

**DECLARATION OF  
NORTH DAKOTA POOLED TRUST**

**THIS POOLED TRUST MASTER AGREEMENT** (“Agreement”) is made effective this 15th day of November, 2010, by Guardian and Protective Services, Inc., a non-profit corporation organized under the laws of the State of North Dakota, as Settlor and Trustee D/B/A North Dakota Pooled Trust.

**PREAMBLE**

WHEREAS, the Omnibus Budget Reconciliation Act of 1993 (OBRA ‘93) provided that trusts established and managed by non-profit corporations and meeting certain other requirements may be established to pool funds for the benefit of persons with disabilities; and,

WHEREAS, Guardian and Protective Services, Inc., intends to establish and manage the North Dakota Pooled Trust (the “Trust”) for the convenience of individual grantors (“Grantors”) who qualify and who wish to establish a Sub-Account within the Trust; and,

WHEREAS, a Grantor may designate a beneficiary of the Trust by signing a Joinder Agreement that is approved by Guardian and Protective Services, Inc., and that incorporates this Agreement by reference; and,

WHEREAS, Guardian and Protective Services, Inc., may, from time to time, contract with various financial institutions as Funds Manager; and,

WHEREAS, Guardian and Protective Services, Inc., has transferred to the Funds Manager the assets listed on Appendix 1 and wishes to establish the Trust solely to further the programs of Guardian and Protective Services, Inc., to provide services for persons with disabilities, as provided by this Agreement; and,

WHEREAS, the Trustee agrees to hold, administer, and distribute the income and principal of the Trust in accordance with the terms and provisions of this Agreement.

NOW, THEREFORE, IT IS AGREED that North Dakota Pooled Trust is hereby established and that the Trustee shall receive, administer, and disburse assets of the Trust as set forth in this Agreement.

**ARTICLE I.**

**NAME OF THE TRUST**

1.1 The name of this Trust shall be North Dakota Pooled Trust, hereinafter referred to as the "Trust".

**ARTICLE II.**

**DEFINITIONS**

2.1 "Assets" of the Trust shall include both corpus and income of the Trust.

2.2 "Beneficiary" shall mean a person with disabilities for whom a Sub-Account is established within the Trust.

2.3 "Beneficiary Funded Trust Sub-Account" shall mean any trust Sub-Account that includes assets provided by the Beneficiary or an individual who owes a legal support obligation to the Beneficiary, including assets provided by: such individual, by a person, including a court or administrative body, with legal authority to act on behalf of the individual; or, by any person, including a court or administrative body, acting at the direction or upon the request of the individual,

2.4 "Funds Manager" shall mean the entity then serving as Funds Manager under Article VII of this Trust, and its successor or successors,

2.5 "GaPS" shall mean Guardian and Protective Services, Inc., whose mailing address is 316 North 5<sup>th</sup> Street, Suite 112, Bismarck, North Dakota 58501.

2.6 "Government Assistance" shall mean all services, medical care, means-tested and non-means-tested benefits and financial assistance that may be provided by any local, state, or federal agency, to or on behalf of a Beneficiary. Government Assistance benefits include, but are not limited to, the Supplemental Security Income (SSI) program, the Old Age Survivor and Disability Insurance (OASDI) program, the Social Security Disability Insurance (SSDI) program, and the Medicaid (Medical Assistance) program, together with any additional, similar, or successor public programs. Government Assistance services include, but are not limited to, the services of the North Dakota Department of Human Services, local or regional mental health and mental retardation agencies, county, or city programs to benefit Persons with Disabilities, together with any additional, similar, or successor public programs.

2.7 “Grantor” shall mean a parent, grandparent, or Guardian of a Beneficiary, a Beneficiary himself or herself, any court, or any other person or entity that establishes a Sub-Account within the Trust for the benefit of a Beneficiary.

2.8 “Guardian” shall mean a legal guardian, conservator, or agent acting under a durable power of attorney, representative payee, custodian under the Uniform Gift or Transfers to Minors Act of any state, or other legal representative or fiduciary of a Beneficiary.

2.9 “Joinder Agreement” shall mean that agreement attached to this Agreement as Appendix 2, which provides information about the Beneficiary, the Grantor, the Guardian (if any), and the Primary Representative of the Beneficiary, as well as information about disbursements from the Beneficiary’s Sub-Account and annual costs associated with the Trust, and which sets forth other issues regarding the relationships between the Funds Manager, Trustee, and Grantor.

2.10 “Person with disabilities” shall 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, amended August 10, 1993, by OBRA ‘93, to be a recipient of benefits under this Trust.

2.11 “Primary Representative” shall mean the person named in the Joinder Agreement with whom the Funds Manager is authorized to communicate regarding the interests of the Beneficiary.

2.12 “Sub-Account” shall mean the financial account within the Trust maintained for the benefit of an individual Beneficiary and shall be equal to the initial value of the assets contributed on behalf of the Beneficiary by the Grantor, less disbursements made on behalf of the Beneficiary, increased by the proportionate share of the Sub-Account in Trust earnings and appreciation, less the allocable share of the Sub-Account in taxes, expenses, depreciation, and fees as set forth in the Joinder Agreement.

2.13 “Trustee” shall mean GaPS or any successor as provided in Section 8.4.

### **ARTICLE III.**

#### **ESTABLISHMENT OF TRUST**

3.1 Settlor’s Intent. It is the intention of GaPS to establish a pooled trust pursuant to 42 U.S.C. §1396p, amended August 10, 1993, by OBRA ’93 for the benefit of Beneficiaries under this Trust, for the purpose of assisting each Beneficiary to achieve his or her maximum potential and to otherwise enhance the quality of his or her life. The Trust is intended to qualify as a trust for the benefit of Persons with Disabilities and all terms of this Trust shall be interpreted and administered in a manner which is consistent with this intent.

It is the intention of GaPS that means-tested public and/or private assistance benefits should not be made unavailable to a Beneficiary or be terminated because of the existence of a Sub-Account for the benefit of the Beneficiary. Except Medicaid assignments by operation of law and as provided in Sections 12.2 and 12.3, assets of this Trust cannot be used to satisfy claims of any creditor of a Beneficiary. This Trust shall not be used to defeat the rights of pre-existing creditors. Assets held in this Trust are not for the support of any Beneficiary. The assets in this Trust are to be used only for special needs, supplemental needs and the supplemental care of the Beneficiaries. There is no obligation of support owing to Beneficiaries by GaPS as the Settlor, nor by the Grantor, nor by the Trustee, nor by the Funds Manager. The Beneficiaries have no entitlement to the income or corpus of this Trust, and Trust assets that have not been disbursed are not available to the Beneficiaries. Income or corpus of the Trust shall be available to Beneficiaries only when the Funds Manager or the Trustee in their sole and absolute discretion elects to disburse such funds for the benefit of a Beneficiary. Any determination made by the Funds Manager or the Trustee in good faith as to the manner in which or the extent to which the powers granted by this Trust shall be exercised shall be binding and conclusive upon all persons who might then or thereafter have or claim any interest in the Trust assets. The Trust shall require that a Grantor name Final Remainder Beneficiaries and the Trust shall create a vested remainder in such Final Remainder Beneficiaries.

3.2 Purpose and Objective of the Trust. The principal purpose and objective of this Trust is to provide a system for the management, investment, and disbursement of Trust assets to promote the comfort and happiness of the Beneficiaries by providing Beneficiaries with distributions for the benefit of the special needs, supplemental needs and supplemental care of the Beneficiaries. It is not the purpose nor objective of this Trust to provide for or to make expenditures for the basic maintenance, support, medical, dental or therapeutic care of any Beneficiary, nor any other appropriate care or service that may be paid for or provided by other sources, including by, but not limited to, means-tested government assistance. It is neither the purpose nor objective of the Trust to provide disbursements for the support of any Beneficiary.

3.3 Special Needs, Supplemental Needs and Supplemental Care. Disbursements for “special needs” or “supplemental needs” or “supplemental care” mean non-support disbursements for the benefit of the Beneficiaries. It is not the intention of GaPS as Settlor or of the Grantors to displace public or private financial assistance that may otherwise be available to any Beneficiary. It is the intention of GaPS as the Settlor and of the Grantor to limit the disbursements by the Funds Manager to those for the benefit of the special needs, supplemental needs and supplemental care for the Beneficiaries. The following examples are not exclusive, but are included merely to illustrate the types of special, supplemental, non-support disbursements that are appropriate for the Funds Manager to make from the Trust for the benefit of a Beneficiary when the Funds Manager or the Trustee, in their sole discretion, consider such disbursements to be of value to the Beneficiary:

Health and dental treatment and equipment for which there are not funds otherwise available, rehabilitative and occupational therapy services, medical procedures even though not medically necessary or life saving, medical insurance premiums, supplemental nursing care, supplemental dietary needs, travel, entertainment, companionship, private case management, cultural experiences, vacations, movies, telephone service, television and cable equipment and service, radios, stereos, programs of training and education, reading and educational materials, legal services, guardianship services, advocacy services, and items listed by the Grantor on the Joinder Agreement, when the purchase of or payment for such items do not risk the Government Assistance of the Beneficiary.

3.4 Discretionary Trust. The Funds Manager shall make disbursements as directed by the Trustee within the Trustee's sole discretion for the special needs or supplemental needs or supplemental care of a Beneficiary, or may refuse to make disbursements, as directed by the Trustee in the Trustee's sole discretion. The Trustee is under no obligation to direct the expenditures of income or principal for special needs or supplemental needs or supplemental care or for any other purpose. Furthermore; the powers and discretion of the Trustee pursuant to this Trust shall not be exercised or exercisable, with respect to and during the life of each Beneficiary, except in a manner consistent with the intent of the Settlor as set forth in Section 3.1 of this Agreement.

3.5 Limits On Use of Trust Assets. Notwithstanding the discretion of the Funds Manager and Trustee as set forth in Section 3.4 or any other provision of this Trust, in order to achieve the expressed purpose and objective of this Trust, assets of the Trust shall not be used:

- 3.5.1 in any way which would result in Government Assistance that would otherwise be available to a Beneficiary (if this Trust did not exist) being reduced, diminished, altered or denied;
- 3.5.2 to make disbursements to or for the benefit of a Beneficiary in excess of resource and income limitations of any public benefit program to which the Beneficiary is entitled;
- 3.5.3 to provide or pay for any care or service that constitutes a "Medicaid covered service" in the State in which a Beneficiary resides, during any period for which application has been made for Medicaid benefits, unless the application has been denied, or Medicaid benefits terminated, unless that denial or termination is no longer subject to review or contest;
- 3.5.4 to make any disbursement except as payment for services necessary to the Beneficiary or which will enhance the quality of life for the Beneficiary and at rates of compensation consistent with the reasonable

value of those services, avoiding disbursements that only incidentally benefit a Beneficiary, such as:

- 3.5.4.1 Provision of travel companions for a Beneficiary who is capable of travel without a companion, and the payment of a non-beneficiary's travel expenses when a visit to the Beneficiary is incidental to the travel;
- 3.5.4.2 Purchase or rental of a home that greatly exceeds the needs of a Beneficiary and which is used as housing for the Beneficiary's friends or relatives; or
- 3.5.4.3 Purchase or rental of a motor vehicle, ostensibly to transport the Beneficiary, but which is ordinarily used by a non-beneficiary; and
- 3.5.5 Except as provided in Section 12.2.1 after the death of the Beneficiary, to pay or to reimburse any amounts to the federal government, State of North Dakota, any other state, or to any subdivision, or to any other government agency for any purpose including for the care, health, support, maintenance, or education of the Beneficiary.

3.6 Disbursements. The Funds Manager, at the Trustee's direction, may make any payments or disbursements under the Trust:

- 3.6.1 directly to the Primary Representative of the Beneficiary, except that no payment may be made to the Primary Representative of the Beneficiary, in money or money's worth, during a month when the Beneficiary is an applicant for, or recipient of, Medicaid benefits or SSI benefits (this shall not disallow reimbursement to the Primary Representative of the Beneficiary for trustee approved expenditures);
- 3.6.2 in any form allowed by law;
- 3.6.3 to any person deemed suitable by Funds Manager; or,
- 3.6.4 by direct payment of the expenses of a Beneficiary.

3.7 Government Assistance. To achieve the expressed purpose and objective of this Trust, the Trustee will seek to preserve and enhance Government Assistance that would otherwise be available to a Beneficiary.

3.8 Sub-Accounts of the Trust. Assets contributed by a Grantor for a Beneficiary shall be invested, re-invested, and administered as a Sub-Account in the name of and for the benefit of that Beneficiary. The Funds Manager shall pay or apply for the special needs,

supplemental needs and supplemental care of each Beneficiary such amounts from the principal or income, or both, of the Trust Sub-Account maintained for such Beneficiary, up to the whole thereof, as the Funds Manager, at the direction of the Trustee, may from time to time deem advisable for the satisfaction of that Beneficiary's special needs, supplemental needs, or supplemental care, if any. Any income attributable to a Beneficiary's Sub-Account that is not distributed shall be added annually to the principal in the Trust Sub-Account maintained for such Beneficiary. Each Sub-Account shall be treated as a non-grantor trust for income tax purposes pursuant to the rules and regulations promulgated under IRC §671 et seq., unless grantor trust rules apply. Generally, a Sub-Account will be treated as a grantor trust if it is a Beneficiary Funded Trust Sub-Account. If the Sub-Account is treated as a grantor trust for federal income tax purposes, the reporting of the income of the Sub-Account and taxation thereon shall be subject to provisions of Section 6.3 of this trust.

3.9 Spendthrift Trust. To the fullest extent permitted by law, this Trust shall be a spendthrift trust and no part of this Trust, whether principal or income, shall be subject to anticipation or assignment by any Beneficiary; nor shall it be subject to attachment or control by any public or private creditor of a Beneficiary; nor may it be subject to any judicial process or levy against any Beneficiary by any voluntary or involuntary creditor, including those that have provided for the Beneficiary's support and maintenance, before assets of this Trust have actually been paid or disbursed to such Beneficiary. Under no circumstance may any Beneficiary compel a disbursement from the Trust, except this provision shall not bar any remedy sought by the Beneficiary, or anyone acting on behalf of the Beneficiary, for the purpose of obtaining trust distributions in accordance with the trust declarations and any applicable federal or state laws, regulations, or rules. Further, a Beneficiary shall not use this Trust to defeat the right of pre-existing creditors.

## ARTICLE IV.

### TRUST FUNDING AND EFFECTIVE DATE

4.1 Initial Funding. GaPS as Settlor has initially funded this Trust with a lump sum payment of One Hundred Dollars and No Cents (\$100.00), as set forth on Appendix 1. GaPS hereby assigns, conveys, transfers and delivers the above described funds to the Funds Manager.

4.2 Trust Estate. The Trust estate shall consist of the initial cash contribution by GaPS and any additional contributions made to the Trust estate at any time by any Grantor in accordance with the provisions of Article V.

4.3 Effective Date. This Trust is established by GaPS as of the day and year first written above. The Trust shall be effective as to any Grantor or Beneficiary upon:

4.3.1 execution of a Joinder Agreement by a Grantor or by a court order;

- 4.3.2 certification of the Joinder Agreement by the Trustee and approval by the Funds Manager; and,
- 4.3.3 Grantor's delivery to the Funds Manager, and the Funds Manager's acceptance of, assets. Grantor's contributions are discussed further in Article V.

## ARTICLE V.

### GRANTOR'S CONTRIBUTIONS

5.1 Trust Is Irrevocable Upon Acceptance of Assets by Funds Manager. Upon delivery to and acceptance by the Funds Manager of assets acceptable to the Funds Manager, the Trust, as to the Grantor of such assets and the designation of the respective Beneficiary, shall be irrevocable and the contributed assets shall not be refundable. By execution of the Joinder Agreement, Grantor acknowledges that upon the funding of a Sub-Account of this Trust, Grantor shall have no further interest in and does thereby relinquish and release all rights in, control over, and all incidents of interest of any kind or nature in and to the contributed assets (including the original contribution to the Trust and any and all subsequent additions to the Trust) and all income thereon.

5.2 Assets Designated for Future Transfer. Assets or interests in assets can be designated for future transfer by a Grantor as a contribution. Such designation may be revocable and can be revoked by the Grantor as to such assets at any time during that Grantor's life and continued capacity to revoke, upon prior written notice from the Grantor to the Funds Manager. Examples of such contributions include a policy of life insurance on a Grantor's life in which the Trust is designated as a beneficiary, or the Trust being named as a beneficiary of any future interest in assets.

## ARTICLE VI.

### ADMINISTRATIVE PROVISIONS

6.1 Sub-Accounts. A separate Trust Sub-Account shall be maintained for each Beneficiary, but, for purposes of investment and management of funds, the Funds Manager shall pool these Trust Sub-Accounts. The Funds Manager or the Trustee or their authorized agents shall maintain records for each Trust Sub-Account in the name of and showing the assets contributed for each Beneficiary, along with increases in and expenditures and costs of such Sub-Account.

6.2 Fees and Expenses. The fees and expenses associated with each Sub-Account shall be charged in the manner described in the Joinder Agreement and as set forth in Schedule A to the Joinder Agreement.



6.3 Annual Reports to Grantor or Beneficiary. For accounting purposes, the Trust and each Sub-Account thereof shall be operated on a calendar year basis. The Funds Manager shall provide periodic accountings, at least annually, to each Grantor while such Grantor is living, and thereafter to each Beneficiary (or to his or her Primary Representative), showing all receipts, disbursements and distributions to or from such Trust Sub-Account during the previous calendar year. The Grantor, by execution of the Joinder Agreement, indemnifies the Trustee and the Funds Manager from any and all claims for income tax liabilities attributable to his or her Sub-Account which is taxed as a grantor trust under the rules of the Internal Revenue Code. The Grantor, Beneficiary or the Primary Representative shall be responsible for completing, signing and mailing the annual income tax returns for the Beneficiary which are applicable to any income of the Sub-Account passed through and taxable directly to the Beneficiary under the rules and regulations of the Internal Revenue Code.

6.4 Sub-Account Records Available for Inspection. The Trust Sub-Account records shall be available at all reasonable times for inspection by the Beneficiary, his or her Primary Representative, or both. The Funds Manager shall not be required to furnish Trust records or documentation to any individual, corporation, or other entity who is not the Beneficiary, or who does not have the express written approval of the Beneficiary to receive such information, or who is not the Primary Representative of the Beneficiary.

## ARTICLE VII.

### FUNDS MANAGER

7.1 Reliance of Funds Manager on Trustee. The Funds Manager shall be authorized to rely on the directions of the Trustee.

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

7.3 Successor Funds Manager. If the Funds Manager resigns or is removed, the Trustee shall select and appoint a Successor Funds Manager. The Successor Funds Manager must be a bank or trust company doing business in the State of North Dakota. If the Trustee does not appoint a Successor Funds Manager within sixty (60) days after removing a Funds Manager or within sixty (60) days after receiving notice of the Funds Manager's intent to resign, a Successor Funds Manager shall be selected and appointed by a court of competent jurisdiction in North Dakota. Any Successor Funds Manager shall act as such without any liability for the acts or omissions of any predecessor Funds Manager. Any corporation that

shall succeed (by purchase, merger, consolidation or otherwise) to all or the greater part of the assets of any corporate Funds Manager shall succeed to all the rights, duties and powers of such corporate Funds Manager as Funds Manager of this Trust.

7.4 Powers of Funds Manager. The Funds Manager shall have full power and authority to perform the duties of the Funds Manager as such and to receive, hold, manage, and control all the income arising from such Trust and the corpus thereof and to do such other acts or things concerning the Trust as may be advisable. The power and authority of the Funds Manager shall include, but not be limited to, all powers conferred upon fiduciaries by Chapter 59-16 of the North Dakota Century Code, as amended from time to time, or the provisions of any trust laws of the State of North Dakota, and the powers conferred upon the Funds Manager by said Code are hereby incorporated into this Agreement by reference. The Funds Manager may hold, sell, exchange, mortgage, lease, convey, encumber, pledge or otherwise dispose of any real, personal or other property for any period, upon any terms and conditions. The Funds Manager may invest the assets of the Trust in its common trust funds. The Funds Manager may also borrow money, including from its own commercial banking department, for such period of time and upon such terms and conditions as it may consider to be proper and may mortgage and pledge assets as security for any such loan. If the Funds Manager accepts non-productive property contributed by a Grantor, the Funds Manager is authorized to retain such non-productive property as an asset of the Trust.

7.5 Limits of Authority of Funds Manager. No authority described in this Trust or available to Funds Manager pursuant to applicable law shall be construed to enable the Funds Manager to purchase, exchange or otherwise deal with or dispose of the assets of any Trust 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 Trust Sub-Account, directly or indirectly, without adequate interest or security.

7.6 No Bond Required. The Funds Manager shall not be required to furnish any bond for the faithful performance of the duties of the Funds Manager. If bond is required by any law or court of competent jurisdiction, no surety shall be required on such bond.

7.7 No Court Supervision of Trust. The Trust established under this instrument shall 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 Funds Manager or by the Trustee in any court having jurisdiction of these matters relating to the construction and administration of the Trust.

7.8 Compensation of Funds Manager. The Funds Manager shall be entitled to reasonable compensation, commensurate with the services actually performed, and as from time to time agreed to by the Trustee.

7.9 Defense Costs and Expenses of the Trust. Costs and expenses of defending the Trust from any claim, demand, legal or equitable action, suit, or proceeding may, in the sole discretion of the Trustee, either be:

7.9.1 charged on a pro rata basis to all Trust Sub-Accounts; or,

7.9.2 charged only against the Trust Sub-Accounts of the affected Beneficiaries. The Trustee may, but is not required to, rely on the advice of the Advisory Committee (as described in Article IX) in determining whether defense costs affect a substantial number of Trust Sub-Accounts and warrant allocation among all Sub-Accounts, or whether the issue requiring defense of the Trust is limited to a single Sub-Account or to only certain Sub-Accounts such that charges should be allocated solely to such accounts.

## **ARTICLE VIII.**

### **TRUSTEE**

8.1 Trustee. In addition to its role as Settlor of this Trust, GaPS shall initially be the Trustee of the Trust. The Trustee, whether GaPS or a successor Trustee as provided by Section 8.4, shall manage the Trust, as required by 42 U.S.C. § 1396p(d)(4)(C)(i), and shall perform such acts and duties as set forth in the Joinder Agreement, and otherwise as the Trustee and the Funds Manager shall mutually agree. The Trustee shall have full power and authority in its absolute discretion, without recourse to any court or any notice whatsoever, to do all acts and things necessary to accomplish the purposes of this Trust, and to perform the duties of the Trustee as such, and to do such other acts or things concerning the Trust as may be advisable. 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 Funds Manager and the Trustee against liability with respect to third persons.

8.2 Trustee May Seek Other Resources. The Trustee may seek the advice and assistance of the Grantor, the Primary Representative, any Guardian(s) of the Beneficiaries, or others, including any federal, state and local agencies that are established to assist persons with disabilities. The Trustee may use available resources to assist in identifying programs that may be of legal, social, financial, developmental, or other assistance to Beneficiaries.

8.3 Trustee Not Liable for Failure to Identify Resources. The Trustee shall not, in any event, be liable to any Beneficiary for failure to identify all programs or resources that may be available to such Beneficiary because of his or her disabilities. As evidenced by Grantor's execution of the Joinder Agreement, Grantor recognizes and acknowledges the uncertainty and changing nature of the guidelines, laws, and regulations pertaining to

governmental benefits and the Grantor agrees that the Trustee will not in any event be liable for any loss of benefits as long as the Trustee acts in good faith, provided the Trustee exercises due diligence to secure and consider the guidelines, laws, and regulations pertaining to government benefits.

8.4 Appointment of Successor Trustee. GaPS may nominate another non-profit corporation that meets the requirements of Internal Revenue Code §501(c)(3) and the requirements of North Dakota Administrative Code §75-02-02.1-31.1(8) as a successor Trustee of the Trust. GaPS, and any duly designated successor Trustee, shall request a court of competent jurisdiction to designate an appropriate successor Trustee, and shall provide notice of proceedings for that purpose to the North Dakota Attorney General, the United States Attorney for the State of North Dakota, and the North Dakota Department of Human Services. In the event that GaPS nominates, and a court designates a successor Trustee, then that successor shall succeed to all the rights, powers, and privileges accorded GaPS as Trustee of the Trust, including the right to name a successor Trustee. Such successor Trustee will advise the Funds Manager pursuant to terms of this Agreement and shall manage the Trust as required by 42 U.S.C. §1396d(4)(C)(i).

8.5 Fees Paid to the Trustee. The Trustee shall charge fees to each Sub-Account for Funds Manager and Trustee fees as provided on Schedule A of the Joinder Agreement between the Trustee and the respective Grantor(s). Unless the monthly fees are paid by a Grantor, the monthly fees will be charged against the funds in the applicable Sub-Account. The Trustee may from time to time establish or amend the schedule of fees applicable to all Sub-Accounts. The amount of the initial annual fee applicable to each funded Sub-Account shall be the fee amount in effect as of the date that the Grantor executes the Joinder Agreement.

8.6 Fees Paid to the Funds Manager. The Trustee shall authorize payment of the fee of the Funds Manager.

8.7 Trustee to Obtain and Maintain Eligibility. The Trustee specifically has full authority and power to take any and all steps necessary to obtain and maintain eligibility of any Beneficiary for any and all Government Assistance.

## **ARTICLE IX.**

### **ADVISORY COMMITTEE**

9.1 Establishment of Advisory Committee. The Board of Directors of GaPS shall constitute an Advisory Committee to advise the Trustee in the administration of the Trust. The Trustee may rely upon the Advisory Committee solely for advice and information. The Advisory Committee may provide advice on matters described in this Trust.

## ARTICLE X.

### INDEMNIFICATION

10.1 Acknowledgment by Grantor. As evidenced by execution by the Grantor of the Joinder Agreement, Grantor acknowledges that the Funds Manager is a financial institution and is not licensed or skilled in the field of social services. The Funds Manager may conclusively rely upon the Trustee to identify programs that may be of social, financial, developmental or other assistance to Beneficiaries. Except as provided in Section 10.3, the Funds Manager, its agents and employees, as well as its heirs and legal and personal representatives of its agents and employees shall not in any event be liable to any Grantor or Beneficiary, or any other party, for its acts as Funds Manager so long as the Funds Manager acts in good faith.

10.2 Scope of Indemnification. Except as provided in Section 10.3, the Funds Manager, GaPS, the Trustee, the members of the Advisory Committee, and each of their respective agents, employees, officers, and directors as well as their heirs, successors, assigns, and personal representatives of such parties shall 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 Funds Manager or Trustee or member of the Advisory Committee, whether or not he, she, or it shall 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 shall not be exclusive of, or prejudicial to, other rights to which the Funds Manager, GaPS, the Trustee, members of the Advisory Committee, and their respective agents or employees may be entitled as a matter of law or otherwise.

10.3 Limits On Indemnification. The Funds Manager, GaPS, the Trustee, and their respective agents and employees (and their heirs or personal representatives) shall not be indemnified with respect to matters as to which he, she, or it shall 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 XI.

### AMENDMENT OF TRUST

11.1 Trust Is Irrevocable. As evidenced by Grantor's execution of the Joinder Agreement, the Grantor acknowledges that upon execution of the Joinder Agreement by

Grantor and the Trustee, and the funding of a Sub-Account for a Beneficiary, that this Trust, as to the Grantor and the Beneficiary, is irrevocable,

11.2 Trust May Be Amended. Notwithstanding Section 11.1 above, the Trustee may amend this Agreement to:

11.2.1 accommodate a required change in the statutes, regulations or interpretations relative to the Medicaid program;

11.2.2 accommodate a required change in the statutes, regulations or interpretations relative to the Supplemental Security Income (SSI) program or any other Government Assistance program of which a Beneficiary is or may be a recipient or applicant; or,

11.2.3 improve the administration of the Trust provided, however, that no amendment may be made that will materially change the purposes of the Trust and the intent of the Settlor as set out in this Agreement.

Notice of any proposed amendment shall be provided to the North Dakota Department of Human Services.

11.3 Amendments Limited. Notwithstanding Section 11.2 above, neither the Funds Manager nor the Trustee shall seek a proposed amendment to this Agreement that would:

11.3.1 alter the purpose or objective of the Trust;

11.3.2 make gifts revocable that are otherwise irrevocable under this Trust or the Joinder Agreement; or,

11.3.3 change the duties of the Funds Manager without the Funds Manager's consent.

## **ARTICLE XII.**

### **TERMINATION OF SUB-ACCOUNTS OR OF ENTIRE TRUST**

12.1 Sub-Account Terminations. Every reasonable attempt will be made to continue the Trust for the purposes for which it is established. However, the Trustee and the Funds Manager do not and cannot know how future developments in the law, including administrative agency and judicial decisions, may affect the Trust or any Trust Sub-Account. If the Trustee and the Funds Manager have reasonable cause to believe that the assets of a Trust Sub-Account are or will become liable for basic maintenance, support, or care that has been or that would otherwise be provided to such Beneficiary by local, state, or federal

government, or an agency or department thereof, the Trustee in its sole discretion, may direct the Funds Manager to:

- 12.1.1 determine that the Trust has become impossible to implement for the affected Beneficiary, and the Funds Manager shall then treat the assets in the Trust Sub-Account according to the provisions of Section 12.3; or,
- 12.1.2 continue to administer the Trust Sub-Account under separate arrangement with the affected Beneficiary or his or her Primary Representative.

Before making any distribution of amounts retained in any Trust Sub-Account, the Trustee should consider the public benefits consequences to the Beneficiary of any particular disbursement.

12.2 Distribution of Remainder Interest Upon Death of Beneficiary. Upon the death of a Beneficiary, any amounts remaining in the Trust Sub-Account of the Beneficiary (the “Remainder”) shall be distributed as follows, to the extent that there are funds remaining:

- 12.2.1 The Trust shall first pay claims for reimbursement for services by the State of North Dakota or such other state that provides Medicaid benefits to the Beneficiary (“State Reimbursement Claims,” as further described in Section 12.5 below) which shall be satisfied up to an amount equal to the total medical assistance paid on behalf of the Beneficiary pursuant to 42 U.S.C. §1396p(d)(4)(C)(iv). In the event the Sub-Account is less than the total amount owed to all states that provided medical assistance benefits to the Beneficiary, payment shall be pro-rated; then,
- 12.2.2 The Trust shall pay the unpaid funeral expenses of the Beneficiary and any necessary administrative costs, such as accountant or legal fees, in settlement of the Sub-Account; then,
- 12.2.3 The Trust shall distribute all remaining funds to the final remainder beneficiaries (the “Final Remainder Beneficiaries”) listed under the Joinder Agreement; provided, however, that if any Final Remainder Beneficiary is a minor, is under a legal disability, or is incapacitated, Section 13.2 of this Agreement shall apply.

12.3 Distribution Upon Termination of Entire Trust. If it becomes impossible or impracticable to carry out the purposes of the Trust with respect to all or substantially all Beneficiaries, the Funds Manager may, at the Trustee's direction or in the absence of such direction in the Funds Manager's sole discretion, terminate the Trust and distribute the Trust assets in each Beneficiary's Sub-Account as follows: .

12.3.1 Prior to payment of the "State Reimbursement Claims" in Section 12.3.2 below, the Trust may pay any taxes due from the Trust to the State(s) or Federal Government due to the termination of the Trust, and all reasonable fees and administrative expenses associated with the termination of the Trust.

12.3.2 The Trust shall first pay claims for reimbursement for services by the State of North Dakota or such other state that provides medical benefits to the Beneficiary ("State Reimbursement Claims," as further described in Section 12.5 below) which shall be satisfied up to an amount equal to the total medical assistance paid on behalf of the Beneficiary under the State Medicaid Plan(s). In the event that Sub-Account is less than the total amount owed to all states that provided medical assistance benefits to the Beneficiary, payment shall be pro-rated.

12.3.3 Any remaining balance of The Trust assets in each Beneficiary's Sub-Account shall be distributed to the Beneficiary.

Before action is taken under this Section 12.3, a final accounting along with an application seeking approval of the action to be taken shall be filed in a court of competent jurisdiction in this state

12.4 Perpetuities Savings Clause. The individual Sub-Account for each Beneficiary shall be held for the lifetime of the Beneficiary. It is the express condition of this Agreement, controlling over all other provisions that the duration of any Sub-Account created under this Agreement in no event shall continue for a period longer than the maximum duration allowed by any applicable rule or statute governing the duration of trusts (commonly known as the Rule Against Perpetuities).

12.5 Determination of State Reimbursement Claims. At the death of a Beneficiary, the Trustee shall provide notice of the death to the Medicaid agency of each state in which the Beneficiary had lived and request that said agency provide to the Trustee information concerning the total Medicaid paid on behalf of the Beneficiary pursuant to 42 U.S.C. §1396p(d)(4)(C)(iv) and shall determine the amount of State Reimbursement Claims, giving effect to claims received from state agencies and as required by federal and state regulations related to 42 U.S.C. 1396p. In the absence of federal regulations directing the Trust as to priority in the case of multiple state claims, the claims of multiple states shall be pro-rated



and paid from a Beneficiary's Sub-Account. The Trustee is authorized to rely on statements of claims received from the North Dakota Department of Human Services or from any similar agency in any state.

### **ARTICLE XIII.**

#### **MISCELLANEOUS**

13.1 **Final Remainder Beneficiaries.** The Funds Manager shall have the power to distribute property to a custodian for a minor or other eligible beneficiary under the Uniform Gifts or Transfers to Minors Act under any state's laws (and in so doing shall have discretion to establish a custodianship termination age up to age 25 if then allowed by the Act), or to use any other means of making distributions under applicable law or the terms of this Trust to any Final Remainder Beneficiary who is under legal disability. Such means include making payments for the beneficiary's benefit to the beneficiary's conservator, guardian of the person, parent, or any other suitable adult with whom the beneficiary shall reside, or making other payments on behalf of the beneficiary for the beneficiary's exclusive benefit. Further, the Funds Manager may make distributions for a Final Remainder Beneficiary who is incapacitated directly on behalf of the beneficiary, or to the conservator of such Beneficiary's estate, to the Funds Manager of the beneficiary's revocable trust for the beneficiary's own benefit, or to an attorney-in-fact named by the beneficiary. "Incapacitated" means that the Final Remainder Beneficiary has any condition that, in the Funds Manager's sole discretion: (a) renders him or her unable to conduct his or her regular affairs, and (b) that is likely to extend for a period longer than ninety (90) days.

13.2 **North Dakota Law Applies.** The validity of this Trust shall be determined by the laws, including valid regulations, of the United States and the State of North Dakota. Questions of construction and administration of this Trust shall be determined by the laws of the state of administration.

13.3 **Headings.** The headings above the various provisions of this Trust have been included only in order to make it easier to locate the subject covered by each provision and are not to be used in construing this Trust or in ascertaining the parties' intentions.

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

GRANTOR/SETTLOR/TRUSTEE:

GUARDIAN AND PROTECTIVE SERVICES, INC.

By: Judy Vetter, Administrator  
(print name & title)

Signature: Judy Vetter Administrator

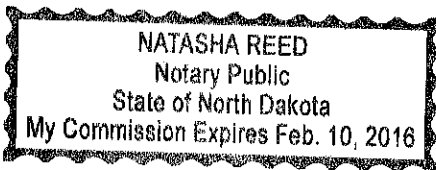
WITNESSES:

Audrey Uhrich

Joel Drum

STATE OF North Dakota )  
 ) SS  
COUNTY OF Burleigh )

This instrument was acknowledged before me by Judy Vetter, an agent of Guardian and Protective Services, Inc., on this 29<sup>th</sup> day of November, 2010.



(SEAL)

Natasha Reed  
(Signature of Notary Public)

Natasha Reed  
(Printed Name of Notary Public)

AGREEMENT TO SERVE AS FUNDS MANAGER

Whereas, Guardian and Protective Services, Inc., has created the NORTH DAKOTA POOLED TRUST, as Grantor/Settlor and Trustee;

Whereas, Guardian and Protective Services, Inc., desires to contract with the undersigned as a Funds Manager of said Trust, as defined in Article VII of said Trust; and,

The parties therefore agree that the undersigned will act as a Funds Manager for the NORTH DAKOTA POOLED TRUST pursuant to the Declaration of Trust and accordance with the provisions of Article VII of said Trust. The Funds Manager acknowledges that this Agreement is not exclusive and that other Sub-Accounts, as defined in said Declaration, may be held and managed by other Funds Managers.

GRANTOR/SETTLOR/TRUSTEE:

GUARDIAN AND PROTECTIVE SERVICES, INC.

By: Judy Vetter, Administrator  
(print name & title)

Signature: Judy Vetter Administrator

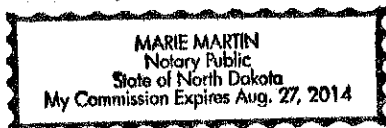
Date: 11-29-10

This instrument was acknowledged before me by Judy Vetter, an agent of Guardian and Protective Services, Inc., on this 29th day of November, 20 10.

(SEAL)

Marie Martin  
Notary Public, State of N. DAK., County of Burlingh

My Commission expires: \_\_\_\_\_



FUNDS MANAGER:

KIRKWOOD BANK AND TRUST

By: Chad Willer - Trust Officer  
(print name & title)

Signature: Chad Willer

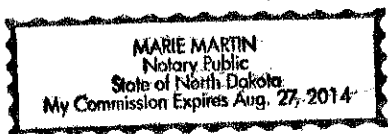
Date: 11-29-10

This instrument was acknowledged before me by Chad Willer, an agent of Kirkwood Bank and Trust on this 29th day of November, 20 10.

(SEAL)

Marie Martin  
Notary Public, State of N. DAK., County of Burlingh

My commission expires: \_\_\_\_\_



APPENDIX 1  
TO GUARDIAN AND PROTECTIVE SERVICES, INC.  
NORTH DAKOTA POOLED TRUST  
DATED 11/05/2010

Initial Assets: \$100.00

APPENDIX 2  
JOINDER AGREEMENT  
NORTH DAKOTA POOLED TRUST  
DATED 11/05/10