

I. Your Information					
First Name		MI	Last Name		
Address 1					
Address 2					
City		State	Zip	Email	
Home Phone	Work/Cell		Date of Birth		Social Security#

II. Beneficiary Designations						
<p>The following individual(s) or entity(ies) shall be my primary and/or contingent beneficiary(ies). <b>If neither primary nor contingent is indicated, the individual or entity will be deemed to be a primary beneficiary.</b> If more than one primary beneficiary is designated and no distribution percentages are indicated, the beneficiaries will be deemed to own equal share percentages in the IRA. Multiple contingent beneficiaries with no share percentage indicated will also be deemed to share equally. If any primary or contingent beneficiary dies before I do, his or her interest and the interest of his or her heirs shall terminate completely, and the percentage share of any remaining beneficiary(ies) shall be increased on a pro rata basis. If no primary beneficiary(ies) survives me, the contingent beneficiary(ies) shall acquire the designated share of my IRA. I may name a valid trust to be a beneficiary. If no names are listed, my estate will be the 100% beneficiary.</p>						
No.	Beneficiary Name/Address	Date of Birth	Social Security	Relationship	Primary or Contingent	Share%
1					<input type="checkbox"/> Primary <input type="checkbox"/> Contingent	
2					<input type="checkbox"/> Primary <input type="checkbox"/> Contingent	
3					<input type="checkbox"/> Primary <input type="checkbox"/> Contingent	
4					<input type="checkbox"/> Primary <input type="checkbox"/> Contingent	
5					<input type="checkbox"/> Primary <input type="checkbox"/> Contingent	

III. Spousal Consent
<p><i>This section should be reviewed if either the IRA or the residence of the IRA holder is located in a community or marital property state and the IRA holder is married. Due to the important tax consequences of giving up one's community property interest, individuals signing this section should consult with a competent tax or legal advisor.</i></p> <p><b>CURRENT MARITAL STATUS</b></p> <p><input type="checkbox"/> <b>I Am Not Married</b> – I understand that if I become married in the future, I must complete a new IRA Designation of Beneficiary form.</p> <p><input type="checkbox"/> <b>I Am Married</b> – I understand that if I choose to designate a primary beneficiary other than my spouse, my spouse must sign below.</p> <p><b>CONSENT OF SPOUSE</b></p> <p>I am the spouse of the above-named IRA holder. I acknowledge that I have received a fair and reasonable disclosure of my spouse's property and financial obligations. Due to the important tax consequences of giving up my interest in this IRA, I have been advised to see a tax professional.</p> <p>I hereby give the IRA holder any interest I have in the funds or property deposited in this IRA and consent to the beneficiary designation(s) indicated above. I assume full responsibility for any adverse consequences that may result. No tax or legal advice was given to me by the Custodian or TPA.</p>  <p>_____</p> <p>(Signature of spouse) <span style="margin-left: 200px;">_____</span>  <span style="margin-left: 200px;">Date</span></p>



## INDIVIDUAL RETIREMENT CUSTODIAL ACCOUNT AGREEMENT

The Depositor and American Estate & Trust, LC hereby make the following IRA custodial account agreement (the "Agreement"):

This IRA application and Agreement is based on the Internal Revenue Service ("IRS") model Form 5305-A (rev. April 2017), *Traditional Individual Retirement Custodial Account*, under section 408(a) of the Internal Revenue Code. The Depositor named on the Application is establishing a Traditional individual retirement custodial account with American Estate & Trust, LC (the "Custodian") under section 408(a) to provide for his or her retirement and for the support of his or her beneficiaries after death. American Estate & Trust, LC has given the Depositor the disclosure statement required by Regulations section 1.408-6. The Depositor has assigned the custodial account the sum indicated on the Application or a related document. American Estate & Trust, LC has delegated certain Custodial account duties as they relate to record keeping and administrative functions to the TPA designated on the IRA Account Application form.

### ARTICLE I

Except in the case of a rollover contribution described in section 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16), an employer contribution to a simplified employee pension plan as described in section 408(k), or a recharacterized contribution described in section 408A(d)(6), the custodian will accept only cash contributions up to \$5,500 per year for 2013 through 2017. For individuals who have reached the age of 50 by the end of the year, the contribution limit is increased to \$6,500 per year for 2013 through 2017. For years after 2017, these limits will be increased to reflect a cost-of living adjustment, if any.

### ARTICLE II

The Depositor's interest in the balance in the custodial account is nonforfeitable.

### ARTICLE III

1. No part of the custodial account funds may be invested in life insurance contracts, nor may the assets of the custodial account be commingled with other property except in a common trust fund or common investment fund (within the meaning of section 408(a)(5)).
2. No part of the custodial account funds may be invested in collectibles (within the meaning of section 408(m)) except as otherwise permitted by section 408(m)(3), which provides an exception for certain gold, silver, and platinum coins, coins issued under the laws of any state, and certain bullion.

### ARTICLE IV

1. Notwithstanding any provision of this agreement to the contrary, the distribution of the Depositor's interest in the custodial account shall be made in accordance with the following requirements and shall otherwise comply with section 408(a)(6) and the regulations thereunder, the provisions of which are herein incorporated by reference.
2. The Depositor's entire interest in the custodial account must be, or begin to be, distributed not later than the Depositor's required beginning date, April 1 following the calendar year in which the Depositor reaches age 70½. By that date, the Depositor may elect, in a manner acceptable to the Custodian, to have the balance in the custodial account distributed in:
  - (a) a single sum or (b) payments over a period not longer than the life of the Depositor or the joint lives of the Depositor and his or her designated beneficiary.
3. If the Depositor dies before his or her entire interest is distributed to him or her, the remaining interest will be distributed as follows:
  - a) If the Depositor dies on or after the required beginning date and:
    - i) The designated beneficiary is the depositor's surviving spouse, the remaining interest will be distributed over the surviving spouse's life expectancy as determined each year until such spouse's death, or over the period in paragraph (a)(iii) below if longer. Any interest remaining after the spouse's death will be distributed over such spouse's remaining life expectancy as determined in the year of the spouse's death and reduced by 1 for each subsequent year, or, if distributions are being made over the period in paragraph (a)(iii) below, over such period.
    - ii) The designated beneficiary is not the Depositor's surviving spouse, the remaining interest will be distributed over the beneficiary's remaining life expectancy as determined in the year following the death of the depositor and reduced by 1 for each subsequent year, or over the period in paragraph (a)(iii) below if longer.
    - iii) There is no designated beneficiary, the remaining interest will be distributed over the remaining life expectancy of the Depositor as determined in the year of the Depositor's death and reduced by 1 for each subsequent year.
  - b) If the Depositor dies before the required beginning date, the remaining interest will be distributed in accordance with (i) below or, if elected or there is no designated beneficiary, in accordance with (ii) below:

- i) The remaining interest will be distributed in accordance with paragraphs (a)(i) and (a)(ii) above (but not over the period in paragraph (a)(iii), even if longer), starting by the end of the calendar year following the year of the Depositor's death. If, however, the designated beneficiary is the Depositor's surviving spouse, then this distribution is not required to begin before the end of the calendar year in which the Depositor would have reached age 70½. But, in such case, if the Depositor's surviving spouse dies before distributions are required to begin, then the remaining interest will be distributed in accordance with (a)(ii) above (but not over the period in paragraph (a)(iii), even if longer), over such spouse's designated beneficiary's life expectancy, or in accordance with (ii) below if there is no such designated beneficiary.
  - ii) The remaining interest will be distributed by the end of the calendar year containing the fifth anniversary of the Depositor's death.
4. If the Depositor dies before his or her entire interest has been distributed and if the designated beneficiary is not the Depositor's surviving spouse, no additional contributions may be accepted in the account.
5. The minimum amount that must be distributed each year, beginning with the year containing the Depositor's required beginning date, is known as the "required minimum distribution" and is determined as follows:
  - a) The required minimum distribution under paragraph 2(b) for any year, beginning with the year the Depositor reaches age 70½, is the Depositor's account value at the close of business on December 31 of the preceding year divided by the distribution period in the uniform lifetime table in Regulations section 1.401(a)(9)-9. However, if the Depositor's designated beneficiary is his or her surviving spouse, the required minimum distribution for a year shall not be more than the Depositor's account value at the close of business on December 31 of the preceding year divided by the number in the joint and last survivor table in Regulations section 1.401(a)(9)-9. The required minimum distribution for a year under this paragraph (a) is determined using the Depositor's (or, if applicable, the Depositor and spouse's) attained age (or ages) in the year.
  - b) The required minimum distribution under paragraphs 3(a) and 3(b)(i) for a year, beginning with the year following the year of the Depositor's death (or the year the Depositor would have reached age 70½, if applicable under paragraph 3(b)(i)) is the account value at the close of business on December 31 of the preceding year divided by the life expectancy (in the single life table in Regulations section 1.401(a)(9)-9) of the individual specified in such paragraphs 3(a) and 3(b)(i).
  - c) The required minimum distribution for the year the Depositor reaches age 70½ can be made as late as April 1 of the following year. The required minimum distribution for any other year must be made by the end of such year.
6. The owner of two or more Traditional IRAs may satisfy the minimum distribution requirements described above by taking from one Traditional IRA the amount required to satisfy the requirement for another in accordance with the Regulations under section 408(a)(6).

#### **ARTICLE V**

1. The Depositor agrees to provide the Custodian with all information necessary to prepare any reports required by section 408(i) and Regulations sections 1.408-5 and 1.408-6.
2. The Custodian agrees to submit to the Internal Revenue Service (IRS) and Depositor the reports prescribed by the IRS.

#### **ARTICLE VI**

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

#### **ARTICLE VII**

This Agreement will be amended as necessary to comply with the provisions of the Code and the related Regulations. Other amendments may be made with the written consent of the parties to this Agreement.

#### **ARTICLE VIII**

The Depositor, Custodian and TPA all agree that to the best of their knowledge, all terms and conditions in this Article VIII and any subsequent Article: (a) comply with applicable requirements of state law and the Internal Revenue Code; and (b) have not been reviewed or preapproved by the IRS.

1. **Definitions.** When used in this Agreement, the following capitalized terms shall have the meanings as set forth below. Additionally, all terms used in this Agreement that are not accordingly defined shall have the meanings as set forth elsewhere in this Agreement.

- 1.1 “Depositor” means the person making and executing this Agreement and who will become the “IRA owner” once the account has been created. In the case of an employee-based plan, the Depositor is also binding the business entity (that will be the sponsor of the plan) to this Agreement. For purposes of this Agreement, the term “Depositor” also will refer to any beneficiary who inherits assets from the IRA until such time as the deceased IRA owner’s account has been terminated and fully distributed.
- 1.2 “Associated Parties” means and includes (jointly and severally), with respect of a person or entity, its principals, owners, members, shareholders, partners, directors, officers, managers, employees, agents, associates, representatives, advisors, consultants, attorneys, accountants, contractors and subcontractors, and each of them.
- 1.3 “American Estate & Trust”, solely for purposes of any legal duties and obligations of Custodian, means only American Estate & Trust, LC; and solely for purposes of any rights, benefits and other non-obligations of Custodian, means (jointly and severally) American Estate & Trust, LC and its controlled and controlling, direct and indirect, affiliates, parents, subsidiaries, divisions, and all Associated Parties acting through, under, or in concert with any of the foregoing, and each of their former, present, and future Associated Parties, in each case in their personal, corporate, authorized, representative or other capacities, and the predecessors, successors, assigns, personal representatives and heirs of any of the foregoing.
- 1.4 “Accuplan Benefits Services”, solely for purposes of any legal duties and obligations of TPA, means only Financial & Retirement Resources, LLC; and solely for purposes of any rights, benefits and other non-obligations of TPA, means (jointly and severally) Financial & Retirement Resources, LLC and its controlled and controlling, direct and indirect, affiliates, parents, subsidiaries, divisions, and all Associated Parties acting through, under, or in concert with any of the foregoing, and each of their former, present, and future Associated Parties, in each case in their personal, corporate, authorized, representative or other capacities, and the predecessors, successors, assigns, personal representatives and heirs of any of the foregoing.
- 1.5 “Planner” means any salesperson(s) who assisted the Depositor with this Agreement and with any general (non-legal/tax) information requested regarding the features or uses of a self-directed IRA.
- 1.6 “IRA”, “account” or “custodial account” means the Traditional IRA being created under this Agreement as well as any type of individual retirement account described in the Internal Revenue Code and related regulations, including a Traditional IRA, Roth IRA, SEP IRA and SIMPLE IRA, which Custodian is, may be, or was holding for you.
- 1.7 “IRC”, “Tax Code” or “Code” means Title 26 of the United States Code, also known as the Internal Revenue Code
- 1.8 “Regulations” means the Treasury Regulations (as issued by the Department of the Treasury)
- 1.9 “Dispute” means any dispute, claim, cause of action, or controversy concerning, arising from, or related to the IRA being created; its intended, pending, current or past investments; the terms of this Agreement; or the rights, obligations or duties created thereby or hereby.
- 1.10 For purposes of this Agreement, the following words and phrases shall be defined as follows:
  - 1.10.1 “We”, “us”, and “our” refer to Custodian and TPA
  - 1.10.2 “You” and “your” refer to the Depositor (IRA owner), the Depositor’s Designated Representative or other agents, and to any Beneficiary who inherits assets from the IRA
2. **Appointment of Custodian and Third-Party Administrator.** As the Depositor/IRA owner, you hereby appoint American Estate & Trust, LC to act as the non-owner, non-discretionary, non-fiduciary, IRS-qualified custodian of your IRA (“Custodian”) and Accuplan Benefits Services to act as the non-owner, non-discretionary, non-fiduciary third-party administrator of your IRA (“TPA” or “Administrator”). This IRA Account Application and Individual Retirement Custodial Account Agreement (collectively the “Agreement”) comprise your total agreement, and govern all aspects of your relationship, with Custodian and TPA. You acknowledge and agree that TPA is independent of Custodian and is not empowered or authorized to obligate or bind Custodian. Additionally, nothing in this Agreement shall be construed to render TPA an employee, partner, agent of, or joint venturer with, Custodian. Custodian shall not be responsible or liable for any representations or statements made by TPA.
3. **Backup Withholding.** The Internal Revenue Service requires your consent to the following certification regarding backup withholding. Under penalties of perjury, by signing this Agreement, you hereby declare and certify:
  - (A) that you have provided us with your correct Social Security or Tax I.D. Number; and
  - (B) that you are not subject to backup withholding because:
    - 1) you are exempt from backup withholding; or
    - 2) you have not been notified by the Internal Revenue Service (IRS) that you are subject to backup withholding as a result of a failure to report all interest or dividends; or
    - 3) the IRS has notified you that you are no longer subject to backup withholding.

Note: If you have been notified by the IRS that you are currently subject to backup withholding because of under reporting interest or dividends on your tax return, then you are required to cross through statement (B) above and initial next to it.

4. **Independence of Planner.** You acknowledge and agree that the Planner may be independent of Custodian and/or TPA and, if so, is not empowered or authorized to obligate or bind Custodian or TPA, respectively. Additionally, nothing in this Agreement shall be construed to render Planner an employee, partner, agent of, or joint venturer with, Custodian or TPA. Custodian and TPA shall not be responsible or liable under any circumstances for any representations or statements made by Planner, unless Planner can be proven, by clear and convincing evidence, to be a W-2 employee of, and acting in the scope of duty for, Custodian or TPA, respectively.
5. **Accuracy and Completeness.** You are responsible for the accuracy, completeness and genuineness of all data and information provided in this Agreement. You hereby authorize Custodian and TPA to conclusively rely on all such data and information, and we shall be under no duty or obligation to authenticate the source, or verify the accuracy, completeness or genuineness of any such data or information other than as specifically required by law. Other than the data and information provided in this Agreement, you consider no other data or information relevant or significant in or for the IRA. You hereby acknowledge and understand that if there are any errors or omissions in the data or information provided to us, then inaccurate, incomplete, and unreliable results will result.
6. **Assignment.** You may not assign or transfer, by operation of law or otherwise, any of your rights under this Agreement to any third party without Custodian's prior written consent. Any attempted assignment or transfer in violation of the foregoing shall be void. We shall have the right to assign or transfer this Agreement to any third party without notice to or consent by the Depositor. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns.
7. **Third Party Beneficiaries.** There are no other third-party beneficiaries of this Agreement.
8. **Final Agreement; Modification.** This Agreement constitutes the final, complete and entire agreement between the Parties concerning the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, written or oral, between the Parties with respect thereto. Any modification, rescission or amendment of this Agreement shall not be effective except by a separate written instrument signed by you and an authorized officer of Custodian.
9. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but when taken together shall constitute one and the same agreement. Facsimile, scanned and photocopy signatures and/or initials, including those delivered electronically in .pdf format, shall be binding and effective and shall have the same force and effect as original signatures and/or initials.
10. **Electronic Record and/or Electronic Signature.** All Parties to this Agreement agree that this Agreement as well as any signature and/or initials by a Party may be in electronic form. Signatures and/or initials made through DocuSign or similar technologies shall be deemed of acceptable form for manifesting such Party's affirmative assent.
11. **Privacy Notice.** We value your privacy. Nonpublic information collected you will be protected using industry best practices. Personal information submitted to us for the creation of a retirement plan account is protected by this privacy policy. Client financial information generally is disseminated only to our home offices or to any party which is legally related to or affiliated with us. In any case, no unauthorized party is permitted to receive your financial information except as is necessary in the normal course of creating and administering your IRA. Under federal law we may share information with certain providers that process and/or service your account but only when such providers have agreed to uphold our privacy policy. No client financial information is online or otherwise available to any unauthorized party outside of the respective Depositor, Custodian or TPA. No client information is sold, rented, or traded. Current and past Depositor financial information may be legally obtained from us only by: the respective Depositor, a proper court order or subpoena, or a proper governmental demand. Access to your financial information is otherwise restricted to employees on a need-to-know basis. You acknowledge that, as part of our administration of your IRA, we may utilize audio-visual recording devices and you hereby agree that we may record and play back any conversation between you and our authorized personnel. We maintain physical, electronic, and procedural guidelines that comply with federal standards to guard your personal financial information. Notwithstanding the foregoing, we may share your non-financial information (e.g., contact information) to outside parties when such parties have presented documentation indicating that you have outstanding issues (e.g., compliance, tax, legal, debt collection, etc.) pertaining to your IRA or its assets. Since we do not act as registered agents for you, your IRA, or its assets, and are not responsible for handling such issues in your "self-directed" IRA, your contact information may be provided so that the third party can work directly with you to address such outstanding issues. We reserve the right to amend this privacy notice at any time.

12. **Plain Language.** This Agreement shall be interpreted and construed in accordance with its plain language and no presumption or burden of proof shall be implied or employed against any person, including Custodian or TPA, as the drafter hereof.
13. **Headings.** Headings are for convenience of reference only and have no legal effect.
14. **Severability.** If any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed and enforced as if such invalid, illegal or unenforceable provisions) had never been contained herein, provided that such invalid, illegal or unenforceable provisions) shall first be curtailed, limited or eliminated to the extent necessary to remove such invalidity, illegality or unenforceability with respect to the applicable law as it shall then be applied.
15. **Waiver.** Any delay in exercising or promise not to enforce any right under this Agreement shall not constitute a waiver and is unenforceable unless evidenced in a separate writing signed by the Party expressly making said waiver or promise.
16. **Notices and Change of Address.** Any notice from us regarding the IRA or its assets will be considered effective when we send it to you or to your designated recipient at any last-known address which we have in our records (e.g., street address, mailing address or e-mail address). No proof of delivery will be required when we sent any notice; therefore, you must notify us promptly of any change of address and must ensure that our e-mail address is whitelisted in the e-mail system you use for us so that our messages are not placed in your e-mail system's spam folder. Any notice to be given to us will be considered effective only when we actually receive it, and in written form, so you may wish to use a method providing proof of delivery. To ensure any notice is sent to our current address, you should view it online prior to sending such notice.
17. **Fraudulent Transfers.** You hereby state and declare that the IRA will not be used to hinder, delay or defraud any existing creditors or governmental agencies that have a legal claim or interest in your assets, or to hinder, delay or defraud creditors or governmental agencies that you could reasonably expect to have a current or future claim. You further state and declare that you intend to repay all existing creditors and otherwise retain the means to discharge all your debts as they come due.
18. **No Endorsement of Other Professional Advisors.** YOU FURTHER ACKNOWLEDGE, AGREE AND UNDERSTAND: i) CUSTODIAN AND TPA DO NOT SELL, ENDORSE, OR RECOMMEND AND HAS NOT SOLD, ENDORSED OR RECOMMENDED ANY INSURANCE, ANNUITIES, SECURITIES, MUTUAL FUNDS OR ANY OTHER INVESTMENT OR FINANCIAL PLANNING PRODUCTS OR SERVICES; AND ii) CUSTODIAN AND TPA DO NOT ENDORSE, RECOMMEND, OR APPROVE ANY INSURANCE COMPANIES, BROKER-DEALERS OR ANY OTHER FINANCIAL INSTITUTION. CUSTODIAN AND TPA DO NOT ENDORSE, RECOMMEND, CONTROL OR REGULATE ANY PLANNERS, ADVISORS, SECURITIES REPRESENTATIVES, INSURANCE AGENTS, ATTORNEYS, CPAS OR OTHER PROVIDERS OF PROFESSIONAL, LEGAL, ACCOUNTING, OR FINANCIAL PRODUCTS OR SERVICES. SUCH PERSONS MUST ACT AND DO ACT INDEPENDENTLY IN EXERCISING THEIR OWN PROFESSIONAL JUDGMENT ON BEHALF OF YOU.
19. **Unknown and/or Conflicting Matters.** You expressly acknowledge and agree that all of the facts and circumstances relating to the IRA may not be known or that the proper significance may not have been ascribed thereto by you, but notwithstanding, you desire to enter into this Agreement and further expressly agree to protect, indemnify, defend and hold harmless Custodian and TPA, as provided herein, with full knowledge that there may be such unknown matters that might have materially affected the decision to enter into this Agreement. You shall comply with all other agreements, instruments, entities, instruction, etc. related to the IRA. You represent and warrant that this Agreement does not conflict with any other agreement to which you are bound and obligated.
20. **Disclaimer.** We shall not be responsible or liable under any circumstances for any claims, costs, losses or damages of any kind or nature whatsoever, whether foreseeable or not, arising from, related to, or as a result of any act or omission to act by any party other than Custodian or TPA, and further shall not be responsible or liable in the event of any delays or irregularities in closing, settlement or transfer of funds or property to/from the IRA.
21. **Warranty.** EXCEPT AS EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT, THE PRODUCTS AND SERVICES PROVIDED IN CONNECTION WITH THIS AGREEMENT, AND ANY INTELLECTUAL PROPERTY RELATING TO ANY OF THE FOREGOING, ARE PROVIDED ON AN "AS IS" BASIS. CUSTODIAN AND TPA MAKE NO WARRANTY OF ANY KIND IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT, AND CUSTODIAN AND TPA HEREBY EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT. SOME JURISDICTIONS LIMIT OR DO NOT ALLOW THE DISCLAIMER OF IMPLIED OR OTHER WARRANTIES SO THE ABOVE DISCLAIMERS MAY NOT APPLY TO YOU.
22. **Developing Law.** You acknowledge and agree that federal, state and local laws and regulations with respect to retirement plans may change from time to time and thereby affect this Agreement and/or the validity or effectiveness of the IRA or its

investments. We, in our sole discretion, may send out notices of changes regarding the IRA. Such updates may incur an additional charge. You agree to notify us of any address change so that notices may be timely received and also agree that failure to comply with any legal requirements may result in disqualification of the IRA with serious legal and/or tax consequences. You have sole responsibility for ensuring compliance with all laws, regulations and guidelines including any updates. We are never obligated to provide any notices of updates but may choose to do so strictly as a courtesy to you. We have not, and will not, provide advice, representations, guarantees or warranties with respect to the applicability of laws, regulations or guidelines to your particular situation.

23. **Indemnity and Hold Harmless.** You expressly agree to protect, indemnify, defend, and hold harmless Custodian and TPA from and against any and all claims, costs, losses and damages, taxes, interest, and penalties or any other obligations (including without limitation, reasonable attorneys' fees, court costs, and other litigation and dispute resolution costs), of every kind and nature whatsoever, sustained or incurred by you or by us in any way, arising from, related to or as a result of the IRA funding and/or operation; or of your (in)actions, directions or lack of directions including those by your Designative Representative(s); or of this Agreement; or any act or omission to act by any party other than Custodian and TPA, whether in whole or in part, and in any way whatsoever.
24. **Amendments.** We have the right to amend this Agreement at any time. Any amendment we make to comply with the Code, Regulations, case law or other federal or state law does not require your consent. When we amend the Agreement by updating the Terms and Conditions, the updated Agreement will be visible in the Terms and Conditions scroll box on our online application. You agree to check the most current Agreement language each month by reviewing our website. If you choose not to be obligated by any new or updated terms and conditions, as shown on our website's online IRA application, you must give us, within forty-five (45) days of the update, your written notification of nonacceptance as well as your instructions to terminate your IRA (along with any instructions as to where to send your IRA assets). Once we receive your notification of nonacceptance and IRA termination, we will terminate your IRA and distribute your assets, and you will be bound to the terms and conditions in effect just prior to the update to which you have formally objected. If we do not receive your notification within forty-five (45) days, you hereby agree that you will be deemed to have consented to all such new and updated terms and conditions. At our sole discretion, we may also send out individual notices of substantial updates, such as those affecting tax rules, as part of the periodic statements we send you.
25. **Consequential or Incidental Damages.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER CUSTODIAN NOR TPA (OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AFFILIATES, AGENTS, SUCCESSORS OR ASSIGNS) SHALL BE LIABLE TO ANY PARTY FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, THOSE RESULTING FROM LOST PROFITS OR BUSINESS INTERRUPTION) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE USE, INABILITY TO USE, OR THE RESULTS OF USE OF THE PRODUCTS AND SERVICES PROVIDED IN CONNECTION WITH THIS AGREEMENT, WHETHER BASED ON WARRANTY, CONTRACT, TORT OR ANY OTHER LEGAL THEORY AND WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER CUSTODIAN NOR TPA (OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AFFILIATES, AGENTS, SUCCESSORS OR ASSIGNS) SHALL BE LIABLE FOR ANY DIRECT DAMAGES IN EXCESS OF THE AMOUNT PAID BY DEPOSITOR TO CUSTODIAN OR TPA FOR THE PRODUCTS AND SERVICES PROVIDED IN CONNECTION WITH THIS AGREEMENT. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES SO THE ABOVE LIMITATION OF LIABILITY MAY NOT APPLY TO YOU.
26. **Third-Party Litigation and/or Dispute Resolution Expenses.** Though uncommon, an IRA or its investments may become subject to a legal claim by or against the IRA, an IRA investment and/or its owner, which may lead to the involvement of Custodian and/or TPA. You understand and agree that we are not required to use our own resources: (1) to satisfy any of the debts and/or claims against your IRA or its investments; (2) to pay for the defense of any such claims; (3) to find or retain legal counsel or other professionals to assist with litigation or other dispute resolution processes by you or your IRA; or (4) to use any of our resources, financial or otherwise, in any litigation or other dispute resolution process involving your IRA or its investments. If Custodian and/or TPA is named as a party to a third-party claim relating to your IRA or investments, you hereby agree to retain legal counsel to represent us in our custodial capacity with litigation or other dispute resolution processes; and (b) deduct from your account any amount necessary to pay such costs and expenses related to the litigation or dispute resolution processes, including, but not limited to, all attorneys' fees and costs incurred by Custodian and/or TPA, respectively, in the defense of such claim. If we believe we are required to respond to any litigation or other dispute resolution processes, you agree to reimburse us with IRA funds, upon our demand, all expenses we incur in such activities, including attorney's fees. If there is insufficient Uninvested Cash in your account, you will promptly reimburse Custodian and/or TPA, respectively, any remaining costs and expenses in such defense of the claim. If you fail to provide such reimbursement, then Custodian and/or TPA are authorized to: (a) freeze and liquidate your investments (in any or all of your IRAs held by Custodian); (b) initiate legal action; (c) and/or initiate collection efforts, so as to obtain full reimbursement for any such costs and expenses. You also agree to hold Custodian and TPA harmless for any default, surrender charges, investment losses, opportunity costs, and any other losses or penalties due to any liquidation of your account assets in execution of this provision. If you choose to initiate any litigation or other dispute resolution process, you agree to list your IRA as the plaintiff and to ensure the court and all parties understand that we have no legal or beneficial rights or obligations

with respect to the IRA and its assets, and that we are not the true party in interest. You must notify the court and all parties that you are the legal and beneficial owner and fiduciary of your IRA and that you will be responsible for coordinating all aspects of the litigation or dispute resolution, via your chosen attorney and on behalf of your IRA. All such litigation or dispute resolution expenses must be paid using your IRA funds. Throughout all legal proceedings described herein, you agree to provide us, at your cost, with copies of all motions, filings, orders and other related documents for our administrative purposes. For purposes of this paragraph, the terms Custodian and TPA include American Estate & Trust, LC and Accuplan Benefits Services, respectively, as well as their employees, agents, licensees, franchises, affiliates, joint ventures, assigns and/or business partners.

27. **Dispute Resolution.** If any Dispute arises, you agree that such Dispute shall first be negotiated in good faith with Custodian or TPA, as applicable, to come to a resolution. If no resolution is reached within thirty (30) days of both parties receiving notice of the Dispute, you agree to then try in good faith to settle the Dispute by non-binding mediation administered by the American Arbitration Association under its Commercial Mediation Procedures (unless a procedure is otherwise provided herein) before resorting to arbitration, litigation or any other dispute resolution procedure. Such mediation shall occur in Clark County, Nevada with respect to any Dispute with Custodian and in Salt Lake County, Utah with respect to any Dispute with TPA or, if permission is provided by Custodian or TPA, via telephone. If not settled by mediation within another thirty (30) days, then you agree that such Dispute shall be resolved by final, binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules (unless a rule is otherwise provided herein), including the Optional Rules for Emergency Measures of Protection, and judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction consistent with this Agreement. Arbitration shall occur in Clark County, Nevada with respect to any Dispute with Custodian and in Salt Lake County, Utah with respect to any Dispute with TPA. You hereby consent to such exclusive jurisdiction and waive objections to venue. You agree not to initiate, participate in, or join any class-action arbitration proceedings. If you institute legal action against Custodian or TPA in any State or federal court (bypassing this section's mediation/arbitration dispute resolution requirements), you understand and agree that: (a) such litigation must be filed and adjudicated in Clark County, Nevada with respect to any claim or cause of action against Custodian and in Salt Lake County, Utah with respect to any claim or cause of action against TPA, and you consent to such exclusive jurisdiction and waive objections to venue; (b) such action constitutes an intentional breach of this Agreement; (c) you waive all rights to any damages; and (d) you hereby agree to reimburse immediately all expenses incurred by Custodian or TPA (including reasonable attorneys' fees, court costs and reasonable wages for involved employees) incurred in the defense of such action.
- 27.1 In any action or arbitration instituted to resolve a Dispute, the prevailing party shall be entitled to reasonable attorneys' fees and costs (but the costs of mediation shall be borne as provided under the applicable Commercial Mediation Procedures). If you institute any such action or arbitration and subsequently abandon it prior to final resolution (with abandonment defined as any six (6) consecutive months of inactivity), then each defendant shall be deemed a prevailing party entitled to its reasonable attorneys' fees and costs from you.
- 27.2 You hereby agree that, once any claim or cause of action that you have or may have against us has accrued, you must file such claim or cause of action (or demand mediation or arbitration as described herein) no later than one (1) year after the claim or cause of action accrued (or if such period is greater than one year, then no later than the shortest duration permitted under applicable law). You hereby agree to waive any statute of limitation to the contrary. In no event shall the demand for mediation or arbitration be made after the date the institution of legal or equitable proceedings based upon such claim, dispute or other matter would be barred by the applicable statute of limitations.
- 27.3 IF YOU FAIL OR REFUSE TO NEGOTIATE, MEDIATE OR ARBITRATE IN GOOD FAITH ANY DISPUTE OR FAIL OR REFUSE TO PROVIDE PRIOR NOTICE TO CUSTODIAN OR TPA, AS APPLICABLE, REGARDING ANY DISPUTE, YOU HEREBY AGREE THAT CUSTODIAN OR TPA WILL BE ENTITLED TO ALL REASONABLE ATTORNEYS' FEES AND COSTS FOR RESPONDING TO ANY LITIGATION OR OTHER DISPUTE RESOLUTION PROCEEDING WHICH YOU INITIATE PRIOR TO ENGAGING IN SUCH GOOD FAITH NEGOTIATION, MEDIATION OR ARBITRATION. YOU FURTHER AGREE THAT CUSTODIAN AND/OR TPA MAY COUNTERSUE IN COURT FOR YOUR BREACH OF THIS AGREEMENT WITHOUT THEMSELVES VIOLATING ANY SECTION OF THIS AGREEMENT AND THAT THE MINIMUM LIQUIDATED DAMAGES FOR YOUR BREACH SHALL BE ALL OF CUSTODIAN'S AND TPA'S LEGAL COSTS, ATTORNEY'S FEES, AND \$1,000 FOR OUR EMPLOYEES' TIME. MOREOVER, YOU UNDERSTAND AND AGREE THAT NO INDIVIDUAL EMPLOYEE, OFFICER, MANAGER, DIRECTOR, OR OTHER INDIVIDUAL HAS ANY PROFESSIONAL OR FIDUCIARY DUTY TO YOU OR HAS MADE ANY MATERIAL REPRESENTATIONS OR OMISSIONS TO INDUCE YOU INTO APPLYING FOR THE IRA. YOU FURTHER HEREBY AGREE TO REIMBURSE IMMEDIATELY ANY SUCH INDIVIDUAL (WHO IS NAMED AS A DEFENDANT IN ANY LEGAL PROCEEDING INITIATED OR JOINED BY YOU) FOR ALL LEGAL EXPENSES AND COSTS ASSOCIATED WITH DEFENSE OF ANY SUCH LEGAL ACTION.
28. **Self-Directed Investments.** You understand and agree that we do not endorse, promote, validate, vet, verify title to, or monitor any of your IRA investment choices. Moreover, in accepting any particular investment, we are not providing a legal, tax, fiduciary or other professional opinion that such investment is permissible under any and all federal and state laws. You agree not to rely on custodial acceptance of any investment to indicate or suggest legal permissibility. It is entirely your responsibility to ensure that all laws, regulations and local ordinances will be complied with in making and maintaining any investment. You must determine, alone or with the assistance of an independent advisor, if your investment is permissible

and appropriate. We do not provide investment, legal, tax or other professional advice of any kind. Our only obligations as your IRA custodian are: (a) to receive deposits of cash as well as proper rollovers of cash or property from other tax-qualified retirement plans; (b) to hold your investments (solely in a non-owner, non-discretionary, and non-fiduciary custodial capacity); (c) to execute on your behalf your written directions to the extent they are proper under all laws and do not violate our company policies or any terms and conditions of this Agreement; (d) to distribute your assets under circumstances described in this Agreement; and (e) to administer your account in a ministerial manner, which includes the provision of periodic reports and statements as required under the Tax Code. You agree that we are not acting as a fiduciary (as that term is defined under ERISA, the Code, and any other federal or state law) to you, your IRA, or your self-directed IRA investments and further agree that any contract or other document creating obligations on behalf of a party, which has been signed by us, shall not create any obligations or liability against us but shall be binding instead upon you (as fiduciary of your IRA). All documents presented to us for our signature must include language that states that we are not liable for any obligations contained in such document and that the only recourse is against the subject property of the transaction described by that document and/or against the IRA itself (to the extent permitted by law). We are not responsible for ensuring this language is included in each such document; you retain sole responsibility to do so. In the event such language is not included or that, for any other reason, we incur any costs, damages or expenses (including legal expenses) due to our signing of IRA transaction documents, you acknowledge and agree that you will indemnify us within thirty (30) days of our notification to you of any such costs. You acknowledge and agree that nothing in this Agreement shall be construed as conferring fiduciary status of any kind upon us. We shall not be required to perform any additional services unless specifically agreed to under the terms and conditions of this Agreement, or as required under the Code and the Regulations promulgated thereunder with respect to IRAs. You agree to indemnify and hold us harmless for any and all claims, actions, proceedings, damages, judgments, liabilities, costs and expenses, including attorney's fees, arising from, or in connection with this Agreement. To the extent written instructions or notices are required under this Agreement, we may, at our sole discretion, accept or provide such information in any other form permitted by the Code, Regulations, or other applicable federal and state laws.

## 29. Withdrawals, Transfers and Rollovers.

- 29.1 **Withdrawals.** All requests for withdrawals shall be in writing on a form provided by or acceptable to us. Withdrawals shall be subject to all applicable tax and other laws and regulations, including possible early withdrawal penalties or surrender charges and withholding requirements.
- 29.2 **Pre-Acceptance Liability for Transfers and Rollovers.** When you are transferring or rolling over assets from a prior custodian or plan administrator/trustee, you agree that we shall not be liable in any manner for actions or omissions by the prior custodian or plan administrator/trustee and that responsibility for custodial or administration duties shall not apply to us until after Custodian has received and accepted the full transfer or rollover. We have no responsibility or duty to inquire into or take action related to acts or omissions by a prior trustee/custodian or plan administrator.
- 29.3 **Procedures for Transfers and Rollovers.** We can receive amounts transferred to this IRA from the custodian or trustee of another IRA. In addition, we can accept direct rollovers of eligible rollover distributions from employer-sponsored retirement plans as permitted by the Code. We reserve the right not to accept any transfer or direct rollover. All requests for transfers shall be in writing on a form provided by or acceptable to us. The method of distribution must also be specified in writing. The tax identification number of the recipient must be provided to us before we are obligated to make a distribution. You acknowledge that there may be limitations on transfers and rollovers permitted into or out of an IRA. You agree that you will review the information on the IRS website ([http://www.irs.gov/pub/irs-tege/rollover\\_chart.pdf](http://www.irs.gov/pub/irs-tege/rollover_chart.pdf)) and will determine the permissibility of your intended action prior to directing us regarding any transfer or rollover. You further understand and agree that any transfer or rollover from a prior custodian and/or plan administrator may take several weeks to process and those funds will not be available to the IRA until all appropriate documentation has been properly completed, submitted, verified and processed. You agree that any transfers of assets to another IRA trustee or custodian must be made directly to a licensed, qualified IRA trustee/custodian (i.e., a "bank" or IRS-approved "nonbank trustee" as defined in the Tax Code). You understand and agree that no transfers will be made to any "IRA administrator," "IRA facilitator," or other unqualified entity regardless of whether such entity is, or claims to be, an agent or nominee of a qualified IRA trustee or custodian.

## 30. Investment Directions.

- 30.1 **Appointment of Designated Representative.** We may permit you to appoint, through signed written notice acceptable to us, an authorized agent ("Designated Representative") to act on your behalf with respect to this Agreement (e.g., attorney-in-fact, executor, guardian, administrator, investment manager, etc.); however, we have no duty to determine the validity of such appointment or any instrument appointing such Designated Representative. We shall not be responsible for losses of any kind that may result from directions, actions or failures to act by your Designated Representative, and you agree to reimburse us for any loss we may incur as a result of such directions, actions or failures to act by your Designated Representative.
- 30.2 **Directions Must Be in Writing.** You acknowledge and agree that you (including your Designated Representative) will need to provide the TPA with written investment directions for any investment you wish to make. The TPA will forward the directions to the Custodian which will implement them in the manner detailed in this Agreement. You will

contact only the TPA with any questions or concerns you might have regarding your account administration or investments. You agree that we are not fiduciaries or investment advisors to you or your IRA and only execute your written orders when making investment transactions. We shall rely solely upon the information submitted by you. You further agree that we shall not be held responsible for any penalties, plan disqualification or any other liability due to the failure of you or your Designated Representative to submit such information on a timely basis or due to any failure to submit accurate information.

- 30.3 **Responsibility for Proper Directions.** You also agree that any directions, documents or information you (including your Designated Representative) give us, or action you take, will be proper under this Agreement and applicable laws, and that we are entitled to fully rely upon any such directions, documents and information. We are entitled to presume that all documents received from you have been approved and authorized by you and are legally valid and enforceable. If we fail to receive directions from you regarding any transaction, or if we receive ambiguous directions regarding any transaction, or we, in good faith, believe that any transaction requested is in dispute or is improper, we reserve the right to take no action until further clarification acceptable to us is received from you or the appropriate government or judicial authority. We shall not be responsible for losses of any kind that may result from your directions to us or your actions or failures to act, and you agree to reimburse us for any loss we may incur as a result of such directions, actions or failures to act. We shall not be responsible for any penalties, taxes, judgments or expenses you incur in connection with your IRA. We have no duty to determine whether your IRA contributions, investments, transactions, or distributions comply with the Code, Regulations, rulings, applicable state and federal laws, or this Agreement.
- 30.4 **No Duty to Question Your Directions.** Furthermore, it is agreed that we shall not have any duty to question any (in)action you take or any directions, documents or information you (including your Designated Representative) give us. Notwithstanding the preceding sentence, if any party to this Agreement, any third party, or any governmental or self-governing agency attempts to impose liability upon us based upon a duty to question such (in)actions, directions, documents or information, you agree to indemnify, defend and hold us harmless from all liability from any loss or damage (including any attorneys' fees), and any additional taxes incurred in any manner, directly or indirectly, arising out of or incident to our failure to question any such (in)action, direction, document or information.
- 30.5 **Responsibility for Investment Monitoring.** When we receive your proper written directions regarding any investment, we will make reasonable efforts to acquire/sell such investment, or notify you if such transaction cannot be made, in a timely manner. However, notwithstanding the foregoing, this is a self-directed IRA and you are in charge of ensuring all directions have been completed to your satisfaction. Accordingly, once we have followed your direction to remit your funds to acquire an investment, or have sent any document(s) to complete a transaction, you will need to follow up to determine that the transaction was completed properly. Our listing of an investment in your IRA is not a representation or warranty on our part that the acquisition was completed properly or to your full satisfaction. We will not be responsible for ensuring that any documents or funds sent to any designated party were received or used to acquire the desired investment property. We are also not responsible for ensuring documents we receive from you or other parties are complete, accurate and/or sufficient to effect or complete a transaction. If, and when, you ascertain that any investment transaction was not completed properly, you must notify us immediately. Once any investment or other IRA transaction has occurred, you shall be responsible for monitoring the investment to ensure it continues to meet your needs as well as all legal, tax, and other compliance requirements. Furthermore, we are not required to notify you or take any action regarding any potential or actual default involving your investments, nor are we required to notify you or any third party of any information we receive concerning your IRA investments, including any information that might indicate irregularities or red flags, or raises potential concerns on our part.
- 30.6 **Investment Processing Delays.** You understand and agree that, due to the time necessary for processing this Application and receiving cleared fund deposits and/or receiving rollovers from prior custodians and administrators, there can be a significant reasonable delay between: (a) the date you initiate this Application; and (b) the date when an investment is executed by Custodian. You agree that we are not responsible or liable in any manner for any losses or opportunity costs associated with such delays. Lack of planning on your part does not constitute an emergency on our part and you understand that we are not obligated to rush through any administrative or custodial processes to meet your personal deadlines. We may offer expedited services for a fee but are never obligated to do so. In the event an expedited service is requested and paid for, we shall make efforts to expedite the processes involved but cannot guarantee we will be able to meet any requested deadlines. It is solely your responsibility to initiate this Application (including provision of necessary documentation), deposit contributions and/or initiate rollover requests, and provide investment directions, etc. with sufficient lead time so as to meet any desired investment timing.

31. **Service Fees.** We reserve the right to charge, and deduct from your IRA, an annual service fee or other designated fees (e.g., a transfer, rollover or termination fee) for maintaining the custodial account. Such fees are listed on the accompanying Fee Schedule which you agree has been provided to you and may be amended upon thirty (30) days' notice sent to you at the last-known street, mailing or e-mail address in our records. You agree that our annual custodial fee will be due upon the anniversary date of your account opening and will be renewed automatically unless we receive written notice of IRA termination at least thirty (30) days prior to the renewal date. In addition, we have the right to be reimbursed for all reasonable expenses, including legal expenses, we incur in connection with the administration of the account. You acknowledge and agree that, in addition to what is listed on your Fee Schedule, we will charge mailing and processing fees each time we send you notices informing you of important issues arising from your IRA investments (such as legal claims or

other filings, government notices about your IRA assets, involuntary distribution notices, asset assignment letters, etc.). We may charge you separately for any fees or expenses, or we may deduct the amount of the fees or expenses from the assets in your account at our discretion. In addition, we may require that you maintain a current, valid credit card on file with us. If we require the use of a credit card, it is agreed that: (a) we are hereby pre-authorized to use the card to charge our fees, and other expenses or costs owed to us; (b) we will not use the card to pay investment-related expenses (those must be paid using IRA funds); and (c) you will notify us before the card expires and will provide us with updated, valid card information once you have renewed the card (or replaced it with another one). We reserve the right to charge any additional fee upon thirty (30) days' notice to you that the fee will be effective. If your IRA lacks sufficient funds to pay our fees, you agree that we may freeze your account and/or liquidate IRA assets to provide for the payment of overdue fees. Fees such as sub-transfer agent fees or commissions may be paid to us by third parties for assistance in performing certain transactions with respect to the account. Any brokerage commissions attributable to the assets in an IRA will be charged to the IRA. You cannot reimburse your IRA for those commissions. Whenever cash is received into the custodial account and there is no written investment direction for such cash deposit ("Uninvested Cash"), Custodian will deposit or invest the Uninvested Cash into interest bearing or non-interest-bearing accounts offered by Custodian or in any other common trust funds offered and administered by Custodian. You agree that any income or earnings generated from the Uninvested Cash will be retained by Custodian as additional compensation for services provided in administering the account and/or in administering the investments associated with the Uninvested Cash. You further understand and agree that income or earnings retained from the Uninvested Cash may also be used to compensate TPA or other third-party account administrators, for fees and expenses associated with account administration.

32. **Investment of Amounts in the IRA.** You have exclusive responsibility for and control over the investment of the assets of your IRA. All transactions shall be subject to any and all restrictions or limitations, direct or indirect, which are imposed by our charter, articles of incorporation, or bylaws; any and all applicable federal and state laws and regulations; the rules, regulations, customs and usages of any exchange, market or clearing house where the transaction is executed; our policies and practices; and this Agreement. After your death, your beneficiary(ies) shall have the right to direct the investment of your IRA assets, subject to the same conditions that applied to you during your lifetime under this Agreement. We shall have no discretion to direct any investment in your IRA beyond placing uninvested cash in interest and/or non-interest-bearing accounts or brokerage accounts while we are waiting for investment direction from you as to such cash deposits. We assume no responsibility for rendering investment advice with respect to your IRA, nor will we offer any opinion or judgment to you on matters concerning the value or suitability of any investment or proposed investment for your IRA. In the absence of instructions from you, or if your instructions are not in a form acceptable to us, we shall have the right to hold any uninvested amounts in cash or in managed accounts. We will not exercise the voting rights, management and other shareholder rights with respect to investments in your IRA unless you provide timely written directions acceptable to us. You will select the type of investment for your IRA assets outside of the accounts that have been established by Custodian, provided, however, that your selection of investments shall be limited to those types of investments that we are authorized by our charter, articles of incorporation, or bylaws to offer and do in fact offer for investment via IRAs. We may, in our sole discretion, make available to you additional investment offerings that are obtainable by us and that we are capable of holding in the ordinary course of our business.
33. **Placement and Holding of Uninvested Cash.**
- 33.1 By default, all client account money received by Custodian is automatically placed in a Quick Access Money Account ("QAM Account") unless and until the client directs that some or all the account's funds be invested, paid or moved elsewhere. The QAM Account holds your Uninvested Cash, held for you by Custodian. Principal (cash) withdrawal requests are normally fulfilled within 24 to 48 hours of receipt of a valid and complete direction letter. When you open a new account, Custodian will send you a notice stating the current interest rate. The rate is also available by phone or email request to Custodian, and it will be listed on your online and monthly account statements.
- 33.2 Custodian's active management of your QAM Account (Uninvested Cash) seeks to maintain and return 100% of your principal; however, using the default of a QAM Account involves risks. The QAM Account is not FDIC-insured. The safety of principal and the return of interest are backed only by the underlying investments and earnings of the account. The underlying assets and earnings could lose value due to market fluctuations. You agree that Custodian assumes no liability for losses in the underlying investments of your QAM Account, if any.
- 33.3 Custodian's fees for managing your QAM Account do not come out of your principal, or your stated yield. Custodian's management fees are: any and all QAM Account earnings which are above the amount needed to pay your stated yields. If there are no earnings above your stated yield, then Custodian collects no fees.
34. **Liquidation of Assets.** We have the right to liquidate assets in your IRA if necessary to make distributions or to pay fees, fines, judgments, expenses, taxes, penalties, surrender charges, or any other costs properly chargeable against your IRA. If you fail to direct us as to which assets to liquidate, we will decide, in our complete and sole discretion, and you agree not to hold us liable for any adverse consequences that result from our decision.
35. **Restrictions on IRA.** Neither you nor any beneficiary may sell, transfer or pledge any interest in your IRA in any manner whatsoever, except as permitted by law and this Agreement. The assets held in your IRA shall not be responsible, or used as collateral, for the debts, contracts or torts of any person entitled to IRA distributions or any other disqualified person.

36. **Prohibited Transactions.** You understand that: (a) both ERISA and IRS rules prohibit certain transactions between a retirement plan, including an IRA, and specified "disqualified persons"; (b) as the owner of a self-directed IRA, you are a disqualified person; (c) certain relatives and entities in which you (or such relatives) have a significant ownership interest, are likewise disqualified persons; (d) the purpose of the rules is to prevent self-dealing and to minimize conflicts of interest that could adversely affect the IRA; (e) ERISA sections 406-408 and Internal Revenue Code section 4975 detail these rules; (f) other regulations and notices issued by the DOL and IRS further refine and explain the rules; and (g) since your plan account is self-directed, it may be possible for you to direct your IRA to purchase nontraditional assets with IRA funds and that some of these transactions could violate the rules.

Examples include: using IRA funds to purchase a property that you (or certain related parties) already own; having the IRA purchase an investment property and then renting it to your child (even at fair market rent); using your personal (non-IRA) funds to make a down payment or earnest money deposit or using other means to hold an investment intended for the IRA; using personal funds to pay any expenses properly associated with acquisition, maintenance, repair or disposition of an IRA investment; receiving compensation from an entity in which the IRA has a significant ownership; allowing yourself or a relative to provide sweat equity labor or other services to a business significantly owned by the IRA; your or certain related parties personally guaranteeing a loan made by the IRA; etc..

You hereby agree that Custodian has sole discretion to disallow any intended or pending transaction if Custodian believes the transaction may be prohibited or if Custodian finds the transaction infeasible for any reason. You further agree that Custodian may terminate and distribute your account if Custodian, in its sole discretion, determines that your IRA may have been involved in a prohibited transaction. You understand and agree that it is very important to examine the relevant rules before investing or otherwise interacting with IRA assets. You understand and agree that we may provide some general guidance in this area but that does not substitute for legal or tax advice. You agree that you must consult your own independent advisor when deciding how to invest IRA assets.

37. **Audits.** You understand and agree that you must consult with your own tax and/or legal counsel to make the final decision regarding whether a self-directed IRA and its related investments will satisfy all state and federal regulations and whether it is suitable and appropriate for your own particular needs. You affirm that either you have consulted with your own tax and/or legal counsel or that you intentionally declined to use such counsel on the firm belief that you can make decisions without such assistance or counsel. You further understand and agree that there are no promises or guarantees that either you or the IRA will never be audited by the IRS, DOL or any other governmental agency. You also understand and agree that there are no promises or guarantees that either you or the IRA will never lose an audit or never be successfully sued. You agree that nothing in this Agreement or in anything else provided to you by Custodian, TPA or Planner is a promise or guarantee of specific results or is a legal, tax or other professional opinion.
38. **IRA Asset Values.** For IRA assets that are valued on recognized markets, Custodian can use the current market values as reported on such markets for its valuation reporting. You acknowledge that your IRA investments may include assets that are hard to value. While Custodian is required to report the fair market value of your IRA portfolio on IRS Form 5498 each year, you understand and hereby agree to obtain all valuations of hard-to-value assets, using independent, qualified appraiser(s) solely at the expense of you or your IRA, and provide such valuation(s) to Custodian in sufficient time for Custodian to report the IRA values as required by law. If you are unwilling or unable to timely provide fair market value for any asset, you agree that Custodian may use the last-known value in our records or any value provided by a third party (such as K-1 values issued from managers of private placements, hedge funds, etc.) for the required valuation. If the value provided by you or any third party (or the last-known value used by Custodian for an unprovided value) is not the actual fair market value of any asset, you agree to hold Custodian harmless for all consequence of such discrepancy. You shall have sole responsibility to determine fair market value for hard-to-value assets and to validate any value provided by a third party (such as K-1 values, property appraisals, etc.). Custodian shall issue periodic account statements to you listing all known IRA assets and their respective values. Custodian will also issue a Form 5498 report to you each year showing the total listed value of the IRA. If you believe a value listed on Custodian's account statement, Form 5498 or any other correspondence is inaccurate, you must contact Custodian in writing within sixty (60) days of the statement, report or correspondence date to explain the discrepancy and what the value should be. Custodian retains the right to determine what form of documentation is necessary to successfully modify any reported asset value. If you provide sufficient documentation, Custodian is authorized to change the value of your assets in its records. If you fail to contact Custodian within that time period, you agree that: (a) the value provided on the statement, report or other correspondence accurately represents the fair market value of the asset or IRA; (b) you hereby waive any subsequent right to object or to assert a claim against us based on the value reported; and (c) we shall have no liability for any value listed or not listed. A Form 5498 sent to you following a partial or complete distribution of your IRA will indicate a value reflecting the distribution (in the case of a complete distribution, the value listed will be zero). If you fail to contact Custodian in writing and state that you disagree with the Form 5498 value, within the sixty-day time frame described herein, you will be deemed to have actual notice of the IRA distribution and will accept such distribution as fully effective for all tax and other federal law and state law purposes.
39. **Lowered Asset Valuations.** Whenever you need to make Required Minimum Distributions (RMDs) or requests a transfer; rollover; distribution or conversion of IRA assets; or any other action that leads to Custodian issuing an IRS Form 1099-R,

you agree that Custodian shall not calculate RMDs or issue the Form 1099-R using a lower valuation than what is listed at the last-known value unless you can provide sufficient documentation to independently validate a lower valuation. In cases of reported loss due to the insolvency of an entity, sufficient documentation means a notarized statement from the bankruptcy trustee assigned to the liquidation of the entity showing the value of the IRA's interest in the entity that would be expected following liquidation. In cases of reported loss due to a Ponzi scheme, embezzlement or other criminal activity, sufficient documentation means a notarized statement from the court handling the criminal case showing the value of the IRA's interest in the investment that would be expected following conclusion of the case. In cases of reported loss in value of real property, sufficient documentation means a notarized appraisal report from an independent, licensed MAI real estate appraiser. In any other situation, Custodian shall determine what qualifies as sufficient documentation. In no case shall Custodian be required to accept your personal statement or opinion of asset valuation, or an appraisal from any non-independent or unqualified appraiser, as sufficient documentation for a lowered valuation. You must ensure payment for any appraisal used to value IRA assets. (You must ascertain whether IRA funds must be used for such payment or if personal funds may be used; we cannot provide any opinion on that issue.) We shall never be responsible for obtaining or paying for any appraisal.

40. **Legal and Tax Advice.** You declare that you, with or without assistance from your own independent advisor(s), will assume sole responsibility for all legal and tax consequences arising from your account transactions, including all contributions, investments, and distributions and that you have sole responsibility for ensuring your actions and IRA investments will comply with all laws, regulations, local ordinances and guidelines. You declare that you are authorized to establish this account and to make investment decisions therein. You also declare that we have not, and will not, provide legal or tax advice, representations, guarantees or warranties with respect to the applicability of laws, regulations or guidelines to your particular situation. Although our employees, associates or independent representatives may discuss generically the rules pertaining to an IRA and certain publications and materials may be provided on some topics, such is provided for general informational, illustrative and educational purposes only. If professional assistance of any kind is required, you are advised to seek the services of a competent professional. It is the sole responsibility of you to use independent counsel: (a) to verify any representations, claims, sales materials, and discussions made or provided by us; and (b) to determine for you the IRA's legality, appropriateness for your needs, accuracy, effectiveness, required and optional updates, proper ongoing operation, legality and appropriateness of any IRA investment options, and termination. If professional assistance is required, you are advised to seek the services of a competent professional.
41. **Third-Party Professional Services.** You acknowledge and agree we are not responsible for any legal, accounting, financial, tax, investment, actuarial or any other professional services and/or advice rendered to you by any persons other than us, and that we do not provide and have not provided legal, accounting, financial, tax, investment, actuarial or other professional advice or opinions on any specific facts or circumstances of yours.
42. **Beneficiaries.** If you die before you receive all of the assets in your IRA, payment of cash and in-kind distribution of each noncash asset held in your IRA will be made to your beneficiary(ies) pro rata based on your predesignated beneficiary percentages. You may designate one or more persons or entities as beneficiary of your IRA. This designation can only be made on a form provided by or acceptable to us, and it will only be effective when it is filed with us during your lifetime. Unless otherwise specified, each beneficiary designation you file with us will cancel all previous ones. The consent of a beneficiary(ies) shall not be required for you to revoke a beneficiary designation. If you have designated both primary and contingent beneficiaries and no primary beneficiary(ies) survives you, the contingent beneficiary(ies) shall acquire the designated share of your IRA. If you do not designate a beneficiary, or if all of your primary and contingent beneficiary(ies) predecease you, your estate will be the beneficiary. A spouse beneficiary shall have all rights as granted under the Code or applicable Regulations to treat your IRA as his or her own. We may allow, if permitted by state law, each original IRA beneficiary (a beneficiary who is entitled to receive distribution(s) from an inherited IRA at the time of your death) to name one or more successor beneficiaries for the inherited IRA. This designation can only be made on a form provided by or acceptable to us, and it will only be effective when it is filed with us during the original IRA beneficiary's lifetime. Unless otherwise specified, each beneficiary designation form that an original IRA beneficiary files with us will cancel all previous ones. The consent of a successor beneficiary shall not be required for the original IRA beneficiary to revoke a successor beneficiary designation. If an original IRA beneficiary does not designate a successor beneficiary, his/her estate will be the successor beneficiary. In no event shall a successor beneficiary be able to extend the distribution period beyond that required for the original IRA beneficiary.
43. **Required Minimum Distributions.** Your required minimum distribution ("RMD") is calculated using the uniform lifetime table in Regulations section 1.401(a)(9)-9. However, if your spouse is your sole designated beneficiary and is more than 10 years younger than you, your RMD is calculated each year using the joint and last survivor table in Regulations section 1.401(a)(9)-9. If you fail to request your RMD by your required beginning date, we can, at our complete and sole discretion, do any one of the following:
- make no distribution until you give us a proper withdrawal request;
  - distribute your entire IRA to you in a single sum payment; or
  - determine your RMD from your IRA each year based on your life expectancy, calculated using the uniform lifetime table in Regulations section 1.401(a)(9)-9, and pay those distributions to you until you direct otherwise.

We will not be liable for any penalties or taxes related to your failure to take a required minimum distribution. You warrant and agree that you will always maintain sufficient liquidity in your IRA, or other IRAs, to satisfy all RMDs when they are due.

44. **UBIT and UDFI.** You understand that if IRA funds are invested in certain assets, there could be special tax consequences. UBIT (Unrelated Business Income Tax) applies to IRA investments in active businesses. For example, if an IRA is invested in a limited partnership that incurs taxable active income for its partners, then the allocation of income that passes through to the IRA would be subject to UBIT (which is taxed at trust tax rates – currently less favorable than corporate rates). There are exemptions from UBIT for certain passive investments such as dividends, royalties, interest, and real property rent. Thus, if an IRA invested in a “C” corporation that issued dividends to its stockholders, the IRA would not have to pay UBIT on those dividends (because the corporation is already paying its taxes at the entity level). You also understand that the IRA is expected to invest in long-term passive investments for your retirement and cannot run a business itself, so there could be problems if the IRA is too active in its activities (such as flipping houses). Active enterprises need to be run in an entity outside the IRA. UDFI (Unrelated Debt-Financed Income) applies to passive investments that utilize debt financing. For example, if an IRA purchases tax lien certificates and borrows 50% of the purchase price, then approximately half of the IRA’s first year’s revenues would be subject to UDFI taxation. As the debt is paid down, the UDFI fraction is reduced. Qualified plans (but not IRAs) may be exempt from UDFI if the debt is used to purchase real property. We will not be responsible for determining if your IRA is subject to UBIT or UDFI. You further agree that, if your IRA is subject to UBIT or UDFI for any given year, you (with or without assistance from a third-party professional of your choosing, paid by you or your IRA) will complete, sign and file with the IRS a current Form 990-T to account for such UBIT and/or UDFI. You are also responsible for obtaining a separate employer identification number (EIN) from the IRS to be used for your IRA, if one has not already been obtained for it, and to complete and provide the IRS with any additional documentation necessary for the filing. You must direct us to pay the UBIT or UDFI tax using funds from your IRA; if there are not sufficient funds, you must make arrangements to deposit additional funds to cover the tax due. You agree to provide us with a copy of the Form 990-T filing once you have filed it. If the IRS expressly determines that we must file a Form 990-T on behalf of you or your IRA, and provides this determination to us in writing, then you agree to complete the Form 990-T, sign it (as IRA owner), and give us the signed original to file for you. You acknowledge that it is important to examine potential UBIT and UDFI consequences when engaging in self-directed IRA investments. You further understand and agree that we cannot or will not provide tax advice for your particular situation and that you will consult a competent, independent advisor if any of these issues, or related issues, may apply to your investment choices.
45. **Legal Status of Custodial IRA and Titling of IRA Assets.** You understand and agree that: (a) Custodian and you have no desire to create through this Agreement an express trust but, rather, are creating a non-trust, non-discretionary, non-fiduciary custodial account; (b) your custodial IRA, while “treated as” a trust solely for purposes of IRC section 408, does not qualify as an express trust under applicable state law; (c) Custodian has no ownership (legal or otherwise) of any of your IRA assets; (d) all titling of your IRA assets, regardless of whether the term “FBO” is used, is of the nature of non-trustee “custodial titling,” meaning Custodian’s name on such titling refers to Custodian solely as a non-discretionary, non-owner, non-fiduciary, administrative-only custodian of your IRA asset while you, as the IRA owner, are listed as the full legal, beneficial and possessory owner of the asset; (e) because Custodian is not the legal owner under applicable state law and has no substantial interest in any such asset, you, as the IRA owner, will be the real party in interest for any legal proceedings involving your IRA and IRA assets; (f) we have no duty to defend or protect your IRA assets from legal or other actions, or to institute legal or other actions on your behalf as the IRA owner; (g) you will find and retain independent legal counsel to handle all litigation and dispute resolution issues involving your IRA or any of its assets; (h) you will direct Custodian to use your IRA funds to pay any legal counsel and other retained professional(s) providing services on behalf of your IRA or its assets; and (i) you, as the IRA owner, have sole responsibility to ensure full compliance with all rules, laws, regulations and local ordinances affecting your IRA assets.
46. **Distribution and Transfer of Titled IRA Assets.** Because Custodian has no legal or beneficial ownership in your IRA assets and is a mere custodian, whenever Custodian initiates a distribution of any of your IRA assets with custodial titling, you hereby agree that such distribution will be deemed effective for all tax purposes, and the transfer deemed complete for all legal purposes, when Custodian has sent to your last-known street, mailing or e-mail address of record an “Assignment of Interest” document (or any signed document with substantially similar language) that indicates Custodian has assigned all interests it may have in the asset to you. You agree that, regardless of the asset type, Custodian is not required to execute, endorse or send any contract, ownership certificate, or other documentation in order to effect such distribution and transfer.
- 46.1 **Distribution/Transfer of LLCs.** When you choose to invest your IRA in ownership of any LLC, Custodian may be required to execute the LLC operating agreement or membership certificate(s) on your behalf. You agree that Custodian’s execution of any LLC documentation for your IRA investment is done solely as your limited authorized agent, on behalf of you and your IRA, and that such act (or any LLC certificate or other documentation listing Custodian or your IRA as nominal member) does not make Custodian an actual “member” of the LLC in any capacity (legal, fiduciary, custodial, or otherwise). You agree that you, via your IRA, will be the actual member for all purposes and will possess sole governing authority and benefits afforded from such membership while only the “economic interests” and any distributable income from the LLC will be allocated to your IRA. In other words, you agree that Custodian will “hold” as an IRA asset your economic interests but will not hold any LLC governing rights or obligations. You, or an independent agent of your choosing, will exercise governance rights as a member, with the

understanding that if you violate any prohibited transaction rules in so acting, there could be tax consequences. You also agree that Custodian is not required to keep any original certificate representing your IRA investment in any non-publicly-traded LLC and may choose to maintain a digital copy of such certificate solely for its IRA administration records. You further agree that, when you are also a manager of the LLC (e.g., with a “checkbook control” IRA-LLC), any such certificate has no inherent value and is merely evidentiary documentation of your IRA investment in the LLC. You understand that Custodian’s copy of the certificate may be used when you wish to sell the economic interests in the LLC to a non-disqualified third party via endorsement. However, in the case of a distribution of LLC economic interests to you or transfer to another IRA trustee/custodian (whether or not you are a manager of the LLC), you agree that Custodian is not required to endorse or send any certificates (original or otherwise) to you or another trustee/custodian in order to effect the distribution and transfer of its non-ownership, custodial interests in the LLC. You agree that in such a case, you will: (a) contact the manager of such LLC; (b) provide him/her with a copy of Custodian’s Assignment of Interest (or similar) document; (c) ensure that the LLC membership ledger is modified to reflect the termination of IRA custodianship by Custodian; (d) request that the old certificate be voided and that a new certificate be issued directly to you, and out of our name (e.g., in your name only or in the name of the new IRA); and (e) modify the operating agreement to void Custodian’s prior execution. If you choose to roll over your LLC units to another IRA trustee/custodian within the Tax Code’s 60-day rollover window, you hereby agree to arrange for re-titling/issuance of any certificate, and re-execution of the operating agreement, by the new trustee/custodian.

- 46.2 **Distribution/Transfer of Other Intangible Personal Property.** To the extent not expressly prohibited by applicable state law, distributions and transfers of any other intangible personal property with Custodian’s name on the title or in the property’s related documentation (e.g., notes, mortgages, commercial paper, etc.) will be handled in the same manner as described above for LLCs. For all intangible personal property, you are required to ensure that such property, immediately following its distribution by Custodian and at your expense, is fully and properly re-titled, registered, amended as necessary, and/or transferred, out of Custodian’s name.
- 46.3 **Distribution/Transfer of Real Property.** Following an IRA distribution of real property, which distribution and transfer of all Custodian’s interests will be deemed effective upon our sending an Assignment of Interest (or similar) document to you, you agree that: (a) you are fully responsible for ensuring the re-titling of such real property; (b) the new title will not list Custodian’s name in any manner (i.e., it will be titled in your name only or in the name of a recipient trustee/custodian); (c) the re-titling will be completed by recording the new title in the appropriate county within thirty (30) days of the Assignment of Interest date; and (d) the re-titling will be done at your sole expense.
- 46.4 **Optional Re-titling by Custodian.** Notwithstanding the foregoing, you acknowledge and hereby agree that whenever your IRA is being terminated and distributed at the discretion of Custodian (typically when a Depositor fails to pay fees or properly maintain the IRA assets), Custodian shall retain the option of itself arranging for the re-titling, etc., of any asset to be distributed. In such event, Custodian is hereby authorized to freeze your IRA(s) and to use whatever funds may be available in any of your IRAs held by Custodian to pay for such activities. Likewise, Custodian is authorized to liquidate any noncash IRA assets to the extent necessary to fund such activities.
- 46.5 **Distribution/Transfer of Tangible Personal Property.** Distributions and transfers of tangible IRA assets, including cash (e.g., a check or wire transfer) or precious metals, will generally be deemed effective when you receive them.

47. **Registered Agent Status.** You understand and agree that we never act as a Registered Agent for you, your IRA, or any of your IRA assets. We may list our addresses on documents of custodial title but you agree that such listing is solely for purposes of receiving correspondence that may aid in our non-legal, general administration of your account. You must clearly explain to all parties with whom you transact, via your IRA, that we do not accept service on your (or your IRA’s) behalf and that you will provide such parties, at the time of the transaction, the name and address of your designated Registered Agent for all legal purposes with respect to the transaction and/or related property interests.

If we receive any legal documents or notices with respect to you, your IRA or its holdings, we will make normal business efforts to forward such items to your address as it appears in our records. You are required to maintain correct street, mailing and e-mail addresses for our records so you must notify us of any changes. When we forward any correspondence of a legal nature to you, it is your sole responsibility to: (a) promptly deal with the subject matter of the correspondence; (b) notify the original sender that we are not a Registered Agent for you, your IRA, or its assets; and (c) notify the sender that any service of process must be made to you, at your own current address. You also agree that we may send your contact information to any party that has threatened legal action or collection efforts related to you, your IRA, or your IRA assets.

#### 48. Termination of IRA.

- 48.1 **General Rules.** You agree that upon Custodian’s receipt of your signed, written request to terminate your IRA, Custodian will have thirty (30) days in which to initiate termination of your IRA. In such event, a termination fee shall be incurred and deducted from your IRA prior to its termination. If there are not sufficient funds in the IRA to pay such fee, you agree to pay the fee personally prior to termination. Custodian also may terminate your IRA by sending, to your last-known street, mailing or e-mail address, a notice of IRA termination. Such notice will give you thirty (30) days in which to locate another qualified IRA trustee/custodian to which your IRA assets may be transferred. If Custodian does not receive transfer instructions within this time period, Custodian may distribute your IRA assets, cash and in-kind, directly to you. We shall not be liable for any actions or failures to act on the part of any successor trustee/custodian, nor for any tax consequences you may incur that result from the transfer or

distribution of your assets pursuant to this section. As part of any IRA termination, we also may charge to your IRA a reasonable amount of money that we believe is necessary to cover any current or outstanding debts, including but not limited to, one or more of the following:

- any fees, expenses or taxes chargeable against your IRA by us or by third parties with a claim against the IRA;
- any penalties or surrender charges associated with the early withdrawal of any savings instrument or other investment in your IRA.

48.2 **Termination Due to Low Balance, Unpaid Fees or Infeasible/Prohibited Assets.** You agree that we may establish a policy requiring distribution of the entire balance of your IRA to you in cash or property if the balance of your IRA drops below the minimum balance required under the applicable investment or policy established. You further agree that Custodian may terminate immediately any IRA of yours for which fees have accrued and remain unpaid for more than three (3) months. Custodian may terminate the IRA at any time following such three-month default and without providing additional notice (i.e., upon your three-month default, you are automatically deemed to have effective notice that your IRA will eventually be terminated, and your IRA assets distributed, at some time thereafter). Custodian also may terminate any IRA, and/or transfer, roll over or distribute in-kind any IRA investments which Custodian, at its sole discretion, deems to be infeasible or prohibited to hold.

48.3 **Post-Termination Rules.** The IRS Form 1099-R issued due to any IRA termination shall reflect the last-known value of the distributed IRA assets. You agree that such value will be deemed accurate unless you properly dispute the value and provide sufficient supporting documentation as per the "Lowered Asset Valuations" section provided elsewhere in this Agreement. Termination of the IRA will not cause termination of this Agreement. This Agreement will expire only upon the expiration of all applicable statutes of limitations for bringing legal action of any kind, including the dispute resolution processes described herein, against you or us. Regardless of which party initiates termination of the IRA, and except upon our receipt of a properly filed objection to updated terms and conditions under the "Amendments" section provided elsewhere in this Agreement, each party agrees to be bound by all terms and conditions of the most current IRA Agreement in effect immediately prior to termination of the IRA. It shall be your responsibility to request and review any changes made to the Agreement while the IRA is held by Custodian.

49. **Resignation of Custodian.** For purposes of this Agreement, termination of your IRA by either party automatically includes and causes Custodian's resignation as the custodian of your IRA. Likewise, resignation of Custodian automatically includes and causes termination of your IRA.

50. **Removal of Custodian.** If we are not keeping the records, making the returns or sending the statements as we may be required by forms or Regulations, the IRS may, after notifying you, require you to substitute another trustee or custodian. In such an event, we will terminate your IRA and transfer all your IRA assets to the qualified trustee/custodian of your choosing according to standard transfer procedures described herein. If you do not choose a qualified trustee/custodian, we will terminate your IRA and distribute your assets, cash and in-kind, directly to you.

51. **Successor Custodian.** If our organization changes its name, reorganizes, merges with another organization (or comes under the control of any federal or state agency), or if our entire organization (or any portion which includes your IRA) is bought by another organization, that organization (or agency) shall automatically become the trustee or custodian of your IRA, but only if it is the type of organization authorized to serve as an IRA trustee or custodian.

52. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Nevada (with respect to any Dispute with Custodian) and Utah (with respect to any Dispute with TPA), without giving effect to any state's choice of law rules. Under no circumstances shall this Agreement be governed or construed in accordance with the laws of any State other than Nevada or Utah. Jurisdiction and venue for any dispute, claim or controversy arising from, related to, or as a result of the IRA or this Agreement, in whole or in part, shall be solely in Clark County, Nevada (with respect to any Dispute with Custodian) and Salt Lake County, Utah (with respect to any Dispute with TPA). You hereby consent to such jurisdiction and waive objections to venue therein.

## ARTICLE IX

1. You shall be solely responsible for determining the suitability, nature, prudence, value, viability, risk, safety, legality, tax consequences and merit of, and to perform any "due diligence" or other investigation with respect to, any particular investment, strategy or transaction involving your IRA assets. We shall have no responsibility for, and shall not undertake, any such determination, performance or investigation. We shall render no tax, legal investment or other advice (and no statement, communication or other act by us or any of our employees or agents shall be deemed to constitute or may be relied upon as any such advice) with respect to any investment or transaction involving IRA assets. Custodian shall be authorized, and shall have the responsibility, only to acquire, hold and dispose of such investments as directed by you and/or your Designated Representative or as expressly provided in this Agreement.
2. You shall be solely responsible for monitoring your IRA investments. We shall have no responsibility whatsoever for supervising or monitoring investments or transactions of the IRA, ensuring the receipt of IRA disbursements or engaging in any collections or related activities.

3. You shall be solely responsible for the success, failure or other consequences of any investment or transaction directed by you or your Designated Representative. We shall not be liable or otherwise accountable for taxes, losses or other consequences resulting from investments made or transactions entered into in accordance with your and/or your Designated Representative's directions or for taking or failing to take any actions in reliance on the instructions or representations of you or your Designated Representative. You agree to hold us and our employees and agents harmless from all liabilities and expenses incurred, including attorney's fees, arising out of their administration of the IRA or in connection with any actions taken or failures to act in reliance upon your or your Designated Representative's instructions.
4. You acknowledge that certain investments or types of investments or transactions may pose administrative or other burdens to Custodian and therefore Custodian reserves the right not to process or accept such investments or transactions. The decision not to act on investment directions that Custodian deems unacceptable for administrative or other reasons shall in no way be construed as a determination by Custodian concerning the suitability, nature, prudence, value, viability, risk, safety, legality, tax consequences or merit of the investment or transaction. You further acknowledge that:
  - a. any administrative review performed by Custodian is solely for its benefit and is not a "due diligence" or other review with regard to the investment or transaction; and
  - b. the conducting or results of such a review shall not constitute, may not be relied upon as, or in any way obligate us or our employees or agents to provide an opinion, recommendation, prediction or advice regarding the suitability, nature, prudence, value, viability, risk, safety, legality, tax consequences, merit or any other aspect of the investment or transaction.
5. You acknowledge that certain types of investments or transactions directly or indirectly involving or relating to the IRA or its assets or income may:
  - a. constitute prohibited transactions, within the meaning of Code section 4975, resulting in tax consequences to you and/or other persons;
  - b. generate "unrelated business taxable income tax," as defined in the Code, for the IRA;
  - c. constitute "listed transactions or "reportable transactions," as defined in the Code, Regulations or other pronouncements issued by the United States Treasury or Internal Revenue Service, resulting in reporting requirements, and adverse consequences for failing to comply with any applicable reporting or other requirements, for you and/or other persons; and/or
  - d. otherwise result in adverse tax consequences to the IRA or you.
6. It is your responsibility to determine, and to consult your own advisor as you deem necessary or advisable in order to determine, whether any investment or transaction involving the IRA or its assets or income does, or may, constitute a prohibited transaction, generate unrelated business or other taxable income, constitute a listed or reportable transaction, or result in any other tax or adverse consequence and any consequences, requirements and obligations which may result therefrom. We, including our employees and agents, shall not be held responsible, nor shall be liable, for making any such determination or for not advising you to make any such determination. We shall not be held liable for any losses, taxes, penalties or other consequences that may, or does, result from any IRA investment or transaction that constitutes a prohibited transaction, generates unrelated business or other taxable income, constitutes a listed or reportable transaction, or otherwise results in any other tax or adverse consequence to any person or entity.
7. **Nonstandard Investments.** You may direct Custodian to purchase "nonstandard" investments, which include, but are not limited to, investments individually negotiated by you or your Designated Representative, and investments that are part of a private placement of securities offered in reliance upon exemptions provided by Sections 3(B) and 4(2) of the Securities Act of 1933 and Regulation D promulgated thereunder. Custodian may identify investments or classes of investments which are unacceptable due to their posing an administrative burden on Custodian or potential for prohibited transactions. For such investments, Custodian reserves the right to not follow your or your Designated Representative's direction or to not process such an investment. Custodian's decision to reject certain assets for reasons of administrative feasibility or potential for constituting a prohibited transaction shall not be construed as either investment advice, the exercise of discretion with respect to investments, an evaluation of the investment's prudence or viability, or a determination that such investment is in fact a prohibited transaction. Likewise, Custodian's decision to accept a direction to purchase certain assets may not be construed as either investment advice, the exercise of discretion with respect to investments, an evaluation of the investment's prudence or viability, or a determination that such investment is not, in fact, a prohibited transaction. If you or your Designated Representative should direct Custodian to purchase a nonstandard investment, as defined above, the following special certifications and provisions shall apply:
  - 7.1 You agree to submit, or cause to be submitted, all offering documentation related to the nonstandard investment for an administrative review by Custodian. Custodian reserves the right to charge a reasonable fee for such administrative review;
  - 7.2 If the nonstandard investment(s) contains a provision for past or future contractual payments or assessments of any manner or type, to include, but not limited to, taxes, fee, liens, or margin calls, you acknowledge and agree that such payments shall be borne solely by the IRA, that authorization to make such payments shall come from you or you Designated Representative, and that making such payments may reduce or exhaust the value of the IRA. You further agree to maintain sufficient liquid funds in the IRA to cover any such payments or assessments, and you

agree that we shall not be responsible for monitoring the balance of the account to verify compliance with this Section. You agree to indemnify us and hold us harmless for any and all payments or assessments which may result from holding the nonstandard investment within the IRA, and further agree that we shall be under no obligation whatsoever to extend credit to the IRA or otherwise disburse payment beyond the cash balance of the account for any payment or assessment related to the nonstandard investment(s);

- 7.3 If the nonstandard investment(s) contains administrative and/or maintenance requirements or duties beyond Custodian's capabilities or expertise to provide, then you shall find and retain (and pay using IRA funds) suitable agents or counsel necessary to perform such duties and deliver a written service agreement acceptable to Custodian for execution on behalf of your IRA;
- 7.4 If you direct the Custodian to enter into an individually-negotiated debt instrument, including a promissory note, deed of trust, real estate contract, mortgage note or debenture, then you agree to enter into a Note Servicing Agent Agreement with a third-party Agent on a form acceptable to Custodian or, in the alternative, you may serve as your own Note Servicing Agent. The Note Servicing Agent shall be the agent of the Depositor, and not of the Custodian, and shall be responsible for administering the terms of the debt instrument on behalf of the Depositor's IRA. Should the third-party Note Servicing Agent ever become unwilling or unable to perform the duties outlined in the Note Servicing Agent agreement, then you understand and agree that all duties of the Note Servicing Agent shall revert to you until a successor third-party Agent is named. Likewise, should you fail to appoint a Note Servicing Agent, you understand and agree that you become responsible for fulfilling the duties of the Note Servicing Agent until you name a successor third-party Note Servicing Agent. You understand that we do not offer or provide any servicing or collection duties with respect to any note or debt instrument, nor will we monitor the maturity date or take any action with regard to the maturity of any note or debt unless specifically authorized by you, and agreed to by Custodian, in writing. Should you elect to renew or renegotiate the terms of any note or debt instrument, you agree to notify Custodian in writing and provide appropriate written instructions for Custodian to return any original note or debt instrument to debtor;
- 7.5 We shall have no duty to monitor the performance of any investment, the action of any investment sponsor, or the action of the Depositor and/or those of his/her heirs, successors, agents, or assigns. Further, we shall not be required to monitor the acts of any paid consultant to whom we may have contractually delegated any duties or responsibilities pursuant to your or your Designated Representative's directions; and
- 7.6 You agree to be responsible for any and all collection actions, including contracting with a collection agency or instituting and managing legal action, and to bring any other suits or actions which may become necessary to protect the rights of the IRA or any of its assets as a result of the operation or administration of the investment(s).

## 8. Real Estate Holdings in Your IRA.

- 8.1 **Acquisition Costs.** You agree to use only IRA funds for all acquisition costs, including earnest money deposits.
- 8.2 **Legal Compliance.** You will ensure that all real estate holdings or other properties held in your IRA will be properly licensed, registered, and insured as required by any prevailing governmental, federal or state laws that have jurisdiction over the property.
- 8.3 **Environmental Issues.** Under no circumstances shall you or your Designated Representative transfer real estate, or any other property ("the Property"), to Custodian to hold in your IRA account, which you know, or which you should know, is or may be environmentally contaminated to the extent that such contamination could reasonably be expected to subject the Property, the IRA and/or Custodian to regulatory action, control and/or rules of the Environmental Protection Agency of the United States, or to regulatory action, control or rules of any state or other environmental protection body. For purposes of the prior sentence, the term "knowledge" includes actual or constructive knowledge on the part of you, your agent or any Designated Representative. If any Property transferred to or held by your IRA should become subject to such environmental regulatory action, rules or control, and it cannot be proved that Custodian had actual knowledge of the environmental contamination prior to the IRA's acquisition of such Property, Custodian shall bear no responsibility to act in any manner and shall bear no liability with respect to such Property. In such event, you shall hold Custodian harmless and shall indemnify and reimburse Custodian for all legal fees incurred in defense of contamination-related government or third-party claims against Custodian as well as any and all costs, charges, assessments, fines, levies, fees or whatever monetary costs which may be imposed by the environmental regulatory authorities with regard to such Property. You agree that Custodian's "actual knowledge" as used in this section requires, at a minimum, written documentation of Custodian's actual knowledge and the documentation must bear Custodian's authorized signature in direct recognition of such knowledge.
- 8.4 **Property Insurance.** You shall ensure that all real estate holdings carry insurance on the property and that such policies will name your IRA as named insured thereon (with the understanding that the IRA and all its assets, including the property, are legally and beneficially owned by you but are merely held in an administrative-only custodial capacity by Custodian). You shall bear all responsibility for securing suitable and appropriate insurance. The insurance must be sufficient to cover all reasonable expenses, fees, and legal costs that could be incurred as a result of any disaster or lawsuit or other events. You agree to hold us, and our agents and employees, harmless for any failures by you or your Designated Representative to secure proper insurance for the property. Our review or acceptance of any policy shall not be construed as our acknowledgment of sufficiency or suitability of the policy. You agree that you will direct Custodian to use your IRA funds to pay all policy premiums.

- 8.5 **Taxes.** You will be responsible for all taxes related to each property held in your IRA. We will not be responsible for ensuring tax statements are made available to you. You agree to hold us harmless for any late fees or penalties that may arise from any and all late payments of fees or taxes for the property.
- 8.6 **Ownership/Maintenance Expenses.** You shall be solely responsible for payment of all fees, taxes, fines, debts and expenses related to the ownership and maintenance of the property while it is held by Custodian in your IRA. You will ensure that sufficient IRA funds are made available to pay all necessary fees and expenses for property. If any invoice is sent to us for payment of any debt, expense, fee, fine, tax, penalty or other cost related to any property in your IRA, such invoice does not exceed \$3,000, and you fail to direct us in writing to timely pay such invoice, you agree we are hereby preauthorized to pay such invoice with funds we are holding in any of your IRAs with us. If your IRA(s) lacks sufficient funds to pay such invoice, it is your responsibility to address and remedy such shortfalls immediately; failure to do so within thirty (30) days may result, at our discretion, in the immediate distribution of the property and/or termination of your IRA. You agree to properly maintain all property in your IRA, ensuring the timely payment of all taxes, insurance premiums, fees, fines, and other required expenses. Moreover, you agree that all properties will be maintained according to state and local laws and ordinances, including those related to lawn care, trash, home appearances, blight, utilities, etc. and that you will ensure prompt payment of any fines related to violation of any ordinance or property-related laws. You further agree that while Custodian holds any property that has or might have tenants, you will retain an independent property manager to handle all the property owner's lease requirements and that such manager shall be paid using IRA funds. You understand that your failure to maintain adequate levels of capital and liquidity in your IRA may jeopardize the IRA and the property and that you could be in violation of IRS rules if you use personal funds to address shortfalls associated with your IRA assets.
- 8.7 **Foreclosure or Default.** You agree to ensure that sufficient funds will be available at all times to cover any and all mortgage and other debt payments related to your IRA property. In the event of any foreclosure or default related to property held in your IRA, you agree to hold us harmless for any associated foreclosure or default liability and to indemnify and reimburse Custodian for any expenses incurred as custodian of the IRA property. In the event any government entity or other party issues a lien against your IRA property or forecloses on your IRA property, you agree to hold us harmless for any and all consequences of such lien and/or foreclosure.
9. **FOREX / Commodities / Options / Stocks / Other Brokerage Offerings.** Your IRA is permitted to invest in such accounts provided there is no possibility for any investment to incur losses greater than the cash in the account and that no personal pledges, guarantees or collateral is provided. Our acceptance of your brokerage agreement does not mean that we have determined the agreement to be legally valid or tax-compliant; you must ensure that it is. You are the legal owner of the investments while Custodian is only a "trustee" for federal tax purposes (such as IRS reporting requirements); therefore, the brokerage agreement should be designed specifically for non-trust "custodial" IRAs. If you are required to complete a "trust account" document to open an account for such investments, you, as IRA fiduciary, agree to sign as the "account trustee."
10. **Currencies.** Investments in Iraqi Dinar are not permitted. To invest in other currencies, you will need to set up an account with a currencies dealer and forward a copy of your signed agreement to Custodian. Such agreement cannot require any personal collateral or guarantees. Custodian cannot and will not validate that any agreement meets IRS or other rules.
11. **Precious Metals.** You agree not to direct Custodian to purchase any precious metals bullion or coin that is not expressly exempted from the definition of a "collectible" per IRC section 408(m)(3). Despite being "legal tender" in some States, you cannot use precious metal coins to make your annual IRA contributions. You are permitted to roll over or transfer existing metals investments. Likewise, if you wish, you may take an in-kind distribution of metals from your IRA. The Form 1099-R value reported to the IRS will be based on the spot market value of the coins/bullion as of the distribution date.
12. **Life Insurance and Related Products.** IRC section 408(a)(3) expressly prohibits any IRA investments in "life insurance contracts." The law is unclear regarding "life settlement" and "viatical" contracts. The IRS has yet to issue a formal opinion stating that these are acceptable investments for an IRA. Until the IRS does so, Custodian will not permit such investments (note: an attorney opinion letter will not be satisfactory) and you shall not direct Custodian to purchase such products.
13. **Loans.** Under IRS guidance, an IRA loan to yourself or other disqualified persons is prohibited. We are not responsible for ensuring a debtor's repayment of IRA loans or for instituting, handling, or paying for any legal action or collections efforts.
14. **Businesses.** You may not use your IRA to invest in: (a) any "S" corporation; or (b) any company if such investment would constitute a prohibited transaction under tax law. If you invest in a pass-through entity (most partnerships, LLCs, MLPs, etc.), the entity must issue a K-1 statement to your IRA. The K-1 should also indicate if the income is subject to UBIT/UDFI taxation and reporting on Form 990-T. If the company sends the K-1 directly to you, then you must forward a copy to us.
15. **Securities.** You warrant and represent that any security (as defined under state and/or federal law) that you direct us to hold in your IRA has been registered under the appropriate securities laws or is exempt from such registration. You agree to defend, indemnify, and hold us harmless, for holding any security that does not meet the foregoing requirement and you waive and release any claims against us for following your directions to acquire, or otherwise transact with, such security. Your indemnification described herein will include reimbursement of all fines, costs, legal fees (including attorney's fees), penalties and other expenses incurred by us arising from or related to our acquisition, holding or distribution of any security.



**ARTICLE X**

**Depositor Representation.** You hereby expressly represent and warrant that you have read and understood this Agreement and that you have been given a full and fair opportunity to review this instrument with independent professional advisors of your own choosing. You have reviewed and expressly approve all statements, answers and information (the "data") which you (or a Designated Representative under your direction) have given in this instrument and all other data given in writing, by telephone or electronic means. You further hereby represent and warrant that all such data is true, correct and complete, and you freely and voluntarily, without duress or undue influence, make and execute this Agreement on the terms and provisions provided herein. You represent and warrant that you are authorized to enter into this Agreement as, or on behalf of, the Depositor. You agree to all the Terms and Conditions, Fee Schedule pricing, and all other statements, warranties and representations in this Agreement.

**Signature**

I acknowledge receipt of the enclosed Disclosure Statement and Fee Schedule. I declare that I have examined all these documents, including accompanying information, and to the best of my knowledge and belief, they are true, correct, and complete. I agree to abide by the terms of those documents and this Application and Agreement as currently in effect and as they may be amended from time to time.

Account Owner's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Account Owner's Printed Name: \_\_\_\_\_

**General Instructions**

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

**Purpose of Form**

Form 5305-A is a model custodial account agreement that meets the requirements of section 408(a). However, only Articles I through VII have been reviewed by the IRS. A traditional individual retirement account (traditional IRA) is established after the form is fully executed by both the individual (depositor) and the custodian. To make a regular contribution to a traditional IRA for a year, the IRA must be established no later than the due date of the individual's income tax return for the tax year (excluding extensions). This account must be created in the United States for the exclusive benefit of the depositor and his or her beneficiaries.

**Do not** file Form 5305-A with the IRS. Instead, keep it with your records. For more information on IRAs, including the required disclosures the custodian must give the depositor, see Pub. 590-A, *Contributions to Individual Retirement Arrangements (IRAs)*, and Pub. 590-B, *Distributions from Individual Retirement Arrangements (IRAs)*.

**Definitions**

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

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

**Identifying Number**

The Depositor's social security number will serve as the identification number of his or her IRA. An employer identification number (EIN) is required only for an IRA for which a return is filed to report unrelated business taxable income. An EIN is required for a common fund created for IRAs.

**Traditional IRA for Nonworking Spouse**

Form 5305-A may be used to establish the IRA custodial account for a nonworking spouse. Contributions to an IRA custodial account for a nonworking spouse must be made to a separate IRA custodial account established by the nonworking spouse.

**Specific Instructions**

**Article IV.** Distributions made under this article may be made in a single sum, periodic payment, or a combination of both. The distribution option should be reviewed in the year the Depositor reaches age 70½ to ensure that the requirements of section 408(a)(6) have been met.

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

**[End of Instructions]**

## TRADITIONAL IRA DISCLOSURE STATEMENT

### RIGHT TO REVOKE YOUR IRA

You have the right to revoke your IRA within seven (7) days of the receipt of the Disclosure Statement. If revoked, you are entitled to a full return of the contribution you made to your IRA. The amount returned to you would not include an adjustment for such items as sales commissions, administrative expenses, or fluctuation in market value. You may make this revocation only by mailing or delivering a written notice to the Custodian at the address listed on the Application. If you send your notice by first class mail, your revocation will be deemed mailed as of the postmark date. If you have any questions about the procedure for revoking your IRA, please call the Custodian at the telephone number listed on the Application.

### REQUIREMENTS OF AN IRA

- 1) **CASH CONTRIBUTIONS** – Your contribution must be in cash, unless it is a rollover contribution.
- 2) **MAXIMUM CONTRIBUTION** – The total amount you may contribute to an IRA for any taxable year cannot exceed the lesser of 100 percent of your compensation or \$3,000 for years 2002-2004, \$4,000 for years 2005-2007, and \$5,000 for years 2008-2012, and \$5,500 for years 2013 through 2018, with possible cost-of-living adjustments thereafter. If you also maintain a Roth IRA, the maximum contribution to your Traditional IRAs (i.e., IRAs subject to Internal Revenue Code (Code) sections 408(a) or 408(b)) is reduced by any contributions you make to your Roth IRA. Your total annual contribution to all Traditional IRAs and Roth IRAs cannot exceed the lesser of the dollar amounts described above or 100 percent of your compensation. If you received a qualified reservist distribution, an exception applies to the above contribution limits such that you are permitted to make, at any time during the two-year period following the end of your active duty status, total contributions that do not exceed your qualified reservist distribution.
- 3) **CONTRIBUTION ELIGIBILITY** – You are eligible to make a regular contribution to your IRA if you have compensation and have not attained age 70½ by the end of the taxable year for which the contribution is made.
- 4) **CATCH-UP CONTRIBUTIONS** – If you are age 50 or older by the close of the taxable year, you may make an additional contribution to your IRA. The maximum additional contribution is \$500 for years 2002-2005 and \$1,000 for years 2006 and beyond.
- 5) **NONFORFEITABILITY** – Your interest in your IRA is nonforfeitable.
- 6) **ELIGIBLE CUSTODIANS** – The Custodian of your IRA must be a bank, trust company, savings and loan association, credit union, or a person or entity approved by the Secretary of the Treasury.
- 7) **COMMINGLING ASSETS** – The assets of your IRA cannot be commingled with other property except in a common trust fund or common investment fund.
- 8) **LIFE INSURANCE** – No portion of your IRA may be invested in life insurance contracts.
- 9) **COLLECTIBLES** – You may not invest the assets of your IRA in collectibles (within the meaning of Code section 408(m)). A collectible is defined as any work of art, rug or antique, metal or gem, stamp or coin, alcoholic beverage, or other tangible personal property specified by the Internal Revenue Service (IRS). However, specially minted United States gold and silver coins, and certain state-issued coins are permissible investments. Platinum coins and certain gold, silver, platinum or palladium bullion (as described in Code section 408(m)(3)) are also permitted as IRA investments.
- 10) **REQUIRED MINIMUM DISTRIBUTIONS** – You are required to take minimum distributions from your IRA at certain times in accordance with Regulations section 1.408-8. Below is a summary of the IRA distribution rules.
  - a) You are required to take a minimum distribution from your IRA for the year in which you reach age 70½ and for each year thereafter. You must take your first distribution by your required beginning date, which is April 1 of the year following the year you attain age 70½. The minimum distribution for any taxable year is equal to the amount obtained by dividing the account balance at the end of the prior year by the applicable divisor.
  - b) The applicable divisor is generally determined using the uniform lifetime table provided by the IRS. The table assumes a designated beneficiary exactly 10 years younger than you, regardless of who is named as your beneficiary(ies), if any. If your spouse is your sole designated beneficiary, and is more than 10 years younger than you, the required minimum distribution is determined annually using the actual joint life expectancy of you and your spouse obtained from the joint and last survivor table provided by the IRS, rather than the life expectancy divisor from the uniform lifetime table. We reserve the right to do any one of the following by April 1 of the year following the year in which you turn age 70½:
    - i) make no distribution until you give us a proper withdrawal request,
    - ii) distribute your entire IRA to you in a single sum payment, or
    - iii) determine your required minimum distribution each year based on your life expectancy calculated using the uniform lifetime table, and pay those distributions to you until you direct otherwise.
  - c) Your designated beneficiary is determined based on the beneficiary(ies) designated as of the date of your death, who remains your beneficiary(ies) as of September 30 of the year following the year of your death. If you die,
    - (1) on or after your required beginning date, distributions must be made to your beneficiary(ies) over the longer of the single life expectancy of your designated beneficiary(ies), or your remaining life expectancy. If a beneficiary other than an individual or qualified trust as defined in the Regulations is named, you will be treated as having no designated beneficiary of your IRA for purposes of determining the distribution period. If there is no designated beneficiary of your IRA, distributions will commence using your single life expectancy, reduced by one in each subsequent year.
    - (2) before your required beginning date, the entire amount remaining in your account will, at the election of your designated beneficiary(ies), either
      - (a) be distributed by December 31 of the year containing the fifth anniversary of your death, or
      - (b) be distributed over the remaining life expectancy of your designated beneficiary(ies).
  - ii) If your spouse is your sole designated beneficiary, he or she must elect either option (i) or (ii) by the earlier of December 31 of the year containing the fifth anniversary of your death, or December 31 of the year you would have attained age 70½. Your designated beneficiary(ies), other than a spouse who is the sole designated beneficiary, must elect either option (i) or (ii) by December 31 of the year following the year of your death. If no election is made, distribution will be calculated in accordance with option (ii). In the case of distributions under option (ii), distributions must commence by December 31 of the year following the year of your death. Generally if your spouse is the designated

beneficiary, distributions need not commence until December 31 of the year you would have attained age 70½, if later. If a beneficiary(ies) other than an individual or qualified trust as defined in the Regulations is named, you will be treated as having no designated beneficiary(ies) of your IRA for purposes of determining the distribution period. If there is no designated beneficiary of your IRA, the entire IRA must be distributed by December 31 of the year containing the fifth anniversary of your death. A spouse who is the sole designated beneficiary of your entire IRA will be deemed to elect to treat your IRA as his or her own by either (1) making contributions to your IRA or (2) failing to timely remove a required minimum distribution from your IRA. Regardless of whether or not the spouse is the sole designated beneficiary of your IRA, a spouse beneficiary may roll over his or her share of the assets to his or her own IRA.

**INCOME TAX CONSEQUENCES OF ESTABLISHING AN IRA**

- 1) **IRA DEDUCTIBILITY** – If you are eligible to contribute to your IRA, the amount of the contribution for which you may take a tax deduction will depend upon whether you (or, in some cases, your spouse) are an active participant in an employer-maintained retirement plan. If you (and your spouse, if married) are not an active participant, your entire IRA contribution will be deductible. If you are an active participant (or are married to an active participant), the deductibility of your contribution will depend on your modified adjusted gross income (MAGI) and your tax filing status for the tax year for which the contribution was made. MAGI is determined on your income tax return using your adjusted gross income but disregarding any deductible IRA contribution.
- 2) **Definition of Active Participant** – Generally, you will be an active participant if you are covered by one or more of the following employer-maintained retirement plans:
  - a) a qualified pension, profit sharing, 401(k), or stock bonus plan;
  - b) a qualified annuity plan of an employer;
  - c) a simplified employee pension (SEP) plan;
  - d) a retirement plan established by the federal government, a state, or a political subdivision (except certain unfunded deferred compensation plans under Code section 457);
  - e) a tax-sheltered annuity for employees of certain tax-exempt organizations or public schools;
  - f) a plan meeting the requirements of Code section 501(c)(18);
  - g) a qualified plan for self-employed individuals (H.R. 10 or Keogh Plan); and a savings incentive match plan for employees of small employers (SIMPLE) IRA plan or a SIMPLE 401(k) plan.

If you do not know whether your employer maintains one of these plans, or whether you are an active participant in it, check with your employer or your tax advisor. Also, the IRS Form W-2, Wage and Tax Statement, that you receive at the end of the year from your employer will indicate whether you are an active participant.

If you are an active participant, are single, and have MAGI within the applicable phaseout range listed below, the deductible amount of your contribution is determined as follows: (1) begin with the appropriate phase-out range maximum for the applicable year (specified below), and subtract your MAGI; (2) divide this total by the difference between the phase-out maximum and minimum; (3) multiply this number by the maximum allowable contribution for the applicable year, including catch-up contributions if you are age 50 or older. The resulting figure will be the maximum IRA deduction you may take.

If you are an active participant, are married and you file a joint income tax return, and have MAGI within the applicable phaseout range listed below, the deductible amount of your contribution is determined as follows: (1) begin with the appropriate phase-out range maximum for the applicable year (specified below), and subtract your MAGI range; (2) divide this total by the difference between the phase-out range maximum and minimum; (3) multiply this number by the maximum allowable contribution for the applicable year, including catch-up contributions if you are age 50 or older. The resulting figure will be the maximum IRA deduction you may take.

If you are an active participant, are married and you file a separate income tax return, your MAGI phase-out range is generally \$0–\$10,000. However, if you lived apart for the entire tax year, you are treated as a single filer.

Tax year	Joint Filers		Single Filers	
	Min	Max	Min	Max
2018	\$101,000	\$121,000	\$63,000	\$73,000

If you are not an active participant in an employer-maintained retirement plan, are married to someone who is an active participant, and you file a joint income tax return with MAGI between the applicable phaseout range for the year, your maximum deductible contribution is determined as follows: (1) begin with the appropriate MAGI phase-out maximum for the year and subtract your MAGI from it; (2) divide this total by the difference between the phase-out range maximum and minimum; (3) multiply this number by the maximum allowable contribution for the applicable year, including catch-up contributions if you are age 50 or older. The resulting figure will be the maximum IRA deduction you may take. You must round the resulting deduction to the next highest \$10 if the number is not a multiple of 10. If your resulting deduction is between \$0 and \$200 you may round up to \$200.

- 3) **CONTRIBUTION DEADLINE** – The deadline for making an IRA contribution is your tax return due date (not including extensions). You may designate a contribution as a contribution for the preceding taxable year in a manner acceptable to us. For example, if you are a calendar year taxpayer, and you make your IRA contribution on or before April 15, your contribution is considered to have been made for the previous tax year if you designate it as such.
- 4) **TAX CREDIT FOR CONTRIBUTIONS** – You may be eligible to receive a tax credit for your Traditional IRA contributions. This credit will be allowed in addition to any tax deduction that may apply and may not exceed \$1,000 in a given year. You may be eligible for this tax credit if you are
  - age 18 or older as of the close of the taxable year,
  - not a dependent of another taxpayer, and
  - not a full-time student.

For more information on how to calculate and determine if you are entitled to receive a tax credit refer to IRS Pub. 590.

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

- 6) **NONDEDUCTIBLE CONTRIBUTIONS** – You may make nondeductible contributions to your IRA to the extent that deductible contributions are not allowed. The sum of your deductible and nondeductible IRA contributions cannot exceed your contribution limit (the lesser of the allowable contribution limit described previously, or 100 percent of compensation). You may elect to treat deductible IRA contributions as nondeductible contributions. If you make nondeductible contributions for a particular tax year, you must report the amount of the nondeductible contribution along with your income tax return using IRS Form 8606. Failure to file IRS Form 8606 will result in a \$50 per failure penalty. If you overstate the amount of designated nondeductible contributions for any taxable year, you are subject to a \$100 penalty unless reasonable cause for the overstatement can be shown.
- 7) **TAXATION OF DISTRIBUTIONS** – The taxation of IRA distributions depends on whether or not you have ever made nondeductible IRA contributions. If you have only made deductible contributions, any IRA distribution will be fully included in income. If you have ever made nondeductible contributions to any IRA, the following formula must be used to determine the amount of any IRA distribution excluded from income.

$$\begin{array}{r} \text{(Aggregate Nondeductible Contributions)} \\ \text{x (Amount Withdrawn)} \\ \hline \text{Aggregate IRA Balance} \end{array} = \text{Amount Excluded From Income}$$

**NOTE:** Aggregate nondeductible contributions include all nondeductible contributions made by you through the end of the year of the distribution (which have not previously been withdrawn and excluded from income). Also note that the aggregate IRA balance includes the total balance of all of your IRAs as of the end of the year of distribution and any distributions occurring during the year.

- 8) **ROLLOVERS AND CONVERSIONS** – Your IRA may be rolled over to an IRA of yours, may receive rollover contributions, and may be converted to a Roth IRA, provided that all of the applicable rollover and conversion rules are followed. Rollover is a term used to describe a tax-free movement of cash or other property to your IRA from another IRA, or from your employer’s qualified retirement plan, 403(a) annuity plan, 403(b) tax-sheltered annuity, or 457(b) eligible governmental deferred compensation plan. Conversion is a term used to describe the movement of Traditional IRA assets to a Roth IRA. A conversion is generally a taxable event. The rollover and conversion rules are generally summarized below. These transactions are often complex. If you have any questions regarding a rollover or conversion, please see a competent tax advisor.
- Traditional IRA to Traditional IRA Rollovers** – Funds distributed from your IRA may be rolled over to an IRA of yours if the requirements of Code section 408(d)(3) are met. A proper IRA to IRA rollover is completed if all or part of the distribution is rolled over not later than 60 days after the distribution is received. You may not have completed another IRA to IRA rollover from the distributing IRA during the 12 months preceding the date you receive the distribution. Further, you may roll over the same dollars or assets only once every 12 months.
  - SIMPLE IRA to Traditional IRA Rollovers** – Funds may be distributed from your SIMPLE IRA and rolled over to your IRA without IRS penalty provided, two years have passed since you first participated in a SIMPLE IRA plan sponsored by your employer. As with Traditional IRA to Traditional IRA rollovers, the requirements of Code section 408(d)(3) must be met. A proper SIMPLE IRA to IRA rollover is completed if all or part of the distribution is rolled over not later than 60 days after the distribution is received. You may not have completed another SIMPLE IRA to IRA or SIMPLE IRA to SIMPLE IRA rollover from the distributing SIMPLE IRA during the 12 months preceding the date you receive the distribution. Further, you may roll over the same dollars or assets only once every 12 months.
  - Employer-Sponsored Retirement Plan to Traditional IRA Rollovers** – You may roll over, directly or indirectly, any eligible rollover distribution from an eligible employer-sponsored retirement plan. An eligible rollover distribution is defined generally as any distribution from a qualified retirement plan, 403(a) annuity, 403(b) tax-sheltered annuity, or 457(b) eligible governmental deferred compensation plan (other than distributions to nonspouse beneficiaries), unless it is part of a certain series of substantially equal periodic payments, a required minimum distribution, a hardship distribution, or a distribution of Roth 401(k) or Roth 403(b) elective deferrals. If you elect to receive your rollover distribution prior to placing it in an IRA, thereby conducting an indirect rollover, your plan administrator will generally be required to withhold 20 percent of your distribution as a payment of income taxes. When completing the rollover, you may make up the amount withheld, out of pocket, and roll over the full amount distributed from your employer sponsored retirement plan. To qualify as a rollover, your eligible rollover distribution must be rolled over to your IRA not later than 60 days after you receive it. Alternatively, you may claim the withheld amount as income, and pay the applicable income tax and, if you are under age 59½, the 10 percent early distribution penalty (unless an exception to the penalty applies). As an alternative to the indirect rollover, your employer generally must give you the option to directly roll over your employer-sponsored retirement plan balance to an IRA. If you elect the direct rollover option, your eligible rollover distribution will be paid directly to the IRA (or other eligible employer-sponsored retirement plan) that you designate. The 20 percent withholding requirements do not apply to direct rollovers.
  - Nonspouse Beneficiary Rollovers from Employer-Sponsored Retirement Plans** – If you are a nonspouse beneficiary of a deceased employer plan participant, you may directly roll over inherited assets from a qualified retirement plan, 403(a) annuity, 403(b) tax-sheltered annuity, or 457(b) governmental deferred compensation plan to an inherited IRA. The IRA must be maintained as an inherited IRA, subject to the beneficiary distribution requirements, (i.e., you may not roll these assets to your own IRA.)
  - Traditional IRA to Employer-Sponsored Retirement Plans** – You may roll over, directly or indirectly, any eligible rollover distribution from an IRA to an employer’s qualified retirement plan, 403(a) annuity, 403(b) tax-sheltered annuity, or 457(b) eligible governmental deferred compensation plan so long as the employer-sponsored retirement plan accepts such rollover contributions. An eligible rollover distribution is defined as any taxable distribution from an IRA that is not a part of a required minimum distribution.
  - Traditional IRA to Roth IRA Conversions** – If your modified adjusted gross income is not more than \$100,000 and you are not married filing a separate income tax return, you are eligible to convert all or any portion of your existing Traditional IRA(s) into your Roth IRA(s). Beginning in 2010, the \$100,000 MAGI limit and the married filing separate tax filing restriction will be eliminated for conversion eligibility. If you are age 70½ or older you must remove your required minimum distribution prior to converting your Traditional IRA. The amount of the conversion from your Traditional IRA to your Roth IRA shall be treated as a distribution for income tax purposes and is includible in your gross income (except for any nondeductible contributions). Although the conversion amount is generally included in income, the 10 percent early distribution penalty shall not apply to conversions from a Traditional IRA to a Roth IRA, regardless of whether you qualify for any exceptions to the 10 percent penalty.
  - Qualified HSA Funding Distribution** – If you are eligible to contribute to a health savings account (HSA), you may be eligible to take a one-time tax-free HSA funding distribution from your IRA and directly deposit it to your HSA. The amount of the qualified HSA funding distribution may not exceed the maximum HSA contribution limit in effect for the type of high deductible health plan coverage (i.e., single or family coverage) that you have at the time of the deposit and counts toward your HSA contribution limit for that year. For further detailed information, you may wish to obtain IRS Publication 969, *Health Savings Accounts and Other Tax-Favored Health Plans*.
  - Written Election** – At the time you make a proper rollover to an IRA, you must designate in writing to us, your election to treat that contribution as a rollover. Once made, the rollover election is irrevocable.



- 9) **TRANSFER DUE TO DIVORCE** – If all or any part of your IRA is awarded to our spouse or former spouse in a divorce or legal separation proceeding, the amount so awarded will be treated as the spouse’s IRA (and may be transferred pursuant to a court-approved divorce decree or written legal separation agreement to another IRA of your spouse), and will not be considered a taxable distribution to you. A transfer is a tax-free direct movement of cash and/or property from one Traditional IRA to another.
- 10) **RECHARACTERIZATIONS** – If you make a contribution to a Traditional IRA and later recharacterize either all or a portion of the original contribution to a Roth IRA along with net income attributable, you may elect to treat the original contribution as having been made to the Roth IRA. The same methodology applies when recharacterizing a contribution from a Roth IRA to a Traditional IRA. If you have converted from a Traditional IRA to a Roth IRA you may recharacterize the conversion along with net income attributable back to the Traditional IRA. The deadline for completing a recharacterization is your tax filing deadline (including any extensions), for the year for which the original contribution was made or conversion completed.

#### **LIMITATIONS AND RESTRICTIONS**

- 1) **SEP PLANS** – Under a simplified employee pension (SEP) plan that meets the requirements of Code section 408(k), your employer may make contributions to your IRA. Your employer is required to provide you with information which describes the terms of your employer’s SEP plan.
- 2) **SPOUSAL IRA** – If you are married and have compensation, you may contribute to an IRA established for the benefit of your spouse for any year prior to the year your spouse turns age 70½, regardless of whether or not your spouse has compensation. You may make these spousal contributions even if you are age 70½ or older. You must file a joint income tax return for the year for which the contribution is made. The amount you may contribute to your IRA and your spouse’s IRA is the lesser of 100 percent of your combined compensation or \$6,000 for 2002-2004, \$8,000 for 2005-2007, \$10,000 for 2008-2012, and \$11,000 for 2013-2018. This amount may be increased with cost-of- living adjustments in 2019 and beyond. However, you may not contribute more than the individual contribution limit to each IRA. If your spouse is age 50 or older by the close of the taxable year, and is otherwise eligible, you may make an additional contribution to your spouse’s IRA. The maximum additional contribution is \$500 for years 2002-2005, and \$1,000 for years 2006 and beyond.
- 3) **DEDUCTION OF ROLLOVERS AND TRANSFERS** – A deduction is not allowed for rollover contributions or transfers.
- 4) **GIFT TAX** – Transfers of your IRA assets to a beneficiary made during your life and at your request may be subject to federal gift tax under Code section 2501.
- 5) **SPECIAL TAX TREATMENT** – Capital gains treatment and 10-year forward income averaging authorized by Code section 402 do not apply to IRA distributions.
- 6) **INCOME TAX TREATMENT** – Any withdrawal from your IRA is subject to federal income tax withholding. You may, however, elect not to have withholding apply to your IRA withdrawal. If withholding is applied to your withdrawal, not less than 10 percent of the amount withdrawn must be withheld.
- 7) **CHARITABLE DISTRIBUTIONS** – If you are age 70½ or older, you may make tax-free distributions of up to \$100,000 per year directly from your IRA to certain charitable organizations. Special tax rules may apply. For further detailed information you may wish to obtain IRS Publication 590, *Individual Retirement Arrangements* from the IRS. This provision applies to distributions during tax years 2006 and 2007.
- 8) **PROHIBITED TRANSACTIONS** – If you or your beneficiary engage in a prohibited transaction with your IRA, as described in Code section 4975, your IRA will lose its tax-deferred status, and you must include the value of your account in your gross income for the taxable year you engage in the prohibited transaction. The following transactions are examples of prohibited transactions with your IRA: (1) taking a loan from your IRA; (2) buying property for personal use (present or future) with IRA funds; or (3) receiving certain bonuses or premiums because of your IRA.
- 9) **PLEDGING** – If you pledge any portion of your IRA as collateral for a loan, the amount so pledged will be treated as a distribution, and will be included in your gross income for the taxable year in which you pledge the assets.

#### **FEDERAL TAX PENALTIES**

- 1) **EARLY DISTRIBUTION PENALTY** – If you are under age 59½ and receive an IRA distribution, an additional tax of 10 percent will apply, unless made on account of 1) death, 2) disability, 3) a qualifying rollover, 4) the timely withdrawal of an excess contribution, 5) a series of substantially equal periodic payments (at least annual payments) made over your life expectancy or the joint life expectancy of you and your beneficiary, 6) medical expenses which exceed 7.5 percent of your adjusted gross income, 7) health insurance payments if you are separated from employment and have received unemployment compensation under a federal or state program for at least 12 weeks, 8) certain qualified education expenses, 9) first-home purchases (up to a life-time maximum of \$10,000), 10) a levy issued by the IRS, or 11) active military duty (see *Qualified Reservist Distributions*, below). This additional tax will apply only to the portion of a distribution which is includible in your taxable income.
- 2) **EXCESS CONTRIBUTION PENALTY** – An additional tax of six percent is imposed upon any excess contribution you make to your IRA. This additional tax will apply each year in which an excess remains in your IRA. An excess contribution is any amount that is contributed to your IRA that exceeds the amount that you are eligible to contribute.
- 3) **EXCESS ACCUMULATION PENALTY** – As previously described, you must take a required minimum distribution by your required beginning date for the year you attain age 70½ and by the end of each year thereafter. Your beneficiary(ies) is required to take certain minimum distributions after your death. An additional tax of 50 percent is imposed on the amount of the required minimum distribution which should have been taken but was not.
- 4) **PENALTY REPORTING** – You must file IRS Form 5329 along with your income tax return to the IRS to report and remit any additional taxes.

#### **OTHER**

- 1) **IRS PLAN APPROVAL** – Articles I through VII of the Agreement used to establish this Traditional IRA are based on the model Form 5305-A and have been approved by the IRS; the subsequent Articles have not been reviewed by the IRS. The IRS approval is a determination only as to form. It is not an endorsement of the plan in operation or of the investments offered.



- 2) *ADDITIONAL INFORMATION* – You may obtain further information on IRAs from your District Office of the IRS. In particular, you may wish to obtain IRS Pub. 590-A, *Contributions to Individual Retirement Arrangements (IRAs)*, and Pub. 590-B, *Distributions from Individual Retirement Arrangements (IRAs)*, by calling 1-800-TAXFORM, or by visiting [www.irs.gov](http://www.irs.gov) on the Internet.
- 3) *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 all financial organizations to obtain, verify, and record information that identifies each person who opens an account. What this means for you: When you open an account, you are required to provide your name, residential address, date of birth, and identification number. We may require other information that will allow us to identify you.
- 4) *AVAILABILITY OF DEPOSITED FUNDS* – Funds you provide for deposit must be good funds (for example, deposited checks must clear) before they will be available for making investments, transfers, rollovers or distributions.
- 5) *QUALIFIED RESERVIST DISTRIBUTIONS* – If you are a qualified reservist called to active duty, you may be eligible to take penalty-free distributions from your IRA and recontribute those amounts to an IRA generally within a two-year period from your date of return. For further detailed information you may wish to obtain IRS Publication 590, *Individual Retirement Arrangements* from the IRS.



## Rules and Conditions Applicable to Rollovers

### GENERAL INFORMATION

A rollover is a way to move money or property from one eligible retirement plan (e.g., IRA or Qualified Retirement Plan (QRP)) to another eligible retirement plan. The Internal Revenue Code (IRC) limits how many distributions may be rolled over, how quickly rollovers must be completed and how the Trustee or Custodian must report the transaction. By properly completing this form you are certifying to the Trustee or Custodian that you have satisfied the rules and conditions applicable to a rollover and that you are making an irrevocable election to treat the transaction as a rollover.

### TRADITIONAL IRA OR SIMPLE IRA ROLLOVER REQUIREMENTS (Option One)

#### 1. TIMELINESS

The funds you receive from the distributing IRA must generally be deposited into another IRA within 60 days after you receive them. However, this period is 120 days for certain rollovers relating to first-time home purchases. When counting the 60 (or 120) days include weekends and holidays. Receipt generally means the day you actually have the funds in hand. For example, the 60 days would begin on the day following the day you pick up the check from the Trustee or Custodian or when you receive the check in the mail. The IRS has the authority to grant extensions to the 60 (or 120) day rule in cases where a hardship occurs (e.g. casualty, disaster, etc.). Generally, in order to receive this relief you must apply for a Private Letter Ruling accompanied by the applicable user fee. An automatic waiver (no application to the IRS) is available if all the following are true: (1) the financial institution receives the funds prior to the expiration of the 60-day rollover period, (2) you follow all procedures required for depositing the funds into an eligible IRA within the 60-day period, (3) the funds are not deposited due to financial institution error, (4) the funds are deposited into an IRA within one year from the beginning of the 60-day rollover period, and (5) if the financial institution had deposited the funds as instructed, it would have been a valid rollover.

#### 2. RMD ROLLOVER RESTRICTION

If this rollover is being made during or after the year for which you are required to begin receiving distributions, you cannot roll over any distribution to the extent that it is a required minimum distribution from the distributing plan. If the deceased IRA holder died after his or her required beginning date and you are the spouse beneficiary of a deceased IRA holder and you are rolling this IRA into your own IRA, you must make sure that the deceased's required minimum distribution for the year of death is removed from his or her IRA assets prior to the completion of the rollover.

#### 3. TWELVE MONTH RESTRICTION

You are entitled to one distribution per year per IRA which may be rolled over. Twelve (12) months must pass after receipt of one distribution which you roll over before you may take another distribution from the same IRA to roll over. An IRA is created by executing a plan agreement, not by depositing a contribution into a separate investment within an existing IRA. You are entitled to roll over the same assets only once in a twelve (12) month period. Twelve (12) months must elapse between the time you receive a distribution of the assets to be rolled over until you receive another distribution of those same assets for rollover purposes.

#### 4. SIMPLE IRA ROLLOVER RESTRICTIONS

You may roll funds from one SIMPLE IRA to another SIMPLE IRA if the timeliness and 12 month restriction discussed above have been met. In addition, a SIMPLE IRA may be rolled over to a Traditional IRA provided two years have passed since you first participated in a SIMPLE IRA plan sponsored by your employer.

### EMPLOYER-SPONSORED RETIREMENT PLAN TO TRADITIONAL IRA ROLLOVER REQUIREMENTS (Option Two)

#### 1. ELIGIBLE PERSON

Only an eligible person may roll funds from a QRP, 403(a) Plan, 403(b) Plan, or eligible 457(b) Deferred Compensation Plan into an IRA. You will only be an eligible person if you were or are a participant in the distributing plan, the surviving spouse beneficiary of a deceased participant, or the alternate payee identified in a Qualified Domestic Relations Order (QDRO). A QDRO is a domestic relations order issued in a divorce proceeding which meets certain conditions and grants to an alternate payee (e.g., ex-spouse) the right to receive all or a portion of a participant's benefits under a QRP. If the alternate payee is a spouse or former spouse, the alternate payee can roll over all or a portion of the amount received to an IRA. A nonspouse beneficiary may only roll over to an inherited IRA. A rollover to an inherited IRA must be done as a direct rollover from an eligible retirement plan.

#### 2. ELIGIBLE PLAN

A distribution will not be eligible to be rolled over unless that distribution is made from an eligible retirement plan. An eligible retirement plan is a plan that is qualified under IRC Section 401(a), 403(a), 403(b), or 457(b). Eligible retirement plans include defined benefit plans, profit sharing plans, money purchase pension plans, 401(k) plans, tax-sheltered annuities, eligible 457(b) deferred compensation plans, and employee stock ownership plans.

#### 3. ELIGIBLE ROLLOVER DEPOSIT

Only certain types of eligible retirement plan distributions, called "eligible rollover distributions," may be deposited into an IRA. Eligible rollover distributions include most distributions from eligible plans except the following:

**Required Minimum Distributions** – Distributions which represent required minimum distributions paid during a participant's first distribution calendar year or later may not be rolled over.

**Substantially Equal Periodic Payments** – For purposes of determining an eligible rollover distribution, substantially equal periodic payments are defined as a series of substantially equal distributions made not less frequently than annually and calculated 1) over the life (or life expectancy) of the individual or the joint lives (or life expectancies) of the individual and the individual's beneficiary or, 2) for a specified period of 10 years or more.

**Death Benefit Exclusion Amounts** – If you are a surviving spouse beneficiary and your spouse died before August 21, 1996, a portion of your distribution may qualify for the Death Benefit Exclusion Allowance. You may not roll over any portion of your distribution which qualifies for the Death Benefit Exclusion Allowance.



**P.S. 58 Costs** – If you received distribution of a life insurance policy from a plan, the amounts attributable to the cost of life insurance purchased by the plan which have been previously taxed to the participant may not be rolled over.

**Property Distributions** – If property other than cash is distributed, only the same property or the proceeds from its sale may be rolled over. If you receive property but wish to roll over cash, you must actually sell the property and roll over the proceeds.

**Hardship Distributions** – Distributions taken on account of financial hardship are not eligible to be rolled over.

**Roth 401(k) or 403(b) Amounts** – Distributions of elective deferrals from a Roth 401(k) or 403(b) plan are not eligible to be rolled over to a Traditional IRA.

#### **4. TIMELINESS**

If the check is payable to you, the funds you receive from the distributing plan must be deposited in an IRA within 60 days after you receive them. When counting the 60 days include weekends and holidays. Receipt generally means the day you actually have the funds in hand. The IRS has the authority to grant extensions to the 60-day rule in cases where a hardship occurs (e.g. casualty, disaster, etc.). Generally, in order to receive this relief, you must apply for a Private Letter Ruling accompanied by the applicable user fee. An automatic waiver (no application to the IRS) is available if all the following are true:

(1) the financial institution receives the funds prior to the expiration of the 60-day rollover period, (2) you follow all procedures required for depositing the funds into an eligible IRA within the 60-day period, (3) the funds are not deposited due to financial institution error, (4) the funds are deposited into an IRA within one year from the beginning of the 60-day rollover period, and (5) if the financial institution had deposited the funds as instructed, it would have been a valid rollover.

#### **5. CAUTION ABOUT COMMINGLING FUNDS**

If you are rolling over funds from certain eligible retirement plans, you may be eligible to take advantage of favorable tax treatment if the IRA is maintained as a conduit IRA and the funds are subsequently rolled back over to another eligible retirement plan. See your tax professional for additional information.