

**SAMPLE TRUST AGREEMENT PROVISION
FOR
SUBTRUST BENEFITTING DESCENDANTS
YOUNGER THAN THE TRUST'S OLDEST
LOOK THROUGH DESIGNATED BENEFICIARY**

Retirement Benefit Nonconduit 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 together with all other subtrust assets and proceeds from their reinvestment ("plan assets") in a retirement benefit non-conduit subtrust. The nonconduit subtrust shall be governed by all of the provisions of the separate trust of which the subtrust is a part except as follows –

- (a) Any individual beneficiary of the separate trust which includes the subtrust (including any individual who may, at a future date, become a beneficiary of the separate trust following the death of one or more current trust beneficiaries) who is older than the oldest descendant (or spouse of a descendant) of settlor living on the date of settlor's death (or, if another person has designated a subtrust as beneficiary, on such other person's date of death) who is a trust beneficiary (the "oldest beneficiary") shall, for the purposes of the subtrust, be deemed to have predeceased settlor and shall not be a beneficiary of the subtrust.
- (b) From and after September 30 of the year following the calendar year of settlor's death:
 - (I) No charitable organization that is a current or potential future beneficiary of the separate trust which includes the subtrust shall be a beneficiary of that subtrust and
 - (II) No plan assets shall be applied, directly or indirectly, for the payment of settlor's debts, estate or other death taxes, or post-death administration.

- (c) Any power of appointment held by a trust beneficiary or any other person with respect to the separate trust which includes the subtrust shall be exercisable with respect to subtrust assets exclusively in favor of one or more individual descendants (or spouses of descendants) of settlor who are (or could in the future become) permissible distributees of such subtrust or in favor of a trust benefitting such individuals which has the same restrictions that apply to the subtrust.
- (d) Unless the subtrust is earlier terminated by the distribution of all of the subtrust assets to the subtrust beneficiaries, outright and free of trust (in the discretion of the independent trustees or otherwise under the provisions of the separate trust which includes the subtrust) or under the provisions of section 8.1 below, the subtrust shall terminate when there are no more than two subtrust beneficiaries to whom the subtrust assets may be distributed.

The sole purpose of this retirement benefit nonconduit 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 arrangement paid to the subtrust under the so-called section 401(a)(9) look through rules. In that way, the minimum required distributions from such plans and individual retirement arrangements may be calculated and paid to the subtrust over the single life expectancy of the oldest trust beneficiary. The provisions of section 401(a)(9), section 408, or the Treasury regulations issued with respect to these sections that apply to any amounts payable to a 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 account distributions payable to the retirement benefit nonconduit subtrust of any separate trust must be paid at a rate more rapid than over the single life expectancy of the oldest trust beneficiary on the date of settlor's (or such 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.