



## **DECLARATION OF IRREVOCABLE SPECIAL NEEDS TRUST**

This Trust Agreement is made this \_\_\_\_ day of 20\_\_\_\_, by \_\_\_\_\_, of \_\_\_\_\_, as Settlor, and Family Network on Disabilities of Florida, Inc., d/b/a Family Network on Disabilities (“FND”), as Trustee.

### **ARTICLE I. NAME OF TRUST**

The trust created in this instrument may be referred to as THE IRREVOCABLE SPECIAL NEEDS TRUST for the benefit of \_\_\_\_\_ (hereinafter referred to as the “Beneficiary”).

### **ARTICLE II. SCOPE OF AGREEMENT**

This is an irrevocable trust for the sole and exclusive benefit of the Beneficiary. Settlor declares that the property described in Exhibit “A” attached to this instrument has transferred to the Trustee, without consideration. The Trustee hereby agrees to hold that property and any other property of the trust estate, in trust, on the terms set forth in this instrument. It is Settlor's desire, by this instrument, to create an inter vivos irrevocable special needs trust, whereby the property placed in trust shall be managed for the benefit of the Beneficiary during the Beneficiary's lifetime and distributed to the beneficiaries named herein upon the death of the Beneficiary.

### **ARTICLE III. INTENTIONS AND WISHES OF SETTLOR**

#### **3.01. Trust To Be Used For Supplemental Needs.**

The intent of this Trust is to supplement any benefits received (or for which the Beneficiary may be eligible) through or from various governmental assistance programs and not to supplant any such benefits. All actions of the Trustee shall be directed toward carrying out this intent. The Beneficiary shall not be considered to have access to income and/or principal of the trust and the Beneficiary has no power to direct the Trustee to make distributions of income and/or principal to him. No assets in this trust were contributed by the Beneficiary.

### **3.02. Advocacy and Quality of Life.**

This trust is intended to insure that there shall always be a friend, advocate and protector of the legal rights of the Beneficiary and to insure that the Beneficiary shall receive services that will assist the Beneficiary in achieving a reasonable degree of happiness and improve, to as great an extent as possible, the Beneficiary's quality of life.

### **3.03. Importance of Maintaining Benefits.**

Currently there exist basic living needs, such as dental care and outdoor recreation, which public benefit programs for persons with disabilities do not provide. It is vitally important that the Beneficiary continues to have these programs in order to maintain a level of human dignity, humane care, and quality of life. If this trust were to be invaded by creditors, subject to any liens or encumbrances, or cause public benefits to be terminated, it is likely that the trust corpus would be depleted prior to the Beneficiary's death, especially since the cost of care for persons with disabilities (not including any emergency needs) is high.

### **3.04. Additional Trust Property.**

The Trustee, in the Trustee's sole and absolute discretion, may receive property from others as trust assets during and/or after Settlor's lifetime.

## **ARTICLE IV. TRUST ESTATE**

### **4.01 Composition of Trust Estate.**

All property subject to this instrument from time to time is referred to as the "trust estate" and shall be held, administered, and distributed according to this instrument. The trust estate consists of the property listed in Exhibit "A" attached hereto, together with any additional trust property (plus the proceeds and undistributed income of the property) that is hereafter transferred to the trust by the Settlor or by others as permitted herein.

### **4.02 Benefit Solely for Beneficiary.**

The trust will be administered solely for the benefit of the Beneficiary.

### **4.03 Discretion of Trustee; Use of Assets.**

The Settlor recognizes and acknowledges that all distributions are subject to the Trustee's sole and absolute discretion, that the Trustee shall only make distributions solely for the Beneficiary's supplemental needs and supplemental care, and that the Trustee shall possess and exercise the authority to allocate all distributions between principal and income

as it determines in its sole and absolute discretion.

## **ARTICLE V. DISTRIBUTIONS OF INCOME AND PRINCIPAL**

### **5.01 Distribution.**

(A) The Trustee shall, in the Trustee's sole and absolute discretion, distribute so much income and principal to or for the benefit of the Beneficiary as the Trustee shall, in the Trustee's sole discretion, determine in order to provide supplemental benefits, as hereinafter defined, to the benefits receivable by the Beneficiary through or from various governmental assistance programs. The Trustee is prohibited from making any distribution to any governmental entity to replace or reimburse or supplant any public assistance benefit of any county, state, federal or other governmental agency which has a legal responsibility to serve persons with disabilities which are the same or similar to the impairment(s) of the Beneficiary herein, and shall not distribute trust assets to or for the benefit of the Beneficiary for such needs as would be provided for in the absence of this trust by governmental financial assistance and/or benefits and/or by any provider of services. Trust property should not be distributed in such a manner that any governmental financial assistance, which would be available to the Beneficiary if this trust did not exist, is in any way reduced, diminished, altered or denied. All terms of this trust, wherever they may appear, shall be interpreted to conform to this primary goal, namely that the governmental financial assistance which would otherwise be available to the Beneficiary if this trust did not exist will in no way be reduced, diminished, altered or denied. However, a distribution may be made by the Trustee, in the Trustee's sole discretion, in order to meet a need of the beneficiary for supplemental benefits not otherwise met by governmental financial assistance.

### **5.02 Beneficiary.**

(A) This trust shall be solely and exclusively for the benefit of the Beneficiary, and the rights of the remainder beneficiary(ies) shall be of secondary importance. The Trustee shall not be required to distribute income currently. The Trustee shall not be held accountable to any beneficiary if part or all of the principal shall be depleted as a result of distributions under this trust in accordance with the terms of this trust. Any income not distributed shall be added to and become a part of the principal.

(B) Any determination made by the Trustee in good faith as to the manner in which or the extent to which the powers granted by this trust shall be exercised shall be binding and conclusive upon all persons who might then or thereafter have or claim any interest in the trust property.

### 5.03 Supplemental Benefit/Special Needs.

(A) The Trustee shall pay to or apply for the benefit of the Beneficiary for the Beneficiary's lifetime, such amounts of principal or income, up to the whole thereof, as the Trustee in its discretion may from time to time deem necessary or advisable for the satisfaction of the Beneficiary's special needs, and any income not distributed shall be added to the principal. As used in this instrument, "special needs" refers to the requisites for maintaining the Beneficiary's good health, safety, welfare, and quality of life when, in the discretion of the Trustee, such requisites are not being provided by any public agency, office or department of any state, or of the United States.

(1) The term "special needs" or "supplemental benefits" would or could include, but not be limited to, the following examples of non-support payments that are appropriate for the Trustee to make from this Trust to, or for the benefit of, the Beneficiary:

a) medical, dental, and diagnostic work and treatment for which there are no available private or public funds;

b) medical procedures that are desirable in the Trustee's sole discretion, even though they may not be medically necessary or life saving;

c) supplemental nursing care, rehabilitative and/or occupational therapy services;

d) differentials in cost between housing and shelter for shared and private rooms in institutional settings;

e) care appropriate for the Beneficiary that assistance programs may not or do not otherwise provide;

f) assistive technology and/or equipment of any nature or kind whatsoever;

g) educational and training programs as may, in the Trustee's sole and absolute discretion, be appropriate;

h) supplemental dietary needs;

i) expenditures for transportation, travel, companionship, experiences, and expenses in bringing the Beneficiary's siblings and/or others for visitation;

j) items of a similar nature to those contained in sub-sections a - i above, and such items as may be specified in a care plan prepared for the Beneficiary.

The foregoing examples are illustrative only, non-exclusive, and are not meant to limit the Trustee's discretion in making distributions on behalf of the Beneficiary that may be appropriate, but do not fall within one of the above categories.

#### **5.04. Spendthrift Provision.**

- (A) This trust shall not be reduced in value by creditors of the Beneficiary. The public and private assistance benefits of the Beneficiary should not be terminated or made unavailable to the Beneficiary because of this trust or the assets held in the trust for the Beneficiary's benefit. Assets held in this trust are not for the primary support of the Beneficiary and shall only be used for the Beneficiary's supplemental care and/or supplemental needs. The Settlor and Trustee do not owe any obligation of support to the Beneficiary, and the Beneficiary does not have any right of entitlement to the trust corpus or income, except as the Trustee elects to disburse the same in its sole, complete, absolute, and unfettered discretion. The Trustee may act unreasonably in exercising its discretion, and the judgment of any other person or entity shall not be substituted for the judgment of the Trustee.
- (B) No part of this Trust, neither principal nor income, shall be subject to anticipation or assignment by the Beneficiary, nor shall it be subject to attachment or control by any public or private creditor of any of the Beneficiary. No part of this Trust, neither principal nor income, may be taken by any legal or equitable process by any voluntary or involuntary creditor of the Beneficiary, including those who have provided support and maintenance for the Beneficiary. Under no circumstances may the Beneficiary compel a distribution from the trust or from any other part of the trust estate.

#### **5.05. Public Benefits.**

Settlor declares that it is Settlor's intent, as expressed herein, that because the Beneficiary is disabled and will be unable to maintain and support him/herself independently, the Trustee shall, in the exercise of its best judgment and fiduciary duty, seek support and maintenance for the Beneficiary from all available public resources, including, but not limited to, Supplemental Security Income (SSI), Medicaid, federal Social Security Disability Insurance (SSDI), as well as any other state and/or federal benefit or assistance programs for which the Beneficiary may be eligible. In making distributions to the Beneficiary for the Beneficiary's special needs, as herein defined, the Trustee shall take into consideration the applicable resource limitations of the public benefit or assistance programs for which the Beneficiary is eligible.

#### **5.06. Commingling.**

No public assistance benefits for the Beneficiary of this trust shall be added to

this trust.

#### **5.07. Supplemental.**

(A) It is further Settlor's intention that no part of the interest earned by, or the corpus of the trust created herein, shall be used to supplant or replace public assistance benefits of any county, state, federal or other governmental agency which has a legal responsibility to serve persons with disabilities.

(B) For purposes of determining the Beneficiary's Medicaid or any other public benefits programs eligibility, no part of the principal or income of the trust estate shall be considered available to said Beneficiary. In the event the Trustee is requested by any department or agency administering Medicaid or any other benefits to release principal or income of the trust to or on behalf of the Beneficiary to pay for equipment, medication, or services which Medicaid or any other government benefit program is authorized to provide, or in the event the Trustee is requested by any department or agency administering Medicaid or any other benefits 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 to defend, at the expense of the trust estate, any contest or other attack of any nature of the provisions of the trust.

(C) In addition to the above, it is Settlor's hope, which is precatory, and not mandatory, that the trust property shall be expended for such advocates, both legal and non-legal, as may be necessary in order to protect any and all rights of the Beneficiary as well as to protect the integrity of this trust.

#### **5.08. Termination.**

This trust shall cease and terminate upon the depletion of its assets or upon the death of the Beneficiary, whichever is earlier. If terminating on the death of the Beneficiary, then the Trustee shall distribute the balance of the trust estate as follows:

(A) Ten per cent of the balance of the trust shall be retained by the Trustee to be used to further its mission to provide information, advocacy, and/or services to persons with disabilities.

(B) The balance of the Trust, after the deduction provided in subsection (A) above, shall be distributed in accordance with the provisions of Exhibit "C", attached hereto and incorporated herein as an integral part of this Trust.

#### **5.09. Ineligibility.**

In determining whether the existence of the trust has the effect of rendering the Beneficiary ineligible for SSI, Medicaid, or other public benefits, the Trustee is hereby granted full and complete discretion to initiate either administrative or judicial

proceedings, or both, for the purpose of determining eligibility, and all costs relating thereto, including reasonable attorney fees, shall be a proper charge to the trust estate.

#### **5.10. Expenses.**

Upon the death of the Beneficiary, the Trustee, in the Trustee's sole discretion, may pay all or any expenses of the Beneficiary's funeral, and expenses related to administration and distribution of the trust estate (including fees of the Trustee, its attorney, and other agents) if, in the Trustee's sole discretion, other satisfactory provisions have not been made for the payment of such expenses. The Trustee shall make no payments for obligations incurred for the Beneficiary's health, support and maintenance if the Trustee shall determine, in the Trustee's sole discretion, that payment therefore is the obligation of any county, state, federal, or other governmental agency, which has a legal responsibility to serve persons with disabilities which are the same as or similar to the disability or disabilities of the Beneficiary.

### **ARTICLE VI. DESIGNATION OF TRUSTEE**

#### **6.01. Trustee.**

(A) FND shall serve as the Trustee of the trust. In the event FND chooses to resign as trustee, FND shall designate a successor trustee, who may be either an individual or corporate entity qualified to serve as trustee under the laws of Florida.

(B) If there is no named successor Trustee who accepts appointment, the Trustee or, if the Trustee fails to act, the Beneficiary may secure at the expense of the trust the appointment of a successor Trustee by a court of competent jurisdiction. Any corporate Trustee so appointed shall be a corporation organized under the laws of any State or of the United States authorized by law to administer trusts. Any Trustee hereunder shall be an independent corporate or individual Trustee (as defined under Section 674 of the Internal Revenue Code) and shall not be a beneficiary hereunder. Appointment shall be effective upon acceptance of the successor Trustee or as of the date the prior acting Trustee ceased to act, whichever is earlier.

#### **6.02. Incapacity of a Trustee.**

If an individual shall serve at any time as the Trustee of the trust, then the following provisions shall apply:

(A) If a Trustee cannot administer the trust because of incapacity, during any period of incapacity the successor Trustee named herein (or appointed as provided herein) shall act as Trustee, having all rights and powers granted to the Trustee by this instrument.

(B) Incapacity shall mean any physical or mental condition of the Trustee, whether arising from accident, illness or other cause, which renders the Trustee unable

to conduct the regular affairs of the trust estate, including, but not limited to, the endorsement for receipt of funds and writing of checks for disbursement of funds from the trust estate, which condition of incapacity is probable to extend for a period greater than ninety days.

(C) Incapacity shall be conclusively established if either the Trustee's regularly attending physician or two doctors, authorized to practice medicine in any state or country in which the Trustee is then residing, issue written certification to that effect.

(D) In the absence of certification, a Co-Trustee or successor Trustee or beneficiary(ies) hereunder may petition the court having jurisdiction over this trust to remove a Trustee and, if there is no other acting Trustee, replace him or her with the successor Trustee. Neither a Trustee nor beneficiary who so petitions the court shall incur liability to any beneficiary of the trust or to the substituted Trustee as a result of this petition, provided the petition is filed in good faith and in the reasonable belief that the substituted Trustee is incapacitated or otherwise cannot act.

(E) In like manner, it may be determined that the Trustee has regained capacity.

### **6.03. Resignation.**

Any Trustee may resign at any time by giving written notice of resignation to the Settlor, and/or the other Trustee(s) then acting, if any, and if there are none, then to the Beneficiary, or to the Beneficiary's attorney in fact or guardian if the Beneficiary is incapacitated. Any such resignation shall become effective at such date as the Trustee and the Settlor, or the Beneficiary (or the Beneficiary's attorney in fact or guardian) may agree, but no later than thirty (30) days after such written notice.

### **6.04. Death of Trustee.**

Death of a Trustee shall be evidenced by a certified copy of the death certificate delivered to the successor Trustee.

### **6.05. Bond.**

No bond shall be required of FND for the faithful performance of its duties as Trustee, but a subsequently named Trustee or successor Trustee may be required to be bonded, in accordance with the terms of appointment.

### **6.06. Co-Trustee.**

(A) During such time as two or more persons are acting as Co-Trustee, the powers of a Trustee may be delegated to one or more of the Trustees from time to time by execution of a written instrument signed by all of the then-acting Trustees.



(B) No financial or investment action shall be taken on the sole signature of a Trustee.

#### **6.07. Successor Trustee.**

(A) A successor Trustee shall succeed to all title to the property of the trust estate and all powers, rights, discretions, obligations and immunities of the Trustee hereunder with the same effect as though such successor had been originally named Trustee.

(B) No successor Trustee shall be liable for any act, omission or default of a predecessor Trustee or Trustees. Unless requested in writing within sixty (60) days of appointment by an adult beneficiary of a trust, no successor Trustee shall have any duty to investigate or review any action of a predecessor Trustee or Trustees, and the successor Trustee may accept the accounting records of the predecessor Trustee or Trustees showing assets on hand without further investigation and without incurring any liability to any person claiming or having an interest in the trust.

(C) Any third person dealing with the successor Trustee shall accept, and shall be absolutely entitled to rely upon, the statement of the successor Trustee that it has become the successor Trustee in accordance with the provisions of this Article; and shall be under no obligation to make any investigation into the facts or circumstances of the assumption of authority by the successor Trustee.

(D) The successor Trustee shall not be made subject to any claim or demand by a Settlor or by any beneficiary of the trust estate by reason of its commencing to act as successor Trustee in accordance with the provisions of this Article.

#### **6.08 Reimbursement and Compensation.**

The Trustee may receive reasonable compensation. FND may be compensated for its services in accordance with its regular fee schedule, as may be amended from time to time. Any Trustee shall be reimbursed for expenses paid on behalf of the trust estate. A Trustee shall be entitled to reimbursement for any costs incurred in the administration of this trust.

#### **6.09. Report and Account.**

The Trustee shall make an annual report and account of trust assets to Settlor and/or to such person Settlor may from time to time designate to the Trustee. The financial records of the Trustee shall be open at all reasonable times to inspection by these named individuals.

#### **6.10. Personal Liability of Trustee.**

No Trustee named in this instrument shall be personally liable to any beneficiary or to the Settlor, or to the heirs of either, or to any creditor of the trust or trust estate, for the Trustee's acts or failure to act, except for willful misconduct or gross negligence. No Trustee shall be liable or responsible for any act, omission, or default of any other Trustee.

#### **6.11 Trustee May Seek Advice.**

The Trustee may, in performing its duties under this trust, seek the advice and assistance of any person or entity it deems to be appropriate, including, but not limited to, any federal, state, and/or local agencies that are established to assist people with disabilities; and legal counsel. The fees for any such legal counsel shall be paid from the trust.

#### **6.12 Trustee to Receive Full Consideration for Trust Assets.**

No authority described in this trust, or available to the Trustee pursuant to applicable law, shall be construed to enable the Trustee to purchase, exchange, or otherwise deal with or dispose of the assets of the trust for less than an adequate or full consideration in money or money's worth, or to enable any person to borrow the assets of the trust, directly or indirectly, without adequate interest or security.

#### **6.13 Indemnification of Trustee.**

The Trustee and each of its Co-trustees (if any), agents and employees, including the heirs, successors, assigns, and personal representatives of its agents, are hereby indemnified by the trust and the trust property against all claims, liabilities, fines, or penalties, and against all costs and expenses, including attorney's fees and disbursements and the cost of reasonable settlements, imposed upon, asserted against or reasonably incurred thereby in connection with or arising out of any claim, demand, action, suit, or proceeding in which he, she, or it may be involved by reason of being or having been a Trustee or affiliated with a Trustee as set forth above, whether or not he, she, or it shall have continued to serve as such at the time of incurring such claims, liabilities, fines, penalties, costs, or expenses or at the time of being subjected to the same. However, the Trustee and each of its Co-trustees (if any), agents and employees, including the heirs, successors, assigns, and personal representatives of its agents, shall not be indemnified with respect to matters as to which he, she, or it shall be finally determined to have been guilty of willful misconduct in the performance of any duty by a court of competent jurisdiction. This right of indemnification shall not be exclusive of, or prejudicial to, other rights to which the Trustee and each of its Co-trustees (if any), agents and employees, including the heirs, successors, assigns, and personal representatives of its agents, may be entitled as a matter of law or otherwise.

## ARTICLE VII. TRUSTEE'S POWERS

### **7.01 Powers Enumerated.**

Settlor grants to the Trustee discretion and complete power to administer the trust estate as a fiduciary. In addition to those powers now or subsequently conferred to the Trustee by law, such grant shall include without limitation the powers listed in this Article:

#### (A) To Receive Assets

To receive, take possession of, sue for, recover, and preserve the assets of the trust estate, both real and personal, coming to the Trustee's attention or knowledge, and the rents, issues and profits arising from such assets.

#### (B) To Retain Initial Assets

To retain the initial assets of the trust estate without liability for loss, depreciation, or diminution in value resulting from such retention until the Trustee decides to dispose of such assets.

#### (C) To Invest

To invest and reinvest all or any part of the trust estate in any common or preferred stocks, shares of investment trusts and investment companies, bonds, debentures, mortgages, deeds of trusts, mortgage participations, money market funds, mutual funds, index funds, notes, real estate, or other property the Trustee in the Trustee's discretion selects. The Trustee may continue to hold in the form in which received (or the form to which changed by reorganization, split stock dividend, or other like occurrence) any securities or other property the Trustee may at any time acquire under this trust, it being the Settlor's express desire and intention that the Trustee shall have the full power to invest and reinvest the trust funds in the manner, under the circumstances then prevailing (specifically including but not limited to the general economic conditions and the anticipated needs of the trust and its beneficiaries), that persons of prudence, and diligence acting in a similar capacity and familiar with those matters would use in the conduct of an enterprise of a similar character and with similar aims, to attain the goals of the Settlor under this instrument without being restricted to forms of investment that the Trustee may otherwise be permitted to make by law; and to consider individual investments as part of an overall investment strategy; and the investments need not be diversified.

#### (D) To Manage Securities

To have all the rights, powers and privileges of an owner of the securities held in trust, including, but not by way of limitation, the power to vote, give proxies, and pay assessments; to participate in voting trusts and pooling agreements (whether or not

extending beyond the term of the trust); to enter into shareholders' agreements; to consent to foreclosure, reorganizations, consolidations, mergers, liquidations, sales, and leases, and incident to any such action, to deposit securities with and transfer title to any protective or other committee on such terms as the Trustee may deem advisable; and to exercise stock options and to exercise or sell stock subscriptions or conversion rights.

(E) To Handle Financial Accounts

To handle trust funds, including deposits and withdrawals, in any savings or other account, interest-bearing or non-interest-bearing, in any currency whatsoever, with any bank, financial institution, or other depository, or deposit such trust funds in investment certificates or time certificates or other investment paper.

(F) To Make Contracts and Carry Out Agreements

To enter into contracts, which are reasonably incident to the administration of the trust.

(G) To Borrow

To borrow money from any source, excluding an individual Trustee, with any such indebtedness being repayable solely from the trust estate or a part of it, and to pledge or encumber the trust estate, or a part of it, as security for such loans.

(H) To Determine Income and Principal

Except as otherwise specifically provided hereunder, to determine all matters of trust accounting in accordance with the provisions of the Principal and Income Law of the State of Florida or in any state which may be the situs of the trust, from time to time existing; and if there is no provision therein, in accordance with generally accepted accounting principles in the Trustee's discretion.

(I) To Employ Agents and Delegates

To employ investment counsel, custodians of trust property, brokers, accountants, lawyers, realtors, social workers, care managers, rental agents, therapists, housekeepers, and other agents in those instances where the Trustee, in the exercise of discretion, deems it necessary, and to pay reasonable fees in connection therewith from principal or income, or both; to be free from liability for neglect or misconduct of any such agent, provided such agent was selected and retained with reasonable care; and, at its discretion, to obtain a correspondent trust fiduciary or other agent to hold real property located in another jurisdiction.

(J) To Litigate

To prosecute, defend, contest or otherwise litigate legal actions or other proceedings for the protection or benefit of a trust or the Trustee; to pay, compromise, release, adjust, or submit to arbitration any debt, claim or controversy; and to insure the trust against any risk, and the Trustee against liability with respect to third persons.

(K) To Prepare Tax Returns and Make Elections

To prepare and file returns and arrange for payment with respect to all local, state, federal, and foreign taxes incident to this agreement; to prepare all necessary fiduciary income tax returns; and to make all necessary and appropriate elections in connection therewith in its discretion.

(L) To Carry Insurance and Collect Insurance Proceeds

To carry, at the expense of the trust, insurance of such kinds and in such amounts as the Trustee deems advisable to protect the trust estate and the Trustee personally against any hazard.

(M) To Seek and Maintain Public Benefits for a Beneficiary

To take any and all steps necessary, in the Trustee's discretion, to obtain and maintain eligibility of any beneficiary under this trust for any and all public benefits and entitlement programs. Such programs include, but are not limited to Social Security, Supplemental Security Income, Medicare, Medicaid, and In Home Support Services.

(N) Restrictions on Powers

Notwithstanding the provisions of this Article, none of the powers enumerated herein nor any power accorded to a Trustee generally pursuant to law shall be construed to enable the Settlor, the Trustee, or any other person (a) to purchase, exchange or otherwise deal with or dispose of the principal or income of this trust for less than an adequate or full consideration in money or money's worth, or (b) to borrow the principal or income of this trust, directly or indirectly, without adequate interest or security. No person, other than the Trustee, shall have or exercise the power (a) to vote or direct the voting of any stock or securities of this trust, (b) to control the investment of property of this trust either by directing investments or reinvestments or (c) to reacquire or exchange any property of this trust by substituting other property of any equivalent value.

(O) Relinquishment of Power

The Trustee shall have the power to relinquish and/or disclaim irrevocably the power of the Trustee for the duration of the trust and for any and all acting thereafter as Trustee to distribute principal to the Beneficiary.

**ARTICLE VIII. TRUST PROTECTORS**

8.01. **Appointment of Initial Trust Protectors.** The person(s), if any, named in Exhibit "D", attached hereto and incorporated herein as an integral part of this trust, are hereby appointed as the initial trust protectors ("Trust Protector(s)") hereunder. In the event that any Trust Protector named herein shall cease, for any reason, to serve as Trust Protector hereunder, then the remaining persons named as the Trust Protectors shall serve as the Trust Protectors.

8.02. **Designation of Successor Trust Protectors.** The Trust Protector(s) shall be entitled to appoint one or more successor individual Trust Protector(s) and to remove such successor Trust Protector(s). If at any time there shall be no Trust Protector serving hereunder, then the Beneficiary, or the Beneficiary's guardian, if any, shall have the power to appoint a successor individual Trust Protector. Any successor Trust Protector shall designate upon assuming their duties as successor Trust Protector, in writing, their successor as Trust Protector.

8.03. **Advisors to Trustee.** The Trust Protector(s) shall act as advisors to the Trustee with respect to the needs of the Beneficiary. The Trustee shall consult with the Trust Protector(s) on no less than an annual basis, at a time and in a manner of the Trustee's choosing. The Trustee shall not be bound by, or compelled to follow in any way whatsoever, the advice of the Trust Protector(s) on any matter.

8.04. **Liability of Trust Protectors.** No Trust Protector shall be liable for such Trust Protector's own acts or omissions except for those involving gross negligence or willful misconduct. No Trust Protector shall have any duty to inquire into, nor shall any Trust Protector be liable for, the acts or omissions of any predecessor Trust Protector. The Trust Protector(s) of any trust shall have no obligation to act or to refrain from acting under this Article unless and until requested to do so by the Trustee.

8.05. **Trust Protectors Not Trustee.** The Trust Protectors shall not be considered a Trustee of this Trust for any purpose and shall not have any powers except as otherwise expressly provided in this trust.

## **ARTICLE IX . ADMINISTRATIVE PROVISIONS**

### **9.01. Additions to Trust.**

Settlor may add to the trust estate by Will, deed or otherwise. Subject to the approval of the Trustee in writing, other persons or entities may add to the trust.

### **9.02. Nonassignment.**

No beneficiary of a trust created herein shall anticipate, assign, or encumber, or subject to any creditor's claim or to legal process, any interest in principal or income before its actual receipt by any beneficiary. The beneficial interest in this trust and the principal and income rights shall be free from interference or control by any creditor of a beneficiary and shall not be liable to attachment, execution, bankruptcy, or other process of law.

### **9.03. Perpetuities Savings Clause.**

Except as otherwise specified, this trust shall terminate upon the death of the Beneficiary, or earlier upon full distribution of the trust estate.

### **9.04. Choice of Law.**

(A) The validity of this trust and the construction of its beneficial provisions shall be governed exclusively by the laws of the State of Florida, in force from time to time. This paragraph shall apply regardless of any change of residence of a Trustee or the Beneficiary, or the appointment or substitution of a Trustee residing or doing business in another state.

(B) Notwithstanding the foregoing, the validity and construction of this trust in relation to any real property located in a jurisdiction outside the State of Florida, shall be determined under the laws of such jurisdiction. If the situs or place of administration of the trust is changed to another state, the law of that state shall govern the administration of the trust.

### **9.05. Construction.**

(A) Gender and Number. In this instrument, in all matters of interpretation, whenever necessary to give effect to any provision of this instrument, the masculine shall include the feminine and neuter and vice versa, the singular shall include the plural, and the plural shall include the singular.

(B) Headings. The headings, titles, and subtitles are inserted solely for convenient reference and shall be ignored in any construction of this instrument.

(C) Articles. Whenever this document refers to a provision contained in a specific article, section, paragraph or subparagraph, the reference shall be to that article, section, paragraph or subparagraph of this instrument.

(D) Statutes, Codes and Regulations. All references to specific statutes, codes, or regulations shall include any successors.

(E) Trustee and Fiduciaries. All references to Trustee, or any other fiduciary shall refer to the individuals or institutions serving from time to time in such

capacity under this instrument.

(F) “Shall” and “May”. The use of the word “shall” or the term “is to” indicates a mandatory direction, while the use of the word “may” or “should” or the terms, “wish that” or “desire that” indicate a permissive, but not mandatory, grant of authority.

#### **9.06. Definitions.**

(A) Class Terms. In this instrument, the term “issue” refers to lineal descendants of all degrees, and the terms “child,” “children,” “issue,” and “descendants” and other class terminology include claimants whose membership in the class is based on birth out of wedlock or adoption, provided the person so born or adopted lived for a significant time during minority (before or after adoption, in the case of adoption) as a member of the household of the relevant natural or adoptive parent or the household of that parent’s parent, brother, sister, or surviving spouse. The rights of a person who would be included in a class gift term on this basis, or on the basis of birth in wedlock, are not affected by subsequent adoption of that person (or of one through whom he or she claims) by another, whether within or outside the family.

(B) Notice. “Notice” throughout this trust agreement shall be in writing and shall either be personally delivered or mailed with postage prepaid in a manner reasonably designed to communicate the information contemplated.

#### **9.07 Claims of Creditors.**

The Trustee shall not be personally liable to any creditor or to any other person for making distributions from any trust under the terms of this instrument.

#### **9.08. Severability Clause.**

If any provision of this trust instrument is unenforceable, the remaining provisions shall nevertheless be carried into effect.

#### **9.09. Survivorship Period.**

Except as otherwise specifically provided in this instrument, any beneficiary not living ninety (90) days after the death of the Beneficiary, shall be deemed not to have survived the Beneficiary.

#### **9.10. Right to Revoke and Amend the Trust.**

This Trust Agreement is irrevocable and may not be changed, amended, altered, or revoked, except as expressly provided herein. Notwithstanding any provision hereof to the contrary, the Settlor may amend this Agreement to change trustees, provide replacement or successor trustees, or to comply with provisions of law as may be



constituted from time to time. Furthermore, any trustee may amend this Trust Agreement to name a replacement or successor trustee to himself or herself in the event of the death, incompetence, or resignation of the amending trustee and/or may amend this Trust Agreement to comply with provisions of law as may be constituted from time to time. All amendments shall be in writing and delivered to the Settlor, if living, and all trustees then serving as such.

**9.11. Dispute Resolution.**

Any dispute which may arise between the parties hereto, including the Beneficiary, concerning any matter related to or arising from this Joinder Agreement and/or the Trust, shall be resolved exclusively by binding arbitration between the parties. Said arbitration shall be conducted pursuant to the then-obtaining arbitration rules of the American Arbitration Association. The arbitration shall be conducted in Clearwater, Florida, at a location to be designated by the arbitrator(s).

**9.12 No Requirement to Furnish Bond.**

Neither the Trustee, nor any Co-trustees, shall be required to furnish bond for the faithful performance of any duties created under this trust. If bond is required by any law or court of competent jurisdiction, no surety shall be required on such bond.

**9.13 Trust to Be Free From Court Supervision.**

The Trust established under this Declaration shall be administered free from the active supervision of any court. However, any proceedings to seek judicial instructions or a judicial determination may be initiated by the Trustee in any court having jurisdiction of matters relating to the construction and administration of trusts.

WHEREFORE, the Parties have hereunto set their hands this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Settlor

The foregoing instrument, consisting of 27 typewritten pages, including signature blocks, notary certificates, and exhibits, was signed, sealed, published, and declared by the Settlers in our presence and the presence of each other, and we, at the request of the Settlers and in the presence of the Settlers and in the presence of each other, have hereunto subscribed our hands as witnesses this \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Witness: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_

Witness: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_

STATE OF \_\_\_\_\_ ))  
COUNTY OF \_\_\_\_\_ ))

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as Settlor, who [ ] is personally known to me or [ ] has produced \_\_\_\_\_ as identification and who did take an oath.

\_\_\_\_\_  
Notary

FAMILY NETWORK ON DISABILITIES  
OF FLORIDA, INC., Trustee

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

Witnesses as to Trustee:

Witness: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_

Witness: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_

STATE OF \_\_\_\_\_ ))  
COUNTY OF \_\_\_\_\_ ))

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of Family Network on Disabilities of Florida, Inc., trustee, who [ ] is personally known to me or [ ] has produced \_\_\_\_\_ as identification and who did take an oath.

\_\_\_\_\_  
Notary

Exhibit "A"  
Property Contributed to Trust

The initial property contributed to the above Irrevocable Special Needs Trust by the Settlor is:

\$10.00 (Ten dollars even).

## Exhibit "B"

### Settlor and Beneficiary Information

Please be as thorough as possible when completing this section. This information is necessary for administering the Trust for the Beneficiary's best possible interest.

#### Settlor Information

(This is the person who will sign the Trust Agreement)

Name:	_____
	-
Address:	_____
	-
	_____
	-
Telephone:	(day) _____ (evening) _____
Birth date:	_____
Social Security Number:	_____
Relationship to Beneficiary:	_____
	-

#### Beneficiary Information

(This is the person who will be a Beneficiary of the Pooled Trust)

Name:	_____
Address:	_____
	_____
Telephone:	(day) _____ (evening) _____
Birth date:	_____ SS# _____
	<i>If the Beneficiary is a Minor, Please Provide:</i>
Mother's Name:	_____ SS# _____
	-

Name:	_____
Father's Name:	_____ SS# _____ -

Does the Beneficiary have a legal representative? \_\_\_ Yes. \_\_\_ No. If yes, please provide the representative's name, address, telephone number, and relationship to the Beneficiary.

Name:	_____ -
Address:	_____ -
	_____ -
Telephone:	(day) _____ (evening) _____ -
Relationship:	_____ -

Please circle the description that best describes the correct legal relationship:

Legal Guardian	Conservator	Representative Payee	Power of Attorney	
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Other (please explain) \_\_\_\_\_

What is the specific nature of the Beneficiary's disability? Also, if the Beneficiary's condition has been medically diagnosed, what is that diagnosis?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

What is the Beneficiary's current prognosis?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Government Assistance**

Please indicate all forms of government assistance that the beneficiary receives.

Social Security	Yes _____	No _____	Not Sure _____
Supplemental Security Income (SSI)	Yes _____ Yes _____	No _____ No _____	Not Sure _____ Not Sure _____
Institutional Care Program (Long Term Nursing Home Care)	Yes _____	No _____	Not Sure _____
Medically Needy Program	Yes _____	No _____	Not Sure _____
MEDS-AD	Yes _____	No _____	Not Sure _____
Medi-Kids	Yes _____	No _____	Not Sure _____
Protected Medicaid	Yes _____	No _____	Not Sure _____
Home or Community Based Medicaid Waiver Programs	Yes _____	No _____	Not Sure _____
Optional State Supplementation (OSS)	Yes _____	No _____	Not Sure _____
Home Care for the Elderly and Disabled (HCE/DA)	Yes _____	No _____	Not Sure _____
Food Stamps	Yes _____	No _____	Not Sure _____

List any other government assistance that the Beneficiary receives or has applied for:

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List all forms of government assistance which have been denied or discontinued to the Beneficiary, including the approximate dates:

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### Insurance Information

If the Beneficiary is covered under any policy of health care insurance, please provide the insurer's name, address, and the policy number.

Insurer:	_____ -
Address:	_____ -
	_____ -
Policy Number:	_____

If the Beneficiary is covered under any prepaid funeral or burial insurance, please provide the insurer's name, address, and the policy number.

Insurer:	_____ -
Address:	_____ -
	_____ -
Policy Number:	_____

Exhibit "C"  
Distribution of Estate

Pursuant to section 5.8(B) of the Declaration of Trust, any funds remaining in the Trust upon the death of the Beneficiary, following the distribution provided in section 5.8(A), shall be distributed as follows in the following percentages (Example: John Smith, 100%):

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_



Exhibit "D"  
Trust Protectors

The following persons shall serve as Trust Protectors, pursuant to Article VIII, and shall perform the functions set forth therein:

**NOTE: YOU ARE NOT REQUIRED TO NAME ANYONE AS A TRUST PROTECTOR. YOU MAY CHOOSE ONLY ONE, OR UP TO FOUR, PERSONS AS TRUST PROTECTORS.**

1. \_\_\_\_\_  
\_\_\_\_\_
2. \_\_\_\_\_  
\_\_\_\_\_
3. \_\_\_\_\_  
\_\_\_\_\_
4. \_\_\_\_\_  
\_\_\_\_\_

Exhibit "E"  
Disclaimer Regarding Legal Advice

BY MY SIGNATURE below, I freely and openly acknowledge that:

- 1) Neither the Trustee, nor any of its employees and/or agents, have offered or given me any legal advice regarding the trust;
- 2) Neither the Trustee, nor any of its employees and/or agents, have offered or given me any legal advice regarding the trust regarding the suitability of the trust as it may apply to my particular circumstances;
- 3) neither the Trustee, nor any of its employees and/or agents, have offered or given me any legal advice regarding the trust regarding the suitability of the trust as it may apply to the particular circumstances of the Beneficiary; and,
- 4) I have been encouraged to, and have had a full, complete, and fair opportunity to seek independent legal counsel, whether or not I have chosen to do so.

Dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Settlor

## Exhibit "F" Trustee Fees

1. Annual Fee.

(A) The annual Trustee fee as of the date the Agreement is accepted and approved shall be a total of 1.5% of the assets held in the Beneficiary's trust account, and a prorated annual Trustee fee shall be deducted and earned upon creation of the Beneficiary's account. Thereafter, the annual Trustee fee shall be calculated as of May 1 of each subsequent year or at such time as shall be determined by the Trustee. The annual Trustee fee shall be paid in advance each year (or portion thereof) and is deemed earned by the Trustee upon payment. Under those circumstances when income is assigned to, and/or deposited in, the Beneficiary's account, the annual projected income shall be taken into account and used to value and arrive at the total assets held in the Beneficiary's account, each year following payment of the initial annual Trustee fee.

(B) The annual Trustee fee covers administrative services and performance of general trustee functions. The annual Trustee fee does not cover or include charges or fees for the following items which may be requested by and/or provided on behalf of beneficiaries: investment management services; custodial services; overnight delivery services; stop payment charges; early pay out charges; commissions or similar charges incurred incident to the management of the assets of the trust; bill payment services; fees for consultants; trust development fees; similar charges or fees to those set forth herein; and/or any and all other extraordinary charges which may be incurred by the Trustee, co-trustee, money manager and/or custodian. Said charges or fees may be incurred and/or authorized by the Trustee on behalf of the Beneficiary or beneficiaries at the Trustee's sole and absolute discretion and shall be debited to the Beneficiary's sub-account, as appropriate, at the direction of the Trustee and without requiring the authorization, consent or foreknowledge of the settlor and/or Beneficiary affected.

2. Administrative Fee. A one-time administrative fee of \$750.00 for setting up the Beneficiary's trust account.