

Basic Plan Document

DEFINITIONS

ADOPTING EMPLOYER Means any corporation, sole proprietor, or other entity named in the Adoption Agreement and any successor who by merger, purchase, or otherwise, assumes the obligations of the Plan.

ADOPTION AGREEMENT Means the document executed by the Employer through which it adopts the Plan and thereby agrees to be bound by all terms and conditions of the Plan.

BASIC PLAN DOCUMENT Means this prototype plan document.

CODE Means the Internal Revenue Code of 1986 as amended.

COMPENSATION As elected by the Adopting Employer in the Adoption Agreement, Compensation shall mean one of the following, except as otherwise specified in the Plan:

1. **W-2 Wages.** (Information required to be reported under Code sections 6041, 6051, and 6052 (wages, tips, and other compensation as reported on Form W-2)). Compensation is defined as wages within the meaning of Code section 3401(a) and all other payments of compensation to an Employee by the Employer (in the course of the Employer's trade or business) for which the Employer is required to furnish the Employee a written statement under Code sections 6041(d), 6051(a)(3), and 6052. Compensation must be determined without regard to any rules under Code section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code section 3401(a)(2)).
2. **3401(a) Wages.** Compensation is defined as wages within the meaning of Code section 3401(a) for the purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code section 3401(a)(2)).
3. **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 SEP Plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid to salespersons, 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 nonaccountable plan (as described in Regulations section 1.61-2(c), 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 SEP 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).

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

A Participant's Compensation shall include any elective deferral described in Code section 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 sections 125, 132(f)(4), or 457.

The annual Compensation of each Participant taken into account under the Plan for any year shall not exceed the Compensation limit described in Code section 401(a)(17) as adjusted by the Secretary of the Treasury for increases in the cost-of-living in accordance with Code section 401(a)(17)(B). Such adjustments shall be made in multiples of \$5,000. (The Compensation limit for 2002 is \$200,000.) If a Plan 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.

EARNED INCOME Means 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 Self-Employed 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 a qualified plan or to a Simplified Employee Pension plan to the extent deductible under Code section 404.

EMPLOYEE Means any person who is employed by the Employer as a common law employee and, if the Employer is a sole proprietorship or partnership, any Self-Employed Individual who performs services with respect to the trade or business of the Employer as described in Code section 401(c)(1). Further, any employee of any other employer required to be aggregated under Code sections 414(b), (c), (m), or (o) and, unless otherwise indicated in the Adoption Agreement, any leased Employee required to be treated as an employee of the Employer under Code section 414(n) shall also be considered an Employee.

EMPLOYER Means the Adopting Employer and any successor who by merger, consolidation, purchase, or otherwise assumes the obligations of the Plan. A partnership is considered to be the Employer of each of the partners and a sole proprietorship is considered to be the Employer of the sole proprietor.

If the Adopting Employer is a member of a controlled group of corporations (as defined in Code section 414(b)), a group of trades or businesses under common control (as defined in Code section 414(c)), an affiliated service group (as defined in Code section 414(m)), or is required to be aggregated with any other entity as defined in Code section 414(o), then for purposes of the Plan, the term Employer shall include the other members of such groups or other entities required to be aggregated with the Adopting Employer.

IRA Means a Traditional individual retirement account or Traditional individual retirement annuity, which satisfies the requirements of Code section 408(a) or (b).

PARTICIPANT Means any Employee who has met the eligibility requirements of Section 3.01 of the Plan and Section Three of the Adoption Agreement, and who is or may become eligible to receive an Employer Contribution.

PLAN Means the prototype SEP Plan adopted by the Employer that is intended to satisfy the requirements of Code section 408(k). The Plan consists of the Basic Plan Document plus the corresponding Adoption Agreement as completed and signed by the Employer.

PLAN YEAR Means the 12-consecutive month period which coincides with the Employer's taxable year or such other 12-consecutive month period as is designated in the Adoption Agreement.

PRIOR PLAN Means a plan which was amended or replaced by adoption of this Plan, as indicated in the Adoption Agreement.

PROTOTYPE SPONSOR Means the entity specified in the Adoption Agreement that makes this prototype Plan available to employers for adoption.

REGULATIONS Means the Treasury Regulations.

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SELF-EMPLOYED INDIVIDUAL Means an individual who has Earned Income for a Plan Year from the trade or business for which the Plan is established; also, 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.

TAXABLE WAGE BASE Means, with respect to any taxable year, the contribution and benefit base in effect under Section 230 of the Social Security Act at the beginning of the Plan Year.

SECTION ONE ESTABLISHMENT AND PURPOSE OF PLAN

- 1.01 **PURPOSE** The purpose of this Plan is to provide, in accordance with its provisions, a Simplified Employee Pension plan providing benefits upon retirement for the individuals who are eligible to participate hereunder.
- 1.02 **INTENT TO QUALIFY** It is the intent of the Employer that this Plan shall be for the exclusive benefit of its Employees and shall qualify for approval under Code section 408(k). This document is intended to conform with the applicable rules and procedures of the Internal Revenue Service (IRS) that apply to prototype Simplified Employee Pension plans.
- 1.03 **USE WITH IRA** This prototype Plan must be used with an IRS model IRA (Form 5305 or Form 5305-A) or any other plan that satisfies Code section 408(a) or 408(b).

SECTION TWO EFFECTIVE DATES

The Effective Date means the date the Plan (or in the event a Prior Plan is amended, the restatement) becomes effective as indicated in the Adoption Agreement.

SECTION THREE ELIGIBILITY AND PARTICIPATION

- 3.01 **ELIGIBILITY REQUIREMENTS** Except for those Employees described in Section 3.02 of the Plan that are excluded as indicated in the Adoption Agreement, each Employee of the Employer who fulfills the eligibility requirements specified in the Adoption Agreement shall become a Participant.
- When the Employer maintains the Plan of a predecessor employer, an Employee's service will include his or her service for such predecessor employer.
- 3.02 **EXCLUSION OF CERTAIN EMPLOYEES** The Employer may exclude collective bargaining unit Employees, non-resident aliens and acquired Employees, as defined in paragraphs (A) through (C) below, from participating in the Plan. In addition, the Employer may exclude Employees earning less than the defined Compensation threshold as defined in paragraph (D) below, pursuant to the conditions described therein.
- A. **Collective Bargaining Unit Employees.** A collective bargaining unit Employee is an Employee included in a unit of Employees covered by a collective bargaining agreement between the Employer and Employee representatives, if retirement benefits were the subject of good faith bargaining and if two percent or less of the Employees who are covered pursuant to that agreement are professionals as defined in Regulations section 1.410(b)-9. For this purpose, 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 Aliens.** A non-resident alien is an Employee who is a non-resident alien (within the meaning of Code section 7701(b)(1)(B)) and who received no earned income (within the meaning of Code section 911(d)(2)) from the Employer which constitutes income from sources within the United States (within the meaning of Code section 861(a)(3)).
- C. **Acquired Employees.** An acquired Employee is an Employee who would be employed by another employer that has been involved in an acquisition or similar transaction described under Code section 410(b)(6)(C) with the Employer, had the transaction not occurred.
- If elected on the Adoption Agreement, an acquired Employee will not be eligible to become a Participant in the Plan during the period beginning on the date of the transaction and ending on the last day of the first Plan Year beginning after the date of the transaction.
- D. **Compensation Amount.** Compensation for the purposes of the \$450 limit of Code section 408(k)(2)(C) shall be defined as Code section 414(q)(7) Compensation.
- 3.03 **ADMITTANCE AS A PARTICIPANT**
- A. **Prior Plan.** If this Plan is an amendment or continuation of a Prior Plan, each Employee of the Employer who, immediately before the Effective Date, was a participant in the Prior Plan shall be a Participant in this Plan as of the Effective Date.
- B. **Notification of Eligibility.** The Employer shall notify each Employee who becomes a Participant of his or her status as a Participant in the Plan and of his or her duty to establish an IRA to which Employer Contributions may be made.
- C. **Establishment of an IRA.** If a Participant fails to establish an IRA within a reasonable period of time after receiving notice from the Employer pursuant to Section 3.03(B) of the Plan, the Employer may execute any necessary documents to establish an IRA on behalf of the Participant.
- 3.04 **DETERMINATIONS UNDER THIS SECTION** The Employer shall determine the eligibility of each Employee to be a Participant. This determination shall be conclusive and binding upon all persons except as otherwise provided herein or by law.
- 3.05 **LIMITATION RESPECTING EMPLOYMENT** Neither the fact of the establishment of the Plan nor the fact that an Employee has become a Participant shall give to that Employee any right to continued employment; nor shall either fact limit the right of the Employer to discharge or to deal otherwise with an Employee without regard to the effect such treatment may have upon the Employee's rights under the Plan.

SECTION FOUR CONTRIBUTIONS AND ALLOCATIONS

4.01 EMPLOYER CONTRIBUTIONS

A. **Obligation to Contribute.** An Employer Contribution is the amount contributed by the Employer to this Plan. Except as otherwise indicated in the Adoption Agreement, the Employer will contribute an amount to be determined from year to year. The Employer may, in its sole discretion, make contributions without regard to current or accumulated earnings or profits.

B. **Allocation Formula.** Employer Contributions shall be allocated in accordance with the allocation formula selected in the Adoption Agreement. Each Employee who has satisfied the eligibility requirements pursuant to Section 3.01 (thereby becoming a Participant) will share in such allocation.

Employer Contributions made for a Plan Year on behalf of any Participant shall not exceed the lesser of 25 percent of Compensation or \$40,000, as adjusted under Code section 415(d). For purposes of the 25 percent limitation described in the preceding sentence, a Participant's Compensation does not include any elective deferral described in Code section 402(g)(3) or any amount that is contributed by the Employer at the election of the Participant and that is not includible in the gross income of the Participant under Code sections 125, 132(f)(4), or 457.

1. **Pro Rata Allocation Formula.** If the Employer has selected the pro rata allocation formula in the Adoption Agreement, then Employer Contributions for each Plan Year shall be allocated to the IRA of each Participant in the same proportion as such Participant's Compensation for the Plan Year bears to the total Compensation of all Participants for such year.
2. **Integrated Allocation Formula.** If the Employer has selected the integrated allocation formula in the Adoption Agreement, then Employer Contributions for the Plan Year will be allocated to Participants' IRAs as follows:

Step 1 Employer Contributions will be allocated to each Participant's IRA in the ratio that each Participant's total Compensation bears to all Participants' total Compensation, but not in excess of three percent of each Participant's Compensation.

Step 2 Any Employer Contributions remaining after the allocation in Step One will be allocated to each Participant's IRA in the ratio that each Participant's Compensation for the Plan Year in excess of the integration level bears to the Compensation of all Participants in excess of the integration level, but not in excess of three percent of the Participant's 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 Employer Contributions remaining after the allocation in Step Two will be allocated to each Participant's IRA in the ratio that the sum of each Participant's total Compensation and Compensation in excess of the integration level bears to the sum of all Participants' total Compensation and Compensation in excess of the integration level, but not in excess of the maximum disparity rate described in the table below. For purposes of this Step Three, in the case of any Participant who has exceeded the cumulative permitted disparity limit described below, two times such Participant's total compensation for the calendar year will be taken into account.

Step 4 Any Employer Contributions remaining after the allocation in Step Three will be allocated to each Participant's IRA in the ratio that each Participant's total Compensation for the Plan Year bears to all Participants' total Compensation for that Plan Year.

The integration level shall be equal to the Taxable Wage Base or such lesser amount elected by the Employer in the Adoption Agreement.

Integration Level	Maximum Disparity Rate
Taxable Wage Base (TWB)	2.7%
More than \$0 but not more than X*	2.7%
More than X* of TWB but not more than 80 percent of TWB	1.3%
More than 80 percent of TWB but not more than TWB	2.4%

*X means the greater of \$10,000 or 20 percent of TWB.

Annual overall permitted disparity limit. Notwithstanding the preceding paragraphs, for any calendar year this Plan benefits any Participant who benefits under another Simplified Employee Pension plan or qualified plan described in Code section 401(a) maintained by the Employer that provides for permitted disparity (or imputes disparity), Employer Contributions under this Plan 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.

Cumulative permitted disparity limit. 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. Effective for calendar years beginning on or after January 1, 1995, the cumulative permitted disparity limit for a Participant who has benefited under a defined benefit or target benefit plan 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 Plan or any other Simplified Employee Pension plan 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.

C. **Timing of Employer Contribution.** Employer Contributions, if any, made on behalf of Participants for a Plan Year shall be allocated and deposited to the IRA of each Participant no later than the due date for filing the Employer's tax return (including extensions).

4.02 **VESTING AND WITHDRAWAL RIGHTS** All Employer Contributions made under the Plan on behalf of Employees shall be fully vested and nonforfeitable at all times. Each Employee shall have an unrestricted right to withdraw at any time all or a portion of the Employer Contributions made on his or her behalf. However, withdrawals taken are subject to the same taxation and penalty provisions of the Code, which are applicable to IRA distributions.

4.03 **SIMPLIFIED EMPLOYER REPORTS** The Employer shall furnish Participant reports, relating to contributions made under the Plan, in the time and manner and containing the information prescribed by the Secretary of the Treasury. Such reports shall be furnished at least annually and shall disclose the amount of the contribution made under the Plan to the Participant's IRA.

SECTION FIVE COMPENSATION AND PLAN YEAR ELECTIONS

Except as otherwise provided in the Adoption Agreement, Compensation shall mean W-2 wages and Plan Year shall mean the 12-consecutive month period which coincides with the Adopting Employer's fiscal year.

SECTION SIX AMENDMENT OR TERMINATION OF PLAN

6.01 AMENDMENT BY EMPLOYER The Employer reserves the right to amend the elections made or not made in the Adoption Agreement by executing a new Adoption Agreement. The Employer shall neither have the right to amend any nonelective provision of the Adoption Agreement nor the right to amend provisions of this Basic Plan Document. If the Employer adopts an amendment to the Adoption Agreement or Basic Plan Document in violation of the preceding sentence, the Plan will be deemed to be an individually designed plan and may no longer participate in this prototype Plan.

6.02 AMENDMENT OR TERMINATION OF SPONSORSHIP BY PROTOTYPE SPONSOR The Employer, by adopting the Plan, expressly delegates to the Prototype Sponsor the power, but not the duty, to amend the Plan without any further action or consent of the Employer as the Prototype Sponsor deems either necessary for the purpose of adjusting the Plan to comply with all laws and applicable Regulations governing Simplified Employee Pension plans, or desirable to the extent consistent with such laws and applicable Regulations. Specifically, it is understood that the amendments may be made unilaterally by the Prototype Sponsor. However, it shall be understood that the Prototype Sponsor shall be under no obligation to amend the Plan documents and the Employer expressly waives any rights or claims against the Prototype Sponsor for not exercising this power to amend.

An amendment by the Prototype Sponsor shall be accomplished by giving notice to the Adopting Employer of the amendment to be made. The notice shall set forth the text of such amendment and the date such amendment is to be effective. Such amendment shall take effect unless, within the 30-day period after such notice is provided, or within such shorter period as the notice may specify, the Adopting Employer gives the Prototype Sponsor written notice of refusal to consent to the amendment. Such written notice of refusal shall have the effect of withdrawing the Plan as a prototype plan and shall cause the Plan to be considered an individually designed plan. The right of the Prototype Sponsor to cause the Plan to be amended shall terminate should the Plan cease to conform as a prototype plan as provided in this or any other section.

In addition to the amendment rights described above, the Prototype Sponsor shall have the right to terminate its sponsorship of this Plan by providing notice to the Adopting Employer of such termination. Such termination of sponsorship shall have the effect of withdrawing the Plan as a prototype plan and shall cause the Plan to be considered an individually designed plan. The Prototype Sponsor shall have the right to terminate its sponsorship of this Plan regardless of whether the Prototype Sponsor has terminated sponsorship with respect to other employers adopting its prototype Plan.

6.03 LIMITATIONS ON POWER TO AMEND No amendment by either the Employer or the Prototype Sponsor shall reduce or otherwise adversely affect any Participant's benefits acquired prior to such amendment unless it is required to maintain compliance with any law, regulation, or administrative ruling pertaining to Simplified Employee Pension plans.

6.04 TERMINATION While the Employer expects to continue the Plan indefinitely, the Employer shall not be under any obligation or liability to continue contributions or to maintain the Plan for any given length of time. The Employer may terminate this Plan at any time by appropriate action of its managing body.

6.05 NOTICE OF AMENDMENT OR TERMINATION Any amendment or termination shall be communicated by the Employer to all appropriate parties as required by law. Amendments made by the Prototype Sponsor shall be furnished to the Employer and communicated by the Employer to all appropriate parties as required by law.

6.06 CONTINUANCE OF PLAN BY SUCCESSOR EMPLOYER A successor of the Employer may continue the Plan and be substituted in the place of the present Employer.

6.07 SENDING OF NOTICES To the extent written instructions or notices are required under this Plan, the Prototype Sponsor or Employer may accept or provide such information in any other form permitted by the Code or related regulations. Any required notice will be considered effective when it is sent to the intended recipient at the last known address which is on file with the provider of the notice.

6.08 LIMITATION OF LIABILITY The Prototype Sponsor, trustee, custodian, or issuer of this Plan shall not be liable for any losses incurred by the IRA by any direction to invest communicated by the Employer, or any Participant or beneficiary. It is specifically understood that the Prototype Sponsor, trustee, custodian, or issuer shall have no duty or responsibility with respect to the determination of the adequacy of contributions to the Plan and enforcing the payment of such contributions. In addition, it is specifically understood that the Prototype Sponsor, trustee, custodian or issuer shall have no duty or responsibility with respect to the determination of matters pertaining to the eligibility of any Employee to become a Participant or remain a Participant hereunder; it being understood that all such responsibilities under the Plan are vested in the Employer. Finally, it is specifically understood that the Prototype Sponsor shall have no responsibility for IRAs maintained by Participants at IRA trustees, custodians, or issuers other than the Prototype Sponsor.

SECTION SEVEN ADOPTING EMPLOYER SIGNATURE

Section Seven of the Adoption Agreement must contain the signature of an authorized representative of the Adopting Employer evidencing the Employer's agreement to be bound by the terms of the Basic Plan Document and Adoption Agreement.