

## **(NAME OF) SUPPLEMENTAL NEEDS TRUST**

### **1.1 Creation and Effect; Settler and Trustee**

This Agreement made the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, between \_\_\_\_\_, as Settlor, and \_\_\_\_\_ as Trustee, is intended by the parties to take effect immediately upon signing, subject to being funded by the Settlor and/or such other person as specified in Sections 1.2 and 5.3 below.

### **1.2 Irrevocability; Corpus**

This Trust shall be irrevocable. The Settlor hereby irrevocably assigns transfers and sets over to the Trustee all right, title and interest, claims, benefits and all other indicia of ownership which the Settlor now has or may hereinafter acquire in and to the assets described in the schedule of infusions set forth at the end of this Agreement.

### **1.3 Consideration**

In consideration of the mutual covenants contained herein, the Trustee hereby agrees to hold IN TRUST those assets scheduled herein or later acquired as permitted by this instrument for the uses and purposes set forth herein and subject to the terms and conditions hereinafter set forth.

### **1.4 Name**

This Trust shall be known as the \_\_\_\_\_ SUPPLEMENTAL NEEDS TRUST.

### **1.5 Purpose and Intent of Settlor**

Because of the nature of the disability of \_\_\_\_\_, hereinafter referred to as "the Beneficiary", at the time of the execution of this Trust, it is the Settlor's intent that the special provisions of this Trust be strictly enforced. The Settlor recognizes that in view of the vast costs involved in caring for a disabled person, a direct distribution to the Beneficiary would be rapidly dissipated. The Settlor intends this Trust to conform to the holding set forth in *Matter of Escher*, 52 NY2d 1006, EPTL §7-1.12 and Mental Hygiene Law § 43.03(d).

The Settlor intends that the Trust assets be used to supplement, not supplant, impair or diminish, any benefits or assistance of any federal, state, county, city, or other governmental entity for which the Beneficiary may otherwise be eligible or which the Beneficiary may be receiving. Consistent with that intent, it is the Settlor's desire that, before expending any amounts from the net income and/or principal of this Trust, the Trustee consider the availability of all benefits from government or private assistance programs for which the

Beneficiary may be eligible and that, where appropriate and to the extent possible, the Trustee endeavor to maximize the collection of such benefits and to facilitate the distribution of such benefits for the benefit of the Beneficiary.

### **1.6 Provision pursuant to EPTL § 7-1.6**

It is the further intent of the Settlor that no distribution be ordered in contravention of the intent of this Trust and of 42 U.S.C. § 1396p(d)(4)(A). This provision is intended to negate and eliminate any discretion granted to any Court pursuant to § 7-1.6 of the EPTL. The Settlor also intends that the funds provided by any third party be utilized for the “special needs” of the Beneficiary. Settlor intends that if the Trustee receives any contributions from the Beneficiary, whether as an outright gift or pursuant to a Court order, that these Trust assets be protected by the terms of this Special Needs Trust. The Settlor intends that the Beneficiary have the same property rights as any other person who does not have a handicapping condition.

## **2.0 DISTRIBUTION OF INCOME AND PRINCIPAL**

### **2.1 Income**

The income shall be distributed in-kind for the benefit of \_\_\_\_\_, but only as per the strict limitations of the Trust, and in the Trustee’s sole discretion. The income will be used to furnish items of need not provided by government entitlements consistent with the definition of income as intended by the Congress and as decided in *Ruppert v. Bowen*, 871 F.2d 1171 (2<sup>nd</sup> Cir. 1989). *See also* 42 U.S.C. § 1382(a)(2)(A)(in-kind goods and services that do and do not affect SSI benefits); 20 C.F.R. § 416.113(b) (in-kind housing assistance that affects SSI benefits); 18 NYCRR § 360-4.3(e) (in-kind income that affects medical assistance); .

The Trustee is prohibited from making cash disbursements, without court approval, that will impair the Beneficiary’s eligibility for benefits, unless such impairment is *de minimus*.

It is intended that any distribution be made with recognition of the special needs of \_\_\_\_\_, who because of the nature of his disability will be dependent on government entitlements for his life.

### **2.2 Principal**

There shall be no invasion of principal except in the Trustee’s discretion. Such use of principal may be made to supply services and items of need not otherwise provided through government entitlements and consistent with the use of income as stated herein. It is the intent of the Settlor to supplement, rather than supplant, government entitlements.

OR

Because the income of the Trust is and is expected to continue to be minimal, the principal may be invaded in the Trustee's sole discretion. Any distribution of principal shall conform to the provision regarding the distribution of income set forth in Section 2.1 above.

OR something else that reflects the wishes. Note that court approval may be a requirement.

### **2.3 Investment of Principal in Appropriate Housing**

It should be a priority of the Trustee to ensure and maintain proper housing for the Beneficiary. The Trustee shall have discretion to invest the principal or accumulated income in appropriate housing, subject to the restrictions set forth herein and pursuant to order of the court. The Trustee is encouraged to invest in property in whatsoever form as will maintain \_\_\_\_\_ in a "homestead," or in a home-like environment. Homestead or home-like environment shall not include nursing homes or institutions or any facility which would be financed by government entitlements but for the investment made under this section of this trust.

### **2.4 Additions to Income and Principal**

With the Trustee's consent, any person may, at any time, from time to time, by Court order, assignment, gift, transfer, Deed or Will, provide income or add to the principal of the Trust created herein, and any property so added shall be held, administered and distributed under the terms of this Trust. The Trustee shall execute documents necessary to accept additional contributions to the Trust and shall designate the additions on Schedule A of this Trust. At the end of a calendar year, the Trustee shall designate any accumulated income as principal, and so designate this addition on an amended schedule of infusions.

### **2.5 Insurance**

The Trustee has discretion to use income to purchase whatever insurance is necessary to make the Beneficiary financially secure, including purchasing private health insurance and life insurance. The private health insurance may be purchased if it will result in providing for payment to those medical professionals or medical providers who would otherwise not accept government entitlements.

Life insurance may be purchased by the Trust on the life of an insured person who chooses to provide financial support for the beneficiary in a manner consistent with the provisions of this Trust. Any insurance purchased with premiums paid from this Trust Fund shall be an asset of the Trust.

### **2.6 Other Needs and Luxuries**

The Trustee has discretion to use income to insure that the Beneficiary enjoys the therapeutic benefits of education, vocational training, hobbies, vacations, modes of

transportation, entertainment, and any other need and/or luxury the Beneficiary may require to enjoy life to the fullest. This discretion shall include the use of income for needed medical care not paid for by private health insurance or government entitlements. This provision shall include the purchase of any equipment or computer that would enhance the quality of life of the Beneficiary.

### **2.7 Employment of Professionals and Other Care Givers:**

The Trustee shall have discretion, if necessary, to use income from the Trust to hire professionals to assist. It is contemplated that the class of professionals that may be needed to assist will be social workers, custodians, medical professionals who would not otherwise accept government entitlements, legal counsel, accounting professionals, feeders, therapists and any medical professionals or personnel who would not otherwise accept or be paid for fully by government entitlements, and investment counsel.

### **3.0 TERMINATION OF TRUST**

#### **3.1 Beneficiary**

The Beneficiary of this Trust shall be \_\_\_\_\_.

#### **3.2 Termination Upon Death of Beneficiary**

Except as authorized in Section 4.7, this Trust shall not continue beyond the death of the Beneficiary. Upon the death of the Beneficiary, or as soon as practical thereafter, the Trustee shall distribute the remaining corpus and any accumulated income in accordance with the provisions for distribution set forth herein.

Notwithstanding anything to the contrary, the Trustee may withhold a sum in reserve which in his opinion will be necessary to pay the funeral expenses of the Beneficiary if not covered by life insurance on the life of the Beneficiary or any other funds to set aside for funeral expenses of the Beneficiary. (The Trustee may also withhold a sum in reserve to cover any estate, gift, trust or income taxes or final expenses which are or may be due upon or by reason of the Settlor's death.) The decision as to the amount held in reserve shall be binding upon the remaindermen. Any amounts left after such reimbursement shall be distributed to the remaindermen as listed in Section 3.3 or 3.4 of this Trust.

#### **3.3 Remaindermen**

This Trust shall terminate upon the death of \_\_\_\_\_, and the State shall be reimbursed for the total medical assistance provided to \_\_\_\_\_ during his lifetime, as consistent with federal and state law.

All remaining principal and accumulated income shall be paid over to the Estate of \_\_\_\_\_, provided that the Beneficiary, \_\_\_\_\_, has not executed in writing, before a notary public, an amendment to this Trust Agreement naming a remainderman or remaindermen. The Trustee shall accept any and all amendments executed by the Beneficiary, and attach them to her original copy of this Trust Agreement.

### **3.4 Continued Trust for Disabled Beneficiary**

If any remaindermen are disabled such that the remainderman would otherwise be eligible for government entitlements, the Trust shall continue and the Trustee shall administer the trust pursuant to the same provisions as per the (NAME OF THIS TRUST) SUPPLEMENTAL NEEDS TRUST.

### **3.5 Perpetuities**

If not sooner terminated pursuant to the terms of this Trust, all trusts created hereunder shall terminate twenty-one years after the death of the last survivor of the descendants of the Settlor in being at the date of this Trust, and if a trust terminates pursuant to the terms of this paragraph, the principal thereof shall be paid over to the Beneficiary thereof.

## **4.0 TRUSTEES**

### **4.1 Identity**

The Trustee of this Trust shall be NAME, PHYSICAL ADDRESS and MAILING ADDRESS IF DIFFERENT. If \_\_\_\_\_ should be deceased or otherwise unable to serve as Trustee, then the Successor Trustee shall be \_\_\_\_\_.

### **4.2 Powers of Trustee**

In addition to any powers which may be conferred upon the Trustee under the laws of the State of New York in effect during the life of this Trust, the Settlor hereby confers upon the Trustee all those discretionary powers mentioned in § 1.1 of the EPTL or similar statute(s) governing the discretion of Trustee so as to confer upon the Trustee the broadest possible powers available for the management of the trust assets.

### **4.3 Compensation of Trustee**

The Trustee shall be entitled to such compensation as may be allowable under the law of the State of New York, or in the case of a corporate Trustee, as may be agreed upon between the parties.

The Trustee shall be entitled to be reimbursed for reasonable expenses incurred in the administration of this Trust.

#### **4.4 Resignation of Trustee**

Any Trustee may resign by delivering notice of such resignation to the Beneficiary and subsequent to the approval of the Supreme/Surrogate's Court.

#### **4.5 Annual Accounts**

The Trustee shall render an annual account of the administration of the Trust to the Beneficiary, and if ordered, to the Court having jurisdiction over this Trust. This accounting shall be made for each calendar year, and shall be due by the following April. A sufficient accounting shall be deemed as having been made to the Beneficiary by a submission to him of a list of income and expenditures. A sufficient accounting shall be deemed as having been made to the court by the submission of a copy of the federal fiduciary income tax return filed for the Trust, if a tax return is required to be filed, or by the submission of a list of income and expenditures.

#### **4.6 Bond**

The Trustee shall not be required to execute and file a bond.

#### **4.7 Continuation of Powers Upon Termination**

The title, powers, duties, immunities and discretion herein conferred upon the Trustee shall continue after termination of the Trust and until final distribution.

### **5.0 MISCELLANEOUS PROVISIONS**

#### **5.1 Governing Law; Separability**

All questions relating to the validity and construction of this Trust, the determination of the share of the Beneficiary, the dates, powers, authority and discretion of the Trustee, and all other matters arising in connection therewith, shall be governed by, and the Trust shall be administered in accordance with, the laws of the State of New York. If any provision of this Trust shall be invalid or unenforceable, the remaining provisions hereof shall subsist and be carried into effect.

#### **5.2 Amendments and Modifications**

This Trust may be amended or modified, upon court approval, in order to be portable to another state, should it become necessary due to the relocation of the Beneficiary and the law of his new domicile.

The Beneficiary may amend the Trust Agreement as provided in Section 3.3 herein.

### **5.3 Additional Infusions of Corpus**

The Trustee may accept additional property, without limitation, whether from the Settlor or any third party under such terms and conditions as might be agreed upon by the Settlor thereof and the Trustee. These additional infusions may be from Court ordered settlements, bequests and devises, or gifts from any third party.

### **5.4 Spendthrift Clause**

The interest of the Trust shall, to the extent permitted by law, not be subject to claims of any creditors or others nor to legal process and may not be voluntarily or involuntarily encumbered. No money or property payable or distributable under this Trust shall be pledged, assigned, dissipated or encumbered by any Beneficiary or Remainderman hereunder or in any manner.

## **6.0 DEFINITIONS**

### **6.1 Trustee**

“Trustee” shall include any successor Trustee.

### **6.2 Death**

The death of a beneficiary or of a Trustee shall be evidenced by presentation of a certified copy of such person’s death certificate to the Trustee or successor Trustee, as the case may be.

### **6.3 Disability**

“Disability” or “Disabled” shall include any physical or mental condition of a person which renders him unable to conduct his regular affairs and which condition is likely to extend for a period of greater than ninety (90) days. A condition of disability as just defined shall be evidenced by the written certificate or statement of the disabled person’s regularly attending physician filed with and accepted by the Trustee, or in the case of a disabled Trustee, filed with and accepted by the successor Trustee.

### **6.4 Discretion**

As used herein, “discretion” shall mean sole, exclusive, unrestricted and absolute discretion.

**6.5 De Minimus**

As used herein, "de minimus" shall mean of trifling consequence or importance; too insignificant to be worthy of concern. The Trustee shall weigh the benefit of the cash disbursement against the temporary loss or reduction of the government benefit. The temporary loss shall be for no longer than one month. The temporary reduction shall be for no longer than three months.

**6.6 Interpretation**

Whenever used herein, and to the extent appropriate, the masculine, feminine or neuter gender shall include the other two genders, the singular shall include the plural, and the plural shall include the singular.

**IN WITNESS WHEREOF**, the Settlor and the Trustee have executed this Indenture in triplicate, any one of which shall constitute the original, although the others are not produced, the day and year first written above.

\_\_\_\_\_  
Settlor

\_\_\_\_\_  
Trustee

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came SETTLOR NAME, to me known and known to me to be the individual described in and who executed the foregoing Trust indenture and duly acknowledged to me that she executed the same.

\_\_\_\_\_  
Notary Public: State of New York

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came TRUSTEE NAME, to me known and known to me to be the individual described in and who executed the foregoing Trust indenture and duly acknowledged to me that she executed the same.

\_\_\_\_\_  
Notary Public: State of New York



\_\_\_\_\_ **SUPPLEMENTAL NEEDS TRUST**

Schedule A

1.