

LABOR & INDUSTRY FOR EDUCATION, INC.

Pooled Trust II
(Self-Settled Asset Trust)

AMENDED AND RESTATED
MASTER POOLED TRUST AGREEMENT

Labor & Industry For Education, Inc.
112 Spruce Street, Suite 5
Cedarhurst, NY 11516
516-374-4564

**AMENDED AND RESTATED
MASTER POOLED TRUST AGREEMENT**

This **Amended and Restated Master Pooled Trust Agreement** ("Agreement"), is made as of March 7, 2016 by and between Labor & Industry For Education, Inc. ("LIFE") a not-for-profit corporation having its principal place of business at 112 Spruce Street, Cedarhurst, NY 11516 as Settlor of the Trust ("Settlor"), and LIFE as Trustee of the Trust ("Trust").

WHEREAS, LIFE is a not-for-profit corporation, and

WHEREAS, LIFE, as Settlor, established the Pooled Trust known as the LIFE, INC. POOLED TRUST II (the "Trust") to be used by people with disabilities (as hereinafter defined) for the purposes of providing the trust services set forth herein, and

WHEREAS, said Trust was established on March 6, 2012 by execution of the original Master Trust Agreement ("Original Agreement"), and

WHEREAS, LIFE now wishes to amend the Original Agreement by creating this Amended and Restated Master Trust Agreement.

NOW THEREFORE, the parties to this Agreement hereby amend and restate the Master Trust as follows:

Article I Trust Establishment, Purpose and Disposition.

- 1.1 Name of Trust. The name of the Trust shall be LIFE, INC. POOLED TRUST II, a supplemental needs trust created pursuant to the Omnibus Budget Reconciliation Act of 1993 ("OBRA 1993"). Pursuant to OBRA 1993, persons with disabilities (as defined pursuant to Social Security Law §1614(a)(3) [42 USC 1382(a)(3)]) shall be able to put assets in a pooled supplemental needs trust so long as said trust is established and managed by not-for-profit institutions. LIFE is a recognized 501(c)(3) not-for-profit charitable corporation.
- 1.2 Establishment of Trust. This Trust is established under all applicable federal, state and local laws including 42 USC 1936 (p)(d)(4), New York Social Services Law Section 366(2)(b)(2) and any and all other applicable laws. Trustee shall be required to provide all applicable governmental agencies the notices required pursuant to applicable laws.

- 1.3 Trustee. LIFE shall be the Trustee pursuant to this Agreement and hereafter referred to as the “Trustee”.
- 1.4 Irrevocable Trust. (a) The parties hereby agree and understand that this Trust is an irrevocable trust and upon its creation, any funds put into the Trust by Beneficiary (as hereinafter defined in Article II) or a person acting on behalf of a Beneficiary shall remain part of the Trust and cannot be returned to Beneficiary for any reason.
- (b) No money or other Trust property in the Trust shall be encumbered in any way by Beneficiary, or any person acting on Beneficiary’s behalf. Neither Beneficiary, nor any person acting on or behalf of Beneficiary, shall have the right to pledge, encumber, sell, borrow against, loan, assign, transfer or charge against any Trust property. Beneficiary and any person legally acting on Beneficiary’s behalf, hereby indemnify and holds Trustee and Settlor harmless against any and all claims, costs and expenses arising due to a violation of this Section 1.4(b).
- 1.5 Amendments to Trust. Settlor and/or Trustee may make amendments to the Trust and/or this Agreement so long as such amendments do not (i) alter the purpose of the Trust, (ii) make this a revocable trust, or (iii) adversely impact a past executed Sub-Trust Agreement. All amendments shall be consistent with all applicable laws. Major amendments to the Trust and/or Agreement shall require a majority vote of LIFE’s governing board. In the event such amendment requires the approval of a court of law, then such amendment shall not be deemed to be in effect until such time as same has been approved by such court of law. Trustee shall not make amendments which will adversely affect the ability of Beneficiary to receive the benefits to which Beneficiary is otherwise entitled.
- 1.6 Creation and Funding a Sub-Account. (a) Creation. A sub-account in the Master Trust shall be created and maintained for each person who enters the Trust. Such account may be established by the Beneficiary or guardian of the beneficiary or any person acting with legal authority (“Grantor”), using Beneficiary’s own funds.
- (b) Funding. Each Beneficiary (hereinafter defined) who joins the Trust shall have a sub-account within the Trust for such Beneficiary’s Trust property. The funding of the Beneficiary’s sub-account may come from the Beneficiary itself or from other persons as set forth in Section 1.6(a), above. A Beneficiary shall join

the Trust only upon the execution and delivery of a separate Trust Joinder Agreement between the Settlor and Beneficiary, and/or the Beneficiary's legal guardian or other person with legal authority. The Trust Joinder Agreement shall establish the Beneficiary as a participant in the Trust. The minimum amount of the funding of an account shall be based upon the requirements of the Trustee at the time of the establishment of the Trust account. Trustee shall have the right to change the amount required for minimum amounts in the trust.

(c) Property. The sums of cash, securities and/or property irrevocably transferred to the Trust by the Grantor to be held by the Trust for the purposes set forth in this Agreement shall be the Trust property. Grantor has the right to add additional Trust property to the Trust sub-account at any time, subject to review and acceptance by the Trustee. Upon acceptance, the additional property becomes part of the Trust property. In the event Trustee does not accept such property as part of the Trust property, Trustee shall advise Grantor in writing of such refusal.

(d) Contribution. Each Grantor shall designate a specific account to which he or she is contributing to. In the event that no such specific designation is made, the Trustee shall reasonably determine which account the contribution shall be made to.

1.7 Purpose. (a) The Trust is established for the primary benefit of the Beneficiary. The Beneficiary has a disability which impairs Beneficiary's ability to provide for his or her primary needs. The support services provided for by governmental programs may be leaving gaps in Beneficiary's standard of care. This Trust is intended to supplement the governmental services and supports and to provide for the Beneficiary's need, wants, care, education, training, rehabilitation and comfort, as well as any other expenditure allowable by applicable laws. Accordingly, any funds or contributions by Beneficiary or any third party shall be protected funds under this supplemental needs trust. The purpose of the Trust shall be to provide for the efficient management and distribution of the trust estates of people with disabilities, as defined in the Social Security Law - Section 1614(a)(3) ("Disabled Persons"). Disabled Persons who have entered into the Trust ("Beneficiaries") and established sub-trust accounts within the Trust (as required by law) shall be entitled to the benefits of such management and distribution. Beneficiaries shall be able to receive extra benefits for care, comfort and support above and beyond any benefits the Beneficiary receives from governmental programs or services. The needs of the Beneficiaries are the

primary purpose of this Trust and any interests of third parties and remaindermen shall be subordinated to the interests of the Beneficiaries.

(b) The parties hereby agree and understand that Beneficiary is part of a so called "family unit" and cannot be made completely independent of such family unit. Accordingly, Trustee is hereby permitted by Beneficiary or such other person establishing the Trust for the benefit of the Beneficiary to use the trust estates for the benefit of the Beneficiary, even if the use of funds on Beneficiary's behalf will indirectly benefit other members of Beneficiary's family. Trustee shall use its sole discretion to determine whether or not such benefits are direct or indirect and shall act with such discretion accordingly. The foregoing provision shall be exercised by Trustee in full compliance with all applicable laws. In the event that such provisions shall cause a loss or lapse of any governmental benefits to Beneficiary, the provision shall automatically be deemed to be null and void.

1.8 Remainder Funds in Sub-Account. (a) Upon the death of a Beneficiary, any remaining funds (after the payment of any authorized and otherwise unpaid for estate administration fees and expenses) in the sub-account shall be retained by the Trust to be used for furthering the Trust's purpose. Such purposes shall include, but shall not be limited to, (i) providing other Beneficiaries who are disabled pursuant to the Social Security Law with direct benefits in the event that such other Beneficiaries do not have enough funds in their own sub-accounts to cover their benefits, (ii) using such remaining amounts to pay for the administrative costs and expenses of the Trust, or (iii) using such amounts to provide indirect assistance to, and advocacy for, individuals with disabilities or for educating the community on people with special needs disabilities. Trustee may also pay out of the trust property any federal, state or local taxes which are due to any applicable governmental authority as a result of the Trust.

(b) If the Trust does not use such remaining amounts for the purposes set forth in Section (a), above, then the trust will pay to the State(s) the amount remaining up to an amount equal to the total amount of medical assistance paid on behalf of the Beneficiary under state Medicaid plan(s). To the extent that the trust does not retain the funds in the account, the State(s) shall be the first payee(s) of any such funds and the state(s) shall have priority over payment of other debts and administrative expenses except as listed in the POMS SI01120.203B.3.a.

Article II The Beneficiary.

- 2.1 A person may be a Beneficiary under this Trust so long as such person is a Disabled Person, as defined above.
- 2.2 A person shall become a "Beneficiary" under the trust upon (i) the full execution and delivery of the Sub-Trust Joinder Agreement by Settlor and Beneficiary (or a person with legal authority to execute same on Beneficiary's behalf) and (ii) approval of same by the Trustee. The Sub-Trust Joinder Agreement incorporates all of the terms and conditions of this Agreement into such Sub-Trust Joinder Agreement by reference. A party entering into and executing the Sub-Trust Joinder Agreement shall have first read and agreed to the terms and conditions of this Agreement. The Trust Joinder Agreement shall establish the Beneficiary of the Sub-Trust.

Article III Disposition of Trust Funds.

- 3.1 (a) Each Sub-Account shall be held by Trustee for the sole benefit of the Beneficiary. The Trust property shall not be used for any other purposes during the life of the Beneficiary. No remaindermen have an interest in such trust property until the death of the Beneficiary. The interests of any remaindermen shall be subordinate to the Beneficiary during Beneficiary's lifetime.

(b) Trustee shall, at Trustee's sole and absolute discretion, distribute all Trust income, principal and proceeds for the benefit of the Beneficiary, as so permitted by law and by the terms and conditions of this Agreement. The Trust property income and principal of the Trust shall be used to provide goods and services which shall supplement and enhance the quality of life of the Beneficiary. Such distributions shall supplement, but not replace, impair or diminish Beneficiary's eligibility for any applicable federal, state or local benefits which Beneficiary receives. Such distributions shall be made in accordance with any and all applicable laws. Trustee shall make disbursements from the Trust for the Beneficiary's benefit based upon the need of each individual Beneficiary and the total amount of resources available to Trustee to make such disbursements.

(c) Trustee shall not use the powers set forth in this Agreement, nor make payments or distributions, which will diminish, impair, terminate or revoke the benefits which Beneficiary receives from any applicable federal, state or local source.

(d) Anything in Section 3.1 of this Agreement to the contrary notwithstanding, Trustee, in its sole discretion, may make distributions for needs that may or will directly impair Beneficiary's ability to receive governmental (or other) supports and services if and only if it is determined using reasonable discretion that Beneficiary requires such distributions to be made and such distributions are in the best interest of the Beneficiary, despite the negative consequences because (i) Beneficiary is not receiving his or her basic needs or (ii) it is in Beneficiary's best interests to suffer a loss of such governmental supports or services. Such distributions shall include, but shall not be limited to, educational, care, food, clothing, living, health or personal care needs. If the ability of the Trustee to make such distributions as described in subsection (d) shall cause the Beneficiary to lose access to governmental services and/or benefits, then subsection (d) shall be null and void, and Trustee will no longer have authority to make such distributions.

- 3.2 It is the intent of the parties and the intent of the Trust that Section 7-1.6 of the New York Estate Powers and Trusts Law ("EPTL") shall not apply to this Trust or to this Agreement.
- 3.3 In the event that Beneficiary is no longer a resident of New York State, Trustee shall have authority to suspend all of its distributions until such time as a new distribution source is established on Beneficiary's behalf.

Article IV Trust Administration.

- 4.1 Trustee may at any time appoint a financial institution as Co-Trustee, as Trustee sees fit. Trustee may also work with a third party financial institution to assist in the management and investment of Trust funds without making said financial institution a "Co-Trustee".
- 4.2 Powers of the Trustee. (a) Trustee shall hold each account for the benefit of the Beneficiary during Beneficiary's lifetime. Trustee shall, at its sole discretion, have the full power and authority to:
- (i) Retain any income of the trust, so long as such retention appears advisable, and to retain income received without liability for any loss that may be incurred thereby.
 - (ii) Sell, exchange, lease, assign, transfer and convey any income or property, real or personal held in the Trust estate, at public or private sale,

at such time and price and upon such terms and conditions (including credit) as the Trustee may determine.

(iii) To determine the manner of ascertainment of income and principal (including gross income and net income), the apportionment between income and principal of all receipts and disbursements; and to select an annual accounting period. Without limiting the discretion granted in respect to other administrative powers, the discretion intended by this paragraph may be exercised without regard as to whether there is any doubt or uncertainty under general law as to the proper classification of a particular receipt or disbursement, so long as it is exercised to effectuate the Settlor's intention that due and impartial consideration be given to the interests of those entitled to income as well as those entitled to principal.

(iv) To take any action with respect to conserving or realizing upon the value of any estate property.

(v) To employ and compensate accountants, attorneys, and such agents as Trustee may deem advisable, with or without discretionary power, to pay reasonable compensation for their services and to charge same to (or apportion same between) income and principal of each sub-account (proportionally) as it may deem proper, to reimburse LIFE or any other advocacy or service group for its expenses and costs incurred in providing services on behalf of the Beneficiary.

(vi) To commence or defend any legal actions for the trust or any Beneficiary as Trustee deems advisable.

(vii) To invest any trust property as Trustee deems appropriate and proper.

(b) The powers set forth in Section 4.2(a) are in addition to the powers and authorities that are granted in other sections of this Agreement and that are conferred upon the Trustee by law or the EPTL and may be exercised without the prior leave or subsequent confirmation of any court from the date this agreement is executed until the final distribution of the assets of each Trust created by this Agreement.

4.3 Account Pooling. Trustee shall pool, jointly manage or co-mingle trust property of all of the Beneficiaries of the Trust for the purposes of investment of the assets of the accounts. Each account shall then be entitled to its pro-rata share of any net income of such asset investment. Net income is the amount of any income and profits, including realized or unrealized gains, generated by the investment of the trust property, less any and all losses, costs and expenses, including realized and unrealized losses, attributed to the administration of the Trust.

- 4.4 LIFE Board. LIFE's governing board shall manage the Trust as both Settlor and Trustee.
- 4.5 Delegation of Duties. Trustee may delegate authority or duties to one or more agents of Trustee for the purposes of administration of the Trust. Such delegation may include record keeping, accounting, asset investment or distribution, selection of investment opportunities and administrative duties. Such delegation may include the hiring of a Trust custodian (authorized by the State of New York to be a trust custodian); however nothing herein shall be read so as to require the hiring of a corporate custodian.
- 4.6 Successor Trustees. (a) In the event that any Trustee hereunder resigns or is terminated by Settlor, a replacement of the Trustee shall be established by LIFE.
- (b) Any successor Trustee shall have all of the rights and powers set forth herein for such Trustee (whether as Lead Trustee or Co-Trustee, in the event a Co-Trustee is ever established). A successor Trustee shall not be liable for the acts of a previous Trustee, prior to the date upon which successor Trustee becomes a Trustee hereunder. Successor Trustees shall immediately have power as Trustees as though they were initially made Trustees pursuant to this Agreement.

Article V Trust Accounting.

- 5.1 The Trust accounting period shall be on a calendar year.
- 5.2 Trustee shall maintain accurate records for each sub-account established under the Trust. Trustee shall send monthly or quarterly statements, as it deems proper, as well as an end of the year statement for the previous Trust year. Such accountings and reports shall be deemed approved if the Beneficiary assents to the account in writing or does not give written notice of an objection to the Trustee within ninety (90) days after the date on which the account is rendered.
- 5.3 Trustee shall comply with all applicable accounting laws with jurisdiction over the Sub-Accounts.

Article VI Fees and Expenses.

- 6.1 Each Beneficiary shall pay an initial fee to join the Trust and establish a sub-account within the Trust. Beneficiaries shall also be responsible for such other

fees and expenses which exist or which may in the future be established by Trustee in its discretion. All of the fees set forth hereunder shall be in accordance with LIFE's published fee schedule, subject to change from time to time. Trustee may waive statutory commissions and fees and instead charge reasonable fees and expenses as set forth herein.

Article VII Waiver of Liability/Indemnification.

- 7.1 Trustee and any of its employees, directors or other parties associated with Trustee shall be fully indemnified and held harmless and shall be deemed not liable for any claim, losses, actions, suits, liability, proceedings, penalty, loss, fees, costs or expenses (including reasonable attorney fees and expenses) arising out of any error or omission, negligence or misconduct on the part of Trustee acting in its capacity as Trustee whether or not such person was serving at such time in the role of Trustee of the incurring of such loss, claim, suit, liability, fee, cost or expense. The foregoing shall not apply to any instances of intentional misconduct or fraud on the part of Trustee.
- 7.2 Trustee shall be fully indemnified and shall be presumed to have acted in good faith upon Trustee's reliance on any document, instrument or certificate which Trustee in its reasonable discretion believed to be genuine. Trustee shall not be under any requirement to make an investigation or inquiry into the legality of any signature on a document or to ascertain whether such signature is genuine. Barring gross negligence or fraud, Trustee's acceptance of any such documents shall be conclusive evidence that same is in fact legal and genuine.
- 7.3 Trustee may in good faith rely upon the correctness of any document or certificate which Trustee believes to be genuine and which appears to be properly executed by the correct party without the need for investigation into such correctness. Trustee may accept such documents as proof of the accuracy of the information contained therein.

Article VIII Miscellaneous

- 8.1 Governing Laws. This Trust shall be governed by the laws of the State of New York. All accounting and administrative services shall be done in Nassau County, New York, the corporate home of LIFE. Federal law may also be applicable in the event of a conflict of laws.
- 8.2 Invalidity of Provisions. Should any provision of this Agreement be deemed illegal, invalid or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect and fully enforceable thereunder.

- 8.3. Counterparts. This Agreement may be signed in any number of counterparts all of which, when taken together, shall constitute a fully executed agreement.
- 8.4. Severability. A determination that any provision of this Trust Agreement is prohibited by law shall be effective in respect to that provision only, and shall not invalidate the remaining provisions this instrument. In the event of such a determination, such provision shall be reformed to comply with applicable law to the extent possible and consistent with the intent and purpose of this Trust Agreement.
- 8.5. Notices. Wherever in this Agreement it shall be required or permitted that Notice or demand be given or served by any party to this Agreement to or on the other, such Notice or demand shall not be deemed to have been duly given or served unless in writing and either personally delivered or sent by Certified Mail, Return Receipt Requested, postage prepaid, and addressed to the party at the address set forth in the opening paragraph. Such addresses may be changed from time to time by any party, by serving Notice as stated above. Notices shall be deemed effective upon actual receipt or refusal of delivery.

Article IX – Insurance/Bond

- 9.1 Trustee may, at its option, obtain a bond or such other insurance to cover claims arising from services as Trustee hereunder. A pro-rata portion of the premiums for such insurance shall be charged to the sub-accounts. Trustee is further authorized to purchase any bond as may be required by any applicable law or any court of competent jurisdiction.


Article X – Waiver of Conflict of Interest

- 10.1 Waiver of Any Conflict of Interest. Beneficiary, or any person legally executing a sub-account Trust Joinder Agreement on behalf of Beneficiary, hereby and thereby acknowledges a potential conflict of interest in the Trust administration since, pursuant to the terms and conditions of this Agreement, any remaining funds in the Beneficiary's sub-account shall remain with the Trust to be used as herein set forth. By executing and delivering a sub-account Trust Agreement to Trustee, Beneficiary or any party claiming through Beneficiary, hereby and thereby waives any and all claims against the Settlor, Trust or any Trustee for


self-dealing or conflicts of interest arising out of the terms and conditions of this Agreement.

IN WITNESS THEREOF, the parties hereby sign this Agreement as of the date first hereinabove written.

LABOR & INDUSTRY FOR EDUCATION, INC., Settlor

BY: 
Name: Jackie Rogoff
Title: Executive Director of Labor and Industry
for Education, Inc.

LABOR & INDUSTRY FOR EDUCATION, INC., Trustee

BY: 
Name: Jackie Rogoff
Title: Executive Director of Labor and Industry for
Education, Inc.

STATE OF NEW YORK)
)
) ss.:
COUNTY OF Nassau)

On the 7 day of March in the year 2016 before me, the undersigned, a Notary Public in and said State, personally appeared Jacki Rogoff, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

JENNIFER KATZ
NOTARY PUBLIC-STATE OF NEW YORK
No. 02KA6309615
Qualified in Nassau County
My Commission Expires August 11, 2018

Jennifer Katz
Notary Public

STATE OF NEW YORK)
)
) ss.:
COUNTY OF Nassau)

On the 7 day of March in the year 2016 before me, the undersigned, a Notary Public in and said State, personally appeared Jacki Rogoff, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

JENNIFER KATZ
NOTARY PUBLIC-STATE OF NEW YORK
No. 02KA6309615
Qualified in Nassau County
My Commission Expires August 11, 2018

Jennifer Katz
Notary Public