateral for a personal loan, the amount so pledged will be treated as a distribution. If you are under age 59½, the

amount pledged may also be subject to the early distribution penalty tax.

- h. Itemized Deductions. You can no longer claim any miscellaneous itemized deductions on your individual income tax return. Miscellaneous itemized deductions are those deductions that would have been subject to the 2% of adjusted gross income limitation. This impacts the ability to deduct SIMPLE IRA losses on a total distribution and the source(s) of your payment for certain expenses, such as management fees, related to your SIMPLE IRA.
- i. CARES Act. The CARES Act may have affected certain otherwise applicable terms set forth in this Agreement, including the waiver of RMDs in 2020, the ability of certain COVID-related distributions to be exempted from the early withdrawal penalty and to be recontributed to your SIMPLE IRA over a three-year period, and that certain previously inherited SIMPLE IRAs which were otherwise required to be distributed over five years do not need to count 2020 in such five year period. Consult your tax and/or legal advisors for specific guidance on which CARES Act provisions may have applied, or continue to apply, to your SIMPLE IRA.

## 6. Other

- a. IRS Form. The form of Agreement used to establish this SIMPLE IRA is the model government form provided by the IRS and is known as Form 5305-SA. The IRS approval is a determination only as to the form. It is not an endorsement of the plan in operation or of the investments offered.
- b. Additional Information. You may obtain further information on SIMPLE IRAs from your District Office of the Internal Revenue Service or by visiting the IRS web site at [www.irs.gov](http://www.irs.gov). In particular, you may wish to obtain IRS Publication 590-A, Contributions to Individual Retirement Arrangements (IRAs), IRS Publication 590- B, Distributions from Individual Retirement Arrangements (IRAs), and IRS Publication 560, Retirement Plans for Small Businesses. Additional information may be found in the summary description provided by your employer.
- c. Customer Identification Program. To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial organizations to obtain, verify, and record information that identifies each person who opens an account. When you open an account, you are required to provide your name, residential address, date of birth, and identification number. We may require other information that will allow us to identify you.
- d. Tax Filing. You are responsible for filing the applicable IRS forms to report certain activities, taxable income and/or penalties associated with your SIMPLE IRA. See Section 10(c) of the Custodial Agreement for special information on the Form 990-T.
- e. Custodian. The custodian of your SIMPLE IRA must be a bank, a federally insured credit union, a savings and loan association, or an entity approved by the IRS to act as custodian.

## 7. Additional Financial Information

- a. Account Fees. A schedule of fees will be provided by the financial institution that introduced the account to you. The annual maintenance, termination, and other administration fees shall be charged by the Custodian or the financial institution that introduced the account to you for its services hereunder in accordance with the current fee schedule that is in effect. At the discretion of the Custodian or the financial institution that introduced the account to you, you may receive a separate invoice or invoice instructions on your statement for the account maintenance and other related fees that are due and payable upon receipt. Fees when due shall be automatically charged against the IRA or as you direct in writing, charged against another account held by the Custodian over which you have investment authority. You may not reimburse your IRA for account fees including fee-based account fees, once they have been charged to your IRA. Any reimbursement of annual maintenance or other administrative fees charged to your IRA must be considered a contribution to your IRA and reported to the IRS accordingly. Alternatively, you may choose to pay the fees in a timely manner before the account has been charged. If you do prepay the account maintenance fee, you will see a corresponding debit and credit offset on your account statement. The financial institution that introduced the account to you may notify you prior to changing the fee schedule. In the event of account termination either by you or by the Custodian for any reason, the Custodian or financial institution shall be entitled to receive the full termination fee, along with the full, non-prorated current year maintenance fee, regardless of the date during the year of the termination of the account.
- b. Brokerage Commissions. Commissions and other securities transaction-related charges shall be as charged by the financial institution that introduced the account to you. Such commissions must be paid from assets held within your SIMPLE IRA and may not be reimbursed.
- c. Other Expenses. Taxes of any kind, which may be imposed with respect to the SIMPLE IRA, and any expenses incurred by the Custodian in the management of your SIMPLE IRA, together with any fees referred to above, shall be paid by you (as permissible), charged against your account, or as directed in writing by you, charged against another account over which you have authority.
- d. Earnings. The earnings of each separate account shall be allocated only to that account. The Custodian will attribute earnings only to the assets held in the account in the custody of the Custodian according to the Custodian's ordinary business practices and in accordance with the Custodian's established customs and procedures.
- e. Growth in Value. Growth in value of your account will depend entirely on the investment decisions made by you and is neither guaranteed nor projected.



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

DEC 06 2011

Pershing LLC  
One Pershing Plaza  
Jersey City, NJ 07399

EIN: 13-2741729  
Ladies and Gentlemen:

On May 31, 1984, the Internal Revenue Service issued to Donaldson Lufkin & Jenrette Securities Corporation a letter approving it to act as an active trustee or custodian for individual retirement arrangements (IRAs). The Service issued another letter, dated July 31, 1990, allowing Donaldson Lufkin & Jenrette Securities Corporation to act as a nonbank custodian of plans qualified under section 401(a) of the Internal Revenue Code. In a third letter dated April 20, 1995, the Service approved Donaldson Lufkin & Jenrette Securities Corporation to act as a nonbank custodian of accounts described in section 403(b)(7).

Donaldson Lufkin & Jenrette Securities Corporation converted, on January 17, 2003, into a Delaware limited liability company named Pershing LLC. Upon the conversion of Donaldson Lufkin & Jenrette Securities Corporation into Pershing LLC, the officers and directors of Donaldson Lufkin & Jenrette Securities Corporation became Pershing LLC's Board of Managers and the employees and assets of Donaldson Lufkin & Jenrette Securities Corporation became the employees and assets of Pershing LLC.

Section 401(f)(1) of the Code provides that a custodial account shall be treated as a qualified trust under this section if such custodial account would, except for the fact it is not a trust, constitute a qualified trust under this section. Section 401(f)(2) provides that the custodian must be a bank (as defined in section 408(n)) or another person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will hold the assets will be consistent with the requirements of section 401. Section 401(f) also provides that in the case of a custodial account treated as a qualified trust, the person holding the assets of such account shall be treated as the trustee thereof.

Section 403(b)(7)(A) of the Code requires, in part, that for amounts paid by an employer to a custodial account to be treated as amounts contributed to an annuity contract for his employee, the custodial account must satisfy the requirements of section 401(f)(2). That section also requires, in order for the amounts paid by an employer to be treated as amounts contributed to an annuity contract for his employee, that the amounts are to be invested in regulated investment company stock to be held in the custodial account, and under the custodial account no such amounts may be paid or made available to any distributee before the employee dies, attains age 59 1/2, has a severance from employment, becomes disabled (within the meaning of section 72(m)(7)), or in the case

Pershing LLC

of contributions made pursuant to a salary reduction agreement (within the meaning of section 3121(a)(1)(D)), encounters financial hardship.

Section 408(a)(2) of the Code requires that the trustee of an IRA be a bank (as defined in section 408(n)) or such other person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will administer the IRA will be consistent with the requirements of section 408.

Section 408(h) of the Code provides that a custodial account shall be treated as a trust under this section if the assets of such account are held by a bank (as defined in subsection (n)) or another person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will administer the account will be consistent with the requirements of this section, and if the custodial account would, except for the fact that it is not a trust, constitute an IRA described in subsection (a). Section 408(h) also provides that, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

Section 408A of the Code provides, in general, that a Roth IRA shall be treated in the same manner as an individual retirement plan. Section 7701(a)(37)(A) defines an individual retirement plan as an IRA described in section 408.

The Income Tax Regulations at section 1.408-2(e) contain the requirements that such other person must comply with in order to act as trustee or custodian, for purposes of sections 401(f), 403(b)(7), 408, and 408A of the Code. One of the requirements of section 1.408-2(e) of the regulations states that such person must file a written application with the Commissioner demonstrating, as set forth in that section, its ability to act as a trustee or custodian.

Based on all the information and representations Donaldson Lufkin & Jenrette Securities Corporation submitted to this office in its written application and the nonbank trustee/custodian investigation on Pershing LLC for continued compliance with the nonbank trustee regulations at section 1.408-2(e), we have concluded that Pershing LLC meets the requirements of section 1.408-2(e) of the regulations and, therefore, is approved to act as a passive or non-passive nonbank custodian of plans qualified under section 401(f) or accounts described in section 403(b)(7), passive or non-passive nonbank trustee or custodian for IRAs established under sections 408, and 408A (dealing with Roth IRAs).

This Notice of Approval authorizes Pershing LLC to act as a passive or non-passive nonbank trustee or custodian. When Pershing LLC acts as a passive nonbank trustee or custodian (within the meaning of section 1.408-2(e)(6)(i)(A) of the regulations), it is authorized only to acquire and hold particular investments specified by the trust instrument or custodial agreement. It may not act as a passive trustee or custodian if

## Pershing LLC

under the written trust instrument or custodial agreement it has discretion to direct investments of the trust (or custodial) funds.

Pershing LLC may not act as a trustee or custodian unless it undertakes to act only under trust instruments or custodial agreements that contain a provision to the effect that the grantor is to substitute another trustee or custodian upon notification by the Commissioner that such substitution is required because Pershing LLC has failed to comply with the requirements of section 1.408-2(e) or is not keeping such records, or making such returns or rendering such statements as are required by forms or regulations. For example, one such form is Form 990-T for IRAs that have \$1000 or more of unrelated business taxable income that is subject to tax by section 511(b)(1) of the Code.

Pershing LLC is required to notify the Commissioner of Internal Revenue, Attn: SE:T:EP:RA, Internal Revenue Service, Washington, D.C. 20224, in writing, of any change that affects the continuing accuracy of any representations made in its application. Further, the continued approval of Pershing LLC to act as a passive or non-passive nonbank custodian of plans qualified under section 401(f) or accounts described in section 403(b)(7), passive or non-passive nonbank trustee or custodian for IRAs established under sections 408, and 408A (dealing with Roth IRAs) is contingent upon the continued satisfaction of the criteria set forth in section 1.408-2(e) of the regulations.

This Notice of Approval is not transferable to any other entity. An entity that is a member of a controlled group of corporations, within the meaning of section 1563(a) of the Code, may not rely on a Notice of Approval issued to another member of the same controlled group. Furthermore, any entity that goes through an acquisition, merger, consolidation, or other type of reorganization may not necessarily be able to rely on the Notice of Approval issued to such entity prior to the acquisition, merger, consolidation, or other type of reorganization. Such entity may have to apply for a new Notice of Approval in accordance with section 1.408-2(e) of the regulations.

This Notice of Approval constitutes a notice that Pershing LLC may act as a passive or non-passive nonbank custodian of plans qualified under section 401(f) or accounts described in section 403(b)(7), passive or non-passive nonbank trustee or custodian for IRAs established under sections 408, and 408A (dealing with Roth IRAs) and does not bear upon its capacity to act as a trustee or custodian under any other applicable law. This is not an endorsement of any investment. The Internal Revenue Service (Service) does not review or approve investments.

In order to protect the accounts Donaldson Lufkin & Jenrette Securities Corporation handled as nonbank trustee or custodian from May 31, 1984, through its conversion to Pershing LLC, this Notice of Approval is retroactively effective to May 31, 1984. This

Pershing LLC

Notice of Approval will remain in effect until withdrawn by Pershing LLC or revoked by the Service.

In accordance with the power of attorney on file in this office, a copy of this notice is being sent to your authorized representative.

If you have any questions, please contact Mr. Calvin Thompson (Badge No. 1000221590) at (202) 283-9596.

Sincerely,

A handwritten signature in black ink that reads "Carlton A. Watkins". The signature is fluid and cursive, with the first name "Carlton" being the most prominent part.

Carlton A. Watkins, Manager  
Employee Plans Technical Group 1

# SIMPLE IRA Application

## FOR PARTICIPANTS IN A SAVINGS INCENTIVE MATCH PLAN FOR EMPLOYEES

Pershing LLC serves as IRA Custodian or Non-Bank Trustee (Custodian).

### STEP 1. ACCOUNT INFORMATION

This IRA Application may only be used in conjunction with the IRA plan document stipulated by the Custodian.

I Hereby Designate the Following as the Financial Organization	Account Number	1	RR Number
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#### Account Type

☐ Participant ☐ Employer ☐ Guardian ☐ Inherited

### STEP 2. PARTICIPANT INFORMATION

Name		Gender <input type="checkbox"/> M <input type="checkbox"/> F
Social Security or Tax ID Number		Date of Birth
Address (No P.O. Box Addresses)		
City	State	Zip /Postal Code
Telephone		

**Marital Status** ☐ Single ☐ Married\* ☐ Divorced ☐ Domestic Partner ☐ Widowed

\*If Married, Spousal Consent may be required. See below.

### STEP 3. EMPLOYER INFORMATION

Employer Name		
Employer Address		
City	State	Zip/Postal Code
Employer Tax ID Number		Employer Pershing LLC SIMPLE Plan Account Number*

\*If maintained at Pershing LLC.

### STEP 4. MUTUAL FUND ONLY

To establish a Mutual Fund only SIMPLE IRA, be sure to specify the mutual fund only.

☐ **Mutual Fund Only IRA**

If you select a Mutual Fund Only account, you cannot commingle other investments within your Mutual Fund Only account.



**STEP 5. BENEFICIARY DESIGNATIONS**

Pershing considers the following as a standard beneficiary request:

- Name of an Individual(s)
- Name of Group(s) (e.g. charity)
- Specifically dated Trust (s), subject to proper qualification
- Estate (FYI — Pershing will require a Court Order and instructions from the Executor for the proper distribution of the assets.)

The following shall be my beneficiary or beneficiaries of this IRA. If I designate more than one primary or contingent beneficiary, but do not specify the percentages to which such beneficiary or beneficiaries are entitled, payment will be made to the surviving beneficiary or beneficiaries in equal shares.

If no beneficiary is named, the beneficiary provisions outlined in the Custodial Account Agreement will apply.

To designate your Estate as your beneficiary, write in "Estate" in the primary beneficiary section. "Per Will" designations are not acceptable designations.

All other beneficiary requests will be considered a customized beneficiary request, subject to Pershing's acceptance policy. Each custom request must use the Pershing Customized Beneficiary Designation form or applicability indemnity language. To designate a testamentary trust as a beneficiary, you must complete a customized beneficiary designation form. Please speak with your Financial Advisor for more details.

☐ I elect to have a customized beneficiary

The total allocation of all primary beneficiaries must equal 100%.

**Primary Beneficiaries**

<b>Primary Beneficiary 1 Name</b>				Email Address	
Date of Birth	Date of Trust (if applicable)	Gender (if applicable) <input type="checkbox"/> M <input type="checkbox"/> F	Percentage	Social Security or Tax ID Number	
Relationship		Trust Type (if applicable)		<input type="checkbox"/> Per Stirpes	
Legal Address				Telephone	
Mailing Address (If different than Legal Address)					
<b>Primary Beneficiary 2 Name</b>				Email Address	
Date of Birth	Date of Trust (if applicable)	Gender (if applicable) <input type="checkbox"/> M <input type="checkbox"/> F	Percentage	Social Security or Tax ID Number	
Relationship		Trust Type (if applicable)		<input type="checkbox"/> Per Stirpes	
Legal Address				Telephone	
Mailing Address (If different than Legal Address)					
<b>Primary Beneficiary 3 Name</b>				Email Address	
Date of Birth	Date of Trust (if applicable)	Gender (if applicable) <input type="checkbox"/> M <input type="checkbox"/> F	Percentage	Social Security or Tax ID Number	
Relationship		Trust Type (if applicable)		<input type="checkbox"/> Per Stirpes	
Legal Address				Telephone	
Mailing Address (If different than Legal Address)					

<b>Primary Beneficiary 4 Name</b>				Email Address	
Date of Birth	Date of Trust (if applicable)	Gender (if applicable) <input type="checkbox"/> M <input type="checkbox"/> F	Percentage	Social Security or Tax ID Number	
Relationship		Trust Type (if applicable)		<input type="checkbox"/> Per Stirpes	
Legal Address				Telephone	
Mailing Address (If different than Legal Address)					
<b>Primary Beneficiary 5 Name</b>				Email Address	
Date of Birth	Date of Trust (if applicable)	Gender (if applicable) <input type="checkbox"/> M <input type="checkbox"/> F	Percentage	Social Security or Tax ID Number	
Relationship		Trust Type (if applicable)		<input type="checkbox"/> Per Stirpes	
Legal Address				Telephone	
Mailing Address (If different than Legal Address)					
<b>Primary Beneficiary 6 Name</b>				Email Address	
Date of Birth	Date of Trust (if applicable)	Gender (if applicable) <input type="checkbox"/> M <input type="checkbox"/> F	Percentage	Social Security or Tax ID Number	
Relationship		Trust Type (if applicable)		<input type="checkbox"/> Per Stirpes	
Legal Address				Telephone	
Mailing Address (If different than Legal Address)					
<b>Primary Beneficiary 7 Name</b>				Email Address	
Date of Birth	Date of Trust (if applicable)	Gender (if applicable) <input type="checkbox"/> M <input type="checkbox"/> F	Percentage	Social Security or Tax ID Number	
Relationship		Trust Type (if applicable)		<input type="checkbox"/> Per Stirpes	
Legal Address				Telephone	
Mailing Address (If different than Legal Address)					
<b>Primary Beneficiary 8 Name</b>				Email Address	
Date of Birth	Date of Trust (if applicable)	Gender (if applicable) <input type="checkbox"/> M <input type="checkbox"/> F	Percentage	Social Security or Tax ID Number	
Relationship		Trust Type (if applicable)		<input type="checkbox"/> Per Stirpes	
Legal Address				Telephone	
Mailing Address (If different than Legal Address)					

<b>Primary Beneficiary 9 Name</b>			Email Address	
Date of Birth	Date of Trust (if applicable)	Gender (if applicable) <input type="checkbox"/> M <input type="checkbox"/> F	Percentage	Social Security or Tax ID Number
Relationship		Trust Type (if applicable)		<input type="checkbox"/> Per Stirpes
Legal Address				Telephone
Mailing Address (If different than Legal Address)				
<b>Primary Beneficiary 10 Name</b>			Email Address	
Date of Birth	Date of Trust (if applicable)	Gender (if applicable) <input type="checkbox"/> M <input type="checkbox"/> F	Percentage	Social Security or Tax ID Number
Relationship		Trust Type (if applicable)		<input type="checkbox"/> Per Stirpes
Legal Address				Telephone
Mailing Address (If different than Legal Address)				

**Contingent Beneficiaries**

The total allocation of all contingent beneficiaries must equal 100%.

Contingent beneficiaries will be paid only if all primary beneficiaries (and their heirs if per stirpes is selected) do not survive the participant.

<b>Contingent Beneficiary 1 Name</b>			Email Address	
Date of Birth	Date of Trust (if applicable)	Gender (if applicable) <input type="checkbox"/> M <input type="checkbox"/> F	Percentage	Social Security or Tax ID Number
Relationship		Trust Type (if applicable)		<input type="checkbox"/> Per Stirpes
Legal Address				Telephone
Mailing Address (If different than Legal Address)				
<b>Contingent Beneficiary 2 Name</b>			Email Address	
Date of Birth	Date of Trust (if applicable)	Gender (if applicable) <input type="checkbox"/> M <input type="checkbox"/> F	Percentage	Social Security or Tax ID Number
Relationship		Trust Type (if applicable)		<input type="checkbox"/> Per Stirpes
Legal Address				Telephone
Mailing Address (If different than Legal Address)				
<b>Contingent Beneficiary 3 Name</b>			Email Address	
Date of Birth	Date of Trust (if applicable)	Gender (if applicable) <input type="checkbox"/> M <input type="checkbox"/> F	Percentage	Social Security or Tax ID Number
Relationship		Trust Type (if applicable)		<input type="checkbox"/> Per Stirpes
Legal Address				Telephone
Mailing Address (If different than Legal Address)				

<b>Contingent Beneficiary4 Name</b>			Email Address	
Date of Birth	Date of Trust (if applicable)	Gender (if applicable) <input type="checkbox"/> M <input type="checkbox"/> F	Percentage	Social Security or Tax ID Number
Relationship		Trust Type (if applicable)		<input type="checkbox"/> Per Stirpes
Legal Address				Telephone
Mailing Address (If different than Legal Address)				
<b>Contingent Beneficiary5 Name</b>			Email Address	
Date of Birth	Date of Trust (if applicable)	Gender (if applicable) <input type="checkbox"/> M <input type="checkbox"/> F	Percentage	Social Security or Tax ID Number
Relationship		Trust Type (if applicable)		<input type="checkbox"/> Per Stirpes
Legal Address				Telephone
Mailing Address (If different than Legal Address)				
<b>Contingent Beneficiary6 Name</b>			Email Address	
Date of Birth	Date of Trust (if applicable)	Gender (if applicable) <input type="checkbox"/> M <input type="checkbox"/> F	Percentage	Social Security or Tax ID Number
Relationship		Trust Type (if applicable)		<input type="checkbox"/> Per Stirpes
Legal Address				Telephone
Mailing Address (If different than Legal Address)				
<b>Contingent Beneficiary7 Name</b>			Email Address	
Date of Birth	Date of Trust (if applicable)	Gender (if applicable) <input type="checkbox"/> M <input type="checkbox"/> F	Percentage	Social Security or Tax ID Number
Relationship		Trust Type (if applicable)		<input type="checkbox"/> Per Stirpes
Legal Address				Telephone
Mailing Address (If different than Legal Address)				
<b>Contingent Beneficiary8 Name</b>			Email Address	
Date of Birth	Date of Trust (if applicable)	Gender (if applicable) <input type="checkbox"/> M <input type="checkbox"/> F	Percentage	Social Security or Tax ID Number
Relationship		Trust Type (if applicable)		<input type="checkbox"/> Per Stirpes
Legal Address				Telephone
Mailing Address (If different than Legal Address)				

<b>Contingent Beneficiary9 Name</b>			Email Address	
Date of Birth	Date of Trust (if applicable)	Gender (if applicable) <input type="checkbox"/> M <input type="checkbox"/> F	Percentage	Social Security or Tax ID Number
Relationship		Trust Type (if applicable)		<input type="checkbox"/> Per Stirpes
Legal Address				Telephone
Mailing Address (If different than Legal Address)				
<b>Contingent Beneficiary10 Name</b>			Email Address	
Date of Birth	Date of Trust (if applicable)	Gender (if applicable) <input type="checkbox"/> M <input type="checkbox"/> F	Percentage	Social Security or Tax ID Number
Relationship		Trust Type (if applicable)		<input type="checkbox"/> Per Stirpes
Legal Address				Telephone
Mailing Address (If different than Legal Address)				

**Per Stirpes Information**

If your beneficiary designation is per stirpes, you understand that if your beneficiary(ies) dies before you, the beneficiary's share of the IRA will pass to his or her respective heirs. In the field below, please provide the name of the individual responsible for advising Pershing LLC on any questions relating to the per stirpes distribution of the IRA.

Name of Responsible Individual

You understand that the per stirpes instructions given to Pershing LLC by the responsible individual named above shall be binding on all beneficiaries of this IRA and of your estate and may be relied on by Pershing LLC. Pershing LLC shall not be liable for any payment made at the direction of this individual. If you do not name a responsible individual or the individual you named is unwilling or unable to advise Pershing on questions regarding the per stirpes distribution, then you understand that Pershing will rely on instructions from the executor of your estate regarding any per stirpes designation.

Please consult with your legal advisor before electing the per stirpes designation.

**Spousal Consent**

If you are married, reside in a community property or marital property state, and designate someone other than your spouse as your sole, primary beneficiary, your spouse must sign this form below. Community or marital property states include: AZ, CA, ID, LA, NV, NM, TX, WA, WI.

**I am the spouse of the above-named account holder. I acknowledge that I have received a fair and reasonable disclosure of my spouse's property and financial obligations. Due to the important tax consequences of giving up my interest in this IRA, I have been advised to see a tax professional. I hereby give the account holder any interest I have in the funds or property deposited in this IRA and consent to the beneficiary designation(s) indicated above. I assume full responsibility for any adverse consequences that may result. No tax or legal advice was given to me by the Custodian.**

Spouse Printed Name	Date
Signature 	

**STEP 6. CERTIFICATION**

I understand the eligibility requirement for the type of SIMPLE IRA deposits I make and I state that I am a participant in my employer's Savings Incentive Match Plan for Employees and do qualify to establish a SIMPLE IRA and make the deposit. I understand that Pershing LLC assumes no responsibility for any tax consequences relating to such contributions or distributions from this SIMPLE IRA. I have reviewed and understand a copy of the Pershing LLC SIMPLE IRA Custodial Account Agreement which contains the plan agreement and disclosure statement. I understand that the terms and conditions which apply to this SIMPLE Individual Retirement Account are contained in this Pershing LLC SIMPLE IRA Custodial Account Agreement which contains the plan agreement and disclosure statement. I agree to be bound by those terms and conditions. If I elect to make a rollover contribution to this account, I hereby certify that I understand the rollover rules and conditions as they pertain to this SIMPLE IRA and I have met the requirements for making a rollover. Due to the important tax consequences of rolling over funds or property, I have been advised to consult with a tax professional. All information provided by me is true and correct and may be relied upon by the Custodian. I assume full responsibility for establishing this SIMPLE IRA and for rollover transactions and will not hold the Custodian liable for any adverse consequences that may result. I hereby irrevocably designate the rollover of funds or other property as rollover contributions.

Pershing LLC supports a sweep platform that makes available money market mutual funds and bank deposit sweep products, from which your financial institution may select as sweep options to be made available to you. You should contact your financial institution or your financial professional for additional information on the offerings available to you through your financial institution's Sweep Program. Additionally, your financial institution may also opt to not take advantage of sweep functionality in your account, and rather, maintain any cash balance as a free credit balance which may be eligible to earn interest. I am aware that the sweep options in my account are made available via my financial institution's Sweep Program and may include the option of keeping the cash balance in my account as a free credit balance. There is no guarantee that interest will be paid on cash balances in an account. If applicable, interest on cash balances may require a minimum balance to earn interest. Unless my financial institution provides Pershing with instructions to apply a default sweep or selects to maintain the cash balance in my account as a free credit balance or I instruct Pershing or my financial institution differently, I authorize Pershing LLC to sweep any cash balance in my account into a sweep product, which may include the Pershing Government Account or another money fund or FDIC-insured bank deposit sweep product. Pershing LLC is further authorized to rely on instructions that I give to my financial institution regarding my sweep elections. I understand that Pershing LLC supports a sweep platform through which the cash balance in my IRA introduced to Pershing LLC through my financial institution can be automatically invested. I understand: (i) the current sweep option may be a money market mutual fund or bank deposit sweep product affiliated with Pershing LLC or my financial institution; (ii) a sweep option is not intended for use as a long-term investment option and is best used for short periods of time; (iii) the rate of return on the sweep option may vary over time, and at times may be zero; (iv) I may be able to earn a higher yield through a different investment, and I may consult with my financial professional about the available sweep options; and (v) Pershing LLC, my financial institution and their affiliates may receive benefits from having money invested in the sweep products or held as a cash balance in my account. To the extent I have money in a sweep product, I understand the balance in the sweep product will be automatically redeemed to satisfy obligations arising in connection with my account introduced to Pershing LLC through my financial institution. I understand I will receive a copy of the applicable prospectus for money funds or customer disclosure document for bank deposit sweep products upon my first investment in the sweep product, and I may request a copy of the applicable prospectus or customer disclosure document now or any time. I agree that my sweep option may be changed, including changes between money market funds and bank deposit sweep products, with prior notification to me.

I HEREBY ADOPT THE PERSHING LLC SIMPLE INDIVIDUAL RETIREMENT CUSTODIAL PLAN. I AGREE THAT THIS AGREEMENT CONTAINS A PREDISPUTE ARBITRATION CLAUSE, WHICH IS LOCATED AT ARTICLE IX ON PAGES 7 AND 8 IN THIS AGREEMENT.

**Participant or Guardian Signature**

Print Name	Date
Signature X	

**FINANCIAL ORGANIZATION USE ONLY**

Please forward to your financial organization for approval.

Investment Professionals Name	Date
Signature X	
Operations Manager Name	Date
Signature X	

Participant Account Number	RR Number
1	

Plan Administrator/Employer Account Number	RR Number
1	

Employer Tax ID Number

(if different from participant account number)

Form **5304-SIMPLE**  
(Rev. March 2012)  
Department of the Treasury  
Internal Revenue Service

## Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—Not for Use With a Designated Financial Institution

OMB No. 1545-1502

**Do not file**  
with the Internal  
Revenue Service

Name of Employer \_\_\_\_\_

establishes the following SIMPLE

IRA plan under section 408(p) of the Internal Revenue Code and pursuant to the instructions contained in this form.

### Article I—Employee Eligibility Requirements *(complete applicable box(es) and blanks—see instructions)*

- 1 General Eligibility Requirements.** The Employer agrees to permit salary reduction contributions to be made in each calendar year to the SIMPLE IRA established by each employee who meets the following requirements (select either 1a or 1b):
  - a** ☐ **Full Eligibility.** All employees are eligible.
  - b** ☐ **Limited Eligibility.** Eligibility is limited to employees who are described in both (i) and (ii) below:
    - (i) Current compensation.** Employees who are reasonably expected to receive at least \$ \_\_\_\_\_ in compensation (not to exceed \$5,000) for the calendar year.
    - (ii) Prior compensation.** Employees who have received at least \$ \_\_\_\_\_ in compensation (not to exceed \$5,000) during any \_\_\_\_\_ calendar year(s) (insert 0, 1, or 2) preceding the calendar year.
- 2 Excludable Employees.**

☐ The Employer elects to exclude employees covered under a collective bargaining agreement for which retirement benefits were the subject of good faith bargaining. **Note:** *This box is deemed checked if the Employer maintains a qualified plan covering only such employees.*

### Article II—Salary Reduction Agreements *(complete the box and blank, if applicable—see instructions)*

- 1 Salary Reduction Election.** An eligible employee may make an election to have his or her compensation for each pay period reduced. The total amount of the reduction in the employee's compensation for a calendar year cannot exceed the applicable amount for that year.
- 2 Timing of Salary Reduction Elections**
  - a** For a calendar year, an eligible employee may make or modify a salary reduction election during the 60-day period immediately preceding January 1 of that year. However, for the year in which the employee becomes eligible to make salary reduction contributions, the period during which the employee may make or modify the election is a 60-day period that includes either the date the employee becomes eligible or the day before.
  - b** In addition to the election periods in 2a, eligible employees may make salary reduction elections or modify prior elections \_\_\_\_\_. If the Employer chooses this option, insert a period or periods (for example, semi-annually, quarterly, monthly, or daily) that will apply uniformly to all eligible employees.
  - c** No salary reduction election may apply to compensation that an employee received, or had a right to immediately receive, before execution of the salary reduction election.
  - d** An employee may terminate a salary reduction election at any time during the calendar year. ☐ If this box is checked, an employee who terminates a salary reduction election not in accordance with 2b may not resume salary reduction contributions during the calendar year.

### Article III—Contributions *(complete the blank, if applicable—see instructions)*

- 1 Salary Reduction Contributions.** The amount by which the employee agrees to reduce his or her compensation will be contributed by the Employer to the employee's SIMPLE IRA.
- 2a Matching Contributions**
  - (i)** For each calendar year, the Employer will contribute a matching contribution to each eligible employee's SIMPLE IRA equal to the employee's salary reduction contributions up to a limit of 3% of the employee's compensation for the calendar year.
  - (ii)** The Employer may reduce the 3% limit for the calendar year in (i) only if:
    - (1)** The limit is not reduced below 1%; **(2)** The limit is not reduced for more than 2 calendar years during the 5-year period ending with the calendar year the reduction is effective; and **(3)** Each employee is notified of the reduced limit within a reasonable period of time before the employees' 60-day election period for the calendar year (described in Article II, item 2a).
- b Nonelective Contributions**
  - (i)** For any calendar year, instead of making matching contributions, the Employer may make nonelective contributions equal to 2% of compensation for the calendar year to the SIMPLE IRA of each eligible employee who has at least \$ \_\_\_\_\_, (not more than \$5,000) in compensation for the calendar year. No more than \$250,000\* in compensation can be taken into account in determining the nonelective contribution for each eligible employee.
  - (ii)** For any calendar year, the Employer may make 2% nonelective contributions instead of matching contributions only if:
    - (1)** Each eligible employee is notified that a 2% nonelective contribution will be made instead of a matching contribution; and
    - (2)** This notification is provided within a reasonable period of time before the employees' 60-day election period for the calendar year (described in Article II, item 2a).
- 3 Time and Manner of Contributions**
  - a** The Employer will make the salary reduction contributions (described in 1 above) for each eligible employee to the SIMPLE IRA established at the financial institution selected by that employee no later than 30 days after the end of the month in which the money is withheld from the employee's pay. See instructions.
  - b** The Employer will make the matching or nonelective contributions (described in 2a and 2b above) for each eligible employee to the SIMPLE IRA established at the financial institution selected by that employee no later than the date for filing the Employer's tax return, including extensions, for the taxable year that includes the last day of the calendar year for which the contributions are made.

\* This is the amount for 2012. For later years, the limit may be increased for cost-of-living adjustments. The IRS announces the increase, if any, in a news release, in the Internal Revenue Bulletin, and on the IRS's internet website at **IRS.gov**.



**5304S**

**Article IV—Other Requirements and Provisions**

- 1 Contributions in General.** The Employer will make no contributions to the SIMPLE IRAs other than salary reduction contributions (described in Article III, item 1) and matching or nonelective contributions (described in Article III, items 2a and 2b).
- 2 Vesting Requirements.** All contributions made under this SIMPLE IRA plan are fully vested and nonforfeitable.
- 3 No Withdrawal Restrictions.** The Employer may not require the employee to retain any portion of the contributions in his or her SIMPLE IRA or otherwise impose any withdrawal restrictions.
- 4 Selection of IRA Trustee.** The Employer must permit each eligible employee to select the financial institution that will serve as the trustee, custodian, or issuer of the SIMPLE IRA to which the Employer will make all contributions on behalf of that employee.
- 5 Amendments To This SIMPLE IRA Plan.** This SIMPLE IRA plan may not be amended except to modify the entries inserted in the blanks or boxes provided in Articles I, II, III, VI, and VII.
- 6 Effects Of Withdrawals and Rollovers**
  - a** An amount withdrawn from the SIMPLE IRA is generally includible in gross income. However, a SIMPLE IRA balance may be rolled over or transferred on a tax-free basis to another IRA designed solely to hold funds under a SIMPLE IRA plan. In addition, an individual may roll over or transfer his or her SIMPLE IRA balance to any IRA or eligible retirement plan after a 2-year period has expired since the individual first participated in any SIMPLE IRA plan of the Employer. Any rollover or transfer must comply with the requirements under section 408.
  - b** If an individual withdraws an amount from a SIMPLE IRA during the 2-year period beginning when the individual first participated in any SIMPLE IRA plan of the Employer and the amount is subject to the additional tax on early distributions under section 72(t), this additional tax is increased from 10% to 25%.

**Article V—Definitions**

- 1 Compensation**
  - a General Definition of Compensation.** Compensation means the sum of the wages, tips, and other compensation from the Employer subject to federal income tax withholding (as described in section 6051(a)(3)), the amounts paid for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, and the employee's salary reduction contributions made under this plan, and, if applicable, elective deferrals under a section 401(k) plan, a SARSEP, or a section 403(b) annuity contract and compensation deferred under a section 457 plan required to be reported by the Employer on Form W-2 (as described in section 6051(a)(8)).
  - b Compensation for Self-Employed Individuals.** For self-employed individuals, compensation means the net earnings from self-employment determined under section 1402(a), without regard to section 1402(c)(6), prior to subtracting any contributions made pursuant to this plan on behalf of the individual.
- 2 Employee.** Employee means a common-law employee of the Employer. The term employee also includes a self-employed individual and a leased employee described in section 414(n) but does not include a nonresident alien who received no earned income from the Employer that constitutes income from sources within the United States.
- 3 Eligible Employee.** An eligible employee means an employee who satisfies the conditions in Article I, item 1 and is not excluded under Article I, item 2.
- 4 SIMPLE IRA.** A SIMPLE IRA is an individual retirement account described in section 408(a), or an individual retirement annuity described in section 408(b), to which the only contributions that can be made are contributions under a SIMPLE IRA plan and rollovers or transfers from another SIMPLE IRA.

**Article VI—Procedures for Withdrawals** *(The Employer will provide each employee with the procedures for withdrawals of contributions received by the financial institution selected by that employee, and that financial institution's name and address (by attaching that information or inserting it in the space below) unless: (1) that financial institution's procedures are unavailable, or (2) that financial institution provides the procedures directly to the employee. See **Employee Notification** in the instructions.)*

**Article VII—Effective Date**

This SIMPLE IRA plan is effective \_\_\_\_\_ . See instructions.

\* \* \* \* \*

\_\_\_\_\_  
Name of Employer

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Address of Employer

\_\_\_\_\_  
Name and title

## Model Notification to Eligible Employees

### I. Opportunity to Participate in the SIMPLE IRA Plan

You are eligible to make salary reduction contributions to the \_\_\_\_\_ SIMPLE IRA plan. This notice and the attached summary description provide you with information that you should consider before you decide whether to start, continue, or change your salary reduction agreement.

### II. Employer Contribution Election

For the \_\_\_\_\_ calendar year, the Employer elects to contribute to your SIMPLE IRA (*employer must select either (1), (2), or (3)*):

- ☐ **(1)** A matching contribution equal to your salary reduction contributions up to a limit of 3% of your compensation for the year;
- ☐ **(2)** A matching contribution equal to your salary reduction contributions up to a limit of \_\_\_\_\_ % (*employer must insert a number from 1 to 3 and is subject to certain restrictions*) of your compensation for the year; or
- ☐ **(3)** A nonelective contribution equal to 2% of your compensation for the year (limited to compensation of \$250,000\*) if you are an employee who makes at least \$ \_\_\_\_\_ (*employer must insert an amount that is \$5,000 or less*) in compensation for the year.

### III. Administrative Procedures

To start or change your salary reduction contributions, you must complete the salary reduction agreement and return it to \_\_\_\_\_ (employer should designate a place or individual by \_\_\_\_\_ (*employer should insert a date that is not less than 60 days after notice is given*)).

### IV. Employee Selection of Financial Institution

You must select the financial institution that will serve as the trustee, custodian, or issuer of your SIMPLE IRA and notify your Employer of your selection.

## Model Salary Reduction Agreement

### I. Salary Reduction Election

Subject to the requirements of the SIMPLE IRA plan of \_\_\_\_\_ (*name of employer*) I authorize \_\_\_\_\_ % or \$ \_\_\_\_\_ (which equals \_\_\_\_\_ % of my current rate of pay) to be withheld from my pay for each pay period and contributed to my SIMPLE IRA as a salary reduction contribution.

### II. Maximum Salary Reduction

I understand that the total amount of my salary reduction contributions in any calendar year cannot exceed the applicable amount for that year. See instructions.

### III. Date Salary Reduction Begins

I understand that my salary reduction contributions will start as soon as permitted under the SIMPLE IRA plan and as soon as administratively feasible or, if later, \_\_\_\_\_. (*Fill in the date you want the salary reduction contributions to begin. The date must be after you sign this agreement.*)

### IV. Employee Selection of Financial Institution

I select the following financial institution to serve as the trustee, custodian, or issuer of my SIMPLE IRA.

\_\_\_\_\_  
Name of financial institution

\_\_\_\_\_  
Address of financial institution

\_\_\_\_\_  
SIMPLE IRA account name and number

I understand that I must establish a SIMPLE IRA to receive any contributions made on my behalf under this SIMPLE IRA plan. If the information regarding my SIMPLE IRA is incomplete when I first submit my salary reduction agreement, I realize that it must be completed by the date contributions must be made under the SIMPLE IRA plan. If I fail to update my agreement to provide this information by that date, I understand that my Employer may select a financial institution for my SIMPLE IRA.

### V. Duration of Election

This salary reduction agreement replaces any earlier agreement and will remain in effect as long as I remain an eligible employee under the SIMPLE IRA plan or until I provide my Employer with a request to end my salary reduction contributions or provide a new salary reduction agreement as permitted under this SIMPLE IRA plan.

Signature of employee \_\_\_\_\_ Date \_\_\_\_\_

\* This is the amount for 2012. For later years, the limit may be increased for cost-of-living adjustments. The IRS announces the increase, if any, in a news release, in the Internal Revenue Bulletin, and on the IRS website at **IRS.gov**.

## General Instructions

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

### Purpose of Form

Form 5304-SIMPLE is a model Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) plan document that an employer may use to establish a SIMPLE IRA plan described in section 408(p), under which each eligible employee is permitted to select the financial institution for his or her SIMPLE IRA.

These instructions are designed to assist in the establishment and administration of the SIMPLE IRA plan. They are not intended to supersede any provision in the SIMPLE IRA plan.

Do not file Form 5304-SIMPLE with the IRS. Instead, keep it with your records.

For more information, see Pub. 560, Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans), and Pub. 590, Individual Retirement Arrangements (IRAs).

**Note.** If you used the March 2002, August 2005, or September 2008 version of Form 5304-SIMPLE to establish a model Savings Incentive Match Plan, you are not required to use this version of the form.

### Which Employers May Establish and Maintain a SIMPLE IRA Plan?

To establish and maintain a SIMPLE IRA plan, you must meet both of the following requirements:

1. Last calendar year, you had no more than 100 employees (including self-employed individuals) who earned \$5,000 or more in compensation from you during the year. If you have a SIMPLE IRA plan but later exceed this 100-employee limit, you will be treated as meeting the limit for the 2 years following the calendar year in which you last satisfied the limit.

2. You do not maintain during any part of the calendar year another qualified plan with respect to which contributions are made, or benefits are accrued, for service in the calendar year. For this purpose, a qualified plan (defined in section 219(g)(5)) includes a qualified pension plan, a profit-sharing plan, a stock bonus plan, a qualified annuity plan, a tax-sheltered annuity plan, and a simplified employee pension (SEP) plan. A qualified plan that only covers employees covered under a collective bargaining agreement for which retirement benefits were the subject of good faith bargaining is disregarded if these employees are excluded from

participating in the SIMPLE IRA plan. If the failure to continue to satisfy the 100-employee limit or the one-plan rule described in 1 and 2 above is due to an acquisition or similar transaction involving your business, special rules apply. Consult your tax advisor to find out if you can still maintain the plan after the transaction.

Certain related employers (trades or businesses under common control) must be treated as a single employer for purposes of the SIMPLE IRA requirements. These are: (1) a controlled group of corporations under section 414(b); (2) a partnership or sole proprietorship under common control under section 414(c); or (3) an affiliated service group under section 414(m). In addition, if you have leased employees required to be treated as your own employees under the rules of section 414(n), then you must count all such leased employees for the requirements listed above.

### What Is a SIMPLE IRA Plan?

A SIMPLE IRA plan is a written arrangement that provides you and your employees with an easy way to make contributions to provide retirement income for your employees. Under a SIMPLE IRA plan, employees may choose whether to make salary reduction contributions to the SIMPLE IRA plan rather than receiving these amounts as part of their regular compensation. In addition, you will contribute matching or nonelective contributions on behalf of eligible employees (see *Employee Eligibility Requirements* below and *Contributions* later). All contributions under this plan will be deposited into a SIMPLE individual retirement account or annuity established for each eligible employee with the financial institution selected by him or her.

### When To Use Form 5304-SIMPLE

A SIMPLE IRA plan may be established by using this Model Form or any other document that satisfies the statutory requirements.

Do not use Form 5304-SIMPLE if:

1. You want to require that all SIMPLE IRA plan contributions initially go to a financial institution designated by you. That is, you do not want to permit each of your eligible employees to choose a financial institution that will initially receive contributions. Instead, use Form 5305-SIMPLE, Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—for Use With a Designated Financial Institution;

2. You want employees who are nonresident aliens receiving no earned income from you that is income from sources within the United States to be eligible under this plan; or

3. You want to establish a SIMPLE 401(k) plan.

### Completing Form 5304-SIMPLE

Pages 1 and 2 of Form 5304-SIMPLE contain the operative provisions of your SIMPLE IRA plan. This SIMPLE IRA plan is considered adopted when you have completed all applicable boxes and blanks and it has been executed by you.

The SIMPLE IRA plan is a legal document with important tax consequences for you and your employees. You may want to consult with your attorney or tax advisor before adopting this plan.

### Employee Eligibility Requirements (Article I)

Each year for which this SIMPLE IRA plan is effective, you must permit salary reduction contributions to be made by all of your employees who are reasonably expected to receive at least \$5,000 in compensation from you during the year, and who received at least \$5,000 in compensation from you in any 2 preceding years. However, you can expand the group of employees who are eligible to participate in the SIMPLE IRA plan by completing the options provided in Article I, items 1a and 1b. To choose full eligibility, check the box in Article I, item 1a. Alternatively, to choose limited eligibility, check the box in Article I, item 1b, and then insert "\$5,000" or a lower compensation amount (including zero) and "2" or a lower number of years of service in the blanks in (i) and (ii) of Article I, item 1b.

In addition, you can exclude from participation those employees covered under a collective bargaining agreement for which retirement benefits were the subject of good faith bargaining. You may do this by checking the box in Article I, item 2. Under certain circumstances, these employees must be excluded. See *Which Employers May Establish and Maintain a SIMPLE IRA Plan?* above.

### Salary Reduction Agreements (Article II)

As indicated in Article II, item 1, a salary reduction agreement permits an eligible employee to make a salary reduction election to have his or her compensation for each pay period reduced by a percentage (expressed as a percentage or dollar amount). The total amount of

the reduction in the employee's compensation cannot exceed the applicable amount for any calendar year. The applicable amount is \$11,500 for 2012. After 2012, the \$11,500 amount may be increased for cost-of-living adjustments. In the case of an eligible employee who is 50 or older by the end of the calendar year, the above limitation is increased by \$2,500 for 2012. After 2012, the \$2,500 amount may be increased for cost-of-living adjustments.

### Timing of Salary Reduction Elections

For any calendar year, an eligible employee may make or modify a salary reduction election during the 60-day period immediately preceding January 1 of that year. However, for the year in which the employee becomes eligible to make salary reduction contributions, the period during which the employee may make or modify the election is a 60-day period that includes either the date the employee becomes eligible or the day before.

You can extend the 60-day election periods to provide additional opportunities for eligible employees to make or modify salary reduction elections using the blank in Article II, item 2b. For example, you can provide that eligible employees may make new salary reduction elections or modify prior elections for any calendar quarter during the 30 days before that quarter.

You may use the *Model Salary Reduction Agreement* on page 3 to enable eligible employees to make or modify salary reduction elections.

Employees must be permitted to terminate their salary reduction elections at any time. They may resume salary reduction contributions for the year if permitted under Article II, item 2b. However, by checking the box in Article II, item 2d, you may prohibit an employee who terminates a salary reduction election outside the normal election cycle from resuming salary reduction contributions during the remainder of the calendar year.

### Contributions (Article III)

Only contributions described below may be made to this SIMPLE IRA plan. No additional contributions may be made.

#### Salary Reduction Contributions

As indicated in Article III, item 1, salary reduction contributions consist of the amount by which the employee agrees to reduce his or her compensation. You must contribute the salary reduction contributions to the financial institution selected by each eligible employee.

### Matching Contributions

In general, you must contribute a matching contribution to each eligible employee's SIMPLE IRA equal to the employee's salary reduction contributions. This matching contribution cannot exceed 3% of the employee's compensation. See *Definition of Compensation*, below.

You may reduce this 3% limit to a lower percentage, but not lower than 1%. You cannot lower the 3% limit for more than 2 calendar years out of the 5-year period ending with the calendar year the reduction is effective.

**Note.** If any year in the 5-year period described above is a year before you first established any SIMPLE IRA plan, you will be treated as making a 3% matching contribution for that year for purposes of determining when you may reduce the employer matching contribution.

To elect this option, you must notify the employees of the reduced limit within a reasonable period of time before the applicable 60-day election periods for the year. See *Timing of Salary Reduction Elections* above.

### Nonelective Contributions

Instead of making a matching contribution, you may, for any year, make a nonelective contribution equal to 2% of compensation for each eligible employee who has at least \$5,000 in compensation for the year. Nonelective contributions may not be based on more than \$250,000\* of compensation.

To elect to make nonelective contributions, you must notify employees within a reasonable period of time before the applicable 60-day election periods for such year. See *Timing of Salary Reduction Elections* above.

**Note.** Insert "\$5,000" in Article III, item 2b(i) to impose the \$5,000 compensation requirement. You may expand the group of employees who are eligible for nonelective contributions by inserting a compensation amount lower than \$5,000.

### Effective Date (Article VII)

Insert in Article VII the date you want the provisions of the SIMPLE IRA plan to become effective. You must insert January 1 of the applicable year unless this is the first year for which you are adopting any SIMPLE IRA plan. If this is the first year for which you are adopting a SIMPLE IRA plan, you may insert any date between January 1 and October 1, inclusive of the applicable year.

## Additional Information

### Timing of Salary Reduction Contributions

The employer must make the salary reduction contributions to the financial institution selected by each eligible employee for his or her SIMPLE IRA no later than the 30th day of the month following the month in which the amounts would otherwise have been payable to the employee in cash.

The Department of Labor has indicated that most SIMPLE IRA plans are also subject to Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Under Department of Labor regulations at 29 CFR 2510.3-102, salary reduction contributions must be made to each participant's SIMPLE IRA as of the earliest date on which those contributions can reasonably be segregated from the employer's general assets, but in no event later than the 30-day deadline described previously.

### Definition of Compensation

"Compensation" means the amount described in section 6051(a)(3) (wages, tips, and other compensation from the employer subject to federal income tax withholding under section 3401(a)), and amounts paid for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority. Usually, this is the amount shown in box 1 of Form W-2, Wage and Tax Statement. For further information, see Pub. 15, (Circular E), Employer's Tax Guide. Compensation also includes the salary reduction contributions made under this plan, and, if applicable, compensation deferred under a section 457 plan. In determining an employee's compensation for prior years, the employee's elective deferrals under a section 401(k) plan, a SARSEP, or a section 403(b) annuity contract are also included in the employee's compensation.

For self-employed individuals, compensation means the net earnings from self-employment determined under section 1402(a), without regard to section 1402(c)(6), prior to subtracting any contributions made pursuant to this SIMPLE IRA plan on behalf of the individual.

### Employee Notification

You must notify each eligible employee prior to the employee's 60-day election period described above that he or she can make or change salary reduction elections and select the financial institution that will serve as the trustee, custodian, or

\*This is the amount for 2012. For later years, the limit may be increased for cost-of-living adjustments. The IRS announces the increase, if any, in a news release, in the Internal Revenue Bulletin, and on the IRS's website at [IRS.gov](http://IRS.gov).

issuer of the employee's SIMPLE IRA. In this notification, you must indicate whether you will provide:

1. A matching contribution equal to your employees' salary reduction contributions up to a limit of 3% of their compensation;
2. A matching contribution equal to your employees' salary reduction contributions subject to a percentage limit that is between 1 and 3% of their compensation; or
3. A nonelective contribution equal to 2% of your employees' compensation.

You can use the *Model Notification to Eligible Employees* earlier to satisfy these employee notification requirements for this SIMPLE IRA plan. A *Summary Description* must also be provided to eligible employees at this time. This summary description requirement may be satisfied by providing a completed copy of pages 1 and 2 of Form 5304-SIMPLE (including the information described in *Article VI—Procedures for Withdrawals*).

If you fail to provide the employee notification (including the summary description) described above, you will be liable for a penalty of \$50 per day until the notification is provided. If you can show that the failure was due to reasonable cause, the penalty will not be imposed.

If the financial institution's name, address, or withdrawal procedures are not available at the time the employee must be given the summary description, you must provide the summary description without this information. In that case, you will have reasonable cause for not including this information in the summary description, but only if you ensure that it is provided to the employee as soon as administratively feasible.

## Reporting Requirements

You are not required to file any annual information returns for your SIMPLE IRA plan, such as Form 5500, Annual Return/Report of Employee Benefit Plan, or Form 5500-EZ, Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan. However, you must report to the IRS which eligible employees are active participants in the SIMPLE IRA plan and the amount of your employees' salary reduction contributions to the SIMPLE IRA plan on Form W-2. These contributions are subject to social security, Medicare, railroad retirement, and federal unemployment tax.

## Deducting Contributions

Contributions to this SIMPLE IRA plan are deductible in your tax year containing the end of the calendar year for which the contributions are made.

Contributions will be treated as made for a particular tax year if they are made for that year and are made by the due date (including extensions) of your income tax return for that year.

## Summary Description

Each year the SIMPLE IRA plan is in effect, the financial institution for the SIMPLE IRA of each eligible employee must provide the employer the information described in section 408(l)(2)(B). This requirement may be satisfied by providing the employer a current copy of Form 5304-SIMPLE (including instructions) together with the financial institution's procedures for withdrawals from SIMPLE IRAs established at that financial institution, including the financial institution's name and address. The summary description must be received by the employer in sufficient time to comply with the *Employee Notification* requirements earlier.

There is a penalty of \$50 per day imposed on the financial institution for each failure to provide the summary description described above. However, if the failure was due to reasonable cause, the penalty will not be imposed.

**Paperwork Reduction Act Notice.** You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete this form will vary depending on individual circumstances. The estimated average time is:

**Recordkeeping** . . . . 3 hr., 38 min.  
**Learning about the law or the form** . . . . 2 hr., 26 min.  
**Preparing the form** . . . . 47 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:M:S, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send this form to this address. Instead, keep it with your records.