

## U.S. OFFICE OF GOVERNMENT ETHICS

### Model Qualified Blind Trust Provisions

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  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

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)(A) 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.

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

Settlor, therefore, hereby delivers to the Trustee, and the Trustee hereby acknowledges receipt of, the property listed in annexed Schedule B, subject to the provisions of this Trust and

1 the Act, and regulations promulgated thereunder, and other applicable Federal laws, Executive  
2 orders, and regulations.

3

4 The primary purpose of this Trust is to confer on the Trustee the sole responsibility to  
5 administer the trust and to manage trust assets without the participation by, or the knowledge of,  
6 any interested party or any representative of an interested party. This includes the duty to decide  
7 when and to what extent the original assets are to be sold or disposed of and in what investments  
8 the proceeds of sale are to be reinvested. Accordingly, the Settlor and the Trustee agree as  
9 follows:

10

11 FIRST: (A) This Trust shall terminate upon the first to occur of the following –

12 (1) Settlor's ceasing for any reason to serve as \_\_\_\_\_  
13 and in any other position to which he may have been subsequently appointed in the Federal  
14 Government and Settlor thereafter giving Trustee written notice directing that this Trust be  
15 terminated; or (2) Settlor's death or incompetence. The period between the date of this  
16 agreement and the termination of the Trust shall be called the "Trust Term".

17

18 (B) Notwithstanding Paragraph (A) of this Article FIRST, this Trust agreement  
19 may in addition be terminated through revocation. However, within thirty days of dissolution of  
20 the trust, the interested party shall file a report of the dissolution and a list of the assets of the  
21 trust at the time of dissolution, categorized as to value in accordance with 5 C.F.R.  
22 § 2634.301(d), with the Director of the U.S. Office of Government Ethics .

23

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

27

28 SECOND: The Trustee in the exercise of its authority and discretion to manage and control  
29 the assets of this Trust shall not consult or notify any interested party or any representative of an  
30 interested party.

31

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

4  
5 (B) Each asset listed in annexed Schedule B is free of any restriction with respect  
6 to its transfer or sale, except as fully described in such Schedule B.

7  
8 (C) During the Trust Term, the interested parties shall not pledge, mortgage, or  
9 otherwise encumber their interests in the property held in trust hereunder.

10

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

18

19 FIFTH: The income tax return of the Trust shall be prepared by the Trustee or his  
20 delegate, and such return and any information relating thereto (other than the Trust income  
21 summarized in appropriate categories necessary to complete an interested party's tax return),  
22 shall not be disclosed publicly or to any interested party or any representative of an interested  
23 party. To effectuate the provisions of this Article FIFTH, the Trustee shall use its best efforts to  
24 provide the interested party, promptly after the close of each taxable year of the Trust during the  
25 Trust Term, with that information concerning the Trust, including information on income,  
26 expenses, capital gains and capital losses, which is necessary for the interested party to prepare  
27 and file tax returns required by the laws of the United States and the laws of any State, district or  
28 political subdivision; provided however, that in no event shall the Trustee disclose publicly or to  
29 any interested party or any representative of an interested party any information whatsoever  
30 which might identify the securities or other property which comprise the assets of the Trust or  
31 identify the securities or other property which have been sold from the assets of the Trust.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

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

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

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

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

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

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

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

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

1           (C) To the notification of the Trustee of a law, Executive order, or regulation  
2 subsequently applicable to the Settlor that prohibits the interested party from holding an asset,  
3 which notification directs that the asset not be held by the Trust, or  
4

5           (D) To directions to the Trustee to sell all of an asset initially placed in the Trust  
6 by an interested party that in the determination of the Settlor creates a conflict of interest or the  
7 appearance thereof due to the subsequent assumption of duties by the Settlor (but any such  
8 direction is not required).  
9

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

14 EIGHTH:     The interested parties and any representative of an interested party shall not take  
15 any action to obtain, and shall take reasonable action to avoid receiving, information with respect  
16 to the holdings of, and the sources of income of, the Trust, including obtaining a copy of any  
17 Trust tax return filed by the Trustee or any information relating thereto, except for the reports  
18 and information specified in Article SIXTH of this Trust.  
19

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

27 TENTH:       The Trustee or any other designated fiduciaries shall not knowingly and willfully,  
28 or negligently –  
29

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

4  
5 (B) Acquire any holding:

6  
7 (1) directly from an interested party or any representative of an interested party  
8 without the prior written approval of the Director of the U.S. Office of Government Ethics, or  
9

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

13  
14 (C) Solicit advice from any interested party or any representative of an interested  
15 party with respect to this Trust, which solicitation is prohibited by any provision or requirement  
16 of Title I of the Act (and the regulations thereunder) or this Trust; or

17  
18 (D) Fail to file any document required by Title I of the Act (and the regulations  
19 thereunder) or this Trust.

20  
21 ELEVENTH: The Settlor shall not knowingly and willfully, or negligently –

22  
23 (A) Solicit or receive any information with respect to this Trust that may not be  
24 disclosed pursuant to any provision or requirement of Title I of the Act (and the regulations  
25 thereunder) or this Trust, or

26  
27 (B) Fail to file any document required by Title I of the Act (and the regulations  
28 thereunder).

29

1 TWELFTH [**Optional provision**]: Subject to such amounts as the Trustee may from time to  
2 time reserve for the payment of such income taxes as may be due and payable by the Trust, and  
3 for payment of expenses and compensation as provided for in this Trust, during the Trust Term  
4 the Trustee shall pay to the Settlor \$\_\_\_\_\_ at the beginning of each month.  
5

6 THIRTEENTH: In addition to the rights, duties, and powers conferred upon the Trustee by  
7 law, the Trustee shall have the following powers, rights, and discretion with respect to any Trust  
8 property held by it:  
9

10 (A) To sell, exchange, or otherwise dispose of the property in such manner and  
11 upon such terms as the Trustee in its sole discretion shall deem appropriate;  
12

13 (B) Except as limited by specific enumeration in this Trust agreement, to invest  
14 and reinvest the principal and any undistributed income, in property of any kind;  
15

16 (C) Except as limited by specific enumeration in this Trust agreement, to  
17 participate in any reorganization, consolidation, merger, or dissolution of any corporation having  
18 stocks, bonds or other securities that may be held at any time, to receive and hold any property  
19 that may be allocated or distributed to it by reason of participation in any such reorganization,  
20 consolidation, merger, or dissolution;  
21

22 (D) To exercise all conversion, subscription, voting, and other rights of  
23 whatsoever nature pertaining to any such property and to grant proxies, discretionary, or  
24 otherwise, with respect thereto;  
25

26 (E) To elect, appoint, and remove directors of any corporation, the stock of which  
27 shall constitute Trust property, and to act through its nominee as a director or officer of any such  
28 corporation;  
29

30 (F) Except as limited by specific enumeration in this Trust agreement, to manage,



1 control, operate, convert, reconvert, invest, reinvest, sell, exchange, lease, mortgage, grant a  
2 security interest in, pledge, pool, or otherwise encumber and deal with the property of this Trust,  
3 for Trust purposes and in behalf of the Trust to the same extent and with the same powers that  
4 any individual would have with respect to his own property and funds;

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

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

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

21  
22 (J) To determine whether or to what extent receipts should be deemed income or  
23 principal, whether or to what extent expenditures should be charged against principal or income,  
24 and what other adjustments should be made between principal and income, provided that such  
25 adjustments shall not conflict with well-settled rules for the determination of principal and  
26 income adjustments, or the Uniform Principal and Income Act, if in effect in the State of  
27 \_\_\_\_\_;

28  
29 (K) To determine whether or not to amortize bonds purchased at a premium;

30

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

4  
5 (M) To pay such persons employed by the Trustee to assist it in the  
6 administration of the Trust, including investment counsel, accountants, and those engaged for  
7 assistance in preparation of tax returns, such sums as the Trustee deems to be reasonable  
8 compensation for the services rendered by such persons. Such persons may rely upon and  
9 execute the written instructions of the Trustee, and shall not be obliged to inquire into the  
10 propriety thereof;

11  
12 (N) No person may be employed or consulted by the Trustee to assist it in any  
13 capacity in the administration of the Trust or the management and control of Trust assets,  
14 including investment counsel, investment advisers, accountants, and those engaged for assistance  
15 in preparation of tax returns, unless the following four conditions are met –

16  
17 (1) when an interested party or any representative of an interested party learns  
18 about such employment or consultation, the person must sign the Trust instrument as a party,  
19 subject to the prior approval of the Director of the U.S. Office of Government Ethics,

20  
21 (2) under all the facts and circumstances, the person is determined pursuant to the  
22 requirements for eligible entities under 5 C.F.R. § 2634.405(c) to be independent of any  
23 interested party with respect to the trust arrangement,

24  
25 (3) the person is instructed by the Trustee or other designated fiduciary to make  
26 no disclosure publicly or to any interested party or any representative of an interested party that  
27 might specifically identify current Trust assets or those assets which have been sold or disposed  
28 of from Trust holdings, and

29

1           (4) the person is instructed by the Trustee or other designated fiduciary to have  
2 no direct communication with any interested party or any representative of an interested party,  
3 and that any indirect communication with an interested party or any representative of an  
4 interested party shall be made only through the Trustee pursuant to Article SEVENTH of this  
5 Trust;

6  
7           (O) Except as specifically limited in this Trust agreement, to do all such acts,  
8 take all such proceedings, and exercise all such rights and privileges, although not otherwise  
9 specifically mentioned in this Article THIRTEENTH, with relation to any such property, as if the  
10 Trustee were the absolute owner thereof, and in connection therewith to make, execute, and  
11 deliver any instruments and to enter into any covenants or agreements binding the Trust.

12  
13 FOURTEENTH:       Notwithstanding the provisions of Article THIRTEENTH of this Trust, the  
14 Trustee shall not acquire by purchase, grant, gift, exercise of option, or otherwise, without the  
15 prior written approval of the Director of the U.S. Office of Government Ethics, any securities,  
16 cash, or other property in addition to that listed in the annexed Schedule B, from any interested  
17 party or any representative of an interested party.

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

23  
24 SIXTEENTH:         No Trustee hereunder shall be required, in any jurisdiction, to furnish any  
25 bond or other security, or to obtain the approval of any court before applying, distributing,  
26 selling, or otherwise dealing with property.

27  
28 SEVENTEENTH:       Except as provided in Article SIXTH of this Trust, the Trustee shall make  
29 no accounting to the Settlor until the date of termination of this Trust, and, at such time, it shall  
30 be required to make full and proper accounting and turn over to the Settlor all assets of the Trust  
31 then held by it the said Trustee.

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

7

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

13

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

1

2

The validity, construction, and administration of this Trust shall be governed by the Act  
(and regulations thereunder) and the laws of the State of \_\_\_\_\_.

4

5

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

6

7

8

Settlor

9

10 NOTARIZATION

11 REQUIRED

12

13

14

The above Trust is accepted this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

15

16

17

Trustee

18

19

By:

20

(title)

21

22 NOTARIZATION

23 REQUIRED

## 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 with 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/GOVT-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 right-hand corner of the first page of this OGE model qualified trust draft document).