

STATE OF WASHINGTON  
DEVELOPMENTAL DISABILITIES ENDOWMENT FUND  
AMENDED AND RESTATED  
TRUST FUND II AGREEMENT  
(Self-Settled Trust)

**TABLE OF CONTENTS**

	<u>Page</u>
<b>Article 1</b>	<b>Definitions..... 2</b>
<b>Article 2</b>	<b>Establishment of Supplemental Needs Trust ..... 5</b>
2.1	Settlor’s Intent..... 5
2.2	Purpose and Objective ..... 6
2.3	Supplemental Needs..... 6
2.4	State Welfare Benefits ..... 6
2.5	Discretionary Trust ..... 7
2.6	Limits on Use of Individual Trust Account Assets..... 7
2.7	Government Assistance ..... 8
<b>Article 3</b>	<b>Assets of Trust Fund..... 9</b>
3.1	Trust Estate Assets..... 9
3.2	Permitted Assets..... 9
<b>Article 4</b>	<b>Private Contributions ..... 9</b>
4.1	Irrevocable Trust..... 9
4.2	Assets Designated for Future Transfer ..... 10
<b>Article 5</b>	<b>Matching Contributions ..... 10</b>
5.1	Matching Contribution Funds..... 10
5.2	Discretion to Make Matching Contributions ..... 11
<b>Article 6</b>	<b>Distribution of Trust Income and Principal..... 11</b>
6.1	Disbursements..... 11
6.2	Individual Trust Accounts..... 11
6.3	Spendthrift Trust..... 12
6.4	Primary Benefit to Beneficiary ..... 12
6.5	Income Taxation of an Individual Trust Account..... 13
<b>Article 7</b>	<b>Trustee ..... 13</b>
7.1	Trustee’s Duties ..... 13
7.2	Status of Trustee ..... 14
7.3	Trustee Powers..... 14
7.4	Compensation of WSIB and State Treasurer ..... 14
7.5	No Bond Required ..... 14
7.6	Trustee’s Powers and Duties Defined by State Law..... 14
<b>Article 8</b>	<b>Governing Board..... 15</b>
<b>Article 9</b>	<b>Manager ..... 15</b>
9.1	Manager ..... 15
9.2	The Manager May Consult Other Advisors..... 15

9.3	The Manager and Trustee Not Liable for Failure to Identify Resources .....	15
9.4	Appointment of Successor Manager .....	16
9.5	Fees Paid to the Manager .....	16
<b>Article 10</b>	<b>Trust Accounting .....</b>	<b>17</b>
10.1	Individual Trust Accounts.....	17
10.2	Annual Reports to Primary Donor or Beneficiary .....	17
10.3	Individual Trust Account Records Available for Inspection .....	18
<b>Article 11</b>	<b>Liability .....</b>	<b>18</b>
<b>Article 12</b>	<b>Amendment of Trust.....</b>	<b>19</b>
12.1	Amendments .....	19
12.2	Limitation on Amendments .....	19
<b>Article 13</b>	<b>Termination of Individual Trust Account or Entire Trust.....</b>	<b>20</b>
13.1	Possible Termination During Beneficiary's Life .....	20
13.2	Transfer to Section 1917 (d)(4)(C) Trust.....	20
13.3	Distribution to Primary Beneficiary.....	21
13.4	Distribution Upon Death of Primary Beneficiary .....	22
13.5	Minor or Incapacitated Final Remainder Beneficiaries .....	23
13.6	Perpetuities Savings Clause .....	24
13.7	Termination of Entire Trust Fund and Agreement .....	24
<b>Article 14</b>	<b>Miscellaneous.....</b>	<b>24</b>
14.1	Situs of Trust.....	24
14.2	Effective Date .....	24
14.3	Governing Law .....	25
14.4	Headings .....	26

**DEVELOPMENTAL DISABILITIES ENDOWMENT FUND**

**AMENDED AND RESTATED**

**TRUST FUND II AGREEMENT**

THIS AMENDED AND RESTATED TRUST FUND II AGREEMENT (this “**Trust Agreement**”) is made this 2nd day of December, 2010, is authorized and adopted by the Governing Board of the Developmental Disabilities Endowment Fund (“**Governing Board**”), and is established by The Arc of Washington State, as Settlor, and The Arc of Washington State, as Trustee.

**RECITALS:**

WHEREAS, the Washington State Legislature has established the Developmental Disabilities Endowment Trust Fund (the “**Trust Fund**”), codified at RCW 43.70.730-737 (the “**Act**”), to finance long-term care for persons with developmental disabilities through an endowment funded jointly by the investment of public funds and by dedicated family contributions to encourage and assist families to engage in long-range financial planning and to contribute to the lifetime care of their disabled family member; and

WHEREAS, in furtherance of the purposes for which the Trust Fund was established, the State of Washington, acting through the Governing Board and the Department Health, intends to authorize the establishment of this Trust Agreement for the convenience of qualifying donors who wish to establish and/or contribute to an Individual Trust Account under the terms of the Act as provided in this Trust Agreement; and

WHEREAS, the Governing Board has authorized The Arc of Washington State, a Washington state nonprofit corporation which has been recognized as exempt from federal income tax under Section 501(c)(3) of the federal Internal Revenue Code, to establish and

manage this Trust Agreement in order to comply with the requirements of Section 1917(d)(4)(C) of the Social Security Act (42 U.S.C. 1396p(d)(4)(C)), which is necessary to preserve the eligibility of a Beneficiary for certain governmental benefits including Supplemental Security Income and Medicaid;

WHEREAS, a Primary Donor may designate a Beneficiary of an Individual Trust Account under this Trust Agreement by executing a Joinder Agreement II that is approved by the Governing Board of the Trust Fund and that incorporates this Trust Agreement by reference; and

WHEREAS, the State of Washington has appropriated \$5,000,000 for use as matching funds under the provisions of the Act and the rules promulgated thereunder and such funds are held in the custody of the State Treasurer for investment by the Washington State Investment Board (the “**WSIB**”) pursuant to RCW 43.70.732 and for the exclusive purpose of furthering the program of the Trust Fund to provide benefits for persons with disabilities, as provided by the Act and this Trust Agreement; and

WHEREAS, the Trustee has agreed to receive, hold, manage, invest, administer, and disburse Assets of the Trust Fund in accordance with the terms and provisions of this Trust Agreement.

NOW, THEREFORE, IT IS AGREED that this Developmental Disabilities Endowment Fund Trust Fund II Agreement is hereby established and that the Trustee shall administer and disburse Assets of the Trust Fund as set forth in this Trust Agreement.

## **Article 1**

### **Definitions**

1.1 “**Assets**” of the Trust Fund or an Individual Trust Account include both principal and income.

1.2 “**Beneficiary**” means a person with developmental disabilities who resides in the State of Washington and for whom an Individual Trust Account is established under this Trust Agreement.

1.3 “**Final Remainder Beneficiaries**” has the meaning set forth in Section 13.4(e).

1.4 “**Governing Board**” means the Governing Board of the Trust Fund. Unless otherwise specified, references to the Governing Board in this Trust Agreement mean the Governing Board acting in its capacity as the statutorily authorized policy making body of the Trust Fund.

1.5 “**Government Assistance**” has the meaning set forth in Section 2.7.

1.6 “**Guardian**” means a legal guardian, conservator, agent acting under a durable power of attorney, trustee, representative payee, custodian under the Uniform Transfers to Minors Act of any state, or other legal representative or fiduciary of a Beneficiary.

1.7 “**Individual Trust Account**” has the meaning set forth in RCW 43.70.730(4). Each Individual Trust Account is an account maintained by the Trustee under the terms of this Trust Agreement that reflects (a) the initial value of the Beneficiary’s assets contributed by the Primary Donor; (b) increased by the amount of any Matching Contributions; (c) increased by any additional contributions of the Beneficiary’s assets by a Primary Donor or Beneficiary; (d) increased by the Individual Trust Account’s proportionate share of Trust Fund earnings and appreciation; (e) less disbursements made on behalf of the Individual Trust Account’s Beneficiary; (f) less the Individual Trust Account’s proportionate share of taxes, expenses, depreciation, investment losses and the fees set forth in the Joinder Agreement II.

1.8 “**Joinder Agreement II**” shall mean that agreement attached to this Trust Agreement as Appendix 1, which provides information about the Beneficiary, the Primary

Donor, the Guardian (if any), and the Primary Representative of the Beneficiary, as well as information about disbursements from the Beneficiary's Individual Trust Account and annual costs associated with this Trust Agreement, and which further describes the relationships among the Trustee, Manager, Primary Donor and Beneficiary.

1.9 **“Manager”** shall mean The Arc of Washington State as the designee of the Governing Board, pursuant to RCW 43.70.731, or such successor as may be designated by the Governing Board. The Manager shall have the powers and duties as set forth in Article 9 below.

1.10 A **“person with developmental disabilities”** is an individual with a developmental disability within the meaning of RCW 71A.10.020(3) as determined by the Division of Developmental Disabilities of the Washington Department of Social and Health Services and who the Governing Board has determined is within the purview of the Trust Fund's purposes and programs.

1.11 **“Primary Donor”** means the individual or entity that executes Joinder Agreement II for the purpose of establishing an Individual Trust Account for a Beneficiary. A Primary Donor may be any person who contributes assets of the Beneficiary to an Individual Trust Account under this Trust Agreement for the benefit of a Beneficiary, whether such contribution is by contract or agreement or pursuant to court order or otherwise; provided however; that such person must be a listed person under 42 U.S.C. § 1396(d)(4)(C)(iii)(and any regulations promulgated thereunder or as such statute is officially interpreted by the Centers for Medicare and Medical Services) and applicable Washington law.

**“Primary Representative”** means the person named in the Joinder Agreement II with whom the Trustee and/or the Manager is authorized to communicate regarding an individual Beneficiary's interests.

1.12 “**Settlor**” means the The Arc of Washington State.

1.13 “**Trustee**” means the The Arc of Washington State.

## **Article 2**

### **Establishment of Supplemental Needs Trust**

2.1 Settlor’s Intent. It is the intention of the Settlor of this Trust Agreement to permit a Primary Donor to establish an Individual Trust Account as a supplemental fund comprised of private, public, or private and public sources, to finance services for the benefit of a Beneficiary administered in accordance with the terms of this Trust Agreement. The Individual Trust Account shall be established and funded only with property that belongs to the Beneficiary. It is the intent of the Settlor that public and private assistance benefits should not be made unavailable to the Beneficiary or be terminated because of the existence of an Individual Trust Account or the Trust Fund. This Trust Fund is not to be used to defeat the rights of pre-existing creditors of the Beneficiary in property belonging to the Beneficiary prior to his or her contribution to an Individual Trust Account. Matching contribution assets held in the Trust Fund or in an Individual Trust Account shall not be used to satisfy claims of any of the Beneficiary’s creditors. The Assets in the Trust Fund or in an Individual Trust Account are to be used only for supplemental health, education, maintenance and other needs and the supplemental care of the Beneficiaries and as otherwise specified by the Governing Board. There is no obligation of support owing to any Beneficiary by the Governing Board, the Settlor or the Trustee. No Beneficiary is entitled to the Assets of this Trust Fund or an Individual Trust Account, and Assets that have not been disbursed are not available to the Beneficiary except as provided in this Trust Agreement. Assets of the Trust Fund or an Individual Trust Account shall be available to a

Beneficiary only when the Trustee and/or Manager in their complete and absolute discretion elect to disburse such funds.

2.2 Purpose and Objective. It is the principal purpose and intent of the Trust Fund and this Trust Agreement to provide a system for the management, investment, and disbursement of Assets to promote a Beneficiary's comfort and happiness by providing for the Beneficiary's supplemental needs. It is not the purpose or objective of the Trust Fund or this Trust Agreement to provide for or to make expenditures for a 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 government sources. Any assets contributed to an Individual Trust Account for a Beneficiary shall be invested, re-invested, and managed as provided in Section 6.2 hereof.

2.3 Supplemental Needs. Disbursements for supplemental needs shall mean disbursements for care or services that are not paid for or provided by other governmental sources. It is not the intention of the Settlor nor of the Primary Donor or the Beneficiary to displace public or private financial assistance that may otherwise be available to any Beneficiary. It is the intention of the Settlor and of the Primary Donor or the Beneficiary, to limit disbursements from an Individual Trust Account to those for a Beneficiary's supplemental needs only, including but not limited to the items listed by the Primary Donor on the Joinder Agreement II when the purchase of or payment for such items do not risk the Beneficiary's Government Assistance (as defined in Section 2.7).

2.4 State Welfare Benefits. Because the Assets of an Individual Trust Account will be insufficient to meet all of a Beneficiary's possible future needs for the remainder of the Beneficiary's life, it is the intent of the Trust agreement to use such Assets to supplement the basic support provided through state welfare benefits.

2.5 Limits on Use of Individual Trust Account Assets. All Assets of an Individual Trust Account shall be used for the sole benefit of the Beneficiary of such Account. Notwithstanding the discretion of the Manager and the Trustee to achieve the express purpose and objective of this Trust Agreement, Assets of an Individual Trust Account are not to be used in a manner that would inappropriately impair a Beneficiary's eligibility for Government Assistance except as set forth in Article 13 hereof, to pay or reimburse any amounts to the federal government, State of Washington, any other state, or to any other government agency for any purpose including the care, health, support maintenance, education of the Beneficiary, other than the WSIB and State Treasurer fees, expenses and costs for investing the Trust Fund Assets and the Individual Trust Account Assets and costs determined by the Governing Board.

There may be situations where the Trustee and/or Manager determine that it is in the Beneficiary's best interests to make distributions from the Individual Trust Account even though such distributions will reduce the Beneficiary's Government Assistance or result in the Beneficiary's ineligibility for Government Assistance. Any determination made by the trustee and/or the manager in good faith as to the manner in which or the extent to which the powers granted by this Trust Agreement shall be exercised shall be binding and conclusive on all persons who might then or thereafter have or claim any interest in the Assets. Neither the Governing Board, acting in any capacity, nor the Manager shall bear any liability for making distributions in accordance with this Section which result in a reduction, loss or denial of a Beneficiary's Government Assistance.

2.6 Limits on Use of Individual Trust Account Assets. Notwithstanding the discretion of the Manager and the Trustee, to achieve the express purpose and objective of this Trust Agreement, Assets of an Individual Trust Account are not to be used (a) in any way which

would result in Government Assistance that would otherwise be available to a Beneficiary if this Trust Agreement 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 set forth in Section 13.9 hereof, to pay or reimburse any amounts to the federal government, State of Washington, any other state, or to any other government agency for any purpose including for the care, health, support, maintenance, or education of the Beneficiary, other than the WSIB and State Treasurer fees, expenses and costs for investing the Trust Fund Assets and the Individual Trust Accounts Assets and costs determined by the Governing Board.

There may be situations where the Trustee and/or the Manager determine that it is in the Beneficiary's best interests to make distributions from the Individual Trust Account even though such distributions will reduce the Beneficiary's Government Assistance or result in the Beneficiary's ineligibility for Government Assistance. Any determination made by the Trustee and/or the Manager in good faith as to the manner in which or the extent to which the powers granted by this Trust Agreement shall be exercised shall be binding and conclusive on all persons who might then or thereafter have or claim any interest in the Assets. Neither the Governing Board, acting in any capacity, nor the Manager shall bear any liability for making distributions in accordance with this Section that result in a reduction, loss, or denial of a Beneficiary's Government Assistance.

2.7 Government Assistance. To achieve the express purpose and objective of this Trust Agreement, the Trustee will seek to preserve and enhance Government Assistance that would otherwise be available to a Beneficiary. "**Government Assistance**" means 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 Washington Department of Social and Health Services, local or regional mental health agencies, and other state, county, or city programs to benefit persons with developmental disabilities, together with any additional, similar, or successor public programs.

### **Article 3**

#### **Assets of Trust Fund**

3.1 Trust Fund Assets. The Assets of the Trust Fund shall consist of the initial cash contribution by the State of Washington, any additional contributions by the State of Washington, and any additional contributions made to the Trust Fund at any time by any Primary Donor or a Beneficiary in accordance with the provisions of Article 4, and any earnings on any of the foregoing contributions.

3.2 Permitted Assets. Pursuant to the Act, the Trust Fund is authorized to accept only contributions of cash but such cash may be invested according to the laws and regulations of the State of Washington pertaining to the WSIB.

### **Article 4**

#### **Private Contributions**

4.1 Irrevocable Trust. On delivery to and acceptance by the Trustee of assets acceptable to the Trustee, this Trust Agreement shall be irrevocable as to any Primary Donor, and the contributed assets shall not be refundable to any Primary Donor or the Beneficiary. By

execution of the Joinder Agreement II, the Primary Donor, on his, her or its own behalf and on behalf of the Beneficiary, acknowledges that on the funding of an Individual Trust Account of this Trust, neither the Primary Donor nor the Beneficiary shall have any further interest in, and does thereby relinquish and release all rights in, control over, and all incidents of interest or ownership of any kind or nature in and to, the contributed assets (including the Beneficiary's original contribution to the Trust Fund and any and all subsequent additions to the Trust Fund) and all income and appreciation thereon.

4.2 Assets Designated for Future Transfer. Any assets or interests in assets can be designated for future transfer by a Primary Donor as a contribution to the Trust Fund. Examples of such contributions include a policy of life insurance on a Primary Donor's life in which the Individual Trust Account is designated as a beneficiary or the naming of an Individual Trust Account as a beneficiary of any future interest in assets, such as that which would pass under the terms of a donor's will. However, if a Primary Donor, other than the Beneficiary, directs that assets belonging to a person other than the Beneficiary are to be used to create or are added to an Individual Trust Account for the Beneficiary, those assets will be held under the Developmental Disabilities Endowment Fund Trust Fund I Agreement and not under this Trust Fund II Agreement.

## **Article 5**

### **Matching Contributions**

5.1 Matching Contribution Funds. RCW 43.70.730 provides that funds contributed by the State of Washington to the Trust Fund for the purpose of matching private contributions with public funds (“**Matching Contributions**”) be held and invested by the WSIB. All right title and interest in and to the Matching Contributions or any portion thereof and any earnings

thereon shall remain with the State of Washington until and to the extent that the Trustee has made a disbursement as provided in Section 2.5 or has irrevocably allocated any such earnings or porting thereof to an Individual Trust Account. Matching Contributions and earnings thereon which have not been disbursed to or for the benefit of a Beneficiary and which have not been irrevocably allocated to an Individual Trust Account shall be separately accounted for in each Individual Trust Account and are subject to reversion to the Trust Fund.

5.2 Discretion to Make Matching Contributions. The Trustee may match any private contribution to an Individual Trust Account on the terms and conditions set forth in the Act and the rules promulgated thereunder. The eligibility for Matching Contributions and the terms of any match shall be set out in the policies of the Governing Board as amended from time to time.

## **Article 6**

### **Distribution of Trust Income and Principal**

6.1 Disbursements. The Trustee and/or the Manager, in their sole discretion, may make any payments or disbursements from the Assets constituting an Individual Trust Account in any form allowed by law (a) directly to a Beneficiary, (b) to any person deemed suitable by the Trustee and/or the Manager, or (c) by direct payment of a Beneficiary's expenses.

6.2 Individual Trust Accounts. Any assets contributed to an Individual Trust Account shall be invested, re-invested, and managed by the WSIB as part of the Trust Fund. However, the Trustee or its designee shall maintain separate recordkeeping of the contributions, distributions, fees and investment income or losses of each Individual Trust Account. Any income attributable to a Beneficiary's Individual Trust Account that is not distributed shall be added annually to the principal in the Individual Trust Account maintained for such Beneficiary and prorated between the private funds and the Matching Contributions. The Trustee is

responsible for making the bookkeeping allocation of such undistributed income to an Individual Trust Account. The Manager shall pay or apply for the supplemental care of a Beneficiary such amounts from the principal or income, or both, of the Individual Trust Account maintained for such Beneficiary, up to the whole thereof, as the Manager, at the direction of the Trustee, or in the absence of such direction, in the Manager's sole discretion, may from time to time deem advisable for the satisfaction of that Beneficiary's supplemental needs, if any.

6.3 Spendthrift Trust. To the fullest extent permitted by law, the Trust Fund and each Individual Trust Account established hereunder shall be a spendthrift trust, and no part of the Trust Fund or Individual Trust Account, 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 the Trust Fund or the Individual Trust Account have actually been paid or disbursed to such Beneficiary. Under no circumstances may any Beneficiary compel a disbursement from the Trust Fund or an Individual Trust Account. The Beneficiary shall not use this Trust to defeat the rights of pre-existing creditors.

6.4 Sole Benefit to Beneficiary. Each Individual Trust Account is for the sole benefit of the Beneficiary for whom the account is established during the Beneficiary's life, and the Trustee and/or Manager may authorize payments to the Beneficiary or for the Beneficiary's benefit at any time without liability to remainder beneficiaries. Any benefit for Final Remainder Beneficiaries is purely incidental and not an intended purpose of this Trust. Any decision with

regard to discretionary distributions shall be resolved without regard to the Final Remainder Beneficiaries.

6.5 Income Taxation of an Individual Trust Account. Generally, an Individual Trust Account under this Trust II will be treated as a “grantor trust” because the Beneficiary himself or herself, his or her guardian, or other authorized Primary Representative of the Beneficiary, or any other donor on behalf of the Beneficiary will have deposited assets or properties belonging to that Beneficiary to the Individual Trust Account for that Beneficiary. If the Individual Trust Account is treated as a grantor trust for federal income tax purposes, the reporting of the income of the Individual Trust Account and taxation thereon shall be subject to the provisions of Section 10.2 of this Trust II.

## **Article 7**

### **Trustee**

7.1 Trustee’s Duties. Pursuant to the Act, the Governing Board was established to design and administer the Trust Fund and is authorized to establish all policies relating to the Trust Fund, other than investment policies set forth in RCW 43.70.732. In furtherance of such authority, the Governing Board, has designated The Arc of Washington State to act as Trustee, under this Trust Agreement, shall have the duties and responsibilities set forth in this Trust Agreement, which shall not be inconsistent with the Act. The Trustee shall serve at the pleasure of the Governing Board and may be removed at any time, with or without cause and replaced with a Successor Trustee designated by the Governing Board. The Governing Board’s duties shall include routinely consulting and communicating with the WSIB on the investment policy, earnings of the Trust Fund and related needs of the program. The Trustee shall not be bound by the provisions of RCW Title 11.

7.2 Status of Trustee. The Trustee shall not be considered a trustee for purposes of the Washington Trust Act of 1984 as amended in 1985, and amendments thereto, and so long as the WSIB has the full power to invest, reinvest, manage, contract, sell or exchange Assets of the Trust Fund, as provided in RCW 43.70.732, the Trustee shall not be bound by the provisions of RCW 11.100.010 et. seq.

7.3 Trustee Powers. Pursuant to the Act, the Trustee shall have full power and authority in its discretion, without recourse to any court or any notice whatsoever, to do all acts and things necessary for the performance of the Trustee's duties as such, and for the purpose of performing such duties, to receive, hold, manage, and control all of the Assets, of an Individual Trust Account, and to do such other acts concerning the Trust Fund as may be advisable.

7.4 Compensation of WSIB and State Treasurer. Notwithstanding any other provision of this Trust Agreement, the WSIB shall be reimbursed its expenses and operating costs under RCW 43.84.160 and the Washington State Treasurer shall be reimbursed its expenses and operating costs under RCW 43.08.190 and 43.79A.040.

7.5 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 jurisdictions, no surety shall be required on such bond.

7.6 Trustee's Powers and Duties Defined by State Law. Notwithstanding any other provision to the contrary in this Trust Agreement, the powers and duties of the Trustee exist solely by virtue of legislative enactment. This Trust Agreement does not, and shall not be construed to, grant to the Trustee any powers or impose upon the Trustee any duties other than those powers and duties granted to or imposed upon the Trustee by the Legislature of the State of Washington.

## Article 8

### Governing Board

The Governing Board shall have the responsibility for the performance of all duties as set out in RCW 43.70.730-737.

## Article 9

### Manager

9.1 Manager. The Arc of Washington State shall be the initial Manager of this Trust Agreement. The Manager, whether The Arc of Washington State or a successor manager as provided by Section 9.4, shall act in a fiduciary capacity and shall manage the disbursements from Individual Trust Accounts, and shall perform such acts and duties as set forth in the Joinder Agreement II, as established in the operating plan of the Governing Board and as the Manager and the Trustee shall mutually agree. Subject to the supervision of the Trustee, the Manager shall have full power and authority in its discretion, without recourse to any court or any notice whatsoever, to do all acts and things necessary to accomplish the purposes of this Trust Agreement, not otherwise within the responsibilities of the Trustee, and to perform the Manager's duties as such, and to do such other acts or things as may be advisable.

9.2 The Manager May Consult Other Advisors. The Manager may seek the advice and assistance of the Primary Donor, the Primary Representative, the Beneficiary, any Guardian or Guardians of the Beneficiary, or others, including any federal, state and local agencies that are established to assist persons with disabilities.

9.3 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 any program or resource that may be available to such Beneficiary because of his or her

disabilities. The Primary Donor's execution of the Joinder Agreement II evidences that the Primary Donor recognizes and acknowledges the uncertainty and changing nature of the guidelines, laws, and regulations pertaining to Government Assistance and the Primary Donor has agreed that the Manager and Trustee will not in any event be liable for any failure to apply for, or for the loss of, benefits as long as the Manager and Trustee act in good faith, except for willful dishonesty or intentional violations of law.

9.4 Appointment of Successor Manager. The Governing Board may terminate and discharge a Manager and designate another Manager to act as a fiduciary under the laws of the State of Washington as a successor Manager. In the event that the Governing Board names a successor Manager, then that successor shall succeed to all the rights, powers, and duties accorded the initial Manager.

9.5 Fees Paid to the Manager. The Governing Board shall charge fees to each Individual Trust Account for the Manager's services as provided in the Joinder Agreement II and as allowed by law. Unless the fees are paid by a Primary Donor, or as otherwise provided in the policies of the Governing Board, the fees will be charged against the applicable Individual Trust Account. The Governing Board may from time to time establish or amend the schedule of fees applicable to the Individual Trust Accounts, and the new fees will apply as of the effective date of such amendment. The amount of the initial annual fee applicable to each funded Individual Trust Account shall be the fee amount in effect as of the date that the Primary Donor executes the Joinder Agreement II.

## Article 10

### Trust Accounting

10.1 Individual Trust Accounts. A separate Individual Trust Account shall be maintained for each Beneficiary by the Trustee. The WSIB may, in its sole discretion, pool Assets of the Individual Trust Accounts with each other, with the Matching Contributions and with other funds subject to investment by the WSIB. The Trustee shall obtain from the WSIB the necessary investment performance information (e.g., current Asset values, rates of return, investment earnings and losses, and fees and expenses) to enable the Trustee and Manager or their authorized agents, (a) to maintain records; (b) to prepare reports and tax returns for each Individual Trust Account; and (c) to show the Assets contributed and matched for each Beneficiary, along with increases in, expenditures from and costs of each such Individual Trust Account.

10.2 Annual Reports to Primary Donor or Beneficiary. For accounting purposes, the Trustee and/or Manager shall maintain the books and records of the Trust Agreement and each Individual Trust Account, such that they may be reported for tax purposes on a calendar year basis. The Trustee and/or Manager shall provide periodic accountings, at least annually, to each Beneficiary (and to his or her Primary Representative), showing all receipts and disbursements of such Individual Trust Account during the previous calendar year. The Trustee and/or the Manager, or their agents shall also cause to be prepared on behalf of each Individual Trust Account appropriate federal income tax returns and/or other reports required by the Internal Revenue Service, all of the costs and expenses of which shall be charged to each Individual Trust Account in accordance with the policies of the Governing Board. The federal income tax return for any Individual Trust 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 Beneficiary's federal income tax return. Each Individual Trust Account which is not a grantor trust will file its own federal income tax return and any taxes assessed against the income of the Individual Trust Account shall be paid from and out of the Individual Trust Account Assets. The Primary Donor, by execution of the Joinder Agreement II, indemnifies the Governing Board, the Manager and the Trustee from any and all claims for income tax liabilities attributable to the Beneficiary's Individual Trust 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 Individual Trust Account passed through and taxable directly to a Beneficiary under the rules and regulations of the Internal Revenue Code.

10.3 Individual Trust Account Records Available for Inspection. Individual Trust Account records shall be available at reasonable times for inspection by the Beneficiary of such Individual Trust Account, or by his or her Primary Representative, or both. The Trustee or Manager shall not be required to furnish Individual Trust Account 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 or Court appointed legal guardian of the Beneficiary.

## **Article 11**

### **Liability**

No member of the Governing Board, the Manager or the Trustee shall be considered an insurer of the Trust Fund, this Trust Agreement or any Individual Trust Account.

## **Article 12**

### **Amendment of Trust**

12.1 Amendments. Notwithstanding Section 4.1 above, the Governing Board may amend this Trust Agreement so that this Trust Agreement conforms with any rules or regulations that are approved by any governing body or agency related to 42 U.S.C. § 1396p or related state statutes, including state statutes and regulations that are consistent with the provisions of and purposes of Omnibus Reconciliation Act of 1993 and RCW 43.70.730-737 and the Governing Board may amend this Trust Agreement in any manner the Governing Board deems to be appropriate and consistent with state law and the purposes and objectives set forth in this Trust Agreement. At the discretion of the Governing Board, such amendments may be made and approved by a court of competent jurisdiction in Washington, provided that notice of such request for amendment is provided to the Trustee, the Manager, the State of Washington and to the Attorney General of the State of Washington. Each Primary Donor, by signing the Joinder Agreement II, specifically waives any formal notice or citation to him or her, the Beneficiary or the Primary Representative prior to any amendment of this Trust Agreement. A Beneficiary (who is not also the Primary Donor) who is then currently eligible to receive a distribution need not be made a party to any court proceeding to amend the Trust Agreement and the amended Trust Agreement shall apply to each Individual Trust Account then existing under this Trust Agreement upon the date of the amendment.

12.2 Limitation on Amendments. Notwithstanding Section 12.1 above, the Governing Board shall not seek a proposed amendment to this Trust Agreement that would: (a) alter the purpose or objective of this Trust Agreement; or (b) make gifts or accounts revocable that are otherwise irrevocable under this Trust Agreement or the Joinder Agreement II.

## Article 13

### Termination of Individual Trust Account or Entire Trust

13.1 Possible Termination During Beneficiary's Life. Every reasonable attempt shall be made to continue each Individual Trust Account during the life of the Primary Beneficiary. However, under certain circumstances, the Governing Board may, in its discretion, conclude that an Individual Trust Account should be terminated. Such circumstances may include, but not be limited to, (1) a change in law that causes the existence of the Individual Trust Account to adversely affect the Beneficiary's eligibility for Government Assistance, (2) the Beneficiary moves out of the State of Washington, and (3) the Beneficiary no longer meets the definition of a person with developmental disabilities. In no event shall the Primary Beneficiary have the right to terminate an Individual Trust account during the life of the Primary Beneficiary.

13.2 Transfer to Section 1917 (d)(4)(C) Trust. In the event the Governing Board concludes that an Individual Trust Account should be terminated during the life of the Beneficiary, the Governing Board shall have the discretion to distribute the assets in the Individual Trust account to another trust established pursuant to Section 1917 (d)(4)(C) of the Social Security Act (42 U.S.C. 1396p(d)(4)(C)) after making only the following disbursements:

(a) First, any previous allocated Matching Contributions and any appreciation thereon which have been separately accounted for in relation to the Beneficiary's Individual Trust Account shall revert to the Trust Fund and be made available for future Matching Contributions to other Individual Trust Account Beneficiaries;

(b) Second, any state and federal taxes owed by the Individual Trust Account as a result of terminating the Individual Trust Account shall be paid; and

(c) Third, reasonable trustee fees and administrative expenses associated with terminating the Individual Trust Account shall be paid.

13.3 Distribution To Primary Beneficiary. In the event the Governing Board concludes that an Individual Trust Account should be terminated during the life of the Beneficiary, and does not use its discretion to distribute the assets in the Individual Trust Account to another trust established pursuant to Section 1917(d)(4)(c) of the Social Security Act (42 U.S.C. 1396p(d)(4)(C)) the Individual Trust Account shall be distributed in the following order, to the extent that there are funds remaining:

(a) First, any previously allocated Matching Contributions and any appreciation thereon which have been separately account for in relation to the Beneficiary's Individual Trust Account shall revert to the Trust Fund and be made available to future Matching Contributions to other Individual Trust Account Beneficiaries;

(b) Second, any state and federal taxes owed by the Individual Trust Account as a result of terminating the Individual Trust Account shall be paid; and

(c) Third, reasonable trustee fees and administrative expenses associated with terminating the Individual Trust Account shall be paid;

(d) Fourth, each state shall be reimbursed for the amount of medical assistance under a State Medicaid Plan of Title XIX Medicaid Assistance benefits, or other similar benefits, paid on behalf of the Primary Beneficiary of the Individual Trust Account, as required by 42 U.S.C. 1382b(e)(5), U.S.C. 1396p(d)(4)(C)) and WAC 388-561-0100(7)(b), or any other legally applicable provision of federal or state law. If Title XIX Medicaid Assistance benefits have been paid on behalf of the Beneficiary in more than one state, and the remaining funds in the Individual Trust Account are insufficient to fully compensate each state, the remaining funds in

the Individual Trust Account shall be prorated between the state in proportion to the amounts paid on behalf of the Primary Beneficiary in each state.

(e) Fifth, any remaining funds in the Individual Trust Account shall be paid to the Primary Beneficiary of the Individual Trust Account.

13.4 Distribution Upon Death of Primary Beneficiary. Upon the death of a Primary Beneficiary, the Beneficiary's Individual Trust Account shall be terminated and any Assets remaining in the Individual Trust Account shall be distributed in the following order, to the extent that there are funds remaining:

(a) First, any previously allocated Matching Contributions and any appreciation thereon which have been separately account for in relation to the Beneficiary's Individual Trust Account shall revert to the Trust Fund and be made available to future Matching Contributions to other Individual Trust Account Beneficiaries;

(b) Second, any state and federal taxes owed by the Individual Trust Account as a result of terminating the Individual Trust Account shall be paid; and

(c) Third, reasonable trustee fees and administrative expenses associated with terminating the Individual Trust Account shall be paid;

(d) Fourth, the amount designated by the Primary Beneficiary to be retained for the benefit of other Beneficiaries of this Trust Agreement shall be held and administered by the Governing Board for the benefit of such other Beneficiaries.

(e) Fifth, each state shall be reimbursed for the amount of medical assistance under a State Medicaid Plan of Title XIX Medicaid Assistance benefits, or other similar benefits, paid on behalf of the Primary Beneficiary of the Individual Trust Account, as required by 42 U.S.C. 1382b(e)(5), U.S.C. 1396p(d)(4)(C)) and WAC 388-561-0100(7)(b), or any other legally

applicable provision of federal or state law. If Title XIX Medicaid Assistance benefits have been paid on behalf of the Beneficiary in more than one state, and the remaining funds in the Individual Trust Account are insufficient to fully compensate each state, the remaining funds in the Individual Trust Account shall be prorated between the state in proportion to the amounts paid on behalf of the Primary Beneficiary in each state.

(f) Sixth, any remaining funds in the Individual Trust Account shall be paid to the Final remainder beneficiaries (the “Final Remainder Beneficiaries”) designated under the Joinder Agreement II for the Individual Trust Account; provided however, if any Final Remainder Beneficiary is a minor, is under a legal disability, or is incapacitated, Section 13.5 of this Trust Agreement shall apply.

13.5 Minor or Incapacitated Final Remainder Beneficiaries. The Trustee or Manager shall have the power to distribute property to a custodian for a minor or other eligible beneficiary under the Uniform Transfer to Minors Act under any state’s law or to use any other means of making distributions under applicable law or the terms of this Trust Agreement to any Final Remainder Beneficiary who is under a legal disability. Such means include making the payments for the Final Remainder Beneficiary’s benefit to the beneficiary’s guardian with whom the beneficiary shall reside, parent or any other suitable adult with whom the beneficiary shall reside, or making other payment on behalf of the beneficiary for the beneficiary’s exclusive benefit. Further, the Trustee or Manager may make distributions for a Final Remainder Beneficiary who is incapacitated directly on behalf of the beneficiary, or to the guardian of such beneficiary’s estate, to the trustee of the beneficiary’s revocable trust (if any) 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 and/or

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.

13.6 Perpetuities Savings Clause. The Individual Trust Account for each Beneficiary shall be held for the lifetime of the Beneficiary. An Individual Trust Account under the Trust Fund's Remainder Account shall be distributed in the manner permitted to Section 13.6 with the period of time measured by the rule against perpetuities, RCW 11.98.130 s it may be amended.

13.7 Termination of Entire Trust Fund and Agreement. If it becomes impossible or impracticable to carry out the purpose of the Trust Fund with respect to all or substantially all Beneficiaries, the Settlor may terminate this Trust Agreement and Trustee shall distribute the Assets in each Individual Trust Account as set forth in Sections 13.2, 13.3, or 13.4, whichever is applicable. Any other asset shall be applied and paid over as determined by the State Legislature. Before action is taken under this Section 13.7, the Trustee and/or Manager shall prepare a final accounting along with a petition seeking approval of the action to be taken, which shall be filed in a court of competent jurisdiction in the State of Washington.

## **Article 14**

### **Miscellaneous**

14.1 Situs of Trust. The situs of the Trust Fund and the Trust Agreement shall be Washington State.

14.2 Effective Date. The Trust Agreement is established by the Settlor as of the day and year first written above. An Individual Trust Account shall be effective as to any Primary Donor or Beneficiary on (a) execution of a Joinder Agreement II by a Primary Donor or by a court order; (b) certification of the Joinder Agreement II by the Governing Board; and (c) Primary Donor's delivery to the Trustee, and the Trustee's acceptance of, assets.

14.3 Governing Law. The validity of this Trust Agreement shall be determined by the laws of the United States and the State of Washington. The Trustee shall at all times act within the duties, powers, rights and authorities granted and imposed by the laws of the State of Washington, and this Trust shall be interpreted under the laws of the State of Washington except as otherwise provided for hereinabove. Any action or proceeding relating to this Trust Agreement shall be instituted in Thurston County, Washington.

14.4 Headings. The headings show the various provisions of the Trust Agreement, have been included to make it easier to locate the subject covered by each provision and are not to be used in construing this Trust Agreement or in ascertaining the intent.

EXECUTION OF AMENDED AND RESTATED TRUST AGREEMENT

This Amended and Restated Trust Agreement is authorized and adopted by the Governing Board of the Developmental Disabilities Endowment Fund pursuant to its authority under Article 12 of the Trust Agreement and RCW 43.30.730-737 on this 2<sup>nd</sup> day of December, 2010.

DEVELOPMENTAL DISABILITIES  
ENDOWMENT FUND GOVERNING BOARD

BY: [Signature]

ITS: DDDF Chair

**SETTLOR:**

THE Arc OF WASHINGTON STATE

BY: Patti Reel

ITS: TRUST MANAGER

DATE: December 2, 2010

**TRUSTEE:**

THE Arc OF WASHINGTON STATE

BY: Patti Reel

ITS: Trust Manager

DATE: December 2, 2010