

# Individual Retirement Account

(Traditional, Roth, Rollover or SEP IRA)

**Delaware Charter**  
Guarantee & Trust Company



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Plan Name: Traditional or Roth IRA Trust 001  
FFN: 50116680000-001 Case: 200300122 EIN: 51-0099493  
Letter Serial No: K170168f

DELAWARE CHARTER GUARANTEE & TRUST CO  
d/b/a TRUSTAR RETIREMENT SERVICES  
1013 CENTRE ROAD  
WILMINGTON, DE 19805

Contact Person:  
Ms. Arrington 50-00197  
Telephone Number:  
(202) 283-8811  
In Reference To:  
T:EP:RA:T1  
Date: 07/29/2003

Dear Applicant:

In our opinion, the form of the prototype trust, custodial account or annuity contract identified above is acceptable either for use as a traditional IRA under section 408 of the Internal Revenue Code or for use as a Roth IRA under Code section 408A, as amended through the Job Creation and Worker's Assistance Act of 2002.

Each individual who adopts this approved prototype will be considered to have either a traditional IRA that satisfies the requirements of Code section 408 or a Roth IRA that satisfies the requirements of Code section 408A, provided the individual explicitly and unambiguously indicates at the time of adoption which type of IRA it is to be, follows the terms of the approved prototype document applicable to the type of IRA adopted, does not engage in certain transactions specified in Code section 408(e), and, if the IRA is a trust or custodial account, the trustee or custodian is a bank within the meaning of Code section 408(n) or has been approved by the Internal Revenue Service pursuant to Code section 408(a)(2).

Code section 408(i) and related regulations require that the trustee, custodian or issuer of a contract provide a disclosure statement to each participant in this program as specified in the regulations. Publication 590, Individual Retirement Arrangements (IRAs), gives information about the items to be disclosed. The trustee, custodian or issuer of a contract is also required to provide each adopting individual with annual reports of all transactions related to the IRA.

The Internal Revenue Service has not evaluated the merits of this IRA and does not guarantee contributions or investments made under the IRA. Furthermore, this letter does not express any opinion as to the applicability of Code section 4975, regarding prohibited transactions.

This prototype IRA may have to be amended to include or revise provisions in order to comply with future changes in the law or regulations.

If you have any questions concerning IRS processing of this case, call us at the above telephone number. Please refer to the File Folder Number (FFN) shown in the heading of this letter. Please provide those adopting this prototype with your telephone number, and advise them to contact your office if they have any questions about the operation of their IRA. Please provide a copy of this letter to each adopting individual.

You should keep this letter as a permanent record. Please notify us if you terminate sponsorship of this prototype IRA.

Sincerely yours,

*Paul T. Schultz*  
Director,  
Employee Plans Rulings & Agreements

## PRIVACY NOTICE

This Notice is provided on behalf of Trustar® Retirement Services, a trade name of Delaware Charter Guarantee & Trust Company.

### PROTECTING YOUR PRIVACY

This Notice is required by law. It tells how we handle personal information.

This Notice applies to:

- People, including IRA account holders, who own or apply for our products or services for personal use
- Employee benefit plan participants and beneficiaries

In this Notice, “you” refers to only these people. The Notice does not apply to an employer plan sponsor.

### WE PROTECT INFORMATION WE COLLECT ABOUT YOU

We follow strict standards to protect personal information. These standards include limiting access to data and regularly testing our security technology.

### HOW WE COLLECT INFORMATION

We collect data about you as we do business with you. Some of the sources of this data are as follows:

- **Information we obtain when you apply or enroll for products or services.** You may provide facts such as your name, address, Social Security number, and employment data.
- **Information we obtain from others.** This includes market value data about your account and similar data.
- **Information we obtain through our transactions and experience with you.** This includes investment records and account values.
- **Information we obtain through the Internet.** This includes data from online forms you complete. It also includes data we receive when you visit our website.

## HOW WE SHARE INFORMATION WITH OTHERS

In the course of doing business we may share data with others. This could include personal information about you or about former customers, plan participants or beneficiaries. Personal information may be shared with others for the following purposes:

- in response to a subpoena,
- to prevent fraud,
- to comply with inquiries from government agencies or other regulators, or
- for other legal purposes.

We also may share personal information about you or former customers:

- with others that service your accounts, or that perform services on our behalf,
- with other companies with your consent, at your request or as allowed by law.

## ACCURACY OF INFORMATION

We believe our records are accurate. Please tell us if you receive any incorrect materials from us. We will make the appropriate changes.

## MORE INFORMATION

You can write to us if you have questions about our Privacy Notice. Contact our Privacy Officer at P.O. Box 8963, Wilmington, DE 19899-8963.

*Receipt of this notice does not mean your application has been accepted.*

*We may change our privacy practices at times. We will give you a revised notice when required by law.*

*Our privacy practices comply with all applicable state laws. If a state's privacy laws are more restrictive than those stated in this Notice, we comply with those laws.*

*Your agent, broker, registered representative, consultant or advisor may have a different privacy policy.*

# Instructions for Self-Directed Traditional, Roth, Rollover, & SEP IRA

## CONSULT WITH YOUR ATTORNEY

Carefully read the enclosed information. Please consult with your attorney or tax adviser if you are thinking about starting your own trust.

## DISCLOSURE STATEMENT & TRUST AGREEMENT

Before you complete any forms, read the Disclosure Statement and Trust Agreement in their entirety. **Note:** The Internal Revenue Service approved these documents before EGTRRA (Economic Growth and Tax Relief Reconciliation Act) was enacted. Please make sure you read the EGTRRA changes we have included in this package.

## WHAT IS REQUIRED TO ESTABLISH AN INDIVIDUAL RETIREMENT TRUST?

When you decide to start your program, complete the application found in this package and forward to Mesirow Financial, Inc., Attention: New Accounts Department, 350 North Clark Street, Chicago, IL, 60610.

## TAX QUALIFICATION

This master trust has received a favorable determination and has been assigned serial #K170168f. A copy of this letter can be found in the front of this booklet.

## APPLICATION

This is the basic legal document through which you join the Trust. It should be carefully considered. Please complete and sign the application. Send the original to Mesirow Financial Inc., New Accounts Department, 350 North Clark Street, Chicago, Illinois 60610. Make a copy for your records. We cannot accept an incomplete or unsigned application. **Note for SEP IRA only:** We have provided Form 5305-SEP for your convenience. Please complete this form for your records.

## IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, Federal law requires Delaware Charter Guarantee & Trust Company to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

## TRUST INSTALLATION AND NOTICE

Individual accounts will be opened by your investment executive. The title of the account will be as follows:

Delaware Charter Guarantee & Trust Co., Trustee

FBO \_\_\_\_\_

Traditional, Roth, Rollover, or SEP IRA

Name of Account Holder

## INVESTMENTS

It is your responsibility to direct the investment of the Trust funds. Investment directions may be given directly to Mesirow Financial. Investment confirmations will be sent to you by Mesirow Financial. Any transactions not generating a confirmation must be accompanied by additional written instructions.

The facilities of Mesirow Financial will be available to you so that you may obtain research material in connection with your investments. The firm will receive only brokerage commissions or appropriate dealer markups for the purchase and sale of securities within your account.

Mesirow Financial cannot exercise discretion or control over your account, unless you are using the services of a registered investment adviser. Although they may provide investment information and advice to you, they do not intend that any advice given by them will serve as the primary basis for your investment decisions. Furthermore, it is our understanding that you will exercise independent judgment in making your investment decisions.

## CONTRIBUTIONS

**IMPORTANT:** Forward all contributions to Mesirow Financial. To make sure the contributions are associated with the proper tax year, the firm's cash statement must designate the tax year for which the contribution is made. If no year is designated, the contribution will be considered made in the tax year in which it is deposited.

**NOTE:** With the exception of rollovers, contributions in excess of the allowable amount per year (as indexed), plus excess of allowable catch-up contributions (as indexed) (or such limits as may be established by law) cannot be accepted. Do not over-invest as this will cause a debit balance and may disqualify your Plan. Commissions are part of the cost of the investment and may not be paid separately.

## MAILING INSTRUCTIONS

Address to:

Mesirow Financial, Inc.

Attn: Cash Management

350 North Clark Street

Chicago, Illinois 60610

# Disclosure Statement for Self-Directed Individual Retirement Accounts

Internal Revenue Service (IRS) regulations (Section 1.408-6(d)(4)) require that trustees of Individual Retirement Accounts (IRAs) provide a Disclosure Statement to the individual for whose benefit the IRA is established.

We provide the basic rules and benefits of your Delaware Charter Guarantee & Trust Company (conducting business as Trustar® Retirement Services) Self-Directed Individual Retirement Account in this Disclosure Statement. It also contains important tax and legal information. However, the Self-Directed Individual Retirement Trust Agreement issued by Delaware Charter Guarantee & Trust Company governs your IRA, and it will govern in the case of any discrepancy between this Trust Agreement and Disclosure Statement.

When used in this document, the words **you** and **your** refer to the person for whom the IRA is established. **We, us,** and **our** refer to Delaware Charter Guarantee & Trust Company as trustee of your IRA.

**Roth IRA** refers to either your Delaware Charter Guarantee & Trust Company Roth IRA or a Roth IRA at another financial institution.

**Traditional IRA** refers to an IRA that is not a Roth IRA, Simplified Employee Pension Plan (SEP), or SIMPLE retirement Account.

Delaware Charter Guarantee & Trust Company is not licensed to practice law or give tax or financial advice. We strongly urge you to consult with your tax or legal advisor before you establish an IRA.

## I. Your Right to Revoke Your IRA

**You can cancel your IRA within seven days of the date you adopt the Trust Agreement.** If you cancel or “revoke” your IRA, we will return all of your funds, including your acceptance fee, to you.

The notice of revocation must be in writing and signed by you. You can mail the notice to:

Mesirow Financial, Inc.  
Attn: New Accounts  
350 North Clark Street  
Chicago, IL 60610

If you mail the notice, we will use the date of the postmark (or the date of certification or registration for certified or registered mail) as the date of the notice.

## II. IRS Approval Letter

The IRS approval letter at the beginning of this document certifies **only** that the IRS approves the **form** of the IRA. It does not represent a determination of the merits of the IRA investment plan.

## III. Statutory Requirements

### A. Roth IRAs

#### 1. Types of Contributions

Your Roth IRA can accept three different types of contributions:

- a. Checks, cash, money orders, or electronic fund transfers for regular contributions.
- b. Transfers or rollovers of cash, securities, or other assets from another Roth IRA.
- c. Transfers or rollovers of cash, securities, or other assets from a Traditional IRA.

#### 2. Eligibility to Establish a Roth IRA

Anyone with earned income can set up a Roth IRA. This includes minor children. You must make contributions based on the rules in the following sub-sections.

#### 3. Contribution Limits

The maximum contribution you can make to your Roth IRA is based on the following four items:

- a. Your taxable compensation
- b. Your tax filing status
- c. Your modified adjusted gross income
- d. Contributions, if any, made to a Traditional IRA for the year

#### 4. Limitations and Restrictions on Deductibility of Contributions

Contributions to a Traditional IRA do not include SEP or SIMPLE contributions made by you or your employer.

You cannot take a deduction for a contribution to a Roth IRA. This is true whether or not you are a participant in an employer-sponsored plan and regardless of your adjusted gross income.

You must meet certain income requirements to contribute to a Roth IRA. The maximum amount you can contribute for a year is the lesser of \$3,000 or 100% of compensation (or such limits as prescribed by law) and is phased out for:

- Single taxpayers with adjusted gross income (AGI) between \$95,000 and \$110,000.
- Married taxpayers filing a joint return with AGI between \$150,000 and \$160,000.
- Married taxpayers filing a separate return with AGI between \$0 and \$10,000.

**If your income exceeds the above limits, you may still be entitled to make a partial contribution. See Publication 590 for instructions on how to calculate the contribution amount.**

## Disclosure Statement for Self-Directed Individual Retirement Accounts

Contributions to a Roth IRA **are** permitted after age 70½.

Employer contributions are **not** permitted to a Roth IRA.

### 5. Conversions

Generally, you may convert assets in a non-Roth IRA to a Roth IRA by paying taxes on the converted amount in the year of the conversion.

#### a. General Conditions

- i. You must complete the conversion within 60 days of the date you withdraw the assets from your Traditional IRA.
- ii. Your AGI is determined before you include the amount of the conversion in your income.
- iii. You cannot convert a payment that is part of a series of substantially equal and periodic payments that are made at least annually and will last for:
  - your life expectancy
  - your life expectancy and your beneficiary's life expectancy, or
  - a period of ten years or more.
- iv. You cannot convert payments that you received as a "required minimum payment" in the year you reach age 70½.
- v. The one-year waiting period for traditional rollovers does not apply.
- vi. Your modified AGI cannot exceed \$100,000.
- vii. You cannot be a married individual filing a separate return.

#### b. Conversions and Transfers

You may make a rollover from one Roth IRA to another Roth IRA or convert from a Traditional IRA to a Roth IRA. You **cannot** convert assets from a qualified retirement plan to a Roth IRA. There is no dollar limit on the amount of the transfer.

Any amount that you convert to a Roth IRA is includible in your gross income for the year in which it is *distributed or transferred*, **not** the year it is deposited into the Roth IRA.

#### c. Conversion Methods

There are three methods you can use to convert your assets from a Traditional IRA to a Roth IRA.

- i. **Rollover** – You can receive a distribution from your Traditional IRA and roll it over to a Roth IRA within 60 days after the distribution. Amounts distributed in one tax year, but rolled over in the next tax year are treated as a contribution to the Roth IRA in the year of distribution.

- ii. **Trustee-to-Trustee Transfer** – You can direct the trustee of the Traditional IRA to transfer an amount from the Traditional IRA directly to the trustee of the Roth IRA.
- iii. **Same Trustee Transfer** – If the trustee of your traditional and Roth IRAs is the same, you can direct the trustee to transfer an amount from the Traditional IRA to the Roth IRA.

#### d. Inherited Accounts

You cannot rollover a Traditional IRA that you inherited, unless you inherit it from your spouse.

#### e. Conversions from a SEP, SIMPLE, or Employer-Sponsored Plan

You can convert any amount in a SEP-IRA on the same terms as a Traditional IRA.

You can convert amounts in a SIMPLE Retirement Account on the same terms as a Traditional IRA, **except** amounts distributed from a SIMPLE Retirement Account during the first two years of participation in the SIMPLE plan.

You **cannot** convert amounts in an employer-sponsored plan to a Roth IRA. You can deposit qualified distributions from an employer-sponsored retirement plan into a Traditional IRA. Then you can convert them to a Roth IRA later.

### 6. Reconversions

A reconversion occurs when you recharacterize a conversion contribution made to a Roth IRA back to a Traditional IRA, then recharacterize it again to a Roth IRA.

#### Limits

Effective January 1, 2000, an amount recharacterized from a Traditional IRA to a Roth IRA and then transferred back to a Traditional IRA by means of a recharacterization, may not be reconverted back to a Roth IRA before the later of:

- a. The beginning of the taxable year following the taxable year in which the amount was converted to a Roth IRA or,
- b. The end of the 30-day period beginning on the day on which the IRA owner transfers the amount from the Roth IRA back to a Traditional IRA by means of a recharacterization.

If you make a reconversion that does not follow the above guidelines, it is treated as a "failed" conversion. This means it must be recharacterized back to a Traditional IRA.

### 7. Penalty Tax

The 10 percent penalty tax does not apply to a non-qualified distribution that is used:

## Disclosure Statement for Self-Directed Individual Retirement Accounts

- To buy a first home for you or your spouse, your children, grandchildren, parents, or grandparents if you use the money within 120 days to pay qualified acquisition costs.
- To pay certain educational expenses. The amount cannot exceed the qualified higher education expenses for you or your spouse or either one's children or grandchildren.

The penalty also does not apply to qualified distributions. Generally, a qualified distribution is any payment from your Roth IRA made after the funds have been in the account for five years **and**:

- Made on or after the date you reach age 59½,
- Made because you are disabled,
- Made to a beneficiary or to your estate after death.

You or your beneficiary **may** owe a penalty tax if:

- You make an excess contribution to your IRA. (See "Excess Contributions," later.)
- Your beneficiary does not take the required minimum distributions after your death.

### 8. Minimum Distribution After Death

Generally, if you are the *non-spouse* beneficiary of a Roth IRA, you must begin to take payments by December 31 of the year following the account holder's death. The payments are based on the beneficiary's life expectancy.

If you are the *spouse* beneficiary of a Roth IRA, you must begin to take payments starting by December 31 of the year following the calendar year of the individual's death, or if later, you may postpone distributions until the year the decedent would have reached age 70½. You may also treat the IRA as if it is your own IRA.

### 9. Distributions/Transfers

- a.** You must identify in writing all applicable assets held in the IRA when directing any distribution or transfer.

Distributions from a Roth IRA are not included in income if the contribution to which the distribution relates is a "qualified distribution". See Section 7 Penalty Tax, for the definition of a qualified distribution.

The measuring period for the contribution begins on January 1 of the year preceding the year in which the contribution was actually made. For example, if you contributed on April 3, 1999, for tax year 1998 the contribution is treated as if it was made on January 1, 1998.

- b.** You must include earnings on distributions that are not qualified distributions in your income. There are special

rules for determining the correct tax treatment of non-qualified distributions. The rule sets the order that you withdraw contributions (including conversion contributions). The order of withdrawals is as follows:

- Regular contributions.
- Conversion contributions, on a first-in-first-out basis. (Generally, total conversions from the earliest year first.) Conversions are taken into account as follows:
  1. Taxable portions, then
  2. Non-taxable portions
- Earnings on contributions.

## 10. SEP and SIMPLE Retirement Accounts

Simplified Employee Pension contributions and SIMPLE contributions cannot be made to a Roth IRA.

### B. Traditional IRAs

#### 1. Types of Contributions

Your Traditional IRA can accept three different types of contributions:

- a.** Checks, cash, money orders, or electronic fund transfers for a regular contribution.
- b.** Transfers or rollovers of cash, securities, or other assets from another Traditional IRA.
- c.** Recharacterizations of cash, securities, or other assets from a Roth IRA.

#### 2. Eligibility to Establish an IRA

You can set up and contribute to a Traditional IRA if you (or your spouse, if filing a joint tax return) received taxable compensation for the year and you were not age 70½ by the end of the calendar year.

#### 3. Contribution Limits

The maximum amount you can contribute to your Traditional IRA is the lesser of \$3,000 (or such amount as prescribed by law) or 100% of your compensation.

- a. Limitations and Restrictions on Deductibility of Contributions**

If you or your spouse were covered by an employer-sponsored retirement plan at any time during the year for which you contributed, you may not be able to deduct all of your contribution(s). Your deduction may be reduced or eliminated depending on your income and tax filing status.

If you are an active participant in an employer-sponsored plan, your IRA deduction will be reduced as follows:

## Disclosure Statement for Self-Directed Individual Retirement Accounts

|                                  |   |   |
|----------------------------------|---|---|
| If your <i>filing status</i> is: | Your IRA deduction is <b>reduced</b> if your <i>modified adjusted gross income (MAGI)</i> is between: | Your deductions are <b>eliminated</b> if your <i>MAGI</i> is: |
| Single, or Head of household     | \$40,000 and \$50,000   | \$50,000 or more  |
| Married-Joint return             | \$60,000 and \$70,000   | \$70,000 or more  |
| Married-Separate return          | \$0 and \$10,000  | \$10,000 or more  |

If your spouse is an active participant in an employer-sponsored retirement plan but you are not, you can make a fully deductible IRA contribution if your *joint* modified adjusted gross income (MAGI) is less than \$150,000. If your joint MAGI is greater than \$150,000, but less than \$160,000, your contribution will be only partly deductible. If your joint MAGI is greater than \$160,000, you cannot take an IRA deduction.

If you are not above the income level that would totally eliminate a deductible contribution, there is a \$200 minimum deduction.

### b. Formula to Determine Deductibility

See Publication 590 or consult with your tax advisor on how to calculate the amount of your deduction if you are an active participant in an employer sponsored plan.

If you make a nondeductible contribution to an IRA, you must report the amount of the nondeductible contribution to the IRS as part of your tax return for the year.

You are an active participant if you are covered by an employer-sponsored retirement plan for the year. You are covered by an employer-sponsored retirement plan if your employer or union has a retirement plan under which money is added to your account or you are eligible to earn retirement credits. For example, if you are covered under a profit sharing plan, certain government plans, a salary reduction arrangement (such as a 401(k), SEP) or a plan which promises you a retirement benefit which is based on the number of years of service you have with the employer, you are likely to be an active participant. Your Form W-2 for the year should indicate whether you are a participant.

You are an active participant even if your retirement benefit is not vested. You are also an active participant if you make

required contributions or voluntary contributions to an employer-sponsored retirement plan. You may be an active participant even if you were only with the employer for part of the year.

### c. Contributions after Age 70 ½

No contribution is allowed for an individual during the taxable year when you reach age 70½ or later, however, you can make a contribution for your spouse if they are not yet age 70 ½ and otherwise qualified.

### d. Contributions by Employers

An employer may also make deductible contributions to an IRA through a SEP IRA that meets the requirements of Section 408(k) of the Internal Revenue Code (Code). An employer may contribute up to 25 percent of compensation or \$40,000, whichever is less, or such limits as prescribed by law.

## 4. IRA Rollovers

### a. General Conditions

- i. Rollovers must be deposited to the IRA within 60 days after you have taken receipt of the *last* asset that was distributed.
- ii. You may take a distribution from a Traditional IRA and make a rollover contribution to another Traditional IRA only once in any twelve consecutive month period. The one-year period begins on the date you receive the IRA distribution, not on the date you roll it over into another IRA.
- iii. In general, only the taxable portion of your payment is an eligible rollover distribution. If you have made after-tax employee contributions, these contributions will be non-taxable when they are paid to you and cannot be rolled over.
- iv. You cannot roll over a payment if it is part of a series of equal (or almost equal) payments that are made at least annually and will last for:
  - Your lifetime (or life expectancy), or
  - You and your beneficiary's lifetime (or life expectancy), or
  - A period of ten years or more.
- v. An amount that must be distributed during a particular year under the required distribution rules is not eligible for rollover treatment.
- vi. You can choose to have any part of an eligible rollover distribution paid directly to a Traditional IRA in a direct rollover. If you choose a direct rollover, you are not

## Disclosure Statement for Self-Directed Individual Retirement Accounts

taxed on the payment until you take it out of the IRA.

This IRA will accept direct rollovers.

- vii. If the rollover includes property such as company stock and the stock has been sold, you may still roll over the proceeds. The gain or loss on the sale of the property is not recognized if the rollover is for the entire amount allowable.
- viii. If you receive an eligible rollover distribution from an employer-sponsored retirement plan and roll part or all of it into an IRA, you can roll over those assets into another employer-sponsored retirement plan later.
- ix. Most employer plan distributions can now be rolled into an IRA. Check with your tax advisor if you are not sure if your distribution qualifies.
- x. There is no dollar limit on the amount of the transfer; however, employee after-tax contributions cannot be rolled over.
- xi. Amounts rolled over do not qualify for capital gains provisions and/or special five-and ten-year averaging provisions.
- xii. No endowment or life insurance contracts or collectibles are allowed.
- xiii. Distributions will be taxed as normal income when you receive them. (Five- and ten-year averaging is not permitted.)

### 5. Penalty Tax

The IRS imposes a 10 percent penalty tax on certain distributions made before you reach age 59 ½. Generally, you will not pay a penalty for distributions made:

- To pay significant unreimbursed medical expenses,
- To pay medical insurance premiums after losing your job,
- Due to disability,
- Due to death,
- As part of a series of substantially equal payments,
- To pay qualified higher education expenses,
- To pay certain qualified first-time homebuyer amounts.

You should consult with your tax advisor or IRS Publication 590 for more information on exceptions to the penalty tax.

### 6. Distributions and Transfers

#### a. General Conditions

You must identify all applicable assets *in writing* when requesting a distribution or transfer.

Distributions are taxed as normal income in the year you receive them.

Five- and ten-year averaging is not allowed.

#### b. Nontaxable Amounts

Any portion of an IRA distribution that consists of nondeductible contributions will not be taxed again. If you make any nondeductible IRA contributions, each distribution from your IRA will consist of a nontaxable portion (return of nondeductible contributions) and a taxable portion (return of deductible contributions if any, and account earnings). This means you cannot take a distribution that is entirely tax free.

Refer to Pub. 590 for instructions on how to calculate the non-taxable portion of your distribution.

### C. Additional Information

The following information applies to Traditional *and* Roth IRAs:

#### 1. Types of Contributions

- a. All contributions must be in cash with the exception of rollovers and conversions.
- b. No part of the trust may be invested in life insurance.
- c. The entire balance of your IRA is non-forfeitable.
- d. The assets of your IRA may not be commingled.

#### 2. Prohibited Transactions

The Tax Code prohibits you from using your IRA to engage in certain transactions. You may lose the tax-deferred status of your IRA if you engage in these transactions. Generally, those transactions are:

- a. Sale, exchange, or leasing of any property between the plan and a party-in-interest.
- b. Lending money or any other extension of credit to a party-in-interest.
- c. Furnishing of goods, services, or facilities, between the plan and a party-in-interest.
- d. Transfer to or use for the benefit of a party-in-interest of the income or assets of the plan in his or her own interest or for his or her own account.
- e. Receipt of any consideration for his or her own personal account by a party-in-interest that is a fiduciary dealing with the plan concerning the transaction involving the income or assets of the plan.
- f. Pledging the account or part of the account as security for a loan.
- g. Investing in collectibles such as works of art, rugs, antiques, certain metals, gems, stamps, most coins, or alcoholic beverages.

If your IRA loses its tax-deferred status, you may have to include the entire amount of the earnings in your income for the year the tax-deferred status was lost. You may also be subject to the 10 percent penalty tax on premature distributions, unless you meet the require-

## Disclosure Statement for Self-Directed Individual Retirement Accounts

ments for one of the exceptions to that tax.

Consult with your broker or account executive about certain restrictions that are imposed by the Trustee and the Brokerage Firm. Some examples of permissible investments include stocks, bonds, mutual funds, and certificates of deposit. This list is an example only and is not inclusive.

For more information on prohibited transactions and certain exemptions, see Code Section 4975.

### 3. Gift Taxes

The gift tax exclusion for distributions is applicable to an IRA. In addition, the designation of a beneficiary of an IRA is not considered a transfer of property for federal gift tax purposes.

### 4. Recharacterizations

You may be able to treat a contribution made to one type of IRA as having been made to a different type of IRA. You generally must have the contribution transferred from the first IRA to the second IRA in a trustee-to-trustee transfer. If you made the transfer by the due date of your tax return filing (including extensions) for the year during which you made the contribution, you can elect to treat the contribution as if it was made to the second IRA on the same date you actually made it. The transfer must include any net earnings allocable to the contribution. The contribution will not be treated as having been made to the second IRA if any deduction was allowed for the contribution to the first IRA.

#### a. Previous Tax-free Transfers

If you moved a contribution from one IRA to another in a tax-free transfer, such as a rollover, the contribution to the second IRA generally cannot be recharacterized. There is an exception for moves from a Traditional IRA to a SIMPLE Retirement Account. If you mistakenly roll over or transfer an amount from a Traditional IRA to a SIMPLE, you can later recharacterize the amount as a contribution to another Traditional IRA.

#### b. Employer Contributions

You cannot recharacterize employer contributions (including elective deferrals) under a SEP or SIMPLE plan as contributions to another IRA.

#### c. Not Counted as a Rollover

The recharacterization of a contribution is not treated as a rollover for purposes of the one-year waiting period.

#### d. How to Recharacterize

You must notify both the trustee of the first IRA and the trustee of the second IRA that you have elected to treat the

contribution as if you made it to the second IRA. You must make the notification by the date of the transfer. The notification must include:

- i. The type and amount of the contribution to the first IRA that you are recharacterizing.
- ii. The date the contribution was made to the first IRA and the year for which it was made.
- iii. Directions to the trustee of the first IRA to transfer the amount and any income allocable to it, to the trustee of the second IRA in a trustee-to-trustee transfer.
- iv. The name of the trustee of both the first and second IRAs.
- v. Any additional information needed to make the transfer.

### 5. Excess Contributions

An excess contribution is one that you make that exceeds the amount you are allowed to make. The IRS may penalize you up to 6 percent of the excess contribution amount.

#### Correcting the Excess

You can make a correction before your tax-filing deadline to avoid the 6 percent tax penalty by:

- Withdrawing the amount of the excess and any earnings before the tax-filing deadline for the tax year the contribution was made (the deadline includes extensions), and
- Including the withdrawn earnings in your gross income for the year in which you contributed.

**You are responsible for computing the earnings and providing that figure to us on your completed distribution form. You may also owe the IRS a 10 percent premature distribution penalty tax on the earnings, even if you removed them before the tax-filing deadline.**

The 6 percent tax penalty will continue to be assessed each year, until you correct the excess contribution. You can avoid the penalty in subsequent years by:

- Leaving the excess amount in your IRA and making a contribution that is equal to your maximum allowable amount, less the amount of the excess, in a subsequent year, or
- Withdrawing the excess amount from your IRA.

If you correct only a part of the excess contribution, you will continue to be liable for the tax on the amount not corrected.

### 6. Financial Disclosure

- a. The amount of money that will be available at any period of time depends on:
  - The amount of contributions,
  - Total years of participation,

## Disclosure Statement for Self-Directed Individual Retirement Accounts

- Earnings, including interest, dividends, realized and unrealized gains, and losses,
- Expenses incurred for brokerage commissions and applicable Trustee's fees.

Due to the many kinds of investments that you may choose, neither a guaranteed return nor a projected amount can be practically furnished.

- b.** The Trustee charges annual and other fees for your IRA. Please refer to the attached fee schedule.

If you fail to pay the Trustee's compensation, taxes, and/or expenses within a reasonable time after demand for payment is made, we reserve the right to charge the expenses to the Trust and liquidate such assets of the Trust as needed to satisfy the demand. The custodian will collect all fees, expenses, and taxes for the Trustee as directed by us. **Such collection of fees by the custodian may be made without your approval or direction.**

*The Trustee reserves the right to revise the fee schedules and will provide sufficient advance written or electronic notice of any revision to the Account Holder.*

Brokerage commissions are considered a separate cost and are in addition to the above fees charged by the Trustee. Questions about brokerage commissions should be discussed with your broker or account executive before any orders are executed.

- c.** To compute and allocate annual earnings:
- Compare the year-end market value to the prior year's market value
  - Add any interest or dividends earned for your total account

### 7. Investments

It is your responsibility to select and direct the investments of the Trust, either in person or through a broker, account executive or investment advisor. The investments you choose must conform to the Self-Directed IRA Trust Agreement. For example, you may invest in stocks, bonds, mutual funds, savings programs, and other lawful transactions as stated in the Trust. (This list is an example only.) Investments that do not generate confirmations must be accompanied by additional written instructions.

No part of your IRA may be invested in collectibles (within the meaning of Code Section 408(m) except for certain coins and bullion defined in

Code Section 408(m)(3). Any investments in collectibles will be treated as a distribution.

No part of your IRA may be invested in life insurance contracts or commingled with other property, except in a common trust or investment fund, described in Code Section 408(a)(5).

Although Mesirow Financial may provide investment information to you, any information given by them should not serve as a primary basis for your investment decisions. Any questions about the authority of your broker should be directed to the Brokerage Firm. The broker is **not** an employee of Delaware Charter, and Delaware Charter **does not supervise or control the activity of the broker.** Furthermore, it is our understanding that you will exercise independent judgment when you make your investment decisions.

### 8. IRS Form 5329

You must file a Form 5329 (Return for Individual Retirement Savings Arrangement) with Form 1040 if you owe:

- excess contribution taxes
- premature distribution taxes

### 9. IRS Form 5498

We will complete Form 5498 and mail it to the IRS each year. This form reports contributions, conversions, and rollovers received during the year. To ensure accuracy, the cash statement from Mesirow Financial must reflect the applicable tax year for each contribution and note whether the contribution is a regular or rollover contribution.

### 10. Simplified Employee Pension

If you are an employer and wish to establish a Simplified Employee Pension Plan, you must obtain and complete Form 5305-SEP. This form is available at your local IRS office. You may also call the IRS at (800) 829-3676 or visit their web site at [www.irs.gov/forms\\_pubs/forms.html](http://www.irs.gov/forms_pubs/forms.html).

### 11. Savings Incentive Match Plan for Employees (SIMPLE)

Please contact our Customer Service area for Form 5305-SIMPLE if you want to establish a SIMPLE plan. You may also download the form from our web site at [www.trustar-rs.com](http://www.trustar-rs.com).

### 12. Arbitration

You agree that all controversies between you and/or your beneficiaries and the Trustee and/or any of its officers, directors, or employees (present or former) concerning or arising from:

- a. Any retirement account maintained with the Trustee by you;
- b. Any transaction involving your IRA, whether or not such transactions occurred in such IRA or IRAs; or

## Disclosure Statement for Self-Directed Individual Retirement Accounts

- c. The construction, performance, or breach of this Self-Directed IRA Trust Agreement provided by Delaware Charter between us, whether such controversy arose prior, on, or subsequent to the date hereof,

shall be determined under the commercial arbitration rules of the American Arbitration Association. Any disputes as to the arbitrability of a matter or the manner of such arbitration will be determined in such arbitration. The arbitration will be held in Wilmington, Delaware.

### Arbitration Disclosures:

- a. Arbitration is final and binding on the parties,
- b. The parties are waiving their right to seek remedies in court, including the right to jury trial,
- c. Pre-arbitration discovery is generally more limited than and different from court proceedings,
- d. The arbitrator's award is not required to include factual findings or legal reasoning and any party's right to appeal or to seek modification of rulings by the arbitrators is strictly limited,
- e. The panel of arbitrators will consist of arbitrators from the American Arbitration Association,
- f. The arbitration will be under the commercial arbitration rules of the American Arbitration Association,
- g. The arbitration will be held in Wilmington, Delaware,
- h. Any disputes as to such arbitration or the manner thereof will be determined in such arbitration.

The determination that any provision of this Self-Directed IRA Trust Agreement is not enforceable in accordance with its terms in a particular jurisdiction shall not affect the validity or enforceability of the remaining provisions of this Self-Directed IRA Trust Agreement generally or in any other jurisdiction or as to any other parties, but rather such unenforceable provisions shall be stricken or modified in accordance with such determination only as to such parties and this Agreement, as modified, shall continue to bind the specific parties involved therein and otherwise all other parties in unmodified form.

Further information can be obtained from any district office of the Internal Revenue Service.

# Self-Directed Individual Retirement Trust

Please check with your legal and/or tax counsel if you have any questions about how this information applies to your particular situation.

## Article I

### Introduction

The purpose of this Trust is to establish a Traditional IRA under Internal Revenue Code ("Code") Section 408(a) or a Roth IRA under Code Section 408A to provide benefits for an individual or their beneficiaries upon their retirement, disability, or death. At no time shall the account be operated as both a Roth IRA and a Traditional IRA.

## Article II

### Definitions

As used in both the Traditional IRA and Roth IRA Self-Directed Individual Retirement Trust Agreement, the following terms shall have the meanings set forth below, unless a different meaning is plainly required by the context:

**2.1 Act** means the Employee Retirement Income Security Act of 1974, as amended.

**2.2 Account Holder** means the individual whose name appears on the Trustee accepted application and for whom contributions have been received by this Trust.

**2.3 Application** means the Application through which the Account Holder adopts this Trust, as may be amended from time to time, and thereby agrees to be bound by all terms and conditions of this Agreement.

**2.4 Beneficiary** means the person(s) or entity (entities) properly designated by the Account Holder in the Application or in a form acceptable to the Trustee.

**2.5 Brokerage Firm** means the investment agent selected in the application or through other means acceptable to the Trustee.

**2.6 Code** means the Internal Revenue Code of 1986, as amended.

**2.7 Compensation** means wages, salaries, professional fees, or other amounts derived from or received for personal services actually rendered. This includes but is not limited to commissions paid salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, and bonuses. It also includes earned income, as defined in Code Section 401(c)(2) (reduced by the deduction the self-employed individual takes

for contributions made to a self-employed retirement plan). For purposes of this definition, Code Section 401(c)(2) shall be applied as if the term trade or business, for purposes of Code Section 1402 included service described in subsection (c)(6). Compensation does not include amounts derived from or received as earnings or profits from property (including but not limited to interest and dividends) or amounts not includible in gross income. Compensation also does not include any amount received as a pension or annuity or as deferred compensation. Compensation does include any amount includible in the Account Holder's gross income under Code Section 71 with respect to a divorce or separation instrument described in subparagraph (A) of Section 71(b)(2).

With respect to Roth IRAs, in the case of a married individual filing a joint return, the greater compensation of his or her spouse is treated as his or her own compensation, but only to the extent that such spouse's compensation is not being used for purposes of the spouse making a contribution to a Roth IRA or a deductible contribution to a non-Roth IRA.

**2.8 Conversion Contribution** means a rollover contribution described in Section 408(d) of the Code from a Traditional IRA, SEP, or SIMPLE IRA to a Roth IRA.

**2.9 Designated Beneficiary** means the beneficiary whose life expectancy is used to determine the amount of the required distribution, in accordance with Code Section 408(a)(6) and Treasury Regulation Section 1.408-8.

**2.10 Disability** means the Account Holder's inability to engage in any substantial, gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of a long-continued and indefinite duration and as further described in Code Section 72(m)(7).

**2.11 Individual Retirement Account** means an account established under section 408(a) of the Code.

**2.12 Internal Revenue Service (IRS)** means the agency responsible for administering and enforcing internal revenue laws, determination of pension plan qualification and exempt organization status, preparation and issuance of ruling and regulations to interpret the provisions of the Internal Revenue Code, and other responsibilities.

**2.13 Modified Adjusted Gross Income (MAGI)** means

## Self-Directed Individual Retirement Trust

income as defined in Code Section 408A(c)(3)(C)(i) and does not include any amount included in adjusted gross income as a result of a rollover from a non-Roth IRA (a conversion).

**2.14 Recharacterization** means treating a contribution made to one IRA as having been made to a different type of IRA.

**2.15 Reconversion** means recharacterizing a conversion contribution as a contribution to a Traditional IRA, then converting the Traditional IRA to a Roth IRA again. Conversions can be reconverted one time during the calendar year during which they were made.

**2.16 Regulations** mean Federal Income Tax regulations, as amended from time to time.

**2.17 Required Beginning Date** means the date at which payments must be made from the account.

**2.18 Roth IRA** means an individual retirement account as defined in Section 408A of the Code.

**2.19 Spousal IRA** means an IRA funded by a married taxpayer for his or her spouse if the taxable compensation of the non-working spouse is less than that of the working spouse and the taxpayer files a joint return.

**2.20 SIMPLE** means a Savings Incentive Match Plan for Employees as defined in Section 408(p) of the Code.

**2.21 SEP** means a Simplified Employee Pension as defined in Sections 408(j) and 408(k) of the Code.

**2.22 Traditional IRA** means an IRA as defined in Section 408(a) of the Code.

**2.23 Trust Year** is the calendar year from January first (1<sup>st</sup>) to December thirty-first (31<sup>st</sup>).

**2.24 Trustee** means the Delaware Charter Guarantee & Trust Company (Delaware Charter), conducting business as Trustar® Retirement Services and any successor Trustee under the trust.

**2.25 Trust** means this Trust established hereunder as it may be amended from time to time, including the Application, which is part of the Trust.

**2.26 Trust Agreement** means this document which establishes and sets forth the material terms of the Self-Directed Individual Retirement Trust Agreement.

## Article III

### Roth IRAs

The references to IRAs in this Article refer only to Roth IRAs unless noted otherwise.

#### 3.1 Eligibility

- A. An eligible individual is any person who received compensation for services (including earned income of a self-employed individual) during the taxable year **and** has a modified adjusted gross income (MAGI) which is less than the amount allowed for their filing status for purposes of contributing to a Roth IRA.
- B. As a condition of participation, the Account Holder is required to consent to the terms and conditions of this Trust, as may be amended from time to time. Agreement need not be in writing.

#### 3.2 Contributions

- A. Each taxable year, the Account Holder may contribute on a periodic basis to this Trust an amount not to exceed the lesser of three thousand dollars (\$3,000) or one-hundred percent (100%) of compensation, or the applicable statutory limit. A qualified rollover contribution or recharacterization (as described in Section 3.3 and 3.4 does not apply toward the contribution limit).

If the Account Holder is under age 50, the applicable amount is \$3,000 for any taxable year beginning in 2002 through 2004, \$4,000 for any taxable year beginning in 2005 through 2007 and \$5,000 for any taxable year beginning in 2008 and years thereafter.

If the Account Holder is 50 or older, the applicable amount is \$3,500 for any taxable year beginning in 2002 through 2004, \$4,500 for any taxable year beginning in 2005 through 2007 and \$6,000 for any taxable year beginning 2008 and years thereafter.

After 2008, the limits in the paragraphs above will be adjusted by the Secretary of the Treasury for cost-of-living increases under Code Section 219(b)(5)(C). Such adjustments will be in multiples of \$500.

- B. The contribution limit is reduced if the Account Holder's filing status is:
  - C. Married filing a joint return *and* the MAGI is between \$150,00 and \$160,000.
  - D. Married filing separately and the Account Holder and spouse lived together during the year *and* the MAGI is

## Self-Directed Individual Retirement Trust

between \$0 and \$10,000.

- E. Single, head of household or married filing separately and the Account Holder did not live with their spouse at any time during the year *and* the MAGI is between \$95,000 and \$110,000.
- F. If the Account Holder's contribution limit is reduced because of MAGI the maximum regulation contribution is rounded up to the next \$10. If the contribution limit is greater than \$0, but less than \$200, the amount is rounded up to \$200.
- G. Contributions to this Roth IRA are also reduced by the amount of contributions made to a Traditional IRA.
- H. For purposes of Sections 3.1(A) above, MAGI has the same meaning as defined in Code Section 408A(c)(3)(C)(i). MAGI does not include amounts includible in Adjusted Gross Income because of a conversion from a Traditional IRA.
- I. A regular contribution to a Traditional IRA or a SIMPLE plan may be recharacterized as a regular contribution to this Roth IRA subject to the terms and limitations in Treasury Regulation Section 1.408A-5 and Section 3.4 below.
- J. No amounts made under a SIMPLE plan established by an employer under Code Section 408(p) or a SEP established by an employer under Code Section 408(j) or (k) will be accepted into this Trust.
- K. No amounts attributable to an employer contribution to a SIMPLE plan can be converted to a Roth IRA during the 2-year period beginning on the date the Account Holder first participated in the SIMPLE.
- L. Contributions may be made after age 70½.

### 3.3 Rollovers

- A. This Trust will accept rollovers from other Roth IRAs provided they are deposited within 60 days of the date distributed from the previous Roth IRA as permitted under applicable laws. A qualified rollover is one that meets the requirements of Section 408(d)(3) of the Code, except the one rollover per twelve consecutive months rule does not apply if the rollover is from an IRA other than a Roth IRA.
- B. Rollover Contributions from a non-Roth IRA cannot be made if:
  - You and your spouse's MAGI is more than \$100,000,
  - You are married and filing a separate return, or
  - You are not married and your MAGI is in excess of \$100,000

The \$100,000 limit shall apply in the year that the assets are distributed from the Traditional IRA and not the date they are deposited into the Roth IRA. For the purposes of this Section 3.3 (B), a husband and wife are not treated as married for a taxable year if they have lived apart at all times during that taxable year and file separate returns for that taxable year.

- C. Conversion amounts must be qualified rollover contributions under Code Section 408A(e), and therefore, must satisfy Code Section 408(d)(3).
- D. Any amount converted from a non-Roth IRA to a Roth IRA will be treated as a distribution from the non-Roth IRA and a rollover to the Roth IRA regardless of the actual means by which the assets are converted.
- E. Amounts held in a SEP or SIMPLE plan may be converted. In the case of a SIMPLE plan, the conversion may be done only after the expiration of the two-year period as described in Code Section 72(t)(6). No SEP or SIMPLE contributions can be made to a Roth IRA. Amounts held in retirement plans other than IRAs cannot be converted directly to a Roth IRA.

### 3.4 Recharacterizations

- A. On or before the due date for filing taxes, plus extensions, an Account Holder may recharacterize IRA contributions, including Roth IRA Conversion Contributions by means of a Trustee transfer. Recharacterized amounts will be treated as if they were made to the transferee plan and not the transferor plan if such recharacterizations are made in compliance with Code Section 408A(d)(6), Treasury Regulation Section 1.408A-5, and other applicable laws or regulations.
- B. **Beginning January 1, 2000**, amounts that are transferred from a Traditional IRA to a Roth IRA by means of a recharacterization may not be converted before the later of the beginning of the taxable year following the taxable year in which the amount was converted to a Roth IRA or the end of the 30-day period beginning on the day on which the Account Holder recharacterizes the amount from the Roth IRA back to the Traditional IRA.

A Reconversion made before the later of the beginning of the next taxable year or the end of the 30-day period is treated as a failed Reconversion. For this purpose only, a failed Conversion Contribution that is the result of a failure to satisfy the statutory requirements for a

## Self-Directed Individual Retirement Trust

Conversion contribution is treated as a Conversion contribution in determining when the Account Holder can make a Reconversion.

### 3.5 Distributions

- A. The Account Holder is not required to take distributions from his or her Roth IRA during their lifetime. The Beneficiary must take distributions as outlined in Paragraphs F through K of this Section 3.5.
- B. Distributions that are not included in income are:
- Qualified distributions
  - Due to return of excess
  - Rolled over to another Roth IRA

A qualified distribution is a distribution of assets that have been in the account for five years **and**:

- Made on or after the date you reach age 59½,
  - Made because you are disabled,
  - Made to a beneficiary or your estate after your death, or
  - Meets the requirements for the purchase of a first home.
- C. Withdrawals of excess contributions and the earnings on them before the due date of your tax return (including extensions) are not qualified distributions. The earnings are taxable in the year for which the contribution was made and may be subject to a 10 percent early distribution penalty.
- D. Distributions that are not qualified distributions may be partially taxable. The tax treatment of these withdrawals and the earnings thereon must be withdrawn according to the order and aggregation rules as outlined in Code Section 408A(d)(F)(4).
- E. The taxable portion of other withdrawals that are not qualified distributions are subject to the additional tax on premature distributions, unless one of the exceptions applies.
- F. Upon the death of the Account Holder, his or her entire interest will be distributed at least as rapidly as follows:
1. If the designated Beneficiary is someone other than the Account Holder's surviving spouse, the entire interest will be distributed, starting by December 31 of the calendar year following the calendar year of the Account Holder's death, over the remaining life expectancy of the designated Beneficiary, with such life expectancy determined using the age of the Beneficiary

as of his or her birthday in the year following the year of the Account Holder's death, or, if elected, in accordance with paragraph F.3 below.

2. If the Account Holder's sole designated Beneficiary is the Account Holder's surviving spouse, the entire interest will be distributed, starting by December 31 of the calendar year following the calendar year of the Account Holder's death (or by December 31 of the calendar year in which the Account Holder would have attained age 70½, if later), over such spouse's life, or, if elected, in accordance with paragraph F.3 below. If the surviving spouse dies before distributions are required to begin, the remaining interest will be distributed, starting by the end of the calendar year following the calendar year of the spouse's death, over the spouse's designated Beneficiary's remaining life expectancy determined using such Beneficiary's age as of his or her birthday in the year following the death of the spouse, or, if elected, will be distributed in accordance with paragraph F.3 below. If the surviving spouse dies after distributions are required to begin, any remaining interest will be distributed over the spouse's remaining life expectancy determined using the spouse's age as of his or her birthday in the year of the spouse's death.
3. If there is no designated Beneficiary, or if applicable by operation of paragraph F.1 or F.2 above, the entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Account Holder's death (or of the spouse's death in the case of the surviving spouse's death before distributions are required to begin under paragraph F.2 above).
4. The amount to be distributed each year under paragraph F.1 or F.2 is the quotient obtained by dividing the value of the Roth IRA as of the end of the preceding year by the remaining life expectancy specified in such paragraph. Life expectancy is determined using the Single Life Table in Q&A-1 of Section 1.401(a)(9)-9 of the Treasury Regulations. If distributions are being made to a surviving spouse as the sole designated Beneficiary, such spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to such spouse's age in the year. In all other cases, remaining life expectancy for a year is the number in the Single Life Table corresponding to the Beneficiary's age in the year specified in paragraph F.1 or F.2 and reduced by 1 for each subsequent year.
5. The value of the Roth IRA includes the amount of any

## Self-Directed Individual Retirement Trust

outstanding rollover, transfer, and recharacterization under Q&As-7 and -8 of Section 1.408-8 of the Treasury Regulations.

- G. If the Beneficiary has not made an election by December 31 of the year following the year of the Account Holder's death, the Trustee reserves the right to distribute the assets in any one of the following ways:
- Pay the entire value of the account to the Beneficiary in a lump sum, or
  - Pay the entire value of the account by December 31 of the fifth year following the year of the Account Holder's death, or
  - Pay the amount over the life expectancy of the Beneficiary.
- In the case of a payment made over the Beneficiary's life expectancy, the amount shall be figured using the Beneficiary's age on December 31 of the year distributions will begin and using the fair market value of the account on December 31 of the year prior to the year distributions will begin. Life expectancy shall be determined using the Single Life Table in Q&A-1 of Section 1.401(a)(9)-9 of the Treasury Regulations. If the Beneficiary is the Account Holder's spouse, the life expectancy will be recalculated and is irrevocable when payment has been made.
- H. If a distribution to a Beneficiary is not a qualified distribution, it is generally included in the Beneficiary's income in the same manner as a distribution to the Account Holder when the Account Holder was alive (See Section 3.5(D) above).
- I. Distributions from other Roth IRAs cannot be substituted for payments from this Roth IRA unless the other IRA was inherited from the same decedent.
- J. If the Account Holder had converted funds to which four-year averaging applies and such Account Holder dies before all such amounts have been included in income, the Beneficiary will include all remaining amounts in gross income for the taxable year that includes the Account Holder's date of death.
- K. If the sole Beneficiary of the account is the Account Holder's spouse, the account will be treated as if the surviving spouse elected to treat it as his or her own in the event that the surviving spouse fails to take a distribution by the required time or makes a contribution, rollover, or conversion to the account.

## Article IV

### Traditional IRAs

**References to IRAs in this Article refer only to Traditional IRAs unless noted otherwise.**

#### 4.1 Eligibility

- A. An eligible individual is any person who received Compensation for services (including earned income of a self-employed individual) during the taxable year and is under age 70½. An individual making a rollover contribution (as permitted by Code Sections 402(c), 402(e)(6), 403(a)(4), 403(b)(8), 403(b)(10), 408(d)(3), and 457(e)(16) or an employer contribution to a Simplified Employee Pension as defined in Code Section 408(k) is also an eligible individual.
- B. As a condition of participation, the Account Holder will be required to consent to the terms and conditions of this Trust, as may be amended from time to time. Consent need not be in writing.

#### 4.2 Contributions

- A. Except in the case of a rollover contribution as described in Code Section(s) 402(c), 402(e)(6), 403(a)(4), 403(b)(8), 403(b)(10), 408(d)(3), and 457(e)(16) or an employer contribution to a SEP as described in Code Section 408(k), no contributions will be accepted unless they are in cash, and the total of such contributions does not exceed \$3,000 for any taxable year beginning in 2002 through 2004; \$4,000 for any taxable year beginning in 2005 through 2007; and \$5,000 for any taxable year beginning in 2008 and years thereafter.

After 2008, the limit will be adjusted by the Secretary of the Treasury for cost-of-living increases under Code Section 219(b)(5)(C). Such adjustments will be in multiple of \$500.

In the case of an individual who is 50 or older, the annual cash contribution limit is increased by \$500 for any taxable year beginning in 2002 through 2005 and \$1,000 for any taxable year beginning in 2006 and years thereafter.

In the case of a SEP contribution, the amount cannot exceed the lesser of 25 percent of compensation, or \$40,000 or such limits as prescribed by law. In general, you cannot consider the part of an employee's compensation that exceeds the statutory limit as adjusted when figuring the contribution limit for that employee. That means the contribution amount for an employee subject to the \$200,000 compensation cap is \$40,000.

## Self-Directed Individual Retirement Trust

No contributions will be accepted under a SIMPLE IRA Plan established by any employer pursuant to Code Section 408(p). Also, no transfer or rollover of funds attributable to contributions made by a particular employer under its SIMPLE IRA Plan will be accepted from a SIMPLE IRA, that is, an IRA used in conjunction with a SIMPLE IRA Plan, prior to the expiration of the 2-year period beginning on the date the employee first participated in that employer's SIMPLE IRA Plan.

- B. No contributions can be made to this Trust in or after the taxable year during which the Account Holder reaches age 70½.

### 4.3 Rollovers

- A. The Trustee may accept additional cash contributions on behalf of the Account Holder for a tax year of the Account Holder. The total cash contributions are limited as described in Section 4.2 above unless the contribution is a rollover as described in Code Sections 402(c) (but only after December 31, 1992) 402(e)(6), 403(a), 403(b)(8), 403(b)(10), 408(d)(3), and 457(e)(16) or an employer contribution to a SEP described in Code Section 408(k).
- B. If this Trust or an employee's IRA forming part of the employer's retirement trust has been disqualified because the individual and/or the Beneficiary engaged in prohibited transaction as defined in Section 406 of the Act, then such employee's account may not be rolled over to another IRA.
- C. Only cash or property from a plan as described above may be rolled over from such plan to this Trust.

### 4.4 Distributions

- A. Amounts distributed from a Traditional IRA and not rolled over into another trust as described in Code Section 408(d)(3), are subject to a 10 percent non-deductible penalty tax as described in Code Section 72(t)(2).

There are exceptions to the tax as described in Code Section 72(t)(2)(a). Those exceptions are distributions that are made:

- After attainment of age 59½
- After the death of the Account Holder
- Due to disability as defined in Code Section 72(m)(7)
- As part of a series of substantially equal and periodic payments that are not less frequently than annually and made over the life expectancy of the Account Holder or the Account Holder and their Beneficiary

- Due to dividends paid by a corporation described in Code Section 404(k)
  - On account of a levy under Code Section 6331
  - Distributions made under Code Section 72(t)(2)(B) (certain medical expenses), Code Section 72(t)(2)(C) (qualified domestic relation orders), and 72(t)(2)(D) (distributions to unemployed individuals for health insurance premiums) may be exempt from the ten percent (10%) penalty.
- B. Notwithstanding any provision of this Trust Agreement to the contrary, the distribution of an Account Holder's interest will be made in accordance with the minimum distribution requirements of Code Sections 408(a)(6) or 408(b)(3) and the regulations thereunder, including the incidental death benefit provision of Treasury Regulation Section 1.401(a)(9)-2 which is herein incorporated by reference. If distributions are made from an annuity contract purchased from an insurance company, distributions thereunder must satisfy the requirements of Q&A-4 of Section 1.409(a)(9)-6T of the Temporary Treasury Regulations, rather than sections C, E, and K below.
- C. The Account Holder's entire interest in the Traditional IRA must be distributed or begin to be distributed by the Account Holder's Required Beginning Date (which is April 1 of the year following the calendar year in which the Account Holder reaches age 70½) and over the life of such Account Holder or the lives of such Account Holder and his or her designated Beneficiary. A distribution must be made on or before December 31 for each succeeding year.
- D. The Account Holder may elect to receive a distribution of the balance of the Trust at any time, upon written notice to the Trustee. This is true even if distributions have begun in accordance with one of the above options.
- E. The amount that must be distributed each year, beginning with the calendar year for which distributions are required and continuing through the year of death, is obtained by dividing the IRA account balance on December 31 of the previous year by the distribution period in the Uniform Lifetime Table in Q&A-2 of Section 1.401(a)(9)-9 of the Treasury Regulations, using the Account Holder's age as of his or her birthday in the year. However, if the Account Holder's sole designated Beneficiary is his or her surviving spouse and such spouse is more than 10 years younger than the Account Holder, then the distribution period is determined under the Joint and Last Survivor Table in Q&A-3 of Section 1.401(a)(9)-9 using the ages as of the Account

## Self-Directed Individual Retirement Trust

Holder's and spouse's birthdays in the year.

- F. If in any taxable year after the Account Holder turns age 70½ and fails to withdraw the required minimum distribution from the IRA, a 50 percent non-deductible penalty may be imposed by the IRS on the difference between the amount that should have been distributed and the amount actually distributed.
- G. If an Account Holder has multiple IRAs, then the Account Holder must determine the required minimum distribution amount for each IRA, however the minimum amounts can be totaled together and the total taken from any one or more of the IRAs in accordance with Q&A-9 of section 1.408-8 of the Treasury Regulations.

If the Account Holder fails to receive any of the distributions described above before the first day of April following the calendar year in which the age of 70½ is reached, then the Trustee reserves the right to pay out the balance of the account in a single sum payment.

- I. Distributions in excess of the required minimum payment cannot be used as a credit when figuring a subsequent year's required minimum distribution.
- J. Life expectancy is determined in accordance with section 4.4E above. If the Account Holder fails to make an election by the time distributions are required to begin, life expectancy will be recalculated annually. Such elections will be irrevocable by the Account Holder and will apply to all subsequent years. The life expectancy of a non-spouse Beneficiary may not be recalculated. Instead, life expectancy will be calculated using the attained age of such Beneficiary during the calendar year in which the Account Holder attains age 70½. Payments for subsequent years will be calculated based on such life expectancy reduced by one for each calendar year that has elapsed since the calendar year life expectancy was first calculated.
- K. If the Account Holder dies before the entire interest in the IRA is distributed, the remaining interest will be distributed as follows:
  - (a) Death on or after Required Beginning Date: If the Account Holder dies on or after the Required Beginning Date, the remaining portion of his or her interest will be distributed as least as rapidly as follows:
    - 1. If the designated Beneficiary is someone other than the Account Holder's surviving spouse, the remaining interest will be distributed over the

remaining life expectancy of the designated Beneficiary, with such life expectancy determined using the Beneficiary's age as of his or her birthday in the year following the year of the Account Holder's death, or over the period described in paragraph (a)(3) below if longer.

- 2. If the Account Holder's sole designated Beneficiary is the Account Holder's surviving spouse, the remaining interest will be distributed over such spouse's life or over the period described in paragraph (a)(3) below if longer. Any interest remaining after such spouse's death will be distributed over such spouse's remaining life expectancy using the spouse's age as of his or her birthday in the year of the spouse's death, or, if the distributions are being made over the period described in paragraph (a)(3) below, over such period.
  - 3. If there is no designated Beneficiary, or if applicable by operation of paragraph (a)(1) or (a)(2) above, the remaining interest will be distributed over the Account Holder's remaining life expectancy determined in the year of the Account Holder's death.
  - 4. The amount to be distributed each year under paragraphs (a)(1), (2), or (3), beginning with the calendar year following the calendar year of the Account Holder's death, is the quotient obtained by dividing the value of the IRA as of December 31 of the preceding year by the remaining life expectancy specified in such paragraph. Life expectancy is determined using the Single Life Table in Q&A-1 of Section 1.401(a)(9)-9 of the Treasury Regulations. If distributions are being made to a surviving spouse as the sole designated Beneficiary, such spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to such spouse's age in the year. In all other cases, remaining life expectancy for a year is the number in the Single Life Table corresponding to the Beneficiary's or Account Holder's age in the year specified in paragraphs (a)(1), (2), or (3) and reduced by 1 for each subsequent year.
- (b) Death before Required Beginning Date: If the Account Holder dies before the Required Beginning Date, the entire remaining interest must be distributed at least as rapidly as follows:

## Self-Directed Individual Retirement Trust

1. If the designated Beneficiary is someone other than the Account Holder's surviving spouse, the entire interest will be distributed, starting by December 31 of the calendar year following the year of the Account Holder's death, over the remaining life expectancy of the designated Beneficiary, with such life expectancy determined using the age of the Beneficiary as of his or her birthday in the year following the year of the Account Holder's death, or, if elected, in accordance with paragraph (b)(3) below.
  2. If the Account Holder's sole designated beneficiary is the Account Holder's surviving spouse, the entire interest will be distributed, starting by December 31 of the calendar year following the calendar year of the Account Holder's death (or by December 31 of the calendar year in which the Account Holder would have attained age 70½ if later), over such spouse's life, or, if elected, in accordance with paragraph (b)(3) below. If the surviving spouse dies before distributions are required to begin, the remaining interest will be distributed, starting by December 31 of the calendar year following the calendar year of the spouse's death, over the spouse's designated Beneficiary's remaining life expectancy determined using such Beneficiary's age as of his or her birthday in the year following the death of the spouse, or, if elected, will be distributed in accordance with paragraph (b)(3) below. If the surviving spouse dies after distributions are required to begin, any remaining interest will be distributed over the spouse's remaining life expectancy determined using the spouse's age as of his or her birthday in the year of the spouse's death.
  3. If there is no designated Beneficiary, or if applicable by operation of paragraph (b)(1) or (b)(2) above, the entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Account Holder's death (or of the spouse's death in the case of the surviving spouse's death before distributions are required to begin under paragraph (b)(2) above).
  4. The amount to be distributed each year under paragraph (b)(1) or (2) is the quotient obtained by dividing the value of the IRA as of December 31 of the preceding year by the remaining life expectancy specified in such paragraph. Life expectancy is determined using the Single Life Table in Q&A-1 of Section 1.401(a)(9)-9 of the Treasury Regulations. If distributions are being made to a surviving spouse as the sole designated Beneficiary, such spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to such spouse's age in the year. In other cases, remaining life expectancy for a year is the number in the Single Life Table corresponding to the Beneficiary's age in the year specified in paragraph (b)(1) or (2) and reduced by 1 for each subsequent year.
- (c) The value of the IRA includes the amount of any outstanding rollover, transfer, and recharacterization under Q&As-7 and -8 of section 1.408-8 of the Treasury Regulations.
  - (d) If the sole designated Beneficiary is the Account Holder's surviving spouse, the spouse may elect to treat the IRA as his or her own IRA. This election will be deemed to have been made if such surviving spouse makes a contribution to the IRA or fails to take required distributions as a Beneficiary.
- L. If the Beneficiary has not made an election by December 31 of the year following the year of the Account Holder's death, the Trustee reserves the right to distribute the assets in any one of the following ways:
- Pay the entire value of the account to the Beneficiary in a lump sum, or
  - Pay the entire value of the account by December 31 of the fifth year following the year of the Account Holder's death, or
  - Pay the amount over the life expectancy of the Beneficiary.
- In the case of a payment made over the Beneficiary's life expectancy, the amount shall be figured using the Beneficiary's age on December 31 of the year distributions will begin and using the fair market value of the account on December 31 of the year prior to the year distributions will begin. If the Beneficiary is the Account Holder's spouse, the life expectancy will be recalculated and is irrevocable when payment has been made.
- M. Distributions under these Paragraphs B through M are

## Self-Directed Individual Retirement Trust

considered to have begun if the distributions are made because the Account Holder has reached his or her Required Beginning Date. If the Account Holder received distributions before the Required Beginning Date and the Account Holder dies, distributions will not be considered to have begun.

### Article V

#### ***Traditional and Roth IRAs***

#### **The following provisions apply to both Traditional IRAs and Roth IRAs**

##### 5.1 Contributions

- A. Contributions must be made in cash. The Account Holder will specify the investment to be made for all such contributions. All contributions received, together with the income therefrom, and any other increment thereon will be held, and administered by the Trustee pursuant to the terms of this Trust without distinction between principal and income and without liability for the payment of interest thereon. The Trustee will not be responsible for the computation and collection of any contributions under the Trust and will be under no duty to determine whether the amount of any contributions is in accordance with the Trust.
- B. Except in the case of a rollover contribution as described in Sections 3.3 (Roth IRA) and 4.3, (Traditional IRA), Conversion Contributions as described in Section 3.2 and Recharacterizations as described in Section 3.4, the Trustee will accept only cash and will not accept contributions on behalf of the Account Holder in excess of \$3,000 or such limits as may be prescribed by law for any taxable year. In the case of a SEP as described in Code Section 408(k), the Trustee will not accept employer contributions on behalf of the Account Holder in excess of \$40,000 or such limits as may be prescribed by law for that taxable year.
- C. Contributions made to this Trust by the Account Holder will be made to, or for the account, not later than April 15 of the year following the year to which the contribution relates. Contributions by an employer to a SEP must be made no later than three and one half months after the close of the Trust year.
- D. Contributions made to this Trust by or for the Account Holder will be fully vested and nonforfeitable at all times. Neither the Account Holder nor the Beneficiary may pledge, sell, or transfer any part of the account, except as provided by law

and this Trust Agreement.

- E. The Account Holder will direct the Trustee with respect to the investment of all contributions and the earnings thereon under the Trust. Such direction will be limited to securities obtainable through the brokerage firm designated in the Application (or any other stockbroker selected by the Account Holder and approved by the Trustee) for reinvestment in accordance with the instructions of the Account Holder. Notwithstanding the above, the Account Holder may direct contributions and earnings to be placed in a savings account or a Certificate of Deposit with an institution approved by the Trustee. The Trustee in its discretion reserves the right to return contributions received without the proper investment instructions to the payer or deposit such contributions to a money market account of the Trustee's choice. See Section 5.5 below for Investments and Administration.
- F. If the Account Holder makes a contribution to this Trust which exceeds the lesser of one hundred percent (100%) of compensation or three thousand dollars (\$3,000), or the lesser of twenty five percent (25%) of compensation or forty thousand dollars (\$40,000) if a SEP, or such limits as may be prescribed by law and it is deemed that any portion of such contribution which exceeds these limits is not deductible for federal income tax purposes, then the non-deductible portion may be withdrawn by the Account Holder. Such withdrawal must be made prior to the date on which the Account Holder is required to file his or her federal income tax return.
- G. Any income earned on the non-deductible portion of such contributions must be withdrawn by the Account Holder at the same time as indicated in paragraph F, above.

##### 5.2 Rollovers

- A. Partial rollovers from this Trust to another IRA meeting the requirements of Code Section 408(a) or to an Annuity contract meeting the requirements of Code Section 408(b), or a Roth IRA meeting the requirements of Code Section 408A, are permitted to be made once a year.
- B. The Account Holder may rollover or transfer the entire interest to another Individual Retirement Trust meeting the requirements of Code Section 408(a) or to an Annuity contract meeting the requirements of Code Section 408(b), or a Roth IRA meeting the requirements of Code Section 408A.
- C. The above described rollover(s) must be completed within sixty (60) days after the

## Self-Directed Individual Retirement Trust

day on which the Account Holder receives the payment or distribution of last asset in the account or in such time frames as prescribed by law.

### 5.3 Distributions

- A. Subject to, and in accordance with other provisions in this Trust, the Trustee will from time to time on the written directions of the Account Holder make distributions out of the Trust to such individuals, in such manner, in such amounts, and for such purposes as may be specified in such written directions.
- B. The Trustee will not be liable for the proper application of any part of the Trust if distributions are made in accordance with the written directions of the Account Holder as herein provided, nor will the Trustee be responsible for the adequacy of the Trust to meet and discharge any and all distributions and liabilities.
- C. All requests for withdrawals will be in writing and in a form acceptable to the Trustee. A withholding election and the tax identification number of the recipient will be provided to the Trustee before the Trustee makes a payment. All payments are subject to applicable taxes and penalties. If no withholding election is provided to the Trustee, taxes will be withheld in accordance with applicable laws.
- D. The Account Holder may transfer his or her interest in whole or in part, under a divorce decree, dissolution of marriage, or a written instrument incident to such divorce or dissolution. The Account Holder shall promptly notify the Trustee of such transfer by providing a certified copy of such decree or true copy of such written instrument to the Trustee.

### 5.4 Designation of Beneficiary

- A. The Account Holder shall designate a Beneficiary on the IRA application. The Account Holder may change the Beneficiary designation by filing a written notice with the Trustee in such manner as the Trustee deems acceptable. Changes to the Beneficiary designation must be received by the Trustee during the Account Holder's lifetime and are considered valid when they have been received by the Trustee.
- B. The Designated Beneficiary will be entitled to the Account Holder's entire interest in the event of the Account Holder's death before the complete distribution of the entire interest.
- C. Unless the Account Holder designates in writing how distributions are to be paid, the interest in the account will be paid equally to all primary Beneficiaries, or contingent Beneficiaries if all primary Beneficiaries have died before the

Account Holder.

- D. If the designation of a Beneficiary has not been made by the Account Holder at the time of the Account Holder's death, the Beneficiary shall be the spouse of the Account Holder, or if there is no spouse living at the time of the Account Holder's death, the Beneficiary will be the estate of the Account Holder.
- E. If the Beneficiary designated to receive payments is a minor child or declared incapacitated or incompetent by the court, the Trustee may make such payment to a court appointed guardian or legally appointed representative. The receipt of such payment by such individual shall be a full and complete discharge to the Trustee for any sums so paid.
- F. If the Trustee is unable to make a payment to a Beneficiary within six months after any such payment is due because the Trustee cannot ascertain the whereabouts or the identity of the Beneficiary by mailing to the last known address shown on the Trustee's records and such Beneficiary has not written claim for such payment before the expiration of said six-month period, then the Trustee may deposit the Beneficiary's funds in a savings account or money market mutual fund established in the name of the Beneficiary.
- G. Upon the death of the Account Holder, the Beneficiary may designate his or her own Beneficiary to receive any remaining assets in the account in the event the Beneficiary dies before a total distribution of the interest in the account occurs. Payments to the Beneficiary's Beneficiary must continue at least as rapidly as they would have been to the original Beneficiary.
- H. A designated Beneficiary may disclaim his or her interest in the account provided the disclaimer is in a form acceptable to the Trustee and complies with Code Section 2518(b).
- I. A Beneficiary is responsible for paying any fees, expenses, or taxes of the Trust in the same manner and time frame as if they were the original Account Holder.
- J. If the designated Beneficiary of the account is the spouse and a partial transfer of the account is effected under Section 5.3(D), it is the responsibility of the Account Holder to send the Trustee a written beneficiary change notice if the Account Holder does not want the spouse to remain as the designated Beneficiary.
- K. In the event of a dispute between two or more beneficiaries, the Trustee retains the right to apply to a court of competent

## Self-Directed Individual Retirement Trust

jurisdiction for judicial settlement or to arbitration pursuant to Section 5.8(G). All fees and expenses incurred by the Trustee in connection with such action will be deducted from the assets of the Trust after reasonable notice is given to the beneficiaries. Such fees and expenses do not have to be approved by the court or an arbitrator.

### 5.5 Investments and Administration

The Trustee shall have the power and authority in the administration of this Trust to do all acts, including by way of illustration, but not in limitation of the powers conferred by law, the following:

- A. Pursuant to the Account Holder's written directions (or those of the Account Holder's agent, if applicable) and notwithstanding any provision to the contrary in this Agreement, to invest and reinvest all or any part of the Trust in (i) cash, cash equivalents, exchange traded debt or equity securities (including options thereon and collectively defined as securities), mutual fund shares, savings media, and any other investment for the Trust under applicable law, to the extent they are not prohibited by Code Section 408(m) and the regulations thereunder, and (ii) with respect to which the Trustee agrees to provide Trust services. The allowable investments shall include, without limitation, any options on any security that may be held by the Trust under this Agreement and applicable law which is obtainable through the Brokerage Firm designated in the Application, either "over the counter" or on a recognized exchange. Any and all such investments and reinvestments must be acceptable to the Trustee without any duty on the part of the Trustee to diversify the investments or to make inquiry with regard to the investments or the written directions. The Trustee may absolutely rely on such written directions for the Account Holder that the Trustee believes to be genuine and will be fully protected in doing so;
- B. To hold part or all of the Trust account uninvested or, pursuant to directions of the Account Holder to place the same in a savings account approved by the Trustee or purchase a Certificate of Deposit with an institution approved by the Trustee. However, the Trustee may, but need not, establish a program under which cash deposits in excess of a minimum set by it will periodically be invested in a savings account or money market mutual fund without direction of the Account Holder or his or her agent and the terms of any such program may be determined and altered at the discretion of the Trustee;
- C. To employ suitable agents and counsel and to pay their reasonable expenses and compensations;
- D. Pursuant to the Account Holder's written directions or agent, to write covered listed call options against existing positions and to liquidate or close such option contracts and the purchase of put options on existing long positions (the same securities cannot be used to simultaneously cover more than one position), to exercise conversion privileges or rights, to subscribe for additional securities and to make payments therefore;
- E. Pursuant to the Account Holder or agent's written directions, and subject to Section 5.5(C), to consent to or participate in dissolutions, reorganizations, consolidations, mergers, sales, leases, mortgages, transfers or other changes affecting securities held by the Trustee;
- F. To leave any securities or cash for safekeeping or on deposit, with or without interest, with such banks, brokers and other custodians as the Trustee may select, and to hold any securities in bearer form or in the name of the banks, brokers and other custodians or in the name of the Trustee without qualification or description or in the name of any nominee;
- G. To invest contributions for Account Holder through the facilities of the Brokerage Firm designated in the Application (or equivalent facilities maintained by any other stockbroker or investment agent selected by the Account Holder and administratively pre-approved by the Trustee);
- H. The Brokerage Firm named in the Application is designated by the Account Holder with authority to provide the Trustee with instructions, via confirmations or otherwise, implementing his or her directions to the Brokerage Firm to purchase and sell securities for his or her account. Before the entry of any orders to purchase or sell securities in this account, the Account Holder shall approve beforehand all such orders and direct the Brokerage Firm to implement his or her instructions. The Account Holder authorizes the Trustee to honor trades within his or her account without obligation to verify prior authorizations of such trades. The Brokerage Firm shall receive advices of available cash in this account and shall forward confirmation of purchases and sales to the Trustee. Selling short, and executing purchases in an amount greater than available cash are prohibited transactions. Investments in life insurance and collectibles are not permitted. No assets will be commingled. All investments outside of the brokerage account shall be accompanied by additional written instructions. Except as provided in Section 5.5(A), investments in offshore entities, foreign securities, and insurance contracts are not permitted under this Trust;

## Self-Directed Individual Retirement Trust

- I. Except with respect to Paragraph R below and notwithstanding anything to the contrary contained in this Trust, the Trustee shall not make any investment or dispose of any investment held in the Trust, except upon the direction of the Account Holder or his or her agent;
- J. The Trustee shall be under no duty to question any such direction of the Account Holder, to review any securities or other property held in the Trust, or to make suggestions to the Individual with respect to the investment, retention, or disposition of any assets held in the Trust. The Account Holder hereby agrees to indemnify the Trustee and hold it harmless from and against any claim or liability which may be asserted against the Trustee by reason of its acting or not acting pursuant to any direction from the Account Holder or failing to act in the absence of any such direction;
- K. In accordance with Section 404(c) under the Act and being that the Account Holder exercises control over his or her assets in this Trust which provides for his or her account such Account Holder or their Beneficiary shall not be deemed to be a fiduciary by reason of such exercise, and no person who is otherwise a fiduciary shall be liable under this Trust for any loss, or by reason of any breach, which results from such Account Holder's exercise of control;
- L. The Account Holder may appoint in writing an Investment Manager or Managers to manage (including power to acquire and dispose of) any assets of this Trust. Any such Investment Manager shall be registered as an Investment Adviser under the Investment Advisers Act of 1940 ("1940 Act"). If investment of the Trust is to be directed by an Investment Manager, the Account Holder shall deliver to the Trustee a copy of the instruments appointing the Investment Manager and evidencing the Investment Manager's acceptance of such appointment, an acknowledgment by the Investment Manager that it is a fiduciary of the Trust, and a certificate evidencing the Investment Manager's current registration under the 1940 Act. The Trustee shall be fully protected in relying upon such instruments and certificate until otherwise notified in writing by the Account Holder;

The Trustee shall follow the directions of the Investment Manager regarding the investment and reinvestment of the Trust, or such portion thereof as shall be under management by the Investment Manager. The Trustee shall be under no duty or obligation to review any investment to be acquired, held or disposed of pursuant to such directions nor to make any recommendations with respect to the disposition or continued retention of any such investment or the exercise or

non-exercise of the powers. Therefore, and in accordance with Section 405 (d) (1) under the Act, the Trustee shall have no liability or responsibility for acting or not acting pursuant to the direction of, or failing to act in the absence of any direction from, the Investment Manager, unless the Trustee knows that by such action or failure to act it would be itself committing or participating in a breach of fiduciary duty by the Investment Manager. The Account Holder hereby agrees to indemnify the Trustee and hold it harmless from and against any claim or liability which may be asserted against the Trustee by reason of its acting or not acting pursuant to any direction from the Investment Manager or failing to act in the absence of any such direction.

The Investment Manager at any time and from time to time may issue orders for the purchase or sale of securities directly to a broker; and in order to facilitate such transaction, the Trustee upon written request shall execute and deliver appropriate trading authorizations. Written notification of the issuance of each such order shall be given promptly to the Trustee by the Investment Manager, and the execution of each such order shall be confirmed by written advice via confirms or otherwise to the Trustee by the broker.

In the event that an Investment Manager should resign or be removed by the Account Holder, the Account Holder shall manage the investments pursuant to the terms of this Trust unless and until the Trustee shall be notified of the appointment of another Investment Manager with respect thereto as provided in this Paragraph L.

The Trustee shall be under no duty to question any such direction of the Account Holder or Investment Manager to review any securities or other property held in the Trust or to make suggestions to the Account Holder or Investment Manager with respect to the investment, retention, or disposition of any assets held in the Trust;

- M. Notwithstanding anything herein contained to the contrary, the Trustee shall not lend any part of the corpus or income of the Trust to: pay any compensation for personal services rendered to the Trust; to make any part of its services available on a preferential basis to, or acquire for the Trust any property, other than cash, from or sell any property to any Account Holder, or to any member of a Account Holder's family, or to a corporation controlled by any Account Holder through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value

## Self-Directed Individual Retirement Trust

of shares of all classes of stock of such corporation;

All contributions made by the Account Holder and all investments made with such contributions and the earnings thereon shall be credited to an account maintained for the Account Holder by the Trustee. Such account shall reflect the amounts contributed by the Account Holder;

- N. Within ninety (90) days from the close of each Trust Year, the Trustee shall render an accounting, valuing the assets at fair market value, to the Account Holder. The accounting may consist of copies of regularly issued broker-dealer statements to the Trustee and copies of mutual fund, insurance company, and other investment summary account statements supplied to the Trustee. The Account Holder must file any exceptions or objections to the accounting with the Trustee in writing, within sixty (60) days of the mailing of such accounting. In the absence of such filing, the Account Holder shall be deemed to have approved such account; and in such case, or upon the written approval of the Account Holder of any such account, the Trustee shall be released, relieved and discharged with respect to all matters and things set forth in such account as though such account had been settled by the decree of a court of competent jurisdiction. No person other than the Account Holder may require an accounting or bring any action against the Trustee with respect to the Trust or its actions as Trustee.

The Trustee shall have the right at any time to apply to a court of competent jurisdiction for judicial settlement of its accounts for determination of any questions of construction, which may arise, or for instructions. The only necessary party defendant to such action shall be the Account Holder, except that the Trustee may, if it so elects, bring in as a party defendant any other person or persons;

- O. The Trustee shall be fully protected in acting upon any instrument, certificate, or paper believed by it to be genuine and to be signed or presented by the Account Holder or such proper person or persons, and the Trustee shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained;
- P. The Trustee shall be under no duty to question any direction of an Account Holder or his or her agent with respect to any investments, to review or monitor any securities or other property held in Trust, or to make suggestions to the Account Holder or his or her agent with respect to investment. The

Trustee will not be liable for any loss that may result by reason of investments made in accordance with the directions of an Account Holder or his or her agent;

- Q. Whenever the services of a stockbroker or a dealer are required, the Trustee shall retain the Brokerage Firm designated by the Account Holder in the Application. If no Brokerage Firm is currently selected, the Trustee may, in its discretion, appoint another stockbroker or dealer to handle investments in securities under the Trust;
- R. The surviving spouse and/or Beneficiary shall be bound by this Section 5.5, including the indemnification provisions in paragraphs J and L above regarding investments and administration of their interest. Provided, however, should the Beneficiary be a minor or, in the discretion of the Trustee, of unsound mind, the Trustee may liquidate the interest of such Beneficiary and hold such interest in an interest bearing account or money market account until distributed;
- S. To not vote in person or by proxy upon securities held by the Trustee and destroy such proxies if received by the Trustee.

### 5.6 Trustee Compensation

- A. The Trustee shall be paid such reasonable compensation as shall from time to time be communicated to the Account Holder by the Trustee, and such compensation shall be chargeable to the Account Holder. The Account Holder hereby covenants and agrees to pay the same.
- B. The Trustee shall charge the Account Holder any taxes paid by it which may be imposed upon the Trust or the income thereof or upon which the Trustee is required to pay, as well as all expenses of administration of the Trust, including but not limited to transaction costs, distributions, postage, commissions, fees, and reasonable attorney fees. The Account Holder hereby covenants and agrees to pay the same.
- C. In the event the Account Holder shall at any time fail to pay the Trustee's compensation, taxes, and expenses within a reasonable time after demand for such payment has been made by the Trustee on the Account Holder, the Trustee will charge the Trust such compensation, taxes and expenses and may liquidate assets of the Trust for such purposes, as in its sole discretion, it shall determine. The custodian will and hereby agrees to collect such compensation, taxes and expenses for the Trustee as so directed by the Trustee in writing.

## Self-Directed Individual Retirement Trust

- D. Notwithstanding any other provision contained in this Trust Agreement, all payments under this Section 5.6 and the liquidation of assets to obtain funds therefore may be made without the approval or direction of the Account Holder. If the Trust is not sufficient to satisfy the Trustee's compensation, fees, taxes, and expenses, then the Trustee will charge the Account Holder for such unpaid compensation, fees, taxes, and expenses.

### 5.7 Amendment and Termination

- A. Each Account Holder who adopts this Trust delegates to the Trustee the power to amend this Trust, including any retroactive amendments, by submitting a copy of such amendments to each Account Holder, but only after receiving:

1. A favorable ruling or determination letter from the Commissioner of IRS that the Trust, as amended, continues to meet the requirements of Code Section 408, or 408A
2. Each Account Holder shall be deemed to have consented to any and all such amendments. In addition, the Trustee may amend the fee schedule from time to time with advance notice to the Account Holder and is not required to seek approval from the IRS.

The Account Holder shall be permitted to revoke this Trust in writing within a period not to exceed seven (7) days after the date that the Account Holder adopted this Trust. In the event of such revocation, the Trustee will return the entire account plus any Trustee compensation, taxes and expenses as soon as practical.

- B. Neither the Account Holder nor the Trustee shall have the right to amend or terminate this Trust in such a manner as would cause or permit all or part of the entire interest of the Account Holder to be diverted for purposes other than their exclusive benefit or that of their Beneficiary. No Account Holder shall have the right to sell, assign, discount, or pledge as collateral for a loan any asset of this Trust.
- C. An Account Holder shall have the right to terminate or partially terminate this Trust, at any time and from time to time, by delivering to the Trustee a signed copy of a statement of termination.
- D. Either the Trustee or the Account Holder may terminate this Trust upon thirty (30) days written notice to the other. Upon resignation or removal of the Trustee, the Account Holder shall appoint a successor trustee that shall have the same powers and duties as are conferred upon the Trustee

hereunder and in default thereof, such successor trustee may be appointed by a court of competent jurisdiction.

In the event of removal or resignation of the Trustee, if the Account Holder fails to appoint a successor trustee and complete the transfer of assets within 30 days of the date the Trustee mails such termination notice to the last address on file for the Account Holder or the Account Holder mails such notice to the Trustee, the Trustee may in its discretion, transfer the assets to a successor trustee of its choosing, or liquidate and distribute the assets, less any amounts withheld for Trustee compensation, taxes, and expenses, to the Account Holder. The Trustee will not be responsible for any penalties, fines, taxes, or tax consequences that may result from such distribution or transfer.

- E. Upon the delivery by the resigning or removed trustee to its successor trustee of all property of the Trust, less such reasonable amount as it shall deem necessary to provide for its compensation and any taxes and expenses or advances chargeable or payable out of the Trust, the successor trustee shall thereupon have the same powers and duties as are conferred upon the Trustee.
- F. No successor trustee shall have any obligation or liability with respect to the acts or omissions of its predecessors.

The actual appointment and qualification of a successor trustee to whom the Trust assets may be transferred are conditions which must be fulfilled before the resignation or removal of the Trustee shall become effective. The transfer of the Trust assets shall be made coincidentally with an accounting by the resigned or removed Trustee and such resigned or removed Trustee shall endorse, transfer, convey and deliver to the successor trustee all of the funds, securities or other property then held by it under the Trust, together with such records as may be reasonably required in order that the successor trustee may properly administer the Trust.

- G. This Trust Agreement and the Trust created hereby will be terminated in the case of complete distribution of the Trust.
- H. The Trustee shall not have the right to modify or to amend this Trust retroactively in such a manner as to deprive any Account Holder or his or her Beneficiary of any benefit to which he or she may be entitled under this Trust Agreement by reason of contributions made prior to the modification or amendment, unless such modification or amendment is necessary to conform this Trust to, or satisfy the conditions of, any law, governmental regulation or ruling, or to permit this

## Self-Directed Individual Retirement Trust

Trust to meet the requirements of Code Section 408.

- I. If the Trustee receives any claim to assets held in the Trust which is adverse to the Account Holder's interest or the interest of his or her Beneficiary, and the Trustee, in its absolute discretion, decides the claim is, or may be, meritorious, the Trustee may withhold distribution until the claim is resolved to its satisfaction or until instructed by a court of competent jurisdiction. In any such matter, the Trustee shall be entitled to reimbursement of all costs, fees and expenses, including reasonable attorney's fees, directly from the Trust assets, without the approval or direction of the Account Holder. If necessary, the Trustee may liquidate Trust assets in order to be reimbursed. As an alternative, the Trustee may deposit all or any portion of the assets in the Trust into the court. Deposit with the court shall relieve the Trustee of any further obligation with respect to the assets deposited. The Trustee has the right to be reimbursed from the funds deposited with the court for legal fees and costs incurred. Such reimbursement may be made directly from the Trust assets without approval or direction of the Account Holder. If necessary, the Trustee may liquidate Trust assets in order to be reimbursed as stated above.

### 5.8 Miscellaneous

- A. Notwithstanding anything to the contrary contained in this Trust Agreement or in any amendment thereto, no part of the Trust other than such part as is required to pay the Trustee's compensation, taxes, and administration expenses (including the reimbursement referenced in Section 5.7 (I)), shall be used for, or diverted to, purposes other than for the exclusive benefit of the Account Holder, their Beneficiaries, or their estates. The Trust account is established for the exclusive benefit of the Account Holder or his or her Beneficiary.
- B. The Trustee shall not be liable for any act or omission made in connection with the Trust except for its intentional misconduct or negligence. Any required notice regarding the Trust will be considered effective when the Trustee mails it to the last address of the intended recipient which is contained in the Trustee's records. Any notice to be given to the Trustee will be considered effective when the Trustee actually receives it. The Account Holder and/or Beneficiaries must notify the Trustee of any change of address in a manner acceptable to the Trustee.
- C. To the extent the Trustee is engaged in any form of litigation, arbitration, or dispute resolution concerning the Trust assets or the interest of the Trust, the Trustee shall be entitled to recover all costs, fees and expenses, including reasonable attorney's fees, directly from the Trust assets, pursuant to Section 5.7(I).
- D. The terms and conditions of this Trust Agreement shall be applicable without regard to the community property laws of any state.
- E. If the Account Holder is married, the Compensation of the Account Holder and any contributions made to this Trust under Section 4.2 shall be determined without regard to the Compensation of the spouse.
- F. The captions of Articles and Sections in this Trust Agreement are included for convenience only and shall not be considered a part of, or an aid to, the construction of this Trust.
- G. The Account Holder agrees that all controversies between the Account Holder and/or Beneficiaries and the Trustee and any of its officers, directors, agents or employees (present or former) concerning or arising from (i) any account maintained with the Trustee by the Account Holder; (ii) any transaction involving the Account Holder's account, whether or not such transaction occurred in such account or accounts; or (iii) the construction, performance or breach of this Trust Agreement, whether such controversy arose prior, on or subsequent to the date hereof, shall be determined by arbitration under the commercial arbitration rules of the American Arbitration Association disclosed below. Any disputes as to the arbitrability of a matter or the manner of such arbitration shall be determined in such arbitration. Such arbitration shall be held in Wilmington, Delaware.  
  
Arbitration Disclosures: Arbitration is final and binding on the parties except to the extent superceded by the Code or the Act; the parties are waiving their right to seek remedies in court, including the right to jury trial; pre-arbitration discovery is generally more limited than and different from court proceedings; the arbitrators' award is not required to include factual findings or legal reasoning, and any party's right to appeal or to seek modification of rulings by the arbitrators is strictly limited; the panel of arbitrators will consist of arbitrators for American Arbitration Association; the arbitration will be under the commercial arbitration rules of the American Arbitration Association; the arbitration shall be held in Wilmington, Delaware; and any disputes as to such arbitration or the manner thereof shall be determined in such arbitration.
- H. The determination that any provision of this Trust Agreement is not enforceable in accordance with its terms in a particular

## Self-Directed Individual Retirement Trust

jurisdiction shall not affect the validity or enforceability of the remaining provisions of this Trust Agreement generally or in any other jurisdiction or as to any other parties, but rather such unenforceable provisions shall be stricken or modified in accordance with such determination only as to such parties and this Trust Agreement, as so modified, shall continue to bind the specific parties involved therein and otherwise all other parties in unmodified form.

- I. All contributions to this Trust shall be deemed to take place in the State of Delaware.
- J. This Trust Agreement may be executed in any number of counterparts, each one of which shall be deemed to be the original although the others shall not be produced.
- K. This Trust Agreement is made pursuant to and shall be construed in accordance with the laws of the State of Delaware. Jurisdiction and venue of any matter not subject to the arbitration provisions of this Trust Agreement shall lie solely in the courts of the State of Delaware.
- L. The Trustee shall furnish annual calendar-year reports concerning the status of the Account and such information concerning required minimum distribution as is prescribed by the Commissioner of Internal Revenue.

# EGTRRA (Economic Growth and Tax Relief Reconciliation Act)

**Overview:** On June 7, 2001, President Bush enacted the Economic Growth and Tax Relief Reconciliation Act (EGTRRA). This act changed many of the provisions of IRAs and employer-sponsored plans. The primary objective of EGTRRA is to encourage individuals to save more for retirement and encourage employers to sponsor retirement plans. This section outlines the provisions of EGTRRA.

## Traditional and Roth IRAs

| ISSUE  | EGTRRA   |      |                |             |         |             |         |       |                   |
|--|--|------|----------------|-------------|---------|-------------|---------|-------|-------------------|
| Regular & Roth IRA Contribution Limits   | <p>Limit increases as follows:</p> <table border="1"> <thead> <tr> <th>Year</th> <th>Limit</th> </tr> </thead> <tbody> <tr> <td>2002 – 2004</td> <td>\$3,000</td> </tr> <tr> <td>2005 – 2007</td> <td>\$4,000</td> </tr> <tr> <td>2008+</td> <td>\$5,000 (indexed)</td> </tr> </tbody> </table>  | Year | Limit          | 2002 – 2004 | \$3,000 | 2005 – 2007 | \$4,000 | 2008+ | \$5,000 (indexed) |
| Year   | Limit  |      |                |             |         |             |         |       |                   |
| 2002 – 2004  | \$3,000  |      |                |             |         |             |         |       |                   |
| 2005 – 2007  | \$4,000  |      |                |             |         |             |         |       |                   |
| 2008+  | \$5,000 (indexed)  |      |                |             |         |             |         |       |                   |
| Regular & Roth IRA Catch-up Contributions for Individuals Age 50 or Older (Individual must turn age 50 by end of taxable year) | <p>Catch-up contributions are as follows:</p> <table border="1"> <thead> <tr> <th>Year</th> <th>Catch-up Limit</th> </tr> </thead> <tbody> <tr> <td>2002 – 2005</td> <td>\$ 500</td> </tr> <tr> <td>2006+</td> <td>\$1,000</td> </tr> </tbody> </table>  | Year | Catch-up Limit | 2002 – 2005 | \$ 500  | 2006+       | \$1,000 |       |                   |
| Year   | Catch-up Limit   |      |                |             |         |             |         |       |                   |
| 2002 – 2005  | \$ 500   |      |                |             |         |             |         |       |                   |
| 2006+  | \$1,000  |      |                |             |         |             |         |       |                   |
| Regular & Roth IRAs Under Qualified Plans & 403(b) Plans (Effective 1/1/03)  | <p>If a plan permits, participants can make voluntary contributions to a qualified plan that are treated as IRA contributions. Contributions must be made:</p> <ul style="list-style-type: none"> <li>• To a separate account established under the qualified plan</li> <li>• According to the Regular &amp; Roth IRA rules – age, earned income, limits, etc.</li> </ul> <p><i>Contributions will be reported on Form 5498.</i></p> |      |                |             |         |             |         |       |                   |

## Simplified Employer Pension (SEP) IRA

| ISSUE   | EGTRRA  |
|---|---|
| Contribution Limit (Job Creation and Workers Assistant Act of 2002) | 25% of compensation   |
| 415 Limit   | Lesser of 25% of compensation or \$40,000   |
| Compensation Cap  | \$200,000 (with potential \$5,000 COLA increases)   |
| Deduction Limits for SEP  | 25% of all participating employees' compensation. Compensation includes salary deferrals.   |
| Top-Heavy Rules   | <p><u>Key Employee Definition:</u></p> <ul style="list-style-type: none"> <li>• Officer with compensation exceeding \$130,000</li> <li>• Deleted the top-10 owner rule</li> <li>• 5% owner of the company</li> <li>• 1% owner with compensation exceeding \$150,000</li> </ul> <p><u>Account Balances</u><br/>Account balances are valued as of the last day of the prior plan year, adding back in any distributions made during that year. <i>(Five-year inclusion period still applies to in-service withdrawals.)</i></p> |

# Application for Traditional, Roth, Rollover, & SEP IRA

|  |                                   |  |                               |                                   |                              |
|--|-----------------------------------|--|-------------------------------|-----------------------------------|------------------------------|
| CHECK ONE:<br><input type="checkbox"/> New | <input type="checkbox"/> Transfer | CHECK ONE:<br><input type="checkbox"/> Traditional | <input type="checkbox"/> Roth | <input type="checkbox"/> Rollover | <input type="checkbox"/> SEP |
|--|-----------------------------------|--|-------------------------------|-----------------------------------|------------------------------|

|   |                |       |
|---|----------------|-------|
| FOR ROTH ACCOUNTS ONLY CHECK ALL BOXES THAT APPLY:<br><input type="checkbox"/> New <input type="checkbox"/> Partial <input type="checkbox"/> Total Conversion Amount \$ _____ | DCG&T USE ONLY |       |
| Conversion from my existing Delaware Charter IRA# _____ to a Roth IRA   | G&T#           | PLAN# |
| Conversion from my existing account at _____ to a Roth IRA  | SS#            | CODE# |

## DEPOSITOR INFORMATION

|               |       |                        |       |
|---------------|-------|------------------------|-------|
| NAME          |       |                        |       |
| ADDRESS       |       |                        |       |
| CITY          | STATE | ZIP                    | PHONE |
| DATE OF BIRTH |       | SOCIAL SECURITY NUMBER |       |

## PRIMARY BENEFICIARY INFORMATION (If more than one Primary beneficiary is listed, make sure percentage is noted.)

|               |                        |              |
|---------------|------------------------|--------------|
| 1 NAME        | PERCENTAGE             | RELATIONSHIP |
| DATE OF BIRTH | SOCIAL SECURITY NUMBER |              |
| 2 NAME        | PERCENTAGE             | RELATIONSHIP |
| DATE OF BIRTH | SOCIAL SECURITY NUMBER |              |

## CONTINGENT BENEFICIARY INFORMATION (Replaces Primary noted above if Primary predeceases the Contingent)

|               |                        |              |
|---------------|------------------------|--------------|
| 1 NAME        | PERCENTAGE             | RELATIONSHIP |
| DATE OF BIRTH | SOCIAL SECURITY NUMBER |              |
| 2 NAME        | PERCENTAGE             | RELATIONSHIP |
| DATE OF BIRTH | SOCIAL SECURITY NUMBER |              |

Note: Community and marital property state laws may require your spouse to be named as at least a 50% primary beneficiary. Check with your legal adviser if you are impacted by these state laws.

## PARTICIPANT ACKNOWLEDGEMENT

I/We appoint Delaware Charter to serve as Trustee. By making this appointment I/We agree to and acknowledge the following:  
 I/We have read and understand the Trust Agreement, Disclosure Statement, and Schedule of Trustee Fees and agree to abide by the terms of the plan documents listed above.  
 I/We agree to pay all applicable fees described in the Schedule of Trustee Fees, which may be changed from time to time. Any fee changes will be communicated to me in writing by Delaware Charter. If I/We do not pay such Trustee fees directly, I/We authorize my/our investment executive as "custodian" to debit such Trustee fees from my retirement plan account.  
 I/We understand Delaware Charter is not an investment adviser and does not supervise or control my/our investment executive. Delaware Charter does not endorse any particular investment. I/We agree to use independent judgment in making my/our investment decisions.  
 I/We agree to resolve disputes with Delaware Charter through binding arbitration. See Article XII of the Trust Agreement.  
 I/We certify that the above social security numbers(s) are true and correct.

|                       |      |
|-----------------------|------|
| APPLICANT'S SIGNATURE | DATE |
|-----------------------|------|

## TO BE COMPLETED BY INVESTMENT EXECUTIVE

|                                    |                         |     |       |
|------------------------------------|-------------------------|-----|-------|
| INVESTMENT EXECUTIVE NAME AND FIRM | CLIENT'S ACCOUNT NUMBER |     |       |
| ADDRESS                            |                         |     |       |
| CITY                               | STATE                   | ZIP | PHONE |

## APPROVAL OF TRUSTEE

The foregoing Application is hereby approved by the Trustee this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Attest \_\_\_\_\_ by \_\_\_\_\_

Please send the original to Mesirow Financial, Inc., Attn: New Accounts, 350 North Clark Street, Chicago, Illinois 60610.  
 Please retain a copy for your records.

# Simplified Employee Pension—Individual Retirement Accounts Contribution Agreement

(Under section 408(k) of the Internal Revenue Code)

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

\_\_\_\_\_ makes the following agreement under section 408(k) of the Internal Revenue Code and the instructions to this form.  
(Name of employer)

## Article I—Eligibility Requirements (check applicable boxes—see instructions)

The employer agrees to provide discretionary contributions in each calendar year to the individual retirement account or individual retirement annuity (IRA) of all employees who are at least \_\_\_\_\_ years old (not to exceed 21 years old) and have performed services for the employer in at least \_\_\_\_\_ years (not to exceed 3 years) of the immediately preceding 5 years. This simplified employee pension (SEP)  includes  **does not** include employees covered under a collective bargaining agreement,  includes  **does not** include certain nonresident aliens, and  includes  **does not** include employees whose total compensation during the year is less than \$450\*.

## Article II—SEP Requirements (see instructions)

The employer agrees that contributions made on behalf of each eligible employee will be:

- A. Based only on the first \$200,000\* of compensation.
- B. The same percentage of compensation for every employee.
- C. Limited annually to the smaller of \$40,000\* or 25% of compensation.
- D. Paid to the employee's IRA trustee, custodian, or insurance company (for an annuity contract).

\_\_\_\_\_  
Employer's signature and date

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

## Instructions

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

### Purpose of Form

Form 5305-SEP (Model SEP) is used by an employer to make an agreement to provide benefits to all eligible employees under a simplified employee pension (SEP) described in section 408(k).

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

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

### Instructions to the Employer

**Simplified employee pension.** A SEP is a written arrangement (a plan) that provides you with an easy way to make contributions toward your employees' retirement income. Under a SEP, you can contribute to an employee's traditional individual retirement account or annuity (traditional IRA). You make contributions directly to an IRA set up by or for each employee with a bank, insurance company, or other qualified financial institution. When using Form 5305-SEP to establish a SEP, the IRA must be a Model traditional IRA established on an IRS form or a master or prototype traditional IRA for which the IRS has issued a favorable opinion letter. You may **not** make SEP contributions to a Roth IRA or a SIMPLE IRA. Making the agreement on Form 5305-SEP does not establish an employer IRA described in section 408(c).

**When not to use Form 5305-SEP.** Do not use this form if you:

1. Currently maintain any other qualified retirement plan. This does not prevent you from maintaining another SEP.

2. Have any eligible employees for whom IRAs have not been established.

3. Use the services of leased employees (described in section 414(n)).

4. Are a member of an affiliated service group (described in section 414(m)), a controlled group of corporations (described in section 414(b)), or trades or businesses under common control (described in sections 414(c) and 414(o)), unless all eligible employees of all the members of such groups, trades, or businesses participate in the SEP.

5. Will not pay the cost of the SEP contributions. Do not use Form 5305-SEP for a SEP that provides for elective employee contributions even if the contributions are made under a salary reduction agreement. Use Form 5305A-SEP, or a nonmodel SEP.

**Note:** SEPs permitting elective deferrals cannot be established after 1996.

**Eligible employees.** All eligible employees must be allowed to participate in the SEP. An eligible employee is any employee who: (1) is at least 21 years old, and (2) has performed "service" for you in at least 3 of the immediately preceding 5 years. You can establish less restrictive eligibility requirements, but not more restrictive ones.

Service is any work performed for you for any period of time, however short. If you are a member of an affiliated service group, a controlled group of corporations, or trades or businesses under common control, service includes any work performed for any period of time for any other member of such group, trades, or businesses.

**Excludable employees.** The following employees do not have to be covered by the SEP: (1) employees covered by a collective

bargaining agreement whose retirement benefits were bargained for in good faith by you and their union, (2) nonresident alien employees who did not earn U.S. source income from you, and (3) employees who received less than \$450\* in compensation during the year.

**Contribution limits.** You may make an annual contribution of up to 25% of the employee's compensation or \$40,000\*, whichever is less. Compensation, for this purpose, does not include employer contributions to the SEP or the employee's compensation in excess of \$200,000\*. If you also maintain a salary reduction SEP, contributions to the two SEPs together may not exceed the smaller of \$40,000\* or 25% of compensation for any employee.

You are not required to make contributions every year, but when you do, you must contribute to the SEP-IRAs of all eligible employees who actually performed services during the year of the contribution. This includes eligible employees who die or quit working before the contribution is made.

Contributions cannot discriminate in favor of highly compensated employees. Also, you may not integrate your SEP contributions with, or offset them by, contributions made under the Federal Insurance Contributions Act (FICA).

If this SEP is intended to meet the top-heavy minimum contribution rules of section 416, but it does not cover all your employees who participate in your salary reduction SEP, then you must make minimum contributions to IRAs established on behalf of those employees.

**Deducting contributions.** You may deduct contributions to a SEP subject to the limits of section 404(h). This SEP is maintained on a calendar year basis and contributions to the SEP are deductible for your tax year with or

\* For 2003 and later years, this amount is subject to annual cost-of-living adjustments. The IRS announces the increase, if any, in a news release, in the Internal Revenue Bulletin, and on the IRS Web Site at [www.irs.gov](http://www.irs.gov).

within which the calendar year ends. Contributions made for a particular tax year must be made by the due date of your income tax return (including extensions) for that tax year.

**Completing the agreement.** This agreement is considered adopted when:

- IRAs have been established for all your eligible employees;
- You have completed all blanks on the agreement form without modification; and
- You have given all your eligible employees the following information:

1. A copy of Form 5305-SEP.
2. A statement that traditional IRAs other than the traditional IRAs into which employer SEP contributions will be made may provide different rates of return and different terms concerning, among other things, transfers and withdrawals of funds from the IRAs.

3. A statement that, in addition to the information provided to an employee at the time the employee becomes eligible to participate, the administrator of the SEP must furnish each participant within 30 days of the effective date of any amendment to the SEP, a copy of the amendment and a written explanation of its effects.

4. A statement that the administrator will give written notification to each participant of any employer contributions made under the SEP to that participant's IRA by the later of January 31 of the year following the year for which a contribution is made or 30 days after the contribution is made.

Employers who have established a SEP using Form 5305-SEP and have furnished each eligible employee with a copy of the completed Form 5305-SEP and provided the other documents and disclosures described in **Instructions to the Employer and Information for the Employee**, are not required to file the annual information returns, Forms 5500 or 5500-EZ for the SEP.

However, under Title I of the Employee Retirement Income Security Act of 1974 (ERISA), this relief from the annual reporting requirements may not be available to an employer who selects, recommends, or influences its employees to choose IRAs into which contributions will be made under the SEP, if those IRAs are subject to provisions that impose any limits on a participant's ability to withdraw funds (other than restrictions imposed by the Code that apply to all IRAs). For additional information on Title I requirements, see the Department of Labor regulation at 29 CFR 2520.104-48.

**Information for the Employee**

The information below explains what a SEP is, how contributions are made, and how to treat your employer's contributions for tax purposes. For more information, see Pub. 590.

**Simplified employee pension.** A SEP is a written arrangement (a plan) that allows an employer to make contributions toward your retirement. Contributions are made to a traditional individual retirement account/annuity (traditional IRA). Contributions must be made to either a Model traditional IRA executed on an IRS form or a master or prototype traditional IRA for which the IRS has issued a favorable opinion letter.

An employer is not required to make SEP contributions. If a contribution is made, however, it must be allocated to all eligible employees according to the SEP agreement. The Model SEP (Form 5305-SEP) specifies that the contribution for each eligible employee will be the same percentage of compensation (excluding compensation greater than \$200,000\*) for all employees.

Your employer will provide you with a copy of the agreement containing participation rules and a description of how employer contributions may be made to your IRA. Your employer must also provide you with a copy of the completed Form 5305-SEP and a yearly statement showing any contributions to your IRA.

All amounts contributed to your IRA by your employer belong to you even after you stop working for that employer.

**Contribution limits.** Your employer will determine the amount to be contributed to your IRA each year. However, the amount for any year is limited to the smaller of \$40,000\* or 25% of your compensation for that year. Compensation does not include any amount that is contributed by your employer to your IRA under the SEP. Your employer is not required to make contributions every year or to maintain a particular level of contributions.

**Tax treatment of contributions.** Employer contributions to your SEP-IRA are excluded from your income unless there are contributions in excess of the applicable limit. Employer contributions within these limits will not be included on your Form W-2.

**Employee contributions.** You may make regular IRA contributions to an IRA. However, the amount you can deduct may be reduced or eliminated because, as a participant in a SEP, you are covered by an employer retirement plan.

**SEP participation.** If your employer does not require you to participate in a SEP as a condition of employment, and you elect not to participate, all other employees of your employer may be prohibited from participating. If one or more eligible employees do not participate and the employer tries to establish a SEP for the remaining employees, it could cause adverse tax consequences for the participating employees.

An employer may not adopt this IRS Model SEP if the employer maintains another qualified retirement plan. This does not prevent your employer from adopting this IRS Model SEP and also maintaining an IRS Model Salary Reduction SEP or other SEP. However, if you work for several employers, you may be covered by a SEP of one employer and a different SEP or pension or profit-sharing plan of another employer.

**SEP-IRA amounts—rollover or transfer to another IRA.** You can withdraw or receive funds from your SEP-IRA if, within 60 days of receipt, you place those funds in the same or another IRA. This is called a "rollover" and can be done without penalty only once in any 1-year period. However, there are no restrictions on the number of times you may make "transfers" if you arrange to have these funds transferred between the trustees or the custodians so that you never have possession of the funds.

**Withdrawals.** You may withdraw your employer's contribution at any time, but any amount withdrawn is includible in your income unless rolled over. Also, if withdrawals

occur before you reach age 59½, you may be subject to a tax on early withdrawal.

**Excess SEP contributions.** Contributions exceeding the yearly limitations may be withdrawn without penalty by the due date (plus extensions) for filing your tax return (normally April 15), but are includible in your gross income. Excess contributions left in your SEP-IRA after that time may have adverse tax consequences. Withdrawals of those contributions may be taxed as premature withdrawals.

**Financial institution requirements.** The financial institution where your IRA is maintained must provide you with a disclosure statement that contains the following information in plain, nontechnical language:

1. The law that relates to your IRA.
2. The tax consequences of various options concerning your IRA.
3. Participation eligibility rules, and rules on the deductibility of retirement savings.
4. Situations and procedures for revoking your IRA, including the name, address, and telephone number of the person designated to receive notice of revocation. This information must be clearly displayed at the beginning of the disclosure statement.
5. A discussion of the penalties that may be assessed because of prohibited activities concerning your IRA.

6. Financial disclosure that provides the following information:

a. Projects value growth rates of your IRA under various contribution and retirement schedules, or describes the method of determining annual earnings and charges that may be assessed.

b. Describes whether, and for when, the growth projections are guaranteed, or a statement of the earnings rate and the terms on which the projections are based.

c. States the sales commission for each year expressed as a percentage of \$1,000.

In addition, the financial institution must provide you with a financial statement each year. You may want to keep these statements to evaluate your IRA's investment performance.

**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** . . . . . 1 hr., 40 min.
- Learning about the law or the form** . . . . . 1 hr., 35 min.
- Preparing the form** . . . . . 1 hr., 41 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 Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **Do not** send this form to this address. Instead, keep it with your records.

