

Prototype Simplified Employee Pension Plan Agreement

PROTOTYPE SIMPLIFIED EMPLOYEE PENSION PLAN AGREEMENT

ARTICLE I Adoption and Purpose of Plan

- 1.01 **Adoption of Plan:** By completing and signing the Adoption Agreement, the Employer adopts the Sponsoring Organization's Prototype Simplified Employee Pension Plan. This Agreement must be used with an Internal Revenue Service Model traditional IRA (Form 5305 or Form 5305-A) or an IRS approved Master or Prototype traditional IRA.
- 1.02 **Purpose:** The purpose of this Plan is to provide benefits for the individuals who are eligible to participate hereunder. It is intended that this Plan be for the exclusive benefit of the Employer's Employees, and that the Plan qualify under Section 408(k) of the Code.
- 1.03 **Limitation:** If the Employer amends this plan other than by making an election permitted in the Adoption Agreement, the Employer will no longer participate in the Sponsoring Organization's Prototype Simplified Employee Pension Plan, the Employer will be considered to have an individually designed SEP Plan, and the Employer may no longer rely on the IRS opinion letter received in connection with this Prototype Simplified Employee Pension Plan.

ARTICLE II Eligibility and Participation

- 2.01 **Eligible Employees:** All Employees of the Employer shall be eligible to participate in this Plan except for Excludible Employees as defined under Section 2.02 of this Plan.
- 2.02 **Excludible Employees:** If the Employer elects in the Adoption Agreement, the following Employees shall be excluded from eligibility:
- (a) Employees included in a unit of employees covered by a collective bargaining agreement between employee representatives and the Employer, provided that there is evidence that retirement benefits were the subject of good faith bargaining between such parties, unless such agreement provides that some or all of such covered employees are to be covered by this Plan. For purposes of this paragraph, the term "employee representatives" does not include any organization more than half of whose members are employees who are owners, officers, or executives of the Employer.
 - (b) Non-resident alien employees who receive no earned income from the Employer which constitutes income from sources within the United States.
 - (c) Employees who have not met the age and service requirements specified in the Adoption Agreement.
 - (d) Employees who did not earn at least \$450 (as adjusted for cost of living increases in accordance with Code §408(k)(8)) of Compensation from the Employer during the Plan Year.
- 2.03 **Participation:**
- (a) Each Employee who meets the eligibility requirements as specified in the Adoption Agreement shall, as a condition for further employment, become a Participant under this SEP Plan.
 - (b) Each eligible Employee shall establish an IRA in order to receive Employer contributions under this Agreement, and any Employer contributions shall be made directly to such IRA plan. Unless otherwise elected in the Adoption Agreement, such IRA shall be established with the Trustee.
 - (c) If a Participant fails to timely establish or to maintain an IRA in which SEP contributions may be made on such Participant's behalf, the Employer may execute any necessary documents to establish an IRA with the Trustee into which such contributions shall be made on behalf of the Participant.
 - (d) If an Employer maintained a SEP Plan and desires to change to a Plan Year other than a calendar year, an Employee who has any service during the short Plan Year must be given credit for that service in three of the last five years. Such an Employee must also receive a contribution for the short Plan Year if such Employee would have been entitled to a contribution for the calendar year in which the short Plan year begins if there had been no change.

ARTICLE III Written Allocation Formula

- 3.01 **Amount of Contribution:** The Employer agrees to contribute on behalf of each eligible Employee for the Plan Year an amount determined under the written allocation formula specified in the Adoption Agreement.
- 3.02 **Uniform Relationship to Compensation:**
- (a) All Employer contributions to this Plan shall bear a uniform relationship to the total Compensation (not to exceed \$200,000, or such higher amount as may be permitted under law) of each Participant.
 - (b) If the Employer elects the Flat Dollar Contribution allocation in the Adoption Agreement, such contributions shall be deemed to bear a uniform relationship to the total compensation of each Participant.
- 3.03 **Limitation on Employer Contributions:** The maximum employer contribution which may be made for any one Plan Year with respect to any Participant and allocated to each Participant's IRA is the lesser of 25% of such Participant's Compensation for the Plan Year or \$40,000 as adjusted under Code § 415(d). For purposes of the 25% limitation described in the preceding sentence, a participant's compensation does not include any elective deferral described in Code § 402(g)(3) or any amount that is contributed by the employer at the election of the employee and that is not includible in the gross income of the employee under Code §§ 125, 132(f)(4) or 457.
- 3.04 **Permitted Disparity for Certain Contributions:**
- (a) **Definite Integrated Contribution Formula:** If elected in the Adoption Agreement, the Employer will contribute an amount equal to the Base Contribution Percentage selected in the Adoption Agreement (but not less than 3%) of each Participant's Compensation (as defined in Section 4.04 of the Plan) for the Plan Year, up to the Integration Level plus an amount equal to the Excess Contribution Percentage selected in the Adoption Agreement (but not less than 3% and not to exceed the Base Contribution Percentage by more than the lesser of: (i) the Base Contribution Percentage, or (ii) the Maximum Disparity Rate) of such Participant's Excess Compensation.
 - (b) **Discretionary Integrated Contribution Formula:** If elected in the Adoption Agreement, Employer contributions for the Plan Year will be allocated to Participants' accounts as follows:
 - STEP 1: Contributions will be allocated to each Participant's account in the ratio that each Participant's total Compensation bears to the total Compensation of all Participants, at a rate not in excess of 3% of each Participant's Compensation.
 - STEP 2: Any contributions remaining after the allocation in Step One will be allocated to each Participant's account in the ratio that each Participant's Excess Compensation bears to the Excess Compensation of all Participants, at a rate not in excess of 3% of such Excess

Compensation. For purposes of this Step Two, in the case of any Participant who has exceeded the Cumulative Permitted Disparity Limit described below, such Participant's total Compensation for the calendar year will be taken into account.

STEP 3: Any contributions remaining after the allocation in Step Two will be allocated to each Participant's account in the ratio that the sum of each Participant's total Compensation and Excess Compensation bears to the sum of all Participants' total Compensation and Excess Compensation, at a rate not in excess of the Maximum Disparity Rate. For purposes of this Step Three, in the case of any Participant who has exceeded the Cumulative Permitted Disparity Limit described below, 2 times such Participant's total Compensation for the calendar year will be taken into account.

STEP 4: Any remaining Employer contributions will be allocated to each Participant's account in the ratio that each Participant's total Compensation bears to the total Compensation of all Participants.

- (c) For purposes of the allocations made pursuant to this Section 3.04, in no event can the amount allocated to each Participant's IRA exceed the lesser of 25% of the first \$200,000 (or such higher amount, as may be permitted under law) of compensation or \$40,000, as adjusted under Code §415(d). For purposes of the 25% limitation described in the preceding sentence, a Participant's compensation does not include any elective deferral described in Code §402(g)(3) or any amount that is contributed by the employer at the election of the employee and that is not includible in the gross income of the employee under Code §§125, 132(f)(4) or 457.
- (d) Annual Overall Permitted Disparity Limit: Notwithstanding the preceding paragraphs, for any calendar year this SEP benefits any Participant who benefits under another SEP or qualified plan described in Code Section 401(a) maintained by the Employer that provides for Permitted Disparity (or imputes disparity), Employer contributions will be allocated to each Participant's IRA in the ratio that the participant's total compensation for the calendar year bears to all Participants' total Compensation for that year.
- (e) Cumulative Permitted Disparity Limit: Effective for calendar years beginning on or after January 1, 1995, the Cumulative Permitted Disparity Limit for a Participant is 35 total Cumulative Permitted Disparity Years. Total Cumulative Permitted Disparity Years means the number of years credited to the Participant for allocation or accrual purposes under this SEP or any other SEP or any qualified plan described in Code Section 401(a) (whether or not terminated) ever maintained by the Employer. For purposes of determining the Participant's Cumulative Permitted Disparity Limit, all years ending in the same Calendar Year are treated as the same year. If the Participant has not benefited under a defined benefit or target benefit plan for any year beginning on or after January 1, 1994, the Participant has no Cumulative Permitted Disparity Limit.

ARTICLE IV Glossary of Plan Terms

- 4.01 **Adoption Agreement:** The document executed by the Employer through which it adopts the Plan and agrees to be bound by all terms and conditions of the Plan.
- 4.02 **Base Contribution Percentage:** The percentage of Compensation contributed under the Plan (but in no event less than 3%) with respect to that portion of each Participant's Compensation not in excess of the Integration Level.
- 4.03 **Code:** The Internal Revenue Code of 1986 and the regulations issued there under as heretofore or hereafter amended. Reference to a section of the Code shall include that section and any comparable section or sections of future legislation that amends, supplements or supersedes that section.
- 4.04 **Compensation; 415 Safe Harbor Compensation:** Compensation is defined as wages, salaries, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the employer maintaining the plan to the extent that the amounts are includible in gross income (including but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements, or other expense allowances under a no accountable plan (as described in Section 1.61-2(c) IRC), and excluding the following:
 - (a) Employer contributions to a plan of deferred compensation which are not includible in the employee's gross income for the taxable year in which contributed, or employer contributions under a simplified employee pension plan, or any distributions from a plan of deferred compensation;
 - (b) Amounts realized from the exercise of a nonqualified stock option, or when restricted stock (or property) held by the employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;
 - (c) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and
 - (d) Other amounts which received special tax benefits, such as premiums for group-term life insurance (but only to the extent the premiums are not includible in the gross income of the employee).

For any Self-Employed individual covered under the plan, Compensation will mean Earned Income.

Compensation shall include only that compensation which is actually paid or made available to the Participant during the year.

Except where specifically stated otherwise in this plan, a Participant's Compensation shall include any elective deferral described in Code § 402(g)(3) or any amount that is contributed by the employer at the election of the employee and that is not includible in the gross income of the employee under Code §§ 125, 132(f)(4) or 457.

The annual compensation of each participant taken into account under the SEP for any year shall not exceed \$200,000, as adjusted for increases in the cost of living in accordance with Code § 401(a)(17)(B). If the SEP determines compensation for a period of time that contains fewer than 12 calendar months, then the annual compensation limit is an amount equal to the annual compensation limit for the calendar year in which the compensation period begins multiplied by a fraction, the numerator of which is the number of full months in the short compensation period, and the denominator of which is 12.

- 4.05 **Earned Income:** The net earnings from self-employment in the trade or business with respect to which the Plan is established, for which personal services of the individual are a material income-producing factor. Net earnings will be determined without regard to items not included in gross income and the deductions allocable to such items. Net earnings are reduced by contributions by the Employer to qualified plans or to a SEP plan to the extent deductible under Section 404 of the Code. Net earnings shall be determined with regard to the deduction allowed to the Employer by Section 164(f) of the Code.
- 4.06 **Employee:** An individual, including a Self-Employed, employed by the Employer, who performs services with respect to the trade or business of the Employer. Also any employee of any other employer required to be aggregated under Section 414(b), (c) or (m) of the Code; any leased employee within the meaning of Section 414(n) of the Code shall be considered an Employee; and all Employees required to be aggregated under section 414(o) of the Code.
- 4.07 **Employer:** The sole proprietorship, partnership, corporation or other entity identified as such in the Adoption Agreement.
- 4.08 **Excess Compensation:** A Participant's Compensation in excess of the Integration Level.
- 4.09 **Excess Contribution Percentage:** The percentage of Compensation contributed under the Plan with respect to each Participant's Excess Compensation.
- 4.10 **Integration Level:** The taxable wage base, or such lesser amount elected by the Employer in the Adoption Agreement. The taxable wage base is

the maximum amount of earnings which may be considered wages for a year under section 3121(a)(1) of the Code in effect as of the beginning of the Plan Year.

4.11 Maximum Disparity Rate:

- (a) If the Definite Integrated Contribution Formula is selected by the Employer under Section 3.04(a) above, the Maximum Disparity Rate is equal to the lesser of:
- (i) 5.7%; or
 - (ii) the applicable percentage determined in accordance with Table I below.

Table I

<u>If the Integration Level is more than</u>	<u>But not more than</u>	<u>the applicable percentage is:</u>
\$0	X*	5.7%
X* of Taxable Wage Base	80% of Taxable Wage Base	4.3%
80% of Taxable Wage Base	Y**	5.4%
Equal to the Taxable Wage Base	N/A	5.7%

*X = the greater of \$10,000 or 20% of the Taxable Wage Base.

**Y = any amount more than 80% of the Taxable Wage Base but less than 100% of the Taxable Wage Base.

- (b) If the Discretionary Integrated Contribution Formula is selected by the Employer under Section 3.04(b) above, the Maximum Disparity Rate is equal to the lesser of:

- (i) 2.7%; or
- (ii) the applicable percentage determined in accordance with Table II below:

Table II

<u>If the Integration Level is more than</u>	<u>But not more than</u>	<u>the applicable percentage is:</u>
\$0	X*	2.7%
X* of Taxable Wage Base	80% of Taxable Wage Base	1.3%
80% of Taxable Wage Base	Y**	2.4%
Equal to the Taxable Wage Base	N/A	2.7%

*X = the greater of \$10,000 or 20% of the Taxable Wage Base

**Y = any amount more than 80% of the Taxable Wage Base but less than 100% of the Taxable Wage Base.

- (c) In no event can the amount allocated to each participant's IRA exceed the lesser of 25% of the participant's compensation or \$40,000, as adjusted under Code § 415(d). For purposes of the 25% limitation described in the preceding sentence, a participant's compensation does not include any elective deferral described in Code § 402(g)(3) or any amount that is contributed by the employer at the election of the employee and that is not includible in the gross income of the employee under Code §§ 125, 132(f)(4) or 457.

4.12 Participant: Any Employee who has met the eligibility requirements of this Plan and who is eligible to receive an Employer contribution.

4.13 Plan: The Sponsoring Organization's Prototype Simplified Employee Pension Plan consisting of this plan document and the Adoption Agreement as completed and signed by the Employer.

4.14 Plan Year: The 12-consecutive month period specified by the Employer in the Adoption Agreement.

4.15 Self-Employed: An individual who has Earned Income for a Plan Year from the trade or business for which the Plan is established. A Self-Employed also includes an individual who would have had Earned Income but for the fact that the trade or business had no net profits for the Plan Year.

4.16 Sponsoring Organization: The entity specified in the Adoption Agreement.

4.17 Trustee: The financial institution or other organization specified in the Adoption Agreement which qualifies under section 408(a) of the Code and is serving as Trustee or Custodian of the IRA plan to which an Employer contribution is made.

PROTOTYPE SEP DISCLOSURE STATEMENT

INFORMATION FOR THE EMPLOYEE

The information provided below explains what a Simplified Employee Pension (SEP) plan is, how contributions are made, and how to treat your employer's contributions for tax purposes. Please read the questions and answer carefully. For more specific information, see the Prototype SEP Plan document and Adoption Agreement executed by your Employer. Also, see IRS Publication 560.

QUESTIONS & ANSWERS

Q1 What is a Simplified Employee Pension, or SEP?

A1 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 (IRA).

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.

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

Q2 Must my employer contribute to my IRA under the SEP?

A2 No. An employer is not required to make SEP contributions. If a contribution is made, it must be allocated to all the eligible employees according to the SEP agreement. The Prototype SEP Plan specifies that the contribution for each eligible employee will be the same percentage of compensation (excluding compensation higher than a specified dollar limit that is subject to cost-of-living adjustments) for all employees. The compensation limit is:

2006	\$220,000
2007	\$225,000
2008	\$230,000
2009	\$245,000
2010	\$245,000
2011	\$245,000

Q3 How much may my employer contribute to my SEP IRA in any year?

A3 Your employer will determine the amount to be contributed to your traditional 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. The \$40,000 maximum SEP contribution limit is subject to cost-of-living adjustments. Compensation does not include any amount that is contributed by your employer to your traditional IRA under the SEP. Your employer is not required to make contributions every year or to maintain a particular level of contributions. See Question 5. The SEP contribution limit is:

2006	\$44,000
2007	\$45,000
2008	\$46,000
2009	\$49,000
2010	\$49,000
2011	\$49,000

Q4 How do I treat my employer's SEP contributions for my taxes?

A4 Employer contributions to your SEP IRA are excluded from your income unless there are contributions in excess of the applicable limit. See Question 3. Employer contributions within these limits will not be included on your Form W-2.

Q5 May I also contribute to my IRA if I am a participant in a SEP?

A5 Yes. You may contribute the smaller of the annual regular IRA contribution limit or 100% of your compensation 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. See Question 11.

Q6 Are there any restrictions on the IRA I select to have my SEP contributions deposited?

A6 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.

Q7 What if I do not want to participate in a SEP?

A7 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 fails to establish a SEP IRA for the remaining eligible employees, it could cause adverse tax consequences for the participating employees.

Q8 Can I move funds from my SEP IRA to another traditional IRA?

A8 Yes. 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 traditional IRA or SEP 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.

Q9 Can I move my funds from my SEP IRA to another employer plan?

A9 Yes. Beginning with distributions received in 2002, you may also roll over to a qualified plan (under section 401(a)), a qualified annuity, a 403(b) tax-sheltered annuity or custodial agreement, or an eligible 457(b) plan of a state or local government.

Q10 Are there any restrictions to rollovers from my IRA?

A10 Yes. You may not roll over to an employer plan (See Question 9) any basis in your IRA. Basis includes nondeductible IRA contributions, after-tax monies that were rolled into the IRA from an employer plan, or repayments of qualified reservist distributions.

Q11 What happens if I withdraw my employer's contribution from my IRA?

A11 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 an additional tax on early withdrawal.

Q12 Are there any restrictions in withdrawing the funds in my SEP IRA?

A12 You may withdraw the funds in your IRA at any time. However, a withdrawal from a certificate of deposit prior to maturity may result in a forfeiture of principal or interest. These penalties, as well as any fees which may be charged, are set forth in the IRA disclosure statement you received when you opened your account and/or any specific disclosure accompanying your certificate of deposit (including rules of class) or other investment.

An IRA with another institution may have different terms concerning transfers, withdrawals, rates of return, etc. It is possible that the terms offered at another institution may be more advantageous.

Q13 May I participate in a SEP even though I am covered by another plan?

A13 An employer may adopt this Prototype SEP in conjunction with any qualified plan, including a defined benefit plan. Also, if your employer maintained in the past a defined benefit plan, which is now terminated the employer may adopt this Prototype SEP.

Q14 What happens if too much is contributed to my SEP IRA in one year?

A14 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 account after that time may have adverse tax consequences. Withdrawals of those contributions may be taxed as premature withdrawals.

Q15 Is my employer required to provide me with information about SEP IRAs and the SEP agreement?

A15 Yes. Your employer must provide you with a copy of the executed SEP Plan agreement with Adoption Agreement and a yearly statement showing any SEP contributions to your traditional IRA.

Q16 Is the financial institution where my traditional IRA is established required to provide me with information?

A16 Yes. It must provide you with a disclosure statement that contains the following information in plain, nontechnical language.

- (1) The law that relates to your traditional IRA.
- (2) The tax consequences of various options concerning your traditional IRA.
- (3) Participation eligibility rules, and rules on the deductibility of retirement savings.
- (4) Situations and procedures for revoking your traditional 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 traditional IRA.
- (6) Financial disclosure that provides the following information:
 - (a) Projects value growth rates of your traditional 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 traditional IRA's investment performance.

See IRS Publication 590, Individual Retirement Arrangements (IRAs), available at most IRS offices, for a more complete explanation of the IRA disclosure requirements.

In addition to this disclosure statement, the financial institution is required to provide you with a financial statement each year. It may be necessary to retain and refer to statements for more than one year in order to evaluate the investment performance of the traditional IRA and in order that you will know how to report traditional IRA distributions for tax purposes.

PROTOTYPE SEP CONTRIBUTION DISCLOSURE

WRITTEN ALLOCATION FORMULA

1. How much will my Employer contribute to my SEP IRA?

The Employer has agreed to provide contributions for the _____ Plan Year as follows (complete one):

- a). Fixed Percentage - _____ % of each Participant's Compensation.
- b). Flat Dollar - \$ _____ per Participant.
- c). Contributions made by the Employer are integrated with Social Security. This means that in determining contributions made to your SEP IRA your Employer has taken into account Social Security taxes paid by the Employer on your compensation.

2. If #1 (c) is checked above, how will social security integration affect Employer contributions to my SEP IRA?

Employer contributions made on your behalf would be reduced by certain amounts being contributed on your behalf to the Social Security System, subject to strict guidelines under the Internal Revenue Code.

For more information on the effect of Social Security Integration in your particular situation, contact the individual named below.

ADDITIONAL INFORMATION

The Employer has designated _____ (insert Name & title) to provide additional information to participants about the Employer's SEP Plan.