

**APPOINTMENT OF TRUSTEE  
FOR THE  
THE ARC OF TEXAS MASTER POOLED TRUST II**

WHEREAS, THE ARC OF TEXAS, pursuant to the Omnibus Budget Reconciliation Act of 1993, established and is managing master pooled trusts for the convenience of individual grantors who have established Sub-Accounts for disabled beneficiaries within one of the Master Trusts; and

WHEREAS, THE ARC OF TEXAS, as Manager entered into a Trust Agreement effectively dated March 5, 1997, with Founder's Trust and created THE ARC OF TEXAS MASTER POOLED TRUST II; and

WHEREAS, THE ARC OF TEXAS appointed Bank One Texas, N.A. as successor trustee and Bank One Texas, N.A.. merged with JPMorgan Chase Bank, N.A.; and

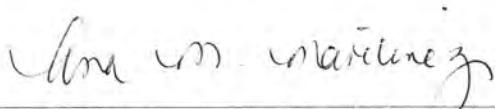
WHEREAS, JPMorgan Chase Bank, N.A. has resigned as Trustee; and

WHEREAS, THE ARC OF TEXAS now desires to appoint Providence First Trust Company as Trustee and represents it has authority under the Trust Agreement to do so;

NOW, THEREFORE, pursuant to Article 7.3 of the Trust Agreement, THE ARC OF TEXAS, as Manager appoints Providence First Trust Company as Trustee of THE ARC OF TEXAS MASTER POOLED TRUST II, dated March 5, 1997.

Dated and effective on October 31, 2017.

**THE ARC OF TEXAS:**



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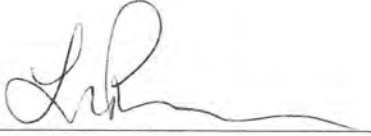
Ana M. Martinez, Chief Executive Officer

STATE OF Texas )  
 ) ss  
County of Travis )

Before me, the undersigned Notary Public, personally appeared Ana M. Martinez, Chief Executive Officer, known to me to be the person whose name is subscribed to the within instrument, the Removal and Appointment, and acknowledged that she executed the same for the purposes and consideration therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 31 day of October, 2017.



  
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Notary Public

My commission expires: 10/19/19

**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 (the "Trust") for the convenience of individual grantors ("Grantors") who qualify and who wish to establish a sub-account within the Trust; and

WHEREAS, a Grantor may designate a beneficiary of the Trust by executing a Joinder Agreement that is approved by The Arc of Texas and that incorporates this Agreement by reference; 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 set forth in 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.

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. "Manager" shall mean The Arc of Texas or any successor as provided in §8.4.

2.2. "Beneficiary" shall mean a person with disabilities for whom a sub-account is established within the Trust.

2.3. "Person with disabilities" Whether or not there has been any official determination of such individual's disability by a court of law, the Social Security Administration, Medicaid, or other governmental entity, a "person with disabilities" shall mean a "disabled person" as defined in § 1614(a)(3) of the Social Security Act [42 U.S.C. § 1382c(a)(3)], and includes but is not limited to a disabled person who qualifies under 42 U.S.C. § 1396p, amended August 10, 1993, by OBRA '93, to be a recipient of services and benefits under this Trust. As of September 1, 2000, if a disabled person is sixty-five (65) or over when the Sub-Account is established and his or her own assets are used to fund the Sub-Account, then that disabled person may be subject to the transfer of resources analysis and perhaps penalty.

2.4. "Grantor" shall mean a parent, grandparent, or Guardian of a Beneficiary, a Beneficiary himself or herself, any court, or any other person or entity with legal authority to act with respect to the assets of the Beneficiary (a) that establishes a sub-account within the Trust for the benefit of a Beneficiary, or (b) that contributes his, her, or its own assets to an existing sub-account of the Trust for the benefit of a Beneficiary, whether such contribution is by gift, will, beneficiary designation, contract, or agreement.

2.5. "Guardian" shall mean a legal guardian, conservator, agent acting under a durable power of attorney, trustee, representative payee, custodian under the Uniform Gift or Transfers to Minors Act of any state, or other legal representative or fiduciary of a Beneficiary.

2.6. "Primary Representative" shall mean the person named in the Joinder Agreement with whom the Manager is authorized to communicate regarding the Beneficiaries' interests.

2.7. "Sub-Account" shall mean the financial account within the Trust maintained for the benefit of an individual Beneficiary and shall be equal to the initial value of the assets contributed on the Beneficiary's behalf by the Grantor less disbursements made on behalf of the 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.

2.8. "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), and the Primary Representative of the Beneficiary, 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.

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

2.10 "Assets" of the Trust shall include both corpus and income of the Trust.

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

3.1. Settlor's Intent. It is the intention of The Arc of Texas, as Settlor of this Trust, to establish a supplemental fund pursuant to 42 U.S.C. § 1396p, amended August 10, 1993, by OBRA '93, for the benefit of Beneficiaries under this Trust. Public and private assistance benefits should not be made unavailable to a Beneficiary or be terminated because of the existence of this Trust. Assets of this Trust cannot be used to satisfy claims of any Beneficiary's creditors. This trust is not to be used to defeat the rights of pre-existing creditors. Assets held in this Trust are not for any Beneficiary's support. The assets in this Trust are to be used only for supplemental needs and the supplemental care of the Beneficiaries. There is no obligation of support owing to the Beneficiaries by the Settlor nor by the Trustee. The 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. Income or corpus of the Trust shall be available to Beneficiaries only when the Trustee or the Manager in their complete and absolute discretion elect to disburse such funds. Any determination made by the Trustee or 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. The Trust shall require that a Grantor name Final Remainder Beneficiaries other than the Trust's Remainder Share or State Reimbursement Claims and the Trust shall create a vested remainder in such Final Remainder Beneficiaries.

3.2. Purpose and Objective of the Trust. The principal purpose and objective of this Trust is to provide a system for the management, investment, and disbursement of Trust assets to promote the Beneficiaries' comfort and happiness by providing Beneficiaries with supplemental care. 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. It is not the Trust's purpose nor objective to provide disbursements for the support of any Beneficiary.

3.3. Special Needs, Supplemental Needs and Supplemental Care. Disbursements for "special needs" or "supplemental needs" or "supplemental care" shall mean non-support disbursements. It is not the intention of The Arc as Settlor nor of the Grantors to displace public or private financial assistance that may otherwise be available to any Beneficiary. It is the intention of The Arc as the Settlor and of the Grantor to limit the Trustee's disbursements to those for a Beneficiary's supplemental care only. The following examples are not exclusive, but are included merely to illustrate the types of special, supplemental, non-support disbursements that are appropriate for the Trustee to make from the Trust to or for the benefit of a Beneficiary when the Trustee or the Manager, in their sole discretion, consider such disbursements to be of value to the Beneficiary:

Health and dental treatment and equipment for which there are not funds otherwise available, rehabilitative and occupational therapy services, medical procedures even though not medically necessary or life saving, medical insurance premiums, supplemental nursing care, supplemental dietary needs, eye glasses, travel, entertainment, companionship, private case management, cultural experiences, expenses associated with bringing siblings or friends to visit with the Beneficiary, vacations, movies, telephone service, television and cable equipment and service, radios, stereos, programs of training and education, reading and educational materials, and items listed by the Grantor on the Joinder Agreement, when the purchase of or payment for such items do not risk the beneficiary's Government Assistance as defined in Section 3.7).

3.4. Discretionary Trust. The Trustee shall make disbursements as directed by the Manager within the Manager's sole discretion for the supplemental care of a

Beneficiary, or may refuse to make disbursements, as directed by the Manager in the Manager's sole discretion. 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 Trustee and 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 Government Assistance that would otherwise be available to a Beneficiary if this Trust did not exist being reduced, diminished, altered or denied;
- (b) To make disbursements to or for the benefit of a Beneficiary in excess of resource and income limitations of any public benefit program to which the Beneficiary is entitled; and
- (c) Except as provided in Section 12.2 (b) after the death of the Beneficiary, 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 any purpose including for the care, health, support, maintenance, or education of the Beneficiary.

3.6. Disbursements. The Trustee, at the Manager's direction or in the absence of such direction in its sole discretion, may make any payments or disbursements under the Trust (a) directly to a Beneficiary's primary representative, (b) in any form allowed by law, (c) to any person deemed suitable by Trustee, or (d) by direct payment of a Beneficiary's expenses.

3.7. 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. "Government Assistance" shall mean all services, medical care, benefits and financial assistance that may be provided by any local, state, or federal agency, or private organization, to or on behalf of a Beneficiary. Government Assistance benefits include but are not limited to the Supplemental Security Income (SSI) program, the Old Age Survivor and Disability Insurance (OASDI) program, the Social Security Disability Insurance (SSDI) program, and the Medicaid program, together with any additional, similar, or successor public programs. Government Assistance services include but are not limited to the services of the Texas Department of Mental Health and Mental Retardation, local or regional mental health and mental retardation agencies, and other state, county, or city programs to benefit persons with disabilities, together with any

additional, similar, or successor public programs.

3.8. Sub-Accounts of the Trust. Assets contributed by a Grantor for a Beneficiary shall be invested, re-invested, and administered as a sub-account in the name of and for the benefit of that Beneficiary. The Trustee shall pay or apply for the supplemental care of each Beneficiary such amounts from the principal or income, or both, of the Trust sub-account maintained for such Beneficiary, up to the whole thereof, as the Trustee, at the direction of the Manager or in the absence of such direction in its sole discretion, may from time to time deem advisable for the satisfaction of that Beneficiary's supplemental needs, if any. Any income attributable to a Beneficiary's sub-account that is not distributed shall be added annually to the principal in the Trust sub-account maintained for such Beneficiary. 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 the Beneficiary himself, his guardian or other authorized personal representative or any other person deposits assets or properties belonging to the Beneficiary to the sub-account as grantor. If the 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 §6.3 of this trust.

3.9. 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. Further, a Beneficiary shall not use this Trust to defeat the rights of pre-existing creditors.

3.10. The Trust shall require a Grantor, which funds a Beneficiary's sub-account with that Beneficiary's own money, to name in the Joinder Agreement, Final Remainder Beneficiaries, other than the Trust's Remainder Share or State Reimbursements Claims. Such Final Remainder Beneficiaries shall have a vested remainder in amounts remaining in that Beneficiary's account upon the death of the Beneficiary after the Trust's Remainder Share has been retained by the Trust and after the Trust pays State Reimbursement Claims.

#### 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.

4.3. Effective Date. This Trust is established by The Arc of Texas as of the day and year first written above. The Trust shall be effective as to any Grantor or Beneficiary upon (a) execution of a Joinder Agreement by a Grantor or by a court order, (b) certification of the Joinder Agreement by the Manager and approval by the Trustee, and (c) Grantor's delivery to the Trustee, and the Trustee's acceptance of, assets. 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 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. Assets or interests in assets can be designated for future transfer by a Grantor as a contribution. Such designation may be revocable and can be revoked by the Grantor as to such assets at any time during that Grantor's life and continued capacity to revoke, upon prior written notice from the Grantor to the Trustee. Examples of such contributions include a policy of life insurance on a Grantor's life in which the Trust is designated as a beneficiary, or the Trust being named as a beneficiary of any future interest in assets, such as that which would pass under the terms of a Grantor's last will.

## **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 Trustee shall pool these Trust sub-accounts. The Trustee or the Manager or their authorized agents, shall maintain records for each Trust sub-account in the name of and showing the assets contributed for each 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 Trustee shall provide periodic accountings, at least annually, to each Grantor while such Grantor is living, and thereafter 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 Trustee, the Manager, or their agents 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 Grantor'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 the sub-account 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 his or her sub-account which is 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. The Trust sub-account records shall be available at all reasonable times for inspection by the Beneficiary, his or her Primary Representative, or both. The Trustee shall not be required to furnish Trust records or documentation to any individual, corporation, or other entity who is not the

Beneficiary, or who does not have the express written approval of the Beneficiary to receive such information, or who is not the Primary Representative of the Beneficiary.

## 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 court of competent jurisdiction in Texas. 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 have full power and authority in its 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, and to perform the Trustee'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 Trustee's power and authority shall include, but not be limited to, all powers conferred upon fiduciaries by the Texas Trust Code, Subtitle B of Title 9 of the Texas Property Code, as amended from time to time, or the provisions of any successor trust laws of the State of Texas, and the powers conferred upon the Trustee by said code 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. The Trustee may invest the assets of the Trust in

its common trust funds. The Trustee may also borrow money, including from its own commercial banking department, for such period of time and upon such terms and conditions as it may consider to be proper and may mortgage and pledge assets as security for any such loan. If the Trustee accepts non-productive property contributed by a Grantor, the Trustee is authorized to retain such non-productive property as an asset of the Trust. 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 any risk, and to insure the Trustee and the Manager against liability with respect to third persons. The Trustee specifically has full authority and power to take any and all steps necessary, as directed by the Manager and in the absence of such direction in the Trustee's sole discretion, 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, Medicaid, services provided or authorized or licensed by the Texas Department of Mental Health and Mental Retardation, other State services and other Community Services, including In Home and Family Support Services.

7.5. Limits of Trustee Authority. 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 may be initiated by the Trustee or by the Manager in any court having jurisdiction of these matters relating to the construction and administration of the Trust.

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,

in the sole discretion of the Manager, 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. The Manager may, but is not required to, rely on the advice of the Advisory Committee (as described in Article IX) in determining whether defense costs affect a substantial number of Trust sub-accounts and warrant allocation among all sub-accounts, or whether the issue requiring defense of the Trust is limited to a single sub-account or to only certain sub-accounts such that charges should be allocated solely to such accounts.

## ARTICLE VIII MANAGER

8.1. Manager. In addition to its role as Settlor of this Trust, The Arc of Texas shall initially be the Manager of the Trust. The Manager, whether The Arc or a successor manager as provided by Section 8.4, shall manage the Trust, as required by 42 U.S.C. § 1396p d(4)(C)(i), and shall perform such acts and duties as set forth in the Joinder Agreement, and otherwise as the Manager and the Trustee shall mutually agree. The Manager shall have full power and authority in its 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, and to perform the Manager's duties as such, and to do such other acts or things concerning the Trust as may be advisable.

8.2. The 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. The Manager Not Liable for Failure to Identify Resources. The Manager shall not, in any event, be liable to any Beneficiary for failure to identify all programs or resources that may be available to such Beneficiary because of his or her disabilities. As evidenced by Grantor's execution of the Joinder Agreement, Grantor recognizes and acknowledges the uncertainty and changing nature of the guidelines, laws, and regulations pertaining to governmental benefits and the Grantor agrees that the Manager will not in any event be liable for any loss of benefits as long as the Manager acts in good faith.

8.4. Appointment of Successor Manager. The Arc of Texas may designate another non-profit corporation that meets the requirements of Internal Revenue Code § 501 (c)(3) as a successor manager of the Trust. In the event that The Arc of Texas

names a successor manager, then that successor shall succeed to all the rights, powers, and privileges accorded The Arc of Texas as Manager of the Trust, including the right to name a successor manager. Such successor manager will advise the Trustee pursuant to terms of this Agreement and shall manage the Trust as required by 42 U.S.C. § 1396 d(4)(C)(i).

8.5. 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). Unless the quarterly fees are paid by a Grantor, the quarterly fees will be charged against the funds in the applicable sub-account. The Manager may from time to time establish or amend the schedule of fees applicable to new sub-accounts. The amount of the initial annual fee applicable to each funded sub-account shall be the fee amount in effect as of the date that the Grantor executes the Joinder Agreement.

8.6. Fees Paid to the Trustee. From its fee, and any other funds available to it, the Manager shall pay the Trustee's fee.

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

9.1. Establishment of Advisory Committee. The Board of Directors of The Arc of Texas shall appoint members of a 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 Board of Directors of The Arc of Texas shall request by board resolution.

9.2. Members of the Advisory Committee. There shall be a minimum of three and a maximum of seven members of the Advisory Committee, as such number is established from time to time by resolution of the Board of Directors of The Arc. Members of the Advisory Committee shall be appointed by The Arc of Texas from interested organizations ("Stakeholder Organizations"), with such composition among the Stakeholder Organizations as The Arc determines to be appropriate by resolution of The Arc Board of Directors.

9.3. Stakeholder Organizations. The organizations listed below may be included among The Arc's listing of Stakeholder Organization. Organizations may be added or deleted by resolution of The Arc of Texas Board of Directors.

Advocacy, Incorporated; Alzheimer's Association; The Arc of Texas; the local

Arc chapters; Coalition of Texans With Disabilities; Directors Association of Texas Centers for Independent Living; Epilepsy Coalition of Texas; Head Injury Foundation; The Institute for Disability Access; Mental Health Association In Texas; Planned Living Assistance Network of North Texas, Inc.; Spina Bifida Association of Texas; Texas Advocates; Texas Alliance for the Mentally Ill ("TEXAMI"); Texas Association for Mental Retardation; Texas Association of the Deaf; Texas Council of Community MHMR Centers; Texas Deaf-Blind Association; Texas Head Injury Association; Texas Mental Health Consumers; Texas Multiple Sclerosis Coalition; Texas Planning Council for Developmental Disabilities; Texas Society for Autistic Citizens; and United Cerebral Palsy of Texas.

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

9.5. 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 not have 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 as well as to provide Stakeholder Organizations with information about the Trust and its administration. 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. Acknowledgement of Grantors. As evidenced by Grantors' execution of the Joinder Agreement, Grantors acknowledge that 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.

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 of such parties 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 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 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, or it 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. As evidenced by Grantor's execution of the Joinder Agreement, the Grantor acknowledges that upon execution of the Joinder Agreement by Grantor and the Manager, and the funding of a sub-account for a Beneficiary, that this Trust, as to the Grantor and the Beneficiary, is irrevocable.

11.2. Trust May Be Amended. Notwithstanding Section 11.1 above, the Manager may amend this Agreement so that this Agreement conforms with any rules or regulations that are approved by any 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 and purposes of OBRA '93. In addition, the Trustee or the Manager may amend this Trust with Court approval in any manner the Manager deems to be appropriate and consistent with the purposes and objectives set forth in this Trust. Such amendments may be made and approved by any court of competent jurisdiction in Texas, provided that notice of such request for amendment is provided to the Trustee, the Manager, the Texas Department of Human Services, or its successor agency, of the State of Texas, and to the Attorney General's Office of the



State of Texas.

11.3. Amendments Limited. Notwithstanding Section 11.2 above, neither the Trustee nor the Manager shall 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 Trust sub-account. If the Manager and the Trustee have 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 direct the Trustee to:

(a) terminate the Trust sub-account as to the affected Beneficiary, and the Trustee shall then administer the assets in the Trust sub-account according to the provisions of Section 12.3, or

(b) continue to administer the Trust sub-account under separate arrangement with the affected Beneficiary or his or her Primary Representative.

Before making any distribution of amounts retained in any Trust sub-account, the Manager should consider the public benefits consequences to the Beneficiary of any particular disbursement.

12.2. Distribution of Remainder Interest Upon Death of Beneficiary. Upon the death of a Beneficiary, any amounts remaining in the Beneficiary's Trust sub-account (the "Remainder") shall be distributed as follows, to the extent that there are funds remaining:

(a) First, the Trust shall retain the portion of the Remainder that has been authorized by the Grantor in the Joinder Agreement to be added to the sub-account retained by and in the name of the Trust (the "Trust's Remainder Share"), if any, to be used as set forth in Section 13.1; then

(b) Second, to the extent that such Beneficiary's sub-account was funded with his or her own money prior to January 1, 2000, claims for reimbursement

for services by the State of Texas or such other state that provides Medicaid benefits to the Beneficiary ("State Reimbursement Claims," as further described in Section 12.6 below) shall be satisfied up to an amount equal to the total medical assistance paid on behalf of the Beneficiary under the State's Medicaid plan for services furnished after September 30, 1993, however for those sub-accounts funded on, or after, January 1, 2000 there shall be no limitation to the period during which medical assistance was paid on behalf of the Beneficiary under the State's Medicaid plan and for which claims for reimbursement by the State of Texas or other state that provides Medicaid benefits to the Beneficiary shall be satisfied; then

(c) Third, the Trust shall distribute all remaining funds to the final remainder beneficiaries (the "Final Remainder Beneficiaries") listed under the Joinder Agreement; provided, however, that if any Final Remainder Beneficiary is a minor, is under a legal disability, or is incapacitated, Section 13.2 of this Agreement shall apply.

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 the respective Beneficiary for reasons other than the death of the Beneficiary according to section 12.1(a), the Trustee, at the Manager's direction or in the absence of such direction in the Trustee's sole discretion, or upon order from a court with jurisdiction, or in the event the Grantor has not designated such a recipient, shall distribute all or any portion of the assets in a Trust sub-account as set out below:

a) Taxes due from the trust to the State(s) or Federal government because of the death of the beneficiary;

b) Reasonable fees and administrative expenses associated with the termination of the trust shall be paid to the Manager and Trustee prior to reimbursement of medical assistance to the State(s), as described in 12.3(c).

c) To the extent that such Beneficiary's sub-account was funded with his or her own money prior to January 1, 2000, claims for reimbursement for services by the State of Texas or such other state that provides Medicaid benefits to the Beneficiary ("State Reimbursement Claims," as further described in Section 12.6 below) shall be satisfied up to an amount equal to the total medical assistance paid on behalf of the Beneficiary under the State's Medicaid plan for services furnished after September 30, 1993 (however for those sub-accounts funded on, or after, January 1, 2000 there shall be no limitation to the period during which medical assistance was paid on behalf of the Beneficiary under the State's Medicaid plan and for which claims for reimbursement by the State of Texas or other state that provides Medicaid benefits to the Beneficiary shall be satisfied); then

d) Other than payment for those expenses listed in section 12.3(a) and (b), no entity other than the trust beneficiary may benefit from the early termination; after reimbursement to the State(s), all remaining funds are disbursed to the

trust 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 Trustee may, at the Manager's direction or in the absence of such direction in the Trustee's sole discretion, terminate the Trust and distribute the Trust assets in each Beneficiary's sub-account as set forth in Article 12.3. The Trust's Remainder Share shall be paid to The Arc; provided, however, that if The Arc has ceased to exist or has been dissolved, then the Trust's Remainder Share 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 court of competent jurisdiction in this state.

12.5. Perpetuities Savings Clause. The individual sub-account for each Beneficiary shall be held for the lifetime of the Beneficiary. The sub-account of the Trust's Remainder Share (as defined below in Section 13.1) shall be distributed in the manner permitted by Section 13.1 within the period of time measured by the lives of being of all of the descendants of Joseph P. Kennedy living at the date of execution of this Trust plus twenty-one years. The Trust may be extended by the Manager's written notice to the Trustee.

12.6 Determination of State Reimbursement Claims. At the death of the Beneficiary, the Manager shall determine the amount of State Reimbursement Claims, giving effect to claims received from state agencies and 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, to the extent funds remain available after funding the Trust's Remainder Share, from a Beneficiary's sub-account. The Manager is authorized to rely on statements of claims received from the Texas Department of Aging and Disability Services or from any similar agency in any state.

### **ARTICLE XIII**

#### **MISCELLANEOUS**

13.1. Trust's Remainder Share. The Trust's Remainder Share shall be retained by the Trust and, at the Manager's direction or in the absence of such direction in the Trustee's sole discretion, be used:

(a) for the benefit of other Beneficiaries who are indigent, disabled persons as defined in 42 U.S.C. § 1382 c(a)(3),

(b) to add indigent disabled persons, as defined in 42 U.S.C. § 1382c(a)(3), to the Trust as Beneficiaries, or

(c) to provide indigent disabled persons, as defined in 42 U.S.C. § 1382c(a)(3), with equipment, medication or services deemed suitable for such persons by the Manager or Trustee.

Gifts or devises to the Trust shall be similarly treated unless the purpose for which a gift is made is specified by the donor. Any undistributed income of the Trust that is attributable to the Trust's Remainder Share shall be accumulated and added to the corpus of the Trust's Remainder Share.

13.2. Final Remainder Beneficiaries. The Trustee shall have the power to distribute property to a custodian for a minor or other eligible beneficiary under the Uniform Gifts or Transfers to Minors Act under any state's laws (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 Final Remainder Beneficiary who is under legal disability. Such means include making payments for the beneficiary's benefit to the beneficiary's conservator, guardian of the person, parent, or any other suitable adult with whom the beneficiary shall reside, or making other payments on behalf of the beneficiary for the beneficiary's exclusive benefit. Further, the Trustee may make distributions for a Final Remainder Beneficiary who is incapacitated directly on behalf of the beneficiary, or to the conservator of such beneficiary's estate, to the trustee of the beneficiary's revocable trust for the beneficiary's own benefit, or to an attorney in fact named by the beneficiary. "Incapacitated" shall mean that the Final Remainder Beneficiary has any condition that, in the Trustee's sole discretion: (a) renders him or her unable to conduct his or her regular affairs, and (b) that 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, including valid 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 administration.

13.4. Headings. The headings above the various provisions of this Trust have been included only in order to make it easier to locate the subject covered by each provision 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: *Michael Bright*  
Name: G. Michael Bright  
Title: Executive Director

FOUNDER'S TRUST

By: *Cynthia Williams*  
Name: CYNTHIA WILLIAMS  
Title: VICE PRESIDENT

APPENDIX 1

TO THE ARC OF TEXAS  
MASTER POOLED TRUST  
DATED 2-15, 1997

Initial Assets: \$100

APPENDIX 2  
JOINDER AGREEMENT