PENSON

Qualified Retirement Plan

Adoption Agreement

SIMPLIFIED STANDARDIZED PROFIT SHARING PLAN

A Guide to Establishing a Qualified Retirement Plan

Getting Started

Once you've decided to establish a qualified retirement plan, the process of completing the necessary paperwork is quite straightforward. Whether you have an existing business retirement plan or this is your first plan, these instructions—with the assistance of your tax or legal advisor—will help guide you through the steps necessary to establish or make changes to your plan.

Action Required

Complete the Adoption Agreement

Review the Adoption Agreement with your tax or legal advisor, complete all requested information, and make appropriate elections where required.

- Instructional text is provided for each applicable election. These instructions are intended to help ensure your document is in compliance and that you are designing the plan to meet your needs.
- If you fail to select an option or complete an election, default provisions will apply. Each applicable default is detailed below each option or election. Make every effort to complete each option and election as the default provisions may not be the most suitable for your business.
- Complete any applicable attachments to the Adoption Agreement. These items may include the *Related Employer Participation Form* and the *Protected Benefits and Prior Plan Provisions* form. If you did not receive any of these items, please contact your prototype plan sponsor (the financial organization, third-party administrator, or other representative that provided you with your plan documents).

  Plan document amendments may also be included with your plan establishment materials. These items may or may not apply to the type of plan you are establishing; therefore, review them carefully with your tax or legal advisor. Amendments applicable to your plan may or may not require your signature.

Sign and date the Adoption Agreement

Once you have completed and approved the Adoption Agreement, you must sign and date it and then retain it for your records. You may be required to return a copy of your completed and signed Adoption Agreement to your prototype plan sponsor.

- It is your responsibility to coordinate the effective date of your plan with your signature date, and the operational implementation of the plan and/or its provisions to ensure that your plan is operated in compliance with all federal retirement law and other regulatory requirements. Consult with your tax or legal advisor regarding the date by which you must sign your plan documents.

Designate your Beneficiaries

Now that you have established your qualified retirement plan, you are ready to designate the beneficiaries who will receive your plan assets in the event of your death.

- Federal laws governing qualified retirement plans require that you receive the notarized, written consent of your spouse if someone other than—or in addition to—your spouse is named as your primary beneficiary.
- Keep your completed and signed *Qualified Retirement Plan Designation of Beneficiary* form in a place that you have designated for the safekeeping of important financial and legal documents. If you did not receive a form to designate your beneficiary, please contact your prototype plan sponsor.

Obtain a Fidelity Bond

Generally, every fiduciary and anyone who handles funds or other property of the plan must be bonded. The fidelity bond must cover at least 10 percent of the amount handled by the bonded individual(s). It may not be less than $1,000 and need not be for more than $500,000. A fidelity bond can be obtained from your Insurance Agent and should be in the plan's name (*not* the company's name).

For Employers With Employees

Provide the Summary Plan Description to Employees

The Summary Plan Description (SPD) is a comprehensive, easily understood explanation of qualified retirement plan provisions. You must complete your SPD using your completed Adoption Agreement as a guide. If you have employees and did not receive an SPD to complete, please contact your prototype plan sponsor.

- The Department of Labor (DOL) requires that an SPD must be provided to all eligible employees within 120 days of the plan's establishment. The SPD must also be distributed to any new employees within 90 days after such employee becomes eligible to participate in the plan.
- You must also provide an SPD to each beneficiary receiving benefits from the plan on account of death or as an alternate payee pursuant to a qualified domestic relations order (QDRO).
- Complete any applicable attachments to the SPD and provide a copy to each employee. These items may include notices required for regulations (such as QDIA, EACA/QACA, and safe harbor 401(k) contributions). If you did not receive any of these items, please contact your prototype plan sponsor.

If your plan covers non-English speaking participants, you may be required to include an additional note along with the SPD. This note must explain, in the participants' non-English language(s), their ability to obtain additional assistance from you in understanding their rights and obligations under the plan.

Provide the Designation of Beneficiary Form to Employees

If there is more than one business owner or if there are employees that will be covered under your plan, you should provide a *Qualified Retirement Plan Designation of Beneficiary* form to each eligible plan participant. If you did not receive a supply of beneficiary forms, please contact your prototype plan sponsor.

- Federal laws governing qualified retirement plans require that you receive the notarized, written consent of the spouse if someone other than—or in addition to—a plan participant's spouse is named as the primary beneficiary.
- Keep all completed and signed beneficiary forms in a place that you have designated for the safekeeping of important financial and legal documents.

Next Steps

Contributing Assets

For a deposit being made at this time and for future deposits, a *Qualified Retirement Plan Deposit Form* must generally be completed. As applicable, forward the original copy to your recordkeeper (the individual or organization handling the administration and reporting for your plan), provide your prototype plan sponsor with a copy, and keep a copy in your plan files. Your prototype plan sponsor can provide these forms to you on an as needed basis.

- Your prototype plan sponsor and recordkeeper may allow you to transmit electronic contributions.

Consolidating Assets

You may want to take inventory of any other retirement savings you currently have. All of these types of retirement savings are generally eligible to be rolled over into your qualified retirement plan, making overall management of your retirement savings easier and less costly.

- Traditional IRA Assets
- Rollover IRA Assets
- 401(k) Savings
- Profit Sharing Plan Assets
- Money Purchase Pension Plan Assets
- 403(b) (i.e., "Tax-Sheltered Annuity") or 403(a) Annuity Plan Assets
- Accrued Pension Benefits
- Governmental 457(b) Plan Assets
- SEP-IRA Assets
- SIMPLE IRA Assets (at least two years must have elapsed since SIMPLE IRA was initially funded)

Simplified Profit Sharing Plan
Standardized Adoption Agreement

EMPLOYER INFORMATION

Name of Adopting Employer_____

Address _____

City _____ State _____ Zip _____

Telephone _____ Adopting Employer's Federal Tax Identification Number _____

Adopting Employer's Tax Year End *(specify month and day)* _____

Type of Business *(select one)* ☐ Sole Proprietorship ☐ Partnership ☐ C Corporation ☐ S Corporation ☐ LLC
☐ Other *(specify a legal entity recognized under federal income tax laws)* _____

Name of Plan _____

Plan Sequence Number _____ Trust Identification Number *(if applicable)* _____ Account Number_____

SECTION ONE: EFFECTIVE DATES
Complete Part A or B

Part A. ☐ **New Plan Effective Date**

This is the initial adoption of a profit sharing plan by the Adopting Employer.

The Effective Date of this Plan is _____.

NOTE: *The Effective Date is usually the first day of the Plan Year in which this Adoption Agreement is signed and may not be earlier than such date.*

Part B. ☐ **Existing Plan Amendment or Restatement Date**

This is an amendment or restatement of an existing qualified plan (a Prior Plan).

The Prior Plan was initially effective on _____.

The Effective Date of this amendment or restatement is _____.

NOTE: *The restatement Effective Date is generally the first day of the Plan Year in which this Adoption Agreement is signed. An amendment or restatement Effective Date after the first day of the Plan Year in which this Adoption Agreement is signed may result in a reduction or elimination of accrued benefits, violating Code Section 411(d)(6). Notwithstanding the foregoing, Effective Dates for certain items (e.g., EGTRRA and other government pronouncements) are governed by the dates specified in the Basic Plan Document.*

SECTION TWO: ELIGIBILITY
Complete Parts A through C

Part A. **Age and Years of Eligibility Service**

Age Requirement. An Employee will be eligible to become a Participant in the Plan for purposes of receiving an allocation of any Employer Profit Sharing Contributions made pursuant to Section Three of the Adoption Agreement, after attaining age _____ *(no more than 21).*

NOTE: *If no age is specified there will be no age requirement.*

Years of Eligibility Service Requirement. An Employee will be eligible to become a Participant in the Plan for purposes of receiving an allocation of any Employer Profit Sharing Contributions made pursuant to Section Three of the Adoption Agreement *(select one)*.

Option 1: ☐ No Eligibility Service Required.

Option 2: ☐ After completing _____ consecutive Months of Eligibility Service *(no more than 12).*

Option 3: ☐ After completing _____ Years of Eligibility Service *(enter 0, 1, or 2).*

NOTE: *If no Years of Eligibility Service requirement is selected, Option 1 will apply. If more than one Year of Eligibility Service is selected in this Section Two, Part A, the immediate 100 percent vesting schedule in Section Four will automatically apply for Employer Profit Sharing Contributions.*

Part B. **Employees Employed As of Effective Date**

Will an Employee employed as of the Effective Date listed in Section One, Part A of the Adoption Agreement who has not otherwise met the requirements of Part A above be considered to have met those requirements as of the Effective Date *(select one)*?

Option 1: ☐ Yes.

Option 2: ☐ No.

NOTE: *If no option is selected, Option 2 will apply.*

Part C. **Hours Required For Eligibility Purposes**

1. _____ Hours of Service *(no more than 1,000)* shall be required to constitute a Year of Eligibility Service.
2. _____ Hours of Service *(no more than 500 and less than the number specified in Part C, item 1, above)* must be exceeded to avoid a Break in Eligibility Service.

NOTE: *If no hours are specified, 1,000 and 500 will apply for items 1 and 2, respectively unless the Elapsed Time method of determining service applies.*

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SECTION THREE: CONTRIBUTIONS
Complete Parts A and B

Part A. Employer Profit Sharing Contributions – Allocation Formula

Employer Profit Sharing Contributions will be allocated to the Individual Accounts of Qualifying Participants as follows *(select one)*:

Option 1: ☐ Pro Rata Formula. In the ratio that each Qualifying Participant's Compensation for the Plan Year bears to the total Compensation of all Qualifying Participants for the Plan Year.

Option 2: ☐ Integrated Formula. Pursuant to the integrated allocation formula, which is further described in Plan Section 3.04(B)(2).

NOTE: *If no option is selected, Option 1 will apply.*

Part B. Qualifying Participants

A Participant will be a Qualifying Participant, and thus entitled to share in Employer Profit Sharing Contributions for any Plan Year if the Participant has satisfied all of the eligibility requirements described in Section Two of this Adoption Agreement on at least one day of such Plan Year and has not incurred a Termination of Employment. If the Participant has incurred a Termination of Employment during the Plan Year, the following additional condition(s) apply *(select one)*:

Option 1: ☐ Hours of Service Requirement. The Participant completes more than _____ *(not more than 500)* Hours of Service during the Plan Year.

Option 2: ☐ No Additional Conditions.

NOTE: *If no option is selected, Option 1 and a 500 Hours of Service requirement will apply with no additional waivers.*

SECTION FOUR: VESTING AND FORFEITURES
Complete Parts A through B

Part A. Vesting Schedule For Employer Profit Sharing Contributions

A Participant will become Vested in the portion of their Individual Account derived from Employer Profit Sharing Contributions, if applicable, made pursuant to Section Three of the Adoption Agreement as follows.

YEARS OF VESTING SERVICE	VESTED PERCENTAGE				
Profit Sharing	Option 1 ☐	Option 2 ☐	Option 3 ☐	Option 4 ☐ *(Complete if chosen)*	Option 5 ☐ *(Complete if chosen)*
Less than One	100%	0%	0%	_____ %	_____ %
1	100%	0%	0%	_____ %	_____ %
2	100%	0%	20%	_____ % (not less than 20%)	_____ %
3	100%	100%	40%	_____ % (not less than 40%)	100%
4	100%	100%	60%	_____ % (not less than 60%)	100%
5	100%	100%	80%	_____ % (not less than 80%)	100%
6	100%	100%	100%	100%	100%

NOTE: *If no option is selected as of the first date on which such contributions may be made to the Plan, Option 1 will apply.*

Part B. Year of Vesting Service

1. _____ Hours of Service *(no more than 1,000)* will be required to constitute a Year of Vesting Service.
2. _____ Hours of Service *(no more than 500 but less than the number specified in Part B, item 1, above)* must be exceeded to avoid a Break in Vesting Service.

NOTE: *If no hours are specified, 1,000 and 500 will apply for items 1 and 2, respectively.*

SECTION FIVE: DISTRIBUTIONS AND LOANS
Complete Parts A and B

Part A. Form of Distribution *(Answer each of the following items.)*

1. Individual Account Balances Exceeding $1,000

a. Lump Sum

Will a Participant be entitled to request a distribution of the Vested portion of their Individual Account in a lump sum, subject to Plan Section 5.02 *(select one)*?

Option 1: ☐ Yes.

Option 2: ☐ No.

b. Partial Payments

Will a Participant be entitled to request a partial distribution of the Vested portion of their Individual Account, subject to Plan Section 5.02 *(select one)*?

Option 1: ☐ Yes.

Option 2: ☐ No.

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c. Installment Payments

Will a Participant be entitled to request a distribution of the Vested portion of their Individual Account over a period not to exceed the life expectancy of the Participant or the joint and last survivor life expectancy of the Participant and their designated Beneficiary, subject to Plan Section 5.02 *(select one)*?

Option 1: ☐ Yes.

Option 2: ☐ No.

d. Annuity Contracts

Will a Participant be entitled to apply the Vested portion of their Individual Account toward the purchase of an annuity contract, subject to Plan Section 5.02 *(select one)*?

Option 1: ☐ Yes.

Option 2: ☐ No.

NOTE: *Option 1 must be selected for at least one of items (a) through (d). If neither option is selected for items (a) or (b) in Part A, item 1 above, Option 1 will apply. If neither option is selected for items (c) or (d), Option 2 will apply. If this Plan is restating a Prior Plan, the forms of distribution under this Plan must generally be at least as favorable as under the Prior Plan.*

Part B. Loans

May a Participant request a loan pursuant to Plan Section 5.16 *(select one)*?

Option 1: ☐ Yes.

Option 2: ☐ No.

NOTE: *If no option is selected, Option 2 will apply.*

NOTE: *Generally, Code Section 411(d)(6) prohibits the elimination of protected benefits. Protected benefits include the timing of payout options. If the Plan is restating a Prior Plan that permitted a distribution option described above that involves the timing of a distribution, the selections must generally be at least as favorable as under the Prior Plan. Certain forms of distributions (e.g., redundant forms of distribution) may, however, be eliminated. Refer to Code Section 411(d)(6) and the corresponding Treasury regulation for details pertaining to the elimination of otherwise protected benefits.*

SECTION SIX: DEFINITIONS

Complete Parts A through D

Part A. Hour of Service - Method of Determining Service

Service will be determined on the basis of *(select one)*:

Option 1: ☐ Elapsed Time.

Option 2: ☐ Actual hours for which an Employee is paid or entitled to payment.

Option 3: ☐ Days worked. An Employee will be credited with 10 Hours of Service if under the definition of Hours of Service such Employee would be credited with at least one Hour of Service during the day.

Option 4: ☐ Weeks worked. An Employee will be credited with 45 Hours of Service if under the definition of Hours of Service such Employee would be credited with at least one Hour of Service during the week.

Option 5: ☐ Semi-Monthly payroll periods worked. An Employee will be credited with 95 Hours of Service if under the definition of Hours of Service such Employee would be credited with at least one Hour of Service during the semi-monthly payroll period.

Option 6: ☐ Months worked. An Employee will be credited with 190 Hours of Service if under the definition of Hours of Service such Employee would be credited with at least one Hour of Service during the month.

NOTE: *If no option is selected, Option 2 will apply.*

Part B. Normal Retirement Age

The Normal Retirement Age under the Plan will be *(select and complete one)*:

Option 1: ☐ Age _____ *(not to exceed 65 or such later age as may be allowed in Code Section 411(a)(8))*.

Option 2: ☐ The later of age _____ *(not to exceed 65 or such later age as may be allowed in Code Section 411(a)(8))* or the _____ *(not to exceed fifth)* anniversary of the first day of the first Plan Year in which the Participant commenced participation in the Plan.

NOTE: *If no option is selected, Option 1 and age 59½ will apply.*

Part C. Plan Year Means

Option 1: ☐ The 12-consecutive month period which coincides with the Adopting Employer's tax year.

Option 2: ☐ The calendar year.

Option 3: ☐ Other 12-consecutive month period *(Specify a 12-consecutive month period selected in a uniform and nondiscriminatory manner.)* _____ .

NOTE: *If no option is selected, Option 1 will apply.*

If the initial Plan Year or any subsequent Plan Year is less than 12 months (a short Plan Year) specify such Plan Year's beginning and ending dates. _____.

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Part D. Predecessor Employer Service

In addition to the Hours of Service credited when an Employer maintains the plan of a predecessor employer, Hours of Service with a predecessor employer will be credited for the following purposes where the Employer does not maintain the plan of a predecessor employer *(select all that apply)*:

☐ Eligibility.

☐ Vesting.

☐ Allocation of Contributions.

Name of Predecessor Employer(s): _____ .

If service with a predecessor is taken into account for one or more of the items listed above, specify any additional limitations on crediting service that apply (e.g., limitations by business classification, length of service, etc.):

_____

SECTION SEVEN: MISCELLANEOUS

Complete Parts A and B

Part A. Life Insurance

Will life insurance investments be permitted under the Plan *(select one)*?

Option 1: ☐ Yes.

Option 2: ☐ No.

NOTE: *If no option is selected, Option 2 will apply.*

Part B. ERISA 404(c) Compliance

Does the Adopting Employer intend to operate this Plan in compliance with ERISA Section 404(c) as set forth in Plan Section 7.22(B)?

Option 1: ☐ Yes.

Option 2: ☐ No.

NOTE: *If no option is selected, Option 1 will apply.*

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SECTION EIGHT: TRUSTEE AND CUSTODIAN

Complete Parts A and B (as applicable)

Part A. **Trustee** *(This Part A must be completed unless the Plan only covers one or more Self-Employed Individuals or satisfies another exception under ERISA. Select one.)*

1. Trustee Appointment

Option 1: ☐ Financial Organization as Trustee

Option 2: ☐ Individual Trustee(s)

The Trustee of this Plan shall be a: ☐ Directed Trustee ☐ Discretionary Trustee

Name of Trustee _____

Address _____

Telephone _____

Signature _____ Title _____

2. Trust Agreement

If a Trustee is designated in Part A, item 1 above, which trust agreement will apply to the Plan *(select one)*?

Option 1: ☐ Trust provisions contained in Plan Section Eight.

Option 2: ☐ Separate executed trust agreement attached hereto.

NOTE: *If no option is selected, Option 1 will apply. If Option 2 is selected, the attached trust agreement must be on file with the IRS for use by the Prototype Sponsor listed in Section Nine below.*

Part B. **Custodian** *(Both a Custodian and Trustee may be appointed for the Plan. This Part B must be completed if a Trustee is not named in Part A, above.)*

1. Custodian Appointment

Financial Organization_____

Address _____

Signature _____

Type Name_____ Title _____

2. Custodial Agreement

If a Custodian is designated in Part B, item 1 above, which custodial agreement will apply to the Plan *(select one)*?

Option 1: ☐ Custodial provisions contained in Plan Section Eight.

Option 2: ☐ Separate executed custodial agreement attached hereto.

NOTE: *If no option is selected, Option 1 will apply. If Option 2 is selected, the attached custodial agreement must be on file with the IRS for use by the Prototype Sponsor listed in Section Nine below.*

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SECTION NINE: EMPLOYER SIGNATURE

Prototype Sponsor

Name of Prototype Sponsor_____

Address _____

Telephone _____

Check the applicable box if there is an attachment(s) that applies to this Plan other than a separate trust or custodial agreement.

☐ Attachment A, Protected Benefits and Prior Plan Provisions.

☐ Other: *(If this box is checked, please describe the attachment(s))* _____

Authorized Employer Signature

I am an authorized representative of the Adopting Employer named above and I state the following:

1. **I acknowledge that I have relied upon my own advisors regarding the completion of this Adoption Agreement and the legal tax implications of adopting this Plan;**
2. **I understand that my failure to properly complete this Adoption Agreement may result in disqualification of the Plan;**
3. **I understand that the Prototype Sponsor will inform me of any amendments made to the Plan and will notify me should it discontinue or abandon the Plan; and**
4. **I have received a copy of this Adoption Agreement, the corresponding Basic Plan Document and, if applicable, any separate trust or custodial agreement used in lieu of the trust or custodial agreement contained in the Basic Plan Document.**

Signature of Adopting Employer_____ Date Signed _____

Type Name_____ Title _____

NOTE: *The Adopting Employer may rely on an opinion letter issued by the Internal Revenue Service as evidence that the Plan is qualified under Code Section 401 of the Internal Revenue Code except to the extent provided in Revenue Procedure 2005-16. An Employer who has ever maintained or who later adopts any plan (including a welfare benefit fund, as defined in Code Section 419(e), which provides post-retirement medical benefits allocated to separate accounts for key employees, as defined in Code Section 419A(d)(3), or an individual medical account, as defined in Code Section 415(l)(2) in addition to this Plan may not rely on the opinion letter issued by the Internal Revenue Service with respect to the requirements of Code Sections 415 and 416.*

If the Employer who adopts or maintains multiple plans wishes to obtain reliance with respect to the requirements of Code Sections 415 and 416, application for a determination letter must be made to Employee Plans Determinations of the Internal Revenue Service. The Employer may not rely on the opinion letter in certain other circumstances, which are specified in the opinion letter issued with respect to the Plan or in Revenue Procedure 2005-16. This Adoption Agreement may be used only in conjunction with Basic Plan Document #01.

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ATTACHMENT A
PROTECTED BENEFITS AND PRIOR PLAN PROVISIONS

This Attachment may be used by an Adopting Employer to document protected benefits and other prior plan provisions that apply to some or all of the assets of the Adopting Employer's Plan.

ADOPTING EMPLOYER PLAN INFORMATION

Name of Adopting Employer_____

Plan Name_____

Plan Sequence Number_____ Trust Identification Number *(if applicable)*_____ Account Number_____

PROTECTED BENEFITS AND PRIOR PLAN PROVISIONS

Provision 1:

Source of Provision *(e.g., plan name and sequence number, good faith amendment, etc.)*:

Provision 2:

Source of Provision *(e.g., plan name and sequence number, good faith amendment, etc.)*:

Provision 3:

Source of Provision *(e.g., plan name and sequence number, good faith amendment, etc.)*:

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