

# **The Disability Foundation, Inc. Third Party Pooled Flexible Spending Trust**

## **Article One Establishing the Trust**

The effective date of this Trust Agreement (“this Agreement”) is May 10, 2021.

This Trust is hereby created by and between The Disability Foundation, Inc., an Ohio non-profit corporation, (the “Settlor” and “The Distribution Trustee”) and Key Bank National Association, an Ohio corporation (the “Investment Trustee”). The Distribution Trustee and Investment Trustee may collectively be referred to as the “Joint Trustees.” The Settlor hereby establishes and will manage the Trust, within the meaning of Ohio Revised Code Section 5163.21(G), as follows:

### **Section 1.01 Establishment of Trust.**

The Settlor has entered into this Agreement with the Joint Trustees to establish a trust to be administered as a pooled trust, pursuant to the Collective Investment Fund Law, 12 C.F.R. Section 9.18, as amended. The purpose of this trust is to provide any individual or other entity the ability to transfer property to the Distribution Trustee in accordance with an executed and accepted Account Agreement, to provide use of the property so transferred for the Supplemental Needs of the Individual with Disabilities. It is the Settlor’s intent to create a Supplemental Needs Trust that conforms to Ohio law.

The further purposes of this trust are to promote the general wellbeing of Individuals with Disabilities by providing for their Supplemental Needs. The trust assets shall be used to supplement, not supplant, impair or diminish, any benefits or assistance of any federal, state, county, city, or other governmental entity for which an Individual with Disabilities may otherwise be eligible or which an Individual with Disabilities may be receiving. This trust shall also enable the Distribution Trustee to promote and administer Disability Programs and Services. The Joint Trustees must interpret all provisions of this trust to best effectuate these purposes and intentions.

### **Section 1.02 Name of Trust.**

This trust shall be referred to as The Disability Foundation, Inc. Third Party Flexible Spending Pooled Trust. Each Account created hereunder shall be known separately as the “Disability Foundation, Inc. Third Party Pooled Flexible Spending Trust for the benefit of [Name of Beneficiary], [Agreement Number].”

### **Section 1.03 Acceptance of Property**

The Distribution Trustee may, but is not required, to accept property from any individual or other entity (“Donor”) upon completion of an Account Agreement, to be used and administered for the benefit of an Individual with Disabilities as provided in this Agreement. An Account for each such Individual with Disabilities shall be established as provided in this Agreement. Each Account shall be evidenced by an Account Agreement entered into by the Distribution Trustee and the Donor.

Each Account is intended to be a trust created by another person with assets or property in which the Person with Disabilities never held an ownership interest, pursuant to O.R.C. §5163.21(G) and will be administered as a pooled trust in accordance with the Collective Investment Fund Law, 12 C.F.R. §9.18, as amended. The Distribution Trustee may hold in a pooled account all property that becomes an asset of any trust established pursuant to this Agreement and each separate account that is part of that trust.

## **Article Two**

### **Establishment and Use of Separate Accounts**

#### **Section 2.01 The Distribution Trustee's Role**

The Distribution Trustee, in cooperation with the Investment Trustee, shall establish a separate Account for each Individual with Disabilities for whose benefit property is transferred to the Distribution Trustee pursuant to an Account Agreement. The Distribution Trustee shall use each Account established for an Individual with Disabilities as explained in the Sections that follow.

#### **Section 2.02 Use of Account During the Lifetime of the Individual with Disabilities**

Until the termination of the Account for the Individual with Disabilities as provided in Section 2.03 of this Agreement, the Distribution Trustee shall use the income and principal of the Account established for the Individual with Disabilities solely for the Supplemental Needs of the Individual with Disabilities. If there is a Personal Representative for the Individual with Disabilities, then the Distribution Trustee shall consult with the Personal Representative as to the Supplemental Needs of the Individual with Disabilities. If there is no Personal Representative for the Individual with Disabilities, then the Distribution Trustee shall consult with the Individual with Disabilities as to his or her Supplemental Needs. The Distribution Trustee's decision as to the use of any income or principal of an Account for the Supplemental Needs of the Individual with Disabilities shall in all events be made as the Distribution Trustee may deem advisable, in the Distribution Trustee's sole and absolute discretion. The Joint Trustees shall not be liable in any manner with respect to any decision as to the use of any income or principal for the Supplemental Needs of any Individual with Disabilities.

#### **Section 2.03 Distribution of Account Following the Death of the Individual with Disabilities.**

Upon the death of the Individual with Disabilities, the Distribution Trustee shall distribute the remaining property attributable to the Account of the Individual with Disabilities pursuant to the terms of the Individual with Disabilities' Account Agreement.

## **Article Three**

### **Trustee Succession Provisions**

#### **Section 3.01 Successor Trustees**

If Key Bank National Association, or any successor Investment Trustee, shall resign or for any other reason cease to serve as the Investment Trustee, then a successor designated by the Settlor

shall, upon acceptance of the trust, serve as the Investment Trustee. If The Disability Foundation, Inc. resigns or for any other reason ceases to serve as the Distribution Trustee, then before the effective date of such cessation, The Disability Foundation, Inc. shall appoint a Qualified Sponsor as the successor Distribution Trustee.

Except as provided above, if the last named person or entity serving as Investment Trustee or Distribution Trustee resigns or for any other reason ceases to serve, and no successor is appointed, then the Judge of the Montgomery County Court of Common Pleas, Probate Division, shall appoint a financial institution or trust company organized under the laws of the United States or any state thereof to serve in the vacant Trustee role. The Judge appointing such successor shall be entitled to full immunity associated with his or her judicial status with respect to such appointment.

### **Section 3.02 Removal of Trustees**

The Settlor shall have the right at any time to remove any trustee serving or designated to serve as the Investment Trustee or Distribution Trustee.

### **Section 3.03 Exercise of Appointment or Removal Right**

The right provided in the preceding provisions of this Section to designate a successor Investment Trustee or Distribution Trustee shall be effected by delivering (i) written notice of such designation, and (ii) written acceptance thereof signed by the designee.

### **Section 3.04 Merger or Consolidation of a Trustee**

If any financial institution or trust company serving as Investment Trustee, by sale, merger, consolidation, reorganization or otherwise, is merged or consolidated with any other financial institution or trust company authorized to do a trust business in a state in the United States, the merged or consolidated financial institution or trust company resulting therefrom shall serve as such Investment Trustee.

### **Section 3.05 Resignation of a Trustee**

Any Investment Trustee or Distribution Trustee may resign by giving written notice prior to the effective date thereof to each other trustee then serving and to the Settlor. Such notice may be waived by the person or persons entitled to such notice.

### **Section 3.06 Rights of Successor Trustees**

Each successor Investment Trustee or Distribution Trustee serving under this agreement, whether corporate or individual, has all of the title, rights, powers and privileges granted to the initial Investment Trustee or Distribution Trustee named under this agreement. In addition, each successor Investment Trustee or Distribution Trustee is subject to all of the restrictions imposed upon, as well as all obligations and duties, both discretionary and ministerial, given to the initial Investment Trustee or Distribution Trustee.

## **Article Four**

### **Distributions During the Lifetime of the Individual with Disabilities**

#### **Section 4.01 Distributions of Income and Principal**

The Distribution Trustee may distribute to, or use for the benefit of, the Individual with Disabilities the net income or principal of this trust in such amounts and at such times as the Distribution Trustee may determine in its sole, absolute, uncontrolled and unreviewable discretion. The Distribution Trustee may choose to make no distributions whatsoever. The Individual with Disabilities has no power to withdraw any income or principal, or to demand or compel any distributions from this trust. This trust is intended to be a wholly discretionary trust under Ohio law.

Without limitation to the generality of the foregoing, the Distribution Trustee shall have the power to direct the Investment Trustee to pay such amount, even though such Individual with Disabilities is a minor or is otherwise incompetent, (i) directly to such Individual with Disabilities, without the intervention of any natural or legal guardian or the Personal Representative of such Individual with Disabilities; (ii) directly in payment or expenses incurred by or for such Individual with Disabilities; and/or (iii) for the legal guardian or custodian. The Joint Trustees shall not be accountable for, or under any obligation to see to, the application of any payment so made, and the receipt of the recipient of any such payment shall fully and completely discharge the Trustees for the amount so paid even though such recipient is a minor or is otherwise incompetent. An Individual with Disabilities shall not have the right or power to assign, anticipate, alienate or otherwise transfer any right or interest in any Account Agreement.

The Distribution Trustee will collect income and, after deducting all charges and expenses attributed thereto, may apply for an Individual with Disabilities' benefit, in-kind, or in cash, so much of the income and principal (even to the extent of the whole) of the Individual with Disabilities' Account as the Distribution Trustee deems advisable in the Distribution Trustee's sole, absolute, and uncontrolled discretion, subject to the limitations set forth below. The Distribution Trustee must add the balance of net income not paid or applied to the principal of the Individual with Disabilities' Account.

#### **(a) No Discretionary Standards**

For purposes of this trust, the word "discretion" shall in all instances mean our Distribution Trustee's sole, absolute, uncontrolled and unreviewable discretion. Notwithstanding anything in this Section or in any other part of this trust agreement to the contrary, no term or provision shall impose, or be construed to impose, any standards to guide our Distribution Trustee in exercising its discretion with respect to distributions. No term or provision of this trust, and no person, entity or court, shall restrict, direct or otherwise alter the complete discretion of the Distribution Trustee in making or refusing to make distributions from this trust.

#### **(b) Maximize Benefits**

Consistent with the trust's purpose, before expending any amounts from the net income and/or principal of this trust, the Distribution Trustee must consider the



availability of all benefits from government or private assistance programs that the Individual with Disabilities is receiving.

**(c) No Reduction in Benefits**

None of the income or principal of this trust may be applied in such a manner as to supplant, impair or diminish any governmental benefits or assistance that an Individual with Disabilities is receiving.

**(d) Qualified ABLE Account Contributions**

The Distribution Trustee may contribute funds from the trust to a qualified ABLE account under Section 529A of the Internal Revenue Code on the Individual with Disability's behalf. All such contributions must be made in cash and may not cause the annual aggregate contribution limit (from all contributors) imposed by Section 529A(b)(2)(B) to be exceeded, and may not cause the aggregate excess contribution limit imposed by Section 529A(b)(6) to be exceeded. The Distribution Trustee has no duty to monitor, supervise, or review, nor has any liability for, the ABLE account or the application of the ABLE account funds.

**(e) No Assignment**

Under no circumstances may an Individual with Disabilities have the power to assign, encumber, direct, distribute or authorize distributions from this trust.

**(f) Distributions for an Individual with Disabilities' Benefit**

When making distributions for the benefit of an Individual with Disabilities, the Distribution Trustee is not required to take into consideration the interests of the remainder beneficiaries. In the Distribution Trustee's sole, absolute, and uncontrolled discretion, the entire trust corpus of the Individual with Disabilities' Account may be consumed for the benefit of the Individual with Disabilities, to the exclusion of the remainder beneficiaries.

**(g) Supplemental Needs Trust Savings Clause**

Notwithstanding the provisions of any Article herein to the contrary, in the event that this trust is challenged or faces imminent invasion by any governmental department or agency in such a way as to affect an Individual with Disabilities' eligibility for benefits available under any governmental program, the Settlor is empowered to amend this trust so as to maintain an Individual with Disabilities' eligibility for benefits under such governmental program.

**Section 4.02 Common Funds**

Although a separate Account is to be established for each Individual with Disabilities, the Joint Trustee shall not be required to make an actual physical division of trust property (except insofar as the Joint Trustees may deem to be necessary or desirable), but may hold, administer and invest all or any part of the trust property in one or more common funds, and in such event the Investment Trustee shall assign the appropriate interest in any such common fund to each separate Account from which property has been allocated to such common fund. In addition to the other powers with respect to the investment of the trust property granted to the Investment Trustee in Article Eight, the Trustee shall also have power, without order, decree, direction or other action of any

court, to invest all or any part of any of the property of the trust created under this Agreement in participation in any common trust fund or funds established and maintained by the Investment Trustee for the collective investment of property held by the Investment Trustee (with or without a co-fiduciary or fiduciaries), and any statute or rule of law now or hereafter in effect to the contrary notwithstanding, the Investment Trustee shall not be required to give any notice to any person prior to making any such investment.

#### **Section 4.03 No Seeking of Order to Distribute**

Under no circumstances may trust principal be subject to any court-directed invasion pursuant to the laws of the State of Ohio or any other state.

For purposes of determining an Individual with Disabilities' eligibility for any service provided under Ohio's Medicaid program, no part of the principal or undistributed income of this trust will be considered available to the Individual with Disabilities.

The Distribution Trustee may, in the Distribution Trustee's sole, absolute, and uncontrolled discretion, take necessary administrative or legal steps to protect an Individual with Disabilities' eligibility for any service provided under Ohio's Medicaid program or under any Medicaid programs in other states, including obtaining a ruling from a court of competent jurisdiction that the trust principal is not available to an Individual with Disabilities for purposes of determining such eligibility. Expenses for this purpose, including reasonable attorney fees, will be a proper charge to the trust.

#### **Section 4.04 Commingling of Property Prohibited**

Under no circumstances may an Individual with Disabilities have any ownership interest whatsoever in the assets of this trust. Therefore, the Joint Trustees may not permit an Individual with Disabilities to commingle funds not belonging to the trust with trust property. Specifically, the Joint Trustees may not accept or commingle any earnings or public benefits payable to an Individual with Disabilities. Under no circumstances may a representative payee for an Individual with Disabilities' Supplemental Security Income, or other benefits administered by the Social Security Administration, cause those funds to be commingled with this trust.

No property interests assigned, conveyed, or delivered to the Joint Trustees in which an Individual with Disabilities has any vested ownership interest may be accepted by the Joint Trustees. This includes, but is not limited to, any public benefits of an Individual with Disabilities, inheritances where an Individual with Disabilities has gained a vested ownership interest prior to transfer to this trust, property directed to this trust by means of a disclaimer exercised by an Individual with Disabilities, proceeds from a custodial account for the benefit of an Individual with Disabilities, or assets from a conservatorship or guardianship account of an Individual with Disabilities.

## **Article Five**

### **Provisions in the Event of Changed Circumstances**

#### **Section 5.01 Discretionary Distributions if Existence of Trust Renders an Individual with Disabilities Ineligible for Benefits**

Notwithstanding anything to the contrary contained in the other provisions of this trust, in the event the existence of this trust has the effect of rendering an Individual with Disabilities ineligible for Social Security Disability payments (SSDI), Medicaid benefits, including but not limited to any and all benefits administered by the Ohio Department of Job and Family Services or the Ohio Department of Medicaid, Supplemental Security Income (SSI), or any other program of public benefits, the Distribution Trustee is authorized, but not required, in its sole, absolute, and uncontrolled discretion to purchase assets or services which are considered “exempt assets” for purposes of determining eligibility for those benefits and distribute those assets to the Individual with Disabilities.

In determining whether the existence of this trust has the effect of rendering an Individual with Disabilities ineligible for any of the above listed programs, the Distribution Trustee is hereby granted sole, absolute, and uncontrolled discretion, but not the obligation, to initiate either administrative or judicial proceedings, or both, for the purpose of determining eligibility. All costs relating thereto, including reasonable attorney’s fees, will be a proper charge to the trust.

## **Article Six**

### **Administration of An Account Upon the Death of The Individual with Disabilities**

Upon the death of an Individual with Disabilities, all of the trust property in the Individual with Disabilities’ Account that was not previously distributed pursuant to prior Articles of this trust will be administered as provided in this Article.

#### **Section 6.01 Reimbursement Prohibited**

The Distribution Trustee may not make payments for expenses incurred prior to the Individual with Disabilities’ death if the Distribution Trustee determines, in the Distribution Trustee’s sole, absolute, and uncontrolled discretion, that the payments are the obligation of any county, state, federal or other governmental agency that has a legal responsibility to serve persons with disabilities that are the same as or similar to the deceased Individual with Disabilities.

#### **Section 6.02 Distribution of Remaining Trust Property**

The Distribution Trustee will distribute the remaining trust property pursuant to the terms of the Account Agreement that was signed at the time the Account was established for the deceased Individual with Disabilities.

## **Article Seven**

### **Trust Administration**

#### **Section 7.01 Distributions to Beneficiaries**

Whenever this agreement authorizes or directs the Distribution Trustee to make a distribution of net income or principal to a beneficiary, the Distribution Trustee may apply for the benefit of the beneficiary any property that otherwise could be distributed directly to the beneficiary. The Distribution Trustee shall have no responsibility to inquire into the beneficiary's ultimate disposition of the distributed property unless specifically directed otherwise by this agreement.

The Distribution Trustee may make distributions in cash or in kind, or partly in each, in proportions and at values determined by The Distribution Trustee. The Distribution Trustee may allocate undivided interests in specific assets to a beneficiary or trust in any proportion or manner that the Distribution Trustee determines, even though the property allocated to one beneficiary may be different from that allocated to another beneficiary.

The Distribution Trustee may make these determinations without regard to the income tax attributes of the property and without the consent of any beneficiary.

#### **Section 7.02 No Bond**

No Investment Trustee or Distribution Trustee is required to furnish any bond for the faithful performance of the Joint Trustees' duties, unless required by a court of competent jurisdiction and only if the court finds that a bond is needed to protect the interests of the beneficiaries. No surety will be required on any bond required by any law or rule of court, unless the court specifies that a surety is necessary.

#### **Section 7.03 Exoneration of Trustee**

No successor Investment Trustee or Distribution Trustee is obligated to examine the accounts, records or actions of any previous Investment Trustee or Distribution Trustee. No successor Investment Trustee or Distribution Trustee shall be in any way or manner responsible for any act, omission, or forbearance on the part of any previous Investment Trustee or Distribution Trustee. Unless an Investment Trustee or Distribution Trustee has received notice of removal, the Investment Trustee or Distribution Trustee shall not be liable to us or to any beneficiary for the consequences of any action taken that would have been, but for the prior removal of the Investment Trustee or Distribution Trustee, a proper exercise by the Investment Trustee or Distribution Trustee of the authority granted to the Investment Trustee or Distribution Trustee under this agreement. Absent bad faith on the part of either of the Joint Trustees, the Joint Trustees are exonerated from any and all liability for the acts, omissions, and forbearances of the Joint Trustees.

Either or both of the Joint Trustees may request and obtain from the beneficiaries, or from their legal representatives, agreements in writing releasing the Joint Trustees from any liability that may have arisen from the Joint Trustees' acts, omissions, and forbearances, and indemnifying the Joint Trustees from liability for the acts, omissions, and forbearances. An agreement described in this paragraph, if acquired from beneficiaries of the trust or from their legal representatives, shall be conclusive and binding upon all parties, born or unborn, who may have, or may in the future acquire, an interest in the trust.

The Distribution Trustee may require a refunding agreement before making any distribution or allocation of trust income or principal and may withhold distribution or allocation pending determination or release of a tax lien or other lien.

#### **Section 7.04 Trustee Compensation**

Each Joint Trustee may receive in each year a reasonable fee for the services rendered by such Joint Trustees under this Agreement, and the Joint Trustees shall have the right to pay such fee from the trust property. Fees attributable to individual Accounts may be directly debited and paid from such Accounts.

#### **Section 7.05 Employment of Professionals**

The Joint Trustees may appoint, employ, and remove, at any time and from time to time, investment advisors, accountants, auditors, depositories, custodians, brokers, consultants, attorneys, expert advisers, agents, and employees to advise or assist the Joint Trustees in the performance of its duties. The Joint Trustees may act upon the recommendations of the persons or entities employed with or without independent investigation.

The Joint Trustees may reasonably compensate an individual or entity employed to assist or advise the Joint Trustees, regardless of whether the person or entity shall be an Investment Trustee or Distribution Trustee of a trust established under this agreement or a corporate affiliate of an Investment Trustee or Distribution Trustee, and regardless of whether the entity shall be one in which an Investment Trustee or Distribution Trustee of a trust created under this agreement is a partner, member, stockholder, officer, director or corporate affiliate, or has any other interest.

The Joint Trustees may pay the usual compensation for services contracted for under this Section out of principal or income of the trust as the Joint Trustee may deem advisable. The Joint Trustees may pay compensation to an individual or entity employed to assist or advise the Joint Trustees without diminution of or charging the same against the compensation to which the Joint Trustees are entitled under this agreement. Any Investment Trustee or Distribution Trustee who shall be a partner, stockholder, officer, director or corporate affiliate in any entity employed to assist or advise the Joint Trustee shall nonetheless receive the Investment Trustee's Distribution Trustee's share of the compensation paid to the entity.

#### **Section 7.06 Determination of Principal and Income**

The provisions of Ohio Uniform Principal and Income Act shall govern beneficiaries' rights among themselves in matters concerning principal and income. If Ohio Uniform Principal and Income Act contains no provision concerning a particular item, the Investment Trustee shall determine in a fair, equitable, and practical manner what shall be credited, charged, and apportioned between principal and income.

Notwithstanding the above, in no event may the Investment Trustee adjust between income and principal if such adjustment would cause any public benefit program to consider the adjusted principal or income to be an available resource or available income, or if such adjustment would otherwise supplant any governmental benefit that a beneficiary is entitled to receive.

### **Section 7.07 Trust Accounting**

The Joint Trustees shall not be required to make any returns or render any accounting to any court while acting hereunder, nor to secure any orders therefrom or file any appraisals or inventories therewith, but shall (i) within 90 days after the Settlor's or the State's written request, and/or (ii) otherwise at such intervals as the Joint Trustees may deem desirable, render an accounting with respect to the trust (covering the period from the date of the next preceding account) to the Settlor. No Individual with Disabilities or any other person shall have the right to require the Joint Trustees to render an accounting of the trust except as otherwise required by law. Notwithstanding the preceding, the Distribution Trustee shall, within 90 days after an Individual with Disabilities makes a written request, render to the Individual with Disabilities or such Personal Representative, as the case may be, an accounting of the amount(s) held by the Joint Trustees and/or distributed by the Distribution Trustee for such Individual with Disabilities' Account, covering the period from the date of the preceding accounting.

The written acceptance of an accounting rendered by the Joint Trustees in accordance with the provisions of the preceding paragraph by all of the persons to whom such accounting is to be rendered under said provisions, shall fully and completely release and discharge the Joint Trustees from any liability or accountability to anyone with respect to the propriety of the acts and transactions reflected in such accounting. If such written acceptance is not made by all of such persons, then upon the expiration of 90 days after the rendering of any such accounting, the Joint Trustees shall be forever released or discharged from any liability or accountability to anyone with respect to the propriety of the transaction and actions reflected in such accounting, except with respect to any such transaction or act as to which any of the persons to whom such accounting is to be rendered shall have filed written exceptions with the Joint Trustees within such 90 day period.

If the person or persons entitled to notice of any accounting by the Joint Trustees fail, without exception, to approve an accounting of the Joint Trustees as provided above, the Joint Trustee shall have the right to a judicial settlement of the Joint Trustees' account in an action instituted by the Joint Trustees in any court of competent jurisdiction, and in any such proceeding, the person or persons entitled to such notice and the Joint Trustees shall be the property parties and any such settlement shall be binding upon all persons having any interest in the trust.

### **Section 7.08 Merger of Corporate Fiduciary**

If any corporate fiduciary acting as the Investment Trustee or Distribution Trustee under this agreement is merged with or transfers substantially all of its trust assets to another corporation, or if a corporate fiduciary changes its name, the successor shall automatically succeed to the trusteeship as if originally named as the Investment Trustee or Distribution Trustee. No document of acceptance of trusteeship shall be required.

### **Section 7.09 A Beneficiary's Status**

Until the Distribution Trustee receives notice of the incapacity, birth, death or other event upon which a beneficiary's right to receive payments may depend, the Distribution Trustee shall not be liable for acting or failing to act with respect to the event or for disbursements made in good faith to persons whose interest may have been affected by such event. Unless otherwise provided in this agreement, the parent or legal representative may act on behalf of a beneficiary who is a minor or is incapacitated.

The Joint Trustees may rely on any information provided by a beneficiary with respect to the beneficiary's assets and income. The Joint Trustees shall have no independent duty to investigate the status of any beneficiary and shall not incur any liability for failure to do so.

### **Section 7.10 Discharge of Third Persons**

Persons dealing in good faith with the Joint Trustees shall not be required to see to the proper application of money paid or property delivered to the Joint Trustees, or to inquire into the authority of the Joint Trustees as to any transaction. The receipt from the Joint Trustees for any money or property paid, transferred or delivered to the Joint Trustees shall be a sufficient discharge to the person or persons paying, transferring or delivering the money or property from all liability in connection with its application.

### **Section 7.11 Certificate by Trustee**

A written statement of the Joint Trustees may always be relied upon by, and shall always be conclusive evidence in favor of, any transfer agent or any other person dealing in good faith with the Joint Trustees in reliance upon the statement.

### **Section 7.12 Funeral and Other Expenses of a Beneficiary**

Subject to the provisions of Section 6.01 and any specific written instructions in the Account Agreement for an Account, the Distribution Trustee may pay the funeral expenses, burial or cremation expenses, enforceable debts and other expenses incurred due to the death of the beneficiary from trust property.

The Distribution Trustee may rely upon any request by the personal representative or members of the family of the deceased beneficiary for payment without verifying the validity or the amounts and without being required to see to the application of the amounts so paid. The Distribution Trustee may make decisions under this Section without regard to any limitation on payment of expenses imposed by statute or rule of court and may be made without obtaining the approval of any court having jurisdiction over the administration of the deceased beneficiary's estate.

## **Article Eight The Trustees' Powers**

### **Section 8.01 Introduction to Trustees' Powers**

Except as otherwise specifically provided in this agreement, the Joint Trustees may exercise, without prior approval from any court, all the powers conferred by this agreement and any other powers conferred by law, including, without limitation, those powers set forth under the common law or statutory law of the State of Ohio or any other jurisdiction whose law applies to this trust. The powers conferred upon the respective Joint Trustees by law are subject to any express limitations or contrary directions contained in this agreement.

The Joint Trustees will exercise these powers in the manner each of the Joint Trustees determines to be the best interests of the beneficiaries. The Joint Trustees may not exercise any of the powers in a manner that is inconsistent with the right of the beneficiaries to the beneficial enjoyment of the trust property in accordance with the general principles of the law of trusts.

The Joint Trustees may have duties and responsibilities in addition to those described in this agreement.

The Joint Trustees shall exercise the powers and discretions granted to the Joint Trustees under this Agreement in the manner required to preserve the status of the trust as a Pooled Trust.

### **Section 8.02 Exercise of Investment Trustee's Powers**

All of the powers and discretions vested in the Investment Trustee under this Agreement shall be exercised in the Investment Trustee's unrestricted discretion, in the manner provided under this Agreement. The Investment Trustee may from time to time make a written delegation of such part or all of the powers and discretions so vested in the Investment Trustee to the Distribution Trustee and the Distribution Trustee, upon acceptance of such written delegation, shall be vested with the powers and discretions so delegated.

### **Section 8.03 Exercise of Distribution Trustee's Powers**

The Distribution Trustee shall have the power and discretion to (i) accept and enter into an Account Agreement with a Donor for the establishment of an Account within this Trust, (ii) direct the Investment Trustee as to the distribution of any funds in an Account of an Individual with Disabilities for his or her Supplemental Needs, (iii) direct the Investment Trustee as to the distribution of any funds remaining in the Account of an Individual with Disabilities following his or her death, and (iv) exercise those powers and discretions which the Investment Trustee has delegated to the Distribution Trustee as provided in Section 8.02. All of the powers and discretions vested in the Distribution Trustee shall be exercised in the Distribution Trustee's unrestricted discretion. The Distribution Trustee shall from time to time designate one or more individuals to serve as members of the Distribution Committee, and may at any time remove any individual serving as a member of the Distribution Committee. The Distribution Trustee may further designate one or more members of the Distribution Committee with all of the Distribution Trustee's powers and discretions under this Agreement with respect to the determination of the use and distribution of any Amount for an Individual with Disabilities for the purposes stated in Section 2.02 of this Agreement.

### **Section 8.04 Designation of Investment Managers**

The Investment Trustee shall have the right to designate (and remove), one or more investment managers who is registered under the Investment Advisors Act of 1940 or who is a financial institution or trust company to direct or act for the Investment Trustee, on a discretionary or nondiscretionary basis, with respect to all of the powers, rights, and investment discretions contained in Article 8 of this Agreement with respect to those assets placed under the control and/or discretion of such investment manager. The investment manager shall receive from the trust reasonable compensation for the services of the investment manager.

### **Section 8.05 No Power to Elect Optional Unitrust**

Notwithstanding any provision of this Trust or state law to the contrary, the Joint Trustees may not elect to apply the optional unitrust provisions under Ohio law for any trust created hereunder.



### **Section 8.06 Execution of Documents by Trustee**

The Joint Trustees may execute and deliver any and all instruments in writing that the Joint Trustees consider necessary to carry out any of the powers granted in this agreement.

### **Section 8.07 Investment Powers in General**

The Investment Trustee may invest in any type of investment that the Investment Trustee determines is consistent with the investment goals of the trust, whether inside or outside the geographic borders of the United States of America and its possessions or territories, taking into account the trust's overall investment portfolio.

Without limiting the Investment Trustee's investment authority in any way, the Settlor requests that the Investment Trustee exercise reasonable care and skill in selecting and retaining trust investments. The Settlor also requests that the Investment Trustee take into account the following factors in choosing investments for the trust:

- (i) the potential return from the investment, both in the form of income and appreciation;
- (ii) the potential income tax consequences of the investment;
- (iii) the investment's potential for volatility; and
- (iv) the role the investment will play in the trust's portfolio.

The Settlor requests that the Investment Trustee, in arranging the investment portfolio of the trust, also consider the possible effects of inflation or deflation, changes in global and U.S. economic conditions, transaction expenses, and the trust's need for liquidity.

The Investment Trustee may delegate its discretion to manage trust investments to any registered investment adviser or corporate fiduciary.

### **Section 8.08 Banking Powers**

The Investment Trustee may establish bank accounts of any type in one or more banking institutions that the Investment Trustee may choose. The Investment Trustee may open accounts in the name of the Investment Trustee (disclosing fiduciary capacity) or in the name of the trust. When an account is in the name of the trust, checks on that account and authorized signatures must disclose the fiduciary nature of the account or refer to the trust or either of the Joint Trustees.

An account from which frequent disbursements are made need not be an interest bearing account. The Distribution Trustee may authorize withdrawals from an account by check, draft or other instrument, or in any other manner.

### **Section 8.09 Contract Powers**

The Joint Trustees may sell at public or private sale, transfer, exchange for other property, and otherwise dispose of trust property for consideration and upon terms and conditions that the Joint Trustees deem advisable. The Joint Trustees may grant options of any duration for any such sales, exchanges, or transfers of trust property.

The Joint Trustees may enter into contracts, and may deliver deeds or other instruments, that the Joint Trustees deem appropriate.

### **Section 8.10 Common Investments**

For purposes of convenience with regard to the administration and investment of the trust property, the Investment Trustee may invest part or all of the trust property jointly with trust property of other trusts for which the Investment Trustee is also serving as a trustee, as provided herein. For this purpose, a corporate fiduciary acting as the Investment Trustee may use common funds for investment.

When trust property is managed and invested in this manner, the Investment Trustee must maintain records that sufficiently identify that portion of the jointly invested assets that constitute the trust property of this trust.

### **Section 8.11 Payment of Taxes and Expenses**

Except as otherwise provided in this agreement, the Distribution Trustee is authorized to pay all taxes, assessments, fees, charges, and other expenses incurred in the administration or protection of the trust. All payments will be a charge against the trust property and paid by the Distribution Trustee out of the income, or to the extent that the income is insufficient, then out of the principal of the trust property. The determination of the Distribution Trustee with respect to the payment of expenses is conclusive upon the beneficiaries.

### **Section 8.12 Retention and Abandonment of Trust Property**

The Investment Trustee may retain, without liability for depreciation or loss resulting from retention, any property constituting the trust at the time of its creation, at the time of the death of the Individual with Disabilities, or as the result of the exercise of a stock option. The Investment Trustee may retain property, notwithstanding the fact that the property may not be of the character prescribed by law for the investment of assets held by a fiduciary, and notwithstanding the fact that retention may result in inadequate diversification under any applicable Prudent Investor Act or other applicable law.

The Investment Trustee may hold property that is non-income producing or is otherwise nonproductive if holding the property is, in the sole, absolute, and uncontrolled discretion of the Joint Trustees, in the best interests of the beneficiaries. On the other hand, the Investment Trustee must invest contributions of cash and cash equivalents as soon as reasonably practical after the assets have been acquired by the trust. The Investment Trustee is permitted to retain a reasonable amount in cash or money market accounts in order to pay anticipated expenses and other costs and to provide for anticipated distributions to or for the benefit of a beneficiary.

The Joint Trustees may abandon any trust property that the Joint Trustees deem to be of insignificant value.

### **Section 8.13 Securities, Brokerage and Margin Powers**

The Investment Trustee may buy, sell, trade and otherwise deal in stocks, bonds, investment companies, mutual funds, common trust funds, commodities, options and other securities of any kind and in any amount, including short sales. The Investment Trustee may write and purchase call or put options, and other derivative securities. The Investment Trustee may maintain margin accounts with brokerage firms and may pledge securities to secure loans and advances made to the Investment Trustee or to or for the benefit of a beneficiary.

The Investment Trustee may place all or any part of the securities held by the trust in the custody of a bank or trust company. The Investment Trustee may have all securities registered in the name of the bank or trust company or in the name of its nominee. The Investment Trustee may appoint the bank or trust company as the agent or attorney in fact to collect and receive any income and generally to perform the duties and services incident to a custodian of accounts.

The Investment Trustee may employ a broker-dealer as a custodian for securities held by the trust and may register the securities in the name of the broker-dealer or in the name of a nominee with or without the addition of words indicating that the securities are held in a fiduciary capacity. The Investment Trustee may hold securities in bearer or uncertificated form and may use a central depository, clearing agency or book-entry system, such as The Depository Trust Company, Euroclear or the Federal Reserve Bank of New York.

The Investment Trustee may participate in any reorganization, recapitalization, merger or similar transaction. The Investment Trustee may exercise or sell conversion or subscription rights for securities of all kinds and description.

The Investment Trustee may give proxies or powers of attorney that may be discretionary and with or without powers of substitution. The Investment Trustee may vote or refrain from voting as to any matter.

#### **Section 8.14 Settlement Powers**

The Joint Trustees may settle, by compromise, adjustment, arbitration or otherwise any and all claims and demands in favor of or against the trust. The Joint Trustees may release or abandon any claim in favor of the trust.

## **Article Nine General Provisions**

#### **Section 9.01 Conflicts of Interests**

The fact that either or both of the Joint Trustees may (i) be beneficially interested in all or any part of any trust hereunder, (ii) be a partner, member, shareholder, officer or director of any partnership, limited liability company, or corporation with which the Joint Trustees may deal, (iii) be a trustee of any other trust with which the Joint Trustees may deal, (iv) have an interest, as partner, member, shareholder or otherwise, in any partnership, limited liability company, or corporation which may form a part of the trust property, or (v) be engaged by or have previously been engaged to render legal, financial, investment or other services to the Settlor, or to any corporation, limited liability company, or partnership which may form a part of the trust property, shall not bar or disqualify such respective Joint Trustee from acting as an Investment Trustee or Distribution Trustee in all matters and decisions in which such respective Joint Trustee is authorized to act under the provisions of this Agreement, regardless of whether the interests do or might conflict with those of any other person interested hereunder.

#### **Section 9.02 Spendthrift Provision**

Neither the income nor the principal of any trust created under this trust agreement may be assigned, anticipated, encumbered, alienated, or otherwise voluntarily transferred in any manner

by any beneficiary. In addition, neither the income nor the principal of any trust created under this trust agreement is subject to attachment, bankruptcy proceedings or any other legal process, to the interference or control of creditors or others, or otherwise subject to any involuntary transfer.

This Section does not restrict a beneficiary's right to disclaim any interest or the exercise of any power of appointment granted in this agreement.

### **Section 9.03 Definitions**

For purposes of this agreement, the following definitions apply:

#### **(a) Account**

"Account" shall refer to the separate sub-account of the trust established for an Individual with Disabilities. Each Account for an Individual with Disabilities shall be initially credited with the property transferred by a Donor for the benefit of such Individual with Disabilities pursuant to an Account Agreement. Each Account shall be established and maintained as a separate and independent share, within the meaning of Section 663 of the Internal Revenue Code. Each Account shall be reflected as a separate account with respect to trust records, but the Investment Trustee shall not be required to segregate the funds of each Account for investment purposes.

#### **(b) Account Agreement**

"Account Agreement" shall refer to the agreement executed by a Donor and accepted by the Distribution Trustee, under which the Donor agrees to establish an Account pursuant to this Agreement.

#### **(c) Agreement and Trust Agreement**

The terms "this agreement" and "this trust agreement" mean this entire trust agreement, including all trusts created hereunder.

#### **(d) Beneficiary**

"Beneficiary" shall mean any Individual with Disabilities who is the beneficiary of an Account that is established and maintained pursuant to this Agreement.

#### **(e) Disability Programs and Services**

"Disability Programs and Services" shall refer to those programs and services offered by The Disability Foundation, Inc. in furtherance of the purposes stated in its Articles of Organization, as amended.

#### **(f) Distribution Trustee**

"Distribution Trustee" shall refer to The Disability Foundation, Inc., an Ohio non-profit corporation, or to any person or persons, jointly and collectively, serving as the Distribution Trustee.

#### **(g) Distribution Committee**

"Distribution Committee" shall refer to the individual or individuals, jointly or collectively, serving as a member of the Distribution Committee under this Agreement.

**(h) Donor**

“Donor” refers to the person or entity establishing an Account for the Individual with Disabilities. A Donor can be any person or entity other than the Individual with Disabilities.

**(i) Individual with Disabilities**

“Individual with Disabilities” shall refer to an individual who is disabled within the meaning of 42 United States Code Section 1382c(a)(3).

**(j) Internal Revenue Code and Treasury Regulations**

References to the “Internal Revenue Code” or to its provisions are to the Internal Revenue Code of 1986, as amended from time to time, and the corresponding Treasury Regulations, if any. References to the “Treasury Regulations” are to the Treasury Regulations under the Internal Revenue Code in effect from time to time. If a particular provision of the Internal Revenue Code is renumbered, or the Internal Revenue Code is superseded by a subsequent federal tax law, any reference is deemed to be made to the renumbered provision or to the corresponding provision of the subsequent law, unless to do so would clearly be contrary to our intent as expressed in this agreement. The same rule applies to references to the Treasury Regulations.

**(k) Investment Trustee**

“Investment Trustee” shall refer to KEYBANK NATIONAL ASSOCIATION, or to any person or persons, jointly and collectively, serving as Investment Trustee.

**(l) Joint Trustees**

“Joint Trustees” shall refer to the Investment Trustee and the Distribution Trustee, collectively, or either of those parties, as the context may require.

**(m) Personal Representative**

“Personal Representative” shall refer to that person serving as the designated Personal Representative of an Individual with Disabilities pursuant to an Account Agreement as qualified to advise the Distribution Trustee as to Distributions to be made for the Supplemental Needs of an Individual with Disabilities; provided, however any person subsequently authorized to act on behalf of an Individual with Disabilities shall succeed as the Personal Representative. If there is no person serving as the Personal Representative of an Individual with Disabilities, then the Distribution Trustee may take such action as the Distribution Trustee deems advisable to seek the appointment of a person as the legal guardian of such Individual with Disabilities. A person claiming to be the Personal Representative of an Individual with Disabilities, other than pursuant to an Account Agreement, shall be required to provide the Distribution Trustee written notice of the same which notice shall be accompanied by an original of the judicial appointment of guardianship evidencing such person’s authority to act on behalf of the Individual with Disabilities. The Distribution Trustee shall not be required to conduct an independent investigation of the authority of any person claiming to be the Personal Representative of an Individual with Disabilities.

**(n) Per Stirpes**

Whenever a distribution is to be made to a person's descendants "per stirpes," the distribution will be divided into as many equal shares as there are then-living children of the person and deceased children of the person who left then-living descendants. Each then-living child will receive one share and the share of each deceased child will be divided among such child's descendants in the same manner.

**(o) Pooled Trust**

"Pooled Trust" shall refer to a trust for Individuals with Disabilities established pursuant to Ohio Revised Code Section 5163.21(G), and administered as a pooled trust within the meaning of Collective Investment Fund Law, 12 C.F.R. Section 9.18, as amended.

**(p) Qualified Sponsor**

"Qualified Sponsor" refers to a non-profit association authorized to establish and/or manage a Pooled Trust pursuant to 42 U.S.C Section 1396p(d)(4)(C), Ohio Revised Code Annotated Section 5111.151(F)(3), and Ohio Administrative Code Section 5101: 1-39-27.(C)(3)(c).

**(q) Shall and May**

Unless otherwise specifically provided in this agreement or by the context in which used, the word "shall" is used to command, direct, or require, and the word "may" to allow or permit, but not require. In the context of the Joint Trustees' actions, the word "may" is intended to authorize the Joint Trustees to act in its sole, absolute, and uncontrolled discretion, unless otherwise stated.

In addition, the phrases "may not" and "must not" are synonymous and are intended to forbid what follows in the provision where it appears.

**(r) Supplemental Needs**

"Supplemental Needs" shall refer to those items or services that may be provided to an Individual with Disabilities, to supplement and not supplant service or benefits provided pursuant to federal or state law, which services/benefits are based on financial need, in whole or in part. If an Individual with Disabilities is or becomes the recipient of such services, the Supplemental Needs shall not include items or services which would terminate such services or benefits. The Joint Trustees shall have no duty to inquire whether an Individual with Disabilities is receiving federal Supplemental Security Income or Medicaid benefits and shall only be deemed to have knowledge that an Individual with Disabilities is receiving such benefits if the Distribution Trustee has actual, written notice that such Individual with Disabilities is receiving such benefits.

**(s) Trust**

The terms "this trust" or "this trust agreement" refer to this agreement and all trusts created under the terms of this agreement.

## **Section 9.04 General Provisions**

The following general provisions and rules of construction apply to this agreement:

### **(a) Duplicate Originals**

This agreement may be executed in any number of counterparts, each of which are deemed to be an original. Any person may rely upon a copy of this agreement certified under oath by the Joint Trustees to be a true copy, to the same effect as if it were an original.

### **(b) Singular and Plural; Gender**

Unless the context requires otherwise, words denoting the singular may be construed as plural and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within the context. The word “or” when used in a list of more than two items may function as both a conjunction and a disjunction as the context requires or permits.

### **(c) Headings of Articles, Sections, and Subsections**

The headings of Articles, Sections, and subsections used within this agreement are included solely for the convenience and reference of the reader. They have no significance in the interpretation or construction of this agreement.

### **(d) Governing State Law**

This agreement is governed, construed, and administered according to the laws of the State of Ohio as from time to time amended, except as to trust property required by law to be governed by the laws of another jurisdiction and unless the Distribution Trustee elects to change the Situs of Administration.

### **(e) Notices**

Unless otherwise stated, whenever this agreement calls for notice, the notice must be in writing and personally delivered with proof of delivery, or mailed postage prepaid by certified mail, return receipt requested, to the last known address of the party requiring notice. Notice is effective on the date personally delivered or on the date of the return receipt. If a party giving notice does not receive the return receipt but has proof that he or she mailed the notice, notice will be effective on the date it would normally have been received via certified mail. If notice is required to be given to a minor or incapacitated individual, notice must be given to the parent or legal representative of the minor or incapacitated individual.

### **(f) Severability**

The invalidity or unenforceability of any provision of this agreement does not affect the validity or enforceability of any other provision of this agreement. If a court of competent jurisdiction determines that any provision is invalid, the remaining provisions of this agreement will be interpreted and construed as if the invalid provision had never been included in this agreement.

We certify that we have read this agreement, that we understand it, and that it correctly states the provisions under which the trust property is to be administered and distributed by the Joint Trustees. We hereby sign this agreement in the presence of the witnesses.

**THE DISABILITY FOUNDATION, INC.,**  
An Ohio non-profit corporation

By: [Signature]  
Brittany D. O'Diam, Chair of Board of Trustees,  
Settlor and Distribution Trustee

STATE OF OHIO )  
 )  
COUNTY OF GREENE )

SS:

This Trust was acknowledged before me, with no oath or affirmation administered, on May 10, 2021 by Brittany D. O'Diam, Chair of the Board of Trustees for The Disability Foundation, Inc., as Settlor and Distribution Trustee. This notarial certificate is an acknowledgement under Ohio law.



**DANA DETOTO**  
Notary Public - State of Ohio  
Commission Expires Sep 9, 2024

[Signature]  
Notary Public

**KEY BANK NATIONAL ASSOCIATION**

By: [Signature]  
KEY BANK NATIONAL ASSN, Trustee KEVIN L McDONALD  
Position: SENIOR VICE PRESIDENT

STATE OF OHIO )  
 )  
COUNTY OF Montgomery)

SS:

This Trust was acknowledged before me, with no oath or affirmation administered, on May 7, 2021 by Jennifer Loveless for Key Bank National Association, as Trustee. This notarial certificate is an acknowledgement under Ohio law.



**JENNIFER LYNN LOVELESS**  
Notary Public  
State of Ohio  
My Comm. Expires  
November 17, 2025

[Signature]  
Notary Public