

## **Sample Third Party Special Needs Trust Language**

### **Preamble (Inter Vivos)**

THIS TRUST AGREEMENT is made the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by [Name of Grantor/Settlor] , [Relation of Grantor/Settlor to Beneficiary] of [Name of Beneficiary], hereinafter referred to as the “Grantor/Settlor”, of the [Name of Beneficiary] Special Needs Trust, and ACHIEVA FAMILY TRUST (and \_\_\_\_\_ (Co-Trustee))<sup>1</sup>, hereinafter referred to as the “Trustee”. This Trust is for the benefit of [Name of Beneficiary], hereinafter referred to as “Beneficiary”, a person with a disability.

### **Preamble (Testamentary)**

All the rest, residue and remainder [or whatever portion thereof] of my estate, real, personal and mixed, wheresoever situate, of which I may die seized or possessed, or to which I may be entitled at the time of my death and any property over which I may have or may hereafter acquire any power of appointment, I give, devise and bequeath to ACHIEVA FAMILY TRUST to be held IN TRUST for the benefit of [Name of Beneficiary], together with any other assets received by the Trustee.

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**Article I**  
**NAME OF TRUST**

The Trust hereby created may be referred to as the “[Name of Beneficiary] Special Needs Trust.”

**Article II**  
**TRUST FUNDING**

The Trust for the Benefit of [Name of Beneficiary] shall be funded with such assets as Grantor/Settlor/Testator or any other person has transferred or will transfer to the Trustee, or which is bequeathed hereto by the Grantor/Settlor/Testator or any other person other than the special needs beneficiary. The property transferred is irrevocably assigned, conveyed and delivered to ACHIEVA FAMILY TRUST. Other property, real or personal, may be transferred to the Trustee by anyone other than the beneficiary, with the consent of the Trustee. The Trustee shall invest said property, shall hold said property and all investments thereof as a

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<sup>1</sup> A co-trustee is not necessary, but ACHIEVA Family Trust is happy to serve in conjunction with a co-trustee.

trust estate ("Trust Estate"), and shall distribute the Trust Estate's net income and principal as set forth in this Agreement.

**Article III**  
**DISTRIBUTION OF INCOME AND PRINCIPAL**

In providing for the establishment of this trust for the benefit of [Name of Beneficiary], I am aware of the special circumstances and disabilities affecting [Name of Beneficiary] which may cause or will cause him/her to be eligible for various local, state and federal benefits and entitlements, as well as possible assistance provided by various private agencies and organizations. The primary purpose of this trust is to assure that [name of Beneficiary] achieves his/her maximum potential and leads as full, independent and normal a life as possible. To that end, it is my wish that the Trustee view themselves not only as trustee in the traditional sense, but also as protector, guardian and advocate for [Name of Beneficiary]. Correspondingly, the trustee shall expend the income and the principal of the trust in ways that best further these goals, and in accordance with the provisions set forth in the following Articles.

A. Purpose of Trust

The Trustee, within their complete and unfettered discretion, shall apply the income and principal of the Trust for the Benefit of [Name of Beneficiary] for the purpose of providing for [Name of Beneficiary]'s extra and supplemental care. This Trust is for the primary benefit of [Name of Beneficiary] and his/her present and future needs shall be considered first. The Trust shall be used to cover the expense of purchases that could improve his/her quality of life in addition to and over and above the benefits that [Name of Beneficiary] otherwise receives or shall receive as a result of his/her disability, and which are not otherwise provided for by insurance or by any local, state or federal government, including, but not limited to Supplemental Security Income (SSI), Medicare, Medicaid, or from any other public or private agency providing services or benefits to disabled persons. The Trustee may, in its sole and absolute discretion, make distributions for the requisite items or services necessary to provide for and maintain Beneficiary's current and reasonably foreseeable needs when, in the discretion of the Trustee, such items or services are not being paid for or provided by any public agency, office or department of any State or of the United States. The income and principal of this trust may therefore be used as judged necessary and appropriate as a supplement to, but not to supplant any assistance that [Name of Beneficiary] receives or may receive. The corpus of the Trust shall be distributed for the primary benefit of [Name of Beneficiary], and his/her present and future needs shall be considered first, and without regard to the interest of any Remainder Beneficiary.

B. Distributions During the Life of the Beneficiary

The Trustee shall have full discretion over the expenditure of payments from the Trust. The Trustee shall provide trust payments of such an amount and for such purposes so as not to preclude participation in any Federal, State, local or other assistance programs, as noted above. To the extent the income of this trust is not used, the Trustee may accumulate the income and add it to the principal of the trust. If the existence of this Trust should at any time be used by any governmental agency as an excuse for denying the beneficiary such benefits, then the Trustee is authorized, in its sole and absolute discretion, to terminate the Trust Estate in accordance with Article IV Paragraph H.

C. Depletion of Trust

To the extent reasonable or advisable, and based on the needs of the beneficiary, the Trustee may, within its discretion, deplete the Trust corpus prior to the Beneficiary's death.

**Article IV**  
**TRUST ADMINISTRATION**

A. Distribution of Trust Income and Principal

The income or principal of any Trust under this Agreement allocated to [Name of Beneficiary] may be expended for his/her benefit, or may be paid to [Name of Beneficiary]'s natural guardian or custodian, without liability on the part of the Trustee to see the application thereof. Notwithstanding the foregoing portion of this paragraph, no income allocated to [Name of Beneficiary] shall be distributed in a manner that would make the same countable for purposes of determining [Name of Beneficiary]'s eligibility for needs based government programs or benefits, or to [Name of Beneficiary]'s natural guardian, other than for a specific expense incurred for [Name of Beneficiary]'s sole benefit for which the natural guardian must furnish a receipt to the Trustee.

B. Administration in Cooperation with Co-Trustee (optional)

As between the Trustees, ACHIEVA Family Trust, corporate trustee, shall perform all ministerial and administrative duties including the keeping of books and records, acting as custodian of the trust and property and preparing all necessary tax returns.

\_\_\_\_\_, individual trustee, is authorized to delegate from time to time to the corporate trustee by an instrument in writing, any or all of her duties, rights and

powers hereunder. Any and all reference to “trustees” shall be deemed to include both the singular and the plural.

C. Powers of the Trustee

Except as may otherwise be provided in this Agreement, the Trustee shall have the following powers, to be exercised in its discretion, in addition to and not in limitation of those granted by law: to retain assets, without duty of diversification, in kind or to sell the same, at public or private sale, at such times and upon such terms and conditions as it sees fit; to invest in any kind of property, or fractional interest therein, no matter where located, without regard to any otherwise applicable statutory or other limitations on investment by fiduciaries; to purchase policies of life insurance, to pay premiums thereon from income or principal and to exercise all right of ownership thereover; to pledge, exchange or mortgage any real or personal property and to lease the same for any period of time, including without limitation more than either five (5) years or the term of the Trust; to give or exercise options for sales, leases and exchanges; to borrow money; to lend money (including, without limitation, to any possible beneficiary hereunder) on commercially reasonable terms; to compromise claims; to vote shares of corporate stock, in person or by proxy, in favor of or against management proposals and otherwise exercise all right of security holders; to carry securities in the name of a nominee, including that of a clearing corporation or depository, in book entry form, unregistered or in such other form as will pass by delivery; to allocate realized capital gains to income or principal; to allocate receipts and disbursements as between income and principal; and to make distribution either in cash or in kind. Without limiting the foregoing, the Trustee may own property which is used as the principal residence, furniture, and other items meeting the “special needs” of [Name of Beneficiary] despite the fact that such property is non-productive of income.

D. Availability of Other Funds

In exercising any discretion to distribute principal or Income granted to Trustee, the Trustee shall take into consideration other readily available funds of which it has knowledge, all applicable insurance coverage and tax consequences, as well as available governmental benefits, payments and programs. No discretionary power to distribute principal or Income provided for in this Agreement shall be construed to allow the payment therefrom of any specific expense or obligation of, or for, a beneficiary which is otherwise payable by any insurance or any governmental entity or pursuant to any governmental benefit or program.

E. Compensation

The Corporate Trustee shall be entitled to reasonable compensation for its services and to reimbursement for its expenses in connection with its services performed

hereunder. Reasonable compensation is defined by the Trustee's published fee schedule in effect at the time its services are rendered. The Trustee shall be entitled to additional compensation and/or reimbursement for his or her expenses in connection with any additional services performed for the Trust. Compensation may be charged to principal or income, or partly to each, in the discretion of the Trustee.

F. Payment of Expenses Incurred by the Trust

The Trustee shall be entitled to pay all expenses incurred in the administration of the Trust from the Trust, and to pay or appoint, and pay reasonable compensation from the Trust to accountants, depositories, investment managers, attorneys, attorneys-in-fact, and agents (with or without discretionary powers). In determining whether the existence of the Trust for the benefit of [Name of Beneficiary] has the effect of rendering [Name of Beneficiary] ineligible to receive any government benefits or to participate in any government program, to which [Name of Beneficiary] would otherwise be entitled, the Trustee is granted full and complete discretion to initiate or defend administrative and/or judicial proceedings related to determining such eligibility, and all costs related thereto, including reasonable attorney's fees, shall be a proper charge to the Trust Estate.

G. Discretion of Trustee

Except as may otherwise be expressly provided herein, the Trustee's exercise or nonexercise of powers and discretions in good faith, and without negligence, shall be conclusive on all persons and the Trustee shall have no liability therefor.

H. Statements

During [Name of Beneficiary]'s lifetime, the Trustee shall furnish a copy of its regular statements to [Name of Beneficiary], from and after his/her 18th birthday, his/her parents if the beneficiary is a minor, his/her representative, as well as \_\_\_\_\_, and any judicially appointed guardian. In no event shall statements be provided less often than quarterly.

I. Termination of Trust

If the Trustee elects to terminate the Trust, the Trustee may a) pay the principal and any accrued or undistributed income to [Name of Beneficiary], or a court-appointed guardian of the estate for [Name of Beneficiary], or, b) if [Name of Beneficiary] is under the age of twenty-one (21) years, to a Custodian to be selected by the Trustee under an appropriate Uniform Gifts or Transfers to Minors Act, for the benefit of [Name of Beneficiary], or c) if [Name of Beneficiary] is not then living to any other beneficiary or beneficiaries entitled to the terminated trust, or d) may elect to utilize the corpus of the

Trust to create a Pooled Trust in accordance with 42 U.S.C. §1396p(d)(4)(C), if doing so would be in the best interest of [Name of Beneficiary]. If the Trustee acts under the foregoing sentence, the receipt and release of the distributee will terminate absolutely the rights of all persons who might otherwise have an interest in such trust, whether vested or contingent, without notice to them and without the necessity of filing an account to the court.

Upon the death of [Name of Beneficiary] the Trustee shall pay and distribute the remaining balance of the Trust Estate, and any accumulated, undistributed net income thereon, as follows: (name remainder beneficiaries as directed by Grantor/Settlor/Testator).

J. Resignation of Trustee

The Trustee may resign, effective upon qualification of its successor, at any time, without stating cause by giving written notice to the Beneficiary, to the Grantor/Settlor, if living, and to any other Trustee then serving. Upon receipt of such notice, the person(s) then entitled to remove a Trustee may select and designate in writing a successor Trustee pursuant to Article VI to serve hereunder in a reasonable time.

**Article V**  
**FIDUCIARY PROVISIONS**

- A. In the event the merger or consolidation of ACHIEVA FAMILY TRUST with any corporate Trustee, the resulting corporation shall become successor Trustee, without notice to any party.
- B. No bond shall be required of the Trustee hereunder in any jurisdiction.
- C. All powers, authorities and discretions conferred upon and granted to the Trustee named herein shall extend to and be exercisable by such Trustee's successor or successors, regardless of method of appointment. No successor Trustee shall be personally liable for any act or failure to act of a predecessor Trustee; PROVIDED, HOWEVER, that this provision shall not be deemed to abrogate the successor liability of an entity that succeeds to the assets or business of a Trustee and, thus, becomes a successor Trustee.

**Article VI**  
**REMOVAL POWER**

[Name of Beneficiary], the Beneficiary's agent or the Beneficiary's guardian shall have the right, by an instrument in writing delivered to the Trustee giving 90 days advance notice, to

remove a corporate Trustee, and appoint as a successor any corporate fiduciary which is, at the time of this appointment, lawfully authorized to engage in trust business in the United States, is independent from, including not related or subordinate to [Name of Beneficiary] or anyone with a removal/appointment power as provided in this Article, and has \_\_\_\_\_ assets managed as a fiduciary, excluding the subject trust. Should a judicially appointed guardian of the estate be serving for [Name of Beneficiary], the guardian of the estate shall have the same right of removal/appointment as would [Name of Beneficiary]; provided, however, that said guardian may not appoint itself Trustee hereunder. In no event may the Beneficiary serve as Trustee

## **Article VII** **REFORMATION**

### A. Taxes

The Trustee is, at any time during the continuance of any trust established by the terms of this Agreement, authorized to reform, by a writing made and filed with the records of such trust, any of the provisions of this Agreement for the purpose of minimizing or eliminating any burdensome tax consequences.

### B. Disqualification as a Special Needs Trust

During [Name of Beneficiary]'s lifetime, the Trustee is authorized to reform, by a writing made and filed with the records of such trust for the purpose of ensuring that the trust will continue to qualify as a special needs trust, consistent with its intended purpose. Should it be determined that [Name of Beneficiary] is not disabled and, as a consequence, that [Name of Beneficiary]'s trust can no longer serve as a special needs trust, then the Trustee is authorized to reform, by a writing made and filed with the records of such trust, any of the provisions of this Agreement regarding restrictions on distribution that are specifically required for such trust to be considered a special needs trust.

### C. Continued Compliance with Applicable Law

The Trustee is, at any time during the continuance of any trust established by the terms of this Agreement, authorized to engage in reformation of the Trust, by a writing made and filed with the records of such trust, that is necessary to respond to the reasonable requirements of an administrative agency with the authority to dispense public benefits or regulate this Trust or the Trustee, or any changes including, but not limited to the Program Operations Manual System (POMS) of the Social Security Administration, or any relevant statutory, regulatory or case law in order ensure that the Trust remains in compliance with such changes.

**Article VIII**  
**GOVERNING LAW**

This Agreement has been executed, delivered and accepted in the Commonwealth of Pennsylvania. This Agreement and the Trust established pursuant hereto shall be governed, construed and administered according to the laws of the Commonwealth of Pennsylvania. The situs of the Trust established pursuant hereto shall be Allegheny County, Pennsylvania. Notwithstanding the foregoing provisions of this Article, if at any time, in the opinion of the Trustee, it is in the best interests of the beneficiary for the situs of the trust to be located in a jurisdiction other than Allegheny County, the Trustee may remove the trust situs to such other jurisdiction and elect that the law of such other jurisdiction and elect that the law of such other jurisdiction shall govern the trust to the extent necessary or appropriate under the circumstances.

**Article IX**  
**ACCEPTANCE OF TRUST**  
**[INTER VIVOS ONLY]**

ACHIEVA FAMILY TRUST hereby accepts the foregoing Trust upon the terms and conditions herein set forth.

WITNESS and due execution hereof, INTENDING TO BE LEGALLY BOUND, the day and year first written above.

ACHIEVA FAMILY TRUST

By: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

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