

U.S. OFFICE OF GOVERNMENT ETHICS

Model Qualified Blind Trust Provisions

[For use in the case of multiple fiduciaries]

The model qualified blind trust agreement contained in this memorandum is made available by the U.S. Office of Government Ethics to attorneys for their use in drafting proposed trust agreements to be submitted for certification pursuant to section 102(f)(3) of the Ethics in Government Act of 1978 (Pub. L. 95-521, as amended) and subpart D of 5 C.F.R. Part 2634. 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 U.S. Office of Government Ethics, that variations are required by the unusual circumstances of a particular case. The fiduciaries' certificates of independence 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 should schedule an appointment with the staff of the U.S. 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 U.S. Office of Government Ethics directly:
telephone 202-482-9300, fax 202-482-9237.

1 TRUST AGREEMENT

2

3 THIS TRUST AGREEMENT is made and entered into this _____
 4 day of _____, _____, between _____,
 5 whose mailing address is _____,
 6 hereinafter called the Settlor; _____, whose
 7 business address is _____, hereinafter
 8 called the Trustee; and _____, whose business address is
 9 _____, hereinafter called the Investment
 10 Manager; such Trustee and Investment Manager hereinafter collectively called the Fiduciaries.

11

12 WITNESSETH

13

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

22

23 The Trustee is an eligible entity as specified in paragraph (a) of 5 C.F.R. § 2634.405 that
 24 meets the requirements of paragraph (c) of that section. The existence of any other banking or
 25 client relationship between any interested party and the Trustee is disclosed in annexed
 26 Schedule A, and no other such relationship shall be instituted without the prior written approval
 27 of the Director of the U.S. Office of Government Ethics.

28

29 The Investment Manager is an eligible entity as specified in paragraph (a) of 5 C.F.R.
 30 § 2634.405 that meets the requirements of paragraph (c) of that section. The existence of any
 31 other banking or client relationship between any interested party and the Investment Manager is

1 disclosed in annexed Schedule A, and no other such relationship shall be instituted without the
2 prior written approval of the Director of the U.S. Office of Government Ethics.

3

4 The Custodian is an eligible entity as specified in paragraph (a) of 5 C.F.R. § 2634.405
5 that meets the requirements of paragraph (c) of that section. The existence of any other banking
6 or client relationship between any interested party and the Custodian is disclosed in annexed
7 Schedule A, and no other such relationship shall be instituted without the prior written approval
8 of the Director of the U.S. Office of Government Ethics.

9

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

14

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

21

22 FIRST: (A) This Trust shall terminate upon the first to occur of the following –
23 (1) Settlor's ceasing for any reason to serve as _____ and in any other position to
24 which he may have been subsequently appointed in the Federal Government and Settlor
25 thereafter giving Trustee written notice directing that this Trust be terminated; or (2) Settlor's
26 death or incompetence. The period between the date of this agreement and the termination of the
27 Trust shall be called the "Trust Term".

28

29 (B) Notwithstanding Paragraph (A) of this Article FIRST, this Trust agreement
30 may in addition be terminated through revocation. However, within thirty days of dissolution of
31 a blind trust, the interested party shall file a report of the dissolution and a list of the assets of the

1 trust at the time of dissolution, categorized as to value in accordance with 5 C.F.R.
2 § 2634.301(d), with the Director of the U.S. Office of Government Ethics.

3

4 (C) The Fiduciaries and the interested parties may amend the terms of this trust
5 agreement only with the prior written approval of the Director of the U.S. Office of Government
6 Ethics and upon a showing of necessity and appropriateness.

7

8 SECOND: The Fiduciaries in the exercise of their authority and discretion to manage and
9 control the assets of this Trust shall not consult or notify any interested party or any
10 representative of an interested party.

11

12 THIRD: (A) None of the assets initially placed in Trust hereunder, as listed in
13 annexed Schedule B, is prohibited as a holding by any interested party by the Act and
14 regulations promulgated thereunder, and other applicable Federal laws, Executive orders,
15 and regulations.

16

17 (B) Each asset listed in annexed Schedule B is free of any restriction with respect
18 to its transfer or sale, except as fully described in such Schedule B.

19

20 (C) During the Trust Term, the interested parties shall not pledge, mortgage, or
21 otherwise encumber their interests in the property held in trust hereunder.

22

23 FOURTH: The Fiduciaries shall not knowingly and willfully, or negligently, disclose to the
24 public or to any interested party or any representative of an interested party any information as to
25 the acquisition, retention, or disposition of any particular securities or other Trust property;
26 except that, the Trustee shall promptly notify the Settlor and the Director of the U.S. Office of
27 Government Ethics when the holdings of any particular asset transferred to the Trust by any
28 interested party have been completely disposed of or when the value of that asset becomes less
29 than \$1,000.

30

1 FIFTH: The income tax return of the Trust shall be prepared by the Trustee or his
2 delegate, and such return and any information relating thereto (other than the Trust income
3 summarized in appropriate categories necessary to complete an interested party's tax return),
4 shall not be disclosed publicly or to any interested party or any representative of an interested
5 party. To effectuate the provisions of this Article FIFTH, the Trustee shall use its best efforts to
6 provide the interested party, promptly after the close of each taxable year of the Trust during the
7 Trust Term, with that information concerning the Trust, including information on income,
8 expenses, capital gains and capital losses, which is necessary for the interested party to prepare
9 and file tax returns required by the laws of the United States and the laws of any State, district or
10 political subdivision; provided however, that in no event shall the Fiduciaries disclose publicly or
11 to any interested party or any representative of an interested party any information whatsoever
12 which might identify the securities or other property which comprise the assets of the Trust or
13 identify the securities or other property which have been sold from the assets of the Trust.

14

15 SIXTH: An interested party and any representative of an interested party shall not receive
16 any report on the holdings and sources of income of the Trust; except that the Trustee shall –

17

18 (A) Make quarterly reports of the aggregate market value of the assets
19 representing such interested party's interest in the Trust,

20

21 (B) Report the net income or loss of the Trust and make other reports necessary
22 to enable the interested party to complete an individual tax return required by law (in
23 accordance with Article FIFTH of this Trust), and

24

25 (C) Provide an annual report for purposes of section 102(a)(1) of the Act of
26 the aggregate amount of the Trust's income attributable to the beneficial interest in the Trust
27 of such interested party, categorized in accordance with the provisions of such section.

28

29 A copy of each written communication under this Article SIXTH shall be filed by the Trustee
30 with the Director, U.S. Office of Government Ethics, within five days of the date of the
31 communication.

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2 SEVENTH: There shall be no direct or indirect communication between an interested party
3 or any representative of an interested party and the Fiduciaries with respect to the Trust unless
4 the communication is with the Trustee, in writing, and has the prior written approval of the
5 Director, U.S. Office of Government Ethics, and unless it relates only –

6

7 (A) To a request for a distribution of cash or other unspecified assets of the
8 trust,

9

10 (B) To the general financial interest and needs of the interested party (including,
11 but not limited to, a preference for maximizing income or long-term capital gain),

12

13 (C) To the notification of the Fiduciaries of a law, Executive order, or
14 regulation subsequently applicable to the reporting individual that prohibits the interested
15 party from holding an asset, which notification directs that the asset not be held by the Trust,
16 or

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18 (D) To directions to the Fiduciaries to sell all of an asset initially placed in the
19 Trust by an interested party that in the determination of the Settlor creates a conflict of interest or
20 the appearance thereof due to the subsequent assumption of duties by the Settlor (but any such
21 direction is not required).

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23 A copy of each written communication under this Article SEVENTH shall be filed by the
24 person initiating the communication with the Director, U.S. Office of Government Ethics,
25 within five days of the date of the communication.

26

27 EIGHTH: The interested parties and any representative of an interested party shall not
28 take any action to obtain, and shall take reasonable action to avoid receiving, information with
29 respect to the holdings of, and the sources of income of, the Trust, including obtaining a copy
30 of any Trust tax return filed by the Trustee or any information relating thereto, except for the
31 reports and information specified in Article SIXTH of this Trust.

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NINTH: The Fiduciaries shall each file with the Director, U.S. Office of Government Ethics, by the May 15th after any calendar year during which the Trust was in existence a properly executed Certificate of Compliance in the form prescribed in Appendix B to 5 C.F.R. Part 2634. In addition, the Fiduciaries shall maintain and make available for inspection by the U.S. Office of Government Ethics, as it may from time to time direct, the Trust's books of account and other records and copies of the Trust's tax returns for each taxable year of the Trust.

TENTH: The Fiduciaries shall not knowingly and willfully, or negligently –

(A) Disclose any information to any interested party or any representative of an interested party with respect to this Trust that may not be disclosed pursuant to any provision or requirement of Title I of the Act (and the regulations thereunder) or this Trust;

(B) Acquire any holding:

(1) directly from an interested party or any representative of an interested party without the prior written approval of the Director of the U.S. Office of Government Ethics, or

(2) the ownership of which is prohibited by, or not in accordance with Title I of the Act (and the regulations thereunder), the terms of this Trust, or other applicable statutes and regulations;

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

(D) Fail to file any document required by Title I of the Act (and the regulations thereunder) or this Trust.

ELEVENTH: The Settlor shall not knowingly and willfully, or negligently –

1 (A) Solicit or receive any information with respect to this Trust that may not be
2 disclosed pursuant to any provision or requirement of Title I of the Act (and the regulations
3 thereunder) or this Trust, or

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

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

12
13 **THIRTEENTH:** In addition to the rights, duties, and powers conferred upon the Fiduciaries
14 by law, the Fiduciaries shall have the following powers, rights, and discretion with respect to any
15 Trust property held by them:

16
17 (A) To sell, exchange, or otherwise dispose of the property in such manner and
18 upon such terms as the Fiduciaries in its sole discretion shall deem appropriate;

19
20 (B) Except as limited by specific enumeration in this Trust agreement, to invest
21 and reinvest the principal and any undistributed income, in property of any kind;

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23 (C) Except as limited by specific enumeration in this Trust agreement, to
24 participate in any reorganization, consolidation, merger, or dissolution of any corporation having
25 stocks, bonds or other securities that may be held at any time, to receive and hold any property
26 that may be allocated or distributed to it by reason of participation in any such reorganization,
27 consolidation, merger, or dissolution;

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29 (D) To exercise all conversion, subscription, voting, and other rights of
30 whatsoever nature pertaining to any such property and to grant proxies, discretionary, or
31 otherwise, with respect thereto;

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

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

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

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

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

(J) To determine whether or to what extent receipts should be deemed income or principal, whether or to what extent expenditures should be charged against principal or income, and what other adjustments should be made between principal and income, provided that such adjustments shall not conflict with well-settled rules for the determination of principal and

1 income adjustments, or the Uniform Principal and Income Act, if in effect in the State of
2 _____;

3

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

6

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

10

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

17

18 (N) No person may be employed or consulted by the Fiduciaries to assist it in any
19 capacity in the administration of the Trust or the management and control of Trust assets,
20 including investment counsel, investment advisers, accountants, and those engaged for assistance
21 in preparation of tax returns, unless the following four conditions are met –

22

23 (1) when an interested party or any representative of an interested party
24 learns about such employment or consultation, the person must sign the Trust
25 instrument as a party, subject to the prior approval of the Director of the U.S. Office of
26 Government Ethics,

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28 (2) under all the facts and circumstances, the person is determined pursuant to
29 the requirements for eligible entities under 5 C.F.R. § 2634.405(c) to be independent of any
30 interested party with respect to the trust arrangement,

31

1 (3) the person is instructed by the Fiduciaries to make no disclosure publicly or
2 to any interested party or any representative of an interested party that might specifically
3 identify current Trust assets or those assets which have been sold or disposed of from Trust
4 holdings, and

5
6 (4) the person is instructed by the Fiduciaries to have no direct communication
7 with any interested party or any representative of an interested party, and that any indirect
8 communication with an interested party or any representative of an interested party shall be made
9 only through the Fiduciaries pursuant to Article SEVENTH of this Trust;

10
11 (O) Except as specifically limited in this Trust agreement, to do all such acts,
12 take all such proceedings, and exercise all such rights and privileges, although not otherwise
13 specifically mentioned in this Article THIRTEENTH, with relation to any such property, as if the
14 Fiduciaries were the absolute owner thereof, and in connection therewith to make, execute, and
15 deliver any instruments and to enter into any covenants or agreements binding the Trust.

16
17 **FOURTEENTH:** Notwithstanding the provisions of Article THIRTEENTH of this Trust,
18 the Fiduciaries shall not acquire by purchase, grant, gift, exercise of option, or otherwise,
19 without the prior written approval of the Director of the U.S. Office of Government Ethics, any
20 securities, cash, or other property in addition to that listed in the annexed Schedule B, from any
21 interested party or any representative of an interested party.

22
23 **FIFTEENTH:** The Fiduciaries shall not at any time be held liable for any action taken or
24 not taken or for any loss or depreciation of the value of any property held in the Trust whether
25 due to an error of judgment or otherwise where the Fiduciaries has exercised good faith and
26 ordinary diligence in the exercise of its duties such as would have been exercised by a prudent
27 man.

28
29 **SIXTEENTH:** No Fiduciaries hereunder shall be required, in any jurisdiction, to furnish
30 any bond or other security, or to obtain the approval of any court before applying, distributing,
31 selling, or otherwise dealing with property.

1 SEVENTEENTH: Except as provided in Article SIXTH of this Trust, the Fiduciaries shall
2 make no accounting to the Settlor until the date of termination of this Trust, and, at such time,
3 they shall be required to make full and proper accounting and turn over to the Settlor all assets of
4 the Trust then held by them the said Fiduciaries.

5
6 EIGHTEENTH: The Fiduciaries (and any substitute or successor) shall have the right, by a
7 duly acknowledged instrument delivered to the Settlor to resign as Fiduciaries in which event the
8 Settlor shall designate and appoint substitute or successor Fiduciaries (subject to the prior written
9 approval of the Director, U.S. Office of Government Ethics) in their place and stead, which shall
10 have all of the rights, powers, discretions, and duties conferred or imposed hereunder upon the
11 original Fiduciaries.

12
13 NINETEENTH: Any amendment of the terms of this Trust Agreement, including the
14 appointment of a substitute or successor Fiduciaries, shall require the prior written approval of
15 the Director of the U.S. Office of Government Ethics, upon a showing of necessity and
16 appropriateness. Any such substitute or successor Fiduciaries shall have all of the rights,
17 powers, discretions, and duties conferred or imposed hereunder upon the original Fiduciaries.

18
19 **TWENTIETH [Optional provision]: [A provision delineating the respective powers and**
20 **responsibilities of the Fiduciaries is recommended. Note that the Fiduciaries will not be**
21 **able to communicate with the Settlor for resolution of any disputes that may arise among**
22 **them.]**

23
24 The term "interested party" as used in this Trust means the Settlor, the Settlor's spouse,
25 and any minor or dependent child.

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 C.F.R. part 2634 of the regulations of the U.S. Office of Government Ethics (OGE) require the reporting of this information for the administration of qualified trusts under the 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 disclose the information furnished by the reporting official, in accordance with provisions of section 105 of the Ethics in Government Act of 1978, as amended, to any requesting person.
- 2) To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.
- 3) To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial or administrative proceeding or in order to comply with a subpoena issued by a judge of a court of competent jurisdiction.
- 4) To disclose information to any source when necessary to obtain information relevant to a conflict-of-interest investigation or determination.
- 5) By the National Archives and Records Administration or the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.
- 6) To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection private relief legislation as set forth in OMB Circular No. A-19.
- 7) To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which OGE is authorized to appear, when: OGE; or an employee of OGE in his or her official capacity, or any employee of OGE in his or her individual capacity (where the Department of Justice or OGE has agreed to represent the employee); or the United States (when OGE determines that litigation is likely to affect OGE), is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or OGE is deemed by OGE to be relevant and necessary to the litigation provided, however, that the disclosure is compatible with the purpose for which such records were collected.

- 8) To disclose the public financial disclosure report and any accompanying documents to reviewing officials in a new office, department or agency when an employee transfers or is detailed from a covered position in one office, department or agency to a covered position in another office, department or agency.
- 9) To disclose information to a Member of Congress or a congressional office in response to an inquiry made on behalf of an individual who is the subject of the record.
- 10) To disclose the information to contractors, grantees, experts, consultants, detailees, and other non-Government employees performing or working on a contract, service, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

For additional information please see OGE/GVT-1 Governmentwide Privacy System of Records.

Penalties

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 C.F.R. 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 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: Program Counsel, 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).