

**SAMPLE TRUST AGREEMENT PROVISION
FOR
CONDUIT SUBTRUST**

Retirement Benefit Conduit Subtrust.

If:

- (i) Plan benefit distributions subject to the minimum distribution rules of section 401(a)(9) of the Code in any retirement account qualified under section 401(a), individual retirement account ("IRA") or annuity qualified under section 408, a Roth IRA under Code section 408A, "deemed" IRA or Roth IRA under Code section 408(q), annuity or custodial account qualified under section 403(b), eligible government or tax exempt organization plan qualified under section 457(b), or any other retirement plan or arrangement that is subject to the minimum distribution rules are payable to a retirement benefit conduit subtrust of any separate trust under this article 5 pursuant to any beneficiary designation filed by settlor (or any other person) as a participant, accountowner, or surviving spouse beneficiary [under section 401(a)(9)(b)(iv)] of that plan and
- (ii) The trustees of that separate trust have not disclaimed such benefit distributions on or before September 30 of the calendar year following settlor's (or other designating person's) death,

the trustees of the separate trust shall segregate those plan distributions in that retirement benefit conduit subtrust. The conduit subtrust shall be governed by all of the provisions of the separate trust of which the subtrust is a part except as follows –

- (a) During the remaining lifetime of the oldest current beneficiary [as defined in section 11.3(b) below] of that separate trust who is living on the date of settlor's death (or, in the case of a subtrust designated as beneficiary by another person, on the date of such person's death), the trustees shall distribute all plan distributions (including all minimum required distribution amounts) directly to the oldest beneficiary [and/or directly to and among one or more of the individual beneficiaries of the trust, as the independent trustee (or trustees) shall, in that trustee's (or those trustees') sole discretion, determine], as soon as is reasonably convenient following the trustee's receipt of those distributions.
- (b) Any power of appointment with respect to plan distributions otherwise exercisable by any subtrust beneficiary or any other person during the oldest beneficiary's lifetime shall only be exercisable effective upon the death of the oldest beneficiary of the separate trust which includes the subtrust.
- (c) The independent trustee (or trustees) shall have the discretion to withdraw plan benefit distributions in excess of the minimum required distributions for each calendar year to the extent permitted by the plan or IRA involved, provided such excess distributions shall be subject to paragraph (a) above.

- (d) Unless the subtrust is earlier terminated by the distribution of all of the plan assets in the discretion of the independent trustees or under the provisions of section 8.1 below, the subtrust shall terminate upon the death of the oldest beneficiary of the subtrust who was living on the date of settlor's death. Any plan distributions payable after that oldest beneficiary's death shall become the assets of the separate trust which included that subtrust. The trustees may assign the subtrust's interest in retirement plan benefits and need not liquidate plan benefits in connection with the subtrust's termination.

The sole purpose of this retirement benefit conduit subtrust (and the restrictions upon the otherwise applicable provisions that govern the separate trust which includes this subtrust) is to qualify all benefits from the plans and individual retirement arrangements paid to the subtrust under the so-called section 401(a)(9) look through rules. In that way, the minimum required distributions from any plan or individual retirement arrangement may be calculated and paid to the subtrust over the single life expectancy of the oldest current trust beneficiary at the time of the death of settlor (or other person who designates the retirement benefit conduit subtrust as beneficiary). The provisions of section 401(a)(9), section 408, or the Treasury regulations issued with respect to those sections that apply to any plan assets payable to the subtrust may be modified or other official guidance, such as a revenue ruling, may be issued by the Internal Revenue Service. If those modifications, such guidance, or any specific determination by the Internal Revenue Service with respect to the trust or subtrust involved has the effect that, notwithstanding the foregoing subtrust limitations, any plan or individual retirement arrangement distributions payable to the retirement benefit conduit subtrust of any separate trust must be paid at a rate more rapid than over the single life expectancy of the oldest current trust beneficiary on the date of settlor's (or other designating person's) death, the subtrust may, in the discretion of the independent trustee(s), be terminated in advance of the above specified terminating events.

11.3(b)

(b) Current Beneficiary.

The term "**current beneficiary**" (collectively, "current beneficiaries"), as that term applies to any particular trust as of any specified time (referred to for such purposes as "at that time"), shall mean each person (or those persons) who, at that time, either:

- (1) Is (or are) currently entitled to receive regular distributions (for example, income, annuity, unitrust, or other similar periodic distributions) or
- (2) May currently receive distributions in the discretion of any then trustee (or trustees) of such trust (with or without reference to any standard as guidance in the exercise of such discretion),

whether such distribution is (or such distributions are) from the income or principal (or both the income and principal) of that trust (or any part thereof). However, in either case, no person shall be considered to be a current beneficiary of any trust solely by reason of:

- (A) That person's entitlement to any trust distributions made or to be made (either at one time or in two or more installments) in partial or complete satisfaction of what would otherwise amount to a specific bequest that came (or is coming) into effect upon an individual's death or
- (B) A possible future exercise of a power of appointment held in an individual (as contrasted with a fiduciary) capacity.

Possible addition to paragraph (b) if conduit trust is not a subtrust:

"Notwithstanding the foregoing, such distributions shall be reduced by trust administrative expenses as well as income, estate, generation skipping transfer, or other tax to the extent that such expense and taxes are chargeable to or otherwise payable by the subtrust with respect to the plan benefits received or receivable."