

**ARC-MN POOLED TRUST AGREEMENT FOR  
A BENEFICIARY'S ASSETS  
SECOND AMENDMENT AND RESTATEMENT**

THIS POOLED TRUST AGREEMENT (THE "Trust Agreement"), effective the 5<sup>th</sup> day of May, 2009, thereafter amended the 30<sup>th</sup> day of September, 2010, by and between THE ARC OF MINNESOTA, a Minnesota non-profit corporation as Settlor and as Trustee, hereinafter called the "Settlor" and "Trustee", is hereby amended, as of January 3, 2017, by the Trustee pursuant to paragraph 1.05, and restated in its entirety, to read as follows:

**ARTICLE 1  
CREATION OF TRUST**

**1.01 Definitions.** The following capitalized terms shall have the definitions set forth below; other defined terms are defined elsewhere in this Trust Agreement.

- a) "Assets" will include both principal and income.
- b) "Beneficiary" will mean a "disabled person" as defined in §1614(a)(3) of the Social Security Act (42 U.S.C. §1382c(a)(3)), who qualifies under 42 U.S.C. §1396p, as amended to be a recipient of benefits and services under this Trust Agreement.
- c) "Effective Date" means the date of this Trust Agreement set forth above.
- d) "Grantor" means a Beneficiary, a legal Guardian or Conservator for the Beneficiary, a parent of a beneficiary, a grandparent of a Beneficiary, or any court, using the Beneficiary's funds to establish the Sub-Account.
- e) "Joinder Agreement" means the individual and separate written agreement between the Trustee and a Grantor by which the Grantor establishes a Sub-Account for the sole benefit of a Beneficiary.
- f) "Personal Representative" means legal guardian, conservator, or agent acting under a durable power of attorney, representative payee, custodian, or other legal representative or fiduciary of a Beneficiary.
- g) "Primary Representative or Key Person" means the person named in the Joinder Agreement with whom the Trustee is authorized to communicate the Beneficiary's interest.
- h) "Public Benefits" or "Government Assistance" may be used conjunctively, interchangeably or separately within this Trust Agreement, and will mean all services benefits, medical care, financial assistance and any other assistance of any kind that may be provided by any local, state or federal agency, to or on behalf of a Beneficiary. Such Public Benefits and Government Assistance benefits include, but are not limited to, the Supplemental Security Income program ("SSI"), the Old Age Survivor and Disability Insurance program ("OASDI"), Social Security Disability Insurance program ("SSDI"), and any Medicaid/Medical Assistance program, together with any additional, similar, or successor public programs.
- i) "Remainder Share" means that portion of the Sub-Account that is designated in 6.02.
- j) "Sub-Account" means a trust account established, held and maintained for the sole benefit of a Beneficiary which includes assets provided by (1) the Beneficiary or the Beneficiary's spouse, (2) a person, including a court or administrative body, with legal authority to act in place of or on behalf of the Beneficiary, or (3) any person, including a court or administrative body, acting at the direction or upon the request of the Beneficiary.
- k) "Special care" and "special needs" may be used conjunctively, interchangeably or separately within this Trust Agreement and the terms will always mean care that is not otherwise provided, or needs that are not met, by any public or private financial assistance that might be otherwise available to any Beneficiary.

- l) "Trust" means the Arc-MN Pooled Trust established pursuant to this Agreement.
- m) "Trustee" means The Arc of Minnesota ("Arc-MN"), or its successor organization, or any successor Trustee to Arc-MN as may be provided in this Trust Agreement.

- 1.02 Name and Creation.** This Trust, named the "Arc-MN Pooled Trust for a Beneficiary's Assets", is created and established pursuant to the Omnibus Reconciliation Act of 1993 (OBRA '93), codified at 42 U.S.C. §1396p which provides that a trust established with the assets of a disabled individual that meets the criteria of 42 U.S.C. §1396p(d)(4)(C) will not be used in determining a disabled person's eligibility for benefits.
- 1.03 Funding.** The Settlor hereby transfers, assigns and conveys an initial one time contribution of One Hundred Dollars (\$100.00) to the Remainder Share Sub-Account of the Trust. The Trust estate will consist of this contribution by the Settlor and any additional contributions in cash or property made to the Trust estate at any time by any Grantor in accordance with the provisions of this Trust Agreement and the Settlor shall not thereafter be required to make any further contributions.
- 1.04 Irrevocability.** This Trust Agreement is irrevocable. Except as expressly provided herein, neither the Settlor, Grantor, nor the Beneficiaries will have any right to change, modify, amend or revoke any term or provision hereof, or to terminate this Trust Agreement or any trust created pursuant to this Trust Agreement.
- 1.05 Amendments.** Notwithstanding Section 1.04 of this Trust Agreement, this Trust Agreement may be amended by the Trustee from time to time to effectuate its purposes and intent. The Trustee may also amend, but is not required to amend, the Trust Agreement to conform with any rules, regulations or legislative changes that are approved by any federal, state, or local governing body or agency relating to 42 U.S.C. §1396p or related statutes, including state statutes and regulations that are consistent with the provisions of OBRA '93, as amended, and 42 U.S.C. §1396p. Notice of proposed amendments will be provided to the Minnesota Department of Human Services and the Social Security Administration.

## ARTICLE 2 SETTLOR'S PURPOSE AND INTENT

- 2.01 Purpose.** This Trust has been created for the purpose of providing special assistance to Beneficiaries. The Trust assets will be managed, invested, and disbursed to promote the comfort and well-being of each Beneficiary by providing for special needs. The Trustee will not make any disbursements that would have the effect of replacing, reducing or substituting any Government Assistance or other public benefit otherwise available to a Beneficiary or which would render the Beneficiary ineligible for Government Assistance. It is vitally important that each Beneficiary have eligibility to participate in such programs in order to maintain a level of dignity and humane care.
- 2.02 Settlor's Intent.** Settlor's intent in creating this Trust is to establish a special trust under the authority of 42 U.S.C. §1396p and Minn. Stat. §501C.1205 or Minn. Stat. §501C.1205, Subd. 3, as the case may be, for the benefit of the Beneficiaries of this Trust to facilitate a Beneficiary's eligibility for means-tested public benefits. Private or public benefits should not be made unavailable to a Beneficiary or be terminated because of this Trust. Except as provided in paragraph 6.02 herein, assets of the Trust or of any Sub-Account cannot be used to satisfy claims of any Beneficiary's Creditors. The Trust is not intended to, and will not, be used to defeat the rights of pre-existing creditors. The Trust and Sub-Accounts are intended for Beneficiaries who need the support of public programs with limitations on the amount of

income and resources a recipient may receive on their own. The provisions of this Trust are designed for a continuing conservation and enhancement of funds to be used by the Trustee to supplement, rather than supplant, financial and service benefits, including but not limited to Government Assistance, which a Beneficiary might become eligible to receive as a result of said Beneficiary's disability from any local, county, state or federal agency, or through any public or private profit or nonprofit corporations, entities or agencies.

- 2.03 *Beneficiaries Have No Interest in Trust Assets.*** A Beneficiary will have no interest in either the income or principal of the Trust. This is not a support trust, and assets held in the Trust and in Sub-Accounts of this Trust are not intended to be the primary means of support for any Beneficiary. The Trust assets and each Sub-Account may only be used for the special needs of a Beneficiary. The Trustee does not owe any obligation of support to any Beneficiary, and no Beneficiary will have any right or entitlement to the principal or income of the Trust or to any Sub-Account, except as the Trustee may direct the Trust Funds Manager to disburse, in the Trustee's sole discretion.
- 2.04 *Spendthrift Provisions.*** This Trust is a spendthrift trust. No Beneficiary will have any power to sell, assign, transfer, encumber, or in any other manner to anticipate, or dispose of, his or her interest in the Trust or any Sub-Account. No portion of the Trust or Sub-Account will be subject to garnishment, attachment or other legal process by any Beneficiary's creditors. Under no circumstances may a Beneficiary compel a distribution from a Sub-Account maintained for that Beneficiary or any other part of the Trust estate.

### **ARTICLE 3 GRANTOR CONTRIBUTIONS**

- 3.01 *Grantor's Intent as to Sub-Accounts.*** Each Grantor, in making contributions to the Trust to fund a Sub-Account, intends to supplement, rather than supplant, financial and service benefits which a Beneficiary might become eligible to receive as a result of said Beneficiary's disability from any governmental agency or through any public or private entities or agencies. Each Grantor intends for each Sub-Account to establish a supplemental fund pursuant to 42 U.S.C. §1396p and to limit the Trustee's disbursements to, or on behalf of, a Beneficiary to that respective Beneficiary's special care and special needs only.
- 3.02 *Terms Applicable to Grantor Contributions.*** Subject to the approval of the Trustee, the Trust will be effective as to any individual Beneficiary upon contribution of cash or property ("Property") to the Trust and the execution of a Joinder Agreement by a Grantor and the Trustee. Upon delivery of Property that is approved and accepted by the Trustee, the Trust will be irrevocable as to such Grantor and Beneficiary; the contributed Property will not be refundable to the Grantor of such Property and the Grantor will have no further interest, rights in, or control over any interest in such contributed property; and the designation of the respective Beneficiary may not be revoked, amended or altered.
- 3.03 *Effect of Grantor's Contribution.*** Subject to the provisions of Article 3 of this Trust Agreement, and subject to the Trustee's sole discretion in making any and all distributions, the effect of a Grantor's contribution to the Trust as it applies to any one Beneficiary is such that the total distributions made on behalf of a Beneficiary will not exceed any amount equal to the total of all contributions made to such Beneficiary's Trust Sub-Account, plus any undistributed income.

## ARTICLE 4 ADMINISTRATION OF SUB-ACCOUNTS

- 4.01 Sub-Accounts.** Trustee will maintain a separate Sub-Account for each Beneficiary. The Trust Funds Manager will pool the Sub-Accounts for purposes of investment and management of funds. Trustee will maintain records for each Sub-Account in the name of, and showing the contributions, expenditures and costs for, each Beneficiary.
- 4.02 Fees and Expenses.** Trustee will charge the fees and expenses associated with each Sub-Account as set forth in the Joinder Agreement.
- 4.03 Taxes.** The Joinder Agreement will establish whether the Sub-Account will be taxed as a grantor trust or a trust account. The Trustee or its agents will cause to be prepared on behalf of each Sub-Account that is not a grantor trust the appropriate federal and state income tax returns, the costs and expenses of which will be charged to each Sub-Account in accordance with the actual time and expense incurred for the preparation of such tax returns for that Sub-Account. Any Sub-Account which is not a grantor trust will file its own federal and state income tax returns and any taxes assessed against the income of such Sub-Account will be paid from and out of the Sub-Account assets and Property. If the Sub-Account is treated as a grantor trust, then the income tax returns so prepared for the Sub-Account will be informational returns only. Such informational return will report to the federal and state authorities all allocable income, gains or losses which are required to be reported on the Grantor's federal income tax return. The Beneficiary and the Primary Representative will be responsible for completing, signing and mailing the annual income tax returns for the Beneficiary which are applicable to any income of the Sub-Account passed through and taxable directly to a Beneficiary under the rules and regulations of the Internal Revenue Code.
- 4.04 Accounts to Grantor and Beneficiary.** The Trustee will render accountings of each funded Sub-Account on an annual or more frequent basis (but not more frequent than monthly), as may be required under Minnesota law or upon the direction of a court of competent jurisdiction, to each Grantor during the Grantor's lifetime and thereafter to each Beneficiary (or to the Personal Representative of a Beneficiary, if one is acting). The accountings will show all assets, receipts, disbursements and distributions to or from such Sub-Account during the reporting period.
- 4.05 Records Available for Inspection.** The records of a Beneficiary's Sub-Account will be open and available for inspection by the Beneficiary or the Personal Representative of a Beneficiary, if one is acting, or both, at all reasonable business hours. The Trustee is not required to furnish Trust records, Sub-Account records, or documentation to any individual, corporation, or other entity who (a) is not a Beneficiary, (b) is not the legal representative of the Beneficiary, or (c) does not have the express written authorization of the Beneficiary to receive such information. The Trustee's decision will be the sole and final determination as to the sufficiency of any and all written authorizations or requests for records and/or documentation.

## ARTICLE 5 DISTRIBUTIONS

**5.01 *Discretionary Distributions by Trustee.*** The Trustee will apply to or expend for the benefit of a Beneficiary such sum or sums from the income or principal of the Trust as the Trustee will determine, in the Trustee's sole discretion, to be necessary or advisable to provide for the special care or special needs of the Beneficiary. The Trustee will possess and exercise the sole discretion and authority to allocate all distributions between income and principal. Any income not distributed from a Sub-Account will be added to the principal of that Sub-Account. The Trustee is under no obligation to direct the expenditure of income or principal and the Trustee will have the discretion to refuse to make any such distributions.

**5.02 *Distributions Limited.*** The Trustee will not make distributions or disbursements:

- (a) if the effect of such distributions and disbursements will have the effect of replacing, reducing or substituting for Government Assistance or would render the Beneficiary ineligible for otherwise available means-tested publicly funded benefits;
- (b) if such distributions and disbursements would be in excess of the resource and income limitations of any public benefit program to which the Beneficiary is entitled;
- (c) if such distribution or disbursement would provide or pay for any care or service that is a "Medical Assistance covered service" in any state where the Beneficiary resides, unless such Medical Assistance benefits have been terminated or the application for such benefits denied and such termination or denial is no longer the subject of review or contest;
- (d) for anything other than necessary services or for services which will enhance the quality of life for the Beneficiary;
- (e) to pay or to reimburse any amounts to the federal government, State of Minnesota, any other state, or any other governmental unit or non-governmental agency for the care, support, maintenance and education of any Beneficiary, other than as provided in paragraph 6.02 of this Trust Agreement after the death of the Beneficiary.

**5.03 *Non-Exclusive List of Permissible Distributions.*** The Trustee will have the discretion to make distributions for anything that is a special need of the Beneficiary that is not otherwise provided for the Beneficiary, including but not limited to the following:

- (a) medical, dental and diagnostic work and treatment for which there are no available private or public funds;
- (b) medical procedures that are, in the Trustee's discretion, advisable even though such procedures may not be medically necessary or life saving;
- (c) supplemental nursing care, occupational or physical therapy;
- (d) care appropriate for a Beneficiary that assistance programs may not or do not otherwise provide;
- (e) expenditures for travel, companionship and other expenditures that the Trustee, in the Trustee's discretion, deems advisable to improve the Beneficiary's quality of life;
- (f) an item of similar nature consistent with the above.

**5.04 *Payee of Disbursements.*** The Trust Funds Manager, at the Trustee's direction and as determined by the Trustee in the Trustee's discretion, may make any payment from a Sub-Account in any form allowed by law, to a person deemed suitable by the Trustee (as determined by the Trustee in the Trustee's discretion), or by direct payment of a Beneficiary's expenses.

**ARTICLE 6**  
**TERMINATION OF TRUST OR OF SUB-ACCOUNTS**

**6.01 Sub-Account Terminations.** Every reasonable attempt will be made to continue the Trust for the purposes for which it is established; however, the Trustee and the Trust Funds Manager do not and cannot know how future developments in the law, including administrative agency and judicial decisions, may affect the Trust or any Sub-Account of the Trust. If the Trustee has reasonable cause to believe that the assets of a Sub-Account are or will become liable for basic maintenance, support, or care that has been or that would otherwise be provided to the Beneficiary of the Sub-Account by local, state, or federal government, or an agency or department thereof, the Trustee in its sole discretion, may:

- (a) determine that the Sub-Account has become impossible to implement for the affected Beneficiary, terminate the Sub-Account, and treat the assets in the Sub-Account according to the provisions of paragraph 6.03; or
- (b) continue to administer the Sub-Account under separate arrangement with the affected Beneficiary or his or her Primary Representative.

Before making any distribution of amounts retained in any Sub-Account, the Trustee should consider the public benefits consequences to the Beneficiary of any particular disbursement.

**6.02 Distribution upon Death of Beneficiary.** Upon the death of a Beneficiary, any amounts that remain in that Beneficiary's Sub-Account (the "Remaining Assets") will be administered so as to conform with all the requirements of 42 U.S.C. §1396p and/or related laws and regulations, including state statutes and regulations that are consistent with the provisions of OBRA '93, amending 42 U.S.C. §1396p and pertaining to reimbursements to States for Government Assistance provided on behalf of such Beneficiary. Such Remaining Assets will be distributed as follows:

- (a) After a deduction for reasonable administrative fees and expenses an additional remainder amount of ten percent (10%) of the account value at the time of the Beneficiary's death. This sum must be used for the benefit of disabled individuals who have a beneficiary interest in the pooled trust.
- (b) Any Remaining Assets in a Sub-Account will be subject to claims for reimbursements from the State of Minnesota and any other state, which provided Medical Assistance benefits to the Beneficiary. Such claims will be satisfied up to the amount equal to the Medical Assistance benefits furnished after the effective date of OBRA '93. in the event the Remaining Assets are insufficient to pay all claims, then each state's claim will be pro-rated based on each state's proportionate share of the total Medical Assistance benefits paid by all of the states on the Beneficiary's behalf.
- (c) After payment of any state claims pursuant to Section 6.01(b) the balance shall be distributed by the Trustee in accordance with the instructions provided by the Grantor pursuant to the Joinder Agreement, or if the Joinder Agreement is silent, such Remaining Assets will be retained by the Trustee pursuant to Section 6.02(d).
- (d) Any Remaining Assets which are retained by the Trust, as the Remainder Share, will be used at the direction of the Trustee as may be determined in the Trustee's sole discretion for the direct or indirect benefit of other Beneficiaries of the Trust.

**6.03 Termination of Sub-Account for Impossibility or Impracticability.** Upon the determination by the Trustee that the Trust has become impossible to implement for an affected Beneficiary,

all of the assets in the Sub-Account of the affected Beneficiary, less allowable administrative expenses, shall be either:

- (a) transferred to another Section 1917(d)(4)(C) trust, subject to the limitation that such transfer may not result in disbursements other than to the secondary Section 1917(d)(4)(C) trust or to pay allowable administrative expenses; or,
- (b) distributed outright as follows: to the State(s), as primary assignee, all amounts remaining in the trust Sub-Account at the time of termination up to an amount equal to the total amount of medical assistance paid on behalf of the individual under the State Medicaid plan(s); and, after reimbursement to the State(s), all remaining funds to the affected Beneficiary.

**6.04 Termination of Trust.** Every reasonable attempt will be made to continue the Trust for the purposes for which it has been established. If it becomes impossible or impracticable to carry out the purposes of the Trust, the Trustee may terminate the Trust and distribute the assets and Property in each Beneficiary's Sub-Account in accordance with the provisions of paragraph 6.03 of this Trust Agreement.

## **ARTICLE 7 TRUSTEE**

**7.01 Trustee.** In addition to its role as Settlor of this Trust, The Arc of Minnesota will be the Trustee of the Trust. The Trustee, The Arc of Minnesota and any successor trustee, will manage the Trust, as required by 42 U.S.C. §1396p d(4)(C)(i), and will perform such acts and duties as set forth in the Joinder Agreement, and otherwise as the Trustee and the Trust Funds Manager will mutually agree. The Trustee specifically has full authority and power to prosecute, defend, contest or otherwise litigate legal actions or other proceedings for the protection or benefit of this Trust and to pay compromise, release, adjust, or submit to arbitration any debt, claim or controversy, and to insure the Trust against reasonable risk, and to insure the Trustee against liability with respect to third persons.

**7.02 Appointment of Successor Trustee.** Arc-MN may nominate another nonprofit corporation that needs the requirements of Internal Revenue Code 501(c)(3) as a successor Trustee of the Trust. The Arc of Minnesota, and any duly designated successor Trustee, will request a court of competent jurisdiction to designate an appropriate successor Trustee and will provide notice of proceedings for that purpose to the Minnesota Attorney General, the United States Attorney for the State of Minnesota, and the Minnesota Department of Human Services. In the event that The Arc of Minnesota nominates, and a court designates a successor Trustee, then that successor will succeed to all the rights, powers, and privileges accorded The Arc of Minnesota as Trustee of the Trust, including the right to name a successor Trustee.

**7.03 Trustee Powers.** The Trustee shall have the power, and the authority, to do any act or anything reasonably necessary or advisable for the proper administration and distribution of the Trust and to do all acts and things necessary to accomplish the purposes of this Trust, and to perform the Trustee's duties as such, and to do such other acts or things concerning the Trust as may be advisable. Further, except as may be otherwise expressly directed or required by this Trust Agreement, and in extension, but not in limitation, of the powers provided by applicable law (including but not limited to the powers stated in Minnesota Statutes §501C.0815 and 501C.0816, or corresponding provisions of successor law, which are incorporated in this Trust Agreement by this reference), the Trustee shall have full power and authority as to any properties, at any time comprising a part of any Trust hereunder and, without the necessity of notice to, or license or approval of, any court or person during the term

of such Trust and, for the purposes of administration and distribution of such Trust, after its termination, in the Trustee's continuing sole discretion, to perform the following:

- (a) Asset Retention and Disposal. The Trustee may retain cash or other assets for so long as it deems advisable. The Trustee may also sell, exchange, mortgage, lease, or otherwise dispose of any assets of the Trust estate for terms ending within, or extending beyond, the term of the trust.
- (b) Permissible Investments. Except as provided in paragraph 8.04 of this Trust Agreement, the Trustee may invest, and reinvest in, or exchange assets for, any securities and properties it deems advisable, and as enumerated in the Minnesota Prudent Investor Rule of Minnesota Statute §501C.0901, or corresponding provisions of any successor law, which are incorporated into this Trust Agreement by reference.
- (c) Rights of Ownership. The Trustee shall have the right to (i) collect, receive, and receipt for any principal or income; (ii) enforce, defend against compromise, or settle any claim by, or against, the trust; (iii) vote, issue proxies to vote, join in, or oppose any plans for reorganization; and (iv) to exercise any other rights incident to the ownership of any stocks, bonds, or other properties of the Trust estate.
- (d) Allocations of Receipts and Disbursements. Except as otherwise provided in this Trust Agreement, the Trustee shall apply the rules stated in the Minnesota Revised Uniform Principal and Income Act in determining whether receipts shall be income or principal and whether disbursements shall be paid out of income or principal.
- (e) Division, Distribution, or Allocation. As permitted in Minnesota Statutes §501C.1113, the Trustee may use "income" as defined herein to pay the expenses of administration, including the payment of any taxes.
- (f) Employment and Delegation. The Trustee may employ such trust fund managers, accountants, attorneys, bankers, brokers, custodians, investment counsel, and other agents as determined by the Trustee to be necessary. The Trustee may delegate to them such of the rights, powers, and duties herein conferred upon the Trustee as the Trustee deems proper. The Trustee shall act in these matters without liability for any mistake or default of any such person selected or retained with reasonable care and prudence.

**7.04 *Trustee May Seek Advice.*** The Trustee may seek the advice and assistance of any person or entity it deems to be appropriate, including, but not limited to, the Grantor, Primary Representative, any guardian or guardians of a Beneficiary, and any federal, state, or local agencies that are established to assist person with disabilities. Associated costs, if any, will be a proper expenses of the Trust and may be apportioned on a pro rata basis against all Sub-Accounts or may be charged only against the Sub-Account about which the Trustee seeks such advice or assistance. The Trustee may use available resources to assist in identifying programs that may be of legal, social, financial, developmental or other assistance to Beneficiaries.

**7.05 *The Trustee Not Liable for Failure to Identify Resources.*** The Trustee will identify private or governmental programs that may be of legal, social, financial, develop-mental, or other assistance to any Beneficiary. In no event, however, will the Trustee be liable to any Beneficiary for failure to identify all programs or resources that may be available to such Beneficiary or to create programs when such programs do not exist.

**7.06 *Trustee to Obtain and Maintain Eligibility.*** The Trustee has full authority and power to take any and all steps necessary to obtain and maintain eligibility of any Beneficiary for any and all public benefits and entitlement programs, which programs may include but are not limited to Social Security, Supplemental Security Income, Medicare, Medical Assistance, services provided or authorized or licensed by the Minnesota Department of Human Services, other



State services and other community services. In no event, however, will the Trustee be liable to any Beneficiary for failure to obtain or maintain the eligibility of such Beneficiary for any such programs.

- 7.07 *Trustee Entitled to Reasonable Compensation.*** The Trustee, including its agents, will be entitled to reasonable compensation and to reimbursement of costs and expenses properly incurred in the management and/or administration of the Trust. All such compensation and reimbursements will be made in accord with a schedule of fees and charges as specified in each Beneficiary's Joinder Agreement.
- 7.08 *No Bond.*** Neither the Trustee, nor successor Trustee, nor Trust Funds Manager will be required to pay a bond for the faithful performance of any duties unless required by law or by a court of competent jurisdiction, and such bond fee will be a proper expense of the Trust.
- 7.09 *Indemnification.*** Except as is otherwise provided in this paragraph, the Trustee and any successor Trustee and their respective agents, employees, officers, and directors as well as their heirs, successors, assigns, and personal representatives of such parties will be and hereby are indemnified by the Trust and the Trust assets against all claims, demands, liabilities, fines, or penalties and against all costs and expenses (including attorney's fees and disbursements and the cost of reasonable settlements) and expressly including claims for the negligence of the indemnified parties and their agents, employees, officers and directors, 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, whether or not he, she, or it will have continued to serve as such at the time of incurring such claims, demands, liabilities, fines, penalties, costs, or expenses or at the time of being subjected to the same. This right of indemnification will not be exclusive of, or prejudicial to, other rights to which the Trustee and any successor Trustee, and each of their respective agents or employees may be entitled as a matter of law or otherwise. The Trustee and any successor Trustee and their respective agents and employees (and their heirs or personal representatives) will not be indemnified with respect to matters as to which he, she, or it will be finally determined to have been guilty of willful misconduct, gross negligence in the performance of any duty as such, or violation of any fiduciary obligation or duty to a Grantor or Beneficiary, by a court of competent jurisdiction.

## **ARTICLE 8 TRUST FUNDS MANAGER**

- 8.01 *Trust Funds Manager's Reliance on Trustee.*** The Trust Funds Manager may rely on the Trustee's directions.
- 8.02 *Resignation or Removal.*** The Trust Funds Manager may be removed without cause by the Trustee at any time upon giving ninety (90) day advance notice to the Trust Funds Manager. The Trust Funds Manager may resign for any reason, at any time, provided that the Trust Funds Manager gives ninety (90) days advance notice to the Trustee of its intention to resign. No court approval is required for the Trust Funds manager's removal or resignation. If both the Trustee and the Trust Funds Manager agree, the notice requirement may be waived or reduced.
- 8.03 *Successor Trust Funds Manager.*** If the Trust Funds Manager resigns or is removed, the Trustee will select and appoint a Successor Trust Funds Manager. The Successor Trust Funds Manager must be a bank or trust company doing business in the State of Minnesota. If the Trustee does not appoint a Successor Trust Funds Manager within sixty (60) days after

removing a Trust Funds manager or within sixty (60) days after receiving notice of the Trust Funds Manager's intent to resign, a successor Trust Funds Manager will be selected and appointed by a court of competent jurisdiction in Minnesota. Any successor Trust Funds Manager will act as such without any liability for the acts or omissions of any predecessor Trust Funds Manager. Any corporation that will succeed (by purchase, merger, consolidation or otherwise) to all the rights, duties and powers of such corporate Trust Funds Manager as Trust Funds Manager of this Trust.

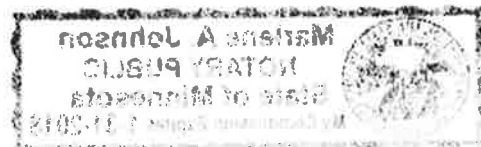
- 8.04 Trust Funds Manager Powers.** The Trust Funds Manager will have full power and authority to perform the Trust Funds Manager's duties as such and to receive, hold, manage, and control all the income arising from such Trust and the corpus thereof and to do such other acts or things concerning the Trust as may be advisable; the Trust Funds Manager's power and authority will include, but not be limited to, all powers conferred upon fiduciaries by Minnesota Statute §48A.07, as amended from time to time, or the provisions of any trust laws of the state of Minnesota, and the powers conferred upon the Trust Funds Manager by applicable law are hereby incorporated into this Agreement by reference. If the Trust Funds Manager accepts non-product property contributed by a Grantor, the Trust Funds manager is authorized to retain such non-productive property as an asset of the Trust.
- 8.05 Limits of Trust Funds Manager's Authority.** No authority described in this Trust or available to the Trustee or Trust funds Manager pursuant to applicable law will be construed to enable the Trustee or Trust Funds Manager to purchase, exchange or otherwise deal with or dispose of the assets of any Sub-Account for less than an adequate or full consideration in money or money's worth, or to enable any person to borrow the assets of any Sub-Account, directly or indirectly, without adequate interest or security.
- 8.06 No Bond Required.** The Trust Funds Manager will not be required to furnish any bond for the faithful performance of the Trust Funds manager's duties. If bond is required by any law or court of competent jurisdiction, no surety will be required on such bond.
- 8.07 No Court Supervision of Trust.** The Trust established under this instrument will be administered free from the active supervision of any court. Any proceedings to seek judicial instructions or a judicial determination may be initiated by the Trust Funds Manager or by the Trustee in any court having jurisdiction of these matters relating to the construction and administration of the Trust.
- 8.08 Trust Funds Manager's Compensation.** The Trust Funds manager will be entitled to reasonable compensation, commensurate with the services actually performed, and as from time to time agreed to by the Trustee.
- 8.09 Trust's Defense Costs and Expenses.** Costs and expenses of defending the Trust or any Sub-Account, including attorneys' fees incurred prior to, during or after trial, and on appeal, against any claim, demand, legal or equitable action, suit, or proceeding may, in the sole discretion of the Trustee, either (a) be charged on a pro rata basis to all Trust Sub-Accounts, or (b) be charged only against the Trust Sub-Accounts of the affected Beneficiaries.
- 8.10 Indemnification.** As evidenced by each Joinder Agreement executed by a Grantor, such Grantor acknowledges that the Trust Funds Manager is a financial institution and is not licensed or skilled in the field of social services. The Trust Funds Manager may conclusively rely upon the Trustee to identify programs that may be of social, financial, developmental or other assistance to Beneficiaries. Except as is otherwise provided in this paragraph 8.10, the Trust Funds Manager, its agents and employees, as well as its agents, employees, heirs and legal and personal representatives will not in any event be liable to any Grantor or Beneficiary

or any other party for its acts as Trust Funds Manager so long as the Funds Manager acts in good faith. The Trust Funds Manager, its agents and employees (and their heirs or personal representatives) will not be indemnified with respect to matters as to which he, she, or it will be finally determined to have been guilty of willful misconduct, gross negligence in the performance of any duty as such, or violation of any fiduciary obligation or duty to a Grantor or Beneficiary, by a court of competent jurisdiction.

## ARTICLE 9 GOVENERAL GOVERNING PROVISIONS

- 9.01 *Captions and Headings.*** The captions and headings of each paragraph of this Trust Agreement are for purposes of convenience only, and it is the Settlor's intent that no such caption will be considered in the construction of any provision of this Trust Agreement, or in any Joinder Agreement, or in any of the Exhibits to the Joinder Agreement executed by a Grantor and the Trustee.
- 9.02 *Governing Law.*** This Trust Agreement will be construed and regulated according to the laws and regulations of the State of Minnesota and the United States.
- 9.03 *Complete Authority.*** This Trust Agreement and any Joinder Agreement with attached Exhibits as approved by the Trustee will determine all rights, authority and duties of the parties, as well as designate the fiduciaries and Beneficiary under this Trust Agreement.
- 9.04 *Severability.*** If any part or portion of this Trust Agreement is adjudicated by a court of competent jurisdiction to be unlawful, or is made invalid by legislative changes and rulings, this Trust Agreement will remain in effect, and in force, as if that part, or portion, were no longer a part of this Trust Agreement.

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IN WITNESS WHEREOF, the undersigned has executed this Second Amendment and Complete Restatement of Trust Agreement to be effective as of January 3, 2017.

**SETTLOR:**

THE ARC OF MINNESOTA, a Minnesota non-profit corporation

By: *Donald F. Lavin, Jr.*

Print Name: Donald F. Lavin, Jr.

It's: Executive Director

**TRUSTEE:**

THE ARC OF MINNESOTA, a Minnesota non-profit corporation

By: *Donald F. Lavin, Jr.*

Print Name: Donald F. Lavin Jr.

It's: Executive Director

STATE OF MINNESOTA )  
 ) ss  
COUNTY OF Ramsey )

On this 3rd day of January, 2017, before me, an notary public, appeared Donald F. Lavin, Jr. of the ARC of Minnesota, to me known to be the person described in and who executed the foregoing instrument on behalf of the Settlor and as Trustee, and acknowledged to me that s/he executed the same as her/his free act and deed on behalf of The ARC of Minnesota, a Minnesota non-profit corporation.

*Marlene A. Johnson*  
Notary Public

