

# Feltl and Company

SECURITIES BROKERAGE AND INVESTMENT BANKING

## ACCOUNT CONTROL AGREEMENT

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FULL ACCOUNT TITLE (at Feltl)   	BRANCH / ACCOUNT NUMBER <table border="1"><tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr></table>											BROKER <table border="1"><tr><td></td><td></td><td></td></tr></table>			

**ACCOUNT TRADING PERMITTED?** Yes  No   
(See Section 3 below)

**ACCOUNT WITHDRAWALS PROHIBITED?** Yes  No   
(See Section 4 below)

**INVESTMENT ADVISER**  
(If applicable, See Section 3 below) \_\_\_\_\_ (Name)

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This Agreement is between Feltl and Company ("Feltl"), the party or parties signing this Agreement as Client where indicated below (together and individually, "Client"), any party signing this Agreement as Investment Adviser where indicated below, and the party signing this Agreement as Creditor where indicated below ("Creditor").

WHEREAS, Feltl has established on behalf of Client, the above-referenced account ("Account") with our clearing firm, National Financial Services. ("NFS"), as a "securities account," within the meaning of Section 8-501 of the Uniform Commercial Code;

WHEREAS, pursuant to a separate security agreement between Client and Creditor, Client has granted Creditor a security interest in the Account and in the security entitlements carried in the Account; and

WHEREAS, Creditor, Client and Feltl are entering into this Agreement to provide for the control of the Account and of the security entitlements from time to time carried in the Account, and to perfect Creditor's security interest in the Account and in such security entitlements;

NOW THEREFORE, the parties hereby agree as follows:

### Section I. The Account.

(a) Feltl hereby represents and warrants to Creditor and Client that (i) the Account has been established in the name and with the account number recited above, and (ii) except for the claims and interests of Creditor and Client in the Account, and except for any claim in favor of NFS permitted under Section 2, Feltl does not know of any claim to or interest in the Account.

(b) If the Account is a new Feltl account, Client hereby instructs NFS to transfer the assets listed on Exhibit A from the Feltl account identified on Exhibit A into the Account. All property now or hereafter credited by Feltl to the Account will be treated as financial assets under Article 8 of the UCC. However, Client and Creditor acknowledge that shares of RMA or PWAM money market funds, shares of PaineWebber mutual funds and, to the extent so indicated on the periodic account statements sent to Client, certain other assets, are held directly by Client and are shown on the account statements relating to the Account only for informational purposes. Such assets are not credited to or carried in the Account, can be transferred without Feltl's or NFS's consent, and are not covered by this Agreement. Feltl and NFS is not responsible for assuring that informational items are not shown on the periodic statements for the Account or are not acquired with assets that are credited to the Account.

**Section 2. Priority of Lien.** Feltl hereby acknowledges the security interest granted to Creditor by Client. Feltl hereby confirms that the Account is a cash account and that it will not advance any margin or other credit to Client with respect to the assets carried in the Account. Feltl hereby subordinates all liens, encumbrances, claims and rights of setoff it may have against the Account or any financial asset carried in the Account or any free credit balance in the Account, except for liens, encumbrances, claims and rights of setoff for the payment of Feltl's customary fees, commissions and debit balances arising from normal account activity, pursuant to its agreement with Customer or for the payment for financial assets purchased for the Account. Feltl will not agree with any third party that Feltl will comply with entitlement orders concerning the Account originated by such third party without the prior written consent of Creditor and Client.

**Section 3. Control; Trading in the Account; Investment Advisers.**

(a) Feltl will comply with entitlement orders originated by Creditor concerning the Account without further consent by Client. Unless "ACCOUNT TRADING PERMITTED?" at the top of this Agreement is marked "NO," and except as otherwise provided in Section 4, Feltl also will comply with entitlement orders concerning the Account originated by Client or Client's authorized representatives, including any investment adviser, which may be an affiliate of NFS, that Client has authorized to exercise investment discretion with respect to the Account ("Investment Adviser"), until such time as Creditor delivers a written notice to Feltl that Creditor is thereby exercising exclusive control over the Account (a "Notice of Exclusive Control.").

(b) After Feltl receives a Notice of Exclusive Control and has had reasonable opportunity to comply with it, Feltl will cease complying with entitlement orders or other directions concerning the Account that are originated by Client or its representatives until such time as Feltl receives a written notice from Creditor rescinding the Notice of Exclusive Control.

(c) Creditor agrees that, if an Investment Adviser is identified at the top of this Agreement, no Notice of Exclusive Control shall be effective as between Feltl and Creditor unless and until Creditor has provided a copy of any Notice of Exclusive Control to such Investment Adviser. Notwithstanding the foregoing, however, Client agrees that Feltl shall have no obligation to comply with entitlement orders or other directions originated by Client or its representatives (including such Investment Adviser) following Feltl's receipt of a Notice of Exclusive Control, irrespective of whether a copy of such Notice of Exclusive Control has been provided to Investment Adviser in accordance with this paragraph.

(d) By signing this Agreement where indicated below, Investment Adviser agrees to all of the terms and conditions hereof and covenants and agrees that it will not originate any directions or entitlement orders, or otherwise enter into trades for the Account if either: (i) "ACCOUNT TRADING

PERMITTED?" at the top of this Agreement has been marked "NO;" or (ii) Investment Adviser has received a copy of a Notice of Exclusive Control that has not been rescinded in accordance with paragraph (a) of this Section 3.

**Section 4. Withdrawals from the Account.** Unless "ACCOUNT WITHDRAWALS PROHIBITED?" at the top of this Agreement is marked "NO," then notwithstanding the provisions of Section 3, Feltl will neither accept nor comply with any entitlement order from Client or its authorized representatives withdrawing or making a free delivery of any financial assets from the Account nor deliver any such financial assets to Client nor pay any free credit balance or other amount owing from Feltl to Client with respect to the Account without the specific prior written consent of Creditor. Such a prohibition against such withdrawals will not limit the obligation of Feltl to comply with other entitlement orders concerning the Account that are originated by Client or Client's authorized representatives in accordance with Section 3.

**Section 5. Statements, Confirmations and Notices of Adverse Claims.** Feltl will see that copies of all periodic account statements and confirmations concerning the Account are sent to Creditor at the address set forth below.

**Section 6. Limited Responsibility of Feltl.** Except to the extent that it permits trading or a withdrawal or payment in violation of Sections 3 or 4 or advances margin or other credit to Client in violation of Section 2, Feltl shall have no responsibility or liability to Creditor for making trades of financial assets held in the Account at the direction of Client or Client's authorized representatives, including any Investment Adviser, or for complying with entitlement orders concerning the Account from Client, or Client's authorized representatives, including any Investment Adviser. Feltl shall have no responsibility or liability to Client for complying with a Notice of Exclusive Control or complying with entitlement orders concerning the Account originated by Creditor. Feltl shall have no responsibility or liability to Creditor with respect to increases or decreases in the value of the Account or increases or decreases in the market value of any asset held therein. Feltl shall have no duty to investigate or make any determination as to whether Creditor is entitled or has been authorized to give any Notice of Exclusive Control, as to whether Creditor has provided a copy thereof to any Investment Adviser, or as to whether a default exists under any agreement between Client and Creditor, and Feltl shall comply with a Notice of Exclusive Control even if it believes that no such default exists. This Agreement does not create any obligation or duty of Feltl other than those expressly set forth herein.

**Section 7. Indemnification of Feltl.** Client, Creditor and any Investment Adviser party hereto hereby agree to indemnify and hold harmless Feltl and NFS, its affiliates and their respective directors, officers, agents and employees against any and all claims, causes of action, liabilities, lawsuits, demands and damages, including without limitation, any and all court costs and reasonable attorneys' fees, in any way related to or arising out of or in connection with this Agreement or any action taken or not taken pursuant hereto, except to the extent caused by Feltl's breach of its obligations hereunder.

**Section 8. Client Account Agreement.** Client, Creditor and any Investment Adviser party hereto acknowledge and agree that this Agreement supplements the NFS account agreement(s) applicable to the Account and, if applicable, any related account management agreements between Client and either Feltl, NFS or its affiliates, and except as otherwise expressly provided herein, does not supersede or abridge any rights or obligations of any of the parties to such agreements. In the event of a conflict between the express terms of this Agreement and any other agreement between Feltl and the Client, the terms of this Agreement will prevail. Regardless of any provision in any such agreement relating to the law governing the Account, the parties hereto agree that the establishment and maintenance of the Account, and all interests, duties and obligations with respect thereto, shall be governed by the law of the State of Minnesota.

**Section 9. Termination.** Unless terminated by Feltl pursuant to this section, the obligations of Feltl under Sections 2, 3, 4 and 5 shall continue in effect until Creditor has notified Feltl in writing that this Agreement is to be terminated or that Creditor's security interest in the Account has terminated. Upon receipt of such notice, the obligations of Feltl under Sections 2, 3, 4 and 5 with respect to the operation and maintenance of the Account after the receipt of such notice shall terminate, Creditor shall have no further right to originate entitlement orders concerning the Account and any previous Notice of Exclusive Control delivered by Creditor shall be deemed to be of no further force and effect. Feltl reserves the right, unilaterally, to terminate this Agreement, such termination to be effective (30) days after written notice thereof is given to Client and Creditor.

**Section 10. Entire Agreement; Amendments.** This Agreement, any schedules or exhibits hereto and the instructions and notices required or permitted to be executed and delivered hereunder set forth the entire agreement of the parties with respect to the subject matter hereof. No amendment, modification or (except as otherwise specified in Section 9) termination of this Agreement, nor any assignment of any rights hereunder (except to the extent contemplated under Section 12), shall be binding on any party hereto unless it is in writing and is signed by each of Feltl, Creditor and Client, and any attempt to so amend, modify, terminate or assign except pursuant to such a writing shall be null and void. No waiver of any rights hereunder shall be binding on any party hereto unless such waiver is in writing and signed by the party against whom enforcement is sought.

**Section 11. Severability.** If any term or provision set forth in this Agreement shall be invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions to persons or circumstances, other than those to which it is held invalid or unenforceable, shall be construed in all respects as if such invalid or unenforceable term or provision were omitted.

**Section 12. Successors.** The terms of this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective corporate successors or heirs and personal representatives.

**Section 13. Notices.** Any notice, request or other communication required or permitted to be given under this Agreement shall be in writing and deemed to have been properly given when delivered in person, or when sent by telecopy or other electronic means and electronic confirmation of error free receipt is received or upon receipt of notice sent by certified or registered United States mail, return receipt requested, postage prepaid, addressed to that party: in the case of Creditor, at the address set forth below; in the case of Client, at the address reflected in Feltl's records with respect to the Account or, if such notice is given by Creditor, at the address specified to Creditor by Client; in the case of any Investment Adviser party hereto, at the address set forth for such Investment Adviser above; and in the case of Feltl, at 225 South Sixth Street, Suite 4200, Minneapolis, MN 55402, Attention Michael B. Schierman. Any party may change its address for notices in the manner set forth above.

**Section 14. Counterparts.** This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing and delivering one or more counterparts.

**Section 15. Choice of Law; Jurisdiction; Waiver of Jury Trial.**

(a) This Agreement shall be governed by and construed in accordance with the law of the State of Minnesota.

(b) ANY SUIT, ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR ANY JUDGMENT ENTERED BY

ANY COURT WITH RESPECT TO THIS AGREEMENT OR SUCH TRANSACTIONS SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE STATE OF MINNESOTA LOCATED IN HENNEPIN COUNTY OR IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA. EACH OF THE PARTIES HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF MINNESOTA LOCATED IN HENNEPIN COUNTY AND OF THE UNITED STATES DISTRICT COURT FOR THE STATE OF MINNESOTA FOR THE PURPOSE OF ANY SUCH ACTION OR PROCEEDING AS SET FORTH ABOVE AND AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH SUCH ACTION OR PROCEEDING. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY HAVE OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY.

IN WITNESS WHEREOF, the parties have signed this Agreement, or caused it to be signed on their behalf by their duly authorized representatives, as of the date indicated below:

DATE: \_\_\_\_\_

**CLIENT:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Joint Signature

**CREDITOR:**

\_\_\_\_\_  
Name

\_\_\_\_\_  
By

\_\_\_\_\_  
(Address for Notices)

**FELTL AND COMPANY:**

\_\_\_\_\_  
By

\_\_\_\_\_  
Title

**INVESTMENT ADVISOR:**

\_\_\_\_\_  
Name

\_\_\_\_\_  
By

\_\_\_\_\_  
(Address for Notices)