

THIRD PARTY SPECIAL NEEDS TRUST

Trust Name: [TRUST NAME] **Governing State:** [STATE] **Effective Date:**

This Trust Agreement (this "Trust Agreement") is entered into and made effective as of (the "Effective Date"), by and between [GRANTOR NAME], with an address of [GRANTOR ADDRESS] (the "Grantor"), and [TRUSTEE NAME], with an address of [TRUSTEE ADDRESS] (the "Trustee"), for the sole benefit of [BENEFICIARY NAME], with an address of [BENEFICIARY ADDRESS] (the "Beneficiary").

Recitals

WHEREAS, the Beneficiary is an individual with a disability who is, or may in the future become, eligible for means-tested public-assistance benefits, including Supplemental Security Income (SSI) under Title XVI of the Social Security Act and medical assistance (Medicaid) under Title XIX of the Social Security Act;

WHEREAS, the Grantor desires to establish an irrevocable trust to hold property for the supplemental — and not the basic — support of the Beneficiary, in a manner that does not disqualify the Beneficiary from such means-tested benefits;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor and Trustee agree as follows.

Article I — Name, Purpose, and Intent

1.1 Name. This trust shall be known as the [TRUST NAME]. It shall be sufficient that it be referred to as such in any deed, assignment, bequest, or devise by that name.

1.2 Supplemental Needs Purpose. It is the intention of the Grantor to establish a supplemental needs trust which preserves the Beneficiary's eligibility for means-tested benefits, while at the same time making funds available for the Beneficiary's supplemental needs which may not be provided for by means-tested benefits, as deemed appropriate and in the absolute discretion of the Trustee. **No part of the principal or income of this trust shall be used to supplant or replace any public-assistance benefits received by the Beneficiary from or through any county, state, federal, or other governmental agency.** This trust is intended to qualify for exclusion from resource-counting under the Social Security Administration's Program Operations Manual System (POMS) SI 01120.200 and SI 01120.201, and for exclusion from Medicaid resource-counting under 42 U.S.C. §1396p(d).

1.3 Initial Funding. The Grantor has transferred to the Trustee the property described on **Schedule A** hereto, with an approximate aggregate value of **\$0.00** (zero dollars and 00/100), consisting of: [TRUST

PROPERTY]. The Grantor confirms that the property funding this trust originates with the Grantor and does not belong, and has never belonged, to the Beneficiary.

1.4 Additional Contributions. Additional property may be added to this trust from time to time by the Grantor or, with the Trustee's written consent, by any other person, by deed, assignment, bequest, devise, or other lawful means, and shall thereupon become subject to all terms of this Trust Agreement. Additional contributions may be made without the Trustee's consent in the case of proceeds of life insurance, bequests under a will, or beneficiary designations naming this trust.

Article II — Irrevocability, Spendthrift, and Governing Law

2.1 Irrevocability. This Trust Agreement is **irrevocable**, and once executed may not be changed, amended, altered, or revoked except as expressly provided herein. In no event shall any change be effective that would: (a) alter the Beneficiary designation expressed herein; (b) expand the Beneficiary's rights in or control over the trust; (c) cause the trust to fail to qualify as a supplemental needs trust under SSA POMS or applicable Medicaid rules; or (d) otherwise defeat the supplemental-needs purpose. The Grantor hereby surrenders all rights to amend, alter, or revoke this trust, except that the Trustee may make administrative amendments that do not affect the foregoing matters.

2.2 Spendthrift Provision. The trust made by this Trust Agreement shall be a spendthrift trust to the fullest extent allowed by law. **No income or principal shall be assignable by the Beneficiary or available to anyone having a claim against the Beneficiary before actual payment to the Beneficiary.** No part of the trust shall be subject to the claims of any of the Beneficiary's creditors (if any), or specifically the Beneficiary's voluntary or involuntary creditors for the provision of care and services to the Beneficiary during the Beneficiary's lifetime, including payments for residential care and maintenance by any public entity or private creditor. No Beneficiary interest may be anticipated, assigned, pledged, or hypothecated.

2.3 Governing Law. This Trust Agreement shall be governed by and construed in accordance with the laws of the State of [STATE], without regard to its conflict-of-laws principles. Trust situs shall be [STATE], and all administrative and judicial proceedings concerning this trust shall occur in [STATE] unless the Trustee, in the Trustee's discretion, changes situs as permitted by applicable law.

Article III — Trustee Discretion, Distributions, and Beneficiary Restrictions

3.1 Absolute Discretion of Trustee. The Trustee shall have **sole, absolute, and unreviewable discretion** to pay to or for the benefit of the Beneficiary such amounts from the income and principal of the trust as the Trustee determines, in the Trustee's absolute judgment, to be appropriate for the Beneficiary's supplemental needs. Distributions shall be non-support and supplemental in nature. **Under no circumstances may the Beneficiary compel any distribution from this trust for any purpose.** The Trustee's discretion in making non-support distributions is final, even if the Trustee elects to make no

distributions at all. The absolute and independent judgment of the Trustee, rather than any other party's determination, is intended to be the criterion on which distributions are made. **No court or any other person shall substitute its or their judgment for the decision or decisions made by the Trustee.** This trust is not a support trust, and no legal obligation of support owed by any person to the Beneficiary is or shall be satisfied by any distribution hereunder.

3.2 Permissible Supplemental Distributions. Without limiting the Trustee's discretion under Section 3.1, the Trustee may, in the Trustee's absolute discretion, make distributions for the following categories of supplemental needs:

- Education, tutoring, vocational training, and related materials;
- Transportation, including acquisition, maintenance, insurance, and operation of a vehicle for the Beneficiary's use;
- Recreation, entertainment, hobbies, and related supplies and memberships;
- Medical, dental, vision, and hearing services, equipment, and supplies not covered by Medicaid or other public benefits;
- Computers, smartphones, tablets, internet service, and assistive technology;
- Personal care attendants and companion services beyond what is provided by Medicaid;
- Any other goods or services the Trustee determines, in the Trustee's absolute discretion, supplement and do not supplant the Beneficiary's means-tested benefits.

Savings construction. Should the mere existence of any subparagraph of this Section 3.2 be read to cause a loss or diminution of need-based public benefits, then that subparagraph shall be stricken in favor of the more restrictive provisions herein, and the Trustee's absolute discretion under Section 3.1 shall control.

3.3 In-Kind Support and Maintenance (ISM) Warning. The Trustee is hereby expressly cautioned that, under SSA POMS SI 00835.001 et seq. and related provisions, distributions made by the Trustee for the Beneficiary's **food or shelter** — including, without limitation, rent, mortgage payments, real-property taxes, heating fuel, gas, electricity, water, sewer, garbage-collection services, and food — constitute **In-Kind Support and Maintenance (ISM)** and will reduce the Beneficiary's SSI benefit by up to one-third of the Federal Benefit Rate plus \$20 (the Presumed Maximum Value or "one-third reduction" under POMS SI 00835.300 and SI 00835.480). Before making any distribution for food or shelter, the Trustee shall weigh the net benefit to the Beneficiary against the resulting SSI reduction, and may consult with a qualified special needs attorney or benefits counselor. The Trustee should also evaluate whether an ABLE-account distribution for Qualified Disability Expenses (which are excluded from ISM under POMS SI 01130.740) would better serve the Beneficiary. Nothing herein prohibits direct ISM distributions; the Trustee retains absolute discretion. This Section 3.3 is informational and protective, not a limitation on Trustee discretion under Section 3.1.

3.4 Restrictions on Beneficiary. Notwithstanding any other provision of this Trust Agreement, and to preserve the Beneficiary's eligibility for means-tested benefits:

1. The Beneficiary **shall not** serve as sole Trustee or co-Trustee of this trust;
2. The Beneficiary **shall not** remove any Trustee;
3. The Beneficiary **shall not** appoint any successor Trustee;
4. The Beneficiary **shall not** direct, assign, distribute, or authorize any distribution from the trust;
5. The Beneficiary **shall not** hold any power of appointment — general or special — over any trust property; and
6. The Beneficiary **shall not** withdraw any property from the trust.

Any purported exercise by the Beneficiary of any of the foregoing powers shall be void ab initio.

3.5 Non-Estate / Non-Resource Declaration. The property owned by this trust shall not be considered part of the Beneficiary's estate for probate purposes, nor shall it be subject to the claims of creditors of the Beneficiary's estate. **Any provision found within this Trust Agreement which, if given effect, would disqualify the Beneficiary from any means-tested benefit shall be deemed void** to the extent necessary to preserve such eligibility, and the Trustee shall administer the trust as if such provision had not been included.

Article IV — Trustee Powers, Succession, and Compensation

4.1 Trustee Powers. In addition to all powers granted by applicable law (including the Uniform Trust Code and the Uniform Prudent Investor Act as adopted in [STATE]), the Trustee shall have full power and authority to: (a) invest and reinvest trust assets in any kind of property, real or personal, including stocks, bonds, mutual funds, exchange-traded funds, and real property, applying the prudent-investor standard; (b) retain any property originally contributed to the trust without liability for depreciation; (c) sell, exchange, lease, mortgage, or otherwise dispose of trust property on such terms as the Trustee deems appropriate; (d) borrow money for trust purposes and pledge trust property as security; (e) employ agents, attorneys, accountants, investment advisors, and care managers and pay their reasonable compensation; (f) maintain, pay premiums on, and exercise rights under life-insurance policies; (g) pay all taxes, assessments, and administrative expenses; (h) execute all documents necessary to administer the trust; (i) make distributions in cash or in kind, and in such proportions among permissible distributees as the Trustee determines; (j) open and maintain an ABLE account for the Beneficiary and fund it from trust assets; and (k) obtain an Employer Identification Number (EIN) and file all required federal and state tax returns.

4.3 Successor Trustees. Upon the death, resignation, incapacity, or removal of the Trustee, **such person as may be appointed by the Trust Protector (if any), or failing such appointment, by a majority in interest of the remainder beneficiaries (excluding the Beneficiary), or failing such appointment, by a**

court of competent jurisdiction upon petition of an interested party shall serve as successor Trustee. If no named successor is able and willing to serve, any interested person (other than the Beneficiary) may petition a court of competent jurisdiction to appoint a successor Trustee, which may be a corporate or professional fiduciary. No successor Trustee shall be the Beneficiary, nor any person whose service would cause the trust to become a countable resource of the Beneficiary under SSI or Medicaid rules.

4.4 Trustee Compensation. The Trustee shall be entitled to reasonable compensation for services rendered, commensurate with the complexity of administration and the skill required, plus reimbursement for reasonable expenses.

4.5 Trustee Liability and Exculpation. The Trustee shall not be liable for any loss, damage, or expense resulting from any act or omission performed in good faith and consistent with the terms of this Trust Agreement and the prudent-investor standard, except for liability arising from the Trustee's own fraud, willful misconduct, or gross negligence. The Trustee shall not be liable to the remainder beneficiaries in the event that the trust assets are exhausted by providing for the Beneficiary's supplemental needs in accordance with this Trust Agreement.

Article V — Termination and Remainder

5.1 Termination Events. This trust shall terminate upon the earliest of: (a) the death of the Beneficiary; (b) the exhaustion of trust assets; or (c) the order of a court of competent jurisdiction terminating the trust.

5.5 Remainder Beneficiaries. After payment of all expenses, taxes, and final obligations, the remaining principal and accumulated income of the trust shall be distributed to the following remainder beneficiaries:

[REMAINDER BENEFICIARIES]

If any named remainder beneficiary predeceases the Beneficiary, that share shall be distributed **per stirpes to the predeceased beneficiary's descendants**.

Article VI — Rule Against Perpetuities

6.1 Rule Against Perpetuities — Savings Clause. All distributions required by this Trust Agreement and the final accounting of the trust must be accomplished no later than twenty-one (21) years after the last to die of the expressly named remainder beneficiaries or, if all such beneficiaries are charities, twenty-one (21) years after the death of the Beneficiary. No judicial modification of this Section 6.1 shall be permitted except as required to preserve the supplemental-needs purpose of the trust.

Article VII — State-Specific Provisions

Article VIII — Miscellaneous

8.1 Notices. All notices and communications required hereun