



UNIVERSITY  
*of* ALASKA  

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*Many Traditions One Alaska*

**Declaration of Trust  
for the  
Education Trust of Alaska**

**As Amended and Restated  
Effective July 1, 2017**

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**DECLARATION OF TRUST**  
**OF THE**  
**EDUCATION TRUST OF ALASKA**  
**As Amended and Restated Effective July 1, 2017**

This AMENDED AND RESTATED DECLARATION OF TRUST for the Education Trust of Alaska, which was established on April 20, 2001, amended and restated as of January 1, 2002, and is further amended and restated by the Board of Regents of the University of Alaska to be effective the 1st day of July 2017.

WHEREAS, the Trust is comprised of the Alaska Higher Education Savings Trust and the Advance College Tuition (ACT) Savings Fund and established under the Alaska College Savings Act (AS 14.40.802 – 14.40.0817) to implement, coordinate, and facilitate the administration of the College Savings Program;

WHEREAS, the purposes of the College Savings Program are to secure the payment of available Account balances and the UA Tuition-Value Guarantee, to reduce the financial barriers to obtaining an education, to provide wide and affordable access to education and a convenient means of saving for college or other post-secondary education, to encourage achievement of higher academic standards by Beneficiaries in grades 7 through 12, to promote increased attendance at the University, and to enhance opportunities for Beneficiaries to complete their education;

WHEREAS, the College Savings Program provides that a Participant may make contributions to be invested in a manner that will encourage use for qualified higher education expenses of a Beneficiary;

WHEREAS, the College Savings Program, among other things, includes the UA Tuition-Value Guarantee, a guarantee by the Trust that the long-term earnings on a Participant's investment in the ACT Portfolio will at a minimum keep pace with the UA Tuition Inflation Rate, but only as to that portion of any distribution from the ACT Portfolio used to pay for tuition at the University of Alaska;

WHEREAS, the Alaska College Savings Act authorizes the University to administer, manage and operate the College Savings Program, to enter into Account Agreements with Participants, to provide for the investment of contributions made by those Participants and investment of any earnings on those contributions, and to make distributions at the direction of the Participants for payment or reimbursement of qualified higher education expenses or other purposes;

WHEREAS, the Alaska College Savings Act authorizes the Trustee to engage a Program Manager to provide Program Management Services;

WHEREAS, the Alaska College Savings Act requires the Board to maintain the Trust in compliance with the requirements of a qualified tuition program established and maintained by a state within the meaning of the Code and provides that the Board may establish trusts and accounts as the Board considers appropriate to satisfy the requirements of the Code;

WHEREAS, the University has determined that the purposes of the College Savings Program may be accomplished through the Trust, and the Trust was originally declared by the University on April 20, 2001, through its Board, to carry out and promote the purposes of the College Savings Program;

WHEREAS, this Declaration is being amended and restated to reflect changes in the Internal Revenue Code of 1986, as amended, and other changes deemed appropriate by the Trust Administrator.

NOW THEREFORE, the Board hereby declares that the Trust, as provided in this Declaration, shall hold all cash, securities and other assets, which the Trust may from time to time acquire pursuant to the terms of this Declaration, IN TRUST, to manage and dispose of them in accordance with the following terms and conditions:

## ARTICLE I

### PURPOSES OF TRUST; CAPITALIZED TERMS AND REFERENCES

1.1 Secure Obligations, Other Purposes. (a) The purposes of the Trust are to secure, in accordance with this Declaration, the payment of available Account balances to Participants and Beneficiaries, to secure the UA Tuition-Value Guarantee, if applicable, to those both participating in the ACT Portfolio and attending the University, and, generally, to accomplish other purposes of the College Savings Program.

(b) The Board finds that the purposes of the Savings Trust and the ACT Savings Fund are compatible and do not limit the Trust's ability to administer, manage and otherwise carry out the duties of the Trust under this Declaration. The Board determines that the purposes of the College Savings Program may be accomplished through the Trust, and the Trust is established to carry out and promote the purposes of the College Savings Program.

1.2 Capitalized Terms, References. Capitalized terms used in this Declaration have the respective meanings specified in Section 11.1. References to Articles and Sections, unless otherwise specified, shall be to Articles and Sections of this Declaration.

## ARTICLE II

### TRUSTEE AND TRUST ADMINISTRATOR

2.1 Trustee. The Trustee shall be the University.

2.2 Trust Administrator. (a) The University President is empowered to act as Trustee as if he/she were named Trustee in AS.14.40.802. The University President may serve as Trust Administrator or appoint such other official, officer, or agent of the University to serve as Trust Administrator of the Trust. The Trust Administrator is authorized to enter into Account Agreements, in accordance with the terms of the Authorized Plans as described in the respective Plan Disclosure Document, to enter into other agreements as considered necessary and convenient, to administer, manage, operate, amend, suspend and terminate this Declaration, the Authorized Plans, and the College Savings Program, and, generally, to have all power and authority necessary and convenient to carry out the responsibilities of the Trustee under this Declaration.

(b) The Trust Administrator may engage employees, independent contractors and other persons to perform the Program Management Services and other services related to the Trust and the College Savings Program.

## ARTICLE III

### POWERS OF TRUSTEE

3.1 All Powers Necessary and Convenient. (a) Subject to the provisions of this Declaration, the operation of the Trust shall be managed by the Trustee. The Trustee shall have all powers necessary and convenient to administer, manage, and operate the Trust and the College Savings Program.

(b) Without limiting the provisions of this Section 3.1, the Trustee may, as the Trustee considers appropriate, do the following with respect to the Trust: (i) appoint and remove officers of the Trust, if any; (ii) appoint and terminate independent contractors, subcontractors, consultants, and sub-consultants; (iii) hire, supervise, and terminate employees; (iv) appoint one or more advisers, sub-advisers, administrators, depositories, custodians, and agents; (v) authorize any contractor, adviser, consultant, depository or custodian to appoint subcontractors, sub-advisors, sub-consultants, sub-depositories, sub-custodians and agents; (vi) deposit all or any part of the assets of the Trust in a system or systems for the central handling of securities and debt instruments; (vii) provide for the promotion and marketing of the College Savings Program; and (viii) provide for payment of all the persons identified in this Section 3.1(b).

(c) The Trustee is granted full power and authority to establish and amend the Authorized Plans of the College Savings Program.

(d) The Trustee is granted full power and authority to determine, and to amend from time to time, the objectives on which the Investment Options of the Trust are based and to comply with the investment direction by a Participant as may be permitted under this Declaration, the Code and interpretations by the Internal Revenue Service.

(e) With regard to Administrative Accounts, the Trustee is further granted full power and authority to hold cash, invested or uninvested, at any time and from time to time, in such amounts and to such extent as the Trustee, in the Trustee's sole discretion, deems advisable.

(f) The Trustee shall have authority to make all final interpretations of the terms and conditions of this Declaration.

(g) The assets of the Trust shall be held in the name of the Trustee or such other person as designated by the Trustee.

(h) The Trustee shall be empowered to enter into any investment that is not prohibited by law.

### 3.2 Standard of Care, Indemnification by the Trust.

(a) Standard of Care. The Trustee shall, in carrying out the duties of the Trustee as set forth in this Declaration, act with the care, skill and diligence, under the circumstances then prevailing, which shall characterize the actions of a prudent person who shall be acting as such a trustee.

(b) Indemnification by the Trust. The Trust agrees to defend and indemnify, to the fullest extent allowed by law, the University, the Trustee, the Trust Administrator, the Board, and their employees and officers (collectively "Indemnitees") for all acts taken in carrying out his, her, or their responsibilities under the terms of the College Savings Program. This defense and indemnification for all acts is intentionally broad but shall not provide indemnification for embezzlement or diversion of Account or Administrative Account funds for the benefit of the Indemnitee. This indemnification applies to all expenses of defending an action, including all legal fees and other costs of such defense, as well as to any monetary recovery resulting from a judicial or other Dispute resolution proceeding. Notwithstanding the preceding, this provision shall not apply and defense and indemnification will not be provided for the Program Manager or any paid consultant or independent contractor appointed as provided in the College Savings Program.

3.3 Selection of Program Manager. The Trustee may, as considered appropriate by the Trustee, from time to time, without limiting the generality of the Trustee's powers and authority otherwise set forth in this Declaration, enter into one or more contracts with a Program Manager, as an independent contractor, to provide some or all of the Program Management Services. In the event the Trustee shall not select a Program Manager to perform a particular Program Management Service, the Trustee shall perform that Program Management Service.

3.4 Program Management Services. (a) Program Management Services may include the performance and assumption of some or all of the following services, duties and responsibilities to, or for, or on behalf of, the Trust, the College Savings Program and the Trustee: (i) assistance in the development and implementation of the College Savings Program; (ii) administrative and recordkeeping; (iii) distribution and marketing; (iv) investment management; (v) investment advisory; (vi) custodial and depository; (vii) accounting; (viii) customer relations; and (ix) such other services, duties and responsibilities as the Trustee may determine appropriate.

(b) In the event the Program Management Services shall include making the investments outlined in this Declaration, and otherwise carrying out investment management or investment advisory duties, the Program Manager shall act as a fiduciary with the care, skill and diligence, under the circumstances then prevailing, which shall characterize the action of a prudent person who shall be acting as a fiduciary in the best interests of the Trust, regarding the Administrative Accounts, and in the best interests of the Trust, the Participants and Beneficiaries, regarding the Accounts.

(c) The Program Management Services expressly include determination of detailed asset allocations and the selection of underlying mutual funds and other investments that make up the Investment Options based on investment objectives established by the Trustee, consultation with the Trustee, and such other Trustee involvement as may be required by the Code.

(d) The Program Manager may issue orders for the purchase and sale of securities, including orders through any affiliate of the Program Manager, as permitted by the Trust. The Program Manager is specifically authorized to direct Participant contributions to, or make investments in, the Investment Options as directed by the Participant, or as provided in the College Savings Program.

(e) In addition to other provisions of this Declaration, the Program Management Services are subject to the following:

(i) The Program Manager, in rendering assistance to Participants, Custodians and Beneficiaries, shall not be expected to, and shall not, provide tax or legal advice. A Participant, Custodian, or Beneficiary may, in the respective sole discretion of each, seek separate tax and legal advice regarding the College Savings Program and its operation. The Program Manager shall, periodically or when requested by the Trust, provide general regulatory and legislative updates to the Trust;

(ii) Because some of the Program Management Services provided by the Program Manager may require a Participant to provide oral, telephonic, electronic or written instructions or information, these instructions and other information provided under a signature which purports to be that of the Participant, a personal identification number, or other identifying information used to verify that the transmission originated from the Participant, are to be deemed to be authentic, and the Program Manager is authorized to act in accordance with such instructions or information; and

(iii) The Program Manager and the Trust shall act in accordance with such instructions or information as described in Section 3.4(e)(ii) and shall have no duty to inquire into their completeness, accuracy, authenticity or timeliness.

#### ARTICLE IV

##### COLLEGE SAVINGS PROGRAM

4.1 Composition. (a) The College Savings Program is composed of Authorized Plans as may be established and amended by the Trust from time to time. The Plan Disclosure Documents for the Authorized Plans, current as of the date of this restatement of the Declaration are incorporated into this Declaration as Appendix I.

(b) The College Savings Program shall be implemented through the Trust and its Authorized Plans as described in the respective Plan Disclosure Documents.

4.2 Continuation and Consolidation of ACT Savings Fund. The ACT Savings Fund will be assimilated within the Administrative and Participants' Accounts of the Trust by the Trustee, and the UA Tuition-Value Guarantee determined and administered, in accordance with the terms of this Declaration and the Plan Disclosure Document for the University of Alaska College Savings Plan.

#### ARTICLE V

##### TRUST ADMINISTRATION

5.1 Trust Accounts (a) The Trustee shall establish within the Trust separate accounts, as follows: (i) Accounts; (ii) one or more Administrative Accounts, and (iii) such other accounts or subaccounts of the Trust as the Trustee may, from time to time, consider appropriate to administer, manage, and operate the Trust.

(b) A separate Account shall be maintained for receipt of contributions, made by a Participant on behalf of each Beneficiary, and the corresponding income, expense, gain, and loss that is attributed to that Account.

(c) The Trustee shall establish and maintain one or more Administrative Accounts for the collection of fees and revenues, for the payment of expenses and other obligations of the College Savings Program, for the creation of operating funds, reserves, endowments and such other accounts as considered necessary or convenient by the Trustee to accomplish the purposes of the Trust and the College Savings Program. The Trust may accept transfers into Administrative Accounts from any source including, but not limited to, Accounts.

(d) The Trust shall maintain accurate recordkeeping and accounting of contributions and any earnings on each Account and each Administrative Account.

(e) The cash, securities and other assets in the Accounts and various Administrative Accounts shall at all times be and remain the property of the Trust, subject to the terms of this Declaration.

(f) All contributions to an Account shall be held, in trust, by, and in the name of, the Trust, the Trustee, or the Trust's designee. Neither the Participant nor the corresponding Beneficiary shall have any right, title or interest in, the whole, or any part, of the Trust property, other than as expressly set forth in this Declaration, nor a right to call for a partition, division or accounting of that property.

(g) Notwithstanding other provisions of this Declaration, the Trust shall have the duty and responsibility, to the exclusion of the Program Manager, if any, to direct the allocation between, and investment of, funds in the Administrative Accounts.

5.2 Commingling. (a) The Trustee shall cause Accounts and Administrative Accounts to be invested. Accounts may be commingled for investment purposes. Administrative Accounts may be commingled for investment and other purposes as considered appropriate by the Trustee. The Administrative Accounts may be invested in such securities and funds as directed by the Trustee, except as may be prohibited by law.

(b) Except to the extent the Accounts are invested in one or more Investment Options, the Accounts and any cash and securities held in them shall be physically segregated and set apart at all times from the corporate assets of the Program Manager.

5.3 Authorized Trust Expenses. (a) The Trustee is authorized to pay or cause to be paid out of the principal or income of the Trust all direct and indirect Authorized Trust Expenses as described in Section 5.3(b).

(b) Authorized Trust Expenses generally include, but are not limited to, the costs, expenses, fees, charges, penalties, taxes and liabilities incurred by the Trust and the Trustee to administer, manage, and operate the College Savings Program, to implement and accomplish the purposes of the Trust and the College Savings Program and such costs, expenses, fees, charges, penalties, taxes and liabilities for the Program Management Services and services of employees, advisers, administrators, distributors, auditors, counsels, depositories, custodians, accounting and servicing persons and other consultants and independent contractors of, and such other expenses and charges of, the Trust and the Trustee, as the Trustee may deem appropriate.

5.4 Recordkeeping. The Trust shall keep accurate and detailed records of all investments, receipts and disbursements and other transactions relating to the College Savings Program and all of the records as required by the Code.

5.5 Reports. The Trust shall provide periodic statements to each Participant concerning the value of the corresponding Accounts and all other reports as required by the Code.

5.6 Audit. The Trustee shall cause the Trust to be audited at least annually by a certified public accountant selected by the Trustee.

5.7 Fiscal Year. The fiscal year for the Trust shall run from July 1 to June 30 of each year, except for its first fiscal year which shall begin on April 20, 2001.

## ARTICLE VI

### PARTICIPANTS, BENEFICIARIES, AND ACCOUNTS

6.1 Establishing an Account, Participant Eligibility, Designating a Beneficiary. (a) An individual, corporation, partnership, association, trust or estate may establish an Account in the Trust under the terms of this Declaration.

(b) A Participant must be a resident of, or organized in, a state, territory, district or commonwealth of the United States, or a resident alien subject to the Internal Revenue Code of 1986, as amended.

(c) The Participant must be one person. Joint ownership of an Account is prohibited.

(d) The Participant must designate a Beneficiary in accordance with Section 6.4.

(e) The Trustee may refuse to establish an Account or may terminate an Account when, in its sole discretion, it determines such action is in the best interest of the Trust.

6.2 Designating a Successor Participant, Changing a Participant. (a) A Participant may designate a successor Participant at any time by notifying the Trust in writing in accordance with terms of the respective Authorized Plan. The designation of a successor Participant does not take effect until the Participant: (i) dies; (ii) is declared legally incompetent by a court of competent jurisdiction; (iii) is dissolved; or (iv) under such other circumstances and on such effective date as is provided in the designation, to the extent not prohibited by law and accepted by the Trust.

(b) If a Participant dies, or is dissolved or declared legally incompetent, without having effectively designated a successor Participant, the Beneficiary may designate a successor Participant, provided that the successor Participant may not be the Beneficiary. In the event a Beneficiary is a minor, the person legally authorized to act on behalf of the Beneficiary shall have the exclusive right, on behalf of the Beneficiary, to designate the successor Participant.

(c) Notwithstanding the provisions of Sections 6.2(a) and (b), a Participant may, in accordance with the terms of the respective Authorized Plan, request the substitution of another person to serve as Participant for an Account. Such substitution may not be in exchange for money or other consideration.

6.3 Account Agreement. (a) Except as provided in Section 6.6, the Trust may accept contributions to an Account by, or on behalf of, a Participant only upon acceptance of an Account Agreement properly completed and executed by the Participant.

(b) A Custodian must execute the Account Agreement for an Account established for a Participant who: (i) is a minor; or (ii) where the Account is funded from an UGMA or UTMA provided the Custodian is required to act under the terms of the UGMA or UTMA. The Custodian will be responsible for performing all duties of the Participant unless indicated otherwise or until released or replaced in accordance with the terms and conditions of the respective Plan Disclosure Document. A Custodian may designate a successor Custodian at any time by notifying the Trust in writing in accordance with the terms of the respective Authorized Plan. The designation of a successor Custodian does not take effect until the current Custodian dies or is declared legally incompetent by a court of competent jurisdiction.

(c) The form of the Account Agreement, current as of this amendment and restatement is attached to, and incorporated into, this Declaration as Appendix II.

(d) The Trustee may amend or otherwise revise the terms of the College Savings Program on a prospective or retroactive basis.

6.4 Beneficiary Eligibility. (a) The Participant shall designate an individual as the Beneficiary on the Account at the time the Account Agreement is executed.

(b) The Beneficiary designated for an Account may be the Participant or another individual appointed by the Participant.

(c) Only one Beneficiary may be appointed for an Account, except for Accounts established before May 21, 2001. Effective May 21, 2001, an Account may have only one Beneficiary at any one time.

(d) Notwithstanding the provisions of Section 6.4(a), an agency or instrumentality of a state or local government or tax exempt organization as described in the Code may establish an Account as part of a scholarship program without naming a specific Beneficiary.

6.5 Contributions to Accounts. (a) A Participant may make contributions to an Account, including, but not limited to, direct contributions from, or on behalf of, the Participant, transfers from other Accounts, and rollovers from other qualified tuition programs, Coverdell education savings accounts, qualified US Savings Bonds, and other rollovers permitted under the Internal Revenue Code.

(b) The Trust shall accept contributions to an Account subject to this Declaration, the terms of the applicable Authorized Plan, and the limitations of the Code, but only to the extent those contributions, together with the value of the Account and any other Account for the same Beneficiary, do not exceed the maximum established by the Trustee.

(c) Contributions to an Account shall be accepted only in the form of cash, check, money order, or other form, as may be authorized by the Trust.

(d) The Trustee shall establish a maximum contribution limit in accordance with the Code. The portion of any contribution in excess of the maximum established shall be returned in accordance with the terms of the applicable Plan Disclosure Document.

(e) Notwithstanding other provisions of Section 6.5, an agency or instrumentality of a state or local government or tax exempt organization as described in the Code, shall not be subject to limits on contributions for Accounts that are established as part of a scholarship program.

6.6 Contributions Through Alaska PFD. (a) The Trust may accept contributions through the Alaska PFD and establish Accounts upon proper notice of the Participant's intent to participate in the College Savings Program.

(b) The notice described in Section 6.6(a), shall be provided in accordance with the terms of the applicable Plan Disclosure Document.

(c) In accordance with the terms of the applicable Plan Disclosure Document, the Participant or the Participant's Alaska PFD sponsor will be provided a 90-day period to confirm his or her intent to participate in the College Savings Program, to request a refund of the contribution, or upon properly executing an Account Agreement to redirect the contribution to another Investment Option.

(d) The Alaska PFD recipient will be deemed to be the Participant and the Beneficiary for Accounts established under Section 6.6(a), unless otherwise designated in an Account Agreement in good order prior to expiration of the 90-day refund period as described in Section 6.6(c).

(e) The Trustee may waive any requirement for an executed Account Agreement for a Participant contribution received under this Section 6.6.

6.7 Investment Direction. (a) The Participant may direct the initial investment of each contribution by selecting among Investment Options.

(b) In the event the direction described in Section 6.7(a) shall not be provided in the Account Agreement or otherwise prior to the time of establishing the Account, the contribution shall be invested in one or more of the Investment Options in accordance with the terms of the applicable Plan Disclosure Document.

(c) In the event the direction in Section 6.7(a) is unclear or not in good order, the contribution shall be returned to the Participant or prospective Participant.

(d) The Participant shall not have the right to, or be entitled to, directly or indirectly, direct the investment of a contribution held in an Account, or any earnings on that Account, beyond the initial selection from the designated Investment Options, except as otherwise allowed by the Code or guidelines established by the Internal Revenue Service.

(e) Notwithstanding Section 6.7(d), the Participant may, in accordance with the terms of the applicable Authorized Plan, move assets between and among Investment Options upon (i) a change in Beneficiary as described in Section 6.8, (ii) such other circumstances as may otherwise be allowed by the Code or guidelines established by the Internal Revenue Service.

(f) In the event an Investment Option is eliminated, the Trustee, in its sole discretion, shall transfer, or cause to be transferred, the investment of the affected funds to one or more of the other Investment Options, in such manner and time as determined by the Trustee.

6.8 Change of Beneficiary, Rollover Distributions, and Transfers. (a) A Participant may change the Beneficiary to another individual who is a Member of the Family of the then-current Beneficiary, except as otherwise may be provided for in the applicable Plan Disclosure Document. Upon the change of a Beneficiary, the Participant may direct a change in investment direction in accordance with Section 6.7(e). Notwithstanding this Section 6.8(a), the Custodian of an Account may not change the Beneficiary.

(b) A Participant may roll over the contributions and accumulated earnings of an Account to another qualified tuition program by contributing, within 60 days of the date of the distribution, all or a portion of such distribution to an account established in another qualified tuition program: (i) for the benefit of another beneficiary who is a Member of the Family of the then-current Beneficiary; or (ii) for the benefit of the then-current Beneficiary, provided a similar rollover into the Account has not occurred within the previous 12 months..

(c) A Participant may direct that a portion of an Account be transferred to another Account established for a different Beneficiary if that different Beneficiary is a Member of the Family of the then-current Beneficiary.

(d) Notwithstanding the provisions of this Section 6.8, an agency or instrumentality of a state or local government or tax exempt organization as described in the Code, may change the Beneficiary of an Account or transfer a portion of an Account to an Account established for an individual who is not a Member of the Family of the then-current Beneficiary, if any. In addition, for accounts established within the ACT Fund prior to August 26, 1996, certain changes of the Beneficiary to an individual who is not a Member of the Family may be conducted in accordance with the terms of the applicable Plan Disclosure Document and the Code.

(e) The right to change a Beneficiary or to transfer funds to another Account may be denied or limited when such change of Beneficiary or transfer will cause one or more Accounts to exceed the maximum contribution limitation or is otherwise determined by the Trustee, in its sole discretion, not to be in the best interest of the Trust.

6.9 Distributions from Accounts. Distributions from an Account shall be made in accordance with the terms of the applicable Plan Disclosure Document and only by check or other form as may be authorized by the Trust.

6.10 Intentionally Left Blank.

6.11 Termination of Accounts. The Trust may close an Account and distribute the funds in it to the Participant, less any Fees, penalties, assessments, and taxes owed on the Account or otherwise properly withheld, if the Trustee determines that: (a) such action is in the best interests of the Trust; or (b) the Participant or the Beneficiary provided false or misleading information in establishing or maintaining the Account or requesting a distribution. In the latter case the Trustee may retain for purposes of the Trust and the College Savings Program any earnings accumulated in the Account as of the date the Account is closed.

6.12 Participant Fees and Charges and Costs. The Trustee shall establish Fees and shall charge and allocate those Fees to, between, and among, the Accounts and portfolios comprising the Investment Options in such manner as the Trustee, in its sole discretion deems appropriate.

6.13 Spendthrift Provision. As set forth in this Declaration and as provided under Alaska law, an Account: (a) is exempt from a claim by the creditors of the Participant or of the corresponding Beneficiary identified with that Account; (b) is conclusively presumed to be a spendthrift trust; (c) is not an asset or property of either the Participant or that Beneficiary; (d) may not be assigned, pledged or otherwise used to secure a loan or other advancement; and (e) is not subject to involuntary transfer or alienation, all subject to the provisions of AS 34.40.110(b)(4) relating to a Participant's default, if any, at the time of contribution, by 30 or more days in making a payment due under a child support judgment or order.

6.14 Confidential Information. The name, address and other information identifying a person as a Participant or Beneficiary in the College Savings Program are confidential and must not be released by the Trust or the Program Manager to persons other than the Trust, the Trustee, the University, or the Program Manager, except for purposes of the College Savings Program as may be permitted or required by law or except for that information related to the Participant when authorized in writing by the Participant.

6.15 Participant's Indemnity. (a) Establishment of an Account in the Trust is based upon the Participant's statements, agreements, representations, warranties and covenants, as set forth in this Declaration, the Account Agreement, and the applicable Plan Disclosure Document.

(b) The Participant, by participating in the College Savings Program, agrees to indemnify and hold harmless the Trust, the Trustee, the University, the State of Alaska, the Program Manager, and any other counsel, adviser, or consultant retained by the Trust or the Program Manager, and any employee, officer, official, or agent of those entities (the indemnitees), from and against any and all loss, damage, liability, penalty, tax, or expense, including costs of reasonable attorneys' fees, to which they shall be put or which they shall incur by reason of, or in connection with, any misstatement or misrepresentation that shall be made by the Participant or the Beneficiary or any indemnitee, any breach by the Participant of the acknowledgments, representations or warranties as shall be contained in, or incorporated into, this Declaration, the Account Agreement, and the applicable Plan Disclosure Document, or any failure of the Participant or any indemnitee to fulfill any covenants or agreements as may be set forth this Declaration, the Account Agreement, and the applicable Plan Disclosure Document.

(c) All statements, representations, warranties or covenants of the Participant shall survive the termination of the Account.

## ARTICLE VII

### DISPUTE RESOLUTION

7.1 Participants. Disputes between a Participant or a Beneficiary and the Trust or the Program Manager, if any, relating to an Account shall be subject to the Dispute resolution procedures as set forth in this Section 7.1 and the applicable Plan Disclosure Document and shall be further subject to the following:

(a) the Dispute resolution procedures shall be carried out by the Program Manager and the Trustee in accordance with the terms of the applicable Plan Disclosure Document; provided that the Trustee shall have final authority to interpret the provisions of this Declaration and the terms of the applicable Plan Disclosure Document;

(b) the liability of the Trust, Trustee, the University, and the Program Manager or any indemnitee shall be limited to direct actual damages incurred subsequent to establishing the Account in the Trust, and specifically shall not include other damages, including, but not limited to, consequential or indirect damages;

(c) the liability of the Trust, the Trustee, the University, and the Program Manager or any indemnitee to a Participant and/or a Beneficiary shall be subject to the provisions of Article VIII;

(d) in no event shall a Participant or Beneficiary be awarded compensation or damages against the Trustee or the Trust in excess of the assets in the Administrative Accounts, which are not contractually committed to Participants, Program Manager or others in connection with the operation of the College Savings Program;

(e) a complaint or other disagreement by a Beneficiary regarding the College Savings Program shall, unless authorized by the Trustee, only be presented through the Participant and using the procedures set forth in this Section 7.1 and the applicable Plan Disclosure Document;

(f) the Trustee and the Program Manager shall cooperate as necessary to address and resolve all Disputes;

(g) notwithstanding other provisions of this Section 7.1, the Trustee shall be entitled to make final decisions in Disputes with a Participant or Beneficiary; and

(h) in the event a Participant or Beneficiary shall disagree with a decision by the Program Manager or the Trustee, the Participant or Beneficiary shall exhaust all administrative remedies available to that person under this Declaration and shall only be entitled to further review of the final decision of the Program Manager or Trustee by appealing, in accordance with Alaska Appellate Rule 602, to the superior court as set forth in Section 12.6.

7.2 Program Manager. Disputes between the Trust or the Trustee and the Program Manager, relating to the Program Management Services, Accounts, Administrative Accounts, or this Declaration shall be subject to the dispute resolution procedures established under a separate agreement entered into between the Trust and the Program Manager, as may be amended from time to time.

## ARTICLE VIII

### LIMITATION OF LIABILITY

8.1 General. Except as set forth in Section 8.4, neither the Trustee, the University, the Board, the Trust, the State of Alaska, nor any agency of the State of Alaska, nor an employee, officer, official, or agent of any of these entities: (a) guarantees or makes any representation: (i) regarding any rate of return or benefit for contributions made by a Participant to an Account; (ii) that a Beneficiary would be accepted as a student by any institution of higher education or other post-secondary education institution; (iii) that a Beneficiary, if accepted, would be permitted to continue as a student; (iv) that a Beneficiary would be treated as a resident of any particular state for tuition purposes; (v) that a Beneficiary would graduate from any institution of higher education or other institution of post-secondary education; or (vi) that a Participant or Beneficiary would achieve any particular treatment under any applicable state or federal financial aid program; (b) is liable for any loss of funds that are invested through the Trust or for the denial of any perceived tax or other benefit under this Declaration or the College Savings Program; or (c) is liable for a failure of the College Savings Program to qualify as, or to remain, a qualified tuition program established and maintained by a state under the Code including, but not limited to, any subsequent loss of favorable tax treatment under state or federal law.

8.2 Program Manager. The limitation of liability set forth in Section 8.1 is extended to the Program Manager except to the extent that such extension would impair the benefits of Section 8.1 to the Trustee, the University, the Board, the Trust, the State of Alaska, or any agency of the State of Alaska, or an employee, officer, official, or agent of any of those entities. Neither the Trustee, the University, the Board, the Trust, the State of Alaska, nor any agency of the State of Alaska, nor any employee, officer, or official of any of these entities has any liability to the Program Manager in the event this subsection is held invalid or ineffective in whole or in part.

8.3 Risk of Loss. The risk of loss in the value of an Account, or loss or reduction of any other benefit expected to be derived from the College Savings Program rests exclusively with the Participant and the respective Beneficiary. Neither the Trustee, the University, the Board, the Trust, the State of Alaska, any agency of the State of Alaska, the Program Manager, nor any employee, officer, official, or agent of any of these entities has any liability to a Participant or Beneficiary arising out of loss in the value of an Account or loss or reduction of any benefit expected to be derived from the College Savings Program.

8.4 UA Tuition-Value Guarantees. Notwithstanding Sections 8.1 through 8.3, the ACT Savings Fund commitments for the UA Tuition-Value Guarantee of the College Savings Program are, and continue to be, exclusive obligations of the Trust.

8.5 Release. Without in any way diminishing the force or effect of other provisions of this Declaration regarding liability, and to the extent allowed by law: (a) the Trust and the Trustee, including their respective officials, officers, employees, representatives and agents, shall not, at any time, be held liable for mistakes of law or of fact, or both law and fact, or errors of judgment, or for any loss which shall come to any Participant or Beneficiary or to any other person, except as shall result directly from actual fraud or willful misconduct on the part of the Trust or the Trustee: and (b) the Program Manager, including its officers, employees, representatives and agents, shall not, at any time, be held liable for mistakes of law or of fact, or both law and fact, or errors of judgment, or for any loss which shall come to any Participant or Beneficiary or to any other person, except as shall result directly from actual fraud or willful misconduct on the part of the Program Manager.

8.6 Reliance on Information From Participants. The Trust and the Trustee, including their respective officials, officers, employees, representatives and agents, and the Program Manager, including its officers, employees, representatives and agents, shall not be liable for any liability, loss, cost, or expense, including attorneys' fees and court costs, incurred by a Participant, a prospective Participant, or a Beneficiary in connection with such instructions or information as described in Section 3.4 (e)(ii).

8.7 Administrative Expense. Any liability, loss, cost or expense incurred by a Participant or a Beneficiary for which the Trust, the Trustee or the Program Manager shall, in its respective sole discretion, accept responsibility or shall be found to be legally responsible, shall, to the full extent as shall be allowed by law, be considered an administrative expense of the Trust and, in accordance with instructions by the Trustee, may be allocated among the Accounts, charged to an Administrative Account, or otherwise recovered from the Program Manager or other party.

8.8 Determinations by Trust, Trustee or Program Manager. The Trust, the Trustee, and the Program Manager including their respective officials, officers, employees, representatives and agents, shall not be liable for any liability, loss, cost, or expense, including attorneys' fees and court costs, incurred by a Participant, Custodian or Beneficiary in connection with a determination made under the College Savings Program and this Declaration, including but not limited to: (a) the status of a Participant, Beneficiary or Custodian under Section 6.6; (b) investment direction under Sections 6.7(b) and (f); and (c) termination of, or refusal to establish Accounts under Sections 6.1(e) and 6.11.

8.9 Other Limitations of Liability. The Trust, through agreement with a Program Manager, may establish other limitations on, and other provisions relating to, liability of the Trust, the Trustee and the Program Manager.

## ARTICLE IX

### STATUS

9.1 Instrumentality of the State. The University and its Board are established through Article VII of the Alaska Constitution. The Trust and the Alaska Higher Education Savings Trust are established in the University, and the Alaska Advance College Tuition Savings Fund is established as a non-lapsing fund of the University. The University, the Alaska Higher Education Savings Trust, the Alaska Advance College Tuition Savings Fund, and the Trust, are instrumentalities of the State of Alaska.

9.2 Qualified Tuition Program under the Code. (a) The Trust is hereby established as, and it is intended to be operated as, a qualified tuition program established and maintained by a state under the Code. This Declaration shall be interpreted consistent with this intent, and no provisions of this Declaration, which shall preclude such qualifications under the Code, shall be effective.

(b) The Trustee shall use its best efforts to preserve the Trust in accordance with the Code. In the event of an amendment or modification of the Code, the Trustee, in its sole discretion, may take such action with regard to the Trust or the College Savings Program that the Trustee determines is in the best interest of the Trust, the College Savings Program, the Participants, and the Beneficiaries.

(c) If a portion or all of the Trust is formally determined by the Internal Revenue Service or by a court of competent jurisdiction not to be a qualified tuition program established and maintained by a state within the meaning of the Code, or the Trustee, in its sole discretion, concludes that such determination is probable, the Trustee may: (i) amend the disqualifying portion of the Trust so that it would so qualify; (ii) terminate the portion of the Trust that is disqualified and distribute all of the assets of Accounts relating to the disqualified portion of the Trust to the respective Participants, less expenses of winding up that disqualified portion and any accrued fees, penalties, taxes and expenses; (iii) rollover or otherwise transfer the assets of the Trust in accordance with the

Code; (iv) terminate the Trust in accordance with Article X of this Declaration; or (v) take other action as the Trustee deems appropriate.

## ARTICLE X

### AMENDMENT, SUSPENSION AND TERMINATION

10.1 Retroactive and Other Actions. (a) The Trustee may, at any time and from time to time, (i) amend, or otherwise modify on a prospective or retroactive basis, this Declaration, the Account Agreements, and the Plan Disclosure Documents or the terms and conditions of an Account established under Section 6.6; or (ii) suspend a portion or all of those documents and the College Savings Program, in order to maintain the Trust in compliance with the Code or to maintain efficient and economical operation of the Trust. The Trustee may, in its sole discretion, provide written notice to Participants, if the Trustee considers such amendment or modification material.

(b) The Trustee may, at any time, terminate or suspend a portion or all of the provisions of this Declaration, the Account Agreements, and the applicable Plan Disclosure Documents, including the terms and conditions for an Account established under Section 6.6, on a prospective or retroactive basis, if the Trustee determines, in its sole discretion, that continuation of that portion or all of the College Savings Program is uneconomical, carries a level of risk unacceptable to the Trust or is unduly burdensome to administer relative to the program purposes accomplished. The Trustee shall provide written notice of termination or suspension to Participants as the Trustee determines appropriate.

(c) The rights and benefits of Participants and Beneficiaries under this Declaration and the College Savings Program are subject to the rights of the Trustee to amend, modify, suspend or terminate all or a portion of this Declaration, the Account Agreements, and the Plan Disclosure Documents, or the terms and conditions of an Account established under Section 6.6.

10.2 Distribution of Accounts upon Termination. (a) Notwithstanding other provisions of this Declaration, in the event there shall be full or partial termination of the Trust or the College Savings Program, the Trust shall: (i) distribute assets of the applicable Accounts to the appropriate Participant, less accrued fees, penalties, taxes, and expenses, if any; (ii) rollover or otherwise transfer the assets of the applicable Accounts in accordance with the Code; or (iii) take such other action as the Trustee deems appropriate, in its sole discretion.

(b) After all matters relating to the Accounts shall have been settled in accordance with Section 10.2(a) and after all debts shall have been paid, the Trustee shall distribute any remaining funds in the Trust to the University for use in a manner which the University shall determine, in its sole discretion, is consistent with the purposes of the College Savings Program.

10.3 Duration of Trust. Unless terminated, as provided in this Declaration, the Trust shall continue without limitation of time.

## ARTICLE XI

### DEFINITIONS

11.1 Definitions. As used in this Declaration, the following terms have the following meanings:

Account: a record of financial transactions and related information established in the Trust by a Participant.

Account Agreement: a participation agreement between a Participant and the Trust, affirming the Participant's agreement to participate in the College Savings Program in accordance with the provisions of the Alaska College Savings Act, this Declaration and the applicable Plan Disclosure Document. The Account Agreement forms, current as of this amendment and restatement, are included as Appendix II of this Declaration.

ACT Credit: a semester unit of education at the University of Alaska generally considered the equivalent of one hour of classroom instruction per week.

ACT Credit Issue Price: the upper-division undergraduate credit hour charge for regular tuition at the University's main campus in Anchorage Alaska adjusted for the daily pro rata projected UA Tuition Inflation for the coming academic year.

ACT Credit Redemption Value: the then current upper-division undergraduate credit hour charge for regular tuition at the University's main campus in Anchorage Alaska.

ACT Portfolio: the Investment Option that includes the UA Tuition-Value Guarantee.

ACT Savings Fund: the Alaska Advance College Tuition Savings Fund, established as a non-lapsing fund of the University under AS 14.40.803-14.40.817 and one of the components of the Trust.

Administrative Accounts: accounts or subaccounts established in the Trust for the purpose of administering, managing and operating the Trust.

Aggregation: for purposes of determining the principal and earnings portions of a distribution, in accordance with Internal Revenue Service guidance, all accounts for the same Account Holder and Beneficiary are aggregated at the investment option level and treated as one account.

Alaska College Savings Act: AS 14.40.802-14.40.817, as may be amended from time to time, establishing the Alaska Advance College Tuition Savings Fund and the Alaska Higher Education Savings Trust in the University.

Alaska PFD: a program of the State of Alaska under which each resident is entitled to a dividend from the Alaska Permanent Fund, when declared.

Authorized Trust Expenses: expenses of the Trust as defined in Section 5.3.

Authorized Plan: a plan established by the Trust, pursuant to this Declaration, to implement the College Savings Program and more fully described in the respective Plan Disclosure Document promulgated by the Trust through the Program Manager. The Plan Disclosure Documents for the Authorized Plans, current as of this amendment and restatement, are included as Appendix I of this Declaration.

Beneficiary: the individual designated by a Participant, or as otherwise provided in this Declaration and the terms of the applicable Authorized Plan, to receive the benefit of an Account.

Board: the Board of Regents of the University.

Code: Section 529 of the Internal Revenue Code of 1986, as it exists and may subsequently be amended, and regulations adopted under it.

College Savings Program: the post-secondary education savings program, which is operated by the University, as Trustee, in accordance with the Alaska College Savings Act and this Declaration, as such currently exist or may hereafter be amended.

Custodian: a person who has executed an Account Agreement or a notice of intent to participate in the College Savings Program where: (1) the Participant is a minor; or (2) the Account is funded from an UGMA or UTMA, provided the Custodian is required to act under the terms of the UGMA or UTMA.

Declaration: this Declaration of Trust for the Education Trust of Alaska (formerly known as the Alaska College Savings Trust), initially effective as of April 20, 2001 and as amended and restated, effective January 1, 2002, and further amended and restated effective July 1, 2017, including appendices, and as may be amended from time to time.

Dispute: a claim, complaint or other disagreement, between a Participant or a Beneficiary and the Program Manager or the Trust, applicable to an Account or arising out of alleged actions by the Trust or Program Manager that may have adversely affected a Participant or Beneficiary, and that is not resolved informally between the Participant and the Program Manager.

Fees: administrative, investment and other program fees, costs and charges, including those customarily charged by mutual funds and trusts.

Investment Options: the investment portfolios available to Participants through the respective Authorized Plans, referred to in the Plan Disclosure Documents as “Portfolios.”

Member of the Family: an individual as defined in the Code.

Participant: an individual, corporation, partnership, association, trust or estate that establishes an Account in the Trust, referred to in the Plan Disclosure Documents as “Account Holder.”

Plan Disclosure Document: the document disclosing the material facts relating to an offer of Accounts in the Trust to a Participant, including the major features, terms, conditions, workings and foreseeable risks of the investment.

Program Management Services: the services that may be provided to the Trust and the Trustee by a Program Manager.

Program Manager: a person or persons engaged by the Trust, to provide the Program Management Services, as an independent contractor, on behalf of the Trust.

Savings Trust: the Alaska Higher Education Savings Trust, a trust established in the University under AS 14.40.802 and one of the underlying components of the Trust.

Trust Administrator: the University President, or designee appointed to carry out the responsibilities of, and have all powers and authority of, the Trustee under this Declaration.

Trust: the Education Trust of Alaska, the trust declared by the University, pursuant to the Alaska College Savings Act and through this Declaration.

Trustee: the University of Alaska, when acting in its capacity as trustee for the Trust.

UA Tuition Inflation Rate: the - rate of change in the cost of an upper division resident undergraduate credit hour charge for regular tuition at the University of Alaska’s main campus in Anchorage, Alaska.

UA Tuition-Value Guarantee: a guarantee by the Trust that the long-term earnings attributable to contributions to an Account invested in the ACT Portfolio for the entire fiscal year will at a minimum be equal to tuition inflation at the UA Tuition Inflation Rate, but only as to that portion of any distribution from the respective Account used to pay for tuition at the University of Alaska in accordance with procedures and limitations established by the Trust.

UGMA or UTMA: an account created under the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act of any state.

**University or UA: the University of Alaska.**

ARTICLE XII

MISCELLANEOUS PROVISIONS

12.1 Rules of Construction. (a) The headings in this Declaration are for convenience of reference only and do not expand, limit or otherwise affect the meaning of the terms of this Declaration.

(b) As used in this Declaration, the phrases “in the discretion of,” “in its sole discretion,” “as considered appropriate by,” “as considered necessary and convenient by” the Trustee or the Trust Administrator and similar phrases mean in the “sole, absolute and unfettered discretion” of the Trustee or the Trust Administrator.

12.2 Precedence. In the event conflicts or discrepancies are found to exist, the order of precedence from most governing to least governing shall, except as to issues between the Trust and the Program Manager, if any, which those parties expressly provide for otherwise in an agreement between them, be as follows: (a) the Code; (b) the Alaska Statutes and Board policy; (c) this Declaration; (d) the Plan Disclosure Document for the respective Authorized Plan; (e) Account Agreement and (f) the agreement between the Trust and the Program Manager.

12.3 Severability. In the event that any one or more of the provisions, sections, paragraphs, words, clauses, phrases or sentences contained within this Declaration, or the application of them in any circumstances shall be held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of such provision, section, paragraph, word, clause, phrase, or sentence in every other respect and of the remaining provisions, sections, paragraphs, words, clauses, phrases or sentences shall not in any way, be impaired, in that it shall be the intent that all rights, powers and privileges of the Trustee arising out of this Declaration shall be enforceable to the fullest extent permitted by law.

12.4 Force Majeure. The responsibilities of the Trustee or the Program Manager, if any, under this Declaration shall be suspended to the extent and for the period that performance is prevented by any unforeseeable cause beyond the control of the Trust, the Trustee or the Program Manager, as the case may be, and neither the Trust, the Trustee nor the Program Manager shall be liable for any loss or expense resulting from, a failure to fulfill, or for delay in fulfilling, its responsibilities under this Declaration where that failure or delay is beyond the reasonable control of the Trust, the Trustee or the Program Manager, as the case may be, and arises from any occurrence commonly known as force majeure, including, but not limited to, fire, flood, earthquake, volcanic activity or other so-called acts of God, war, failure of any telephone or wireless network, labor disputes however arising and whether or not the employee demands are reasonable or within the Trust’s, the Trustee’s or the Program Manager’s power to grant, as the case may be, accidents, acts of terrorism, riot, civil strife, insurrections, rebellion, revolution or any other similar

events or circumstances beyond the reasonable control of the Trust, the Trustee or Program Manager, as the case may be.

12.5 Provisions Surviving Termination. The following items shall survive termination of the Trust: (a) UA Tuition-Value Guarantee commitments as set forth in Sections 4.2 and 8.4 in such manner and to such extent as determined by the Board; (b) a final accounting and audit by the Trust for all Accounts and Administrative Accounts pursuant to Sections 5.5 – 5.7; (c) confidentiality of Participant and Beneficiary information under the terms of Section 6.14; (d) indemnifications provided by Participants as set forth in Section 6.15; (e) Dispute resolution pursuant to Article VII; (f) limitations of liability pursuant to Article VIII; (g) completion of any duties and responsibilities of the Program Manager in providing Program Management Services to the Trust under Section 3.4, for purposes of winding up the business of the Trust; (h) the distribution of Accounts upon a partial or full termination of Trust under Section 10.2; and (i) the provisions of this Section 12.5.

12.6 Governing Law, Jurisdiction, and Venue. The Trust and this Declaration are made in the State of Alaska and created under Alaska law. They shall be governed by, and shall be construed and administered in accordance with, the laws of, and subject to the jurisdiction of, the State of Alaska. Venue for Disputes and all other matters relating to this Declaration shall only be in the Superior Court, Fourth Judicial District in Fairbanks, Alaska. Each Participant and Beneficiary consents to jurisdiction and service of process of the Alaska Superior Court.

12.7 Other Declarations Superseded. This Declaration shall supersede all previous declarations of trust for the Trust.

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