

The Arc of Texas  
Master Pooled Trust II  
2024 Amended Trust Agreement

Established March 5, 1997  
Last Amended September 21, 2024

**RESOLUTION OF  
THE BOARD OF DIRECTORS OF THE ARC OF TEXAS**

APPROVAL OF AMENDMENTS TO  
THE MASTER POOLED TRUST II AND JOINDER AGREEMENT II

WHEREAS, The Arc of Texas serves as Manager of The Arc of Texas Master Pooled Trust II and Providence First Trust Company serves as Trustee; and

WHEREAS, the Board of Directors of The Arc of Texas (“Board”) maintains oversight of the organization and The Arc of Texas Master Pooled Trusts; and

WHEREAS, the Board has reviewed and considered proposed amendments pursuant to Section 11.2 of the Trust which provides that the Manager may amend the Trust in any manner appropriate and consistent with the purposes and objectives of the Trust; and

WHEREAS, the Board has determined that the proposed amendments are intended to conform the Agreement to rules or regulations that are relating to 42 U.S.C. §1396p and related statutes; and

WHEREAS, the Board has determined that the proposed amendments are in the best interest of the Trust and its Beneficiaries; and

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of The Arc of Texas hereby approves the amendments to the Master Pooled Trust as presented; and

That this resolution and amendments are adopted by the Board of Directors of The Arc of Texas on this 21<sup>st</sup> day of September 2024.

# **TABLE OF CONTENTS**

<b>P R E A M B L E</b>	1
<b>ARTICLE I -NAME OF THE TRUST</b>	1
1.1. Name of Trust	1
1.2. Other Terms Used	1
<b>ARTICLE II – DEFINITIONS</b>	2
2.1 “Administrative Expenses”	2
2.2. “Assets”	2
2.3. “Beneficiary”	2
2.4. “Claims for Medicaid Reimbursement”	2
2.5. “Core Management Functions”	2
2.6. “Grantor”	3
2.7. “Government Assistance”	3
2.8. “Guardian”	3
2.9. “Joinder Agreement”	3
2.10. “Manager”	3
2.11. “Primary Representative”	3
2.12. “Remainder Beneficiaries”	3
2.13. “Remainder Share”	4
2.14. “Sub-Account”	4
2.15 “Supplemental care”	4
2.16. “Trustee”	4
<b><u>ARTICLE III - ESTABLISHMENT OF TRUST FOR THE HEALTH, EDUCATION, MAINTENANCE, AND OTHER NEEDS OF THE BENEFICIARIES</u></b>	4
3.1. Settlor’s Intent.	4
3.2. Purpose and Objective of the Trust.	5
3.3. Disbursements.	5
3.4. Discretionary Trust.	5
3.5. Limits On Use of Trust Assets	5
3.6. Government Assistance.	6
3.7. Sub-Accounts of the Trust.	6
3.8. Spendthrift Trust.	6

3.9	<u>Vested Remainder</u>	7
<b>ARTICLE IV - TRUST FUNDING AND EFFECTIVE DATE</b>		7
4.1.	<u>Initial Funding.</u>	7
4.2.	<u>Trust Estate.</u>	7
4.3.	<u>Effective Date.</u>	7
<b>ARTICLE V - GRANTORS' CONTRIBUTIONS</b>		7
5.1.	<u>Trust Is Irrevocable Upon Acceptance of Assets by Trustee.</u>	7
5.2.	<u>Assets Designated for Future Transfer.</u>	8
<b>ARTICLE VI - ADMINISTRATIVE PROVISIONS</b>		8
6.1.	<u>Sub-Accounts.</u>	8
6.2.	<u>Fees and Expenses.</u>	8
6.3.	<u>Annual Reports to Grantor or Beneficiary.</u>	8
6.4.	<u>Sub-Account Records Available for Inspection.</u>	9
<b>ARTICLE VII - TRUSTEE</b>		9
7.1.	<u>Trustee Reliance on Manager.</u>	9
7.2.	<u>Resignation or Removal.</u>	9
7.3.	<u>Successor Trustee.</u>	9
7.4.	<u>Trustee Powers.</u>	10
7.5.	<u>Limits of Trustee Authority.</u>	11
7.6.	<u>No Bond Required.</u>	11
7.7.	<u>No Court Supervision of Trust.</u>	11
7.8.	<u>Trustee Compensation.</u>	11
7.9.	<u>Trust's Defense Costs and Expenses.</u>	11
<b>ARTICLE VIII - MANAGER</b>		12
8.1.	<u>Manager.</u>	12
8.2.	<u>Manager May Seek Other Resources.</u>	12
8.3.	<u>Appointment of Successor Manager.</u>	12
8.4.	<u>Fees Paid to the Manager.</u>	12
8.5.	<u>Fees Paid to the Trustee.</u>	13
<b>ARTICLE IX - ADVISORY COMMITTEE</b>		13
9.1.	<u>Establishment of Advisory Committee.</u>	13
9.2.	<u>Members of the Advisory Committee.</u>	13
9.3.	<u>Meetings of the Advisory Committee.</u>	13

9.4.	<u>Full Indemnification of Advisory Committee Members.</u>	13
<b><u>ARTICLE X - INDEMNIFICATION</u></b>		14
10.1.	<u>Joinder Agreement Is Grantor Acknowledgement.</u>	14
10.2.	<u>Scope of Indemnification.</u>	14
10.3.	<u>Limits On Indemnification.</u>	15
<b><u>ARTICLE XI - AMENDMENT OF TRUST</u></b>		15
11.1.	<u>Trust Is Irrevocable.</u>	15
11.2.	<u>Trust May Be Amended.</u>	15
11.3.	<u>Power to Amend Limited.</u>	15
<b><u>ARTICLE XII - TERMINATION OF SUB-ACCOUNTS OR OF ENTIRE TRUST</u></b>		15
12.1.	<u>Sub-Account Terminations.</u>	15
12.2.	<u>Distribution of Remainder Interest Upon Death of Beneficiary.</u>	16
12.3.	<u>Distribution of Remainder Interest Upon Termination of Sub-Account During Beneficiary's Life.</u>	16
12.4.	<u>Termination of Entire Trust.</u>	17
12.5.	<u>Perpetuities Savings Clause.</u>	17
12.6.	<u>Determination of State Medicaid Claims.</u>	17
<b><u>ARTICLE XIII - MISCELLANEOUS</u></b>		18
13.1.	<u>Trust's Retained Sub-Account.</u>	18
13.2.	<u>Remainder Beneficiaries.</u>	18
13.3.	<u>Texas Law Applies.</u>	19
13.4.	<u>Headings.</u>	19
<b><u>APPENDIX 1 - INITIAL CONTRIBUTION</u></b>		20
<b><u>APPENDIX 2 - JOINDER AGREEMENT II</u></b>		21

**THE ARC OF TEXAS  
MASTER POOLED TRUST II**

**THIS MASTER POOLED TRUST AGREEMENT** (“Agreement”) is made this 5th day of March, 1997, by and between The Arc of Texas, Inc., as Settlor, and Founder’s Trust, as Trustee.

**P R E A M B L E**

WHEREAS, the Omnibus Budget Reconciliation Act of 1993 (OBRA ’93) provided that trusts established and managed by non-profit corporations and meeting certain other requirements may be established to pool funds for the benefit of persons with disabilities; and

WHEREAS, The Arc of Texas intends to establish and manage a master pooled trust for the convenience of individual grantors who wish to establish respective sub-accounts within the pooled trust for the benefit of qualifying persons with disabilities; and

WHEREAS, The Arc of Texas has transferred to the Trustee the assets listed on Appendix 1 and wishes to establish the Trust solely to further The Arc’s program to provide benefits for persons with disabilities, as provided by this Agreement; and

WHEREAS, the Trustee agrees to hold, administer, and distribute the income and principal of the Trust in accordance with the terms and provisions of this Agreement.

NOW, THEREFORE, IT IS AGREED that The Arc of Texas Master Pooled Trust is hereby established and that the Trustee shall receive, administer, and disburse assets of the Trust as directed by the Manager pursuant to this Agreement.

**ARTICLE I  
NAME OF THE TRUST**

1.1. Name of Trust. The name of this Trust shall be The Arc of Texas Master Pooled Trust II.

1.2. Other Terms Used. “Trust” shall mean the trust established by this Master Pooled Trust Agreement. “The Arc” or “The Arc of Texas” shall mean The Arc of Texas, Inc., a Texas non-profit corporation.

## ARTICLE II DEFINITIONS

2.1. “Administrative Expenses” are expenses permitted under applicable law, rule, or agency policy to be paid prior to reimbursement of Medical Assistance to the State(s). As of the date of adoption of this Agreement, Administrative Expenses are:

(a) *Upon termination of a Sub-Account during the Beneficiary’s lifetime:* taxes due from the trust to the State(s) or Federal government due to the Sub-Account’s termination; reasonable fees and administrative expenses associated with the Account’s termination; reasonable compensation to the Trustee to manage the Sub-Account; and reasonable costs associated with investment, legal or other services rendered on behalf of the Beneficiary with regard to the Sub-Account.

(b) *Upon the Beneficiary’s death:* taxes due from the trust to the State(s) or Federal government because of the Beneficiary’s death, and reasonable fees for administration of the trust estate.

2.2. “Assets” of the Trust shall include both corpus and income of the Trust.

2.3. “Beneficiary” shall mean a person who is disabled as defined by 42 U.S.C. § 1382c(a)(3) for whom a Sub-Account is established within the Trust, whether or not there has been an official determination of such individual’s disability by a court of law, the Social Security Administration, Medicaid, or other governmental entity. As of September 1, 2000, if a Sub-Account is established or contributed to with assets belonging to a Beneficiary after the Beneficiary attains sixty-five (65) years of age, the Beneficiary’s eligibility for Government Assistance may be affected by transfer penalties imposed under the rules of Government Assistance programs.

2.4. “Claims for Medicaid Reimbursement” shall mean claims by a State or States for Medical Assistance paid on behalf of a Sub-Account’s Beneficiary under the Plans of the States under Title XIX of the Social Security Act.

2.5. “Core Management Functions” are those powers and trust functions which, under applicable law, rule, or agency policy, must be retained by a non-profit association for the Trust’s Sub-Accounts to qualify for resource exclusion. As of the date of adoption of this Agreement, Core Management Functions include, but are not limited to, the following: removing or replacing a Trustee; determining the amount of

trust corpus to invest, making discretionary disbursements from Sub-Accounts, and making day-to-day decisions regarding Beneficiaries' health and well-being.

2.6. "Grantor" shall mean a party who establishes or contributes to a Sub-Account for the benefit of a Beneficiary. In accordance with applicable law, Sub-Accounts shall be established by one of the following parties: the Beneficiary; the Beneficiary's Guardian, parent, or grandparent; or a court.

2.7. "Government Assistance" shall mean all services, medical care, benefits and financial assistance that may be provided by any local, state, or federal agency to or on behalf of a Beneficiary, including (but not limited to) the Supplemental Security Income (SSI) program, any equivalent State Supplemental Payment (SSP) program, the Old Age Survivors and Disability Income (OASDI) program, Medical Assistance (Medicaid), the Department of State Health Services, Health and Human Services, or any other state, county, or city programs, together with any additional, similar, or successor programs.

2.8. "Guardian" shall mean a court-appointed legal representative of the estate or person of a living Beneficiary.

2.9. "Joinder Agreement" shall mean that agreement attached to this Agreement as Appendix 2, which provides information about the Beneficiary, the Grantor, the Guardian (if any), the Primary Representative of the Beneficiary, and the Remainder Beneficiaries, as well as information about disbursements from the Beneficiary's sub-account and annual costs associated with the Trust, and which sets forth other issues regarding the relationships between the Trustee, Manager, and Grantors.

2.10. "Manager" shall mean The Arc of Texas, or another non-profit corporation that meets the requirements of Internal Revenue Code § 501(c)(3) which is appointed and serving as successor Manager pursuant to Section 8.3 of this Agreement.

2.11. "Primary Representative" shall mean the person with whom the Manager is authorized to communicate regarding a Beneficiary's interests.

2.12. "Remainder Beneficiaries" shall mean the party or parties listed in the Joinder Agreement who upon the death of the Beneficiary shall receive funds remaining in the Sub-Account, after payment of Administrative Expenses, the Remainder Share, and Claims for Medicaid Reimbursement.



2.13. “Remainder Share” shall mean that portion of assets which the Grantor, in the Joinder Agreement, directs be transferred upon the Beneficiary’s death from the Beneficiary’s Sub-Account to the sub-account retained by and in the name of the Trust.

2.14. “Sub-Account” shall mean the financial account within the Trust maintained for the benefit of an individual Beneficiary. A Sub-Account is established when the Manager and Trustee accept a Joinder Agreement and assets are contributed to and accepted by the Trust under that Joinder Agreement. The value of a Sub-Account shall be equal to the value of the assets contributed to the Sub-Account, less disbursements made on behalf of the Sub-Account’s Beneficiary, increased by the Sub-Account’s proportionate share of trust earnings and appreciation, less the Sub-Account’s allocable share of taxes, expenses, depreciation, and fees, as set forth in the Joinder Agreement.

2.15 “Supplemental care” shall mean non-support disbursements that supplement, but do not supplant, money, goods, services, and care provided or available to a Beneficiary through Government Assistance.

2.16. “Trustee” shall mean the entity then serving as Trustee under Article VII of this Trust, and its successor or successors.

### **ARTICLE III** **ESTABLISHMENT OF SUPPLEMENTAL NEEDS TRUST**

3.1. Settlor’s Intent. In creating this Trust, it is the intention of The Arc of Texas to establish a supplemental fund pursuant to 42 U.S.C. § 1396p(d)(4)(C) into which funds may be deposited for the sole benefit of Beneficiaries of the Trust without impairing the Beneficiaries’ eligibility for means-tested Government Assistance. Assets contributed to the Trust are intended to supplement, and not supplant, Government Assistance and other assistance received by Beneficiaries.

Income or corpus of a Trust Sub-Account shall be available to the Sub-Account’s Beneficiary only when the Manager, in exercise of its complete and absolute discretion, elects to disburse such funds. Beneficiaries have no entitlement to the income or corpus of this Trust and Trust assets that have not been disbursed are not available to the Beneficiaries. Assets of this Trust are not intended to provide for any Beneficiary’s support and are not available to satisfy claims of any Beneficiary’s creditors. Neither the Settlor, the Manager, nor the Trustee owe any obligation of

support to any Beneficiary of the Trust.

Any determination made by the Manager 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 assets.

3.2. Purpose and Objective of the Trust. The principal purpose and objective of this Trust is to promote the Beneficiaries' comfort and happiness, providing a means by which funds may be held in trust to provide Beneficiaries products, services, or care in addition to that provided by other sources while maintaining the Beneficiaries' eligibility for Government Assistance. It is not the purpose nor objective of this Trust to provide for or to make expenditures for any Beneficiary's basic maintenance, support, medical, dental or therapeutic care, or any other appropriate care or service that may be paid for or provided by other sources, nor to provide disbursements for the support of any Beneficiary.

3.3. Disbursements. Disbursements from Sub-Accounts shall be made to or for the sole benefit of the Sub-Accounts' respective Beneficiaries. Disbursements are made in the Manager's sole and absolute discretion for Supplemental Care for Beneficiaries, including but not limited to the following: medical goods, services, or care, including elective treatments; travel expenses permitted to be paid from the Trust under applicable law, rule, or agency policy; entertainment; companionship; private case management; telephone and internet service; programs of training and education; "preneed" arrangements for disposition at the Beneficiary's death; and items listed by the Grantor on the Joinder Agreement, when the purchase of or payment for such items do not affect a Beneficiary's eligibility for Government Assistance. Each disbursement shall be charged against the Sub-Account of the Beneficiary for whose benefit the disbursement was made. The Trustee and Manager shall bear no liability for making distributions in accordance with this Section that result in a reduction, loss, or denial of governmental assistance.

3.4. Discretionary Trust. The Trustee shall make (or refrain from making) disbursements as the Manager directs in exercise of its discretion under the terms of this Agreement. The Manager is under no obligation to direct the expenditures of income or principal for supplemental care or for any other purpose.

3.5. Limits On Use of Trust Assets. Notwithstanding the discretion of the Manager as set forth in Section 3.4 or any other provision of this Trust, in order to achieve the expressed purpose and objective of this Trust, assets of the Trust shall not

be used:

(a) In any way which would result in the reduction, diminution, alteration, or denial of Government Assistance that would otherwise be available to a Beneficiary if this Trust did not exist;

(b) To make disbursements to or for the benefit of a Beneficiary in excess of resource and income limitations of any Government Assistance to which the Beneficiary is entitled; and

(c) Except as provided in Sections 12.2(b) and 12.3(a), to pay or to reimburse any amounts to the federal government, State of Texas, any other state, or to any subdivision, or to any other government agency for the care, health, support, maintenance, or education of the Beneficiary.

3.6. Government Assistance. To achieve the expressed purpose and objective of this Trust, the Manager will seek to preserve and enhance Government Assistance that would otherwise be available to a Beneficiary.

3.7. Sub-Accounts of the Trust. Assets contributed to the Trust for the benefit of a Beneficiary shall be invested, re-invested, and administered as a Sub-Account in the name of and for the sole benefit of that Beneficiary. A Grantor may contribute to an existing Sub-Account by directing that the contribution be credited to the existing Sub-Account, in which case the contribution will be administered under the Joinder Agreement establishing that Sub-Account. Alternatively, a Grantor may establish a new Sub-Account for the benefit of the Beneficiary, in which case assets contributed to the new Sub-Account shall be administered pursuant to the Joinder Agreement establishing the new Sub-Account. Any income attributable to a Sub-Account that is not distributed shall be added annually to the principal in the Sub-Account. Each Sub-Account shall be treated as a non-grantor trust for income tax purposes pursuant to the rules and regulations promulgated under IRC § 671 et seq., unless grantor trust rules apply. Generally, a Sub-Account will be treated as a grantor trust if funded by assets belonging to the Beneficiary. If a Sub-Account is treated as a grantor trust for federal income tax purposes, the reporting of the income of the Sub-Account and taxation thereon shall be subject to provisions of Section 6.3 of this trust.

3.8. Spendthrift Trust. To the fullest extent permitted by law, this Trust shall be a spendthrift trust and no part of this Trust, whether principal or income, shall be subject to anticipation or assignment by any Beneficiary; nor shall it be

subject to attachment or control by any public or private creditor of a Beneficiary; nor may it be subject to any judicial process or levy against any Beneficiary by any voluntary or involuntary creditor, including those that have provided for the Beneficiary's support and maintenance, before assets of this Trust have actually been paid or disbursed to such Beneficiary. Under no circumstance may any Beneficiary compel a disbursement from the Trust.

3.9. Vested Remainder. Joinder Agreements for Sub-Accounts shall name one or more Remainder Beneficiaries, who shall have a vested remainder in amounts remaining in the Sub-Account upon the Beneficiary's death, after payment of Administrative Expenses, the Remainder Share, and Claims for Medicaid Reimbursement.

#### **ARTICLE IV** **TRUST FUNDING AND EFFECTIVE DATE**

4.1. Initial Funding. The Arc of Texas as Settlor shall initially fund this Trust with a lump sum payment of One Hundred Dollars and No Cents (\$100.00), as set forth on Appendix 1. The Arc of Texas hereby assigns, conveys, transfers and delivers the above-described funds to the Trustee as of the day and year first written above.

4.2. Trust Estate. The Trust estate shall consist of the initial cash contribution by The Arc of Texas and any additional contributions made to the Trust estate at any time by any Grantor in accordance with the provisions of Article V and the sum of the individual Sub-Accounts.

4.3. Effective Date. This Trust is established by The Arc of Texas as of the day and year it was adopted. The Trust shall be effective as to any Grantor or Beneficiary upon (a) execution of a Joinder Agreement by a Grantor or pursuant to a court order, (b) approval of the Joinder Agreement by the Manager, (c) Grantor's delivery of assets to the Trustee, and (d) the Trustee's acceptance of the assets with the consent of the Manager. Grantors' contributions are discussed further in Article V, below.

#### **ARTICLE V** **GRANTORS' CONTRIBUTIONS**

5.1. Trust Is Irrevocable Upon Acceptance of Assets by Trustee. Upon delivery to and acceptance by the Trustee of assets acceptable to the Manager and the

Trustee, the Trust, as to the Grantor of such assets and the designation of the respective Beneficiary, shall be irrevocable and the contributed assets shall not be refundable. By execution of the Joinder Agreement, Grantor acknowledges that upon the funding of a Sub-Account of this Trust, Grantor shall have no further interest in and does thereby relinquish and release all rights in, control over, and all incidents of interest of any kind or nature in and to the contributed assets (including the original contribution to the Trust and any and all subsequent additions to the Trust) and all income thereon.

5.2. Assets Designated for Future Transfer. A Grantor may designate assets or interests in assets as a contribution for future transfer. Examples of such contributions include a policy of life insurance on a Grantor's life in which a Sub-Account is designated as a beneficiary, or a Sub-Account being named as a beneficiary of any future interest in assets, such as those which would pass under the terms of a Grantor's last will. However, if a third party Grantor directs that assets belonging to that third party or a person other than the Beneficiary are to be used to create or added to a Sub-Account for a Beneficiary, those assets will be held under Trust I or III and not under Trust II or IV.

## **ARTICLE VI** **ADMINISTRATIVE PROVISIONS**

6.1. Sub-Accounts. A separate Trust Sub-Account shall be maintained for each Beneficiary, but, for purposes of investment and management of funds, the Manager may pool these Trust sub-accounts. The Trust shall maintain records for each Sub-Account showing the assets contributed for the Sub-Account's Beneficiary, along with increases in and expenditures and costs of such Sub-Account.

6.2. Fees and Expenses. The fees and expenses associated with each Sub-Account shall be charged in the manner described in the Joinder Agreement and as set forth in Schedule A to the Joinder Agreement.

6.3. Annual Reports to Grantor or Beneficiary. For accounting purposes, the Trust and each Sub-Account thereof shall be operated on a calendar year basis. The Trust shall provide periodic accountings, at least annually, to each Beneficiary or to his or her Primary Representative, showing all receipts, disbursements and distributions to or from such Trust Sub-Account during the previous calendar year. The Trust shall also cause to be prepared on behalf of each Sub-Account appropriate federal income tax returns, all of the costs and expenses of which shall be charged to each Sub-Account in accordance with the actual time and expense incurred for the

preparation of such tax returns for that particular Sub-Account. The federal income tax return for any Sub-Account that is treated as a grantor trust shall be an informational return only. Such informational return shall report to Internal Revenue Service all allocable income, gains, or losses which are required to be reported on the Beneficiary's federal income tax return. Any Sub-Account which is not a grantor trust will file its own federal income tax return and any taxes assessed against the income of the Sub-Account shall be paid from and out of its assets and properties. The Grantor, by execution of the Joinder Agreement, indemnifies the Manager and the Trustee from any and all claims for income tax liabilities attributable to an established Sub-Account taxed as a grantor trust under the rules of the Internal Revenue Code. The Beneficiary and the Primary Representative shall 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.

6.4. Sub-Account Records Available for Inspection. A Sub-Account's records shall be available at all reasonable times for inspection by the Beneficiary and the Beneficiary's Primary Representative. The Trust shall not be required to furnish Trust records or documentation to any individual, corporation, or other entity other than the Beneficiary's Primary Representative absent a court order or express written approval of the Beneficiary to provide such information.

## **ARTICLE VII** **TRUSTEE**

7.1. Trustee Reliance on Manager. The Trustee shall be authorized to rely on the Manager's directions.

7.2. Resignation or Removal. The Trustee may be removed without cause by the Manager at any time upon giving ninety (90) days advance notice to the Trustee. The Trustee may resign for any reason, at any time, provided that the Trustee gives ninety (90) days' advance notice to the Manager of its intention to resign. No court approval is required for the Trustee's removal or resignation. If both the Manager and the Trustee agree, the notice requirement may be waived or reduced.

7.3. Successor Trustee. If the Trustee resigns or is removed, the Manager shall select and appoint a Successor Trustee. The Successor Trustee must be a bank or trust company doing business in the State of Texas. If the Manager does not

appoint a Successor Trustee within sixty (60) days after removing a Trustee or within sixty (60) days after receiving notice of the Trustee's intent to resign, a successor Trustee shall be selected and appointed by a Texas court of competent jurisdiction. Any successor Trustee shall act as such without any liability for the acts or omissions of any predecessor Trustee. Any corporation that shall succeed (by purchase, merger, consolidation or otherwise) to all or the greater part of the assets of any corporate Trustee shall succeed to all the rights, duties and powers of such corporate Trustee as Trustee of this Trust.

7.4. Trustee Powers. The Trustee shall be subordinate to the Manager and shall act only within the scope of authority conferred to it by the Manager in accordance with the terms of this Agreement. At all times, the Manager shall retain ultimate managerial control over the Trust and is prohibited from delegating or releasing Core Management Functions.

The Trustee's power and authority shall include all powers consistent with the limitations contained in this Section which are conferred upon fiduciaries by the Texas Trust Code, Subtitle B of Title 9 of the Texas Property Code, or the provisions of any successor trust laws of the State of Texas, and the powers conferred upon the Trustee are hereby incorporated into this Agreement by reference; provided, however, that the Trustee is specifically prohibited from making direct investments of the Trust assets in real estate or oil, gas and other mineral interests, leases, royalties, overriding royalties, production payments, and other oil, gas and mineral properties. Any powers these sources of law confer upon fiduciaries which relate to Core Management Functions are specifically reserved to the Manager.

The Trustee may take the following actions as directed by the Manager:

- (a) Invest the assets of the Trust in the Trustee's common trust funds.
- (b) Borrow money, including from the Trustee's own commercial banking department, for such period of time and upon such terms and conditions as the Manager may consider to be proper, and mortgage and pledge assets as security for any such loan.
- (c) Retain non-productive property contributed by a Grantor and accepted by the Manager and Trustee as an asset of the Trust.
- (d) Prosecute, defend, contest or otherwise litigate legal actions or other proceedings for the protection or benefit of this Trust, as directed by the

Manager.

(e) Pay, compromise, release, adjust, or submit to arbitration any debt, claim or controversy, as directed by the Manager.

(f) Insure the Trust against any risk.

(g) Insure the Trustee and the Manager against liability with respect to third persons.

7.5. Limits of Trustee Authority. The Trustee's power and authority shall exclude all Core Management Functions; Core Management Functions shall be retained by the Manager. Additionally, no authority described in this Trust or available to trustees pursuant to applicable law shall be construed to enable the Trustee to purchase, exchange or otherwise deal with or dispose of the assets of any Trust 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 Trust Sub-Account, directly or indirectly, without adequate interest or security.

7.6. No Bond Required. The Trustee shall not be required to furnish any bond for the faithful performance of the Trustee's duties. If bond is required by any law or court of competent jurisdiction, no surety shall be required on such bond.

7.7. No Court Supervision of Trust. The Trust established under this instrument shall be administered free from the active supervision of any court. Any proceedings to seek judicial instructions or a judicial determination relating to the construction and administration of the Trust may be initiated by the Trustee or by the Manager in any Texas court of competent jurisdiction.

7.8. Trustee Compensation. The Trustee shall be entitled to reasonable compensation, commensurate with the services actually performed, and as from time to time agreed to by the Manager.

7.9. Trust's Defense Costs and Expenses. Costs and expenses of defending the Trust from any claim, demand, legal or equitable action, suit, or proceeding may be apportioned equitably between and paid from the Sub-Accounts of the specific Beneficiaries affected if the Manager determines, in its sole discretion, that the legal representation serves the best interests of those affected Beneficiaries; alternatively, the Manager may elect to pay legal fees from sources other than Sub-Accounts. Under no circumstance may the Trustee apportion legal fees to Sub-Accounts of Beneficiaries not affected or benefitted by that representation. The Manager may, but



is not required to, rely on the advice of the Advisory Committee (as described in Article IX) in determining which Sub-Accounts are affected and whether legal representation would serve the best interests of the Beneficiaries of those affected Sub-Accounts.

## **ARTICLE VIII** **MANAGER**

8.1. Manager. In addition to its role as Settlor of this Trust, The Arc of Texas shall initially serve as the Trust's Manager. At all times, the Manager shall retain ultimate managerial control over the Trust as required by 42 U.S.C. § 1396p d(4)(C)(i), retaining sole authority to exercise Core Management Functions. Any and all Trustee(s) shall at all times be subordinate to the Manager. The Manager shall have full power and authority and absolute discretion, without recourse to any court or any notice whatsoever, to do all acts and things necessary to accomplish the purposes of this Trust, to perform its duties as Manager, and to act concerning the Trust as may be advisable, consistent with applicable law.

8.2. Manager May Seek Other Resources. The Manager may seek the advice and assistance of the Grantor, the Primary Representative, any Guardian or Guardians of the Beneficiaries, or others, including any federal, state and local agencies that are established to assist persons with disabilities. The Manager may use available resources to assist in identifying programs that may be of legal, social, financial, developmental, or other assistance to Beneficiaries.

8.3. Appointment of Successor Manager. An entity serving as Manager may appoint a successor Manager of the Trust; provided, however, that any successor Manager shall be a non-profit corporation qualifying under Internal Revenue Code § 501(c)(3) as an organization exempt from taxation. Successor Manager(s) shall succeed to all the rights, powers, and privileges accorded to the Manager of the Trust under this Agreement, including the right to name a successor Manager in accordance with this paragraph. An entity serving as Manager may resign only if another qualifying entity has accepted appointment as successor Manager.

8.4. Fees Paid to the Manager. The Manager shall charge fees to each Sub-Account for Trustee and Manager fees as provided on Schedule A of the Joinder Agreement between the Manager and the respective Grantor(s). Quarterly Fees charged to a Sub-Account will be charged against the funds in the applicable Sub-Account unless paid by the Grantor. The Manager may from time to time establish or amend the schedule of fees applicable to the Sub-Accounts and the new fees shall

apply as of the effective date of the amendment.

8.5. Fees Paid to the Trustee. The Manager shall pay the Trustee's fee from fees collected by the Manager and from assets owned by the Manager.

## **ARTICLE IX** **ADVISORY COMMITTEE**

9.1. Establishment of Advisory Committee. The Manager's Board of Directors shall appoint members of an Advisory Committee to advise the Manager in the administration of the Trust. The Advisory Committee members shall not be trustees and the Advisory Committee shall not constitute a Board of Trustees. The Manager may rely upon the Advisory Committee solely for advice and information. The Advisory Committee may provide advice on matters described in this Trust, or as the Manager's Board of Directors shall request by board resolution. The Advisory Committee shall be the same for all of Trusts I, II, III, and IV.

9.2. Members of the Advisory Committee. There shall be a minimum of three (3) and a maximum of seven (7) members of the Advisory Committee, as such number is established from time to time by resolution of the Manager's Board of Directors. Members of the Advisory Committee shall be appointed by the Manager from interested stakeholders and stakeholder organizations, with such composition as the Manager determines to be appropriate.

9.3. Meetings of the Advisory Committee. Meetings of the Advisory Committee shall take place in a location specified by the Manager, no less frequently than annually. Reasonable travel expenses for each member of the Advisory Committee to attend such meetings shall be an administrative charge of the Trust.

9.4. Full Indemnification of Advisory Committee Members. The provisions of Section 10.2 shall apply to members of the Advisory Committee as if incorporated into this section. Further, however, members of the Advisory Committee shall have no liability to the Trust, the Trustee, The Arc of Texas as Settlor, the Manager, any Beneficiaries, or any Grantors for any reason. The purpose of the Advisory Committee is to provide advice, assistance, and information to the Manager. Members of the Advisory Committee shall have no liability to any party for any omission or acts in providing such advice, assistance or information to the Manager.

## ARTICLE X INDEMNIFICATION

10.1. Joinder Agreement Is Grantor Acknowledgement. By executing a Joinder Agreement to create a Sub-Account, the Grantor acknowledges that:

(a) The Trustee is a financial institution and is not licensed or skilled in the field of social services. The Trustee may conclusively rely upon the Manager to identify programs that may be of social, financial, developmental or other assistance to Beneficiaries. The Trustee, its agents and employees, as well as its agents' and employees' heirs and legal and personal representatives shall not in any event be liable to any Grantor or Beneficiary or any other party for its acts as Trustee so long as the Trustee acts in good faith.

(b) Guidelines, laws, and regulations pertaining to Governmental Assistance and the Trust are changeable and at times uncertain, and Grantor agrees that in no event shall the Trustee or the Manager be liable to any Grantor or Beneficiary for failure to identify programs or resources for which such Beneficiary may be eligible, nor for any loss of benefits received by the Beneficiary as a result of creation of the Sub-Account, so long as the Trustee and Manger have acted in good faith.

10.2. Scope of Indemnification. The Trustee, The Arc of Texas, the Manager, the members of the Advisory Committee, and each of their respective agents, employees, officers, and directors as well as their heirs, successors, assigns, and personal representatives shall 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 attorneys' 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 or Manager or member of the Advisory Committee, whether or not he, she, or it shall 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 shall not be exclusive of, or prejudicial to, other rights to which the Trustee, The Arc of Texas, the Manager, members of the Advisory Committee, and their respective agents or employees may be entitled as a matter of law or otherwise.

10.3. Limits On Indemnification. The Trustee, The Arc of Texas, the Manager, and their respective agents and employees (and their heirs or personal representatives) shall not be indemnified with respect to matters as to which he, she, it, or they shall be finally determined to have been guilty of willful misconduct or gross negligence in the performance of any duty as such by a court of competent jurisdiction.

## **ARTICLE XI** **AMENDMENT OF TRUST**

11.1. Trust Is Irrevocable. By executing a Joinder Agreement to create a Sub-Account, the Grantor acknowledges that upon establishment of a Sub-Account as described in Section 4.3, this Trust Sub-Account is irrevocable as to the Grantor and the Beneficiary.

11.2. Trust May Be Amended. Notwithstanding Section 11.1 above, the Manager may amend this Agreement to conform the Agreement to any rules or regulations relating to 42 U.S.C. § 1396p or related statutes adopted by any governing body or agency, including state statutes and regulations consistent with the provisions and purposes of OBRA '93. In addition, the Manager may amend this Trust in any manner the Manager deems to be appropriate and consistent with the purposes and objectives set forth in this Trust. Such amendments may also be made and approved by any Texas court of competent jurisdiction, provided that notice of such request for amendment is provided to the Trustee, the Manager, the Texas Department of Health and Human Services or any successor agency, and to the Attorney General's Office of the State of Texas. Each Grantor specifically waives the need for any formal notice or citation to be issued to him or her.

11.3. Power to Amend Limited. Notwithstanding Section 11.2 above, the Manager shall not seek a proposed amendment to this Agreement that would: (a) alter the purpose or objective of the Trust; (b) make gifts revocable that are otherwise irrevocable under this Trust or the Joinder Agreement; or (c) change the duties of the Trustee without the Trustee's consent.

## **ARTICLE XII** **TERMINATION OF SUB-ACCOUNTS OR OF ENTIRE TRUST**

12.1. Sub-Account Terminations. Every reasonable attempt will be made to continue the Trust for the purposes for which it is established. However, the Manager and the Trustee 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. If the Manager or the Trustee has reasonable cause to believe that the assets of a Trust Sub-Account are or will become liable for basic maintenance, support, or care that has been or that would otherwise be provided to such Beneficiary by local, state, or federal government, or an agency or department thereof, the Manager, in its sole discretion, may:

(a) Terminate the Sub-Account as to the affected Beneficiary, in which case assets in the Sub-Account shall be administered according to the provisions of Section 12.3; or

(b) Transfer the assets of the Sub-Account to an account for the benefit of the Beneficiary in another pooled trust established pursuant to 42 U.S.C. § 1396p(d)(4)(C), or to an individually drafted trust established for the benefit of the Beneficiary pursuant to 42 U.S.C. § 1396p(d)(4)(A). In effecting the transfer, no disbursements shall be made from the Sub-Account other than for Administrative Expenses or to transfer the Sub-Account's assets to the secondary trust.

Before directing the termination of any Sub-Account, the Manager shall consider the effect of the termination upon the Beneficiary, including the Beneficiary's eligibility for Government Assistance.

12.2. Distribution of Remainder Interest Upon Death of Beneficiary. Upon the death of a Beneficiary, after payment of Administrative Expenses, any amounts remaining in the Beneficiary's Sub-Account shall be distributed as follows:

(a) First, the Trust shall add the Remainder Share to the sub-account retained by and in the name of the Trust to be used as set forth in Section 13.1 of this Agreement.

(b) Second, to the extent that such Sub-Account was funded on or after January 1, 2000, the Sub-Account shall pay all Claims for Medicaid Reimbursement.

(c) Third, the Trust shall distribute any remaining funds to the Remainder Beneficiaries named in the Joinder Agreement; provided, however, that if any Remainder Beneficiary is a minor, is under a legal disability, or is incapacitated, Section 13.2 of this Agreement shall apply as to that Remainder Beneficiary.

12.3. Distribution of Remainder Interest Upon Termination of Sub-Account During Beneficiary's Life. If, in the Manager's sole discretion, it becomes

impossible or impracticable to fulfill the conditions of the Trust with regard to a Beneficiary during the Beneficiary's lifetime, after payment of Administrative Expenses, any amounts remaining in the Beneficiary's Sub-Account shall be distributed as follows:

(a) To the extent that such Sub-Account was funded on or after January 1, 2000, the Sub-Account shall first repay all Claims for Medicaid Reimbursement.

(b) After payment for Administrative Expenses and Claims for Medicaid Reimbursement, all remaining funds shall be disbursed to the Beneficiary.

12.4. Termination of Entire Trust. If it becomes impossible or impracticable to carry out the Trust's purposes with respect to all or substantially all Beneficiaries, the Manager, in its sole discretion, may terminate the Trust and distribute the Trust assets in each Beneficiary's Sub-Account as set forth in Section 12.1. The sub-account retained by and in the name of the Trust funded by Remainder Shares of Sub-Accounts which have terminated pursuant to Section 12.2 shall be paid to The Arc; provided, however, that if The Arc has ceased to exist or has been dissolved, then the sub-account retained by and in the name of the Trust shall be applied and paid over to such other non-profit organization or organizations as the Manager, in its sole discretion, may determine then to be serving the interests and needs of people with disabilities in a manner consistent with the purposes of this Trust. Before action is taken under this Section 12.4, a final accounting along with an application seeking approval of the action to be taken shall be filed in a Texas court of competent jurisdiction.

12.5. Perpetuities Savings Clause. The individual sub-account for each Beneficiary shall be held for the lifetime of the Beneficiary. The sub-account retained by and in the name of the Trust funded by Remainder Shares shall be distributed in the manner permitted by Section 13.1, subject to the limitations of the maximum period allowed under the applicable rule against perpetuities. The Trust may be extended by the Manager's written notice to the Trustee.

12.6 Determination of State Medicaid Claims. At the death of the Beneficiary, the Manager shall determine the amount of Medical Assistance paid by all State(s) on behalf of the Beneficiary under Plans of the States under Title XIX of the Social Security Act, giving effect to claims received from State agencies as required by federal and state regulations related to 42 U.S.C. 1396p. In the absence of federal regulations directing the Trust as to priority in the case of multiple State

claims, the claims of multiple States shall be pro-rated and paid from a Beneficiary's Sub-Account to the extent funds remain available after funding the Remainder Share. The Manager is authorized to rely on statements of claims received from Texas Health and Human Services or from any similar agency in any State.

### **ARTICLE XIII** **MISCELLANEOUS**

13.1. Trust's Retained Sub-Account. Remainder Shares shall be retained by the Trust in a sub-account and shall be used in the Manager's sole discretion and at its direction for the benefit of persons who are disabled as defined in 42 U.S.C. § 1382c(a)(3), including by paying expenses of trust administration that would otherwise be paid by fees collected from Sub-Accounts pursuant to the terms of this Agreement. Gifts or devises made to the Trust generally (rather than to a specific Sub-Account within the Trust) shall be similarly used, unless the donor specifies a different use or purpose. Any undistributed income of the Trust that is attributable to the sub-account retained by and in the name of the Trust shall be accumulated and added to the corpus of that sub-account.

13.2. Remainder Beneficiaries. If, at the time of termination of a Sub-Account, the Sub-Account's Remainder Beneficiary is then under a legal disability, the Manager may distribute the Remainder Beneficiary's share to any individual, bank, or trust company (including the Trustee) appointed as custodian for the Remainder Beneficiary under the Uniform Transfers to Minors Act (and in so doing shall have discretion to establish a custodianship termination age up to age 25 if then allowed by the Act), or to use any other means of making distributions under applicable law or the terms of this Trust to any Remainder Beneficiary who is under legal disability. Such means include making payments for the beneficiary's benefit to the beneficiary's Guardian, parent, or any other suitable adult with whom the Remainder Beneficiary shall reside or making other payments on behalf of the Remainder Beneficiary for the Remainder Beneficiary's exclusive benefit, or (if the Individual is a person with disabilities) obtaining a Joinder Agreement for such Individual under Trust I, II, III or IV. Further, the Trustee may make distributions for a Remainder Beneficiary who is incapacitated directly on behalf of the Remainder Beneficiary, to the Remainder Beneficiary's Guardian, to the trustee of the Remainder Beneficiary's revocable trust for the Remainder Beneficiary's own benefit, or to an attorney-in-fact appointed by the Remainder Beneficiary. "Incapacitated" shall mean that the Remainder Beneficiary has any condition that, in the Manager's sole discretion, renders the Remainder Beneficiary unable to conduct his or her regular affairs and which is likely to extend for a period longer than ninety

(90) days.

13.3. Texas Law Applies. The validity of this Trust shall be determined by the laws and regulations of the United States and the State of Texas. Questions of construction and administration of this Trust shall be determined by the laws of the state of Texas.

13.4. Headings. The headings above the various provisions of this Trust are provided merely for convenient reference and are not to be used in construing this Trust or in ascertaining the parties' intentions.

IN WITNESS WHEREOF, the undersigned have executed this Agreement to be effective as of the day and year first written above.

THE ARC OF TEXAS, INC.

By: <signature on file> \_\_\_\_\_

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

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

FOUNDER'S TRUST

By: <signature on file> \_\_\_\_\_

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

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



APPENDIX 1

TO THE ARC OF TEXAS  
MASTER POOLED TRUST II  
AS AMENDED

Initial Assets: \$100

APPENDIX 2  
JOINDER AGREEMENT II  
As Amended