

# **PENNSYLVANIA MASTER TRUST AGREEMENT**

## **POOLED TRUST**

The purpose of this document is to establish a Master Trust Agreement for all accounts of the Pooled Trust established by Life Enrichment Trust. The pooled trust has been established to comply with 42 USC 1396 p (d)(4)(C) and 42 USC 1917 (d)(4)(A) and 55 Pa Code 178.7 (f)(2). These statutes and regulations permit assets, which would otherwise disqualify an individual from receiving Medicaid (MA) and Supplemental Security Income (SSI), to be placed in a trust account and not render the individual ineligible. The trust accounts can then be used to supplement the funds and services received from SSI and MA.

## **ABOUT THE POOLED TRUST**

The Pooled Trust is established to meet the requirements of the statutes and regulations. Two of the requirements are that the trust must be established and managed by a non-profit association and that a separate account is maintained for each Beneficiary but the accounts are pooled for investment and management of the funds. This Pooled Trust is established and managed by Life Enrichment Trust, a non-profit corporation, which is the Trustee of the funds. The funds will be invested through a financial repository. There is always the possibility that the investments can lose value although it is the intent of the trust to invest the funds as a prudent investor and seek to have income for the fund. Each account will share in the income or loss of the entire fund based on the amount of the account and the length of time the funds were deposited. Statements for each account will be issued on a quarterly basis.

## **WHO CAN SET UP AN ACCOUNT**

According to the statutes and regulations as they now exist, only a parent, grandparent, a court, legal guardian or the individual with disabilities can establish an account in a Pooled Trust. The creator of the account is called a "Settlor" and the individual with disabilities who will receive the benefits of the account is called the "Beneficiary". The Beneficiary must be under 65 years of age when the account is established and no additional funds may be deposited once the Beneficiary reaches 65 years of age. The account may continue and withdrawals may be made after the Beneficiary reaches 65 years of age. With a pooled account, an individual with disabilities can establish an account as the Settlor and also be the Beneficiary of the account. To establish the account, the Settlor (parent, grandparent, court, legal guardian or the individual) must sign and date this form, fill out the information requested in the Joinder Agreement, sign and date the Joinder Agreement and submit the funds for deposit. Once accepted by the Trustee, the account is created. Once the account is established, funds can be added at any time and can be added by people who could not have been the Settlor such as a brother, aunt, uncle, etc. Once funds have been deposited in the trust account, the deposit is irrevocable and non-refundable. The trust account is also irrevocable once it has been established although it is possible to spend down all of the income and principal at which time the

account would terminate. It is important to note that although the funds in the various accounts are pooled for investment and management purposes, the Beneficiary can only access funds from his or her own account.

### **WHO CAN BE A BENEFICIARY**

The Beneficiary must be an individual who is disabled as defined by 42 USC 1382 c (a)(3). The definition of disability is the same definition used for MA purposes. The individual need not be receiving SSI or MA. In fact, many otherwise eligible individuals have excess funds which make them ineligible and, when the funds are placed in a pooled trust account, then become eligible.

### **WHAT IS THE TRUSTEE'S ROLE**

The Trustee is a non-profit corporation named Life Enrichment Trust. As the Trustee, Life Enrichment Trust will receive requests to distribute funds from the Beneficiary's account from persons specified by the Settlor. The Trustee will deposit and maintain all funds held in trust with a separate court approved corporate fiduciary. The Trustee will evaluate the requests to determine if they are reasonable, are they for the sole benefit of the Beneficiary and will they make the Beneficiary ineligible for government benefits including SSI and MA. The purpose of the trust is to supplement, not supplant government benefits so distributions will not be made that make the Beneficiary ineligible. The trust is for the sole benefit of the Beneficiary so distributions must be for the Beneficiary's benefit. The Trustee may use both income and principal for distributions and must consider the impact the distribution will have on the account. If distributions from an account exceed \$5,000.00 in a calendar year, the Trustee will seek Court permission before any additional distributions for that year. If the Trustee refuses a request to distribute funds, the Beneficiary or the person authorized to request distributions may request the Board of Life Enrichment Trust to review the decision. The decision of the Board of Life Enrichment Trust is in the sole and absolute discretion of the Board and is final. The Beneficiary may appeal the final decision to the Orphan's Court division of the Court of Common Pleas.

### **HOW ARE FUNDS DISTRIBUTED**

As previously stated, the Settlor will name people who will request distributions from the account and the Trustee will determine whether the request will be honored. The Trustee is not liable for the debts of the beneficiary but may, in its sole discretion, choose to pay them. In order to protect the account, no money or property of the account shall be pledged, assigned, transferred, or in any manner anticipated, charged or encumbered by any Beneficiary or remainderman except by operation of law or be in any manner liable while in the possession of the Trustee for his or her debts, contracts or obligations, voluntary or involuntary or for any claims, legal or equitable against the Beneficiary or remainderman. No trust property shall be available to the Beneficiary or remainderman until

actually delivered to or for the benefit of him or her. Trust funds will not be distributed if the distribution would cause the Beneficiary to lose eligibility for benefits.

The Trustee is authorized to not honor debts which have been incurred by the Beneficiary which have not been previously approved by the Trustee. The Trustee is authorized to disregard the effect any disbursement will have on the remainderman and is authorized to disburse all income and principal on the Beneficiary during the Beneficiary's lifetime.

### **FEES**

Fees are determined by the Board of Life Enrichment Trust on an annual basis. If the amount of support required by an account exceeds the annual trust maintenance fee charged to that account, then the costs related to that account may be charged to that account. These costs may include accountant fees, attorney's fees, legal costs, taxes and other fees. If the costs are based on two or more accounts, the costs will be apportioned to the accounts by the Trustee. Fees can be paid by the Settlor or charged to the account. In the event the fees to be charged to the account are in excess of the annual trust maintenance fee, the Trustee will seek the Court's permission to charge the account. The Trustee is authorized to transfer funds from the account for payment of the charges. Fees will be charged on a monthly basis.

### **TAXES**

At the present time, there are two main areas of concern regarding taxes. First, there may be taxes due on the funds deposited in the trust. Second, there may be taxes due on any income or increase in value of the account. Due to the many individual variables and the constantly changing tax laws, the Settlor and the Beneficiary are advised to seek independent tax advice. The Trustee cannot advise the Settlor whether any deposits to the account are deductible as charitable gifts nor can the Trustee advise whether there are gift tax or other tax consequences for the deposits. Any income or increase in the value of the account may be taxable to the Beneficiary. If the tax for income or increase in value is taxable to the Trust, then the taxes shall be paid from the applicable accounts.

### **ADMENDMENT OR TERMINATION OF THE TRUST**

It is possible, perhaps even probable, that the laws and regulations permitting Pooled Trusts will change in the future. The intent of this paragraph is to grant authority to the Board of Life Enrichment Trust to conform this agreement to the requirements of 42 USC 1396p(d)(4)(C) and other enabling statutes and regulations to meet the requirements of the statutes and regulations while permitting assets to be retained in the Pooled Trust without causing ineligibility. If it becomes impossible or impractical to carry out the purpose of this trust, then the Board of Life Enrichment Trust may, in their sole and absolute discretion, choose to terminate the trust or resign as Trustee

from any account in which case Life Enrichment Trust will first try to transfer the funds to a trust which meets the original intent and is approved by the Department of Public Welfare and, if that is not possible, the funds will be distributed as provided later in this agreement. Any successor Trustee shall succeed to all the rights, titles, interests, powers, discretions and duties of the predecessor Trustee.

#### **POTENTIAL CONFLICT OF INTEREST**

There are two potential conflicts of interest which may occur with Life Enrichment Trust. The first potential conflict is that there is a possibility that Life Enrichment Trust may retain a portion of the residual at the Beneficiary's death depending on the circumstances at the Beneficiary's death. The second potential conflict can occur if Life Enrichment Trust chooses to use the services of agencies which are represented by the Board. In the event that the Trustee has reason to purchase supports or services for the Beneficiary from any present or former Board Member, Officer, Director or employee of Passavant Memorial Homes or any of its related entities, the Trustee will obtain written competitive bids for competitive supports or services.

#### **INDEMNIFICATION**

The Trustee, their agents and employees 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 costs of reasonable settlements) imposed upon, asserted against or reasonably incurred in connection with any claim arising out of their connection with the Trust whether or not the person has continued with the Trust at the time of the claim. Indemnification will not occur if there is a final determination by a court that the person is guilty of willful misconduct.

#### **RESIDUAL AMOUNTS AT THE BENEFICIARY'S DEATH**

Upon the death of the Beneficiary, a determination shall be requested from the Commonwealth as to the total amount of medical assistance paid on behalf of the Beneficiary by the Commonwealth or any other state. The trust shall reimburse the Commonwealth in an amount equal to fifty percent of the residual in the beneficiary's account.

In the event that the total amount of medical assistance to be reimbursed is less than fifty percent of the residual, then the Commonwealth will be reimbursed and the remainder distributed as provided in the Joinder Agreement in the paragraph entitled "Distribution of Residual."

In the event that the total amount of medical assistance is equal to or greater than fifty percent of the residual, then the Commonwealth will be reimbursed in an amount not to exceed fifty percent of the residual and the remaining residual shall be retained by the trust.

All of the funds retained by the trust shall be used for the benefit of individuals with disabilities. If the Beneficiary has been referred to the trust by a non-profit agency supporting individuals with disabilities, 50% of the amount retained shall be directed to the individuals with disabilities supported by that agency or its corporate successor.

In Witness Whereof, the Settlor and Trustee have signed this Master Trust Agreement agreeing to be bound by its terms on \_\_\_\_\_ 20 \_\_\_\_.

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SETTLOR

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LIFE ENRICHMENT TRUST

**JOINDER AGREEMENT**

**BENEFICIARY INFORMATION**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Social Security Number: \_\_\_\_\_

Telephone: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Father's Name & Address: \_\_\_\_\_

Mother's Name & Address: \_\_\_\_\_

Name & Address of Legal Guardian, Trustee, Representative Payee, or Power of Attorney: \_\_\_\_\_

**CURRENT BENEFITS**

What amount of Supplements Security Income (SSI), if any, does the Beneficiary receive each month? \_\_\_\_\_

What amount of Supplements Security Disability Income (SSDI), if any, does the Beneficiary receive each month? \_\_\_\_\_

If the Beneficiary receives Medicare, what is the account Number? \_\_\_\_\_

If the Beneficiary receives Medicaid, who is the provider and what is the account number? \_\_\_\_\_

List any other sources and amount of income of the Beneficiary:

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

List any other source of government assistance the Beneficiary receives: \_\_\_\_\_

List any health insurance policy that covers the beneficiary: \_\_\_\_\_

List any prepaid burial account: \_\_\_\_\_

List the Beneficiary's disability: \_\_\_\_\_



**First alternate representative**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Relationship to the Beneficiary:

**Second alternate representative**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

The Settlor acknowledges that by executing this document and funding the Beneficiary's account, the Trust is irrevocable and the funds are non-refundable. The Settlor is advised to review this Agreement with his or her own attorney before signing the Agreement.

In Witness Wherefore, the Settlor and Trustee have signed this Agreement agreeing to be bound by its terms on \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Settlor

\_\_\_\_\_  
Life Enrichment Trust