

# Using Special Needs Trusts to Obtain Public Benefits

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## **I. Types of Special Needs Trusts and Criteria for Selection**

### **1. Introduction**

#### **a. Special Needs Trusts: The Clients**

Special Needs Trusts come into play in a multitude of situations. Common client-types include:

- Parents planning for a disabled child;
- Disabled individuals coming into an inheritance or winning or settling a personal injury claim; or
- Healthy spouse planning for a disabled spouse.

#### **b. Special Needs Trusts: The Purpose**

The purpose of a Special Needs Trust (SNT) is to supplement, but not supplant, whatever benefits and services the disabled beneficiary may be eligible to receive from time to time by reason of age, disability, incapacity, or other factors, from federal, state, and local governmental and charitable sources.

It is understood and acknowledged that governmental and charitable programs, in themselves, contain many gaps that, if unaddressed, will greatly reduce the possibility of the Primary Beneficiary's maintaining herself as independently as possible and having the capacity to meet her future needs.

Most SNT Settlers intend that the SNT be used in ways that will best enable the beneficiary to lead as normal, comfortable, and fulfilling a life as possible.

#### **c. Special Needs Trusts Solutions Overview**

Special Needs Trusts can offer the solutions to the following common client concerns:

- How to leave funds for the benefit of a child without causing the child to forfeit important public benefits?

- How do you make sure that the funds are well managed?
- How do you make sure that other children are not over-burdened with caring for the disabled sibling?
- What is fair in terms of dividing the estate among a disabled child and other children?
- How do you make sure there's enough money to meet the disabled child's needs?

#### d. The Wrong Approach

Often, parents of children with special needs try to resolve these issues by leaving their estates to their healthy children -- **disinheriting the disabled children**. These parents offer a variety of justifications for this approach:

- “The disabled child shouldn't receive anything because she can't manage money and would lose her benefits.”
- “She doesn't need any inheritance because she will be taken care of by the public benefits she receives.”
- “The other children will take care of their sister.”

This approach is to be **discouraged** for a number of reasons (see next section).

#### e. Why a Special Needs Trust?

**First**, public benefits programs are often inadequate. They need to be supplemented with other resources.

**Second**, both public benefits programs and individual circumstances change over time. What's working today may not work tomorrow. Other resources need to be available, just in case.

**Third**, in the situation where a parent thinks it is appropriate to rely on other children to take care of the disabled sibling, an undue burden arises and can strain relations between them.

*For example*, who will determine whether inherited money belongs to the healthy child to spend as he pleases, or whether he must set it aside for his disabled sister? If one child sets money aside, and the other doesn't, resentments can build that may split the family forever.

A special needs trust should be considered an essential tool to protect a disabled individual's financial future. Also known as "a supplemental needs trust," eligibility is preserved for federal and state benefits by keeping assets out of the disabled person's name.

#### f. Two Primary Functions

Special Needs Trusts fulfill two primary functions:

**The first** is to manage funds for someone who may not be able to do so himself or herself due to disability.

**The second** is to preserve the beneficiary's eligibility for public benefits, whether that is Medicaid, Supplemental Security Income (SSI), public housing, or any other program.

#### g. Two Main Categories

Special Needs Trusts fall generally into two main categories:

**Third-Party SNTs:** one person creates and funds for the benefit of someone else; and

**First-Party SNTs:** (also called d4a or d5c trusts) created for the person with special needs using that person's own money.

## 2. The General Rule and Two Exceptions

#### a. The General Rule

As a general rule, funds held by a self-settled trust are considered available to a disabled beneficiary and render him ineligible for important benefits.

#### b. The Two Exceptions

Fortunately, both Medicaid and SSI allow **two** types of "self-settled" trusts that permit a beneficiary to:

- **Shelter** his/her own funds;

- **Qualify** for public benefits; and
- **Remain** a continuing beneficiary of the trusts.

These trusts fall in two categories:

- Single-beneficiary (First Party) Trusts (d4A); and
- Pooled Trusts (d4C)

### 3. First Party Special Needs Trusts

#### a. In General

The single-beneficiary self-settled trust is generally referred to as a "(d)(4)(A)" trust, referring to the enabling statute, or a "pay-back" trust, referring to their primary feature that any funds remaining in the trusts upon the beneficiary's death be used to reimburse the Commonwealth/State for any Medicaid expenditures it has made on the beneficiary's behalf.

**Warning:** Be very careful when drafting first-party Special Needs Trusts for individuals who are also on or may be on SSI, as your fee for drafting this type of trust may need to be approved by the Social Security Administration.

#### b. First-Party vs. Third-Party Special Needs Trusts

A third-party special needs trust cannot hold funds belonging to the disabled individual himself. However, unexpected events may trigger money being paid directly to a person with special needs. For example: through an inheritance from a family member, life insurance proceeds, or a personal injury settlement.

**If a person is about to receive funds or property in an amount that would cause him or her lose benefits**, a First-Party SNT – often called a “**(d) (4) (A)**” trust, so-named after the U.S. Code section that authorizes this type of trust – can help set aside some or all of the funds for supplemental needs and still allow the person to receive public benefits without any period of disqualification.

**If a person has already received money or property in an amount that has caused him or her lose benefits**, the First-Party SNT can still be used as a tool to set aside some or all of the money for supplemental needs and allow the person to re-obtain public benefits.

## 4. Third Party Special Needs Trusts

### a. In General

Parents who want to leave assets to a special needs child create “third-party” special needs trust. This type of special needs trust can also serve to hold any inheritance that may come from a grandparent or other family member. However, a third-party special needs trust cannot hold funds belonging to the disabled individual himself. This type of trust can be created during the client’s life by using a revocable or irrevocable living trust, or can be created upon death through a living trust or through a Last Will and Testament.

### b. Creation/Funding During the Client’s Lifetime

**If created during life**, one can place assets into the SNT while alive and/or upon death.

This type of third-party SNT can also be used to receive any inheritance that may come from a grandparent or other family member; provided the other family member properly names the SNT that was created. **Because the SNT will own the assets, the beneficiary will not become ineligible for government benefits.**

**On the contrary**, the SNT allows the beneficiary to receive vital public benefits, while the funds in the SNT can be used for the special needs beneficiary to improve care and quality of life until his or her own death, at which time any assets left in trust can pass to whoever you name in the trust document.

## 5. Pooled Special Needs Trusts

### a. In General

A pooled SNT is a special type of SNT that is created by a nonprofit organization. The nonprofit organization may act as the trustee of the pooled SNT, or it may select the trustee. Individuals have separate accounts in the pooled SNT, but all the money is pooled together and invested by the trustee. Individual beneficiaries get the services of a professional trustee and more investment options because there is more money overall. A third-party pooled trust provides a way to benefit from a special needs trust without having to actually create one.

## **b. First Party Pooled Special Needs Trusts vs. Third-Party Pooled Special Needs Trusts**

Just as with single-beneficiary trusts discussed above, there are both “**third-party**” pooled SNTs (which you can use to give money during life, or leave money upon death, for a special needs beneficiary) and “**first-party**” pooled SNTs – also called “(d)(4)(C)” trusts – used to protect money that belongs to the special needs beneficiary. Unlike the individual payback trust – i.e., the (d)(4)(A) discussed above, which may be created only for those under age 65 – pooled SNT accounts may be for beneficiaries of any age and may be created by the beneficiary himself. However, although someone over age 65 can establish a (d)(4)(A) account with a pooled trust, most states penalize transfers into the pooled trust if the disabled individual was over age 65 at the time of transfer.

## **c. Requirements to Obtain Medicaid and SSI**

Pooled disability trusts must be managed by a non-profit association. Unlike individual disability trusts, which may be created only for those under age 65, pooled trusts may be for beneficiaries of any age and may be created by the beneficiary herself.

In addition, at the beneficiary's death the state does not have to be repaid for its Medicaid expenses on her behalf as long as the funds are retained in the trust for the benefit of other disabled beneficiaries.

Although a pooled trust is an option for a disabled individual over age 65 who is receiving Medicaid or SSI, those over age 65 who make transfers to the trust will incur a transfer penalty.

# **6. Public Benefits Based on Financial Need**

## **a. In General**

In general, if one person creates a trust for the benefit of someone else, and the trust is drafted to give the trustee complete discretion whether and when to make distributions to the beneficiary, the trust funds **will not be** considered as available when considering the trust beneficiary's eligibility for public benefits.

Unfortunately, matters get more complicated when the trust assets are actually used for the beneficiary.



For instance, trust funds distributed to a beneficiary will reduce that beneficiary's SSI dollar for dollar. In many circumstances, trust funds used on the beneficiary's behalf will also cause a reduction in SSI benefits.

In other words, while the existence of a properly-drafted trust will not affect eligibility for benefits, the use of the trust funds could if extreme care is not taken.

#### **b. The Relevant Benefit Program Determines Drafting, Funding and Administration**

Each situation and each benefit program has its own rules which affect the drafting, funding and administration of special needs trusts. The public benefit programs in many ways track the treatment of trusts in terms of creditor protection. Just as in most states you cannot create a trust for your own benefit and protect the trust funds from creditors, you generally cannot create a trust for your own benefit and have the funds uncountable for purposes of Medicaid, SSI and other public benefits programs. However, as explained above, Medicaid and SSI have provided for "safe harbors" that permit the creation of self-settled special needs trusts in certain circumstances.

## **II. Structuring and Drafting Special Needs Trusts**

### **1. (d) (4) (A) Trust Guidelines**

#### **a. Who can Create and When?**

A (d) (4) (A) trust can only be established by the disabled individual or by a:

- parent;
- grandparent;
- legal guardian, or
- the court.

In most states, a first-party SNT must be created and funded while the disabled individual is **under age 65** in order to be exempt in connection with Medicaid.

#### **b. Required Reimbursement to State**

A (d)(4)(A) trust also must provide that at the beneficiary's death any remaining

trust funds will first be used to reimburse the state for Medicaid paid on the beneficiary's behalf.

Because of this payback provision, this type of trust is sometimes called a "payback trust."

The state's Medicaid office (and, if a Medicaid recipient is also an SSI recipient, then the Social Security Administration) must review and approve all payback trusts to make sure that they meet the standards in the law. After the state is paid back, any assets left in the trust can pass to the people chosen by the grantor and named in the trust instrument.

Only if funds remain after such reimbursement may they be passed on to the beneficiary's family.

## **2. Writing a Memorandum of Intent: an Additional Safeguard**

### **c. In General**

How can you ensure that the special needs child will remain well cared for and secure once others assume the role of guardian or caregiver? While creating a financial plan and establishing a specialized trust are central to preparing for the child's future, special needs planners also advise families to write down their intentions and expectations in a document referred to as a Memorandum of Intent or Letter of Intent.

The Memorandum is not legally binding and, when directions conflict, those in wills, trusts and other legal documents take precedence. But for "non-legal" matters, it will serve as the primary source of information about the child, providing a roadmap for the courts, guardians, caregivers and others involved in your child's life. This can be critical in easing a child's transition, ensuring continuity of care and treatment, as well as appropriate decision making regarding living arrangements and other lifestyle choices.

Topics that can be included in a Memorandum include the following:

- Individuals and organizations that should be contacted upon death or incapacity;
- The child's health care and therapeutic needs;

- The parent's preferences for education, religion, and child-rearing practices;
- Contact information for doctors, therapists and teachers;
- The child's personal history, degree of independence or mobility, behavioral issues, and need for assistive technologies;
- The child's interests and personality traits;
- The location of medical records and other important documents.

While writing a Memorandum of Intent can be time-consuming and emotionally taxing, it's very important not to postpone this task. Once the Memorandum is complete, place the original in a secure location and distribute copies to others involved in the child's life. Take the time to revise the Memorandum at least once a year so it will continue to reflect the child's current life stage and situation.

### **3. Planning for Disabled Adult-Children**

#### **a. Alternative to Guardianship**

Parents of children with special needs must be concerned with ensuring that medical and financial decisions will continue to be made in the child's best interest once the child reaches age 18 – the age of legal capacity. In most states, once a child reaches age 18, he is presumed to have decision-making capacity and the parents' legal authority ends. Parents of children with special needs have various options, each with advantages and disadvantages depending on the situation, to establish a new legal authority to continue making important decisions for the child.

There are ways to avoid the time and expense of a guardianship or conservatorship process while accomplishing the same basic goals. If the person with special needs has sufficient capacity to understand, he can appoint an agent using a durable power of attorney over medical or financial matters, or both. Depending on the type of power of attorney, the agent will have the authority to make financial and property decisions or medical and personal decisions on behalf of the adult child, all without court intervention or direct oversight.

If the adult child receives either Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) and cannot manage the income, the Social Security Administration allows another person to receive the funds to use on the child's behalf. However this option also requires the filing of an annual report showing how the money was used.

The special needs trust usually avoids the need for a financial guardian or conservator.

### III. Selected Trust Administration Issues

#### 1. Funding a Third-Party SNT

##### a. How much to Fund?

A number of issues arise with respect to the question of how much to put into a third-party SNT:

- **First**, how much will a child with special needs require over her life?
- **Second**, should the same portion of the estate be left to all of the children, no matter their need?
- **Third**, how to assure that there's enough money?

**The first question is a difficult one.** It depends on assumptions about the child's needs and the availability of other resources to fulfill those needs. A financial planner or life care planner with experience in this area can help make projections to assist with this determination. It's generally better to err on the side of more money rather than less. You can't be certain current programs will continue. And you have to factor in paying for services, such as case management, that you provide free-of-charge today. If these assumptions mean that the child with special needs will require a large percentage of the estate, how will the other children feel if they receive less than their pro rata share? After all, the estate may already be smaller than it would be otherwise due to the time and money spent providing for the child with special needs.

**One solution to the question of fairness** and to the challenge of assuring that there are enough funds is **life insurance**. You could divide the estate equally among the children, but supplement the amount going to the special needs trust

with life insurance. The younger the client starts the process, the more affordable the premiums will be. If married, the premiums can often be lower for a policy that pays out only when the second parent dies.

#### **b. Finding the Funds**

Once a reasonable estimate is ascertained, the client will may need to consider how to fund this trust without sacrificing such financial goals as college and retirement. You may also need to balance the needs of the child with special needs with the wish to benefit other children as well as covering other current needs.

**Many families find that a second-to-die life insurance policy is the most realistic option** to fund an SNT because the premiums are often lower and the trust is funded when it is most needed, after both parents have passed away. In short, how much is funded and how large an insurance policy is purchased will be a question of balance among current needs, retirement funding, the needs of the other children, if any, and the anticipated needs of the child with special needs.

Finally, be sure to create or update an estate plan and determine which assets you'll leave to the SNT, and make sure the client understands that any gifts from relatives of the need to be directed to the SNT, rather than the child, to avoid the risk of disqualifying the child from eligibility for public benefits.

#### **c. Tools for Calculating the “Special Needs Goal”**

An excellent tool available to the general public are special needs calculators – such as MetLife's version (located at <http://www.metlifeiseasier.com/metdesk/>), which takes information you provide about anticipated income and expenses, and then offers a realistic estimate of how much the child will need in lifetime financial support. This calculation should be re-run periodically, particularly as the child nears adulthood, to ensure the estimate reflects the most accurate, up-to-date information about needs and circumstances.

The first step in determining the amount to set aside in an SNT is considering your goals and expectations for the child's future. If the client has not created a Memorandum of Intent, also called a Letter of Intent or a Life Plan, this is the time to draft such a document. It should address factors such as the child's

medical condition, guardianship needs, and ability to work and desired living arrangements, all of which will drive your special needs calculation.

Next, you or your client will need to tackle the most arduous part of the process, placing a dollar value on each category. You can start by listing any current income or expenses likely to continue into the child's adult years. Consider income from sources such as life insurance proceeds, gifts, inheritances, and legal settlements, as well as from employment and public benefits such as Supplemental Security Income and Social Security Disability Income.

On the expenses side of the column, broad categories include, but are not necessarily limited to:

- Housing: rent, a mortgage, utilities, insurance, taxes, maintenance;
- Transportation: car payments, auto insurance, fuel, repairs, public transportation costs;
- Medical care: doctor visits, therapy, prescription drugs;
- Care assistance: respite, custodial, nursing home care;
- Special equipment: wheelchairs, assistive technologies, durable medical equipment, computers, service animals;
- Personal needs: grooming, hobbies, entertainment, vacations;
- Education and employment costs: tuition, books, supplies, tutoring; and
- Future asset replacement costs: for a car, major appliances, electronics, an furnishings.

Prior to running the calculation, you may need to indicate the child's life expectancy and the number of years remaining until his or her parent's retirement. Once you've input all required data, the calculator automatically will run an analysis of the funding needs based on preset assumptions about the rate of inflation and after-tax investment returns.

## 2. Trustee Selection

### a. Choosing the Best Trustee: Difficult, but Essential

Choosing a trustee is one of the most difficult parts of planning for a person with special needs. The trustee of a special needs trust must be able to fulfill all of the normal functions of a trustee – accounting, investments, tax returns and distributions – and also be able to meet the needs of the special beneficiary. The latter often means having an understanding of the various public benefits programs, having sensitivity to the needs of the beneficiary, and having knowledge of special services that may be available.

### b. Trustee Possibilities

#### i. *Professional Trustees*

Because of the complexities of properly maintaining a Special Needs Trust, and making proper, non-disqualifying disbursements to the disabled beneficiaries, a professional trustee familiar with public benefits laws is always the best option to serve as trustee. Unfortunately, many professional trustees require a minimum amount of funds **in the trust**, often at least \$500,000. Otherwise their fees become unreasonable in relation to the size of the trust.

There are a number of possible solutions available. Often parents choose to appoint co-trustees – a trust company or law firm as a professional trustee along with a healthy child as a family trustee. Working together, they can provide the necessary experience to meet the needs of the child with special needs. Unfortunately, in many cases such a combination is not available, often because of the minimum amount requirements of the professional trustee. In other situations, there is no appropriate family member to appoint as co-trustee.

Where the size of the trust is insufficient to justify hiring a professional trustee, two solutions are possible:

#### j. *Family Member Trustee*

With amounts under \$500,000, one of the only options is to have a family member or family friend act as trustee. While not ideal, a family member or family friend can serve adequately as trustee so long as that trustee understands that there are complex legal requirements and knows to hire special needs attorneys, accountants, and investment advisors to help with administering the

trust. Where no appropriate family member is available to serve as co-trustee, the parent may direct the professional trustee to consult with specific individuals who know and can care for the child with special needs. These could be family members who are not appropriate trustees, but who can serve in an advisory role. Or they may be social workers or care managers or others who have both personal and professional knowledge of the beneficiary. This role may be formalized in the trust document as a “Care Committee” or “Advisory Committee.” The second option is to use a pooled trust.

#### *ii. Pooled Trust Option*

**The second option is to use a pooled trust.** There are third-party pooled trusts in almost all states, and some that are national in scope. A third-party pooled trust can provide a way to benefit from a special needs trust without creating one yourself. A nonprofit organization creates a pooled trust and selects a trustee. Individual beneficiaries have separate accounts inside the pooled trust, but all the money is pooled together and invested by the trustee. Individual beneficiaries get the services of a professional trustee and more investment options because there is more money overall.

### **3. Trust Investments**

Financial planners advise that running alternative calculations can help you plan adequately for worst- and best--case scenarios. One variable to consider is the child’s ability to earn income. For example, if he or she is able to work more than expected, earned income may cover more expenses, but SSI payments will likely be reduced. As the child’s disability advances, he or she may need to leave the workforce, potentially increasing SSI payments but also adding new expenses.

Another critical factor is the impact of higher or lower investment returns on the amount to set aside. If the child is very young, you may plan to invest aggressively, pursuing a higher rate of return than if he were nearing adulthood. The reason "an investment rule of thumb" is that you generally can take somewhat greater risks with a longer-term investment because you have more time to recover from dips in the market. If you anticipate a lower rate of return for any reason, you will need to compensate by setting aside more in savings.



## 4. Trust Distributions

One of the most complex tasks faced by the trustee of an SNT is what type of distributions to make, and what type of distributions are allowed. As a general rule, assets of an SNT can be used to purchase anything for the beneficiary other than food and shelter<sup>1</sup>. Cash distributions (including distributions of debit cards and gift cards that could be used for food or shelter) should never be made to the beneficiary of an SNT, because cash distributions will be counted as income to the beneficiary, and could disqualify the beneficiary from receiving SSI, which in many states would also disqualify the beneficiary from receiving Medicaid.

Distributions that can generally be made from an SNT include, but are not limited to:

- Education and Training. Training, education, treatment, and rehabilitation programs and services.
- Entertainment and Recreation. Costs of recreation, including, but not limited to: vacations and attending family gatherings; theatrical performances; films; festivals; athletic contests and similar events; sporting goods, equipment, uniforms, team photos, travel to games and tournaments; electronic equipment including but not limited to telephones, audio or video equipment of all kinds, video game consoles and software, televisions, computer equipment, and appropriate broadcast, cable, satellite, subscription, or wireless services to use the equipment.
- Household Goods and Appliances. Costs for household items such as furniture, decorations, window treatments, linens, towels, bedding, kitchen appliances, and maintenance/repairs of same.
- Medical and Dental Care. Medical, dental or diagnostic work or other treatment which is not covered by Medicaid and for which funds are not otherwise available, including, but not limited to: cosmetic or plastic surgery or other non-necessary medical procedures; orthodontics; dentures; optical care; eyeglasses; non-traditional medical care such as acupuncture, acupressure, or massage; experimental medical treatments or procedures; private rehabilitative care; private counseling; physical therapy, occupational therapy, and speech therapy;

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<sup>1</sup> In some states, an SNT can be drafted to allow distributions for food and shelter in the discretion of the trustee. But if making distributions for food and shelter, it must be understood that such distributions will reduce the beneficiary's SSI.

psychological or psychiatric therapy; over the counter medications; vitamins and herbs.

- Non-food Grocery Items. Costs for non-food grocery items such as: laundry soap, bleach, fabric softener, deodorant, dish soap, hand and body soap, personal hygiene products, paper towels, napkins, tissue paper, toilet paper, and household cleaning products.
- Personal Items and Services. Costs for personal items such as clothing, haircuts, spa and salon services, massages, facials, manicures, musical instruments (including lessons and music); costs for personal services such as dry cleaning, laundry, household cleaning, and personal assistance services not covered by Medicaid.
- Pets and Pet Supplies. Costs of pets, pet food, pet supplies, kennel services, veterinary services, and pet caretakers.
- Professional Services. Costs for the services of care managers, geriatric care manager, registered or practical nurses, aides or caregivers, attorneys, and accountants, and other appropriate professional service providers.
- Transportation and Mobility. Costs of transportation, such as cab fare, bus fare, purchase of a new or specially equipped vehicle or other transportation device, modification of an existing vehicle, wheelchairs and other ambulatory aids, ramps, lifts, insurance, gasoline, and maintenance.
- Other. Costs of any other non-essential items that may serve to enhance the Primary Beneficiary's comfort or well-being

June Testcase  
**REVOCABLE SPECIAL NEEDS TRUST**

dated August 13, 2019

by

Adam H. Testcase  
Settlor

**TRUST PREPARED BY:**

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# **TRUST AGREEMENT ESTABLISHING THE JUNE TESTCASE 3<sup>RD</sup>-PARTY SPECIAL NEEDS TRUST**

THIS TRUST AGREEMENT is made as of August 13, 2019, by and between Adam H. Testcase, currently residing at 123 Test Street, Fairfax, Virginia 22030 (the “Settlor”), and the same Adam H. Testcase as Trustee (the “Trustee”), for the benefit of June Testcase, born 1-22-2000, a disabled adult under the age of 65 years.

## **ARTICLE 1 FORMATION OF TRUST.**

### **SECTION 1.1 NAME OF TRUST.**

#### **1.1.1 Trust Name.**

- 1.1.1.1 The Trust created by this Trust Agreement may be referred to, in any other instrument, by any descriptive name including, but not limited to, *June Testcase Special Needs Trust*, or *June Testcase Special Needs Trust dated August 13, 2019*.
- 1.1.1.2 Any transfers to this Trust or any trust hereunder may refer to the aforesaid name or to the name of the Trustee as Trustee under one of the aforesaid names, with or without specifying any change in Trustee or any amendment to this Trust Agreement.
- 1.1.1.3 The Trustee or any third party dealing with this Trust or any trust established under the provisions of this Trust Agreement may use any other reference that is effective to transfer or hold title to Trust assets or to designate the Trust as a beneficiary of a third-party beneficiary contract, provided that the reference includes the date of the Trust, the name of at least one Trustee, and an indication that the assets are being held in a fiduciary capacity.

### **SECTION 1.2 TRUST PROPERTY.**

#### **1.2.1 Type of Property This Trust May Hold.**

- 1.2.1.1 The Trustee may acquire and hold any and all types of assets that the Trustee believes will serve the interests of the Trust, including, without limitation, financial accounts, securities, and other monetary assets; real property; and tangible personal property.
- 1.2.1.2 The Trustee may be named as beneficiary of any life insurance policy, employee benefit plan, retirement plan, or any other plan or asset, and the Trustee may elect the mode of payment which appears to be the most advantageous to this Trust and its beneficiaries, if not previously elected.
- 1.2.1.3 The Trustee may receive assets pursuant to Settlor’s Last Will and Testament and/or pursuant to any living trust created by the Settlor.
- 1.2.1.4 The Trustee may accept property from any source other than from the Primary Beneficiary, and upon any terms.

**1.2.2 Definition of “Trust Estate.”** All assets transferred to and accepted by the Trustee shall be referred to as the “trust estate.”

**1.2.3 How Trust Estate Is Held.** All assets transferred to and accepted by the Trustee shall be held in a single trust for the benefit of June Testcase.

## **SECTION 1.3 REVOCABILITY OF TRUST.**

**1.3.1 Revocability.** This Trust is revocable until the death of the Settlor.

**1.3.2 Additional Powers Reserved to Settlor.** In addition to any powers which may be reserved by Settlor in other provisions of this Trust Agreement, Settlor shall have the following powers while alive:

- 1.3.2.1 When Settlor is serving as Trustee or Co-Trustee of this Trust, Settlor may conduct business on behalf of this Trust without the consent of any other Trustee;
- 1.3.2.2 Settlor shall have the right, at any time, to amend, restate or revoke any term or provision of this Trust Agreement, in whole or in part. Any amendment, restatement or revocation must be in a written instrument signed by Settlor and delivered to the then-acting Trustee during Settlor's lifetime.
- 1.3.2.3 Settlor shall have the right to add or remove Trust property from this Trust at any time.
- 1.3.2.4 Settlor shall have the right to approve any investment decisions made by the Trustee as well as the right to control the distribution of income and principal from this Trust.

**1.3.3 When Trust Becomes Irrevocable.** This Trust shall become irrevocable upon Settlor's death, unless Settlor makes this Trust irrevocable by amendment during Settlor's lifetime.

**1.3.4 Tax Nature of Trust.**

- 1.3.4.1 During Settlor's lifetime, Settlor shall be treated as the owner, for income tax purposes, of all the assets held in this Trust as if Settlor held such assets as an individual. Settlor's Social Security Number shall be the taxpayer identification number of this Trust during Settlor's lifetime.
- 1.3.4.2 Upon Settlor's death, Settlor's Social Security Number may no longer be used as the taxpayer identification number of this Trust, and the Trustee must apply for a separate taxpayer identification number for this Trust.

## **SECTION 1.4 BENEFICIARY OF TRUST.**

**1.4.1 Primary Beneficiary.** This is a non-support, special needs trust for the benefit of June Testcase, who may be referred to herein as June Testcase, or as June, or as the "Primary Beneficiary" of this Trust. At the time this Trust is established, June is 19 years old.

**1.4.2 Beneficiary Disabled.** June is a disabled person as defined in Section 1614(a)(3) of the Social Security Act, 42 U.S.C. § 1382c(a)(3).

## **SECTION 1.5 TRUST PURPOSE.**

**1.5.1 Special Nature of This Trust.**

- 1.5.1.1 The purpose of this Trust is to create a supplemental and emergency fund for the benefit of June and not to displace any assistance, benefits, or services that June may be eligible to receive from time to time by reason of disability, incapacity, age, or other factors, from federal, state, and local governmental and charitable sources. It is understood that governmental and charitable programs, in themselves, often contain gaps that, if unaddressed, may significantly reduce June's quality of life.

- 1.5.1.2 Settlor intends that the Trust be used in ways that will best enable June to lead as normal, comfortable, and fulfilling a life as possible.
- 1.5.1.3 It is important that June maintain the highest possible level of human dignity and quality of life. If this Trust were to be invaded by creditors, subjected to any liens or encumbrances, or cause public or charitable assistance and benefits to be not initiated or to be terminated, it is likely that the Trust corpus would be depleted prior to June's death, particularly if the cost of care for June is high. In such event, there would not be coverage for emergencies or supplementation of June's basic needs. All trust provisions shall be interpreted by the Trustee in light of these concerns.

**1.5.2 "Special Needs" Defined.** As used herein, "special needs" refers to the requisites for maintaining June's comfort and happiness when, in the Trustee's discretion, such requisites are not being provided by any charity or public agency, office, or department of June's state of residence or of any other state, or of the United States. "Special needs" include, but are not limited to:

- 1.5.2.1 ***Education and Training.*** Training, education, treatment, and rehabilitation programs and services.
- 1.5.2.2 ***Entertainment and Recreation.*** Costs of recreation, including, but not limited to: vacations and attending family gatherings; theatrical performances; films; festivals; athletic contests and similar events; sporting goods, equipment, uniforms, team photos, travel to games and tournaments; electronic equipment including but not limited to telephones of all type, audio or video equipment of all kinds, video game consoles and software, televisions, computer equipment, and appropriate broadcast, cable, satellite, subscription, or wireless services to use the equipment.
- 1.5.2.3 ***Household Goods and Appliances.*** Costs for household items such as furniture, decorations, window treatments, linens, towels, bedding, kitchen appliances, and maintenance/repairs of same.
- 1.5.2.4 ***Medical and Dental Care.*** Medical, dental or diagnostic work or other treatment which is not covered by Medicaid and for which funds are not otherwise available, including, but not limited to: cosmetic or plastic surgery or other non-necessary medical procedures; orthodontics; dentures; optical care; eyeglasses; non-traditional medical care such as acupuncture, acupressure, or massage; experimental medical treatments or procedures; private rehabilitative care; private counseling; physical therapy, occupational therapy, and speech therapy; psychological or psychiatric therapy; over the counter medications; vitamins and herbs.
- 1.5.2.5 ***Non-food Grocery Items.*** Costs for non-food grocery items such as: laundry soap, bleach, fabric softener, deodorant, dish soap, hand and body soap, personal hygiene products, paper towels, napkins, tissue paper, toilet paper, and household cleaning products.
- 1.5.2.6 ***Personal Items and Services.*** Costs for personal items such as clothing, haircuts, spa and salon services, massages, facials, manicures, musical instruments (including lessons and music); costs for personal services such as dry cleaning, laundry, household cleaning, and personal assistance services not covered by Medicaid.

- 1.5.2.7 ***Pets and Pet Supplies.*** Costs of pets, pet food, pet supplies, kennel services, veterinary services, and pet caretakers.
- 1.5.2.8 ***Prepaid Funeral and Burial Arrangements.*** Costs for prepaid funeral arrangements, prepaid cremation arrangements, prepaid burial / interment arrangements, and all related costs for the benefit of the Primary Beneficiary.
- 1.5.2.9 ***Service Animal and Supplies.*** Costs of obtaining and training service animals of all types, costs for food and other supplies for service animals, kennel services and veterinary services service animals, and service animal caretakers.
- 1.5.2.10 ***Professional Services.*** Costs for the services of care managers, geriatric care managers, registered or practical nurses, aides or caregivers, attorneys, accountants, and other appropriate professional service providers.
- 1.5.2.11 ***Transportation and Mobility.*** Costs of transportation, such as cab fare, bus fare, purchase of a new or specially equipped vehicle or other transportation device, modification of an existing vehicle, wheelchairs and other ambulatory aids, ramps, lifts, insurance, gasoline, and maintenance.
- 1.5.2.12 ***Other.*** Costs of any other non-essential items that may serve to enhance June 's comfort or well-being.

## **ARTICLE 2 APPOINTMENT, REMOVAL, AND RESIGNATION OF TRUSTEE.**

### **SECTION 2.1 APPOINTMENT BY SETTLOR.**

#### **2.1.1 Appointment of Original and Successor Trustees.**

- 2.1.1.1 The Settlor appoints Adam H. Testcase as original Trustee of this Trust.
- 2.1.1.2 Upon the resignation, refusal to act, death or incapacity (as defined in Article 6) of all Trustees named in Section 2.1.1.1, Settlor appoints \_\_\_\_\_ as Successor Trustee for all trusts created hereunder.

#### **2.1.2 Right to Remove Trustee.**

- 2.1.2.1 Settlor retains the right to remove any Trustee at any time, with or without cause.
- 2.1.2.2 Notice of such removal by Settlor shall be effective when made in writing, and either:
  - 2.1.2.2.1 Delivered personally or by a reputable commercial delivery service to the Trustee being removed, with a written receipt signed by such Trustee, or
  - 2.1.2.2.2 Mailed to the last known address of the Trustee being removed, by certified mail, return receipt requested.

#### **2.1.3 Appointment of Additional Trustees.**

- 2.1.3.1 If all Trustees and Successor Trustees named in Section 2.1 have been removed, have resigned, have become incapacitated, have died, or are otherwise unable or unwilling to serve, then Settlor may appoint an individual Successor Trustee or a corporate Successor Trustee.
- 2.1.3.2 Any such Trustee shall have the same rights, powers, duties, authority and privileges, whether or not discretionary, as if originally appointed hereunder.



- 2.1.3.3 No Successor Trustee so named shall be responsible for, or shall be required to inquire into, any fiduciary actions occurring prior to said successor's appointment as Trustee hereunder. No Successor Trustee shall incur any liability, by reason of qualifying as a Trustee hereunder, for the acts or omissions of any predecessor Trustee.

## **SECTION 2.2 APPOINTMENT BY OTHER THAN SETTLOR.**

### **2.2.1 Appointment of Co-Trustee.**

- 2.2.1.1 The Trustee may appoint a Co-Trustee, in the Trustee's discretion. The Co-Trustee so selected shall be a corporate Co-Trustee, and shall not be subject to the control of the Settlor nor any Beneficiary of this Trust, either directly or by attribution as set forth in the relevant sections of the Code.
- 2.2.1.2 The Trustee may delegate any or all of the Trustee's powers, in writing, to such corporate Co-Trustee for any period of time.
- 2.2.1.3 If any bank, trust company or similar institution serving as a corporate Co-Trustee merges with or is acquired by another entity, the corporate successor entity shall automatically be substituted as corporate Co-Trustee hereunder.

### **2.2.2 Appointment of Successor Trustee.**

- 2.2.2.1 Any Trustee named herein may appoint a Successor Trustee. Such Successor Trustee shall be deemed to be in office and entitled to act upon delivery of said Successor Trustee's written acceptance of this Trust to an acting Trustee or, if none, then to Settlor (or to June's guardian, conservator, guardian *ad litem*, attorney, or agent if Settlor has died or become incapacitated), and to June. If neither Settlor nor any guardian, conservator, attorney or other agent is available to accept written notice of such appointment, a court of competent jurisdiction may accept such notice on behalf of June and Settlor. Any Successor Trustee shall have all the powers, immunities and discretions given to the original Trustee.
- 2.2.2.2 Any such Trustee shall have the same rights, powers, duties, authority and privileges, whether or not discretionary, as if originally appointed hereunder.
- 2.2.2.3 No Successor Trustee so named shall be responsible for, or shall be required to inquire into, any fiduciary actions occurring prior to said successor's appointment as Trustee hereunder. No Successor Trustee shall incur any liability, by reason of qualifying as a Trustee hereunder, for the acts or omissions of any predecessor Trustee.

## **SECTION 2.3 APPOINTMENT OF TRUST ADVISOR.**

### **2.3.1 Designation of Trust Advisor.**

- 2.3.1.1 Settlor designates August Testcase, uncle of June, as the Trust Advisor to the Trustee of this Trust. The Trust Advisor will have primary responsibility for interacting with the Trustee. The Trust Advisor will request and receive disbursements, receive tax information and otherwise be the main point of contact with regard to distributions for the benefit of June.
- 2.3.1.2 All action taken by the Trust Advisor shall be taken in the sole and absolute discretion of the Trust Advisor. The Trust Advisor shall not be personally liable for any loss of public benefits, provided the Trust Advisor at all times acts in good

faith, reasonably consistent with the terms of this Trust. The Trust Advisor shall not be liable to any Beneficiary, to any remainder beneficiaries, or to any other party, for acts undertaken by the Trust Advisor in good faith.

### **2.3.2 Settlor's Powers.**

2.3.2.1 ***Power To Remove Trust Advisor.*** During Settlor's lifetime, Settlor may remove a Trust Advisor at any time. Any Trust Advisor so removed shall not be entitled to receive any reason, cause, or ground for such removal. Notice of removal shall be effective when made in writing by notice delivered to the Trust Advisor at the Trust Advisor's last known address.

2.3.2.2 ***Power to Replace Trust Advisor.*** If a Trust Advisor is terminated, resigns, becomes incapacitated, dies, or cannot serve for any other reason, the Settlor may appoint an individual or corporate successor Trust Advisor other than Settlor; at no time may Settlor serve as Trust Advisor.

**2.3.3 No Fiduciary Duty.** No Trust Advisor shall have a fiduciary duty to act or to withhold actions based on his or her status as Trust Advisor.

### **2.3.4 Fees and Expenses.**

2.3.4.1 The Trust Advisor shall be entitled to a reasonable fee for serving as Trust Advisor.

2.3.4.2 If the Trust Advisor is an accountant, attorney, or financial professional, and is hired by the Trustee or the Trust Advisor to render such professional services, then said Trust Advisor may earn additional fees for rendering such professional services.

2.3.4.3 The Trustee shall reimburse the Trust Advisor for all reasonable expenses incurred on behalf of the Trust, including reviews by or consultations with accountants, attorneys, and financial professionals.

## **SECTION 2.4 RESIGNATION; CO-TRUSTEE SIGNATURE REQUIREMENTS.**

**2.4.1 Notice Required.** Any Trustee may resign at any time by giving at least thirty (30) days written notice of said Trustee's intention to do so, such notice to be delivered in person, by certified mail, or by a reputable commercial delivery service to a Successor Trustee, June, and the Settlor, provided that the resignation of a Trustee shall become effective only upon the appointment and acceptance of a Successor Trustee.

**2.4.2 Signature Requirements.** If two Co-Trustees are serving hereunder, the signatures and/or agreement of both Co-Trustees shall be required to transact business on behalf of the Trust. When more than two Co-Trustees are acting, the signatures and/or agreement of a majority of the Co-Trustees shall control in all matters pertaining to the administration of any trust created under this Trust Agreement.

## **ARTICLE 3 TRUSTEE POWERS AND DUTIES.**

### **SECTION 3.1 DISTRIBUTION OF INCOME AND PRINCIPAL.**

#### **3.1.1 Prohibited Distributions.**

3.1.1.1 The Trustee shall not make any distribution or reimbursement to any governmental or charitable entity that will serve to replace or displace any assistance or benefit that such governmental or charitable entity may provide to persons similar to June,

and shall not distribute trust assets to for the benefit of June for such needs as would be provided for in the absence of this Trust by governmental or charitable financial assistance and/or benefits.

- 3.1.1.2 Neither June nor any person acting on June 's behalf as guardian, conservator, guardian *ad litem*, attorney, or agent, except for the Trustee alone, shall have any right, power, or authority to liquidate this Trust, in whole or in part, to require payments from this Trust for any purpose.

### **3.1.2 Use of Trust Principal and Income in Trustee's Absolute Discretion.**

- 3.1.2.1 The Trustee may use for the sole benefit of June such amounts from Trust income or principal or both (from no amount up to the whole amount thereof), as the Trustee, in the Trustee's sole, absolute and unfettered discretion, may from time to time deem appropriate or advisable for the satisfaction of June 's special needs (as defined above), if any, to supplement the basic support that June may be receiving through or from various governmental and/or charitable assistance programs.
- 3.1.2.2 The Trustee may take into account any factors the Trustee considers appropriate, having regard for the purposes of the Trust described in Section 1.5.1.
- 3.1.2.3 No part of the assets or income shall be used to displace, replace, or reimburse public assistance benefits of any county, state, federal or other government agency that has a legal responsibility to serve persons with disabilities which are the same as or similar to those of June . This includes, but is not limited to, Supplemental Security Income and Medicaid. For purposes of determining June 's eligibility for any such benefits, no part of the principal or income shall be considered available to June .
- 3.1.2.4 All the terms of this Trust Agreement, wherever they may appear, shall be interpreted to conform to this primary goal, namely that June continue to receive the maximum level of governmental assistance for which June is eligible.
- 3.1.2.5 If the Trustee is requested to release principal or income on behalf of June to pay for equipment, medication or services which a government agency is authorized to provide (were it not for the existence of this Trust), or if the Trustee is requested to petition the court or any other administrative or judicial agency for the release of principal or income for this purpose, the Trustee is authorized to deny such request and is authorized, in the Trustee's discretion, to take whatever administrative or judicial steps are necessary to continue June 's eligibility for benefits, including obtaining instructions from a court of competent jurisdiction ruling that the trust corpus is not available to June for eligibility purposes, and obtaining judicial reformation of the trust if necessary. Any expenses of the Trustee in this regard, including reasonable attorney's fees, shall be a proper charge to the trust.
- 3.1.2.6 The Trustee shall not provide, or make any distribution to pay for, any food or housing for the benefit of June if June is receiving Supplement Security Income (SSI), because said SSI monthly benefit is intended to provide sufficient income for June to pay for June 's necessary food and housing.
- 3.1.2.7 Notwithstanding the foregoing prohibition, if the Trustee, in the Trustee's sole and absolute discretion, determines after consultation with a Certified Elder Law Attorney or other attorney who specializes in government benefit law and special

needs planning for the disabled, that it is in June 's best interests for this Trust to provide, at any time, in-kind support and maintenance for June in the form of food and shelter, then the Trustee may do so as long as it will only reduce, and not eliminate, June 's continued right to receive SSI, Medicaid, or any other applicable governmental or charitable benefit.

3.1.2.7.1 However, in the event that the mere existence of the above-stated authority to make in-kind distributions in the form of food and shelter will result in a reduction or loss of the June 's entitlement program benefits, regardless of whether the Trustee actually exercises the authority, then such authority to make in-kind distributions in the form of food and shelter shall be null and void, and the Trustee's authority to make these types of distributions shall terminate.

3.1.2.8 Notwithstanding any provision to the contrary, in the event that this Special Needs Trust is challenged or faces imminent invasion by any governmental department or agency in such a way as to affect June 's eligibility for benefits available under any governmental program, the Trustee is empowered to amend the trust so as to maintain June 's eligibility for benefits under such governmental program.

3.1.2.9 In making any distribution hereunder, the Trustee shall be guided by the following distribution guidelines:

3.1.2.9.1 The Trustee shall consider all income and resources known to the Trustee and reasonably available to June ;

3.1.2.9.2 The Trustee shall consider all available benefits from any government agency, such as Supplemental Social Security Income (SSI), Medicaid, Social Security Disability Income (SSDI), Food Stamps, Medicare, and other special purpose benefits for which June is eligible;

3.1.2.9.3 The Trustee shall consider the resource and income limitations of all applicable assistance programs;

3.1.2.9.4 The Trustee shall strive to make expenditures which provide a comfortable quality of life for June , though the Trustee shall not be obligated or compelled to make such expenditures.

**3.1.3 Duty To Conserve.** The Trustee is directed to conserve and accumulate the Trust estate to the extent feasible, due to the unforeseeability of June 's future needs. However, accumulation or use of this Trust is to be determined solely on the basis of June 's needs, without regard for the potential future interests of the Contingent Beneficiaries described in Section 5.1.2, as they are being provided for through other means.

#### **3.1.4 Public Assistance Programs.**

3.1.4.1 If June is unable to maintain and support himself or herself independently, the Trustee, in the exercise of the Trustee's best judgment and fiduciary duty, may seek support and maintenance for June from all available public resources. The Trustee shall take into consideration the applicable resource and income limitations of any public assistance program for which June is eligible.

3.1.4.2 In carrying out the provisions of this Trust, the Trustee shall be mindful of the probable future special needs of June .

### 3.1.5 Possible Early Termination During Lifetime of June .

- 3.1.5.1 Despite the clear restrictions set forth in this Trust Agreement, if a governmental or charitable organization to which June has applied for benefits determines that the income and/or principal of this Trust is available to be used for the basic maintenance, support, and/or medical care of June , and therefore determines that June is not eligible for the benefits applied for, then the Trustee, in the Trustee's sole discretion, may wind up this Trust pursuant to Section 5.1.1 and distribute the remaining assets hereof to an account for the benefit of June under a pooled third-party special needs trust established pursuant to the provisions of 42 USC Section 1396p(d)(4)(C) (sometimes referred to as a "d4C trust" or "pooled trust" or "pooled special needs trust").
- 3.1.5.2 After the Settlor's death and during June 's lifetime, if the principal of this Trust is less than \$100,000 at any time, then the Trustee may, in the Trustee's sole and absolute discretion, wind up the this Trust pursuant to Section 5.1.1 and distribute the remaining assets hereof to an account for the benefit of June under a pooled third-party special needs trust established pursuant to the provisions of 42 USC Section 1396p(d)(4)(C) (sometimes referred to as a "d4C trust" or "pooled trust" or "pooled special needs trust") or to an ABLE Account created under the Achieving a Better Life Experience Act of 2014 (understanding that any money remaining in an ABLE account upon the death of June would be subject to Medicaid payback).
- 3.1.5.3 **No Power to Convert to Total Return Unitrust.** No Trustee shall under any circumstances have the power to convert this Trust or any part of this Trust into a total return unitrust.
- 3.1.5.4 **No Power to Terminate Uneconomical Trust.** No Trustee shall under any circumstances have any power to terminate this trust due to it being an uneconomical trust and distribute trust assets to the Beneficiary.

### 3.1.6 Protection from Creditors.

- 3.1.6.1 **Spendthrift Limits.** No right, title or interest in this Trust, or in any sub-trusts or trust shares created hereunder, shall be subject to any beneficiary's liabilities, creditor claims, assignment, pledge, alienation, or anticipation.
- 3.1.6.2 **Contingent Beneficiaries Entitled to Full Enjoyment of Trust.** After the death of June , if the Trustee shall determine that a Contingent Beneficiary described in Section 5.1.2 would not benefit from a direct distribution of Trust income and/or principal to said Contingent Beneficiary because of the availability of said distribution to said Contingent Beneficiary's creditors, the Trustee shall instead make such distribution for or on behalf of the Contingent Beneficiary, and not directly to the Contingent Beneficiary. This direction is intended to enable the Trustee to give each Contingent Beneficiary the fullest possible benefit and enjoyment of Trust income and principal to which that Contingent Beneficiary is entitled.
- 3.1.6.3 **Assignment.** After the death of June , until such time as income and/or principal of this Trust, or any part thereof, shall actually be distributed by the Trustee outright to a Contingent Beneficiary of this Trust discharged of trust, no Contingent Beneficiary shall have any right, power or authority to assign, transfer, encumber,

pledge, mortgage, hypothecate, alienate, anticipate or in any other manner dispose of, affect, or impair said Contingent Beneficiary's beneficial or legal rights, entitlements, interests, claims and/or estates under this Trust, nor shall the same be subject to the rights, claims, garnishments, attachments, or executions of any creditor of any Contingent Beneficiary, nor be subject to or liable under any other legal or judicial actions or process of law or court.

- 3.1.6.4 ***Protection from Divorce.*** After the death of June, if a Contingent Beneficiary is in the midst of a divorce proceeding at the time that such Contingent Beneficiary would otherwise receive a distribution hereunder, said distribution shall not be made, but shall instead continue to be held in trust by the Trustee until such time as the divorce proceeding is dismissed or a Final Order or Decree of Divorce (or equivalent document) is entered.
- 3.1.6.5 ***Protection from Judgments, Creditors, and Other Liabilities.*** After the death of June, if at such time as any Contingent Beneficiary would otherwise receive a distribution hereunder, such Contingent Beneficiary has a monetary judgment against him or her or is in the midst of a legal proceeding that could result in a monetary judgment against said Contingent Beneficiary, then said distribution shall not be made, but shall instead continue to be held in trust by the Trustee until such time as the judgment is paid or the legal proceeding is dismissed.
- 3.1.6.6 ***Reimbursement of Expenses.*** Any expenses of the Trustee under this Section 3.1.6, including reasonable attorneys' fees, shall be a proper charge of this Trust.
- 3.1.6.7 ***Applicability.*** This Section 3.1.6 shall apply to this entire trust, including all other trusts created by this Trust, and all trust shares and sub-trusts established hereunder.

## **SECTION 3.2 ADMINISTRATIVE MATTERS.**

### **3.2.1 Delegation and Disclaimer of Powers.**

- 3.2.1.1 At any time, any Trustee may delegate some or all of said Trustee's powers in writing to any named Successor Trustee for any period of time.
- 3.2.1.2 A Trustee may disclaim, release, or restrict the scope of any power held in connection with the Trust or any sub-trust, including any administrative power, whether such power is expressly granted by this Trust Agreement or granted or implied by law. Such a disclaimer, release, or restriction shall be accomplished by written instrument specifying the power to be disclaimed, released, or restricted, and the nature of any such restriction. The Trustee may then appoint an Independent Trustee or Co-Trustee who may exercise any such power that the Trustee has disclaimed, released, or restricted.

### **3.2.2 Disqualification in Certain Circumstances.**

- 3.2.2.1 Notwithstanding anything to the contrary contained herein, if any current or possible future beneficiary of any trust created hereunder is acting as Trustee hereunder, such person shall be disqualified from:
  - 3.2.2.1.1 Exercising any power to make any discretionary distributions of income or principal to himself or herself (unless the discretion to make such distributions is limited by an ascertainable standard within the meaning

of Code Section 2041(b)(1)(A)), or to satisfy any of his or her legal obligations, or

3.2.2.1.2 Making discretionary allocations of receipts or disbursements as between income and principal.

3.2.2.2 No Trustee who is a current or possible future beneficiary of any trust hereunder shall participate in the exercise of any powers of the Trustee which would cause such beneficiary to be treated as the owner of trust assets for tax purposes.

**3.2.3 No Bond Required.** No bond, surety, or other security shall be required of any Trustee specifically named herein for the faithful performance of the duties of Trustee, notwithstanding any law of any State or other jurisdiction to the contrary.

**3.2.4 Liability.** No Trustee shall be liable for acts or omissions in administering the Trust or any sub-trust created by this Trust Agreement, or for the acts or omissions of any agent appointed hereunder with due care, except for that Trustee's own actual fraud, gross negligence or willful misconduct. If any Trustee, as Trustee, becomes liable to any other person who is not a beneficiary in connection with any matter not within the Trustee's control and not due to the Trustee's actual fraud, gross negligence or willful misconduct, such Trustee shall be fully indemnified and held harmless by the Trust and any sub-trust created hereunder giving rise to such liability, as the case may be, against and in respect of any damages that such Trustee may sustain, including, without limitation, attorneys' fees. No Trustee shall be liable for tax elections made under Code Sections 2032A, 2033A, and 2031(c), and the agreements relative thereto, if such elections were made in good faith, in the Trustee's determination of the best interests of the Trust and the beneficiaries.

**3.2.5 Compensation.**

3.2.5.1 **Expenses.** All Trustees are entitled to reimbursement for expenses incurred on behalf of the Trust and any sub-trust or trust share established under this Trust Agreement.

3.2.5.2 **Individual.** Any individual serving as Trustee shall be entitled to, but may waive, reasonable compensation for services in administering the Trust or any sub-trust or trust share established under this Trust Agreement, in accordance with the fiduciary compensation rules in effect in the jurisdiction under which this Trust is being administered.

3.2.5.3 **Professional.**

3.2.5.3.1 Any professional serving as Trustee shall charge such professional's normal hourly rate for services, or receive compensation based upon a fee schedule applicable to such professional's clients who are similarly situated.

3.2.5.3.2 Any Professional Trustee such as a bank or trust company serving as Trustee shall be entitled to receive compensation for its services based upon its standard schedule of compensation in effect when such compensation is payable.

3.2.5.3.3 A Professional Trustee may deal with any individual or entity with whom that Trustee is associated or affiliated when, in the Trustee's sole discretion, such transaction shall be to the benefit of the Trust. The

foregoing authority includes furnishing or receiving services as attorney, investment adviser, accountant, broker, tax specialist or such other capacity as may be necessary or desirable in Trustee's sole discretion for the proper management, protection and sale or other disposition of any part of the Trust. The Professional Trustee or its associates, subsidiaries or affiliates may receive and retain customary and reasonable compensation for such services.

3.2.5.3.4 Any Professional Trustee shall also be entitled to receive and retain from any money market fund or similar entity payments under Rule 12b-1 of the Investment Company Act or any similar State law or rule.

3.2.5.3.5 Any Professional Trustee shall notify all Qualified Beneficiaries of any change in the rate or computation method of such Trustee's compensation or fee schedule at least thirty (30) days in advance of such change.

### **3.2.6 Allowed Types of Distributions.**

3.2.6.1 When distributions are made pursuant to any provision of this Trust Agreement, the Trustee is authorized and empowered in the Trustee's sole discretion:

3.2.6.1.1 To make such distribution in cash or in kind, or partly in both.

3.2.6.1.2 To cause any distribution to be composed of cash, property or undivided fractional shares in property different in kind from any other distribution.

3.2.6.1.3 To determine the fair valuation of the property so allocated, with or without regard to the tax basis.

3.2.6.1.4 To hold the principal of separate trusts in a consolidated fund and to invest the same as a single fund, or alternatively to split trusts for purposes of allocating generation-skipping transfer (GST) tax exemptions within the meaning of Code Section 2642(a);

3.2.6.1.5 To merge any trusts which have substantially identical terms and beneficiaries, and to hold them as a single trust.

3.2.6.2 The Trustee's determination as to the value of property for the purpose of any distribution shall be binding and conclusive upon all persons who are then or may later become entitled to share in the Trust.

**3.2.7 Third Parties.** No person who deals with any Trustee hereunder shall be required to ascertain the application of any asset delivered to such Trustee, nor to inquire into the authority for or propriety of any action taken or not taken by such Trustee.

### **3.2.8 Duty to Inform, Report, and Account.**

3.2.8.1 ***Duty to Inform.***

3.2.8.1.1 During the lifetime of June , the Trustee shall keep June (and, if applicable, June 's legal Guardian and/or Conservator and/or Agent under General Power of Attorney) reasonably informed with respect to administration of the Trust. The Trustee shall not be required to give notice, information, or reports to any remainder beneficiaries or Qualified Beneficiaries (defined in Article 6) during June 's lifetime.



3.2.8.1.2 After June's death, the Trustee shall keep all Qualified Beneficiaries of the Trust reasonably informed with respect to administration of the Trust and any material facts which will enable them to protect their interests. The Trustee shall promptly respond to a Qualified Beneficiary's reasonable request for information related to administration of this Trust.

3.2.8.1.2.1 Any beneficiary may waive the right to such annual Trustee's report, and may withdraw a waiver previously made.

3.2.8.1.2.2 The approval of any person of full age (or of a guardian or parent of a minor or incompetent) to whom a report is rendered shall be final and binding upon such person (or such minor or incompetent), and upon any persons claiming through such person (or such minor or incompetent) as to all matters stated therein.

3.2.8.1.2.3 A person of full age (or a guardian or parent of a minor or incompetent) to whom a report is rendered shall be deemed to have approved the report if such person:

3.2.8.1.2.3.1 Assents to the report in writing; or

3.2.8.1.2.3.2 Does not communicate to the Trustee any written objections to the report within 60 days after receipt of the report (provided that the report included a notice of the 60-day period within which objections must be raised).

3.2.8.2 ***No Duty to File Accounts.***

3.2.8.2.1 No Trustee shall be required to file with or furnish to any court or judicial entity any accountings of proceedings, or any inventory of property which may come into the Trustee's possession.

3.2.8.2.2 No Trustee shall be required to have any account judicially approved, but a Trustee may seek a judicial approval of any account at any time, in the Trustee's discretion. No guardian *ad litem* shall be appointed in such a proceeding.

3.2.8.3 ***Duty to Maintain Books and Records.*** The Trustee shall at all times maintain proper books and records reflecting all income, disbursements, and other transactions of the Trust and any sub-trusts, and shall make such books and records accessible to Qualified Beneficiaries at reasonable times upon reasonable request.

3.2.8.4 ***Under-Age Beneficiary.***

3.2.8.4.1 As long as any beneficiary of this Trust is under 25, the Trustee shall provide all information (including notices and reports) to such beneficiary's parent(s) or guardian(s). If no parent or legal guardian is capable of protecting the beneficiary's interest and receiving notice, the Trustee may provide such information to such beneficiary's grandparent(s).

3.2.8.4.2 If any beneficiary of this Trust is over 25, but the Trustee determines, in the Trustee's sole and absolute discretion, that such beneficiary's best interests would not be served by providing information directly to such beneficiary, the Trustee may continue to provide information to a parent, legal guardian, or grandparent instead of to the beneficiary.

3.2.8.5 **Disabled Beneficiary.** Any Trustee's account accepted in writing by a guardian, conservator, representative, payee, or attorney-in-fact for a disabled beneficiary shall be conclusive, except for fraud or manifest error, on all parties in interest, whether or not of full age or in being or ascertained.

### SECTION 3.3 INVESTMENT POWERS.

**3.3.1 Primary Investment Objective.** With regard to investment of Trust assets, it is Settlor's suggestion, but not direction, that the Trust be managed as though it were a "total return" trust, meaning that the primary investment objective shall be a balance between production of income and preservation of capital.

#### **3.3.2 Investment Manager.**

3.3.2.1 **Appointment.** The Trustee shall have the right from time to time to appoint and remove one or more Investment Managers and to delegate to each Investment Manager some or all of the Trustee's fiduciary duties.

3.3.2.1.1 The Trustee shall exercise reasonable care, skill, and caution in:

3.3.2.1.1.1 Selecting an Investment Manager;

3.3.2.1.1.2 Establishing the scope and terms of the delegation to the Investment Manager, consistent with the purposes and terms of the Trust; and

3.3.2.1.1.3 Periodically reviewing the Investment Manager's actions in order to monitor the Investment Manager's performance and compliance with the terms of the delegation.

3.3.2.1.2 A Trustee who complies with Section 3.3.2.1.1. shall not be liable to the Trust or to the Trust's beneficiaries for an action of the Investment Manager to whom a function was delegated.

3.3.2.1.3 An Investment Manager appointed by a Trustee who is not the Settlor shall have the power and authority to retain assets acquired by the Settlor that are not regarded as traditional for trusts, including investments that would be forbidden or would be regarded as imprudent, improper or unlawful by the "prudent person" rule, "prudent investor" rule, or any other rule or law which restricts a fiduciary's capacity to invest.

3.3.2.2 **How Appointment Accepted.** An Investment Manager appointed shall accept such appointment by a signed writing delivered to the Trustee.

3.3.2.3 **Rights and Duties of Investment Manager.**

3.3.2.3.1 In performing a delegated function, an Investment Manager owes a duty to the Trust and to the Trust's beneficiaries to exercise reasonable care to comply with the terms of the delegation.

- 3.3.2.3.2 While an Investment Manager is serving, the Trustee shall have no responsibility to monitor or to consider the advisability of purchasing, retaining or disposing of any investment being managed by the Investment Manager.
- 3.3.2.3.3 Any direction to the Trustee by an Investment Manager may be in writing, by telephone, by fax, or by electronic mail, and the Trustee may rely on any such direction from a person purporting to be the Investment Manager without further inquiry by the Trustee.
- 3.3.2.3.4 The Trustee shall pay the compensation of the Investment Manager from the trust assets.
- 3.3.2.3.5 An Investment Manager may resign at any time upon thirty (30) days written notice to the Trustee and to Settlor or such other persons then having the right to appoint or remove the Investment Manager.

#### **SECTION 3.4 MANAGEMENT POWERS.**

**3.4.1 Jurisdictional Powers.** All Trustees (including all successor trustees, and including all trustees and successor trustees of any sub-trusts or Special Needs Trusts created hereunder) shall have all of the powers granted to trustees under Section 64.2-105 of the Commonwealth (except for any powers allowing termination of trusts), which laws are hereby expressly incorporated herein by reference. If the situs of this Trust or any trust hereunder at any time changes, then the Trustee shall have all of the powers granted to fiduciaries under the laws of the new situs, which laws are hereby expressly incorporated herein by reference. If the laws of the new situs require a specific reference to a specific code section in order to incorporate such statutory fiduciary powers, the Trustee shall be permitted to amend this section to add such specific reference.

**3.4.2 Enumerated Powers.** All Trustees (including all successor trustees, and including all trustees and successor trustees of any sub-trusts or Special Needs Trusts created hereunder) shall also at all times have the powers granted by common law and the powers specifically enumerated in this Trust Agreement, as follows:

##### **3.4.2.1 *Purchase/Sale/Lease.***

- 3.4.2.1.1 The Trustee may purchase or sell at public or private sale, or exchange, grant options to purchase, lease, pledge, improve, repair, demolish, construct, manage, insure, operate, control, and mortgage, any property (real or personal), which at any time may constitute a part of the Trust, in such manner and on such terms as the Trustee in the Trustee's sole discretion may deem advisable.
- 3.4.2.1.2 This power shall specifically include the power to sell or lease real or personal property via private sale to a member of Settlor's family or to any other person, including the Trustee, at a value determined by an appraisal of said property conducted by a qualified appraiser who is licensed to perform such appraisals under the laws of the relevant jurisdiction.
- 3.4.2.1.3 The Trustee may record any deeds, mortgages, or other documents or memoranda of sales, business transactions, or any other such things and items of any description whatsoever.

- 3.4.2.2 ***Borrowing Money.*** The Trustee may borrow money for any purpose, with or without security, and pledge securities or other property without regard for the life span of the Trust or of any Trust beneficiary.
- 3.4.2.3 ***Execution of Instruments.*** The Trustee may execute deeds, assignments, leases, and all other instruments necessary or proper for the exercise of any power granted to the Trustee.
- 3.4.2.4 ***Voting of Stock and/or Membership Interests.*** In the Trustee's sole discretion, the Trustee may vote (either in person or by general or limited proxy) or refrain from voting any corporate stock or membership interest in any limited liability company for any purpose which is not inconsistent with Trust purposes.
- 3.4.2.5 ***Corporate or Company Transactions.*** The Trustee may deposit any securities constituting a part or all of the Trust with or under the direction of any committee formed to protect the securities; and to participate in, consent to, or carry out any reorganization, consolidation, merger, liquidation, readjustment of financial structure, or sale of the assets of any corporation, limited liability company, or other organization; and to exercise conversion and subscription rights; and hold any property received pursuant to any exchange, deposit, conversion or subscription as part of the Trust.
- 3.4.2.6 ***Obligations, Claims, and Taxes.*** The Trustee may pay, prosecute, extend, renew, modify, contest, or compromise any obligation or claim, including taxes, either in favor of or against the Trust or the income of the Trust, upon such terms as the Trustee determines, and upon such evidence as the Trustee deems sufficient.
- 3.4.2.7 ***Employment of Advisors and Agents.***
- 3.4.2.7.1 The Trustee may employ attorneys, accountants, banks, brokers, custodians, investment advisers, insurance agents, and any other advisors or agents and delegate to them any duties, rights, and powers of the Trustee including without limitation:
- 3.4.2.7.1.1 The right to vote on shares of stock or membership interests in limited liability companies constituting a part or all of the Trust, for periods and purposes as the Trustee in the Trustee's sole discretion deems advisable; and
- 3.4.2.7.1.2 The appointment of agents or co-fiduciaries to act in other jurisdictions in which the named Trustee is or might be unable to act for any reason.
- 3.4.2.7.2 Any agent shall be eligible to be so employed and to receive and retain reasonable compensation or commissions for services rendered, such compensation to be in addition to the compensation which such Trustee would otherwise be entitled to receive for services as a Trustee.
- 3.4.2.8 ***Receipt of Assets.*** The Trustee is authorized, but not required, to accept any property transferred to the Trustee by any person during such person's lifetime or by such person's Last Will and Testament or living trust. Any property so transferred to, and accepted by, the Trustee shall become a part of the Trust or sub-trust created by this Trust Agreement as such person shall direct and may and shall be held, administered and disposed of as a part of the Trust or sub-trusts.

- 3.4.2.9 ***Income and Tax Alternatives.*** The Trustee may determine whether and to what extent Trust income shall be transferred to the Trust with respect to the amortization, depreciation or depletion of the Trust, all without regard to the general rules of law on the subject.
- 3.4.2.10 ***Securities Transactions.*** The Trustee may authorize payment of a specified amount directly to the beneficiaries of this Trust or any subtrust from any mutual fund investment company or annuity underwriter payable from interest income, dividends, capital gains distributions, or proceeds from the liquidation of shares or units.
- 3.4.2.11 ***Insurance.*** The Trustee may purchase, maintain, commute, or surrender life insurance policies on the lives of individuals in whom the Trustee has an insurable interest, including Trust beneficiaries, and may receive the proceeds from any insurance and allocate any proceeds in accordance with the provisions of this Trust Agreement. No insurance company shall be responsible for the execution of any provision of this Trust Agreement. The Trustee may take out an insurance policy covering loss of or damage to any Trust asset, in any form or value whatsoever, may receive the proceeds from any such policy, and may allocate such proceeds in accordance with the provisions of this Trust Agreement.
- 3.4.2.12 ***Trustee Self-Dealing.*** If the Trustee is a Contingent Beneficiary under Section 5.1.2, the Trustee, through the appointment of an Independent Trustee pursuant to Section ?, is authorized to engage in the following acts of self-dealing:
- 3.4.2.12.1 ***Loans of Trustee's Funds.*** Trustee may loan or advance the Trustee's own funds to the Trust for any Trust purpose, with interest at current rates; receive security for such loans in the form of a mortgage, pledge, deed of trust, or other encumbrance of any Trust assets; purchase or exchange Trust assets at their fair market value as determined by an independent appraiser; sell property to the Trust at a price not in excess of its fair market value as determined by an independent appraiser; and lease assets to or from the Trust for fair rental value as determined by an independent appraiser.
- 3.4.2.12.2 ***Contracts.*** Trustee may contract financial obligations between the Trustee and the Executor, Administrator, or Personal Representative of the Settlor's estate, such as the purchase and sale of assets and the making of loans (secured and unsecured) notwithstanding each office being held by the same person and apparent conflicts of interest.
- 3.4.2.13 ***Loans.*** Trustee may loan money to any person, including a Trust or subtrust beneficiary or member of Trustee's family, upon such security and at such interest rate, if any, as the Trustee deems in the best interest of the Trust beneficiaries.
- 3.4.2.14 ***Substitution of Property.***
- 3.4.2.14.1 The Trustee may substitute any asset owned by this Trust, including any life insurance policy, for any other asset of equal value.
- 3.4.2.14.2 The Settlor may also substitute any asset owned by this Trust, including any life insurance policy, for any other asset of equal value.

## **SECTION 3.5 DISCLAIMERS.**

**3.5.1 Right to Disclaim.** In addition to any such rights conferred by law, any person may disclaim,

renounce, or release, in whole or in part or with respect to specific amounts, parts, fractional shares or assets, any interest, right, privilege or power granted to that person by this Trust Agreement.

- 3.5.2 How Disclaimer Made.** Any such disclaimer, renunciation, or release shall be made by a duly acknowledged, irrevocable, written instrument executed by that person or by his or her guardian, committee, conservator, executor or administrator, delivered to the Trustee and filed in accordance with any requirements of applicable law.

## **SECTION 3.6 DEFENSE OF TRUST.**

- 3.6.1 Trustee May Defend.** At the expense of the Trust estate, the Trustee may defend any contest or other attack of any nature on the whole or any provision of this Trust Agreement, of the Trust or any sub-trust created hereunder.

## **ARTICLE 4 TAX NATURE OF TRUST.**

### **SECTION 4.1 GRANTOR TRUST.**

- 4.1.1 Settlor's Intent.** This Special Needs Trust is revocable and is therefore a "grantor trust" for income tax purposes in accordance with Internal Revenue Code Sections 671-678; any income, deductions, and credits attributable to this Trust during the Settlor's respective lifetimes are to be reported on the Settlor's income tax return(s) during the Settlor's respective lifetimes. It is the Settlor's further intent that any transfer of assets by a Settlor into this Special Needs Trust during that Settlor's lifetime be considered "incomplete gifts" in accordance with Internal Revenue Code Section 2036 and Treas. Reg. §20.2036-1, and that therefore any assets in this Trust upon the Settlor's death be considered part of the Settlor's estate for purposes of any Estate Tax that might be due as a result of Settlor's death.

## **ARTICLE 5 TERMINATION OF THE TRUST.**

### **SECTION 5.1 UPON DEATH OF JUNE .**

#### **5.1.1 Wind up Trust.**

- 5.1.1.1 This Trust is intended to terminate after the death of June if it is still in existence at that time. However, this Trust, and/or any sub-trusts or trust shares created hereunder, may continue indefinitely in accordance with Section 3.1.6 and/or Section 5.2 and/or Section 5.4.
- 5.1.1.2 Prior to termination, the Trustee shall wind up the affairs of this Trust. In winding up the affairs of this Trust, the Trustee shall complete the duties and filing of documents associated with normal trust termination, including preparation of the final trust fiduciary income tax return; and provide a final written Trustee's report to the then-current Contingent Beneficiaries.
- 5.1.1.3 After winding up the affairs of this Trust, the Trustee shall distribute any remaining principal and any accrued but undistributed income to the Contingent Beneficiaries as explained below.

#### **5.1.2 Contingent Beneficiaries if Settlor does not Exercise Power of Appointment.**

- 5.1.2.1 Upon the death of June , the Contingent Beneficiaries of this Trust shall be:

- 5.1.2.1.1 June 's descendants, if any, in equal shares *per stirpes*; or
  - 5.1.2.1.2 If June has no living descendants, the Settlor's descendants, if any, in equal shares *per stirpes*; or
  - 5.1.2.1.3 If Settlor has no living descendants, then one or more charities chosen by the Trustee, in the Trustee's sole and absolute discretion, keeping in mind, if possible, the specific charities that supported or provided benefits for June during June 's lifetime or, if there were no such charities, then keeping in mind, if possible, the charities and types of charities supported by the Settlor during the Settlor's lifetime.
- 5.1.2.2 Any distribution to an individual Contingent Beneficiary under Section 5.1.2 shall be made to the Trustee of the Beneficiary Trust that Settlor has created for said Contingent Beneficiary under the provisions of the June Testcase Special Needs Trust dated August 13, 2019. If Settlor has not created a Beneficiary Trust for said Contingent Beneficiary under the provisions of said June Testcase Special Needs Trust, then said distributions shall be made discharged of trust.
- 5.1.2.3 Distributions to charitable organizations under Section 5.1.2 shall be made discharged of trust.

## SECTION 5.2 UNDER-AGE CONTINGENT BENEFICIARIES.

**5.2.1 Continuation of Trust.** If any Contingent Beneficiary of this Trust is under the age of 25 at the time that any distribution or distributive share of Trust assets is to be made by Trustee, no distribution shall be made to that beneficiary ("Under-Age Beneficiary"). Instead, the Trustee shall continue to hold all assets to be distributed to the Under-Age Beneficiary (the "UAB Share") in trust for that Under-Age Beneficiary, and shall manage, invest, and reinvest the UAB Share as though it were a separate trust for the benefit of the Under-Age Beneficiary.

- 5.2.1.1 **Income.** The Trustee shall pay so much or all of the net income from the UAB Share to or for the benefit of the Under-Age Beneficiary thereof, for the health, education, maintenance and support of the Under-Age Beneficiary, to such extent and at such time or times and in such manner as may be determined in the sole and absolute discretion of the Trustee. Any net income not so paid shall be accumulated and added to the principal of the UAB Share at least annually and thereafter shall be held, administered and disposed of as a part thereof.
- 5.2.1.2 **Principal.** In addition, from the principal of the UAB Share the Trustee may pay to or for the benefit of the Under-Age Beneficiary, for the health, education, maintenance and support of such Under-Age Beneficiary, such amounts, including the whole thereof, as determined in the Trustee's sole and absolute discretion.
- 5.2.1.3 **Distribution.** When the Under-Age Beneficiary reaches the age of 25 and is no longer under-age, any remaining trust income and principal in the UAB Share shall be distributed to such child discharged of trust, unless otherwise provided by Section 5.4. If the Under-Age Beneficiary dies prior to having attained the age of 25, the Trustee shall distribute any remaining trust income and principal in the UAB Share which is not exempt from generation-skipping tax to such other persons as the Under-Age Beneficiary shall have appointed by exercise of the

testamentary power of appointment in the Under-Age Beneficiary's Last Will and Testament or a written trust instrument, or if none, to Settlor's then living grandchildren in equal shares *per stirpes*

- 5.2.2 Distributions to 529 Accounts.** In connection with the administration of the UAB Share, the Trustee may distribute trust funds to one or more 529 accounts pursuant to the provisions of Section 5.3.

**SECTION 5.3 529 ACCOUNTS.**

- 5.3.1 Distribution to 529 Account.** Whenever the Trustee is holding funds for a beneficiary under Section 5.2, the Trustee is authorized to distribute any portion of the funds, including the whole thereof, to one or more 529 accounts (defined in Article 6), up to the maximum lifetime contribution allowed by law.

- 5.3.2 Existing Account.** If a 529 account already exists for such beneficiary, then the Trustee may distribute said funds to said existing 529 account.

**5.3.3 New Account(s).**

- 5.3.3.1 If a 529 account does not exist, the Trustee, in the Trustee's sole discretion:

5.3.3.1.1 May establish and fund one or more additional 529 Accounts and

5.3.3.1.2 May determine who shall be named as the "Owner" or "Contributor" of each 529 Account. The Trustee may act as such, or may appoint another proper and competent adult who is able and willing to act as such.

- 5.3.3.2 The creation of a 529 Account shall discharge said funds from trust and from the future responsibility of the Trustee, even though the Trustee may be named as the "Owner" or "Contributor" of the 529 Account.

**5.3.4 Cancellation and Penalties.** Settlor understands that:

- 5.3.4.1 The person named as "Owner" / "Contributor" of a 529 Account may have the legal right, under the rules of the 529 program, to cancel the 529 Account at certain times and for certain reasons.

- 5.3.4.2 If the account is cancelled for a reason other than a qualified rollover or the plan beneficiary's death, disability or receipt of a scholarship, federal income tax may be due on the earnings portion of the refund.

- 5.3.4.3 Non-qualified distributions may be subject to a federal tax penalty of 10% of the earnings, reported on the federal tax return of the "Owner" / "Contributor."

**5.3.5 Distribution to Beneficiary.**

- 5.3.5.1 Notwithstanding the above, Settlor intends the named beneficiary to be the actual beneficial owner of any 529 account that has been established hereunder for that beneficiary. Accordingly, if a 529 account established hereunder is ever cancelled, Settlor directs that all net funds remaining after said cancellation (*i.e.*, after any taxes and penalties) be distributed to such beneficiary.

- 5.3.5.2 If the beneficiary is deceased, all net funds shall be distributed to said beneficiary's issue, in equal shares *per stirpes*.



- 5.3.5.3 If the beneficiary leaves no living issue, then provided it is permitted under the regulations governing that 529 program, the person named as “Owner” / “Contributor” of the 529 Account may cancel the 529 Account and redirect the net funds therein to another beneficiary, including himself or herself.

## **SECTION 5.4 DISABLED OR INCAPACITATED CONTINGENT BENEFICIARIES.**

- 5.4.1 Continuation of Trust.** At the time any distribution or distributive share of Trust assets is to be made by the Trustee, if a Contingent Beneficiary of this Trust is disabled as defined in Article 6 hereof, and/or is disabled as defined in Section 1614(a)(3) of the Social Security Act (as determined by the Social Security Administration or by any State-level disability determination agency operating under the auspices of the Social Security Administration), and/or has been determined by a nursing home or State agency to be medically eligible for nursing home care, and/or is defined elsewhere in this Trust Agreement as a “disabled beneficiary,” then said beneficiary shall cease to be a regular beneficiary of this Trust. Instead, said disabled beneficiary shall hereinafter be referred to as a “Disabled Beneficiary,” and said Disabled Beneficiary’s distribution or distributive share of the Trust assets shall be allocated and held as a separate Special Needs Sub-trust (“SNS”), to be governed by the terms and provisions set forth in this Section 5.4.
- 5.4.2 Purpose and Management.** The purpose and management of any SNS created for a Contingent Beneficiary under this Section shall be the same as was stated in Section 1.5.1 hereof for June .
- 5.4.3 Termination.** Any SNS created for a Contingent Beneficiary under this Section shall terminate upon the Disabled Beneficiary’s death. Upon termination of said SNS, the Trustee shall allocate the remaining principal and any undistributed income pursuant to Section 5.1.2 and shall distribute the same to or for the benefit of the Contingent Beneficiaries described therein.
- 5.4.4 Possible Early Termination During the Disabled Beneficiary's Lifetime.**
- 5.4.4.1 Despite the clear restrictions set forth in any SNS created for a Contingent Beneficiary under this Section, if a governmental or charitable organization to which the Disabled Beneficiary has applied for benefits determines that the income and/or principal of the SNS is available to be used for the basic maintenance, support, and/or medical care of the Disabled Beneficiary, and therefore determines that the Disabled Beneficiary is not eligible for the benefits applied for, then the Trustee, in the Trustee’s sole discretion, may wind up the SNS pursuant to Section 5.1.1 and distribute the remaining assets of the SNS to an account for the benefit of the Disabled Beneficiary under a pooled third-party special needs trust established pursuant to the provisions of 42 USC Section 1396p(d)(4)(C) (sometimes referred to as a “d4C trust” or “pooled trust” or “pooled special needs trust”).
- 5.4.4.2 During the Disabled Beneficiary’s lifetime, if the principal of the SNS is less than \$100,000 at any time, then the Trustee, in the Trustee’s sole and absolute discretion, may wind up the SNS pursuant to Section 5.1.1 and distribute the remaining assets hereof to an account for the benefit of the Disabled Beneficiary under a pooled third-party special needs trust established pursuant to the provisions of 42 USC Section 1396p(d)(4)(C) (sometimes referred to as a “d4C trust” or “pooled trust” or “pooled special needs trust”).

## ARTICLE 6 DEFINITIONS.

### SECTION 6.1 INTRODUCTORY INFORMATION.

**6.1.1 Explanation.** This Article contains an alphabetical list of definitions for many of the defined terms used in this Trust Agreement, particularly for defined terms that are used multiple times in this document. Specific words or terms may also be defined elsewhere in this Trust Agreement.

### SECTION 6.2 ALPHABETICAL LIST OF COMMONLY-USED DEFINED TERMS.

**6.2.1 Charity or Charitable Organization.** These and like terms refer only to a recognized charitable organization as described in each of sections 170(b)(1)(A), 170(c), 2055(a) and 2522(a) of the Code, and listed or eligible to be listed in the Cumulative List of Organizations, or any other similar list maintained to the same ends as the Cumulative List of Organizations is maintained at the time of signing this Trust.

**6.2.2 Children.** The terms “child,” “children,” and “issue” include not only the currently living child, children, and issue of the person designated, but also the legally adopted child, children, and issue of such person, including any child, children or issue born or adopted after the date of execution of this Trust, with the exception of any child whose adoption became final after the child attained the age of eighteen (18). If the legal relationship between a parent and child is terminated by a court while the parent is alive, that child and that child’s issue will not be regarded as issue of that parent. If a parent dies and the legal relationship with the parent’s child had not been terminated before the parent’s death, the child and the child’s issue will still be regarded as issue of the deceased parent even if the child is later adopted by another person.

**6.2.3 Code.** Any reference to the “Code” means the Internal Revenue Code of 1986, as amended, and all regulations promulgated thereunder.

**6.2.4 College Savings Accounts.** College Savings Accounts (also called “529 Accounts”) are accounts established for specific beneficiaries, such as the Virginia Education Savings Trust account offered by the Commonwealth of Virginia, which meet certain criteria for qualified tuition programs under Code Section 529. These programs allow tax-free savings to be used for the beneficiary’s educational expenses, including tuition, fees, room and board, books, supplies, and computers, subject to limitations imposed by each 529 program.

#### **6.2.5 Disabled; Disability.**

6.2.5.1 For the purposes of this Trust Agreement, any individual (including the Settlor or any Trustee) may be conclusively determined to be “disabled” or under a “disability” by any one of the following methods:

6.2.5.1.1 The individual has been determined to be disabled (as defined in Section 1614(a)(3) of the Social Security Act) by the Social Security Administration or by any State-level disability determination agency operating under the auspices of the Social Security Administration;

6.2.5.1.2 The individual has been determined by a nursing home or State agency to be medically eligible for nursing home care;

6.2.5.1.3 The individual is defined in this Trust Agreement as a “disabled beneficiary.”

- 6.2.5.2 Once an individual has been determined to be disabled under any of the methods listed above, any third party may rely on said determination in dealing with any Trustee acting hereunder and shall not be obliged to inquire whether such individual is no longer disabled at the time of such dealings.

#### **6.2.6 Education.**

- 6.2.6.1 The word “education” as it relates to a contingent beneficiary, *i.e.*, a beneficiary other than the Primary Beneficiary, includes, but is not limited to:
- 6.2.6.1.1 College - Any course of study or instruction at any college or university granting any type of degrees.
  - 6.2.6.1.2 Vocational - Any course of study or instruction at any institution for specialized, vocational or professional training.
  - 6.2.6.1.3 General - Any curriculum offered by any institution that is recognized by any state or federal agency or program for purposes of receiving financial assistance from that agency or program.
  - 6.2.6.1.4 Course of Study - Any course of study or instruction which may be useful in preparing a beneficiary for any vocation consistent with the beneficiary’s abilities and interests.
- 6.2.6.2 The types of distributions allowed for education include reasonable expenditures for tuition and related fees, books and supplies, living expenses, travel, and spending money.

#### **6.2.7 Health.** When a contingent beneficiary, *i.e.*, a beneficiary other than the Primary Beneficiary, is permitted to receive distributions for that beneficiary’s “health,” such distributions are limited to the following:

- 6.2.7.1 Any type of health or medical insurance, including dental and vision insurance;
- 6.2.7.2 Routine or emergency health care, treatment, diagnostic tests, and therapies, including medical, dental, chiropractic, homeopathic, acupuncture, vision, hearing, holistic, and alternative medicine;
- 6.2.7.3 Prescription and non-prescription medications;
- 6.2.7.4 Physical therapy, occupational therapy, vision therapy, speech therapy, and any other type of therapy;
- 6.2.7.5 Psychotherapy, psychological treatment, and mental health counseling of any type;
- 6.2.7.6 Drug or alcohol treatment and therapy;
- 6.2.7.7 Surgery, whether medically necessary or elective;
- 6.2.7.8 Medical, dental, and vision equipment prescribed by any type of doctor or health-care practitioner;
- 6.2.7.9 Home exercise equipment;

6.2.7.10 Membership in a gym or health and fitness club.

**6.2.8 Incapacitated; Incapacity.** For the purposes of this Trust Agreement, any individual (including the Settlor or any Trustee) may be conclusively determined to be “incapacitated” by any one of the following methods:

6.2.8.1 **Physicians’ Statements.** The individual has been examined by two physicians, or by one physician and one licensed clinical psychologist, and those examining professionals have signed a written statement or statements (in substantially the form as attached hereto as EXHIBIT A) attesting that in their opinion, the individual is unable to adequately manage his or her legal and financial affairs.

6.2.8.1.1 In expressing the opinion that the individual is so incapacitated, the physicians shall describe the incapacity in functional terms and state the diagnosis or other reason for the incapacity, together with a prognosis or other statement setting forth when, whether, and the extent to which recovery of capacity by the Settlor can reasonably be expected.

6.2.8.1.2 The Trust may pay the costs of obtaining such written statements.

6.2.8.2 **Court Determination.** The individual has been adjudicated by a court of competent jurisdiction to be incapacitated, incompetent, or otherwise legally unable to manage Settlor’s legal and financial affairs.

**6.2.9 Maintenance and Support.** When a beneficiary other than the Primary Beneficiary is permitted to receive distributions for that beneficiary’s “maintenance and support,” this means that the beneficiary may be supported in the manner that the beneficiary was accustomed to prior to Settlor’s death. Without limitation, the following types of distributions shall be considered permissible distributions for maintenance and support:

6.2.9.1 Regular mortgage payments on real estate owned or used by the beneficiary, including the payment in full of any mortgage on real estate occupied by the beneficiary as a principal residence;

6.2.9.2 Real estate taxes and personal property taxes;

6.2.9.3 At least one month of annual vacation to beneficiary’s choice of destination;

6.2.9.4 Regular vehicle payments, including the payment in full of any outstanding loan balance on any vehicle used by the beneficiary as personal transportation;

6.2.9.5 Purchase every five years of one new vehicle, or leasing every three years of one new vehicle, the cost of which may be up to 25% greater than the cost would be for a replacement equivalent in value to the most recently purchased or most recently leased vehicle.

**6.2.10 Per Stirpes.** A distribution made to a specific beneficiary *per stirpes* means that if such beneficiary is not alive at the specified time but has a child or children surviving at the specified time, that child or children shall take the share of the deceased beneficiary. A distribution made to children or issue (or to a specified class of beneficiaries) “in equal shares *per stirpes*” means that the distribution is first divided among the members of the oldest generation of children or issue (or other class of beneficiaries) who have a member surviving at the specified time, with each living member taking one share and any deceased member’s child or children living at the specified time taking the share to which the deceased member would have been entitled; and likewise down the generations. If a

distribution made herein to a beneficiary does not indicate that it is made *per stirpes*, and the named beneficiary is not alive at the time the distribution would be called for, then said distribution shall not be made.

**6.2.11 Professional Trustee.** Professional trustee means a company, corporation, or other entity which is or has been carrying on a business which consists of or includes the management of trusts or the administration of estates.

**6.2.12 Qualified Beneficiary.** A Qualified Beneficiary is a living or then existing beneficiary who, on the date the beneficiary's qualification is determined:

6.2.12.1 Is a distributee or permissible distributee of Trust income or principal;

6.2.12.2 Would be a distributee or permissible distributee of Trust income or principal if the interests of the distributees described in Section 6.2.12.1 terminated on that date, but the termination of those interests would not cause the Trust to terminate; or

6.2.12.3 Would be a distributee or permissible distributee of Trust income or principal if the Trust terminated on that date.

**6.2.13 Retirement Benefits and Related Terms.**

6.2.13.1 A "Retirement Benefit" means the Trust's interest in one of the following types of assets is payable to this Trust as beneficiary: a qualified or nonqualified annuity; a benefit under a qualified or nonqualified plan of deferred compensation; any account in or benefit payable under any pension, profit-sharing, stock bonus, or other qualified retirement plan; any individual retirement account or trust; and any and all benefits under any plan or arrangement that is established under Code Sections 408, 408A, 457, 403, 401, or similar provisions.

6.2.13.2 "Retirement Benefits" means all of such interests collectively.

6.2.13.3 A "Deferrable Retirement Benefit" means any Retirement Benefit that meets the following two requirements:

6.2.13.3.1 First, it is subject to the Minimum Distribution Rules;

6.2.13.3.2 Second, the terms of the plan or arrangement that governs such Retirement Benefit permit a trust that is named as beneficiary of such Retirement Benefit to take distribution of such Retirement Benefit in annual instalments over the life expectancy of the oldest Trust beneficiary. Retirement Benefits payable under a plan or arrangement that is not subject to the Minimum Distribution Rules (such as, under current law, a "nonqualified deferred compensation plan") are not Deferrable Retirement Benefits. Retirement Benefits payable under a plan that does not permit the trust the option of withdrawing the benefits over the life expectancy of the oldest trust beneficiary (such as a retirement plan that offers "lump sum distribution" as the only permitted form of death benefit) are not Deferrable Retirement Benefits.

6.2.13.4 The "Minimum Distribution Rules" means the rules of § 401(a)(9) of the Code, including Regulations promulgated thereunder.

- 6.2.13.5 A “Minimum Required Distribution” for any year means, for each Retirement Benefit, the value of the Retirement Benefit determined as of the preceding year-end divided by the Applicable Distribution Period, or such greater amount (if any) as the Trustee may be required to withdraw to avoid penalty under the laws then applicable to this Trust. Notwithstanding the foregoing, the Minimum Required Distribution for the year of Settlor’s death shall mean (a) the amount that was required to be distributed to Settlor with respect to such Retirement Benefit during such year under the Minimum Distribution Rules, minus (b) amounts actually distributed to Settlor with respect to such Retirement Benefit during such year.
- 6.2.13.6 The terms “Life Expectancy,” “Applicable Distribution Period,” and “Designated Beneficiary” shall have the same meaning as under the Minimum Distribution Rules.
- 6.2.13.7 The term “Inventory Value” shall mean:
- 6.2.13.7.1 In the case of an interest that becomes payable to (or is owned by) this Trust as of the date of Settlor’s death, its “fair market value” determined in accordance with the rules applicable for valuing such interests for purposes of the federal estate tax (as in effect at Settlor’s death or, if such tax does not then exist, as last in effect); or,
- 6.2.13.7.2 In the case of an interest that becomes payable to this Trust as of a date after the date of Settlor’s death (for example, by transfer from another fiduciary), its “fair market value” shall be its value as of Settlor’s death determined as provided in the preceding subparagraph, adjusted as necessary for distributions, expenditures, and receipts that occurred between the date of Settlor’s death and the date of transfer to this Trust; or, if the trustee cannot determine its value in that manner, its “fair market value” shall be its value as of the date it becomes an asset of this Trust, determined as provided in the preceding subparagraph, provided, in the case of an interest transferred to this Trust from another fiduciary (such as the Settlor’s Executor) accrued income so transferred shall be treated as income and shall not be included in “inventory value.”
- 6.2.14 Situs.** The Trust’s “situs” means the state or jurisdiction whose governing law shall govern the validity and construction of this Trust Agreement and the trusts created hereunder, and all rights of the persons who now or later may become entitled to share in the principal or income of the Trust property.
- 6.2.15 Trust and Trust Agreement.** The term “Trust Agreement” means this document. The word “Trust” means the trust entity created by this Trust Agreement.
- 6.2.16 Trustee.** Trustee means the Trustee or Trustees in office from time to time. Any such Trustee shall have the same rights, powers, duties, authority and privileges, whether or not discretionary, as if originally appointed hereunder.
- 6.2.17 Unitrust.** A percentage “unitrust” interest or “unitrust” payment means a payment (whether made monthly, quarterly, or annually) that is based on the specified annual percentage of the fair market value of the total of all trust assets as of the last day of the prior year. For example, if a trust containing a total of one million dollars in assets on December 31 of a given year provides

for distributions to a beneficiary of a 5% unitrust interest, that beneficiary shall be entitled to an annual distribution in the following year of \$50,000.

## **ARTICLE 7 MISCELLANEOUS PROVISIONS.**

### **SECTION 7.1 GOVERNING LAW.**

- 7.1.1 Initial Governing Law.** Because the Settlor currently resides in Virginia, the validity and construction of this Trust Agreement and the trusts created hereunder shall initially be governed by the laws of the Commonwealth of Virginia, and all rights of the persons who now or later may become entitled to share in the principal or income of the trust property shall be determined in accordance with those laws unless and until selection of another situs has been made by the Trustee.
- 7.1.2 Upon Trustee's Change of Situs.** The Trustee may at any time select a new situs of governing law for the trust which, in the Trustee's sole opinion, best carries out the Settlor's purposes, and may change that situs whenever it seems best to the Trustee, by a written document referring to this Section and declaring the new trust situs. Once changed in such manner, the validity and construction of this Trust Agreement and the trusts created hereunder, and all rights of the persons who now or later may become entitled to share in the principal or income of the trust property, shall from that time forward be governed by the laws of such new jurisdiction unless and until selection of another situs has been made by the Trustee.
- 7.1.3 Outdated Laws.** Any provision herein which refers to a statute, rule, regulation, or other specific legal reference which is no longer in effect at the time said provision is to be applied shall be deemed to refer to the successor, replacement, or amendment to such statute, rule, regulation, or other reference, if any, and shall be interpreted in such a manner so as to carry out the original intent of said provision, in the Trustee's sole opinion.

### **SECTION 7.2 WAIVER OF RULE AGAINST PERPETUITIES.**

- 7.2.1 Not Applicable.** The Rule Against Perpetuities, under both statute and common law, shall not apply to this Trust or any Trust share or subtrust created hereunder, nor to any interest created in personal property held in this Trust, nor to any power of appointment over personal property held in or granted under this Trust.

### **SECTION 7.3 SIMULTANEOUS DEATH**

- 7.3.1 Beneficiary.** Where it is required by this Trust Agreement that any person shall have survived another, that requirement means that the person shall have survived the other person by at least thirty (30) days.
- 7.3.2 Applicable Law.** The provisions of this Trust Agreement shall be construed as aforesaid, notwithstanding the provisions of any applicable law establishing a different presumption of order of death, or providing for survivorship for a fixed period as a condition of inheritance of property.

### **SECTION 7.4 CERTIFIED COPIES.**

- 7.4.1 Reliance by Third Party.** To the same effect as if it were the original, any person may rely upon a copy certified by a notary public to be a true copy of this Trust Agreement (and any attachments). Anyone may rely fully upon any statements of fact certified by one who

appears, from the original Trust Agreement or an executed counterpart or a certified copy, to be the Trustee.

#### **SECTION 7.5 BINDING EFFECT.**

**7.5.1 Extent.** This Trust Agreement shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of the Settlor and upon the Trustee acting hereunder.

#### **SECTION 7.6 MISCELLANEOUS.**

##### **7.6.1 Construction.**

7.6.1.1 ***Gender and Number.*** Wherever used in this Trust Agreement and the context so requires, the masculine shall include the feminine and the singular shall include the plural, and vice versa.

7.6.1.2 ***Headings.*** The Section headings in this Trust Agreement shall, when appropriate, be construed as a substantive part of this Trust Agreement.

7.6.1.3 ***Severability.*** If any portion of this Trust Agreement is held to be void or unenforceable, the balance shall nevertheless be carried into effect.

In Witness Whereof, this Trust Agreement has been duly executed as of the date first above written.

Executed under seal this August 13, 2019.

SETTLOR:

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**Adam H. Testcase**

The undersigned agrees to act as Trustee hereunder.

TRUSTEE:

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**Adam H. Testcase**

WITNESSES:

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Seresa M. El-Gafy  
10640 Main Street, Suite 200  
Fairfax, VA 22030

---

Daniel P. Bonner  
10640 Main Street, Suite 200  
Fairfax, VA 22030

**COMMONWEALTH OF VIRGINIA**

**CITY OF FAIRFAX, to-wit:**

I, the undersigned Notary Public in and for the jurisdiction aforesaid, do hereby certify that Adam H. Testcase, whose name is signed to the foregoing document as Settlor and Trustee, has acknowledged the same in said capacities before me in my jurisdiction aforesaid.

Given under my hand and seal this day, August 13, 2019.



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Kathleen G. Limjoco, Notary Public  
My commission expires: July 31, 2018

EXHIBIT A

**FINANCIAL INCAPACITY CERTIFICATION**

**NOTE TO PERSONS REQUESTING THIS CERTIFICATION:** This Financial Incapacity Certification is to be used to establish the incapacity of an individual to manage his or her financial and legal affairs pursuant to the terms of a power of attorney and/or living trust. This Certificate must be signed below by two physicians, or by one physician and one licensed clinical psychologist attesting that, in the opinion of such professionals, the individual in question is unable to manage his or her legal and financial affairs. This Certificate must be re-certified every one hundred eighty (180) days.

**NOTE TO PERSONS AND FINANCIAL INSTITUTIONS ACCEPTING THIS CERTIFICATION:** This Certification, when signed below, shall be conclusive evidence that the patient named below is unable to manage his or her legal and financial affairs. Any person or financial institution may rely on this Certification when dealing with the Agent named in the power of attorney, or the Successor Trustee(s) named in the trust referenced above, and shall not at any time be obligated to inquire whether the patient named below remains under such disability or incapacity at the time of such dealing. This Certification does not need to be notarized nor does it need to be on physician letterhead

**NOTE TO THE DOCTORS SIGNING THIS CERTIFICATION:** The information in this Certification must be based on your personal examination of the patient.

**PATIENT**

\_\_\_\_\_  
Full Name of Patient

\_\_\_\_\_  
Patient's Street Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

Primary / Attending Physician	Second Physician or Licensed Clinical Psychologist
Printed Name: _____	Printed Name: _____
Street: _____ City, State, Zip: _____	Street: _____ City, State, Zip: _____
Office Phone: _____	Office Phone: _____
Office Fax: _____	Office Fax: _____
Based on my personal examination(s) and evaluation(s) of the above-identified patient, I hereby certify that it is my professional opinion as a physician that said patient is unable to manage his or her legal and financial affairs as of the date set forth below.  Date: _____  _____ Signature of Physician	Based on my personal examination(s) and evaluation(s) of the above-identified patient, I hereby certify that it is my professional opinion as a <input type="checkbox"/> physician <input type="checkbox"/> licensed clinical psychologist that said patient is unable to manage his or her legal and financial affairs as of the date set forth below.  Date: _____  _____ Signature of Physician or Psychologist

**CERTIFICATION OF TRUST**  
**JUNE TESTCASE SPECIAL NEEDS TRUST DATED AUGUST 13, 2019**

I, the undersigned Trustee, on this date, August 13, 2019, with this affidavit, do hereby certify the creation of a private revocable trust for the benefit of June Testcase, born 1-22-2000, a disabled adult under the age of 65 years, known as the *June Testcase Special Needs Trust*. This instrument is executed for the purpose of evidencing a record of the existence of said trust, and of the power of the Trustee to hold and deal with the assets of said trust.

1. The Trust name is the *June Testcase Special Needs Trust* and it was executed on August 13, 2019.
2. The Trust Settlor is Adam H. Testcase.
3. The currently-acting Trustee of the Trust is Adam H. Testcase, whose, mailing address, and therefore the address of the Trust, is: 123 Test Street, Fairfax, Virginia 22030 .
4. The powers of the Trustee are set forth in the trust instrument.
5. The Trust is revocable by Adam H. Testcase.
6. The Trust has no co-trustee.
7. The tax I.D. number of the trust is Settlor's Social Security Number.
8. The Trust created by this Trust Agreement may be referred to, in any other instrument, by any descriptive name including, but not limited to, *June Testcase Special Needs Trust*, or *June Testcase Special Needs Trust dated August 13, 2019*.

Any person or entity may rely upon this Certification of Trust as evidence of the existence of said trust, and in doing so is relieved of any obligation to verify that any transaction entered into by a trustee or successor trustee thereunder is consistent with the terms and conditions of the Trust Agreement.

By signing below, the Trustee hereby certifies that the Trust has not been revoked, modified, or amended in any manner that would cause the representations contained in this Certification of Trust to be incorrect.

IN WITNESS WHEREOF, the Trustee has executed this Certification of Trust as of this day, August 13, 2019.

\_\_\_\_\_  
Adam H. Testcase, Trustee

**COMMONWEALTH OF VIRGINIA**  
**CITY OF FAIRFAX, to-wit:**

I, the undersigned Notary Public in and for the jurisdiction aforesaid, do hereby certify that Adam H. Testcase, whose name is signed to the foregoing document as Trustee, has acknowledged the same in said capacity before me in my jurisdiction aforesaid.

Given under my hand and seal this day, August 13, 2019.

\_\_\_\_\_  
Kathleen G. Limjoco, Notary Public  
My commission expires: July 31, 2018

**How to Make Gifts to the  
*June Testcase Special Needs Trust***

FROM: Adam H. Testcase  
123 Test Street  
Fairfax, Virginia 22030

TO: Family Members and Friends of *June Testcase*

RE: *June Testcase Special Needs Trust dated August 13, 2019.*

This is to inform you that the above-named Special Needs Trust now exists, and is capable of receiving gifts at any time. If you would ever like to make a lifetime gift to the above-named Special Needs Trust, please do so by writing a check to the order of:

**Adam H. Testcase, Trustee of the *June Testcase Special Needs Trust dated August 13, 2019***

If you would like to leave funds for the benefit of *June* upon your death, please have your attorney write a special bequest in your Living Trust or Will to:

**Trustee of the *June Testcase Special Needs Trust dated August 13, 2019.***

To retain June 's ability to maintain government benefits such as Medicaid and SSI, please do not ever make a gift payable directly to June and please do not leave a special bequest in your Trust or Will directly to June . Instead, please make all such gifts to the Special Needs Trust as explained above.

Thank you!

Love,

Adam H. Testcase

**Memo Prepared by:**

Evan H. Farr, CELA, CAP  
The Law Firm of Evan H. Farr, P.C.  
1-800-399-FARR  
[www.FarrLawFirm.com](http://www.FarrLawFirm.com)

# **JUNE TESTCASE**

## **First-Party Special Needs Trust**

This trust agreement is established by June Testcase as Settlor, and will initially be funded by June Testcase, a disabled adult under the age of 65 years, as allowed by the 21st Century Cures Act (P.L. 114-255), Section 5007 of which contains the “Fairness in Medicaid Supplemental Needs Trusts” provision which modifies 42 U.S.C. §1396p(d)(4)(a) to allow “the individual” -- *i.e.*, the Settlor herein -- to create this Special Needs Trust. The trustee may accept additional property from or on behalf of June Testcase.

This trust shall be known as the **June Testcase First-Party Special Needs Trust**.

The effective date of this trust shall be the date signed by the Settlor.

### **ARTICLE 1. ESTABLISHMENT OF IRREVOCABLE TRUST**

**Section 1.1.** This trust is established by June Testcase as Settlor, a disabled adult under the age of 65 years, as allowed by the 21st Century Cures Act (P.L. 114-255), Section 5007 of which contains the “Fairness in Medicaid Supplemental Needs Trusts” provision which modifies 42 U.S.C. §1396p(d)(4)(a) to allow the Settlor to create and fund this Special Needs Trust, and is initially funded in the amount of one dollar (\$1.00), attached hereto. The trustee may accept additional property from or on behalf of **June Testcase**.

**Section 1.2.** This trust is irrevocable.

**Section 1.3.** It is intended that this trust will qualify for the Medicaid exclusion under 42 U.S.C. §1396p(d)(4)(a).

### **ARTICLE 2. BENEFICIARY**

**Section 2.1.** This is a non-support, first-party special needs trust for the benefit of June

Testcase, who may be known hereinafter as the “Primary Beneficiary” hereunder. At the time

this trust is established, June Testcase is 19 years old, having been born on January 22, 2000.

June Testcase is disabled as defined in section 1614(a)(3) of the Social Security Act, 42 U.S.C. § 1382c(a)(3).

### **ARTICLE 3. TRUST PURPOSE**

**Section 3.1.** The purpose of this trust is to supplement, but not to supplant, whatever benefits and services the primary beneficiary may, from time to time, be eligible to receive by reason of age, disability, or other factors, from federal, state, and local governmental and charitable sources. It is understood and acknowledged that governmental and charitable programs, in themselves, contain many gaps that, if unaddressed, will greatly reduce the possibility of the primary beneficiary's maintaining himself as independently as possible and having the capacity to meet his future needs for residential, personal and other non-medical services and goods. It is intended that the Trustee use the principal and income from the trust to provide the primary beneficiary with those benefits and service, and only those benefits and services, that, in the Trustee's judgment, are not otherwise available to the primary beneficiary from other sources as or when needed for his welfare. Without limiting the discretion of the Trustee to take whatever actions the Trustee may consider necessary for the primary beneficiary's welfare, in accordance with the trust purposes, it is intended that the trust be used in ways that will best enable the primary beneficiary to lead as normal, comfortable, and fulfilling a life as possible.

**Section 3.2.** It is anticipated that June Testcase will have supplemental or special needs such as, but not limited to:

**3.2.1. Education and Training.** Training, education, treatment, and rehabilitation programs and services.

**3.2.2. Entertainment and Recreation.** Costs of recreation, including, but not limited to: vacations and attending family gatherings; theatrical performances; films; festivals; athletic contests and similar events; sporting goods, equipment, uniforms, team photos, travel to games and tournaments; electronic equipment including but not limited to telephones, audio or video equipment of all kinds, video game consoles and software, televisions, computer equipment, and appropriate broadcast, cable, satellite, subscription, or wireless services to use the equipment.

**3.2.3. Household Goods and Appliances.** Costs for household items such as furniture, decorations, window treatments, linens, towels, bedding, kitchen appliances, and maintenance/repairs of same.

**3.2.4. Medical and Dental Care.** Medical, dental or diagnostic work or other treatment which is not covered by Medicaid and for which funds are not otherwise available, including, but not limited to: cosmetic or plastic surgery or other non-necessary medical procedures; orthodontics; dentures; optical care; eyeglasses; non-traditional medical care such as acupuncture, acupressure, or massage; experimental medical treatments or procedures; private rehabilitative care; private counseling; physical therapy, occupational therapy, and speech therapy; psychological or psychiatric therapy; over the counter medications; vitamins and herbs.

**3.2.5. Non-food Grocery Items.** Costs for non-food grocery items such as: laundry soap, bleach, fabric softener, deodorant, dish soap, hand and body soap, personal hygiene products, paper towels, napkins, tissue paper, toilet paper, and household cleaning products.

**3.2.6. Personal Items and Services.** Costs for personal items such as clothing, haircuts, spa and salon services, massages, facials, manicures, musical instruments (including lessons

and music); costs for personal services such as dry cleaning, laundry, household cleaning, and personal assistance services not covered by Medicaid.

**3.2.7. Pets and Pet Supplies.** Costs of pets, pet food, pet supplies, kennel services, veterinary services, and pet caretakers.

**3.2.8. Professional Services.** Costs for the services of care managers, geriatric care manager, registered or practical nurses, aides or caregivers, attorneys, and accountants, and other appropriate professional service providers.

**3.2.9. Transportation and Mobility.** Costs of transportation, such as cab fare, bus fare, purchase of a new or specially equipped vehicle or other transportation device, modification of an existing vehicle, wheelchairs and other ambulatory aids, ramps, lifts, insurance, gasoline, and maintenance.

**3.2.10. Other.** Costs of any other non-essential items that may serve to enhance the Primary Beneficiary's comfort or well-being.

**3.2.11.** The above list is intended to be illustrative and not inclusive of the kind of non-support disbursements that would be appropriate for the Trustee to make. It is important that June Testcase maintain the highest possible level of human dignity and humane care. If this trust were to be invaded by creditors, subjected to any liens or encumbrances, or cause assistance benefits not to be initiated or to be terminated, it is likely that the trust corpus would be depleted prior to the death of June Testcase, especially if the cost of care for June Testcase is high. In such event, there would not be coverage for emergencies or supplementation for basic needs. The trust provisions contained in this instrument should be interpreted by the Trustee in light of these concerns.

## **ARTICLE 4. USE OF TRUST ASSETS AND INCOME**



**Section 4.1.** The Trustee shall pay to or apply for the benefit of the beneficiary such amounts from the principal or income, or both, of this trust up to the whole thereof, as the Trustee, in the Trustee's sole, absolute and uncontrolled discretion, may from time to time deem necessary or advisable for the satisfaction of June Testcase's supplemental and/or special needs, if any. Sometimes, the Trustee may choose to make no distributions at all.

**Section 4.2.** No part of the assets or income shall be used to supplant or replace or reimburse public assistance benefits of any county, state, federal or other government agency that has a legal responsibility to serve persons with disabilities which are the same as or similar to those of the Primary Beneficiary. This includes, but is not limited to, Supplemental Security Income and Medicaid. For purposes of determining the Primary Beneficiary's eligibility for any such benefits, no part of the principal or income shall be considered available to the Primary Beneficiary.

**Section 4.3.** All the terms of this trust, wherever they may appear, shall be interpreted to conform to this primary goal, namely that the Primary Beneficiary continue to receive the maximum level of governmental assistance for which the Primary Beneficiary is eligible.

**Section 4.4.** Notwithstanding the foregoing provisions, if the Trustee, in the Trustee's sole and absolute discretion, determines after consultation with a Certified Elder Law Attorney that it is in the best interest of the Primary Beneficiary to provide some amount of in-kind support and maintenance (*i.e.*, food and/or shelter) to the Primary Beneficiary, then the Trustee may do so as long as it will only reduce, and not eliminate, the Primary Beneficiary's continued right to receive SSI, Medicaid, or any other applicable governmental or charitable benefit.

**4.4.1.** However, in the event that the mere existence of the above-stated authority to make in-kind distributions in the form of food and shelter will result in a reduction or loss of the

Primary Beneficiary's entitlement program benefits, regardless of whether the Trustee actually exercises the authority, then such authority to make in-kind distributions in the form of food and shelter shall be null and void, and the Trustee's authority to make these types of distributions shall terminate.

**Section 4.5.** Notwithstanding any provision to the contrary, in the event that this Special Needs Trust is challenged or faces imminent invasion by any governmental department or agency in such a way as to affect the Primary Beneficiary's eligibility for benefits available under any governmental program, the Trustee is empowered to amend the trust so as to maintain the Primary Beneficiary's eligibility for benefits under such governmental program.

**Section 4.6.** Despite the clear restrictions set forth in this Trust Agreement, if a governmental or charitable organization to which June has applied for benefits determines that the income and/or principal of this Trust is available to be used for the basic maintenance, support, and/or medical care of June, and therefore determines that June is not eligible for the benefits applied for, then the Trustee, in the Trustee's sole discretion, may wind up this Trust pursuant to Section Article 6 and distribute the remaining assets hereof to an account for the benefit of June under a pooled third-party special needs trust established pursuant to the provisions of 42 USC Section 1396p(d)(4)(C) (sometimes referred to as a "d4C trust" or "pooled trust" or "pooled special needs trust"), and this Trust shall thereupon terminate.

**4.6.1.** After the Settlor's death and during June's lifetime, if the principal of this Trust is less than \$100,000 at any time, then the Trustee may, in the Trustee's sole and absolute discretion, wind up the this Trust pursuant to Section Article 6 and distribute the remaining assets hereof to an account for the benefit of June under a pooled first-party special needs trust established pursuant to the provisions of 42 USC Section 1396p(d)(4)(C) (sometimes

referred to as a “d4C trust” or “pooled trust” or “pooled special needs trust”) or to an ABLE Account created under the Achieving a Better Life Experience Act of 2014, and this Trust shall thereupon terminate.

**Section 4.7.** In making any distribution hereunder, the Trustee shall be guided by the following distribution guidelines:

**4.7.1.** Consideration of all income and resources known to the Trustee and reasonably available to the Primary Beneficiary;

**4.7.2.** Consideration of all available benefits from any government agency, such as Supplemental Social Security Income (SSI), Medicaid, Social Security Disability Income (SSDI), Food Stamps, Medicare, and other special purpose benefits for which the Primary Beneficiary is eligible;

**4.7.3.** Consideration of the resource and income limitations of all applicable assistance programs;

**4.7.4.** Striving to make expenditures to provide a comfortable standard of living for the Primary Beneficiary, though not being obligated or compelled to make such expenditures.

## **ARTICLE 5. TRUST CORPUS AND INCOME NOT AVAILABLE**

**Section 5.1.** No part of the corpus or income of the trust created herein shall be used to supplant or replace public assistance benefits of any county, state, federal, or other governmental agency that has a legal responsibility to orphaned minors or persons with disabilities that are the same or similar to those that June Testcase may be experiencing.

**Section 5.2.** For purposes of determining June Testcase’s public assistance eligibility, no part of the principal or undistributed income of the trust shall be considered available to June Testcase. In the event the Trustee is requested to release principal or income of the trust to or

on behalf of June Testcase to pay for benefits or services that such public assistance is otherwise authorized to provide, were it not for the existence of this trust, or in the event the Trustee is requested to petition the court or any other administrative agency for the release of trust principal or income for this purpose, the Trustee is authorized to deny such request and is authorized in the Trustee's sole, absolute and uncontrolled discretion to take whatever administrative or judicial steps may be necessary to continue the public assistance program eligibility of June Testcase, including obtaining instructions from a court of competent jurisdiction ruling that the trust corpus is not available for June Testcase for such eligibility purposes. Any expenses of the Trustee in this regard, including reasonable attorneys' fees, shall be a proper charge of the trust.

**Section 5.3.** Neither June Testcase nor any person acting on his behalf as guardian, conservator, guardian *ad Litem*, attorney, or agent, except for the Trustee alone, shall have any right, power, or authority to liquidate the trust, in whole or in part, or to require payments from the trust for any purpose.

**Section 5.4.** The Trustee is directed to conserve and accumulate the trust estate to the extent feasible, due to the unforeseeability of June Testcase's future needs. However, accumulation or use of the trust is to be determined solely on the basis of the needs of June Testcase, without regard to the interests of the remaindermen.

## **ARTICLE 6. TRUST TERMINATION AND MEDICAID PAYBACK**

**Section 6.1.** This trust shall terminate upon the death of June Testcase, but only after winding up the affairs of this Trust. In winding up the affairs of this Trust, the Trustee shall make the following payments in the following order of priority:

**6.1.1.** Pay taxes due from the trust to the Commonwealth of Virginia, any other state, or the federal government because of the death of June Testcase;

**6.1.2.** pay reasonable fees for the administration of the trust estate such as an accounting of the trust to a court if required, completion and filing of documents, or other required actions associated with termination and wrapping up of the trust;

**6.1.3.** Pay the trust property and undistributed income to the Commonwealth of Virginia and to any other state which has paid for the primary beneficiary's care under the Medicaid program up to an amount equal to the total amount of medical assistance paid on behalf of June Testcase under the Medicaid program, to the extent such medical assistance has not already been reimbursed from any other source. Such payment or payments from the trust shall be apportioned among the Commonwealth of Virginia and other states in proportion to each state's share of the total medical assistance paid on behalf of the primary beneficiary;

**6.1.4.** After disbursements have been made as set forth in 6.1.1 - 6.1.3, then the Trustee may:

6.1.4.1. pay for June Testcase's funeral and burial expenses;

6.1.4.2. complete the duties and filing of documents associated with normal trust termination, including preparation of the final trust fiduciary income tax return;

6.1.4.3. pay taxes due from the estate of June Testcase other than those arising from the inclusion of the trust in the estate;

6.1.4.4. pay inheritance taxes due for residual beneficiaries;

6.1.4.5. pay debts owed to third parties;

**6.1.5.** After disbursements have been made as set forth in 6.1.1 - 6.1.4, then the Trustee shall:

6.1.5.1. provide a final written Trustee's report to the then-current Contingent Beneficiaries; and

6.1.5.2. pay the remaining trust property and undistributed income, if any, to June Testcase's issue (if any) in equal shares *per stirpes*, otherwise as June Testcase may appoint by June Testcase's Last Will and Testament or, if June Testcase has no Last Will and Testament, then to the persons who would be entitled to receive the property under the laws of the Commonwealth of Virginia then in force and in the proportions prescribed by such laws as if June Testcase had then died intestate, a resident of the Commonwealth of Virginia, and not survived by a spouse.

## **ARTICLE 7. APPOINTMENT OF TRUSTEE**

**Section 7.1.** The initial Trustee is Adam H. Testcase, the Primary Beneficiary's brother. The term "Trustee" or "Custodial Trustee" are interchangeable and include the initial Trustee and all successor or additional Trustees.

**Section 7.2.** If Adam H. Testcase is unable or unwilling to serve, then John Testcase shall serve as trustee hereunder.

**Section 7.3.** Neither June Testcase nor anyone acting on his behalf, whether as guardian, conservator, attorney-in-fact, representative payee, or any other arrangement, may serve as Trustee.

**Section 7.4.** The appointment of a Trustee shall be effective upon acceptance.

**Section 7.5.** Trustee may resign by giving thirty (30) days notice to the primary beneficiary and to the Representative Payee for the primary beneficiary, provided that the resignation of a

sole remaining Trustee shall become effective only upon the appointment and acceptance of a successor Trustee.

## **ARTICLE 8. ADDITIONAL TRUSTEE PROVISIONS**

**Section 8.1.** Each appointment, resignation, acceptance, or notice under Article 7 shall be in writing and, without affecting the validity of any action, copies shall be given to all Trustees. Any notice may be waived by the person to whom it is to be given.

**Section 8.2.** Each successor or additional Trustee shall have all the rights and powers of the original Trustee, except as limited by this agreement or by law. Title to the trust fund shall vest in each successor or additional Trustee by virtue of the Trustee's appointment and acceptance without any further instrument of transfer or conveyance.

**Section 8.3.** When there is a vacancy, the remaining Trustee or Trustees shall act alone until the vacancy has been filled, unless disqualified from acting by this agreement or by law.

During the absence or disability of any Trustee, the remaining Trustee or Trustees, except where disqualified, may act alone subject to any limitations imposed in writing by the absent or disabled Trustee.

**Section 8.4.** Anyone dealing with the trust property may rely on a writing signed by any Trustee as to the Trustee's authority to act on behalf of the trust.

**Section 8.5.** In addition to all common law and statutory authority, the Trustee, except as otherwise provided, shall have power without approval of any court and in any manner the Trustee considers advisable to exercise those powers as set forth under Section 64.2-105 of the Commonwealth (except for any powers allowing termination of trusts unless specifically otherwise provided in Section ).

**Section 8.6.** Trustee may loan money to any person upon such security and at such interest rate, if any, as the Trustee deems in the best interest of the Trust beneficiary.

**Section 8.7.** No Trustee shall be required to give bond, or, if a bond is required by law, no sureties on the bond shall be required.

**Section 8.8.** Any account of Trustee assented to in writing by a guardian, conservator, representative payee or attorney-in-fact for June Testcase, shall be conclusive, except for fraud or manifest error, on all parties in interest, whether or not of full age or in being or ascertained. Nothing herein be construed to give anyone the power or right to enlarge or shift the beneficial interest of any beneficiary. If a person whose assent would be required if legally competent is under guardianship or conservatorship, the guardian or conservator may act in behalf of the person and the guardian's or conservator's assent shall be required. The failure of any person to object to any account by a writing mailed to the Trustee within sixty (60) days after the mailing of a copy of the account to that person shall be conclusively deemed an assent by that person. The Trustee may, but is not required to, present any trust accounts for allowance to a court of competent jurisdiction, and no guardian *ad Litem* shall be appointed in that proceeding.

**Section 8.9.** The Trustee shall be entitled to fair and reasonable compensation for the services the Trustee renders a beneficiary or the trust, in accordance with the fiduciary compensation rules in effect in the Commonwealth of Virginia. The Trustee shall be reimbursed for the reasonable costs and expenses incurred in connection with the Trustee's fiduciary duties performed under this agreement.

**Section 8.10.** If necessary, the Trustee is authorized to utilize trust funds to pay for the costs of preparing this trust agreement and for any associated legal proceeding required to establish this trust for its intended purpose.



## **ARTICLE 9. BENEFICIARIES' INTERESTS AND POWERS**

**Section 9.1.** This is a spendthrift trust. The interest of any beneficiary under this agreement shall not be subject to assignment, alienation, pledge, attachment, or claims of creditors.

**Section 9.2.** Income payable to a person and income or principal that, in the discretion of the Trustee, may be paid to a person, may be used by the Trustee for the person's benefit whether or not that person is legally competent or under conservatorship or guardianship.

**Section 9.3.** Payments of any amount to be made to a minor may be made to a custodian for the minor under the Uniform Transfers to Minors Act or any similar statute.

**Section 9.4.** If property becomes payable to the estate of any person and the Trustee believes there is no duly appointed fiduciary and that none is contemplated, the Trustee may, upon being furnished suitable indemnity, make payment to the persons who the Trustee believes are entitled to the payment, without liability to see to the application of the payment.

## **ARTICLE 10. DEFINITIONS AND CONSTRUCTION**

**Section 10.1.** "Income" means net income and accumulated income not added to principal. Undistributed income at the termination of the income interest to which it relates shall be dealt with as if accrued and received thereafter.

**Section 10.2.** Where it is required by this agreement that any person shall have survived another, that requirement means that the person shall have survived the other person by at least thirty (30) days.

**Section 10.3.** The common law Rule Against Perpetuities shall not apply to this trust.

**Section 10.4.** This agreement shall be construed, governed, and administered in accordance with the laws of the Commonwealth of Virginia.

**Section 10.5.** The headings of the paragraphs of this agreement are inserted for convenience only and shall not affect its construction. In the construction of this agreement the gender of pronouns and the singular or plural form of words shall be disregarded where appropriate.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

SETTLOR:

\_\_\_\_\_  
June Testcase

TRUSTEE:

\_\_\_\_\_  
Adam H. Testcase

Commonwealth of Virginia  
COUNTY OF FAIRFAX, to-wit:

I, the Undersigned Notary Public in and for the Commonwealth of Virginia, do hereby certify that June Testcase and Adam H. Testcase, known to be (or satisfactorily proven to be) the persons whose names are signed to the foregoing, have acknowledged this instrument and signed the same as their free act and deed before me:

Given under my hand and NOTARIAL SEAL this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_