

Sample Pension Plan Documents

Article I. Purpose

Effective as of [date plan goes into effect], to enable eligible employees to establish individual retirement accounts or individual retirement annuities [company name] (the "Employer") decided to adopt the Simplified Employee Pension Plan for Employees of [company name] (the "Plan"). The Plan is intended to meet the requirements of Section 408(k) of the Internal Revenue Code of 1986 (the "Code") as from time to time amended.

The provisions of the Plan, as set forth herein, shall only apply to an eligible employee who is in the active employ of the Employer on or after [date of eligibility].

Article II. Definitions and Construction

2.1 Definitions: Where the following words and phrases appear in this Plan, they shall have the respective meanings set forth in this Article, unless the context clearly indicates to the contrary.

2.2 Principal Entities:

(a) *Plan*: The Simplified Employee Pension Plan for Employees for [company name], the Plan set forth herein, as amended from time to time.

(b) *Simplified Employee Pension*: The retirement savings vehicle chosen by a Participant for deposit of contributions made hereunder by the Employer. Such retirement savings vehicle may only be either an approved Individual Retirement Account under Section 408(a) of the Code or an approved Individual Retirement Annuity under Section 408(b) of the Code.

(c) *Employer*: [company name], a [legal status (i.e., a corporation)] organized and existing under the laws of the State of [name of state], or its successor or successors.

(d) *Committee*: The person or persons appointed pursuant to Article VI to assist the Employer with Plan Administration in accordance with said Article.

(e) *Employee*: Any person who, on or after the Effective Date, is receiving remuneration for personal services rendered to the Employer.

(f) *Participant*: An Employee participating in the Plan in accordance with the provisions of Section 3.1.

(g) *Fiduciaries*: The Employer and the Committee, but only with respect to the specific responsibilities of each for Plan administration, all as described in Section 6.1.

2.3 Determination of Contribution and Other Definitions:

(a) *Participation*: The period or periods during which an Employee participates in this Plan as determined in accordance with Section 3.1.

(b) *Compensation*: The total of all amounts paid to a Participant for a given Year by the Employer for personal services and reported as wages for purposes of federal income tax withholding on Form W-2, or substitute, less (1) amounts paid while covered by a collective bargaining agreement which does not provide for inclusion hereunder, (2) the cost of providing group term life insurance in excess of the statutory amount, (3) reimbursed moving expenses, (4) any other amount required to be reported on Form W-2 which is not direct compensation for services performed and (5) amounts in excess of \$200,000.

(c) *Effective Date*: [The effective date], the date on which the provisions of this Plan became effective.

(d) *Year*: The 12-month period commencing on January 1 and ending on December 31.

(e) *Code*: The Internal Revenue Code of 1986, as amended from time to time.

2.4 Construction: The masculine gender, where appearing in the Plan, shall be deemed to include the feminine gender, unless the context clearly indicates to the contrary. The words "hereof," "herein," "hereunder" and other similar compounds of the word "here" shall mean and refer to the entire Plan and not to any particular provision, Section or Article. Article and Section headings are for convenience of reference and not intended to add to or subtract from the terms of this Plan.

Article III. Participation and Notifications

3.1 Participation: Except for an Employee who, for the entire Year was covered by a collective bargaining agreement which does not provide for his inclusion hereunder, an Employee shall participate in the Plan for any Year in which he meets the following requirements:

(a) he attains age 21 or older

(b) he has performed services for the Employer at some time during the Year

(c) his Compensation for the Year is \$450 or greater, and

(d) the given Year is preceded by a 5-year period that includes at least three Years in each of which he has performed services for the Employer at some time during the Year

3.2 Notifications: The Committee shall notify an Employee in writing when he first becomes a Participant. Such notification shall include information required to be furnished by Department of Labor regulations under 29 CFR 2520.104-49. Such notification shall also advise the Participant that he should establish a Simplified Employee Pension and the date by which the establishment should be accomplished. If the Participant fails to notify the Committee of the establishment of a Simplified Employee Pension as of the prescribed date, the Committee shall choose a Simplified Employee Pension for such Participant and execute such forms and documents as may be necessary to establish a Simplified Employee Pension for and on behalf of such Participant.

If the Participant's Simplified Employee Pension does not accept contributions for the Year in which the Participant attains age 70 1/2, the Committee shall choose a Simplified Employee Pension for such Participant, for such Year and succeeding Years unless the Participant notifies the Committee that he has chosen an alternate Simplified Employee Pension.

Article IV. Contributions

NOTE: *The following Section 4.1 incorporates the requirements of Code Section 401(1)(2) regarding the permitted disparity in plan contributions. The contribution percentage for compensation above a certain level cannot exceed the contribution percentage on compensation below a certain level by more than the lesser of—*

(1) *the contribution percentage on compensation below a certain level, or*

(2) *the greater of:*

(a) *5.7 percent, or*

(b) *the percentage equal to the portion of the rate under Code Section 3111(a) (in effect as of the beginning of the year) which is attributable to old-age insurance.*

4.1 Employer Contributions On and After January 1, 1987: Each Year the Employer shall determine whether or not a contribution will be made under the Plan for that Year. If the Employer determines that a contribution will be made for a Year, then, subject to the provisions of Section 4.4, the contribution made on behalf of each Employee who is a Participant for that Year shall be equal to:

(a) a percentage of Compensation, as determined by the Employer, payable to all Participants;

(b) to the extent any contribution has not been allocated under (a) above, an additional allocation shall be made to all Participants considering only their compensation in excess of the social security wage base for the Year. The percentage for any additional allocation under this Section 4.1(b) shall not exceed the lesser of:

(i) the percentage used under Section 4.1(a) above, or

(ii) the greater of:

(A) 5.7 percent, or

(B) the percentage equal to the portion of the rate under Code Section 3111 (a) (in effect as of the beginning of the Year) which is solely attributable to old-age insurance.

(c) to the extent any contribution remains after the allocations under Sections 4.1(a) and (b) above, the remainder shall be allocated to all Participants based on their Compensation for the Year.

However, the contribution made on behalf of any Participant for any Year may not exceed \$30,000 [*minus any Employer contribution made on the Employee's behalf pursuant to Section 4.2]. Except to the extent provided in this Section 4.1, contributions to any one Participant shall bear a uniform relationship to the Compensation of each Participant receiving a contribution under this Plan.

The \$30,000 limitation referred to above shall be increased in accordance with the increases made to the limit defined under Code Section 415(c)(1)(A) pursuant to Code Section 415(d).

The contributions of the Employer made on behalf of each Participant shall be paid directly to, and deposited in, the Simplified Employee Pension of each such Participant and shall be paid no later than 3 1/2 months after the close of the Year.

NOTE: **The bracketed portion above would be deleted if the Employer does not want to provide for a salary reduction feature in the plan.*

Section 4.2 below does not provide for Employee Contributions. The provision does allow the Participant to make his or her own IRA Contribution to the Accounts.

4.2 Contributions by Participants: Participants are not permitted to make contributions under this Plan. However, the Simplified Employee Pension chosen by the Participant may allow for additional contributions by the Participant, but such contributions shall not be deemed to be made under this Plan.

If the Committee chooses a Simplified Employee Pension for the Participant pursuant to the provisions of Section 3.2, such Simplified Employee Pension shall not provide for Participant contributions thereunder.

NOTE: *The following Section 4.3 deals only with excess contributions from a SEP which does not contain a salary reduction feature. In Appendix A, Section 4.6 provides for returning "excess contributions" which arise both under the salary reduction arrangement and under the Employer's nonelective contributions to the Plan.*

NOTE: *For self-employed individuals contributing to their own SEP, special rules apply in computing the 15% limitation mentioned in Section 4.3(a). For determining the percentage limit on*

contributions, a self-employed individual's compensation is his or her "net earnings" from self-employment. For a self-employed individual, net earnings must take into account the deduction for contributions to the individual's SEP. Therefore, the amount of the SEP deduction and the net self-employment earnings are interdependent. In effect, this means that for self-employed individuals, the maximum contribution is 13.0435% of net earnings without taking into account SEP contributions.

4.3 Excess Contributions: An excess Employer contribution on behalf of a Participant shall exist for a Year if it exceeds one of the following:

(a) the lesser of \$15,000 or 15% of the Participant's Compensation for such Year (\$30,000 for Years beginning on and after January 1, 1984), or

(b) the amount determined by the Employer to be contributed for the Participant for such Year pursuant to the provisions of Section 4.1.

Except as provided by the remaining provisions of this Section, if an excess contribution is made by the Employer on behalf of a Participant, such excess shall be used as payment or partial payment of the Employer's contribution to such Participant's Simplified Employee Pension for the next succeeding Year.

If, by the April 8th immediately following the Year for which an excess contribution is made, it cannot be determined by the Employer whether the excess contribution will cause yet another excess contribution for the current Year, then the Committee shall notify the Participant that an excess contribution has been made on his behalf.

Upon receipt of notification of an excess contribution, the Participant may either withdraw the excess contribution prior to the due date (not including extensions) for filing his federal tax return for the Year for which the excess contribution was made or he may treat it as a Participant contribution if his Simplified Employee Pension allows for such treatment. If the Participant does not withdraw the excess contribution within such time period, he shall be responsible to pay the 6% penalty tax, if any, associated with such excess contribution until such time as the excess is eliminated by withdrawal or by treating it as a Participant contribution to his Simplified Employee Pension, if allowed. If such withdrawal is subject to a 10% federal penalty tax for early withdrawal, the Participant shall be responsible to pay such tax.

NOTE: *The Internal Revenue Service provides Forms 5305-SEP and 5305A-SEP for the adoption of a Simplified Employee Pension plan. However, these forms can not be used if the adopting employer ever maintained a defined benefit plan, even if the defined benefit plan was terminated. The following Section is intended to allow a self-employed individual (or other employer) who maintained a defined benefit plan to also set up a SEP.*

4.4 Maximum Employer Contributions: Notwithstanding anything contained herein, the Employer contribution to be made on behalf of any Participant for any Year shall be reduced to the extent necessary to prevent disqualification of the Plan under Section 415 of the Code.

If the Participant was a participant at any time in [Name of Plan] Defined Benefit Plan which was maintained by the Employer prior to its termination on [Date], the sum of his Defined Benefit Plan Fraction and his Defined Contribution Plan Fraction for any Year may not exceed 1.0. The "Defined Benefit Plan Fraction" for any Year is a fraction, the numerator of which is the Participant's projected annual benefit under the [Name of Plan] Defined Benefit Plan (determined at the close of the Year) and the denominator of which is the Participant's projected annual benefit (determined as of the close of the Year) if such plan provided the maximum benefit allowable under Section 415(b) of the Code. The "Defined Contribution Plan Fraction" for any Year is a fraction, the numerator of which is the sum of the Employer's contribution to be made under Section 4.1 for such Participant for such Year, plus the Employer's contributions made under this Plan for the Participant for all prior Years and the denominator of which is the maximum amount of annual contributions which could have been made under Section 415(c) of the Code for such Year and for all prior Years of such Participant's employment (assuming for this purpose that said Section 415(c) had been in effect during such prior Years). If the Participant's Defined Benefit Plan Fraction for any Year plus

the Defined Contribution Plan Fraction for such Year exceeds 1.0, then the Employer's contribution for the Participant for such Year shall be reduced to the extent necessary to eliminate the excess. The Committee shall advise affected Participants of any limitation on their Employer contributions hereunder required by this Section.

Article V. Benefits

NOTE: *Unlike a qualified retirement plan, a participant can withdrawal SEP contributions without having to show a financial hardship. The Participant would owe federal and possibly state income taxes, plus, unless certain conditions are satisfied, a 10% additional income tax.*

All contributions made to this Plan by the Employer on behalf of a Participant shall be fully vested and nonforfeitable at all times.

The right of a Participant to withdraw amounts contributed by the Employer on his behalf shall not in any way be restricted by the Employer, the Plan, or the Simplified Employee Pension chosen for a Participant by the Committee.

If a Participant does withdraw amounts from his Simplified Employee Pension, the Participant shall be responsible to pay the 10% penalty tax, if any, which may be associated with the Participant's withdrawal.

In the event of a Participant's death, disposition of the Participant's Simplified Employee Pension shall be governed by the terms of his Simplified Employee Pension.

Article VI. Administration

6.1 Fiduciary Responsibility: The Fiduciaries shall have only those specific powers, duties, responsibilities and obligations as are specifically given them under this Plan. The Employer shall have the sole responsibility for making the contributions provided for under Section 4.1 [* and Section 4.2], and shall have the sole authority to appoint and remove members of the Committee, to choose the Simplified Employee Pension that will be utilized for Participants who either fail to choose their own or choose a Simplified Employee Pension that will not accept certain contributions made hereunder, and to amend or terminate this Plan. The Committee shall have the sole responsibility for the administration of this Plan, which responsibility is specifically described in this Plan.

** Add bracketed phrase if plan contains a salary reduction agreement.*

6.2 Appointment of Committee: The Plan shall be administered by a Committee consisting of at least one person who shall be appointed by and serve at the pleasure of the Board of Directors of the Employer. All usual and reasonable expenses of the Committee shall be paid by the Employer. Any members of the Committee who are Employees shall not receive compensation with respect to their services for the Committee.

6.3 Claims Procedure: The Committee shall make all determinations as to the eligibility of any Employee for Plan Participation or an Employer contribution. Any denial by the Committee of the claim for benefits under the Plan by an Employee shall be stated in writing by the Committee and delivered or mailed to the Employee; and such notice shall set forth the specific reasons for the denial, written to the best of the Committee's ability in a manner that may be understood without legal or actuarial counsel. In addition, the Committee shall afford a reasonable opportunity to any Employee whose claim for benefits has been denied for a review of the decision denying the claim.

6.4 Records and Reports: The Committee shall exercise such authority and responsibility as it deems appropriate in order to comply with governmental regulations relating to records of Employer contributions made hereunder, notifications to Participants, and reports, if any, to the Internal Revenue Service or to the Department of Labor.

6.5 Other Committee Powers and Duties: The Committee shall have such duties and powers as may be necessary to discharge its duties hereunder, including, but not by way of limitation, the following:

- (a) to construe and interpret the Plan and decide all questions of eligibility;
- (b) to prepare and distribute, in such manner as the Committee determines to be appropriate, information explaining the Plan;
- (c) to receive from the Employer and from Participants such information as shall be necessary for the proper administration of the Plan;
- (d) to furnish the Employer, upon request, such annual reports with respect to the administration of the Plan as are reasonable and appropriate;
- (e) to appoint or employ individuals to assist in the administration of the Plan and any other agents it deems advisable, including legal counsel;
- (f) to follow the Employer's choice of Simplified Employee Pension when it is the responsibility of the Committee hereunder to establish a Simplified Employee Pension for a Participant.

The Committee shall have no power to add to, subtract from or modify any of the terms of the Plan, or to change or add to any benefits provided by the Plan, or to waive or fail to apply any requirements of eligibility under the Plan.

6.6 Rules and Decisions: The Committee may adopt such rules as it deems necessary, desirable or appropriate. All rules and decisions of the Committee shall be uniformly and consistently applied to all Participants in similar circumstances. When making a determination or calculation, the Committee shall be entitled to rely upon information furnished by a Participant, the Employer or the legal counsel of the Employer.

6.7 Notifications and Forms: The Committee may require a Participant to complete and file with the Committee any and all forms approved by the Committee, and to furnish all pertinent information requested by the Committee. The Committee may rely upon all such information so furnished it, including the Participant's current mailing address.

6.8 Indemnification of the Committee: The Committee and the individual members thereof shall be indemnified by the Employer against any and all liabilities arising by reason of any act or failure to act made in good faith pursuant to the provisions of the Plan, including expenses reasonably incurred in the defense of any claim relating thereto.

Article VII. Employer Rights

7.1 Nonguarantee of Employment: Nothing contained in this Plan shall be construed as a contract of employment between the Employer and any Employee, or as a right of any Employee to be continued in the employment of the Employer, or as a limitation of the right of the Employer to discharge any of its Employees, with or without cause.

7.2 Action by Employer: Any action by the Employer under this Plan may be by any person or persons duly authorized to take such action.

7.3 Choice of Simplified Employee Pension: The Employer shall choose the particular Simplified Employee Pension which will be utilized by the Committee for establishing individual Simplified Employee Pensions for Participants who fail to do so or for Participants whose Simplified Employee Pensions do not accept contributions made by the Employer hereunder.

The Simplified Employee Pension chosen by the Employer shall provide for the following:

31, 1988, this Plan shall not take into consideration a Participant's Compensation to the extent it exceeds \$200,000, as indexed under Code Section 415(d).

(d) Net Compensation: The Compensation actually received by a Participant for any period after reduction for tax-deferred savings contributions and for contributions under Code Sections 125 and 129 for such period. Effective for Plan Years beginning after December 31, 1988, this Plan shall not take into consideration a Participant's Net Compensation to the extent it exceeds \$200,000, as indexed under Code Section 415(d)."

The following sections should be inserted into the plan if the employer meets the criteria above and wishes to provide a salary reduction arrangement.

4.2 Salary Reduction Arrangement: A salary reduction arrangement represents an agreement by a Participant with the Employer to accept a reduction in Compensation in consideration of a contribution to the Plan by the Employer on the Participant's behalf in the same amount.

Subject to the limitations of Section 4.5, a Participant may elect to enter into such an agreement with the Employer by filing a written election with the Committee specifying the percentage of his Compensation he wishes to be contributed by the Employer as a tax-deferred savings contribution from and after [date]. Such amount may be any amount of the Participant's Compensation, but may not be less than 1% nor greater than 10% (in increments of 1%) of his Compensation in any Plan Year; provided that, in no event shall such amount be greater than \$7,000 (indexed in accordance with Code Section 402(g)(5)) in any calendar year.

Subject to the provisions of Section 4.5, an election shall remain in force until changed in writing by a Participant on a form provided by the Committee.

As of the Effective Date or any January 1 or July 1 or after the Effective Date, a Participant may elect to (a) commence, (b) resume, (c) discontinue contributions, or (d) increase the percentage amount of any future tax-deferred savings contributions upon written election filed with the Committee no later than the 15th day of the month prior to such effective date. A Participant may not change his election with respect to tax-deferred contributions already made by payroll deduction.

All tax-deferred savings contributions shall be made by payroll deduction.

All tax-deferred savings contributions shall be credited to the Participant's Tax-Deferred Savings Account and shall be 100% vested and nonforfeitable at all times.

4.5 Limitations on Tax-Deferred Savings Contributions: The Employer may limit, revoke or amend its agreement to make tax-deferred contributions under Section 4.2 on behalf of any Participant at any time, but only if it determines that such limitation, revocation or amendment is necessary under the following circumstance:

(a) in the case of tax-deferred savings contributions, to ensure that the discrimination tests of Section 408(k)(6)(A) of the Internal Revenue Code governing permissible levels of tax-deferred savings contributions are met for such Plan Year by the following test:

The Actual Average Percentage of the tax-deferred savings contributions of the Highly-Compensated Employees eligible to participate is not more than 1.25 times the Actual Average Percentage of the tax-deferred savings contributions for all other Employees eligible to participate.

If a limitation or amendment becomes necessary pursuant to paragraph (a) above, such limitation or amendment will be first applied to the Participant who is the Highly-Compensated Employee electing the highest percentage of tax-deferred savings contributions pursuant to Section 4.2 until the test in (a) is met or until such Participant's election pursuant to Section 4.2 is reduced to the same percentage level as the Participant who is the Highly-Compensated Employee electing the second highest percentage of tax-deferred savings contributions pursuant to Section 4.2. If further limitations are required, then both such

Participants' percentage elections shall be reduced until the test in (a) is met or until the two Participants' elections pursuant to Section 4.2 are reduced to the same percentage level as the Participant who is the Highly-Compensated Employee electing the third highest percentage of tax-deferred savings contributions pursuant to Section 4.2, and such limitations or amendments shall continue to be made in a similar manner from the Participants who are Highly-Compensated Employees making the highest percentage elections to the lowest until the test in (a) is satisfied.

If a Participant is prevented from making a portion of his tax-deferred savings contributions due to a permissible limitation, revocation or amendment by the Employer, such portion shall be considered taxable income to the Participant in the tax year for which the contribution was made, and after appropriate taxes have been withheld shall be returned to the Participant prior to its contribution to the Trust Fund.

For purposes of this Section 4.5, the following meanings shall attach. The "Actual Average Percentage" for a specified group of Employees for a Plan Year shall be the average of the ratios (calculated separately for each Employee in such group) of the amount of Employer contributions actually paid over to the Trust on behalf of each such Employee, pursuant to a salary reduction arrangement in effect with the Employer under Code Section 408(k), for each Plan Year to the Employee's Net Compensation for such Plan Year. The term "Net Compensation" shall be as defined in Section 2.3(d) above; however, the Employer shall have the right to increase the Employee's Net Compensation by the amount of any Employee salary deferrals under Code Sections 125, 129 and 408(k)(6), or to use such alternate definition of compensation as the Internal Revenue Service may provide by regulation under Code Section 414(s). The term "Highly-Compensated Employee" shall have the same meaning as that provided under Code Section 414(q) and regulations thereunder.

4.6 Return of Excess Elective Deferrals: If, during any taxable year of the Participant, the total amount of the Participant's tax-deferred savings contributions to all qualified simplified employee pensions and any other plan subject to the limitation under Code Section 402(g) exceeds \$7,000, as indexed, then the amounts in excess of \$7,000, as indexed, are to be included in the Participant's gross income for the taxable year to which the deferral relates. Notwithstanding anything in this Plan to the contrary, if prior to March 1 following the close of the Participant's taxable year, the Participant notifies the Plan that he requests a return of part or all of his prior Plan Year's tax-deferred savings contributions which exceed the \$7,000 limit (and any income allocable to such amounts) pursuant to Code Section 402(g) and the regulations thereunder, the Plan may (but is not required to), return (not later than the first April 15 after the Participant's taxable year ends) the amount of the Participant's tax-deferred savings contributions with allocable income, which the Participant requested to be returned. The Participant's request will be limited solely to tax-deferred savings contributions deemed made in the immediately prior taxable year. The Committee may establish such rules and regulations as it deems necessary to carry out the effect of this Section 4.6, and will apply its rules and regulations uniformly with respect to each Participant.

MODEL SIMPLIFIED EMPLOYEE PENSION PLAN

The following document is a model simplified employee pension plan. At the end of a document is a sample salary reduction simplified employee plan, which is a SEP with a salary reduction feature tacked on. You can modify this form to meet your specific circumstances. Of course, if you intend to use this plan, you should make sure that your attorney reviews it and approves any changes you make.

Sample:

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MODEL SIMPLIFIED EMPLOYEE PENSION PLAN