



**FIRST AMENDMENT TO THE 2019 AMENDED AND RESTATED  
LSS SPECIAL NEEDS POOLED TRUST AGREEMENT**

**THIS FIRST AMENDMENT TO THE 2019 AMENDED AND RESTATED SPECIAL NEEDS POOLED TRUST AGREEMENT (“Amendment”)** is effective this ~~30~~<sup>31</sup> day of January, 2020, and amends the 2019 AMENDED AND RESTATED LSS SPECIAL NEEDS POOLED TRUST AGREEMENT (the “Trust Agreement”), and is by and between LUTHERAN SOCIAL SERVICE OF MINNESOTA, a Minnesota non-profit corporation, as Settlor and as Trustee, hereinafter called the “Settlor” and “Trustee.”

**WHEREAS**, the Trustee wishes to amend the Trust Agreement to modify Section 8.09 regarding the Trust's Defense Costs and Expenses;

**WHEREAS**, it is deemed to be in the best interest of the Trustee and the Beneficiaries to limit the assessment of defense costs and expenses in a manner required under 42 U.S.C. §1396p and its implementing regulations and POMS;

NOW THEREFORE, the Trust Agreement is hereby amended by making the following changes:

1. Section 8.09 of the Trust is amended to read in its entirety as follows:

**8.09 Trust's Defense Costs and Expenses.** Costs and expenses of defending the Trust or any Sub-Account, including attorneys' attorneys' fees and costs incurred prior to, during or after trial, and on appeal, against any claim, demand, legal or equitable action, suit, or proceeding may only be charged against the Trust Sub-Accounts of the specific Beneficiary or Beneficiaries affected and in a manner in compliance with the requirements of 42 U.S.C. §1396p and its implementing regulations and POMS.

2. Defined terms used but not defined in this Amendment have the meanings ascribed to them in the Trust Agreement.

3. The remaining provisions of the Trust Agreement shall remain unchanged by this Amendment and the Trust Agreement remains in full force and effect as amended by this Amendment.

*{Signatures appear on the following page}*

IN WITNESS WHEREOF, the undersigned has executed this Trust Agreement to be effective as of the day and year first written above.

**SETTLOR:**

LUTHERAN SOCIAL SERVICE OF MINNESOTA,  
a Minnesota non-profit corporation

By: [Signature]  
Print Name: PATRICK THUESON  
Its: Interim CEO

**TRUSTEE:**

LUTHERAN SOCIAL SERVICE OF MINNESOTA,  
a Minnesota non-profit corporation

By: [Signature]  
Print Name: PATRICK THUESON  
Its: Interim CEO

STATE OF MINNESOTA )

COUNTY OF Ramsey ) ss.

On this 30<sup>th</sup> day of January, 2020, before me, a Notary Public, appeared Patrick Thueson, the Interim CEO, of Lutheran Social Service of Minnesota, to me to be known to be the person described in and who executed the foregoing instrument as Settlor and as Trustee, and acknowledged to me that he/she executed the same as his/her free act and deed.



[Signature]  
Notary Public

{Signature Page to First Amendment to 2019 Amended and Restated LSS Special Needs Pooled Trust Agreement}



**2019 AMENDED AND RESTATED  
LSS SPECIAL NEEDS POOLED TRUST AGREEMENT**

**THIS 2019 AMENDED AND RESTATED SPECIAL NEEDS POOLED TRUST AGREEMENT** is effective this 23rd day of August, 2019, amends and restates the LSS Pooled Trust Agreement originally dated December 31, 2007, amended December 11, 2008 and as amended and restated on the 29th day of December, 2009, as amended and restated on the 28<sup>th</sup> day of September, 2010, and as amended and restated on the 11<sup>th</sup> day of April 2012, and amended and restated on the 28th day of August, 2012, and amended and restated on the 17<sup>th</sup> of March, 2017 and shall be referred to as (the “Trust Agreement”), and is by and between LUTHERAN SOCIAL SERVICE OF MINNESOTA, a Minnesota non-profit corporation, as Settlor and as Trustee, hereinafter called the “Settlor” and “Trustee.”

**ARTICLE 1  
CREATION OF TRUST**

**1.01 Definitions.** The following capitalized terms shall have the definitions set forth below; other defined terms are defined elsewhere in this Trust Agreement.

- (a) “Assets” will include both principal and income.
- (b) “Beneficiary” will mean a “disabled person” as defined in §1614(a)(3) of the Social Security Act (42 U.S.C. §1382c(a)(3)), who qualifies under 42 U.S.C. §1396p, as amended, to be a recipient of benefits and services under this Trust Agreement.
- (c) “Qualified Beneficiary” is also the same person who is the Beneficiary of the Sub-Account of the Trust during his or her lifetime for purposes of providing Notice as set forth under Minnesota Statutes § 501C.0103(m). In the event of the death of the Beneficiary for whom a Sub-Account was initially established, then the individuals or entities entitled to the Remainder Share shall then be considered the “Qualified Beneficiaries” for purposes of providing Notice as set forth under Minnesota Statutes § 501C.0103(m).
- (d) “Charitable Trust” means the trust created and administered to hold funds transferred as part of the Remainder Shares from Sub-Accounts under this Trust Agreement, as well as other contributions made to the Charitable Trust from time to time.
- (e) “Effective Date” means the date of this Trust Agreement set forth above.
- (f) “Grantor” means a Beneficiary, parent(s), grandparent(s), legal guardian of a Beneficiary, legal conservator of a Beneficiary, or any court, using the Beneficiary’s funds to establish the Sub-Account.



- (g) "Investment Firm" means a bank or trust company that is doing business in the State of Minnesota as per Article 8 and is investing the pooled Property of the Trust as directed by the Trustee and under the overall management of the Trustee.
- (h) "Joinder Agreement" means the individual and separate written agreement between the Trustee and a Grantor by which the Grantor establishes a Sub-Account for the sole benefit of a Beneficiary.
- (i) "Legal Representative" means legal guardian, conservator, or agent acting under a durable power of attorney, representative payee, custodian, or other legal representative or fiduciary of a Beneficiary named in the Joinder Agreement with whom the Trustee is authorized to communicate the Beneficiary's interest.
- (j) "Public Benefits" or "Government Assistance" may be used conjunctively, interchangeably or separately within this Trust Agreement, and will mean all services benefits, medical care, financial assistance and any other assistance of any kind that may be provided by any local, state or federal agency, to or on behalf of a Beneficiary. Such Public Benefits and Government Assistance benefits include, but are not limited to, the Supplemental Security Income program ("SSI"), the Old Age Survivor and Disability Insurance program ("OASDI"), Social Security Disability Insurance program ("SSDI"), and any Medicaid/Medical Assistance program, together with any additional, similar, or successor public programs.
- (k) "Remainder Share" means that portion of the Sub-Account that is designated according to the Joinder Agreement to be paid over to Lutheran Social Service of Minnesota, as Trustee, upon termination of the Sub-Account to be held and administered as part of the Charitable Trust established under this Trust Agreement. The Remainder Share must not exceed ten percent (10%) of the account value at the time of the beneficiary's death or termination of the trust, and must only be used for the benefit of disabled individuals who have a beneficiary interest in a Trust Sub-Account.
- (l) "Sub-Account" means a trust account established, held and maintained for the sole benefit of a Beneficiary which includes assets provided by (1) the Beneficiary or the Beneficiary's spouse, (2) a person, including a court or administrative body, with legal authority to act in place of or on behalf of the Beneficiary, or (3) any person, including a court or administrative body, acting at the direction or upon the request of the Beneficiary.

- (m) “Supplemental care” and “special needs” may be used conjunctively, interchangeably or separately within this Trust Agreement and the terms will always mean care that is not otherwise provided, or needs that are not met, by any Public Benefits or Government Assistance that might be otherwise available to any Beneficiary.
- (n) “Trust” means the trust established pursuant to this Trust Agreement.
- (o) “Trustee” means Lutheran Social Service of Minnesota (“LSS”), or its successor organization, or any successor Trustee to LSS as may be provided in this Trust Agreement.
- (p) “Property” means any cash, investments, accounts or other assets of any kind that the Grantor transfers to the Trust to be added to the Sub-Account for the Beneficiary’s benefit, with preapproval of the Trustee.

**1.02 Name and Creation.** This Trust, named the “LSS Special Needs Pooled Trust,” is created and established pursuant to the Omnibus Reconciliation Act of 1993 (OBRA ’93), codified at 42 U.S.C. 1396(p) which provides that a trust established with the assets of a disabled individual that meets the criteria of 42 U.S.C. 1396(p)(d)(4)(C) will not be used in determining a disabled person’s financial eligibility for benefits.

**1.03 Funding.** The Settlor previously transferred, assigned and conveyed an initial contribution of One Hundred Dollars (\$100.00) to the Trust. The Trust estate will consist of this contribution by the Settlor and any additional contributions in cash or property made to the Trust estate at any time by any Grantor in accordance with the provisions of this Trust Agreement.

**1.04 Irrevocability.** This Trust Agreement is irrevocable. Neither the Settlor, Grantor, nor the Beneficiaries will have any right to change, modify, amend or revoke any term or provision hereof, or to terminate this Trust Agreement or any trust created pursuant to this Trust Agreement.

**1.05 Amendments.** Notwithstanding Section 1.04 of this Trust Agreement, this Trust Agreement may be amended by the Trustee from time to time to effectuate its purposes and intent. The Trustee may also amend, but is not required to amend, the Trust Agreement to conform with any rules, regulations or legislative changes that are approved by any federal, state, or local 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 of OBRA ’93, amended 42 U.S.C. §1396p. Notice of amendments will be provided to the Minnesota Department of Human Services and the Social Security Administration.

## ARTICLE 2 SETTLOR’S PURPOSE AND INTENT



**2.01 Purpose.** This Trust has been created for the purpose of providing supplemental care and special needs assistance to Beneficiaries. The Trust assets will be managed, invested, and disbursed to promote the comfort and well-being of each Beneficiary by providing for special needs. The Trustee will not make any disbursements that would have the effect of replacing, reducing or substituting any Government Assistance or other Public Benefit otherwise available to a Beneficiary or which would render the Beneficiary ineligible for Government Assistance. It is vitally important that each Beneficiary have eligibility to participate in such programs in order to maintain a level of dignity and humane care. It is the Settlor's Intent that this Trust be considered a Nonprofit Pooled Trust under 42 U.S.C. §1396p(d)(4)(C)(i), and the Trustee shall manage the trust consistent with this intent.

**2.02 Settlor's Intent.** Settlor's intent in creating this Trust is to establish a special needs trust under the authority of 42 U.S.C. 1396(p) and Minn. Stat. § 256B.056 or Minn. Stat §501C.1205, subd. 3, as the case may be, for the benefit of the Beneficiaries of this Trust to facilitate a Beneficiary's eligibility for means-tested Public Benefits. Private or Public Benefits or Government Assistance should not be made unavailable to a Beneficiary or be terminated because of this Trust. Notwithstanding any other provision of this Trust, no assets of the Trust, including but not limited to any Sub-Account or the Charitable Trust may be used to satisfy claims of any Beneficiary's Creditors. The Trust is not intended to, and will not, be used to defeat the rights of pre-existing creditors. The Trust and Sub-Accounts are intended for Beneficiaries who need the support of public programs with limitations on the amount of income and resources a recipient may receive on their own. The provisions of this Trust are designed for a continuing conservation and enhancement of funds to be used by the Trustee to supplement, rather than supplant, financial and service benefits, including but not limited to Government Assistance, which a Beneficiary might become eligible to receive as a result of said Beneficiary's disability from any local, county, state or federal agency, or through any public or private profit or nonprofit corporations, entities or agencies.

**2.03 Beneficiaries Have No Interest in Trust Assets.** A Beneficiary will have no interest in either the income or principal of the Trust. This is not a support trust, and assets held in the Trust and in Sub-Accounts of this Trust are not intended to be the primary means of support for any Beneficiary. The Trust assets and each Sub-Account may only be used for the special needs of a Beneficiary. The Trustee does not owe any obligation of support to any Beneficiary, and no Beneficiary will have any right of entitlement to the principal or income of the Trust or to any Sub-Account, except as the Trustee may direct the Investment Firm to disburse, in the Trustee's sole discretion.

**2.04 Spendthrift Provisions.** This Trust is a spendthrift trust. Each Sub-Account created by this Trust Agreement shall be a spendthrift trust to the fullest extent allowed by law. No Beneficiary will have any power to sell, assign, transfer, encumber, or in any other manner to anticipate, or dispose of, his or her interest in the Trust or any Sub-Account. No portion of the Trust or Sub-Account will be subject to garnishment, attachment or other legal process by any Beneficiary's creditors. Under no circumstances may a Beneficiary compel a distribution from a Sub-Account maintained for that

Beneficiary or any other part of the Trust estate. Prior to the actual receipt of trust property by any Beneficiary, no property (income or principal) distributable under any Sub-Account created by this Trust Agreement shall, voluntarily or involuntarily, be subject to anticipation or assignment by any Beneficiary, or to attachment by or to the interference or control of any creditor or assignee of any Beneficiary, or be taken or reached by any legal or equitable process in satisfaction of any debt or liability of any Beneficiary, and any attempted transfer or encumbrance of any interest in such property by any beneficiary hereunder prior to distribution shall be void.

### ARTICLE 3 GRANTOR CONTRIBUTIONS

**3.01 *Grantor's Intent as to Sub-Accounts.*** Each Grantor, in making contributions to the Trust to fund a Sub-Account, intends to supplement, rather than supplant, financial and service benefits which a Beneficiary might become eligible to receive as a result of said Beneficiary's disability from any governmental agency or through any public or private entities or agencies, including Government Assistance. Each Grantor intends for each Sub-Account to establish a supplemental fund pursuant to 42 U.S.C. §1396p and to limit the Trustee's disbursements on behalf of, a Beneficiary to that respective Beneficiary's supplemental care and special needs only. To the extent there is a conflict between the terms of this Trust and the governing law, the law and regulations shall control.

**3.02 *Terms Applicable to Grantor Contributions.*** Subject to the approval of the Trustee, the Trust will be effective as to any individual Beneficiary upon contribution of cash or property ("Property") to the Trust and the execution of a Joinder Agreement by a Grantor and the Trustee. Upon delivery of Property that is approved and accepted by the Trustee to the Investment Firm, the Trust will be irrevocable as to such Grantor and Beneficiary; the contributed Property will not be refundable to the Grantor of such Property and the Grantor will have no further interest, rights in, or control over any interest in such contributed Property; and the designation of the respective Beneficiary may not be revoked, amended or altered; provided that a Grantor may designate a remainder beneficiary to receive any remainder of the contributed Property upon the termination of the Beneficiary's Trust Sub-Account subject to payment of a Remainder Share and repayment to the state(s) as required under Section 6.02.

**3.03 *Effect of Grantor's Contribution.*** Subject to the provisions of Article 3 of this Trust Agreement, and subject to the Trustee's sole discretion in making any and all distributions, the effect of a Grantor's contribution to the Trust as it applies to any one Beneficiary is such that the total distributions made on behalf of a Beneficiary will not exceed any amount equal to the total of all contributions made to such Beneficiary's Trust Sub-Account, plus any undistributed income.

**3.04 *Future Transfer of Property.*** Property, or any interest in Property, may be designated for future transfer by a Grantor as a contribution to the Trust. Such designated contributions may be revoked by the Grantor at any time during the Grantor's lifetime



and continued capacity, provided the Grantor gives prior written notice to the Trustee and provided such contributions have not actually been made to the Trust prior to the revocation. Such written notice will be by certified mail, return receipt requested.

#### ARTICLE 4 ADMINISTRATION OF SUB-ACCOUNTS

**4.01 *Sub-Accounts.*** Trustee will maintain a separate Sub-Account for each Beneficiary. The Trustee will oversee the pooled Sub-Accounts for purposes of investment and management of funds with the Investment Firm. Trustee will maintain records for each Sub-Account in the name of, and showing the contributions, expenditures and costs for, each Beneficiary.

**4.02 *Fees and Expenses.*** Trustee will charge the fees and expenses associated with each Sub-Account as set forth in the Joinder Agreement.

**4.03 *Taxes.*** The Joinder Agreement will establish whether the Sub-Account will be taxed as a grantor trust or a trust account. The Trustee or its agents will cause to be prepared on behalf of each Sub-Account that is not a grantor trust the appropriate federal and state income tax returns, the costs and expenses of which will be charged to each Sub-Account in accordance with the actual time and expense incurred for the preparation of such tax returns for that Sub-Account. Any Sub-Account which is not a grantor trust will file its own federal and state income tax returns and any taxes assessed against the income of such Sub-Account will be paid from and out of the Sub-Account assets and Property. If the Sub-Account is treated as a grantor trust, then the income tax returns so prepared for the Sub-Account will be informational returns only. Such informational return will report to the federal and state authorities all allocable income, gains, or losses which are required to be reported on the Grantor's federal income tax return. The Beneficiary and the Legal Representative will be responsible for completing, signing and mailing the annual income tax returns for the Beneficiary which are applicable to any income of the Sub-Account passed through and taxable directly to a Beneficiary under the rules and regulations of the Internal Revenue Code.

**4.04 *Accountings to Grantor and Beneficiary.*** The Trustee will render accountings of each Sub-Account on an annual or more frequent basis (but not more frequent than monthly), as may be required under Minnesota law including, but not necessarily limited to accountings to any required governmental agency, or upon the direction of a court of competent jurisdiction to each Grantor during the Grantor's lifetime and thereafter to each Beneficiary (or to the Legal Representative of a Beneficiary, if one is acting). The accountings will show all assets, receipts, disbursements and distributions to or from such Sub-Account during the reporting period. The Settlor expressly opts out of any requirement under state law, including but not limited to Minnesota Statutes § 501C.0813, that the Trustee keep the Qualified Beneficiaries of an irrevocable trust reasonably informed about the administration of any Trust created hereunder and of the material facts necessary to protect their interests, or to respond to a Beneficiary's request for information related to the administration of such Trust (for purposes of this provision,



such requirements shall be referred to as "Notice"). During the lifetime of the Beneficiary of any Trust created hereunder, the Trustee shall only be required to provide such Notice to the Beneficiary who is entitled to distributions, even if such distributions are subject to the discretion of the Trustee. In the event Notice is not sent to the Beneficiary, then said Notice shall be sent to the Beneficiary's Legal Representative.

**4.05 *Records Available for Inspection.*** The records of a Beneficiary's Sub-Account will be open and available for inspection by the Beneficiary or the Legal Representative of a Beneficiary, if one is acting, or both, at all reasonable business hours. The Trustee is not 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 the Beneficiary, or (c) does not have the express written authorization of the Beneficiary to receive such information. The Trustee's decision will be the sole and final determination as to the sufficiency of any and all written authorizations or requests for records and/or documentation.

## **ARTICLE 5 DISTRIBUTIONS**

**5.01 *Discretionary Distributions by Trustee.*** The Trustee will apply to or expend for the benefit of a Beneficiary such sum or sums from the income or principal of the Trust as the Trustee will determine, in the Trustee's sole and absolute discretion, to be necessary or advisable to provide for the supplemental care or special needs of the Beneficiary. The Trustee will possess and exercise the sole discretion and authority to allocate all distributions between income and principal. Any income not distributed from a Sub-Account will be added to the principal of that Sub-Account. The Trustee is under no obligation to direct the expenditure of income or principal and the Trustee will have the discretion to refuse to make any such distributions.

**5.02 *Distributions Limited.*** The Trustee will not make distributions or disbursements:

- (a) if the effect of such distributions and disbursements will have the effect of replacing, reducing or substituting for Government Assistance or would render the Beneficiary ineligible for otherwise available means-tested publicly funded benefits;
- (b) if such distributions and disbursements would be in excess of the resource and income limitations of any Public Benefit program to which the Beneficiary is entitled;
- (c) if such distribution or disbursement would provide or pay for any care or service that is a "Medical Assistance covered service" in any state where the Beneficiary resides, unless such Medical Assistance benefits have been terminated or the application for such benefits denied and such termination or denial is no longer the subject of review or contest;

- (d) for anything other than necessary services or for services which will enhance the quality of life for the Beneficiary; or
- (e) to pay or to reimburse any amounts to the federal government, State of Minnesota, any other state, or any other governmental unit or non-governmental agency for the care, support, maintenance and education of any Beneficiary, other than as provided in paragraph 6.02 of this Trust Agreement after the death of the Beneficiary.

**5.03 *Non-Exclusive List of Permissible Distributions.*** The Trustee will have the discretion to make distributions for anything that is a special need of the Beneficiary that is not otherwise provided for the Beneficiary, including but not limited to the following:

- (a) medical, dental and diagnostic work and treatment for which there are no available private or public funds;
- (b) medical procedures that are, in the Trustee's discretion, advisable even though such procedures may not be medically necessary or life-saving and not covered by public or other private funds;
- (c) supplemental nursing care, supplemental occupational or supplemental physical therapy that is not covered by public or other private funds;
- (d) care appropriate for a Beneficiary that Government Assistance programs may not or do not otherwise provide;
- (e) expenditures for travel, companionship by a personal care attendant (PCA) and other expenditures that the Trustee, in the Trustee's discretion, deems advisable to improve the Beneficiary's quality of life; or
- (f) an item of similar nature contained in the above.

**5.04 *Payee of Disbursements.*** The Trustee in the Trustee's sole discretion, may make, or cause to be made, any payment from a Sub-Account in any form allowed by law, to a person deemed suitable by the Trustee (as determined by the Trustee in the Trustee's discretion), or by direct payment of a Beneficiary's expenses.

## **ARTICLE 6 TERMINATION OF SUB-ACCOUNTS ONLY UPON DEATH**

**6.01 *Sub-Account Terminations.*** No Trust Sub-Accounts may be terminated during the life of the Beneficiary of a Sub-Account.

**6.02 *Distribution upon Death of Beneficiary.*** Upon the death of a Beneficiary, any amounts that remain in that Beneficiary's Sub-Account (the "Remaining Assets") will be administered so as to conform with all the requirements of 42 U.S.C. §1396p and/or



related laws and regulations, including state statutes and regulations that are consistent with the provisions of OBRA '93, amending 42 U.S.C. §1396p and pertaining to reimbursements to States for Government Assistance provided on behalf of such Beneficiary. Such Remaining Assets, after payment of reasonable expenses and administration fees, will be distributed as follows:

- (a) A Remainder Share of 10% of the Remaining Assets in the Sub-Account, will be transferred by the Trustee to the Charitable Trust as established under paragraph 6.03 of this Trust Agreement and pursuant to Minnesota Statute §256B.056, subd. 3b(d) allowing said distribution to the Charitable Trust.
- (b) Any Remaining Assets in a Sub-Account will be subject to claims for reimbursements from the State of Minnesota and any other state which provided Medical Assistance benefits to the Beneficiary. In the event the Remaining Assets are insufficient to pay all claims, then each state's claim will be pro-rated based on each state's proportionate share of the total Medical Assistance benefits paid by all of the states on the Beneficiary's behalf.
- (c) The Trustee is then authorized pursuant to the Social Security Administration POMS SI 01120.203(B)(3)(a) and any applicable Federal and state laws to pay any taxes due from the Sub-Trust to the State(s) or Federal government because of the death of the Beneficiary prior to reimbursement to the State of Minnesota or any other state as provided in paragraph 6.02(b) of this Trust Agreement as long as it does not violate the provisions of 42 U.S.C. § 1396(p)(d)(4)(C). Specifically, Taxes due from the estate of the Beneficiary, (other than those arising from inclusion of the Sub-Account in the estate) and inheritance taxes due for residual beneficiaries are not permitted prior to reimbursement of the state for medical assistance.
- (d) The balance of the Remaining Assets, if any after payment under the foregoing paragraphs, will be distributed as directed by the Grantor in the Joinder Agreement, or if the Joinder Agreement is silent, such Remaining Assets will be transferred by the Trustee to the Charitable Trust as established under paragraph 6.03 of this Trust Agreement.

**6.03 Charitable Trust.** The Charitable Trust will be held and administered, organized and operated as follows:

- (a) Exclusively in such charitable activities as may qualify it for exemption from federal income tax under Section 501(c)(3) of the Code, with its purpose being to improve the lives of disabled Beneficiaries when their existing Sub-Accounts are insufficient to meet their special and special needs providing relief of the poor, the distressed, or the underprivileged.

- (b) Notwithstanding any other provisions of this Trust, the Charitable Trust shall not carry on any other activities not permitted to be carried on (a) by a Trust exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue law); (b) by a trust, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986 (or the corresponding provisions of any future United States Internal Revenue Law), or (c) by a Trust that meets the criteria of 42 U.S.C. 1396(p)(d)(4)(C) such that it will not be used in determining a disabled person's eligibility for benefits.
- (c) The Charitable Trust assets shall be used solely in furtherance of the purposes set forth above and no part of the Charitable Trust assets shall inure or be payable to or for the benefit of any private individual, except to make payments in furtherance of the purposes of the Charitable Trust.
- (d) The Charitable Trust Assets shall not be used for the carrying on of propaganda, or otherwise attempting to influence legislation. No part of the activities of the Charitable Trust shall be the participation in, or intervention in (including the publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office.
- (e) Upon termination of the Charitable Trust, any assets in the Charitable Trust will be paid to Lutheran Social Service of Minnesota; provided however, that if Lutheran Social Service has ceased to exist, has been dissolved, or is no longer exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue law); then the Charitable Trust will be applied and paid over to such other nonprofit organization(s) as the Trustee will determine, in the Trustee's sole discretion, to serve the interests and needs of disabled persons, as defined in §1614(a)(3) of the Social Security Act (42 U.S.C. §1382c(a)(3)).

## ARTICLE 7 TRUSTEE

**7.01 Trustee.** In addition to its role as Settlor of this Trust, Lutheran Social Service of Minnesota, or its successor charitable organization, is the Trustee of the Trust. The Trustee, Lutheran Social Service of Minnesota and any successor trustee, will manage the Trust, as required by 42 U.S.C. § 1396(p)(d)(4)(C)(i), and will perform such acts and duties as set forth in the Joinder Agreement. The Trustee specifically has full authority and power to prosecute, defend, contest or otherwise litigate legal actions or other proceedings for the protection or benefit of this Trust and to pay compromise, release,



adjust, or submit to arbitration any debt, claim or controversy, and to insure the Trust against any risk, and to insure the Trustee and its agents against liability with respect to third persons.

**7.02 *Appointment of Successor Trustee.*** Lutheran Social Service may nominate another nonprofit corporation that meets the requirements of Internal Revenue Code 501(c)(3) and is an agency that qualifies under 42 U.S.C. § 1396(p)(d)(4)(C) as a successor Trustee of the Trust. Lutheran Social Service of Minnesota, and any duly designated successor Trustee, will request a court of competent jurisdiction to designate an appropriate successor Trustee, and will provide notice of proceedings for that purpose to the Minnesota Attorney General, the United States Attorney for the State of Minnesota, and the Minnesota Department of Human Services. In the event that Lutheran Social Service of Minnesota nominates, and a court designates a successor Trustee, then that successor will succeed to all the rights, powers, and privileges accorded Lutheran Social Service of Minnesota as Trustee of the Trust, including the right to name a successor Trustee.

**7.03 *Trustee Powers.*** The Trustee shall have the power, and the authority, to do any act or anything reasonably necessary or advisable for the proper administration and distribution of the Trust and to do all acts and things necessary to accomplish the purposes of this Trust, and to perform the Trustee's duties as such, and to do such other acts or things concerning the Trust as may be advisable. Further, except as may be otherwise expressly directed or required by this Trust Agreement, and in extension, but not in limitation, of the powers provided by applicable law (including but not limited to the powers stated in Minnesota Statutes §501C.0816, or corresponding provisions of successor law, which are incorporated in this Trust Agreement by this reference), the Trustee shall have full power and authority as to any properties, at any time comprising a part of any trust hereunder and, without the necessity of notice to, or license or approval of, any court or person during the term of such trust and, for the purposes of administration and distribution of such trust, after its termination, in the Trustee's continuing sole discretion, to perform the following:

(a) Asset Retention and Disposal. The Trustee may retain cash or other assets for so long as it deems advisable. The Trustee may also sell, exchange, mortgage, lease, or otherwise dispose of any assets of the Trust estate for terms ending within, or extending beyond, the term of the trust.

(b) Permissible Investments. Except as provided in paragraph 8.04 of this Trust Agreement, the Trustee may invest, and reinvest in, or exchange assets for, any securities and properties it deems advisable, and as enumerated in the Minnesota Prudent Investor Rule of Minnesota Statutes §501C.0901, or corresponding provisions of any successor law, which are incorporated into this Trust Agreement by reference.

(c) Rights of Ownership. The Trustee shall have the right to: (i) to collect, receive, and receipt for any principal or income; (ii) to enforce, defend against, compromise, or settle any claim by, or against, the Trust; (iii) to vote, issue proxies to

vote, join in, or oppose any plans for reorganization; and (iv) to exercise any other rights incident to the ownership of any stocks, bonds, or other properties of the Trust estate.

(d) Allocations of Receipts and Disbursements. Except as otherwise provided in this Trust Agreement, the Trustees shall apply the rules stated in the Minnesota Revised Uniform Principal and Income Act in determining whether receipts shall be income or principal and whether disbursements shall be paid out of income or principal.

(e) Division, Distribution, or Allocation. As permitted in the Revised Minnesota Uniform Principal and Income Act under Minnesota Statutes §501C.1101, et seq., the Trustee may use "income" as defined therein to pay the expenses of administration, including the payment of any taxes.

(f) Employment and Delegation. The Trustee may employ investment firms, accountants, attorneys, bankers, brokers, custodians, investment counsel, and other agents as determined by the Trustee to be necessary. The Trustee may designate to them such duties as the trustee determines are reasonable and proper as ordinarily exercised by an agent with particular administrative expertise, except that the Trustee may not delegate managerial and oversight responsibilities to any such agent in making day-to-day decisions regarding the health and well-being of any beneficiary or allow the agent to make discretionary disbursements from the trust without the approval of the Trustee. The Trustee shall remain responsible for the amount of trust corpus to invest and the removal or replacement of any agent. The Trustee shall act in these matters without liability for any mistake or default of any such person selected or retained with reasonable care and prudence.

**7.04 *Trustee May Seek Advice.*** The Trustee may, but is not required to, seek the advice and assistance of any person or entity it deems to be appropriate, including, but not limited to, the Grantor, Legal Representative, any guardian or guardians of a Beneficiary, and any federal, state, or local agencies that are established to assist persons with disabilities; provided that the Trustee does not delegate management control over the Trust and its operations as described here before. Associated administrative costs, if any, will be a proper expenses of the Trust and may be apportioned on a pro rata basis against all Sub-Accounts provided the Trustee determines that the assistance benefits all Sub-Accounts, or may be charged only against the Sub-Account about which the Trustee seeks such advice or assistance. The Trustee may use available resources to assist in identifying programs that may be of legal, social, financial, developmental or other assistance to Beneficiaries.

**7.05 *The Trustee Not Liable for Failure to Identify Resources.*** The Trustee will identify private or governmental programs that may be of legal, social, financial, developmental, or other assistance to any Beneficiary. In no event, however, will the Trustee be liable to any Beneficiary for failure to identify all programs or resources that may be available to such Beneficiary or to create programs when such programs do not exist.



**7.06 Trustee to Obtain and Maintain Eligibility.** The Trustee has full authority and power to take any and all steps necessary to obtain and maintain eligibility of any Beneficiary for any and all Public Benefits and entitlement programs, which programs may include but are not limited to Social Security, Supplemental Security Income, Medicare, Medical Assistance, services provided or authorized or licensed by the Minnesota Department of Human Services, other State services and other community services. In no event, however, will the Trustee be liable to any Beneficiary for failure to obtain or maintain the eligibility of such Beneficiary for any such programs.

**7.07 Trustee Entitled to Reasonable Compensation.** The Trustee, including its agents, will 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 will be made in accordance with a schedule of fees and charges as specified in each Beneficiary's Joinder Agreement.

**7.08 No Bond.** Neither the Trustee, nor successor Trustee, will be required to pay a bond for the faithful performance of any duties. If a bond is required by law or by a court of competent jurisdiction, no surety will be required on such bond, and such bond will be a proper expense of the Trust.

**7.09 Indemnification.** Except as is otherwise provided in this paragraph, the Trustee and any successor Trustee and their respective agents, employees, officers, and directors as well as their heirs, successors, assigns, and Legal Representatives of such parties will be and hereby are indemnified by the Trust and the Trust assets against all claims, demands, liabilities, fines, or penalties and against all costs and expenses (including attorney's fees and disbursements and the cost of reasonable settlements) and expressly including claims for the negligence of the indemnified parties and their agents, employees, officers and directors, imposed upon, asserted against or reasonably incurred thereby in connection with or arising out of any claim, demand, action, suit, or proceeding in which he, she, or it may be involved by reason of being or having been a Trustee, whether or not he, she, or it will have continued to serve as such at the time of incurring such claims, demands, liabilities, fines, penalties, costs, or expenses or at the time of being subjected to the same. This right of indemnification will not be exclusive of, or prejudicial to, other rights to which the Trustee and any successor Trustee, and each of their respective agents or employees may be entitled as a matter of law or otherwise. The Trustee and any successor Trustee and their respective agents and employees (and their heirs or personal representatives) will not be indemnified with respect to matters as to which he, she, or it will be finally determined to have been guilty of willful misconduct, gross negligence in the performance of any duty as such, or violation of any fiduciary obligation or duty to a Grantor or Beneficiary, by a court of competent jurisdiction.

## **ARTICLE 8 INVESTMENT FIRM**

**8.01 Investment Firm's Reliance on Trustee.** The Trustee shall maintain management control over any Investment Firm, and the Trustee shall provide directions as to the investments and distributions of the Trust and its Sub-Accounts by the Investment Firm.

**8.02 Resignation or Removal.** The Investment Firm may be removed without cause by the Trustee at any time upon giving ninety (90) days advance notice to the Investment Firm. The Investment Firm may resign for any reason, at any time, provided that the Investment Firm gives ninety (90) days advance notice to the Trustee of its intention to resign. No court approval is required for the Investment Firm's removal or resignation. If both the Trustee and the Investment Firm agree, the notice requirement may be waived or reduced.

**8.03 Successor Investment Firm.** If the Investment Firm resigns or is removed, the Trustee will select and appoint a Successor Investment Firm. The Successor Investment Firm must be a bank or trust company doing business in the State of Minnesota. If the Trustee does not appoint a Successor Investment Firm within sixty (60) days after removing an Investment Firm or within sixty (60) days after receiving notice of the Investment Firm's intent to resign, a successor Investment Firm will be selected and appointed by a court of competent jurisdiction in Minnesota. Any successor Investment Firm will act as such without any liability for the acts or omissions of any predecessor Investment Firm. Any corporation that will succeed (by purchase, merger, consolidation or otherwise) to all or the greater part of the assets of any corporate Investment Firm will succeed to all the rights, duties and powers of such corporate Investment Firm as Investment Firm of this Trust, but such succession must be approved in advance by the Trustee, and any successor Investment Firm will be subject to removal without cause by and at the sole discretion of the Trustee..

**8.04 Investment Firm Powers.** The Investment Firm will perform the Investment Firm's duties to receive, hold, and manage the investments of the Trust corpus and receive income under the specific direction and control of the Trustee. The Investment Firm shall be considered a fiduciary under Minnesota Statute § 48A.07, as amended from time to time,, or the provisions of any trust laws of the state of Minnesota, and the powers conferred upon the Investment Firm by applicable law are hereby incorporated into this Agreement by reference; provided, however, that the Investment Firm is specifically prohibited from making direct investments of the Trust assets in real estate or oil, gas and other mineral interests, leases, overriding royalties, production payments, and other oil, gas and mineral properties. If the Investment Firm accepts non-productive property contributed by a Grantor, the Investment Firm is authorized to retain such non-productive property as an asset of the Trust.

**8.05 Limits of Investment Firm's Authority.** No authority described in this Trust belonging to the Trustee pursuant to applicable law will be construed to enable the Trustee to allow the Investment Firm to purchase, exchange or otherwise deal with or dispose of the assets of any Sub-Account for less than an adequate or full consideration in money or money's worth, or to enable any person to borrow the assets of any Sub-Account, directly or indirectly, without adequate interest or security. Notwithstanding any other provision of this Agreement, the Trustee shall retain ultimate responsibility over the Trust and its operations.



**8.06 No Bond Required.** The Investment Firm will not be required to furnish any bond for the faithful performance of the Investment Firm's duties. If bond is required by any law or court of competent jurisdiction, no surety will be required on such bond.

**8.07 No Court Supervision of Trust.** The Trust established under this instrument will be administered free from the active supervision of any court. Any proceedings to seek judicial instructions or a judicial determination may be initiated by the Trustee in any court having jurisdiction of these matters relating to the construction and administration of the Trust.

**8.08 Investment Firm's Compensation.** The Investment Firm will be entitled to reasonable compensation, commensurate with the services actually performed, and as from time to time agreed to by the Trustee.

**8.09 Trust's Defense Costs and Expenses.** Costs and expenses of defending the Trust or any Sub-Account, including attorneys' fees and costs incurred prior to, during or after trial, and on appeal, against any claim, demand, legal or equitable action, suit, or proceeding may, in the sole discretion of the Trustee, either (a) be charged on a pro rata basis to all Trust Sub-Accounts, or (b) be charged only against the Trust Sub-Accounts of the affected Beneficiaries.

**8.10 Indemnification.** As evidenced by each Joinder Agreement executed by a Grantor, such Grantor acknowledges that the Investment Firm is a financial institution and is not licensed or skilled in the field of social services. The Investment Firm shall conclusively rely upon the Trustee to identify programs that may be of social, financial, developmental or other assistance to Beneficiaries. Except as is otherwise provided in this paragraph 8.10, the Investment Firm, its agents and employees, as well as its agents, employees, heirs and Legal and Personal Representatives will not in any event be liable to any Grantor or Beneficiary or any other party for its acts as Investment Firm so long as the Investment Firm acts in good faith and in compliance with this Trust Agreement. The Investment Firm, its agents and employees (and their heirs or Legal Representatives) will not be indemnified with respect to matters as to which he, she, or it will be finally determined to have been guilty of willful misconduct, gross negligence in the performance of any duty as such, or violation of any fiduciary obligation or duty to a Grantor or Beneficiary, by a court of competent jurisdiction.

## ARTICLE 9 GENERAL GOVERNING PROVISIONS

**9.01 Captions and Headings.** The captions and headings of each paragraph of this Trust Agreement are for purposes of convenience only, and it is the Settlor's intent that no such caption will be considered in the construction of any provision of this Trust Agreement, or in any of the Exhibits, or in any Joinder Agreement executed by a Grantor and the Trustee.

**9.02 Governing law.** This Trust Agreement will be construed and regulated according to the laws and regulations of the State of Minnesota and the United States.

**9.03 Complete Authority.** This Trust Agreement, the attached Exhibits, and any Joinder Agreement approved by the Trustee will determine all rights, authority and duties of the parties, as well as designate the fiduciaries and Beneficiary under this Trust Agreement.

**9.04 Severability.** If any part or portion of this Trust Agreement is adjudicated by a court of competent jurisdiction to be unlawful, or is made invalid by legislative changes and rulings, this Trust Agreement will remain in effect, and in force, as if that part, or portion, were no longer a part of this Trust Agreement.

*{Signatures appear on the following page}*



IN WITNESS WHEREOF, the undersigned has executed this Trust Agreement to be effective as of the day and year first written above.

**SETTLOR:**

LUTHERAN SOCIAL SERVICE OF MINNESOTA,  
a Minnesota non-profit corporation

By: [Signature]  
Print Name: PATRICK THUESON  
Its: COO + CFO

**TRUSTEE:**

LUTHERAN SOCIAL SERVICE OF MINNESOTA,  
a Minnesota non-profit corporation

By: [Signature]  
Print Name: PATRICK THUESON  
Its: COO + CFO

STATE OF MINNESOTA )  
COUNTY OF Ramsey ) ss.

On this 23 day of August, 2019, before me, a Notary Public, appeared Patrick Thueson, the COO/CFO, of Lutheran Social Service of Minnesota, to me to be known to be the person described in and who executed the foregoing instrument as Settlor and as Trustee, and acknowledged to me that he/she executed the same as his/her free act and deed.



[Signature]  
Notary Public

{Signature Page to LSS of Minnesota Special Needs Pooled Trust Agreement}