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**The “Fortress Trust IRA”**

**Simplified Employee Pension Individual**

**Retirement Account Agreement**

**By Fortress Trust LLC**

**AGREEMENT**

This Simplified Employee Pension Individual Retirement Account Agreement (sometimes referred to as the “Plan”) is created and hereby established by (“Business Name”) as “Employer” and Fortress Trust LLC, (“Fortress Trust”, “trustee”, “we”, “us”, or “our”) as trustee, and the parties hereby agree to the following terms and conditions, and are establishing a simplified employee pension program under section 408(k) of the Internal Revenue Code of 1986, as amended (the “Code”) to provide retirement benefits for the employees of the Employer. An individual retirement account under section 408 of the Code will be established for each employee eligible to participate in the benefit plan established hereunder. The Employer agrees to provide contributions to each individual retirement account established as a traditional individual retirement account under section 408(k) of the Code. Each participating employee’s IRA will be separately accounted for among the cumulative IRAs, which shall constitute the general trust fund of the Plan.

* 1. **Eligibility Conditions for Contributions.** The Employer, in its sole discretion, may elect to make contributions on a calendar year basis, with the contribution so made to be allocated on a percentage of Compensation basis. Contributions may vary from year to year. The contribution on behalf of each eligible employee shall be allocable to the IRA account of each employee who is at least 18 years of age and is employed by the Employer This simplified employee pension (“SEP”) does not include employees covered under a collective bargaining agreement, does not include [certain nonresident aliens, and does not include employees whose total Compensation during the year is less than $650.00 (such amount is subject to cost of living increases). The Employer agrees that it does not maintain any benefit plan “qualified” under section 401(a) of the Code. For purposes of this Agreement, the terms “Employer” includes the Employer named above and any member of an “affiliated service group” or a “controlled group of corporations” or “trades or businesses under common control” that includes such Employer. Such entities are defined in section 414(m), 414(b) and 414(c) and 414(o) of the Code, respectively. “Service” is any work performed for the Employer for any period of time, however short and includes services performed for any of the above entities related to the Employer. Employees of the Employer who are “domestic employees” shall not be included.

If this Plan is an amendment or continuation of a SEP plan previously adopted, each person who was a participant in such plan prior to adoption of this Plan shall be a participating employee in this Plan as of the date of adoption. The Employer shall notify each employee who becomes a participating employee of his or her status as a participating employee for whom an IRA has been opened under this Plan. The Employer shall be solely responsible to determine the eligibility of each employee of the Employer to become a participating employee under this Plan. The Employer’s determination shall be conclusive and binding upon all persons except otherwise required by law. Any such determination shall not give any right to continued employment or otherwise limit the rights of the Employer with respect to its employees and their employment relationship.

* 1. **Contribution Requirements.** The Employer agrees that contributions made on behalf of each eligible employee will be:

1. Based only on the first $330,000.00 of Compensation.

(Such amount is subject to future cost-of-living adjustments).

1. The same percentage of Compensation for every

employee eligible to participate.

1. Limited annually to the smaller of $66,000.00

of Compensation or 25% of Compensation. (Such

amount is subject to future cost-of-living adjustment).

1. Paid to the Trustee as described under this Agreement.

Such contributions so determined shall be made to the traditional IRA of each participating employee participating in the Plan. “Compensation”, for purposes of this Agreement, shall mean wages, salaries, professional fees or other amounts derived from or received for personal services (including but not limited to commissions paid to salesmen, compensation for services on the basis of a percentage of profit, commissions on insurance premiums, tips and bonuses) and includes earned income, as defined in section 401(c)(2) of the Code (reduced by the deduction the self-employed individual takes for contributions made to a self-employed retirement plan). For purposes of this definition, section 401(c)(2) of the Code shall be applied as if the trade or business purposes of section 1402 of the Code included service described in section 401(c)(6) of the Code. “Compensation” does not include amounts derived from or received as earnings and profits from property (including but not limited to interest and dividends) or amounts not includible in gross income (determined without regard to section 112 of the Code). “Compensation” also does not include any amount received as a pension or annuity or as deferred compensation. “Compensation” shall include any amount includible in the individual’s gross income under section 71 of the Code with respect to a divorce or separation instrument described in subparagraph (a) of section 71(b)(2) of the Code. “Compensation” also includes any differential wage payments as defined in section 3401(h)(2) of the Code.

* 1. **Contribution Limits.** The trustee will accept only cash contributions of the Employer allocable to each traditional IRA account (in an amount not to exceed $66,000.00) (with such amount subject to annual cost-of-living increases after 2023) or 25% of Compensation up to $330,000.00 (with such Compensation amount subject to cost-of-living increases after 2023). For self-employed persons the percentage limit is 25% of net self-employment income (effectively 20% of such Compensation). Compensation for self-employed persons in excess of the 25% limit shall be disregarded under the Plan. The Disclosure Statement to this Plan explains how any “excess contribution” are treated.

**1.04 “Top Heavy” Plan Contribution Requirements.** There is a mandatory contribution allocation in any year in which the Plan is a “Top Heavy” Plan. In any such year the Employer will make a minimum contribution of 3% of the respective participating employee’s Compensation on behalf of each participating employee who is a “Non-Key Employee”, unless no “Key Employee’s” IRA account receives a contribution of 3% or more in Compensation, in which case the maximum required minimum contribution will be not less than the highest Compensation percentage received by the IRA account of any Key Employee. A “Key Employee” is defined in section 416 of the Code. All other participating employees are “Non-Key Employees”. The Plan is a Top Heavy Plan for a calendar year it, as of the last day of the preceding calendar year (or the current calendar year if this is the first calendar year of Plan adoption), the total of the Employer contributions to the IRAs of Key Employees exceeds 60% of all contributions under this Plan and any other plan of the Employer subject to section 408(k) of the Code for such year. The identification of key employees and top heavy contributions will be made by the Employer pursuant to section 416 of the Code and the trustee has no responsibility or duty with respect to compliance with section 416 of the Code and/or contribution determined thereunder.

**1.05 Startup Contribution Tax Credits.** If the Employer establishing this Plan has less than 101 employees who received more than $5000.00 of Compensation and did not offer a “qualified employer plan” (as defined in section 45E(c)(2) and section 4972(d) of the Code) in the most recent three taxable years of the Employer, then the Employer may be entitled to employer contribution tax credits under section 45E of the Code. The available credits phase down over a five-year period. The credits are also available for certain plan establishment costs. The trustee has no duty to determine whether the employer tax contribution credit is available to the Employer nor to calculate the amount such of any such credit.

**1.06 Military Spouse Credit.** If an employee participating in the Plan is married to a member of the United States uniformed military services, a tax credit is available to the Employer of up to $500.00 ($200.00 for the military spouse, plus 100% of Employer contributions for the benefit of the respective employee participant for each calendar year, up to three years) beginning with the year in which the participating employee becomes eligible. To qualify for the credit, the Employer can have no more than 100 employees who received at least $5000.00 of Compensation from the Employer in the prior year. No credit is available for any “highly compensated employee”, as defined in section 414 of the Code, and the military spouse must be entitled to participate within two months of hire date. The trustee has no duty to determine whether any participating employee gives rise to eligibility for the tax credit nor does the trustee have any duty to calculate any such tax credit amount.

**Article II**

**2.01 Non-forfeitable.** Each participating employee’s interest in the balance in the IRA account maintained for him or her is nonforfeitable. These IRA accounts are established for the exclusive benefit of participating employees and that of their beneficiaries.

**Article III**

**3.01** **Investment Limitations**. No part of the IRA funds may be invested in life insurance contracts, nor may the assets of the trust account be commingled with other property except in a common trust fund or common investment fund (within the meaning of section 408(a)(5) of the Code).

**3.02 Investment in Collectibles.** No part of the IRA funds may be invested in collectibles (within the meaning of section 408(m) of the Code) except as otherwise permitted by section 408(m)(3) of the Code. Any investment in prohibited collectibles will be treated as a distribution in an amount equal to the cost of such collectibles.

**Article IV**

**4.01 Distributions in General.** Notwithstanding any provision of this Agreement to the contrary, the distribution of each participating employee’s interest in his or her IRA account shall be made in accordance with the following requirements and shall otherwise comply with section 408(a)(6) of the Code and the Treasury Regulations thereunder, as well as other binding guidance, the provisions of which are herein incorporated by reference.

**4.02 Distribution Commencement.** A participating employee’s interest in his or her IRA account must be, or begin to be, distributed not later than the employee’s “required beginning date”, as described below, after attainment of the “applicable minimum distribution age”. The employee’s “applicable minimum distribution age” shall be determined as follows:

1. If the respective employee attains age 72 during 2022, the applicable minimum distribution age is 72.
2. If the respective employee attains age 72 after December 31, 2022, and age 73 before January 1, 2030, the applicable minimum distribution age is 73.
3. If the respective employee attains age 73 after December 31, 2029, and age 74 before January 2033, the applicable minimum distribution age is 74.
4. If the respective employee attains age 74 after December 31, 2032, the applicable minimum distribution age is 75.

The “required beginning date” for participating employees described in (a) above is April 1, 2023. The required beginning date thereafter is April 1 of the calendar year following a calendar year in which the respective employee attains applicable minimum distribution age. All succeeding annual applicable minimum distributions must be made within the calendar year.

1. The minimum amount to be distributed each year, beginning with the calendar year in which the respective employee attains applicable minimum distribution age and continuing through the year of death, shall not be less than the quotient obtained by dividing the value of the IRA account, by a life expectancy factor as determined at the end of the proceeding calendar year under Internal Revenue Service Publication 590-B “Distributions From Individual Retirement Arrangements (IRAs)” or successor guidance issued by the Internal Revenue Service. However, if the participating employee’s sole designated beneficiary is his or her surviving spouse, and such spouse is more than ten years younger than the participating employee, then the distribution period shall be determined under Table II of Appendix B of Internal Revenue Service (“IRS”) Publication 590-B, as referenced above, or successor guidance thereto.

**4.03 Distributions After Death.**

1. If the participating employee dies on or after the required beginning date described in Article 4.02 and before his or her entire interest in the IRA account has been distributed to him or her, any remaining interest will be distributed to his or her designated beneficiary at least as rapidly as follows:

1. If the sole designated beneficiary is: (1) the surviving spouse of the participating employee; (2) a child of the participating employee who has not attained the age of majority; (3) a disabled beneficiary (within the meaning of section 72(m)(7) of the Code; (4) a chronically ill beneficiary (within the meaning of section 7702B(c)(2) of the Code and section 409(a)(9)(E) of the Code or (5) a designated beneficiary who is not more than 10 years younger than the participating employee as of the date of the participating employee’s death; then the beneficiary is an “eligible designated beneficiary”.
2. The eligible designated beneficiary may make the life expectancy elections permitted pursuant to IRS Publication 590-B or successor guidance thereto or may elect to take distribution not later than the 10th year following the year of the date of death of the participating employee.
3. If the beneficiary is not taking life expectancy payments, or is not an eligible designated beneficiary, the beneficiary must withdraw the entire balance of the IRA account on or before the 10th anniversary of the date of the participating employee’s death.
4. If the participating employee dies before the required beginning date, then the remaining interest will be distributed as follows:
5. If the designated beneficiary is (1) the surviving spouse of the participating employee; (2) a child of the participating employee who has not reached majority; (3) a disabled beneficiary (within the meaning of section 72(m)(7) of the Code; (4) a chronically ill beneficiary (within the meaning of section 7702B(c)(2) of the Code and section 409(a)(9)(E) of the Code; or (5) a designated beneficiary who is not more than 10 years younger than the participating employee as of the date of the participating employee’s death, then the beneficiary is an “eligible designated beneficiary”.
6. The eligible designated beneficiary may make the life expectancy payment elections permitted pursuant to IRS Publication 590-B or successor guidance thereto or may elect to take distribution not later than the end of the 10th year following the year of the participating employee’s death.
7. A designated beneficiary who is not an eligible designated beneficiary must receive the entire IRA account balance not later than the end of the 5th year following the year of the date of the participating employee’s death.

c. The amounts to be distributed pursuant to the above are calculated by the quotient obtained by dividing the respective participating employee’s IRA asset value as of the end of the preceding year by the remaining life expectancy. Life expectancy is determined using the tables prescribed in IRS Publication 590-B or successor guidance thereto. If distributions are being made to a surviving spouse as the sole designated beneficiary, such spouse’s remaining life expectancy for a year is the number in the Single Life Table corresponding to such spouse’s age in the year. In all other applicable cases, remaining life expectancy for a year is the number in the Single Life Table corresponding to the beneficiary’s age in the year specified in paragraph (a) or (b) and reduced by 1 for each subsequent year.

**4.04 Determining Minimum Distributions, Cash Assets.** The value of a participating employee’s IRA includes the values ascribed to his or her Plan IRA assets, which for private securities, real estate, and other assets may require the trustee or its third-party appointees, at the sole expense of the respective participating employee’s Plan IRA account, to perform appraisals, obtain quotes from non-SEC registered exchanges, or employ other reasonable valuation strategies. It also would include the amount of any outstanding rollover, transfer and recharacterization under Q&A’s -7and -8 of Treasury Regulations 1.408-8. Furthermore, as distributions must be in cash, if there is not enough cash to make distributions (or pay trustee fees and any required withholdings) the trustee may, and is hereby authorized to sell, liquidate or otherwise encumber assets as it deems appropriate, at prices which may not be “best price” and may include fees, commissions, advisory compensation, and other charges to obtain a reasonable balance of cash in the trust to cover anticipated distributions and expenses. We shall not be liable for any loss that may result from such sale(s) or from any delay(s) in effecting such sale(s); or for any loss of income or appreciation with respect to the proceeds thereof after such sale; or for any failure or our inability to affect any sale if such assets prove not readily marketable in the ordinary course of business.

**4.05 Multiple IRAs.** If a participating employee holds two or more traditional IRAs, then he or she 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 Treasury Regulations under section 408(a)(6) of the Code. If this is an inherited IRA, within the meaning of section 408(d)(3)(C) of the Code, this Article 4.05 shall not apply.

**Article V**

**5.01 Rollovers.** We will accept for a participating employee’s Plan IRA account, in a form and manner acceptable to us, all rollover contributions that consist of cash, and we may, but shall be under no obligation to, accept all or any part of any other property permitted as an investment under section 408. The respective participating employee or (his or her authorized agent) shall designate in a form and manner acceptable to us each rollover contribution as such to us, and by such designation shall confirm to us, that the proposed rollover contribution qualifies as a rollover contribution within the meaning of section 402(c), 403(a)(4) 403(b)(8) 408(d)(3), and/or 457(e)(16) of the Code. The participating employee also represents that if he or she was a participant in a 401(k) plan of an employer in bankruptcy described in section 219(b)(5)(C) of the Code, any contribution made as a result of such participation and rolled over was made for taxable years after 2006 and before 2010. The participating employee (or authorized agent of the participating employee) shall provide any information we may require to properly allocate rollover contributions to the participating employee’s Plan IRA account. Submission by or on behalf of the participating employee of a rollover contribution consisting of assets other than cash or property permitted as an investment under this Agreement shall be deemed to be the instruction of the participating employee to us. If such rollover contribution is accepted, we will use our reasonable efforts to sell those assets for the Plan IRA account and to invest the proceeds of any such sale in accordance with this Agreement. We shall not be liable to anyone for any loss resulting from such sale or delay in effecting such sale; or for any loss of income or appreciation with respect to the proceeds thereof after such sale and prior to investment; or for any failure to affect such sale if such property proves not readily marketable in the ordinary course of business. All brokerage and other costs incidental to the sale or attempted sale of such property will be charged to the participating employee. We will not be responsible for any losses the participating employee may incur as a result of the timing of any rollover from another trustee or custodian that is due to circumstances reasonably beyond the control of us. It shall be the participating employee’s responsibility to ensure that any minimum distribution required by section 408(a)(6) and 401(a)(9) of the Code and applicable Treasury Regulations is made prior to giving us such rollover instructions.

**Article VI**

**6.01 Information from Parties.** The Employer and each participating employee and any appointed agent of the Employer or participating employees agrees to provide the trustee with all information necessary to prepare any reports required by section 408(i) of the Code and Treasury Regulation sections 1.408-5 and 1.408-6.

**6.02 Annual Reports.** The trustee agrees to submit to the Internal Revenue Service (“IRS”) and participating employee and/or its appointed agent the reports prescribed by the IRS.

**Article VII**

**7.01 Superseding Provisions.** Notwithstanding any other articles, which may be added or incorporated, the provisions of Articles I through VI and this sentence will be controlling. Any articles inconsistent with section 408(a) of the Code and related Treasury Regulations will be invalid.

**Article VIII**

**8.01** **Amendments; Termination.**  This Agreement will be amended as necessary to comply with the provisions of the Code and related Treasury Regulations, with no notice or consent required. However, the Employer will be notified of such amendment and must furnish each participating employee with a copy of the amendment and an explanation of the amendment’s effects, within 30 days of the effective date of the amendment, subject to Article 9.19. While the Employer expects to continue the Plan, the Employer reserves the right to terminate the Plan. Any successor of the Employer may continue the Plan by agreement with the trustee. The Employer reserves the right to amend the Plan in accordance with this Agreement, but no amendment shall reduce or otherwise adversely effect any participating employee’s benefits accrued except as required by applicable law.

**Article IX**

**9.01 Additional Definitions**. The words “we,” “us,” and “our” mean the trustee. The word “Code” means the Internal Revenue Code, and “Regulations” means U. S. Treasury regulations. “Plan” means this Simplified Employee Pension Individual Retirement Account arrangement (also, “IRA”), as formed under section 408(k) of the Code.

**9.02 Notices by Trustee.** Any required notice regarding each Plan IRA will be considered effective when we either directly or via our agent, send it to the intended recipient at the last email address that we have on record, unless such notice is required by Article 9.19 or the Code or Regulations to be mailed. The provisions of Article 9.19 shall govern all communications under this Agreement.

**9.03 Representations and Responsibilities**. The Employer represents and warrants to us that the information the Employer and/or its appointed agent have given or will give us with respect to this Agreement is complete and accurate. Further, the Employer agrees that any directions the Employer gives us or action the Employer or its agent takes will be proper under this Agreement, and that we are entitled to rely upon any such information or directions. If we fail to receive directions from the Employer and/or its appointed agent or participating employees and/or their agents regarding any transaction, or if we receive ambiguous directions regarding any transaction, or if we, in good faith, believe that any transaction requested is in dispute, we reserve the right to take no action until further clarification acceptable to us is received from the Employer or its agent or the appropriate government or judicial authority. We will not be responsible for losses of any kind that may result from directions of the Employer to us or any actions or failures to act, or those of appointed agents and of the individual participating employees or their agents, and the Employer agrees to reimburse us for any loss we may incur as a result of such directions, actions, or failures to act. We will not be responsible for any penalties, taxes, judgments, or expenses incurred in connection with any IRA, except as required by applicable law. We have no duty to determine whether any contributions or distributions comply with the Code, Regulations, rulings, or this Agreement. By executing this Agreement, the Employer has agreed to the Fortress Trust Terms of Service and Privacy Policy, as they may be amended from time to time, as available at [www.Fortresstrustcompany.com](http://www.Fortresstrustcompany.com).

We have allowed the appointment of authorized agents as permitted by this Agreement to act on behalf of the Employer with respect to this Agreement (e.g., attorney-in-fact, executor, administrator, investment adviser), but we have no duty to determine the validity of such appointment or any instrument appointing such authorized agent. We will not be responsible for losses of any kind that may result from directions, actions, or failures to act by any authorized agent, and the Employer agrees to reimburse us for any loss we may incur as a result of such directions, actions, or failures to act as authorized agent

**9.04 Disclosure of IRA Information.** We may use agents and/or subcontractors to assist in administering each IRA under the Plan. We may release nonpublic personal information regarding an IRA to such providers as necessary to provide the products and services made available under this Agreement, and to evaluate our business operations and analyze potential product, service, or process improvements. Any authorized agent will have access to all information. Our regulators and auditors have access to all information.

**9.05 Service Fees.** We have the right to charge fees for our services, and the services of our third-party providers (e.g., tax return preparation, funds disbursement, funds processing, investment management, advisory services, and asset acquisition, disposition and maintenances fees). In addition, we have the right to be reimbursed for all reasonable expenses, including legal expenses, we incur in connection with the administration of each Plan IRA. We may charge the Employer separately for any fees or expenses, or we may deduct the amount of the fees or expenses from the assets in each participating employee’s IRA Plan under the Plan, at our discretion. Fees such as sub-transfer agent fees, exchange order flow fees, trading fees and mark-ups, customer service and IRA administration fees, which may be charged on an hourly or “per event” basis, or other fees, including revenue sharing arrangements, may be paid to us by third parties for assistance in performing certain transactions with respect to each IRA under the Plan. Any brokerage commissions attributable to the assets of each Plan IRA will be charged to that IRA. Participating employees cannot reimburse their Plan RAs for those commissions.

**9.06 Investment of Cash in Plan IRAs**. Shall be as follows:

(a) Self-Directed Management of Investments. Every participating employee has responsibility for self-directed investments of the assets in their respective IRA under this Plan, including those made via any authorized agent. All transactions will be subject to any and all restrictions or limitations, direct or indirect, that 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 the death of a participating employee, his or her beneficiaries will have the right to direct the investment of the self-directed (non-trustee-managed) IRA assets, if any, subject to the same conditions that applied to the participating employee’s during his or her lifetime under this Agreement. We assume no responsibility for rendering investment advice with respect to self-directed investments in the Plan IRA, nor will we provide a participating employee with any opinion or judgment on matters concerning the value or suitability of any such investment or proposed investment for their Plan IRA. We have no duty to question any investment directions and shall not be responsible or liable for any loss resulting from the participating employee’s exercise of control (either by his or her action or inaction). In the absence of instructions from the participating employee, or if his or her instructions are not in a form acceptable to us, or if your instructions are not clear to us or in a form acceptable to us, we will have the right to hold off on executing such requests to invest funds unless and until clarified and/or brought into an acceptable form to us. We will generally not exercise the voting rights and other shareholder rights with respect to investments in each IRA.

(b) The trustee’s powers include, but are not limited to, the following:

1. To hold any securities or other property under this Agreement in omnibus, either directly or at a nominee or sub-custodian, or in bearer form;
2. To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance (including documents for the transfer and conveyance of real estate), and any and all instruments that may be necessary or appropriate to carry out our powers; To employ suitable agents, attorneys, or other persons;
3. To exercise (or decline to exercise) the voting rights and other shareholder rights with respect to securities in each IRA;

4. To perform any and all acts that we deem necessary or appropriate for the proper administration of each participating employee’s IRA under the Plan and/or investments therein.

**9.07 Beneficiaries.** If a participating employee dies before he or she receives all of the amounts credited to their respective Plan IRA, then ongoing payments from their respective Plan IRA will be made to the participating employee’s beneficiaries. We have no obligation to pay to beneficiaries until such time we are notified of the participating employee’s death by receiving a valid death certificate. Each participating employee may designate one or more persons or entities as a post-mortem beneficiary of their respective Plan 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. Each beneficiary designation a participating employee files with us will cancel all previous designations. The consent of a participating employee’s beneficiaries will not be required for him or her to revoke a beneficiary designation. If the participating employee does not designate a beneficiary or if all of his or her beneficiaries predecease the participating employee, their estate will be the beneficiary. Beneficiaries shall be designated on an electronic form distributed by the trustee or its agent. Beneficiaries named can be changed at any time, in the participating employee’s sole discretion.

A spouse beneficiary will have all rights as granted under the Code or applicable Regulations to treat the participating employee’s IRA as his or her own.

We may allow an original IRA beneficiary of the participating employee (the beneficiary who is entitled to receive distributions from an inherited IRA at the time of the participating employee’s death) to name 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. Each beneficiary designation form that the original IRA beneficiary files with us will cancel all previous designations. The consent of a successor beneficiary will not be required for the original IRA beneficiary to revoke a successor beneficiary designation. If the original IRA beneficiary does not designate a successor beneficiary, his or her estate will be the successor beneficiary. In no event will the successor beneficiary be able to extend the distribution period beyond that required for the original IRA beneficiary.

**9.08 Required Minimum Distributions**. We will provide the participating employee with information regarding distributions as required by Article 4.02. If the participating employee fails to request a required minimum distribution by his or her required date, we can, at our complete and sole discretion, do any one of the following:

* Make no distribution until we receive a proper withdrawal request.
* Distribute his or her entire Plan IRA to the participating employee in a single sum payment.
* Determine the participating employee’s required minimum distribution from his or her Plan IRA each year based on the participating employee’s life expectancy, calculated using IRS Publication 590-B or successor guidance, and pay those distributions to the participating employee until the participating employee directs otherwise, subject to the requirements of Article IV.

The Employer on its behalf and on behalf of participating employees agrees that we will not be liable for any penalties or taxes related to a failure to take a required minimum distribution.

**9.09 Termination of Agreement, Resignation of Trustee**. We can resign as trustee at any time effective 30 days after we send written notice of our resignation to Employer or its appointed agent or participating employees. Upon receipt of that notice, the Employer must make arrangements to transfer Plan IRAs to another financial organization. If the Employer does not complete a transfer of the Plan IRAs within 30 days from the date we send the notice to the Employer, we have the right to transfer Plan IRA assets to a successor IRA trustee or custodian that we choose in our sole discretion, or we may pay each Plan IRA in a single sum. We will not be liable for any actions or failures to act on the part of any successor trustee or custodian, nor for any tax consequences you may incur that result from the transfer or distribution of plan assets of participating employees pursuant to this section.

If this Agreement is terminated, we may charge to each Plan IRA a reasonable amount of money that we believe is necessary to cover any associated costs, including but not limited to one or more of the following:

* Any fees, expenses, or taxes chargeable against each Plan IRA and in processing the sale, disposition or liquidation of investments (with very few exceptions, only cash may be transferred to another IRA custodian or trustee);
* Any penalties or surrender charges associated with the early withdrawal of any savings instrument or other investment in each Plan IRA; and/or;
* Proceeds net of gains or losses from liquidating investments held by each Plan IRA;
* We may establish a policy requiring distribution of the entire balance of each Plan IRA to participating employees in cash and/or property, at our discretion, if the balance of each Plan IRA drops below our minimum balance policy.

**9.10 Successor Trustee.** 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 that includes Plan IRAs) is acquired by another organization, that organization (or agency) may automatically become the trustee of Plan IRAs, but only if it is the type of organization authorized to serve as a Plan IRA trustee. If for any other reason we cease to qualify to serve as a trustee under IRS regulations, we shall substitute a qualifying trustee or custodian.

**9.11 Provision Pertaining to Rule Against Perpetuities.** Notwithstanding any other provision of this Agreement to the contrary, unless sooner terminated in accordance with such provision, each trust created or provided for under this Agreement shall terminate within the required period of time provided under Nevada law, including any amendments to Nevada law after the creation of this trust after the death of the last survivor of the following persons: (i) the participating employees and (ii) the beneficiaries and their descendants. If on the day preceding the expiration of any such period any properties are still held in this Plan, such properties shall immediately vest in and be distributed to and among the persons entitled to receive such properties in the same manner and in the same proportion as such properties would be distributed from this Plan and the trust relationship created hereunder upon its termination in accordance with the other provisions of this Agreement.

**9.12 Access and Communications.** The trustee shall provide access to the Plan IRA of each participating employee, and all information contained therein, via the trustee’s website(s) or via website(s) and/or apps integrated into Fortress’ Application Programming Interfaces (“APIs”) that third parties write into. A participating employee may be required to exclusively access his or her IRA through a particular third parties’ websites and/or applications who have written into our APIs, and all communications regarding each Plan IRA will be via that third-party. All communications sent by trustee or its API-integrated third-parties to the Employer or each participating employee or any beneficiary and shall exclusively be via electronic means; meaning email and/or alerts in the Dashboard and/or SMS text or other electronic means as trustee may implement in its sole and absolute discretion. Statements shall only be available online in IRA, with notice of statement availability emailed to the Employer or each participating employee (or beneficiary, as may be appropriate after death) not less frequently than a quarterly basis. Subject to Article 9.19, all communications sent by the trustee to the Employer, or any participating employee or beneficiary, shall exclusively be via electronic means; meaning email and/or alerts in the Dashboard and/or SMS text. Statements shall be available online to Plan IRA, with notice of statement availability emailed to the participating employee (or beneficiary, as may be appropriate after death) on not less frequently than a quarterly basis. The Employer acknowledges and agrees that the trustee may contact the participating employee or any such beneficiary for any reason. No such contact will be deemed unsolicited.

**9.13 Electronic Statements Election.** The Employer and each participating employee hereby elect to receive electronic statements at intervals and on a schedule set entirely at the trustee’s discretion or as required by the Code. If he or she desires printed statements, he or she may elect to receive paper communication as described in Article 9.19.

**9.14 Amendments.** We have the right to amend this Agreement at any time. As provided in Article VIII, any amendment we make to comply with the Code and related Regulations does not require consent. The Employer or participating employees will be deemed to have consented to any other amendment unless, within 30 days from the date we email him or her notice of an amendment, the Employer and/or participating employee notify us in writing that the Employer or he or she does not consent.

**9.15 Withdrawals or Transfers to Other Plans or IRA Custodians.** All requests for withdrawal or transfer will be in writing on a form provided by or acceptable to us. The method of distribution must be specified in writing or in any other method acceptable to us. The tax identification number of the recipient must be provided to us before we are obligated to make a distribution. Withdrawals will be subject to all applicable tax and other laws and regulations, including but not limited to possible early distribution penalty taxes, surrender charges, and withholding requirements.

**9.16 Liquidation of Assets.** We have the right to liquidate assets in participating employee IRA accounts if necessary to make distributions or to pay fees, expenses, taxes, penalties, or surrender charges properly chargeable against the respective IRA. If the participating employee fails to direct us as to which assets to liquidate, we will decide, in our complete and sole discretion, and he or she agrees to not hold us liable for any adverse consequences that result from our decision.

**9.17 Restrictions.** Neither the Employer nor any participating employee may sell, transfer, or pledge any interest in his or her Plan IRA in any manner whatsoever, except as provided by law or this Agreement. The assets in each Plan IRA will not be responsible for the debts, contracts, or torts of any person entitled to distributions under this Agreement.

**9.18 Situs, Governing Law and Jurisdiction.** It is agreed between the Employer and the trustee that the situs of the Employer’s Plan and each Plan IRA shall be Nevada. The validity, effect and interpretation of this Agreement and the administration of each Plan IRA created hereby shall be governed by the laws of the State of Nevada. Nevada is the trustee’s place of business and headquarters and is the principal place of administration of each Plan IRA. Exclusive jurisdiction and venue for any action brought regarding this Agreement or the trust shall be in Clark County, Nevada.

**9.19 Notices and Change of Employee’s Address.** Subject to this Article 9.19, all notices permitted or required by this Agreement will be sent via email and will be deemed to have been delivered and received upon transmission via any SMTP delivery service chosen by the sender. Notices shall be delivered to the addresses on record. By adopting this Agreement, the Employer, and each participating employee consents to the use of such electronic communication.

Notwithstanding the preceding paragraph, the Employer has the right, at any time, to withdraw and revoke, in whole or in part, its consent to communicate electronically. The Employer can elect to receive or make some, or all, communications in writing on paper. The Employer may exercise this right by electronic means or by written communication to our physical corporate address. Note that in so doing, Fortress Trust may resign as trustee and terminate this Agreement, and the Employer will need to move Plan IRAs to a new trustee. The Employer may exercise this right by electronic means or by written communication to our physical address of record. To the extent the Employer revokes this election to receive electronic communication or make elections electronically, participating employees shall receive written paper elections and/or communications. No fee will be charged on account of withdrawal of consent or for the receipt of paper communications. We will advise the Employer and participating employees electronically or in a written paper communication of any changes in electronic communication methods participating employees and their beneficiaries will have. We will advise the Employer of any changes or updating in our methods of communications, subject to its election to receive written paper communications as provided above. The Employer and participating employees will have a reasonable opportunity to review, confirm, modify, or rescind any election before the election becomes effective. The trustee will electronically confirm the Employer’s and participating employees’ evidence of ability to communicate electronically. If the Employer and participating employees elect to receive written paper communications, in such case, the notice will be considered effective when mailed to the last physical address in our records. Any notice to be given to us will be considered effective only when we receive it. The Employer or participating employees, or the intended recipient, must notify us of any change of email and/or physical address. This Article 9.19 shall be interpreted and construed to comply with Treasury Regulations 1.401(a)-21(b) or successor guidance.

**9.20 Counterparts; Electronic Signatures**. This Agreement may be executed in counterparts, each of which will be deemed an original and all of which, taken together, will constitute one and the same instrument, binding on each signatory thereto. This Agreement may be executed by signatures, electronically or otherwise, which, upon the Employer entering an electronic signature, which may be as simple as a checkbox or a hyperlink, such consent shall be binding upon each signing party to the same extent as an original executed handwritten version hereof. We may rely conclusively upon and shall incur no liability in respect of any action taken upon any notice, consent, request, instructions, or other instrument believed in good faith to be from the Employer or participating employees or their authorized agents.

**9.21 Employer’s Agent.** The Employer shall be entitled to appoint an agent to exercise the rights and obligations of the Employer under this Agreement, upon such terms as the Employer and the agent shall agree. The trustee may request, and shall be entitled to be given, a copy of any such arrangement and shall follow, without liability for doing so, the directions of the agent to the extent such directions are consistent with this Agreement and applicable law, as determined by the trustee. The trustee shall provide the agent with such data, reports, and communication as it would provide the Employer; provided that all such communication shall be conducted by electronic communication, as provided in the Agreement. Any changes to the Employer’s agency agreement with the agent shall be communicated to the trustee. By separate agreement with any such agent, the trustee may utilize the services of the agent to prepare communications, reports, governmental filings, and communications in connection with this Agreement.

**9.22 Severability, Enforceability.** If any part of this Agreement is held to be illegal or invalid, the remaining parts will not be affected. Neither the Employer’s nor participating employees nor our failure to enforce at any time or for any period of time any of the provisions of this Agreement will be construed as a waiver of such provisions, or the Employer’s or participating employee’s right or our right thereafter to enforce each and every such provision.

Signed and agreed as of this date, <autofill>, by and between:

Signed and agreed as of this date, <autofill>, by and between:

Name Fortress Trust, LLC

<signature> <signature>

Employer George S. Georgiades, Executive Trust Officer

Address 10801 W. Charleston Blvd., Suite 440

City/state/zip Las Vegas, NV 89135

Email: <auto> ira@fortresstrust.us

Phone: <auto>

**ADDENDUM A**

**FORTRESS TRUST, LLC**

**SIMPLIFIED EMPLOYEE PENSION PLAN DISCLOSURE STATEMENT**

This Disclosure Statement is required to be provided to the sponsoring Employer and each participating employee by IRS regulations and is a summary of requirements pertaining to the Fortress Trust Simplified Employee Pension IRA. By adopting the Fortress Trust Simplified Employee Pension Plan, the Employer acknowledges receipt of this Disclosure Statement on its behalf and on behalf of participating employees. The Employer or its agent will provide a copy to each participating employee. Terms used in this Disclosure Statement have the same meaning as used in the Fortress Trust Simplified Employee Pension Individual Retirement Account Agreement (the “Plan”).

Neither we nor any agent of ours provide tax or legal advice. As a result, the Employer, as the party establishing this Plan, and each participating employee of the Employer, is strongly encouraged to seek competent tax and/or legal advice with respect to this Plan and your specific situation. We do not provide tax advice, and noncompliance with tax rules may result in adverse tax consequences and/or tax penalties.

**Right to Revoke Your IRA in the Plan**

Each participating employee has the right to revoke his or her Plan IRA account within seven days of the date this Plan is established. If the participating employee exercises this right, the employee is entitled to an amount contributed to the Plan without penalty, service charge or administrative expense, though the participating employee acknowledges and agrees that any investments the participating employee may have made may have changed in value and that the trustee is in no way liable for any losses in the event that the participating employee revokes this Plan and liquidate such assets, thus reducing the amount a participating employee receives versus the amount he or she contributed (the inverse is also true, of course, and in the event assets appreciated in value then he or she may receive more than the Employer contributed, which would be subject to rollover requirements or tax consequences as articulated in the Code). If the participating employee does not exercise this right within seven days of the date above, then he or she will have irrevocably accepted the terms and conditions of the Plan the Employer has established. To revoke this Plan IRA, simply notify the trustee in writing. Please be advised that the Internal Revenue Service requires us to advise each participating employee that if he or she revokes participation in the Plan, it could cause adverse tax consequences for all the other participating employees in the Plan. If a participating employee wants to revoke his or her Plan IRA, or if has any questions about the procedure for revoking a Plan IRA, please contact:

Fortress Trust LLC

IRA Department

10801 W. Charleston Blvd., Suite 440

Las Vegas, NV 89135

ira@fortresstrust.us

**Communication**

The preferred method of making elections and giving or receiving notices under this Agreement is through electronic means, as described in Articles 9.02, 9.12, 9.13, and 9.19 of the Agreement. When the Employer established the Plan under this Agreement, the Employer consented to these types of communications. We will confirm each participating employee’s electronic media election by an electronic response. However, under this Agreement and under federal law, each participating employee can revoke or modify his or her elections, at no charge and at any time to elect to receive or give some or all elections or notices in written paper form. This right can be exercised at any time. Further details about consent to electronic communication and rights to modify or revoke such consent are contained the Plan Agreement at Article 9.19.

The Employer must give all eligible employees a copy of the Plan and a copy of the Disclosure Statement. The Employer must provide eligible employees a statement that traditional IRAs other than the traditional IRAs into which Plan contributions will be made may provide different rates of return and different terms concerning, among other things, transfers and withdrawals of funds from the IRAs.

The Employer as Plan Administrator must provide participating employees a copy of any plan amendment within thirty (30) days of the amendment effective date, together with an explanation of any effects of the amendment upon participating employees.

The Employer as Plan Administrator must advise each participating employee of the amount of any contribution to their respective Plan IRA by January 31 of the year following for which the contribution is made.

**Some Requirements of a Plan IRA.**

**A.** **Cash Contributions –** The contributions of the Employer on behalf of a participating employee must be in cash unless it is a rollover contribution. Contributions to IRA’s under the Plan for a tax year must be made on or before the due date (not including extensions) for participating employee’s Federal income tax return for that tax year (April 15 for most individuals). The following information explains what a Plan is, how contributions are made, and now to treat your employer’s contributions for tax purposes. For more information, see IRS Publication 590-B.

* A Plan is a written arrangement that allows the Employer to make contributions toward the retirement of participating employees. Contributions are made to a traditional IRA under the Plan.
* The Employer is not required to make Plan contributions. If a contribution is made, however, it must be allocated to all eligible employees according to the Plan Agreement. The contribution for each eligible employee will be the same percentage of Compensation (excluding Compensation greater than $330,000.
* The Employer will provide you with a copy of the Agreement containing participation rules and a description of how employer contribution may be made to your IRA under the Plan. The employer must also provide you with a copy of the completed Plan document and a yearly statement showing any contributions to your Plan IRA.
* All amounts contributed to your Plan IRA by the Employer belong to you even after you stop working for that Employer.
* The Employer will give you (and each other participating employee) a copy of the Plan as adopted by the Employer. In addition to the information provided to an employee at the time he or she is a participating employee, the Employer must furnish each participant within 30 days of the effective date of any amendment and a written explanation of its effects.
* The Employer will give written notification to each participating employee of any employer contribution made under the Plan to that participating employee’s IRA by the later of January 31 of the year following the year for which a contribution is made or 30 days after the contribution is made.

**B.** **Maximum Contribution –** The contribution that the Employer may contribute to each employee’s individual IRA account under the Plan will be a uniform percentage of Compensation, not to exceed $66,000 (adjusted after 2023 for cost-of-living increases or 25% of Compensation, whichever is less. The Employer’s contribution is not taxable to a participating employee at the time of contribution. These maximum contribution limits are much higher than the regular IRA deduction limits. Of course, your Employer can choose to contribute between nothing or up to these limits for any given year. In addition, the participating employee may have the right to contribute to his or her own separate Roth IRA or traditional IRA. Employees who participate in this Plan remain eligible to contribute to their own traditional IRA or his or her Roth IRA in addition to their participation in this Plan IRA. Traditional IRA contributions provide a current tax deduction; Roth IRA distributions do not provide a current tax deduction, but Roth IRA distributions are not taxable. ***However***, because the participating employee is a participant in the Plan, his or her ability to make these separate non-Employer IRA contributions may be limited.

Because the participating employee is a participant in the Plan IRA, the regular IRA contribution limits in the paragraph below must be reduced by any amount contributed to the participating employee’s IRA account under this Plan for the respective year of payment. The rate of contributions to your IRA account under the Plan is explained in section above. Participants in the Plan are deemed to be “active participants” for purposes of making contributions to their own separate traditional or Roth IRA accounts. There are separate contribution limits as follows:

* The separate non-Plan traditional IRA or Roth IRA limits for any taxable year cannot exceed the lesser of 100 percent of your Compensation or $6,500 for 2023, with possible cost-of- living adjustments each year thereafter.
* For individuals who have attained the age of 50 by the end of the year, the Employer’s contribution limit is $7500 for all the IRAs, subject to future cost-of-living increases after 2023.
* If the participating employee also maintains a traditional IRA (i.e., an IRA subject to the limits of section 408 of the Code), the maximum contribution to a Roth IRA is reduced by any contributions he or she makes to his or her traditional IRA.
* The total annual contribution to all traditional IRAs and Roth IRAs cannot exceed the lesser of the dollar amounts described above or 100 percent of the participating employee’s Compensation. Additional tax rules appear below.

**C. Determining MAGI Under IRS Publication 590-A and Its Impact on Regular Traditional IRA or Roth IRA Contributions.**  As an active Plan participant, any separate traditional IRA contribution deduction or permitted Roth contribution is reduced, or phased out, when the participating employee’s Modified AGI rises above a certain limit and is eliminated when it reaches a higher limit. This range of limits is referred to as a “phase-out range”. The chart below shows how Modified AGI affects the traditional IRA deduction.

**Effect of Modified AGI on Traditional IRA Deduction in 2023:**

Tax Filing Your Modified AGI Effect on

Status for 2023\* Tax Deduction

Single or $73,000 or less Full Deduction

Head of More than $73,000

Household but less than Partial Deduction

$83,000

$83,000 or more No deduction

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Married $116,000 or less Full deduction

Filing

Jointly More than $116,000

but less than $136,000 Partial Deduction

$136,000 or more No deduction

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Married Less than $10,000 Partial Deduction

Filing

Separately\*\*

$10,000 or more No deduction

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* These limits are adjusted after 2023 for inflation factors.
* Married individuals who live apart for the entire year and file separate tax returns are treated as if they are “single” for purposes of determining their maximum deductible contribution to traditional non-Plan IRAs.

**D. Roth IRA Contribution AGI Input Tax Deductions –** No Federal income tax deduction is allowed for a contribution to a Roth IRA.

This table shows whether a contribution to a Roth IRA is affected by the amount of modified adjusted gross income (“AGI”) computed for Roth IRA purposes.

If your filing status is: And your modified AGI is: Then you can contribute to your Roth IRA up <$218,000 to the limit

Married Filing Jointly or > $218,000 but < $227,999 a reduced amount Qualifying Widow(er)

> $228,000 zero

Married Filing Separately < $10,000 a reduced amount and you lived with your spouse at any time > $10,000 or more zero during the year

Single, Head of Household, or Married Filing Separately > $138,000 but <$152,999 a reduced amount and you did not live with >$153,000 or more zero your spouse at any time during the year

**Amount of your reduced Roth IRA contribution:**

If the amount you can contribute must be reduced, figure your reduced contribution limit as follows:

1. Start with your modified AGI.

2. Subtract from the amount in (1):

a. $218,000 if filing a joint return or qualifying widow(er);

b. $-0- if married filing a separate return, and you lived with your spouse at any time during the year; or

c. $153,000 for other individuals.

3. Divide the result in (2) by $15,000 ($10,000 if filing a joint return, qualifying widow(er) or married filing a separate return and you lived with your spouse at any time during the year).

4. Multiply the maximum contribution limit (before reduction by this adjustment and before reduction for any contribution to traditional IRAs) by the result in (3).

5. Subtract the result in (4) from the maximum contribution limit before this reduction. The result is your reduced contribution limit.

**E. Saver’s Tax Credit** – A participating employee may be able to claim a tax credit on his or her individual Federal income tax return for contributions to a non-Plan traditional or Roth IRA. This is called the “Saver’s Tax Credit and is available to non-students over 18 not claimed as a dependent on another person’s tax return. The maximum annual contribution amount eligible for the credit is $2000 per person when filing jointly. Eligibility for the credit, which is a percentage of the contribution amount, is determined by AGI as indicated in the chart below, as well as other requirements:

Joint Filers Head of All Other Credit Maximum

(AGI) Households Filers (AGI) Rate Credit

(AGI)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| $0-$43,500 | $0-$32,625 | $0-$21,750 | 50% | $1,000[[1]](#footnote-1) |
| $43,501-$47,500 | $32,626-$35,625 | $21,751-$23,750 | 20% | $400 |
| $47,501-$73,000 | $35,626-$54,750 | $23,751-$36,500 | 10% | $200 |
| Over $73,000 | Over $54,750 | Over $36,500 | 0% | $0 |

* The above amounts are adjusted annually for inflation.
* Use Form 8880 to claim the credit.

**F. Non-forfeitability –** Your interest in your Plan IRA is non-forfeitable.

**G. Eligible trustees –** The trustee of your Plan IRA must be a bank, savings and loan association, credit union, or a person or entity approved by the Secretary of the Treasury.

**H. Commingling Assets –** The assets of your Plan IRA cannot be commingled with other property except in a common trust fund or common investment fund.

**I. Life Insurance –** No portion of your Plan IRA may be invested in life insurance contracts.

**J. Collectibles –** A participating employee may not invest the assets of his or her Plan IRA in collectibles (within the meaning of IRC Sec. 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 IRC Sec. 408(m)(3)) are also permitted as Plan IRA investments.

**K. Minimum Distributions –** One of the most complicated IRA tax rules relates to the requirement to take “minimum distributions”. The current rules are found in IRS Publication 590-B or later IRS guidance. Below is a summary, but each participating employee is urged to consult with a tax advisor with respect to minimum distributions. These rules were extensively changed by Congress in 2020 and 2022 and the Internal Revenue Service has not issued needed guidance as of the date this summary was prepared. The most current guidance as of such date is IRS Publication 590-B.

1. Distributions While the Participating Employee is Alive – In general, the participating employee can withdraw earnings without penalties after age 59½. Each participating employee is required to take a minimum distribution from his or her Plan IRA for the year in which he or she reaches minimum distribution age and for each year thereafter. The respective participating employee must take his or her first distribution by his or her required beginning date, which is April 1 of the year following the year he or she attains minimum distribution age. The minimum distribution for any taxable year is equal to the amount obtained by dividing the Plan IRA balance at the end of the prior year by the applicable divisor.

1. If the participating employee attains age 72 during 2022, the applicable minimum distribution age is 72.
2. If the participating employee attains age 72 after December 31, 2022, and age 73 before January 1, 2030, the applicable minimum distribution age is 73.
3. If the participating employee attains age 73 after December 31, 2029, and age 74 before January 2033, the applicable minimum distribution age is 74.
4. If the participating employee attains age 74 after December 31, 2032, the applicable minimum distribution age is 75.

The “required beginning date” for a participating employee described in (a) above is April 1, 2023. The required beginning date thereafter is April 1 of the calendar year following a calendar year in which the participating employee attains applicable minimum distribution age. All succeeding annual applicable minimum distributions must be made within the calendar year.

2. Using the Uniform Lifetime Table – The applicable divisor generally is determined using the Uniform Lifetime Table provided by the IRS. If the participating employee’s spouse is his or her sole designated beneficiary for the entire calendar year and is more than 10 years younger than him or her, the required minimum distribution is determined each year using the actual joint life expectancy of his or her spouse obtained from the Joint Life Expectancy 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 the participating employee attains minimum distribution age:

(a) Make no distribution until we receive a proper withdrawal request;

(b) Distribute your entire IRA to you in a single sum payment;

(c) Determine the participating employee’s required minimum distribution each year based on his or her life expectancy calculated using the Uniform Lifetime Table and pay those distributions to him or her until he or she direct otherwise, except as provided in his or her Plan IRA.

If the participating employee fails to remove a required minimum distribution, an additional penalty tax of 25 or 50 percent is imposed on the amount of the required minimum distribution that should have been taken but was not. You must file IRS Form 5329 along with your income tax return to report and remit any additional taxes to the IRS.

3. After The Death of the Participating Employee – After the death of the participating employee (regardless of his or her age when he or she dies) the minimum distribution rules apply to the beneficiaries of his or her IRA. How the minimum distribution rules apply after a participating employee’s death depends on whether he or she dies before his or her “required beginning date”, the identity of the participating employee’s beneficiaries, and the type of IRA. Note that these rules are used only in determining the amount that must be paid from your IRA in any year. These rules are not used to determine who receives the payments from his or her IRA after his or her death. These rules are extremely complicated, and you are urged to consult with a qualified tax advisor.

4. General Rules – The following general rules apply in determining minimum distributions after the death of participating employees:

1. “Designated Beneficiary”- After the death of participating employees, the actual beneficiaries of his or her IRA are entitled to benefit from the assets in his or her IRA. To make sure the minimum distribution is paid from IRA each year after the year of the participating employee’s death, one must determine if he or she has one or more “designated beneficiaries” of his or her IRA for minimum distribution purposes and the identity of the designated beneficiary.
2. “Eligible Designated Beneficiaries” – There are special distribution rules for eligible distribution beneficiaries, which includes the participating employee’s surviving spouse, children of him or her who have not attained the age of majority, certain disabled beneficiaries or chronically ill beneficiaries and beneficiaries who are not more than 10 years younger than the participating employee as of the date of his or her death.
3. Other than the special elections available to “eligible distribution beneficiaries”, the general rule is that distribution of the entire IRA balance must be made by the 10th anniversary of the date of the participating employee’s death, or, if the he or she dies before attaining minimum distribution age, by the 5th anniversary of the date of the participating employee’s death.

There are separate and additional rules if the participating employee’s sole beneficiary is his or her spouse, dies on or after your “required beginning date” or you die before your required beginning date. See a tax advisor or IRS Publication 590-B.

**L. Excess Contributions –** An excess contribution is any amount that is contributed to Plan IRA that exceeds the amount that the Employer is allowed to contribute. If the excess is not corrected timely, an additional penalty tax of six percent will be imposed upon the excess amount. The procedure for correcting an excess contribution is determined by the timeliness of the correction as identified below.

1. Removal Before the Participating Employee’s Tax Filing Deadline. An excess contribution may be corrected by withdrawing the excess amount, along with the earnings attributable to the excess, before the participating employee’s tax-filing deadline, including extensions, for the year for which the excess contribution was made. An excess withdrawn under this method is not taxable to the participating employee, but he or she must include the earnings attributable to the excess in his or her taxable income in the year in which the contribution was made. The six percent excess contribution penalty tax will be avoided.

2. Removal After The Participating Employee’s Tax Filing Deadline. If the participating employee is correcting an excess contribution after the tax-filing deadline, including extensions, remove only the amount of the excess contribution. The six percent excess contribution penalty tax will be imposed on the excess contribution for each year it remains in the Plan IRA. An excess withdrawal under this method will only be taxable to the participating employee if the total contributions made in the year of the excess exceed the annual applicable contribution limit.

3. Carry Forward to a Subsequent Year. If the participating employee does not withdraw the excess contribution, he or she may carry forward the contribution for a subsequent tax year. To do so, the Employer must under-contribute for that tax year and carry the excess contribution amount forward to the next year on the participating employee’s tax return. The six percent excess contribution penalty tax will be imposed on the excess amount for each year that it remains as an excess contribution at the end of the year. The participating employee must file IRS Form 5329 along with his or her income tax return to report and remit any additional taxes to the IRS.

**M. Early Distribution Penalty Tax -** If the participating employee receives a Plan IRA distribution before he or she attains age 59½, an additional early distribution penalty tax of 10 percent will apply to the taxable amount of the distribution unless one of the following exceptions apply:

1. Death. After the participating employee’s death, payments made to his or her beneficiary are not subject to the 10 percent early distribution penalty tax.

2. Disability. If the participating employee is disabled at the time of distribution, he or she is not subject to the additional 10 percent early distribution penalty tax. In order to be disabled, a physician must determine that his or her impairment can be expected to result in death or to be of long, continued, and indefinite duration.

3. Substantially equal periodic payments. The participating employee is not subject to the additional 10 percent early distribution penalty tax if he or she is taking a series of substantially equal periodic payments (at least annual payments) over his or her life expectancy or the joint life expectancy of him or her and his or her beneficiary. The participating employee must continue these payments for the longer of five years or until he or she reaches age 59½.

4. Unreimbursed medical expenses. If the participating employee takes payments to pay for unreimbursed medical expenses exceeding 7.5% of his or her adjusted gross income, he or she will not be subject to the 10 percent early distribution penalty tax. The medical expenses may be for the participating employee, his or her spouse, or any dependent listed on the tax return.

5. Health insurance premiums. If the participating employee is unemployed and has received unemployment compensation for 12 consecutive weeks under a federal or state program, he or she may take payments from his or her IRA to pay for health insurance premiums without incurring the 10 percent early distribution penalty tax.

6. Higher education expenses. Payments taken for certain qualified higher education expenses for the participating employee, his or her spouse, or the children or grandchildren of the participating employee or his or her spouse, will not be subject to the 10 percent early distribution penalty tax.

7. First-time homebuyer. The participating employee may take payments from his or her Plan IRA to use toward qualified acquisition costs of buying or building a principal residence. The amount he or she may take for this reason may not exceed a lifetime maximum of $10,000. The payment must be used for qualified acquisition costs within 120 days of receiving the distribution.

8. IRS levy. Payments from the participating employee’s Plan IRA made to the U.S. government in response to a federal tax levy are not subject to the 10 percent early distribution penalty tax.

9. Qualified reservist distributions. If the participating employee is a qualified reservist member called to active duty for more than 179 days or an indefinite period, the payments he or she takes from his or her Plan IRA during the active-duty period are not subject to the 10 percent early distribution penalty tax.

10. Disaster distributions. Payment up to $22,000 from the participating employee’s Plan IRA made within 180 days of a federally declared disaster are not subject to the 10% early distribution penalty tax if his or her place of abode is within the declared disaster area and he and she has suffered economic loss as a result of the disaster. Such amounts can be repaid within three years of the date of distribution. For additional information on specific disaster, including listing of disaster areas, qualification requirements for relief, and allowable disaster-related IRA transactions, the participating employee may wish to obtain IRS Publication 590-B, Distribution from Individual Retirement Arrangements (IRAs), from the IRS or refer to IRS website at: [www.irs.gov](http://www.irs.gov).

11. Emergency expenses. Distributions after December 31, 2023, of up to $1000 may be made once every three years for qualifying emergency expenses arising from immediate need, personal or family emergency, in one distribution. Such amounts may be repaid within three years after the date of distribution.

12. Birth and Adoption Expenses. Up to $5,000 can be distributed exempt from the 10% early distribution penalty tax for qualifying birth and/or adoption expenses. Such amounts may be repaid within three years of the date of distribution.

13. Terminally ill individuals. If certified by a physician as having an illness or physical condition that can be expected to result in death within 84 months or less, distributions to such an individual are not subject to the 10% early distribution penalty tax. Such amounts can be repaid within three years of the date of distribution.

The participating employee must file IRS Form 5329 along with your income tax return to the IRS to report and remit any additional taxes or to claim a penalty tax exception.

**N. Further Information on Rollovers −** We are not responsible for determining whether the participating employee made a proper rollover contribution but we may request a certification that the funds represent a qualified rollover to ensure the accuracy of our records.

1. Traditional IRA-to-Traditional IRA Rollovers. Assets distributed from a traditional IRA may be rolled over to another traditional IRA of the participating employee if the requirements of IRC Sec. 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. In the case of a distribution for a first-time homebuyer where there was a delay or cancellation of the purchase, the 60-day rollover period may be extended to 120 days.

2. SIMPLE IRA-to-Traditional IRA Rollovers. Assets distributed from a SIMPLE IRA may be rolled over to traditional IRA without IRS penalty tax provided two years have passed since the individual first participated in a SIMPLE IRA plan sponsored by his or her employer. As with traditional IRA-to-traditional IRA rollovers, the requirements of IRC Sec. 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.

A participating employee is permitted to roll over only one distribution from an IRA (traditional, Roth, or SIMPLE) in a 12-month period, regardless of the number of IRAs he or she owns. A distribution may be rolled over to the same IRA or to another IRA that is eligible to receive the rollover. For more information on rollover limitations, participating employees may wish to obtain IRS Publication 590-B, Distributions from Individual Retirement Arrangements (IRAs), from the IRS or refer to the IRS website at [www.irs.gov](http://www.irs.gov).

3. Employer-Sponsored Retirement Plan-to-Traditional IRA Rollovers. A participating employee 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, 457(b) eligible governmental deferred compensation plan, or Federal Thrift Savings Plan unless it is a required minimum distribution, hardship distribution, part of a certain series of substantially equal periodic payments, corrective distributions of excess contributions, excess deferrals, excess annual additions and any income allocable to the excess, deemed loan distribution, dividends on employer securities, the cost of life insurance coverage, or a distribution of Roth elective deferrals from a 401(k), 403(b), governmental 457(b), or Federal Thrift Savings Plan.

If a participating employee elects to receive his or her rollover distribution prior to placing it in an IRA, thereby conducting an indirect rollover, his or her plan administrator generally will be required to withhold 20 percent of the distribution as a payment of income taxes. When completing the rollover, the participating employee may make up out of pocket the amount withheld and roll over the full amount distributed from the employer-sponsored retirement plan. To qualify as a rollover, the eligible rollover distribution must be rolled over to his or her IRA not later than 60 days after he or she receives the distribution. Alternatively, the recipient may claim the withheld amount as income, and pay the applicable income tax, and if he or she is under age 59½ the 10 percent early distribution penalty tax (unless an exception to the penalty applies).

As an alternative to the indirect rollover, his or her employer generally must give the option to directly roll over to his or her employer-sponsored retirement plan balance to an IRA. If the direct rollover option is elected an eligible rollover distribution will be paid directly to the IRA (or other eligible employer-sponsored retirement plan) that the participating employee designates. The 20 percent withholding requirements do not apply to direct rollovers.

4. Beneficiary Rollovers From Employer-Sponsored Retirement Plans. If the recipient is a spouse, nonspouse, or qualified trust beneficiary of a deceased employer-sponsored retirement plan participant, he or she may directly roll over inherited assets from a qualified retirement plan, 403(a) annuity, 403(b) tax-sheltered annuity, or 457(b) eligible governmental deferred compensation plan to an inherited IRA. The IRA must be maintained as an inherited IRA, subject to the beneficiary distribution requirements.

5. Traditional IRA-to-SIMPLE IRA Rollovers. Assets distributed the participating employee’s traditional IRA may be rolled over to a SIMPLE IRA if the requirements of IRC Sec. 408(d)(3) are met and two years have passed since he or she first participated in a SIMPLE IRA plan sponsored by the Employer. A proper traditional IRA-to-SIMPLE IRA rollover is completed if all or part of the distribution is rolled over not later than 60 days after the distribution is received. In the case of a distribution for a first-time homebuyer where there was a delay or cancellation of the purchase, the 60-day rollover period may be extended to 120 days.

6. Traditional IRA-to-Employer-Sponsored Retirement Plan Rollovers. The participating employee may roll over, directly or indirectly, any taxable eligible rollover distribution from an IRA to your qualified retirement plan, 403(a) annuity, 403(b) tax-sheltered annuity, or 457(b) eligible governmental deferred compensation plan as long as the employer-sponsored retirement plan accepts such rollover contributions.

7. Traditional IRA-to-Roth IRA Conversions. If the participating employee converts to a Roth IRA, the amount of the conversion from the traditional IRA to the Roth IRA will be treated as a distribution for income tax purposes and is includible in gross income (except for any nondeductible contributions). Although the conversion amount generally is included in income, the 10 percent early distribution penalty tax will not apply to conversions from a traditional IRA to a Roth IRA, regardless of whether the recipient qualifies for any exceptions to the 10 percent penalty tax. If the recipient is over the IRA minimum distribution age, the required minimum distribution must be removed before converting the traditional IRA. These Conversions are also described in paragraph \_\_\_\_ on page \_\_\_\_\_.

8. Designated Roth Account Rollovers to Roth IRAs. Distributions from Roth sources in employer-sponsored plans (“designated Roth account”) can be rolled over into a Roth IRA via a 60-day rollover or a direct rollover. If only a portion of the distribution is rolled over, the portion that is rolled over is treated as consisting first of the amount of the distribution that is includible in gross income. Please note that assets rolled from an employer-sponsored plan to a Roth IRA cannot be rolled back to an employer-sponsored plan. Additionally, note that income limits that determine taxpayer eligibility for annual contributions to a Roth IRA do not apply to Roth IRA rollover contributions amounts.

9. Qualified Rollover Contributions to a Roth IRA (“Direct Roth Conversion”). The Code allows certain distribution of pretax assets from employer-sponsored plans (for example, 401(a), 403(b) and 457(b) governmental plans) may be eligible for rollover directly into a Roth IRA, subject to the restrictions and taxation that applies to conversions from a traditional IRA to a Roth IRA. Beneficiaries of pretax assets in employer-sponsored plans may be request a qualified rollover contribution to a Roth IRA or an Inherited Roth IRA, if applicable. A non-spouse beneficiary may roll over a decedent’s interest in an employer plan to an Inherited Roth IRA. The distribution must be directly rolled over (via a trustee-to-trustee transfer) to the Inherited Roth IRA. A spousal beneficiary may roll over a decedent’s interest in an employer plan to either 1; an inherited Roth IRA or 2) a Roth IRA that the beneficiary elects to treat as his/her own.

10. Direct Payment of Tax Refunds to IRAs. The Code allows taxpayers to direct that portion of his or her federal income tax refund may be directly deposited into a taxpayer’s Roth IRA as a contribution. In certain cases, taxpayers must complete IRS Form 8888, Allocation of Refund, to direct the contribution to their Roth IRA.

**O. Written Election −** At the time of making a rollover to an IRA, the IRA holder must designate in writing to the trustee his or her election to treat that contribution as a rollover. Once made, the rollover election is irrevocable.

**P. Transfer Due to Divorce −** If all or any part of your Roth IRA is awarded to a spouse or former spouse in a divorce or legal separation proceeding, the amount so awarded will be treated as the spouse’s Roth IRA (and may be transferred pursuant to a court-approved divorce decree or written legal separation Agreement to another IRA of a spouse), and will not be considered a taxable distribution to the IRA holder. A transfer is a tax-free direct movement of cash and/or property from one Traditional IRA to another or one Roth IRA to another.

**Limitations and Restrictions**

**A. Deduction of Rollovers and Transfers -** A deduction is not allowed for rollover or transfer contributions.

**B. Gift Tax -** Transfers of the participating employee’s IRA assets to a beneficiary made during his or her life and at his or her request may be subject to federal gift tax under IRC Sec. 2501.

**C. Prohibited Transactions -** If a participating employee or his or her beneficiary engages in a prohibited transaction with his or her Plan IRA assets, as described in IRC Sec. 4975, the Plan IRA will lose its tax-deferred status, and the participating employee must include the value of his or her account not previously taxed in his or her gross income for that taxable year. The following transactions are examples of prohibited transactions with a Plan IRA;

* + Taking a loan from the Plan IRA;
  + Buying property for personal use (present or future) with the Plan IRA assets;
  + Receiving certain bonuses or premiums because of the Plan IRA.

**E. Pledging -** If a participating employee pledges any portion of his or her Plan IRA as collateral for a loan, the amount so pledged will be treated as a distribution and will be included in his or her gross income for that year. The amount so pledged can also be subject to the early distribution penalty tax described above, if applicable.

**Other**

**A**. **IRS Plan Approval −** At present the Internal Revenue Service is not ruling as to whether simplified employee pension plans comply with the requirements of the Code. This Fortress Roth Simplified Employee Pension IRA has been carefully written to comply with the IRC. At such time as the Internal Revenue Service recommences issuing form approvals, this Fortress Simplified Employee Pension IRA will be submitted for such approval.

**B. Additional Information −** For further information on IRAs, the participating employee may wish to obtain IRS Publication 590-A, Contributions to Individual Retirement Arrangements (IRAs), or Publication 590-B, Distributions from Individual Retirement Arrangements (IRAs), by calling 1-800-TAX- FORM, or by visiting www.irs.gov on the Internet.

**C. Important Information About Procedures for Opening a New Roth IRA** **−** 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. Therefore, when the participating employee opens a Plan IRA, he or she is required to provide his or her name, residential address, date of birth, and identification number. We may require other information that will allow us to identify the participant.

**ADDENDUM B**

**PLAN IRA FINANCIAL DISCLOSURE**

**Growth Cannot Be Projected**

The value of each participating IRA will be dependent solely upon the performance of any investment in that Plan IRA account under the Plan. Therefore, no projections of the growth of a participating employee’s Plan IRA under the Plan can reasonably be shown or guaranteed.

Terms and conditions of the Plan IRA under this Plan that affect your investments are listed below.

**Investment Options**

The participating employee’s Plan IRA will be invested in investments that he or she chooses directly (“self-directed”) pursuant to Article 9.06 of this Simplified Employee Pension Plan.

**Fees**

We, as well as, each authorized agent and any other third-party integrated service provider earn income from fees charged for each participating employee’s IRA account, for processing transactions, for handling payments, for compliance obligations, for tax reporting, for investment advisory services and on Plan IRA account investments. We reserve the right to change any of the above fees after notice to the Employer and participating employees, as provided in the Plan IRA Agreement.

**Earnings**

The method for computing and allocating annual earnings (e.g., interest, dividends) on your IRA will differ based on the types of investments chosen. Refer to the investment policies, offering memorandums, prospectuses or other materials as appropriate for the investments in the participating employee’s IRA, noting in particular the methods used for computing and allocating annual earnings.

**Money Market Fund Investments**

A participating employee can lose money by investing in money market funds. Although funds may seek to preserve the value of his or her investment at $1.00 per share, they cannot guarantee they will do so. An investment in such a fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. Fortress Trust LLC and its affiliates have no legal obligation to provide financial support to money market funds and plan participants should not expect that the sponsor would provide financial support to the fund at any time.

**Important Privacy Notice**

This privacy notice is provided by FORTRESS TRUST, LLC (“Fortress Trust”). This notice describes how we handle information and how we protect it.

1. Information We Collect. This information is called “Customer Data”. We collect information to serve participating employees and identify services that may be valuable to the participating employees, including:

a. Information the participating employee or his or her authorized agent gives us (such as name, address, social security number, income and other financial assets);

b. About IRA and transactions with us;

c. Others give us (such as to verify participating employee’s identity);

d. From information provided to our websites.

2. Sharing Information. We do not share Customer Data without the participating employee’s permission except as permitted or required by law and as permitted or disclosed in this Agreement.

3. Former Customers. If participating employees end their relationship with us, we continue to handle customer data about them as described in this notice.

1. $2000 if married filing jointly. [↑](#footnote-ref-1)