

**THE FOUNDATION OF THE ARC OF NORTHERN VIRGINIA  
PERSONAL SUPPORT SELF-FUNDED TRUST**

**THIS PERSONAL SUPPORT SELF-FUNDED TRUST AGREEMENT**  
("Agreement") dated July 16, 1999, and amended and restated in its entirety on February 20, 2006, and on May 20, 2015, is amended and restated in its entirety this 30 day of September, 2016, by and between The Foundation of The Arc of Northern Virginia, Inc., as Settlor, and KEYBANK, as successor Trustee (the "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 Foundation of The Arc of Northern Virginia (herein referred to as "The Foundation") intends to establish and manage the Personal Support Self-Funded 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 Foundation and the Trustee and that incorporates this Agreement by reference; and

WHEREAS, The Foundation has transferred to the Trustee the assets listed on Appendix 1 and wishes to establish the Trust solely to further The Foundation'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 Personal Support Self-Funded 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 Personal Support Self-Funded Trust.

**1.2. Other Terms Used.** "Trust" shall mean the trust established by this Personal Support Self-Funded Trust Agreement. "The Foundation" shall mean The

Foundation of The Arc of Northern Virginia, Inc., a Virginia non-profit corporation.

## ARTICLE II. DEFINITIONS

2.1. **"Manager"** shall mean The Foundation 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"** shall mean a "disabled person" as defined in §1614(a)(3) of the Social Security Act (42 U.S.C. §1382c(a)(3)) who qualifies under 42 U.S.C. §1396p, amended August 10, 1993 by OBRA '93, to be a recipient of services and benefits under this Trust. If the Social Security Administration or any authorized governmental entity has not made a determination that the Beneficiary is a disabled person, the Trustee is authorized to accept such Beneficiary within its discretion if the Manager has made a determination that the Beneficiary is a disabled person, as defined in 42 U.S.C. §1382c(a)(3).

2.4. **"Grantor"** shall mean a parent, grandparent, or Guardian/Conservator of a Beneficiary, a Beneficiary himself or herself, any court, or any other person or entity that establishes a sub-account within the Trust for the benefit of a Beneficiary, whether such contribution is by gift, will, beneficiary designation, contract, or agreement.

2.5. **"Conservator"** 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(s) named in the Joinder Agreement with whom the Manager is authorized to communicate regarding the Beneficiary's interests and who may request disbursements for the Beneficiary. A Conservator, as defined above, is also a Primary Representative.

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 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, the form of which is attached as Appendix 2, which provides information

about the Beneficiary, the Grantor, the Conservator (if any), and the Primary Representative(s) 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 among 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 Foundation of the Arc, 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 should not be considered available to the Beneficiary for purposes of determining eligibility for public or private benefits or services. Assets of this Trust cannot be used to satisfy claims of any Beneficiary's creditors. The assets in the Trust are to be used for supplemental needs and the supplemental care of the Beneficiary. However, the Trustee may, in its sole and absolute discretion, make distributions to meet the Beneficiary's need for food, clothing, shelter, health care or other personal needs, even if such distributions may result in a reduction of the Beneficiary's benefits or assistance from a public or private agency, but only if the Trustee determines, in its sole and absolute discretion, (1) that the Beneficiary's needs will be better met if such distribution is made, and (2) that it is in the Beneficiary's best interest to suffer the consequent effect, if any, on the Beneficiary's benefits or assistance from any public or private agency. There is no obligation of support owing to the Beneficiary by the Settlor nor by the Trustee. The Beneficiary has no entitlement to the income or corpus of this Trust and Trust assets that have not been disbursed are not available to the Beneficiary. Income or corpus of the Trust shall be available to the Beneficiary only when the Manager, in its complete and absolute discretion, elects 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 person who might then or thereafter have or claim any interest in the Trust assets.

The principal purpose of this Trust is to provide a system for the management, investment, and disbursement of Trust assets to meet the needs of the Beneficiary which may arise from time to time and cannot otherwise be met through the Beneficiary's personal resources and/or public or private programs available to him/her. An additional objective is to promote the Beneficiary's dignity, comfort, and happiness by providing the Beneficiary with supplemental care, encouragement, or treatment that would not

otherwise be provided to the Beneficiary by any public or private entity. It is intended that the Trust be used in ways that best enable the Beneficiary to lead as normal, comfortable, and fulfilling a life as possible. It is recognized that governmental and charitable programs, in themselves, contain many gaps that, if unaddressed, will greatly reduce the possibility of the Beneficiary maintaining him/herself as independently as possible and having the capacity to meet his/her future needs. Assets of this Trust should not be considered available to the Beneficiary for purposes of determining eligibility for public or private benefits or services.

**3.2 Supplemental Needs and Supplemental Care.** Disbursements for supplemental needs or supplemental care shall mean non-support disbursements. It is not the intention of The Foundation 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 Foundation 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 Manager, in its discretion, considers 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, private case management or advocacy, cultural experiences, 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 below in Section 3.6).

**3.3 Discretionary Trust.** The Manager shall have sole discretion regarding disbursements for the Beneficiary. The Manager shall at all times consider the Beneficiary's own resources, as well as public resources, prior to making any expenditures. There is no obligation of support owing to the Beneficiary. Income or corpus of the Trust and Trust assets that have not been disbursed are not available to the Beneficiary. Income and corpus of the Trust shall be available to the Beneficiary only when the Manager, in its sole discretion, elects to direct the Trustee to disburse such funds. The Manager may direct the Trustee to provide such resources and opportunities as will contribute to and make the Beneficiary's life as pleasant, comfortable, and happy as feasible. Nothing herein shall preclude the Manager from directing the Trustee to purchase those services and items, not otherwise available, which promote the Beneficiary's dignity, quality of life, happiness, welfare and development.

**3.4 Limits On Use of Trust Assets.** Unless the Manager, in its sole discretion, determines that it is in the best interest of the Beneficiary to do so, and/or it is

provided for in the Joinder Agreement, assets of the Trust shall not be used:

(a) In any way which would result in Government Assistance 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.

**3.5. Disbursements.** The Trustee, at the Manager's direction, 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 the Manager, (d) by direct payment of a Beneficiary's expenses, or (e) directly to the Beneficiary if not otherwise inconsistent with the intent of the Trust and/or Joinder Agreement.

**3.6. Government Assistance.** To achieve the expressed purpose and objective of this Trust, the Manager will seek to preserve and enhance, when appropriate, 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 Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services, Virginia Department of Medical Assistance Services and all local or regional mental health and mental retardation agencies, Virginia and local Departments of Health, Rehabilitation Services, and other state, county, or city programs to benefit persons with disabilities, together with any additional, similar, or successor public programs.

**3.7. 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. At the Manager's discretion, 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 Manager 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.

**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, reformation, 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.

**3.9 Remainder Beneficiaries.** The Trust shall require a Grantor to designate Final Remainder Beneficiaries in the Joinder Agreement, and such designation may be amended by the Grantor from time to time.

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

**4.1. Initial Funding.** The Foundation as Settlor shall initially fund this Trust with a lump sum payment of Ten Dollars and No Cents (\$10.00), as set forth on Appendix 1. The Foundation 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 sub-accounts.

**4.3. Effective Date.** This Trust is established by The Foundation as of July 16, 1999 and is amended and restated in its entirety 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) the 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. The Trustee may refuse to accept an asset, in its sole discretion. 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. For purposes of investment and management of funds, the Trustee may 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.** For accounting purposes, the Trust and each sub-account thereof shall be operated on a calendar year basis. The Trustee shall provide periodic accountings, which may be satisfied by the Trustee's routine statements of account and asset valuation statements, at least annually, to each Grantor while such Grantor is living, and thereafter to each Primary Representative, showing all receipts, disbursements and distributions to or from such Trust sub-account during the previous calendar year. The Trustee, or its agents, shall also cause to be prepared on behalf of each sub-account appropriate federal income tax returns. 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 the 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 or Conservator and/or 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 by appointment for inspection by the Primary Representative or Conservator. The Trustee shall not be required to furnish Trust records or documentation to any individual, corporation, or other entity who is not the Conservator, or Primary Representative or who does not have the express written approval of the Conservator or Primary Representative to receive such information.

## ARTICLE VII. TRUSTEE

**7.1. Trustee Reliance on Manager.** The Trustee shall rely on the Manager's directions as to disbursements on behalf of or for the benefit of the Beneficiary.

**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 sixty (60) 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 Commonwealth of Virginia. If the law of the Commonwealth changes, the Trustee may also be a nonprofit organization whose purpose is consistent with the purposes of this Trust. 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 Virginia. 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. Any successor Trustee, including SunTrust Bank, shall act as such without any liability for the acts or omissions of any predecessor Trustee and shall not be responsible for or required to inquire into any fiduciary actions or omissions occurring before such successor Trustee's appointment.

**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 Virginia Trust Code, 64.1-57 as



amended from time to time, or the provisions of any successor trust laws of the Commonwealth of Virginia, and the powers conferred upon the Trustee by said code are hereby incorporated into this Agreement by reference. The Trustee is specifically authorized to invest in interest bearing deposits or proprietary mutual funds of its own bank, and in mutual funds to which the Trustee or an affiliate provides investment, advisory and other services, but not in collective investment funds that it operates. 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

**7.5. Limits of Trustee Authority.** No authority described in this Agreement 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. Investment of Trust Assets.** The Manager shall provide information on the particular needs of each Beneficiary of a sub-account to the Trustee. Based upon that information as well as other tools, the Trustee shall then have the sole authority to establish an investment objective and strategic asset allocation policy for each sub-account. The Manager may make recommendations on the appropriate investment objective and strategic asset allocation policy for each sub-account, including the Remainder Account, and the Manager shall have the authority to execute the Investment Policy Statement or like instrument setting the investment objective and asset allocation policy on behalf of each individual beneficiary of a sub-account. If the needs of an individual sub-account Beneficiary are such that it is not prudent to invest the assets, but rather maintain a cash portfolio, the Trustee shall have no obligation to establish an investment objective or strategic asset allocation for said sub-account and shall not be liable for maintaining a cash portfolio.

**7.7. 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.

**7.8. 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.

**7.9. Trustee Compensation.** The Trustee shall be entitled to reasonable compensation, as from time to time agreed to by the Trustee and by the Manager. The fee of the Trustee shall be subtracted from each sub-account monthly.

**7.10. Trust's Defense Costs and Expenses.** Trustee is authorized to defend the Trust from any claim, demand, legal or equitable action, suit, or proceeding; and costs and expenses thereof may, in the sole discretion of the Trustee, either (a) be charged on a pro rata basis to all Trust sub-accounts, or (b) be charged only against the Trust sub-accounts of the affected Beneficiaries.

**7.11 Trustee Liability.** Trustee shall be relieved of liability in connection with the administration of the Trust, except as may arise from its own gross negligence or willful misconduct.

## **ARTICLE VIII. MANAGER**

**8.1. Manager.** In addition to its role as Settlor of this Trust, The Foundation shall be the Manager of the Trust. The Manager, whether The Foundation or a successor Manager as provided by Section 8.4, shall manage the Trust, and shall perform such acts and duties as set forth in the Joinder Agreement, to the extent permitted by law. 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 Conservator 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. The Manager has the responsibility to take any necessary steps to obtain and maintain (to the extent it is able) 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 Virginia Department of Mental Health and Mental Retardation, other State services and other Community Services, including In Home and Family Support Services.

**8.3. The Manager and Trustee Not Liable for Failure to Identify Resources.** The Manager and the Trustee 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 and Trustee will not in any event be liable for any loss of benefits as long as the Manager and Trustee act in good faith.

**8.4. Appointment of Successor Manager.** The Foundation may designate another non-profit corporation that meets the requirements of Internal Revenue Code § 501 (c)(3) as a successor Manager of the Trust, upon ninety (90) days notice to the Trustee. In the event that The Foundation names a successor Manager, then that successor shall succeed to all the rights, powers, and privileges accorded The Foundation as Manager of the Trust, including the right to name a successor Manager. Such successor Manager will advise and direct the Trustee pursuant to terms of this Agreement

**8.5. Fees Paid to the Manager.** The Manager shall charge fees to each sub-account for Manager fees as provided on Schedule A of the Joinder Agreement between the Manager and the respective Grantor(s). Unless fees are paid by a Grantor, the 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. The Manager's fee will be subtracted from each sub-account monthly.

## ARTICLE IX. INDEMNIFICATION

**9.1. Acknowledgment 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, and its affiliates, its directors, officers, agents, employees and assigns, and their respective heirs and legal and personal representatives shall not in any event be liable to any Grantor or Beneficiary or any other party for their acts or omissions so long as they act in good faith.

**9.2. Scope of Indemnification.** The Trustee, the Foundation, the Manager, and each of their respective affiliates, agents, employees, officers, and directors as well as their respective heirs, successors, assigns, and personal representatives of such parties shall be and hereby are fully indemnified by the Trust and the Trust assets against all claims, demands, liabilities, taxes, interest, 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, assigns, affiliates, 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, Manager, or other person described above, whether or not he, she, or it shall have continued to serve as such at the time of incurring such claims, demands, liabilities, taxes, interest, 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 Foundation, the Manager, and their respective affiliates, agents, assigns, officers, directors and employees may be entitled as a matter of law or otherwise.

**9.3. Limits On Indemnification.** The Trustee, The Foundation, the Manager, and their respective affiliates, agents, assigns, officers, directors and employees (and their respective 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 X. LIMITED AMENDMENT OF TRUST**

**10.1. 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 Trustee, and the funding of a sub-account for a Beneficiary, that this Trust, as to the Grantor and the Beneficiary, is irrevocable.

**10.2. Trust May Be Amended.** With the approval of the Trustee, 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 or statutes. 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 Virginia, provided that notice of such request for amendment is provided to the Trustee, the Manager, and to the Attorney General's Office of the Commonwealth of Virginia.

**10.3. Amendments Limited.** 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 XI. TERMINATION OF SUB-ACCOUNTS OR OF ENTIRE TRUST**

**11.1. Sub-Account Terminations.** Every reasonable attempt will be made to continue the Trust for the purposes for which it is established. However, the circumstances of the Beneficiary may change. Before termination of any Trust sub-

account, the Manager should consider the public benefits consequences to the Beneficiary of any particular disbursement. If the Manager has reasonable cause to believe that the trust sub-account should be terminated, the Manager in its sole discretion, may direct the Trustee to terminate the Trust sub-account as to the affected Beneficiary.

(a) First, the Trustee may pay all federal and state taxes due because of the death of the Beneficiary as to the Trust sub-account, and any administrative expenses and costs attendant to terminating or settling the Trust sub-account, including legal fees and any costs or fees associated with the preparation of final accountings or making any distributions provided for herein.

To the extent that such Beneficiary's sub-account was funded with his or her own money, claims for reimbursement for services by the Commonwealth of Virginia or such other state that provides Medicaid benefits to the Beneficiary ("State Reimbursement Claims" as further described in Section 11.6 below) shall be satisfied up to an amount equal to the total medical assistance paid on behalf of the Beneficiary.

(b) the balance of the Trust sub-account, after payment of the expenses outlined in Paragraph 11.1(a) above shall be distributed to the Beneficiary.

(c) the provisions of Paragraph 11.1 (a) and (b) shall not apply to a termination when the assets of the Trust sub-account are transferred to another pooled self-funded special needs trust for the benefit of the same Beneficiary.

Under no circumstances may the Beneficiary direct the termination of the Trust sub-account during the Beneficiary's lifetime.

**11.2. 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 pay any outstanding reasonable expenses for the administration and termination of the sub-account, including but not limited to legal fees, court costs, and applicable federal and state taxes due from the trust.

(b) The Trustee 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 12.1; then

(c) To the extent that such Beneficiary's sub-account was funded with his or her own money, claims for reimbursement for services by the

Commonwealth of Virginia or such other state that provides Medicaid benefits to the Beneficiary 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; then

(d) 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 12.2 of this Agreement shall apply.

**11.3. Distribution of Remainder Interest Upon Termination of Sub-Account During Beneficiary's Life.** The Trustee, at the Manager's direction, may distribute all or any portion of the assets in a Trust sub-account. Payback provisions in accordance with Article 11.2 ( c ) shall be observed, and any balance shall be distributed to the Beneficiary or the Beneficiary's Conservator.

**11.4. 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, terminate the Trust and distribute the Trust assets in each Beneficiary's sub-account as set forth in Article 11.3. The Trust's Remainder Share shall be paid to The Foundation; provided, however, that if The Foundation 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 11.4, 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.

**11.5. 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 12.1) shall be distributed in the manner permitted by Section 12.1 within the period of time measured by the lives in being of all of the beneficiaries of any sub-account here-under plus twenty-one years. The Trust may be extended by the Manager's written notice to the Trustee.

## ARTICLE XII. MISCELLANEOUS

**12.1 Trust's Remainder Share.** The Trust's Remainder Share shall be retained by the Trust and, at the Manager's direction, be used:

To fund some level of disbursement for other Beneficiaries whose accounts are depleted.

To pay expenses of the Trust to keep fees as low as possible with the goal of supporting all costs with Remainder Share income.

Gifts to the Trust shall be similarly treated unless the purpose for which a gift is made is specified by the donor/testator. 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.

**12.2. 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 21 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 any 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 Manager'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.

**12.3. Virginia Law Applies.** This Trust shall be governed by the laws, including valid regulations, of the Commonwealth of Virginia.

**12.4 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 FOUNDATION OF THE ARC OF NORTHERN VIRGINIA, INC.  
Settlor

By: \_\_\_\_\_  
President CHAIRMAN  
*Thomas M. Church*

Attest: \_\_\_\_\_  
Authorized Officer  
*Samuel*

KEYBANK  
Trustee

By: \_\_\_\_\_  
Sr. Vice President  
*Cynthia McDaniel*

Attest: \_\_\_\_\_  
Authorized Officer  
*Samuel Kulik*



APPENDIX 1

TO THE FOUNDATION OF THE ARC OF NORTHERN VIRGINIA  
PERSONAL SUPPORT SELF-FUNDED TRUST  
DATED May 20, 2015

Initial Assets: \$10

APPENDIX 2  
JOINDER AGREEMENT