

[Form Approved: OMB No. 3209-0007]

OFFICE OF GOVERNMENT ETHICS

Model Qualified Diversified Trust Provisions

The model qualified diversified trust agreement contained in this memorandum is made available by the Office of Government Ethics to attorneys for their use in drafting proposed trust agreements to be submitted for certification pursuant to section 102(f)(4) of the Ethics in Government Act of 1978 (Pub. L. 95-521, as amended) and 5 C.F.R. Part 2634(D). Under the statutory scheme, a trust agreement is not permitted to be recognized as creating an efficacious blind trust arrangement for any purpose under Federal law unless it had been certified by the Office prior to its execution. Proposed trust drafts submitted to the Office for consideration must adhere to the language of the model except to the extent, as agreed to by the Office of Government Ethics, that variations are required by the unusual circumstances of a particular case. The certificates of fiduciaries must be executed in the exact form indicated.

It is strongly recommended in any case in which the use of a blind trust is contemplated that the Office be consulted as early as possible. Prospective trustees or their representatives

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should schedule an appointment with the staff of the Office of Government Ethics for an orientation to the specialized procedures and requirements which have been established by law with respect to blind trust administration prior to the certification of the trust. As a condition of approval by the Office, prospective trustees must exhibit a familiarity with and commitment to the specialized nature of blind trust administration.

For further information, contact the Office of Government Ethics directly: telephone 202-208-8000, fax 202-208-8037.

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TRUST AGREEMENT

THIS TRUST AGREEMENT is made and entered into this _____ day of _____, _____, between _____ whose mailing address is _____, hereinafter called the Settlor, and _____ [**financial institution**], whose business address is _____, hereinafter called the Trustee.

WITNESSETH

SETTLOR has been appointed by the _____ to the position of _____ of the _____ [**department or agency**], with respect to which appointment the _____ has given its advice and consent. To avoid any conflict of interest, or appearance of any such conflict, which may arise from his duties and powers in such office and any other office to which he may subsequently be appointed to the extent provided for by section 102(f)(4) of the Ethics in Government Act of 1978 (Pub. L. 95-521, as amended) [hereinafter referred to as the "Act"], Settlor hereby creates a trust which shall become effective on the date this agreement bears.

1 The Trustee is an eligible entity as specified in
2 paragraph (a)(2) of 5 C.F.R. §2634.406, which meets the
3 requirements of paragraph (a)(3) of that section. The existence
4 of any other banking or client relationship between any
5 interested party and the Trustee is disclosed in annexed Schedule
6 A, and no other such relationship shall be instituted without the
7 prior written approval of the Director of the Office of
8 Government Ethics.

9
10 Settlor, therefore, hereby delivers to the Trustee, and
11 the Trustee hereby acknowledges receipt of, the property listed
12 in annexed Schedule B, subject to the provisions of this Trust
13 and the Act, and regulations promulgated thereunder, and other
14 applicable Federal laws, Executive orders, and regulations.

15
16 The primary purpose of this Trust is to confer on the
17 Trustee the sole responsibility to administer the trust and to
18 manage trust assets without the participation by, or the
19 knowledge of, any interested party. This includes the duty to
20 decide when and to what extent the original assets of the trust
21 are to be sold or disposed of and in what investments the
22 proceeds of sale are to be reinvested. Accordingly, the Settlor
23 and the Trustee agree as follows:

24
25 FIRST: (A) This Trust shall terminate upon the first to occur
26 of the following -- (1) Settlor's ceasing for any reason to

1 serve as _____ and in any other position to which he may
2 have been subsequently appointed in the Federal Government and
3 Settlor thereafter giving Trustee written notice directing that
4 this Trust be terminated; or (2) Settlor's death or incompetence.
5 The period between the date of this agreement and the termination
6 of the Trust shall be called the "Trust Term".
7

8 (B) Notwithstanding Paragraph (A) of this Article
9 FIRST, this Trust agreement may in addition be terminated through
10 revocation. However, such revocation or any amendment of the
11 terms of this Trust agreement shall require the prior written
12 approval of the Director of the Office of Government Ethics, upon
13 a showing of necessity and appropriateness.
14

15 SECOND: The Trustee in the exercise of its authority and
16 discretion to manage and control the assets of this Trust shall
17 not consult or notify any interested party.
18

19 THIRD: (A) The assets initially placed in Trust hereunder, as
20 listed in annexed Schedule B, shall consist of a
21 widely-diversified portfolio of readily marketable securities.
22 None of the assets is prohibited as a holding by any interested
23 party by the Act and regulations promulgated thereunder, and
24 other applicable Federal laws, Executive orders, and regulations,
25 or consist of securities of entities having substantial

1 activities in the area of the Settlor's primary responsibility
2 within the Federal government.

3

4 (B) The portfolio shall be deemed to be
5 widely-diversified if --

6

7 (1) the value of the securities concentrated in any
8 particular or limited industrial, economic or geographic sector
9 is no more than twenty percent, and

10

11 (2) the value of the securities of any issuer (other
12 than the United States Government) is no more than five percent,

13

14 of the total value of such assets. For purposes of this
15 paragraph (B), securities issued by the United States Government
16 are obligations of the United States.

17

18 (C) A security will be deemed readily marketable, for
19 purposes of this Article THIRD, if --

20

21 (1) daily price quotations for such security appear
22 regularly in newspapers of general circulation, and

23

24 (2) the Trust holds the security in a quantity that
25 does not unduly impair liquidity.

26

1 (D) Each asset listed in annexed Schedule B is free of
2 any restriction with respect to its transfer or sale except as
3 fully described in such Schedule B.

4
5 (E) During the Trust Term, the interested parties
6 shall not pledge, mortgage, or otherwise encumber their interests
7 in the property held in trust hereunder.

8
9 FOURTH: The Trustee shall not acquire any securities or other
10 property in excess of the diversification standards of Paragraph
11 (B)(1) and (2) of Article THIRD of this Trust.

12
13 FIFTH: The Trustee shall not knowingly or negligently disclose
14 to the public or to any interested party any information as to
15 the acquisition, retention, or disposition of any particular
16 securities or other Trust property.

17
18 SIXTH: (A) The income tax return of the Trust shall be
19 prepared by the Trustee or his delegate.

20
21 (B) During the Trust Term, the Trustee shall be
22 responsible for the preparation and filing of such income (joint
23 or separate) and other tax returns, with respect to the property
24 held hereunder and the income therefrom and with respect to any
25 other income of the Settlor, as shall be required by the laws of
26 the United States of America and any State or other political

1 subdivision thereof. The Settlor shall furnish to the Trustee
2 such additional information as it shall, from time to time, need
3 for the completion of such returns. The Settlor shall give to
4 the Trustee powers of attorney (I.R.S. Form 2848) and any other
5 instruments which it may need in order to prepare and file such
6 returns and to represent the Settlor in connection with any audit
7 of returns filed by it and to adjust, settle and pay any taxes
8 due in respect of such returns. The Settlor shall deliver to the
9 Trustee funds for the payment of any income tax obligation
10 estimated to have arisen otherwise than with respect to the
11 property held in Trust hereunder. The Trustee in its discretion
12 shall be entitled to reserve an appropriate amount of Trust
13 income for payment of any additional income tax obligation.

14
15 (C) Any tax return filed pursuant to this Article
16 SIXTH and any information relating thereto shall not be disclosed
17 publicly or to any interested party.

18
19 SEVENTH: An interested party shall not receive any report on the
20 holdings and sources of income of the Trust; except that the
21 Trustee shall --

22
23 (A) Make quarterly reports of the aggregate
24 market value of the assets representing such interested party's
25 interest in the Trust, and

1 (B) Provide an annual report for purposes of
2 section 102(a)(1) of the Act of the aggregate amount actually
3 paid from the Trust to such interested party (or applied for his
4 benefit), categorized in accordance with the provisions of such
5 section. For purposes of this Article SEVENTH, only amounts
6 actually received in respect of this Trust by such interested
7 party (or applied for his benefit) shall be deemed income derived
8 from this Trust.

9
10 A copy of each written communication under this Article SEVENTH
11 shall be filed by the Trustee with the Director, Office of
12 Government Ethics, within five days of the date of the
13 communication.

14
15 EIGHTH: There shall be no direct or indirect communication
16 between an interested party and the Trustee with respect to the
17 Trust unless the communication is in writing and has the prior
18 written approval of the Director of the Office of Government
19 Ethics, and unless it relates only --

20
21 (A) To a request for a distribution in cash or other
22 unspecified assets of the trust,

23
24 (B) To the general financial interest and needs of the
25 interested party (including, but not limited to, a preference for
26 maximizing current income or long-term appreciation), or

1 (C) To information, documents, and funds provided by,
2 or needed from, the Settlor, to effectuate the provisions of
3 Paragraph (B) of Article SIXTH of this Trust, with respect to any
4 income tax obligation arising otherwise than with respect to the
5 property held in Trust hereunder.

6
7 A copy of each written communication under this Article EIGHTH
8 shall be filed by the person initiating the communication with
9 the Director, Office of Government Ethics, within five days of
10 the date of the communication.

11
12 NINTH: The interested parties shall not take any action to
13 obtain, and shall take appropriate action to avoid receiving,
14 information with respect to the holdings of, and the sources of
15 income of, the Trust, including obtaining a copy of any Trust or
16 individual tax return filed by the Trustee or any information
17 relating thereto, except for the reports and information
18 specified in Article SEVENTH of this Trust.

19
20 TENTH: The Trustee shall file with the Director, Office of
21 Government Ethics, by the May 15th after any calendar year during
22 which the Trust was in existence a properly executed Certificate
23 of Compliance in the form prescribed in Appendix B to 5 C.F.R.
24 Part 2634. In addition, the Trustee shall maintain and make
25 available for inspection by the Office of Government Ethics, as
26 it may from time to time direct, the Trust's books of account and

1 other records and copies of the Trust's tax returns for each
2 taxable year of the Trust.

3

4 ELEVENTH: The Trustee shall not knowingly or negligently --

5

6 (A) Disclose any information to any interested party
7 with respect to this Trust that may not be disclosed pursuant to
8 any provision or requirement of Title I of the Act (and the
9 regulations thereunder) or this Trust,

10

11 (B) Acquire any holding the ownership of which is
12 prohibited by, or not in accordance with the terms of, this
13 Trust,

14

15 (C) Solicit advice from any interested party with
16 respect to this Trust, which solicitation is prohibited by any
17 provision or requirement of Title I of the Act (and the
18 regulations thereunder) or this Trust, or

19

20 (D) Fail to file any document required by Title I of
21 the Act (and the regulations thereunder).

22

23 TWELFTH: The Settlor shall not knowingly or negligently --

24

25 (A) Solicit or receive any information with respect to
26 this Trust that may not be disclosed pursuant to any provision or

1 requirement of Title I of the Act (and the regulations
2 thereunder) or this Trust, or

3

4 (B) Fail to file any document required by Title I of
5 the Act (and the regulations thereunder).

6

7 THIRTEENTH [**Optional provision**]: Subject to such amounts as the
8 Trustee may from time to time reserve for the payment of such
9 income taxes as may be due and payable by the Trust, and for
10 payment of expenses and compensation as provided for in this
11 Trust, during the Trust Term the Trustee shall pay to the Settlor
12 \$_____ at the beginning of each month.

13

14 FOURTEENTH: In addition to the rights, duties, and powers
15 conferred upon the Trustee by law, the Trustee shall have the
16 following powers, rights, and discretion with respect to any
17 Trust property held by it:

18

19 (A) To sell, exchange, or otherwise dispose of the
20 property in such manner and upon such terms as the Trustee in its
21 sole discretion shall deem appropriate;

22

23 (B) Except as limited by specific enumeration in this
24 Trust agreement, to invest and reinvest the principal and any
25 undistributed income, in property of any kind;

26

1 (C) Except as limited by specific enumeration in this
2 Trust agreement, to participate in any reorganization,
3 consolidation, merger, or dissolution of any corporation having
4 stocks, bonds or other securities which may be held at any time,
5 to receive and hold any property which may be allocated or
6 distributed to it by reason of participation in any such
7 reorganization, consolidation, merger, or dissolution;

8
9 (D) To exercise all conversion, subscription, voting,
10 and other rights of whatsoever nature pertaining to any such
11 property and to grant proxies, discretionary, or otherwise, with
12 respect thereto;

13
14 (E) To elect, appoint, and remove directors of any
15 corporation, the stock of which shall constitute Trust property,
16 and to act through its nominee as a director or officer of any
17 such corporation;

18
19 (F) Except as limited by specific enumeration in this
20 Trust agreement, to manage, control, operate, convert, reconvert,
21 invest, reinvest, sell, exchange, lease, mortgage, grant a
22 security interest in, pledge, pool, or otherwise encumber and
23 deal with the property of this Trust, for Trust purposes and in
24 behalf of the Trust to the same extent and with the same powers
25 that any individual would have with respect to his own property
26 and funds;

1 (G) Except as limited by specific enumeration in this
2 Trust agreement, to borrow money from any person or corporation
3 (including the Trustee hereunder) and for the purpose of securing
4 the payment thereof, to pledge, mortgage, or otherwise encumber
5 any and all such property for Trust purposes upon such terms,
6 covenants, and conditions as it may deem proper and also to
7 extend the time of payment of any loans or encumbrances which at
8 any time may be encumbrances on any such property irrespective of
9 by whom the same were made or where the obligations may or should
10 ultimately be borne on such terms, covenants, and conditions as
11 it may deem proper;

12
13 (H) To register any property belonging to the Trust in
14 the name of its nominee, or to hold the same unregistered, or in
15 such form that title shall pass by delivery;

16
17 (I) To abandon, settle, compromise, extend, renew,
18 modify, adjust, or submit to arbitration in whole or in part and
19 without the order or decree of any court any and all claims
20 whether such claims shall increase or decrease the assets held
21 under this Trust agreement;

22
23 (J) To determine whether or to what extent receipts
24 should be deemed income or principal, whether or to what extent
25 expenditures should be charged against principal or income, and
26 what other adjustments should be made between principal and

1 income, provided that such adjustments shall not conflict with
2 well-settled rules for the determination of principal and income
3 adjustments, or the Uniform Principal and Income Act, if in
4 effect in the State of _____;

5

6 (K) To determine whether or not to amortize bonds
7 purchased at a premium;

8

9 (L) Except to the extent otherwise expressly provided
10 in this Trust agreement, to make distributions in kind or in cash
11 or partly in each and for such purposes to fix, insofar as
12 legally permissible, the value of any property;

13

14 (M) To pay such persons employed by the Trustee to
15 assist it in the administration of the Trust, including
16 investment counsel, accountants, and those engaged for assistance
17 in preparation of tax returns, such sums as the Trustee deems to
18 be reasonable compensation for the services rendered by such
19 persons. Such persons may rely upon and execute the written
20 instructions of the Trustee, and shall not be obliged to inquire
21 into the propriety thereof;

22

23 (N) No person may be employed or consulted by the
24 Trustee to assist it in any capacity in the administration of the
25 Trust or the management and control of Trust assets, including
26 investment counsel, investment advisers, accountants, and those

1 engaged for assistance in preparation of tax returns, unless the
2 following four conditions are met --

3

4 (1) when an interested party learns about such
5 employment or consultation, the person must sign the Trust
6 instrument as a party, subject to the prior approval of the
7 Director of the Office of Government Ethics,

8

9 (2) under all the facts and circumstances, the person
10 is determined pursuant to the requirements for eligible entities
11 under 5 C.F.R. §2634.406(a)(3) to be independent of any
12 interested party with respect to the trust arrangement,

13

14 (3) the person is instructed by the Trustee to make no
15 disclosure publicly or to any interested party which might
16 specifically identify current Trust assets or those assets which
17 have been sold or disposed of from Trust holdings, and

18

19 (4) the person is instructed by the Trustee to have no
20 direct communication with any interested party, and that any
21 indirect communication with an interested party shall be made
22 only through the Trustee pursuant to Article EIGHTH of this
23 Trust;

24

25 (0) Except as specifically limited in this Trust
26 agreement, to do all such acts, take all such proceedings, and

1 exercise all such rights and privileges, although not otherwise
2 specifically mentioned in this Article FOURTEENTH, with relation
3 to any such property, as if the Trustee were the absolute owner
4 thereof, and in connection therewith to make, execute, and
5 deliver any instruments and to enter into any covenants or
6 agreements binding the Trust.

7
8 FIFTEENTH: Notwithstanding the provisions of Article
9 FOURTEENTH of this Trust, the Trustee shall not acquire by
10 purchase, grant, gift, exercise of option, or otherwise, without
11 the prior written approval of the Director of the Office of
12 Government Ethics, any securities, cash, or other property in
13 addition to that listed in the annexed Schedule B, from any
14 interested party.

15
16 SIXTEENTH: The Trustee shall not at any time be held liable
17 for any action taken or not taken or for any loss or depreciation
18 of the value of any property held in the Trust whether due to an
19 error of judgment or otherwise where the Trustee has exercised
20 good faith and ordinary diligence in the exercise of its duties
21 such as would have been exercised by a prudent man.

22
23
24 SEVENTEENTH: No Trustee hereunder shall be required, in any
25 jurisdiction, to furnish any bond or other security, or to obtain

1 the approval of any court before applying, distributing, selling,
2 or otherwise dealing with property.

3

4 EIGHTEENTH: Except as provided in Article SEVENTH of this
5 Trust, the Trustee shall make no accounting to the Settlor until
6 the date of termination of this Trust, and, at such time, it
7 shall be required to make full and proper accounting and turn
8 over to the Settlor all assets of the Trust then held by it the
9 said Trustee.

10

11 NINETEENTH: The Trustee shall be compensated in accordance
12 with the table in the annexed Schedule C, or as provided for by
13 the laws of the State of _____.

14

15 TWENTIETH: The Trustee (and any substitute or successor)
16 shall have the right, by a duly acknowledged instrument delivered
17 to the Settlor to resign as Trustee in which event the Settlor
18 shall designate and appoint a substitute or successor Trustee
19 (subject to the prior written approval of the Director of the
20 Office of Government Ethics) in its place and stead, which shall
21 have all of the rights, powers, discretions, and duties conferred
22 or imposed hereunder upon the original Trustee.

23

24 TWENTY-FIRST: Any amendment of the terms of this Trust
25 Agreement, including the appointment of a substitute or successor
26 Trustee, shall require the prior written approval of the Director

1 of the Office of Government Ethics, upon a showing of necessity
2 and appropriateness. Any such substitute or successor Trustee
3 shall have all of the rights, powers, discretions, and duties
4 conferred or imposed hereunder upon the original Trustee.

5

6 The term "interested party" as used in this Trust means
7 the Settlor, his spouse, any minor or dependent child, and their
8 representatives.

9

Privacy Act Statement

Section 102(f) of the Ethics in Government Act of 1978 as amended (the "Ethics Act"), 5 U.S.C. Appendix, § 102(f), and subpart D of 5 CFR part 2634 of the regulations of the Office of Government Ethics (OGE) require the reporting of this information for the administration of qualified trusts under the Ethics Act. The primary use of the information on the trust instrument prepared based in part upon this model draft document is for review by Government officials of OGE and the agency of the Government employee for whom the trust is being established to determine compliance with applicable Federal laws and regulations as regards qualified trusts. Additional disclosures of the information in the trust document itself may be made: (1) to any requesting person in accordance with the access provisions of section 105 of the Ethics Act (underlying trust information is not generally available under this routine use, except for the list of assets initially placed in trust and statutorily mandated notifications by the trustee of divestitures of initially transferred assets to below \$1,000 in value in the case of a qualified blind trust); (2) to a Federal, State or local law enforcement agency if the disclosing agency becomes aware of a violation or potential violation of law or regulation; (3) to a court or party in a court or Federal administrative proceeding if the Government is a party or in order to comply with a judge-issued subpoena; (4) to a source when necessary to obtain information relevant to a conflict of interest issue; (5) to the National Archives and Records Administration or the General Services Administration in records management inspections; (6) to the Office of Management and Budget during legislative coordination on private relief legislation; and (7) in response to a discovery request or for the appearance of a witness in a pending judicial or administrative proceeding, if the information is relevant to the subject matter. Knowing or willful falsification of information on the trust document prepared from this model draft or failure to file or report information required to be reported under title I of the Ethics Act and 5 CFR part 2634 of the OGE regulations may lead to disqualification as a trustee or other fiduciary as well as possible disqualification of the underlying trust itself. Knowing and willful falsification of information required under the Ethics Act and the regulations may also subject you to criminal prosecution.

Public Burden Information and Paperwork Reduction Act Statement

This collection of information is estimated to take an average of one hundred hours per response, given the estimated amount of time deemed necessary to structure an actual trust arrangement based in part on this model draft. You can send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for

reducing this burden, to: Deputy Director for Office of Administration and Information Management, U.S. Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917. Do not send your completed trust document to this address; rather, see the remainder of the instructions to this model draft.

Pursuant to the Paperwork Reduction Act, as amended, an agency may not conduct or sponsor, and no person is required to respond to, a collection of information unless it displays a currently valid OMB control number (that number, 3209-0007, is displayed here and in the upper left-hand corner of the first page of this OGE model qualified trust draft document).