

THE GUARDIAN POOLED TRUST

THIS DECLARATION OF TRUST was originally made on June 6, 2002, by the National Non-Profit for Americans with Disabilities, Inc., a Non-Profit Corporation organized under the laws of the State of Florida as Settlor and Trustee. The name of the Trust established under this Declaration is **The Guardian Pooled Trust** (hereinafter sometimes referred to as the “Trust”). In accordance with section 2.4 of this Trust Agreement, modifications were made on April 1, 2009 and on January 25, 2011 to continue to comply with its purposes and intent to function as a Trust under 42 U.S.C. § 1396p(d)(4)(C).

ARTICLE 1 DEFINITIONS

- 1.1. “Settlor” means the National Non-Profit for Americans with Disabilities, Inc., a Florida non-profit, tax exempt corporation, who shall be responsible for appointment of all Trustees and therefore the ultimate management of this Trust.
- 1.2. “Trustee” means the National Non-Profit for Americans with Disabilities, Inc., or it’s successor or successors.
- 1.3. “Co-Trustee” means a natural person, selected by the Trustee to assist with the management, administration, allocation, and disbursement of Trust assets and property. Co-Trustees shall always serve at the discretion of the Settlor and a Co-Trustee’s power shall be subordinate, at all times, to that of the Settlor. A Co-Trustee may not be a for-profit entity, but only individuals appointed by the National Non-Profit for Americans with Disabilities, Inc.
- 1.4. “Grantor” means a parent, grandparent, legal guardian of a Beneficiary, a Beneficiary himself or herself, or any person or entity acting pursuant to an order by a court, who contributes a Beneficiary’s money and/or property to the Trust.
- 1.5. “Beneficiary” means 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, as amended in the Omnibus Budget Reconciliation Act of 1993 (OBRA ‘93) and the Foster Care Independence Act of 1999 (FCIA ‘99) and who a Grantor shall specify as the sole recipient of services and benefits under any one of the particular Trust sub-accounts created within this Trust by such Grantor.
- 1.6. “Joinder Agreement” means the individual written agreement between the Trustee and a Grantor by which the Grantor establishes a Trust sub-account for the sole benefit of a Beneficiary.
- 1.7. “Trust sub-account” means that portion of the entire Trust estate that is established and managed for the sole benefit of a specified Beneficiary.
- 1.8. “Government assistance” means all services, benefits, medical care, financial assistance, and any other assistance that may be provided by any county, state, or federal agency to or on behalf of a Beneficiary. Such assistance includes, but is not limited to, the Supplemental Security Income program (SSI), the Old Age Survivor and Disability Insurance program (OASDI), the Social Security Disability Insurance program (SSDI), and the Medicaid program including the Florida

Medicaid Institutional Care Program (ICP), Home and Community Based Services (HCBS), or any other public assistance programs of the State of Florida or any other state of the United States, together with any additional, similar, or successor public programs.

- 1.9. "Non-support payments" means payments made by the Trustee for supplemental needs or supplemental care as defined below.
- 1.10. "Legal Representative" means a legal guardian, natural guardian, conservator, agent acting under a valid power of attorney, trustee, representative payee, custodian under a transfers to minors account or any other legal representative or fiduciary of the Beneficiary.
- 1.11. "Supplemental care" or "supplemental needs" shall mean care that is not provided, or needs that are not met, by any private assistance or government assistance that may be available to a Beneficiary.

ARTICLE 2 ESTABLISHMENT OF TRUST

- 2.1. Trust is Established. The Settlor and Trustee hereby establish a pooled trust pursuant to 42 U.S.C. § 1396p (d)(4)(C), amended August 10, 1993 by the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) and the Foster Care Independence Act of 1999 (FCIA '99) for the benefit of Beneficiaries (defined in Article 1) under this Trust.
- 2.2. Initial Funding of Trust. Concurrently with the execution of this Trust, the Trustee assigns, conveys, transfers, and delivers a lump sum payment of One Hundred Dollars and No Cents (\$100.00) to the Trust. The Trust estate shall consist of this initial contribution and any additional contributions in cash or property made to the Trust estate at any time by any Grantor in accordance with the provisions below in Article 4.
- 2.3. Irrevocability. This Trust shall be irrevocable.
- 2.4. Amendments to Trust. Notwithstanding the irrevocability of this Trust as set forth in paragraph 2.3 above, this Trust may be amended from time to time to comply with its purposes and intent as set forth in this document. The Trustee may also amend the Trust to continue to conform with any statutes, rules, or regulations that are approved by any governing body or agency relating to 42 U.S.C. § 1396p or related statutes, including state statutes and regulations that are consistent with the provisions and purposes of the Omnibus Budget Reconciliation Act of 1993, amending 42 U.S.C. § 1396p.
- 2.5. Management of Trust. The Settlor, the National Non-profit for Americans with Disabilities, has the ultimate managerial control over the Trust. The Settlor shall determine the amount of the trust corpus to invest, maintains sole and exclusive authority to remove the Trustee or co-Trustees and is responsible for all day-to-day decisions regarding the use of the funds for each beneficiary.

ARTICLE 3
SPENDTHRIFT PROVISIONS

The Trust, and any Trust sub-accounts, shall not be subjected to creditors of any of the Beneficiaries. The Trust, or the assets held in any Trust sub-account for their benefit, shall not cause public and private assistance benefits of the Beneficiaries to be affected. The Trust, or any portion of the Trust, is not a resource to any Beneficiary except in the complete discretion of the Trustee. No part of the principal of the trust created herein shall be used to supplant or replace public assistance benefits of any county, state, federal or other governmental agency which has a legal responsibility to serve persons who are incapacitated, disabled or institutionalized. This trust is not a resource to the Beneficiary. It is not available to the Beneficiary except in the Trustee's discretion, and then only to the extent that other resources are not available to provide for the Beneficiary. Under no circumstance can the Beneficiary compel a distribution from the trust for any purpose. Nor can a Beneficiary transfer any interest they may have in this trust nor can a creditor reach the assets of this Trust, either voluntarily or involuntarily. The Trustee's discretion in making non-support disbursements as provided for in this instrument is final as to all interested parties, even if the Trustee elects to make no disbursements at all. The Trustee's sole and independent judgment, rather than any other party's determination, is intended to be the criterion by which disbursements are made. No court or any other person shall substitute it or their judgment for the decision or decisions made by the Trustee. The Settlor, Grantor and Trustee do not owe any obligation of support to any of the Beneficiaries.

No interest in the principal or income of the Trust shall be anticipated, assigned or encumbered, or shall be subject to any creditor's claim or to legal process, of any Beneficiary. Furthermore, because this trust is to be conserved and maintained for the Beneficiary throughout the Beneficiary's life, no part of the corpus thereof, neither principal nor undistributed income, shall be construed as part of the Beneficiary's "estate" or be subject to the claims of voluntary or involuntary creditors for the provision of care and services, including residential care, by any public entity, office, department or agency of the State of Florida, or any other state, or the United States, or any other governmental agency.

ARTICLE 4
CONTRIBUTIONS TO THE TRUST BY A GRANTOR FOR A BENEFICIARY

- 4.1. Grantors' Intent to Establish a Supplemental Fund. In making contributions to the Trust, Grantors do **not** intend to displace any public and/or private financial assistance that may otherwise be available to any Beneficiary. Grantors intend to establish a supplemental fund pursuant to 42 U.S.C. § 1396p(d)(4)(C) and it is Grantors' primary concern that this Trust continue in existence as a supplemental (and emergency) fund for the Beneficiary, throughout each Beneficiary's life.
- 4.2. Irrevocability of Joinder Agreements. Subject to approval by the Trustee, this Trust shall be effective as to a specified Beneficiary upon contribution of property and/or money ("Property") to the Trust and execution of a Joinder Agreement by a Grantor. Upon approval by the Trustee, and delivery of Property that is acceptable to the Trustee, the following provisions apply:
- 4.2.1. the Trust shall be irrevocable as to such Grantor and specified Beneficiary;
- 4.2.2. the contributed Property shall not be refundable to the Grantor under any circumstances; and,

- 4.2.3. the designation of the respective Beneficiary may not be revoked or changed by the Grantor or Trustee.
- 4.3. Effect of Grantor's Contribution. The Trustee may not pay out to or for the benefit of a Beneficiary an amount greater than the total of all Grantor contributions to a Trust sub-account for a particular Beneficiary plus any undistributed income from said contributions.
- 4.4. Future Transfer of Property. At any time or from time to time, a Grantor may transfer, during his or her lifetime or at death, any kind of real or personal property belonging to the Beneficiary to the Trust and the same shall be subject to the terms of this Trust Agreement. The Trustee may refuse to accept any addition if the Trustee deems such rejection to be in the best interest of the Trust and a Beneficiary. Each Grantor retains no reversion or other interest in any Trust property.
- 4.5. Effect of Designation of Future Transfers of Property. In cases of future designations of property, as provided by paragraph 4.4 above, the Trustee will not consider such designations to be completed or effective, nor shall it credit any such property to a particular Beneficiary's Trust sub-account, until such property has been actually transferred and/or delivered to the Trust and accepted by the Trustee.

ARTICLE 5
DISTRIBUTIONS DURING THE BENEFICIARY'S LIFETIME

Subject to the Trustee's sole and absolute discretion, distributions from any of the individual Trust sub-accounts may be made as follows:

- 5.1. Distributions Within Discretion of Trustee. The Trustee may pay or apply for the supplemental care or supplemental needs of a Beneficiary, such amounts from the principal or income, or both, of the Trust sub-account maintained for such Beneficiary, up to the whole thereof, as the Trustee, in its sole and absolute discretion, may from time to time deem necessary, advisable or desirable. The Trustee shall possess and exercise the authority to allocate all distributions between principal and income as it determines in its sole and absolute discretion. Any income not distributed from a Trust sub-account shall be added to the principal of that Trust sub-account.
- 5.2. Distributions Not to Replace Assistance. Distributions from this Trust should not be made to, or for the benefit of, a Beneficiary if the effect of such distribution would be to supplant, replace, or to disqualify a Beneficiary from receiving, government assistance. The Trust principal and income is specifically not available to any Beneficiary except to the extent in the discretion of the Trustee. Generally, distributions should not be made by the Trustee 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. However, such distributions are not specifically prohibited and may be made with the full understanding of how such distributions may affect future benefits. The Trustee may, but is not required to, consider the future needs of a Beneficiary when making distributions or when considering requests for distributions. In the event the Trustee is requested to release principal or income of the Trust or Trust sub-account to or on behalf of the Beneficiary to pay for equipment, medication, or services which a public assistance program would otherwise provide (were it not for the existence of this Trust), or in the event the Trustee is requested to petition the court or any other administrative agency for the release of trust principal or income

for this purpose, the Trustee is authorized to deny such request and is authorized in Trustee's discretion to take whatever administrative or judicial steps may be necessary to continue the Beneficiary's eligibility for public assistance, including obtaining instructions from a court of competent jurisdiction ruling that the Trust corpus and Trust sub-account is not available to the Beneficiary for public assistance eligibility purposes. Any expenses of the Trustee in this regard, including reasonable attorney's fees, shall be a proper charge to the Beneficiary's Trust sub-account.

- 5.3. Non-exclusive Examples of Appropriate Distributions. The following examples illustrate the types of non-support payments that are appropriate for the Trustee to make from a Beneficiary's Trust sub-account to, or for the benefit of, a Beneficiary. Such examples are not exclusive and include:
- 5.3.1. medical, dental, and diagnostic work and treatment for which there are no available private or public funds;
 - 5.3.2. medical procedures that are desirable in the Trustee's sole discretion, even though they may not be medically necessary or life saving;
 - 5.3.3. supplemental nursing care, rehabilitative and/or occupational therapy services;
 - 5.3.4. differentials in cost between housing and shelter for shared and private rooms in institutional settings;
 - 5.3.5. care appropriate for a Beneficiary that assistance programs may not or do not otherwise provide;
 - 5.3.6. expenditures for travel, companionship, and other expenditures that will improve the quality of a Beneficiary's physical, emotional, psychological, and/or spiritual life;
 - 5.3.7. items of a similar nature to those contained in sub-sections 5.3.1 to 5.3.6 above, and such items as may be specified in a Joinder Agreement.

**ARTICLE 6
DISTRIBUTION UPON A BENEFICIARY'S DEATH**

- 6.1 Upon the death of a Beneficiary, any amounts that remain in that Beneficiary's Trust sub-account shall be deemed surplus Trust property and shall be retained by the Trust.
- 6.2 To the extent that any surplus Trust property is not retained by the Trust, such property must be distributed to each and every state in which the Beneficiary received government assistance in the form of Medicaid, to the extent of the total medical assistance paid by all of the states on the Beneficiary's behalf during the Beneficiary's lifetime.

**ARTICLE 7
NON-TERMINATION OF TRUST OR TRUST SUB-ACCOUNTS**

- 7.1. Non-Termination. This Trust may not be terminated during the lifetime of the Beneficiary.
- 7.2. No Refunds to Grantor. No refunds may be made to a Grantor or Beneficiary.

ARTICLE 8
ADMINISTRATIVE PROVISIONS RELATING TO TRUST SUB-ACCOUNTS

- 8.1. Establishment and Maintenance of Trust Sub-accounts. A separate Trust sub-account shall be established and maintained for the sole benefit of each Beneficiary, but the Trustee shall pool these sub-accounts for investment and management purposes. The Trustee, or the Trustee's authorized agents, shall maintain records for each Trust sub-account in the name of, and showing the contributed property for, each Beneficiary.
- 8.2. Reports to the Beneficiaries. The Trustee shall report at least annually to each Beneficiary or to such Beneficiary's legal representative. Such report shall include a complete statement of the Trust sub-account assets and all of the receipts, disbursements and distributions to or from such Trust sub-account occurring during the reporting period.
- 8.3. Inspection of Trust Records by Beneficiary. The Trust sub-account records maintained by the Trustee, along with all Trust records or documentation, shall be available and open at all reasonable times for inspection by the Beneficiary, the legal representative of the Beneficiary, or both. The Trustee shall not be required to furnish Trust records, sub-account records, or documentation to any individual, corporation, or other entity who: a) is not a Beneficiary; b) is not the legal representative of a Beneficiary; or, c) does not have express written authorization of the Beneficiary to receive such information, unless required by law. The Trustee's decision shall be the sole and final determination as to the sufficiency of any and all written authorizations or requests for records and/or documentation.
- 8.4. Costs of Defending Trust. Costs and expenses of defending the Trust, or any Trust sub-account, including attorney's fees incurred prior to, during, or after trial, and on appeal, against any claim, demand, legal action, equitable action, suit, or preceding may, in the sole discretion of the Trustee, be apportioned on a pro rata basis to all Trust sub-accounts; or charged only against the Trust sub-account that is affected by the action defended against.

ARTICLE 9
TRUSTEE PROVISIONS

- 9.1. Employment of Agents and Others. The Trustee may, in performing its duties under this Trust, seek the advice and assistance of any person or entity it deems to be appropriate, including, but not limited to, any federal, state, and/or local agencies that are established to assist people with disabilities. Associated costs, if any, shall be a proper expense of the Trust and may be apportioned on a pro rata basis to all Trust sub-accounts or charged only against the Trust sub-account about which the Trustee seeks such advise or assistance.
- 9.2. Designation of Co-Trustee. The Trustee may designate a Co-Trustee, or Co-Trustees, as it may deem, in its sole and absolute discretion, to be necessary and advisable. Such Co-Trustee's fees shall a reasonable expense of the Trust.
- 9.3. Trustee Identification of Programs. The Trustee shall not be liable to any Beneficiary for the failure to identify all programs or resources that may be available to such Beneficiary or to create

programs when such programs do not exist. Furthermore, the Trustee and Co-Trustee are not responsible for qualifying any Beneficiary for any public assistance programs or for providing legal advice in obtaining such qualification.

- 9.4. Trustee's Powers. The Trustee will serve without bond. Except as may be otherwise provided in this Trust, and for so long as the Trustee is prudent (as provided in Florida Statute § 518.11 and 518.112 and any subsequent amendments to said sections) in administering the Trust, the Trustee shall exercise all powers under any and all Federal and Florida laws that may exist and be applicable to trusts (such as under Florida Statute 736 and any subsequent law), in effect on or after the execution of a Joinder Agreement by a Grantor. The Trustee shall not be bound by Florida Statutes § 738.606 regarding under productive trust property, § 738 regarding the allocation among principal and income and any statutory limitations regarding a Trustee who is also a beneficiary. The Trustee retains the sole discretion of when to post interest, dividends, gains or losses ratably to Trust sub-accounts provided these postings will be on at least an annual basis. Should bond be necessary for any reason whatsoever, such bond shall be a proper expense of the Trust and may either be allocated directly to the Trust sub-account requiring such bond or across all Trust sub-accounts in pro-rata proportions.
- 9.5. Trustee's Acceptance of Beneficiaries. All Beneficiaries must medically meet the definition of disability as that term is defined in 42 U.S.C. § 1382 c (a) (3).
- 9.6. Trustee to Receive Full Consideration for Trust Assets. No authority described in this Trust, or available to trustees pursuant to applicable law, shall be construed to enable the Trustee to purchase, exchange, or otherwise deal with or dispose of the assets of any Trust sub-account for less than adequate or full consideration in money or money's worth.
- 9.7. Trustee Entitled to Reasonable Compensation. The Trustee and any Co-Trustee(s), including their agents, shall be entitled to reasonable compensation and to reimbursement of costs and expenses properly incurred in the management and/or administration of the Trust. All such compensation and reimbursements shall be pursuant a schedule of fees and charges as specified in each Beneficiary's Joinder Agreement.
- 9.8. Trustee Resignation; Successor Trustees. The Trustee may resign upon written notice to the Beneficiaries and to the Co-trustee(s), if the Trustee has named any Co-trustee(s), at the time of the Trustee's resignation. Upon any such resignation, the Trustee shall designate a successor Trustee. A successor Trustee shall assume its duties under this Trust without any liability for the acts or omissions of any predecessor Trustee. The provisions of this paragraph shall also control if the Trustee ceases to exist, if dissolved, or can no longer serve as Trustee for any other reason. In conjunction with any action taken under this paragraph, a final accounting shall be made by the Trustees to the Beneficiaries and to the Co-trustee(s), if any.
- 9.9. Indemnification of Trustee. The Trustee and each Co-Trustee, their agents and employees, including the heirs, successors, assigns, and personal representatives of its agents, are hereby indemnified by the Trust and the Trust property against all claims, liabilities, fines, or penalties, and against all costs and expenses, including attorney's fees and disbursements and the cost of reasonable settlements, imposed upon, asserted against or reasonably incurred thereby in

connection with or arising out of any claim, demand, action, suit, or proceeding in which he, she, or it may be involved by reason of being or having been a Trustee or affiliated with a Trustee as set forth above, whether or not he, she, or it shall have continued to serve as such at the time of incurring such claims, liabilities, fines, penalties, costs, or expenses or at the time of being subjected to the same. However, the Trustee and each of its Co-trustees, agents and employees, including their heirs, successors, assigns, and personal representatives of its agents, shall not be indemnified with respect to actual fraud, gross negligence or willful misconduct. This right of indemnification shall not be exclusive of, or prejudicial to, other rights to which the Trustee and each of its Co-trustees, agents and employees, including the heirs, successors, assigns, and personal representatives of its agents, may be entitled as a matter of law or otherwise.

ARTICLE 10 GENERAL PROVISIONS

- 10.1. Waiver of Bond. No Trustee acting under this Agreement shall be required to give any bond or security in any court or jurisdiction for acting hereunder. If bond is required by any law or court of competent jurisdiction, no surety shall be required on such bond, and such bond shall be an expense of the Trust.
- 10.2. Jurisdiction. This Trust shall be administered expeditiously consistent with its terms, free of any judicial intervention and without order, approval or other action by any court, subject only to the jurisdiction of a court which is invoked by the Trustee or other interested party or as otherwise provided by law.
- 10.3. Law to Govern. This Trust Agreement and the trusts created hereby shall be construed, regulated and governed by and in accordance with the laws of the State of Florida and of the United States of America.
- 10.4. Severability and Savings. The invalidity or unenforceability of any provision of this Agreement, or the application thereof to any person or circumstance, in any jurisdiction shall in no way impair, affect or prejudice the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of this Agreement, including that provision, or the application thereof to other persons and circumstances, in any other jurisdiction. Additionally, if any provision of this Trust disqualifies a Beneficiary for government assistance, the offending provision may be voided to avoid such disqualification. Any language of this Trust that, at any time, causes this Trust to not qualify as a Trust under 42 U.S.C. 1396p(d)(4)(C) shall be considered void and the remainder of the Trust would continue undisturbed.
- 10.5. Gender and Number. Whenever necessary or appropriate, the use herein of any gender shall be deemed to include the other genders and the use herein of either the singular or the plural shall be deemed to include the other.
- 10.6. Headings. The headings, titles and subtitles herein are inserted solely for convenient reference and shall be ignored in any construction hereof.

IN WITNESS THEREOF, the undersigned hereby subscribes to the above Declaration of Trust on the date and year first written above as Settlor and Trustee.

WITNESSES:

[Handwritten Signature]

Jennifer Ruiz
Printed Name

[Handwritten Signature]

Madison Orr
Printed Name

NATIONAL NON-PROFIT FOR AMERICANS WITH DISABILITIES, INC.

By: [Handwritten Signature]
Larry R. Poteet, Its President

STATE OF FLORIDA))
COUNTY OF PINELLAS))

The foregoing Declaration was acknowledged before me on January 25, 2011 by Larry R. Poteet, President of National Non-Profit for Americans With Disabilities, Inc. who is personally known to be or who produced _____ as identification.

[Handwritten Signature]
Notary

