

# THE ARC COMMUNITY TRUST OF PENNSYLVANIA MASTER TRUST AGREEMENT

THIS MASTER TRUST AGREEMENT, is made this 9th day of September, 2002, and revised January 5, 2004, February 16, 2005, and July 23, 2014, by the Arc Community Trust of Pennsylvania, a Pennsylvania nonprofit corporation (the "Trustee").

It is widely acknowledged that families of persons with disabilities want their loved ones to lead lives that are as independent and fulfilling as possible; that supplemental financial and other resources contribute to that goal; and that adequate future planning benefits individuals; their families, loved ones, and caretakers; and society generally.

Amendments to the Medicaid program allow persons with disabilities, certain members of their families, legal guardians, and Courts to place assets in trust under certain conditions without subjecting these assets to spend-down or recapture requirements. These trusts are commonly known as Special or Supplemental Needs Trusts (SNTs).

Consequently, the Trustee establishes this Master Trust Agreement (hereafter Agreement), intending to conform to the requirements of 42 U.S.C. §1396p(d)(4)(C), as the same may be amended from time to time, and of applicable state rules or statutes creating an exception to the treatment of trust assets of disabled individuals, that is, persons with disabilities. A Settlor or other such individual wishing to fund a **trust**, that is, a separate trust account, for a person with a disability may do so by adopting this Agreement by reference, subject to the approval of the Trustee; and the Trustee agrees to hold, administer, and distribute income and principal of the separate trust account so formed, according to the terms of this Agreement and the individual Joinder Agreement. This trust remains subject to the continuing jurisdiction of the Common Pleas Court, including the Court's right to modify or terminate for cause shown.

## ARTICLE I

### DEFINITIONS

**Account.** The term "Account" or "separate trust account" refers to an **account** established to hold the trust assets contributed by a Settlor to the Trust for the benefit of a named Beneficiary.

**Beneficiary** refers to a person with a disability, as defined in 42 U.S.C. §1382c(a)(3), as amended from time to time, for whose benefit a separate trust account has been established by a qualified Settlor in accordance with a Joinder Agreement. This term does not include any persons or organizations who may have a remainder interest in any Trust or Separate Trust Account.

**Board** refers to the Board of Directors of The Arc Community Trust of Pennsylvania.

**Distribute** means to pay over, convey, deliver, transfer, and assign absolutely in fee simple forever, free of trust.

**Government Assistance, also referred to as Government Benefits or Public Benefits**, includes those services, benefits, financial assistance, medical and rehabilitative care, and similar aids that may be provided by any local, state, or federal government or its agency or department, to or for a Beneficiary. These benefits include but are by no means limited to Supplemental Security Income (SSI) and Medical Assistance (Medicaid, MA).

**Guardian** includes a curator, guardian, conservator, or other court-appointed legal representative of the person or estate, including the legal guardian of a minor Beneficiary.

**Joinder Agreement** refers to an instrument approved and amended from time to time by the Board. It is the execution of this instrument which makes the specific assets designated for the Beneficiary part of the Trust.

**Qualified Medicaid Trust** is a Trust qualifying under 42 U.S.C. §1396p(d)(4)(C), and any successor statute or regulation. It may also be referred to as a Pooled Trust or OBRA Trust.

**Settlor** is the person or entity creating and/or contributing to a separate trust account for an individual Beneficiary. Under certain conditions a Settlor may be the intended beneficiary him- or herself, a parent or grandparent, a legal guardian, or a Court. No Settlor will be allowed to execute a Joinder Agreement unless the Trustee is satisfied that he or she has had access to competent legal advice.

**Trustee** is the original Trustee of the Trust, that is, The Arc Community Trust of Pennsylvania, and any successor Trustee, unless otherwise stated.

## ARTICLE II

### INTENT AND PURPOSE OF THE TRUST

**Trustee Intent.** Trustee, by the creation of this Agreement, and each Settlor, by the Joinder in this Agreement, intend to conform to the requirements of 42 U.S.C. §1396p(d)(4)(C), as amended from time to time, and of applicable state rules which create an exception to the usual spend-down and recapture rules otherwise applicable to trust assets held for the benefit of persons with disabilities. The Master Trust is created solely and specifically to provide supplemental benefits for persons with disabilities as defined in 42 U.S.C. §1382c(a)(3), for whom a separate trust account is established by the person with a disability him- or herself or by a parent, grandparent, legal guardian or Court. The Master Trust may contain the assets of such persons, the Beneficiaries. On the death of a Beneficiary, all assets left in his or her account shall remain in the Trust, to the maximum extent allowed by law, for the benefit of other persons with disabilities who are active members of the Trust. Some educational trusts may revert to the school district at a time specified.

Supplemental Fund. It is the intent of the Trustee that assets held pursuant to this Agreement are not for the primary support, care, and maintenance of the Beneficiaries. Their purpose is only to supplement the care, maintenance, and support provided by whatever other means available.

Purpose of Trust. The purpose of this Agreement, and of the Trust itself, is to promote the comfort and happiness of the Beneficiaries, and to improve their quality of life, by using the Trust assets to provide for and serve the interests of Beneficiaries over and above their basic maintenance; support; medical, dental, and therapeutic care; and any other service, care, or benefit which may be paid for or provided by other sources. It is not the purpose of the Trust to provide any such basic services or maintenance to any Beneficiary. The Trustee shall use the Trust assets for the supplemental needs and care of the Beneficiaries.

Notwithstanding the provisions above, the Trustee may make distributions to meet the Beneficiary's need for food or shelter even if such distribution may result in an impairment or diminution of the Beneficiary's receipt or eligibility for government benefits or assistance, but only if the Trustee determines (1) that the Beneficiary's basic needs cannot be adequately met without such expenditure, and (2) that it is in the Beneficiary's best interest to make such distribution.

If it is determined by a government agency that the Trustee's authority to make distributions pursuant to this paragraph shall result in this Trust being an available resource, then this provision shall be severable from the Trust document and may be considered null and void in the discretion of the Trustee.

### **ARTICLE III**

#### **BENEFICIARIES**

Person with a Disability. A Beneficiary shall be a person who is disabled (a person with a disability) as defined by 42 U.S.C. §1382c(a)(3) or any successor statute and for whom a separate trust account has been established by a qualified Settlor. If the Social Security Administration or other authorized governmental agency or entity has not made a determination of disability, the Trustee is authorized to accept the decision of another governmental body that the person, because of physical, cognitive, or psychological impairment, is entitled to special services. The latter will often be the case with Compensatory Educational SNTs.

### **ARTICLE IV**

#### **TRUSTEES**

Trustee. The Trustee of the Master Trust shall be The Arc Community Trust of Pennsylvania. The name, The Arc Community Trust of Pennsylvania, as used in this Declaration of Trust, shall include its successors and any corporations into which it may be merged or with which it may be consolidated, and the successor of any such merged or consolidated corporation,

and any corporation to which its fiduciary activities and responsibilities may have been transferred.

## ARTICLE V

### TRUSTEE DISCRETION

Trustee Discretion. Within the expressed intent and purpose of this Agreement, the Trustee shall have sole and absolute discretion in making disbursements to or for the benefit of any Beneficiary or in declining to make such disbursements.

## ARTICLE VI

### DONOR AND TRUST PROPERTY

Settlor. A Settlor may be a parent, a grandparent, a legal guardian, a Beneficiary him- or herself, or any Court, in accordance with 42 U.S.C. §1396p(d)(4)(C)(iii), or any other person permitted by a successor statute who establishes a separate trust account for a person with a disability.

Creation of Trust. A Settlor may create a separate trust account under this Agreement by transferring assets, subject to the Trustee's acceptance, for the benefit of a Beneficiary and by executing a Joinder Agreement.

Assets of Beneficiary. Assets belonging to the Beneficiary may be accepted by the Trustee as Trust assets, pursuant to 42 U.S.C. §1396p(d)(4)(C).

Funding. Trust assets shall consist of the initial contribution and any additional contributions in cash or, if accepted by the Trustees, in property made to the Trust or a Beneficiary's separate trust account, as well as any income earned thereon. These contributions may be made at any time, or from time to time, by a Settlor or by any other qualified person in accordance with this Agreement and to the extent permitted by law.

Contributions Irrevocable. All contributions and assets accepted by the Trustee shall be irrevocable and non-refundable.

Additions to Trust. The original Settlor or any other qualified Settlor may at any time or from time to time transfer or bequeath to the Trustee cash or other property, subject to the Trustee's approval, for the account in good standing of a Beneficiary of the Trust. Any such transfer shall be irrevocable, and the assets held, managed, and distributed by the Trustee in accordance with the provisions of this Agreement and of the Joinder Agreement.

## ARTICLE VII

### IRREVOCABILITY

Trust Irrevocable. The Master Trust Agreement shall be irrevocable subject to the Trustee's power to amend it according to the requirements of the law; the Trustee's power to terminate a separate trust account; and the Trustee's power to terminate the Trust if its purpose becomes impracticable or impossible of fulfillment, all pursuant to Article XIII.

## ARTICLE VIII

### TRUST ASSETS DURING BENEFICIARY'S LIFETIME

Administration. During the lifetime of a Beneficiary, the Trustee shall hold and administer the Trust assets held for his or her benefit in accordance with this Agreement and to the extent possible, as the Trustee shall determine in its sole and absolute discretion, with the Joinder Agreement executed by the Settlor.

Distribution During Lifetime of a Beneficiary. During the lifetime of a Beneficiary, the Trustee shall pay so much of the net income or principal or both from a Beneficiary's account, as the Trustee, in its sole and absolute discretion, may from time to time deem advisable for such Beneficiary's supplemental and life-enhancing needs and care. These distributions must be made solely for the benefit of the designated Beneficiary. In exercising its discretion the Trustee may interpret liberally the term "supplemental needs" and may consider any other sources of income and resources known to be available, as well as all relevant circumstances. The Trustee will consult as necessary with any Court having jurisdiction over a Beneficiary. Any income not distributed shall be accumulated as income and shall retain its status as income.

Priority of Beneficiaries. In making discretionary distributions to or for the benefit of a Beneficiary from his or her account, the Trustee shall not consider the effect such distributions may have on the interest of any remainder beneficiary.

Availability of Trust Assets. No portion of the principal or undistributed income of any Beneficiary's account shall be considered available to the Beneficiary for determining eligibility for assistance from any local, state, or federal government agency, department, or program. If a Beneficiary receives assistance for basic maintenance, support, care, or services, the Trustee shall consider the requirements for eligibility for such assistance in using or applying trust assets.

Trustee Discretion Conclusive. Nothing in this Agreement or in the Joinder Agreement shall be deemed to require the Trustee to make or refrain from making a distribution to or for the benefit of a Beneficiary. The Trustee shall make or refrain from making distributions in its sole and absolute discretion, and such discretion shall be conclusive as to the advisability of any distribution. Under no circumstances may a Beneficiary or any other person compel a distribution from a Beneficiary's account.

## ARTICLE IX

### TRUST ASSETS AT DEATH OF BENEFICIARY

Death of Beneficiary. On the death of the Beneficiary, all assets remaining in his or her separate trust account shall be transferred to and remain in the Arc Community Trust of Pennsylvania pool, to the maximum extent allowed by law, to be used for the benefit of other persons with disabilities who are active members of the Trust, as stated in Article II. Some educational trusts may revert to the school district at a time specified.

## ARTICLE X

### FEES

Fees. A schedule of Fees shall be determined and published annually by the Board for the following calendar year.

Other Costs. Costs related to the administration of any separate trust account shall be charged against that account at the discretion of the Trustee. These costs may include but are not limited to appraisals; broker, legal, and/or accountant fees; property taxes; and management costs. Such costs related to the administration of one or more separate trust accounts shall be allocated to these accounts in a manner determined by the Board, as attached in Schedule A.

Taxes. Any federal or state income taxes, inheritance or death taxes, or other taxes of any kind owed by a Beneficiary or his or her separate trust account, as well as the costs of preparation of income tax returns or related documents, shall be charged to the Beneficiary's account.

Special Fee Arrangements. With the approval of the Board, a fee or fees may be modified or waived in special circumstances. The Board will approve such an exception only if it determines that it is in the interests of The Arc Community Trust of Pennsylvania to do so and that no other separate trust account will be adversely affected by the decision.

## ARTICLE XI

### ADMINISTRATIVE PROVISIONS

Effective Date. The Trust shall be effective as to any Settlor or Beneficiary when the following conditions are satisfied:

- a) Execution of an approved Joinder Agreement incorporating this Agreement by reference;
- b) Payment of any applicable fees;
- c) Delivery to and acceptance by the Trustee of property designated as Trust assets.

Separate Trusts. When a Settlor adopts the terms of this Master Trust Agreement, a separate trust account will be created for the benefit of each Beneficiary named. The Trustee will obtain a separate taxpayer identification number and maintain each as separate trust account.

Investment. The Trustee will place all assets for investment purposes, under revocable agreements, with financial institutions approved, under applicable law, as corporate fiduciaries. The Trustee shall regularly review the performance of each corporate fiduciary in producing a reasonable return on a total return basis over a reasonable period of time on the Trust assets under its control, giving due consideration to accepted standards of fiduciary conduct and due regard to the safety of principal.

Commingled Investments. All assets held by the Trustee under this Agreement shall be commingled for investment purposes, as required for Medicaid Qualified Trusts. Each separate trust account shall have an undivided interest in the whole, but the Trustee shall keep or cause each corporate fiduciary to keep a separate account of each separate trust account's assets and interest.

Investment Authority. The Trustee shall have the following powers, in addition to and not in limitation of those granted by law: to retain assets or to sell them and to invest and reinvest the proceeds and any other cash in any kind of property, real or personal or part interest therein, located in the United States or abroad, all current and future statutory and other limitations as to the investment of funds being waived; to hold income cash uninvested until the next payment date, without liability for interest; to pledge, exchange, or mortgage real or personal property and to lease the same for terms exceeding five years; to give options for sales, leases, and exchanges; to borrow money; to compromise claims; to vote shares of corporate stock, in person or by proxy, in favor or against management proposals; to carry securities in the name of a nominee, including that of a clearing corporation or depository, or in book entry form or unregistered or in such other form as will pass by delivery. In addition to but not limiting the foregoing, the Trustee shall have the authority and discretion attributed to trustees under the PRUDENT INVESTOR RULE, 20 PA C.S.A. § 7201 *et seq.*, liberally construed and as most recently articulated by the American Law Institute; and the Trustee is specifically authorized to engage accountants, counsel, and investment advisors for assistance.

Use of Principal. The Trustee may use all income and any and all of the principal of any separate trust account for the purposes established by any Settlor and according to the terms of this Agreement.

Resignation of Trustee. The Trustee may resign at any time, provided that the Trustee has arranged for or has petitioned a Court of competent jurisdiction to appoint a successor Trustee meeting the requirements of applicable law for Medicaid Qualified Trusts. Any successor Trustee shall succeed to all the rights, titles, interests, powers, discretion, duties, and responsibilities vested in the predecessor Trustee. No successor Trustee shall be liable for anything done or omitted in the administration of the trusts prior to the date of becoming successor Trustee.

Surety. No surety will be required of the Trustee.

Books and Records. The Trustee shall maintain and shall cause each corporate fiduciary holding Trust assets to maintain detailed books and records of all receipts, deposits, withdrawals, investments, expenses, and liabilities of each separate trust account formed through the adoption of this Agreement.

Spendthrift Provision. No interest in income or principal held in the Trust shall be subject to levy, attachment, execution, or voluntary or involuntary alienation. Nor may any funds or property of the Trust while administered by the Trustee be available for payment of debts, contracts, obligations, or engagements, voluntary or involuntary, or for any claims, legal or equitable, against such Beneficiary or remainderman, until actually delivered to or for the benefit of that person.

## **ARTICLE XII**

### **INDEMNIFICATION.**

Indemnification. The Trustee, its agents and employees and their heirs and legal representatives are hereby indemnified by the Trust and the Trust property against all claims, liabilities, fines, or penalties, and against all costs and expenses, including those of attorneys and reasonable settlements, imposed upon, asserted against, or reasonably incurred, in connection with or arising out of any claim, action, suit, or proceeding in which he, she or it may have been involved by reason of being or having been a Trustee or advisor, whether or not continuing to serve in such position at the time of incurring or being subjected to such claims, liabilities, fines, penalties, costs, or expenses. Provided, however, that such persons or entities, or their heirs or legal representatives, shall not be indemnified in such matters where he, she, it, or they shall be finally determined by a court of competent jurisdiction to be guilty of willful misconduct in the performance of any duty. The right of indemnification shall not be exclusive of, or prejudicial to, other rights to which any such person or entity may be entitled as a matter of law or otherwise.

## **ARTICLE XIII**

### **AMENDMENT OF TRUST**

Conform Trust. The Board shall have the right and power to conform this Agreement to the requirements of 42 U.S.C. §1396p(d)(4)(C), as amended from time to time, to any related rules and regulations approved by any governing body or agency, and to state statutes affecting Beneficiaries of the Trust and regulations consistent with the provisions and purposes of 42 U.S.C. §1396p(d)(4)(C) and its amendments.

Amendment. Every Settlor and every person making claims through him or her, shall, by executing this Agreement, be deemed to have agreed that the Board may modify and supplement the administrative provisions of the Trust and the Agreement; construe any provisions in good faith; and correct or supply any defect or omission deemed advisable to carry out the purposes stated here properly and effectively. Any such Amendment shall require an affirmative vote of  $\frac{2}{3}$  of the members of the Board.

## ARTICLE XIV

### TERMINATION OF TRUST

Termination. If a court or agency of competent jurisdiction makes a final, nonappealable decision that a separate trust account resulting from the adoption of this Agreement does not meet the requirements of a Medicaid Qualified Trust, that separate trust account shall terminate; and the Trustee, if permitted by applicable law, shall distribute the remaining assets to the remainder beneficiary identified in the Joinder Agreement. However, if the assets are not retained for the benefit of other persons with disabilities, and if the beneficiary has received Medical Assistance benefits during the period of the separate trust account, these must be repaid to the Department of Public Welfare (DPW) before any other distribution is made.

If Trust Purpose Impracticable. Every reasonable attempt shall be made to continue this Agreement for the purposes for which it was established. However, it is acknowledged that the Trustee does not and cannot know how future developments in the law, including administrative agency and judicial decisions, may affect this Agreement. If it becomes impossible or impracticable to carry out the purposes of this Agreement, the Trustee may terminate the Trust and, in its sole and absolute discretion, distribute trust assets held for the benefit of the affected Beneficiaries. However, if the assets are not retained for the benefit of other persons with disabilities, and if the beneficiary has received Medical Assistance benefits during the period of the separate trust account, these must be repaid to the Department of Public Welfare (DPW) before any other distribution is made.

## ARTICLE XV

### TAXES

Taxes. The Settlor acknowledges that contributions to the Trust are not deductible as charitable gifts or otherwise.

The Settlor remains responsible for filing gift tax returns and paying any gift taxes that may be required as a consequence of transferring assets to the Trust. The Settlor is advised to seek professional tax advice.

Trust account income, whether paid in cash or distributed in any other form, may be taxable to the Beneficiary, subject to applicable exemptions and deductions. The Beneficiary, or those acting for him or her, is advised to seek professional tax advice.

If any trust account income is taxable to the Trust, such taxes shall be allocated to Beneficiaries' separate trust accounts and charged against these accounts in a manner determined by the Board.

## **ARTICLE XVI**

### **POTENTIAL CONFLICTS OF INTERESTS**

Disclosure of Potential Conflicts of Interest. The Trustee has a potential conflict of interest in the administration of this Trust because it may make disbursements to its affiliate Arcs or the Arcs whose members it serves or their employees or Board members or others related in some way. These disbursements may be made to any of these on behalf of one or more Beneficiaries to cover the costs of benefits and services provided or to be provided. The Trustee is expressly authorized to make such disbursements, subject to the limitations on authority set forth in this agreement. Every Settlor executing the Joinder Agreement is aware of such potential conflicts of interest and waives any and all claims against the Trustee for self-dealing, conflicts of interest, or related acts, as long as the fees charged their trust are consistent with charges for comparable services. The Trustee shall not be liable to the Settlor or to any party for any act of self-dealing or conflict of interest resulting from its affiliations, as long as fees charged are consistent with those for comparable services.

A second potential conflict of interest exists in the administration of this Trust for Beneficiaries, since the Trust will have a remainder interest in the separate trust accounts. Any amounts remaining in his or her separate trust account(s) at the death of a Beneficiary will remain in the Trust for the benefit of other persons with disabilities, as stated in Article II. Settlers also acknowledge this potential conflict of interest and expressly waive any and all claims against the Trustee for self-dealing, conflict of interest, or similar act.

## **ARTICLE XVII**

### **RESOLUTION OF DISPUTES**

If a dispute arises involving the Trustee, Beneficiary, a school district or any other interested party with respect to the appropriateness of a proposed expense as a proper distribution from the Trust, the disagreement shall be submitted to a Dispute Resolution Panel (Panel) appointed by the President of the Board of Directors. The Panel shall be presented with documentation of the disagreement between the parties and shall decide the matter based on the documentation within ten (10) days of receipt. The Panel's decision shall be final, unappealable, and binding and shall be issued to the parties by mail, fax, or email within ten (10) days. If a decision is not rendered within ten (10) days, the request for disbursement shall be granted.

Revised January, 2004; January, 2005; and July, 2014