

**IRREVOCABLE JOINDER AGREEMENT**  
**for the**  
**UMBRELLA SPECIAL NEEDS POOLED TRUST**  
**Guidance Carolina, Trustee**

This IRREVOCABLE JOINDER AGREEMENT (hereinafter the “Joinder Agreement”) is entered into by and between Guidance Carolina, a North Carolina Non-Profit Corporation, f/k/a Corporation of Guardianship (hereinafter “Guidance Carolina” or the “Trustee”), and \_\_\_\_\_ (hereinafter the “Beneficiary”) this \_\_\_ day of \_\_\_\_\_, 202\_\_.

**A. Umbrella Pooled Trust Instrument and Joinder Agreement:**

1. **Umbrella Pooled Trust.** Guidance Carolina established its Umbrella Pooled Trust (hereinafter the “Umbrella Pooled Trust”), on December 9, 2003. Its terms were modified by court order dated May 15, 2023. A copy of the Modified Umbrella Pooled Trust Instrument is attached as **Exhibit A** and incorporated herein by reference as if fully set out (hereinafter the “Umbrella Pooled Trust Instrument”). Guidance Carolina is the designated Trustee.
2. **Joinder Agreement.** A Joinder Agreement is Guidance Carolina’s authorized vehicle by which a court, parent, grandparent, legal guardian or individual can establish a sub-account under the Umbrella Pooled Trust (hereinafter the “Trust Sub-Account”). The Joinder Agreement may be modified from time to time to comply with changes in public benefit programs or other applicable laws and policies.
3. **Governing Law.** The Umbrella Pooled Trust Instrument and Joinder Agreement are governed by the provisions of federal law, 42 U.S.C. § 1396p, amended August 10, 1993, by the Omnibus Budget Reconciliation Act of 1993, and by applicable state law that is not in conflict with the federal law. To the extent there exists a conflict between any governing laws and/or agency regulations, and the terms of the Umbrella Pooled Trust Instrument and/or this Joinder Agreement (hereinafter collectively the “Umbrella Pooled Trust Documents”), the governing laws and regulations shall control.
4. **Applicable Policy.** The laws governing the Umbrella Pooled Trust Documents are interpreted by various public benefit programs in their own administrative manuals. For example, the Social Security Administration interprets the laws through its POMS and each state’s Medicaid program interprets the laws through its Medicaid manual. To the extent any administrative agency finds the terms of the Umbrella Pooled Trust and/or this Joinder Agreement to be out of compliance with applicable law and/or its policies, the Trustee is authorized to modify the Umbrella Pooled Trust Documents to comply with applicable law and the agency’s policies; however, the Trustee is also authorized, in its sole discretion, to challenge the agency’s determination through an administrative appeal process and/or have the the Umbrella Pooled Trust Documents reviewed by a court for guidance.

5. **Irrevocability.** Both the Umbrella Pooled Trust Instrument and this Joinder Agreement are irrevocable and cannot be changed except as permitted pursuant to the terms of the Umbrella Pooled Trust Instrument or applicable law.

**B. Enrollment in the Umbrella Pooled Trust / Adoption of Joinder Agreement Terms:**

By executing this Joinder Agreement and funding the Trust Sub-Account, the undersigned Establishor(s) (hereinafter the “Establishor(s)”) hereby establishes a sub-account for the benefit of the Beneficiary in Guidance Carolina’s Umbrella Pooled Trust pursuant to its terms as shown in the attached **Exhibit A**, and adopts the Umbrella Pooled Trust Instrument and this Joinder Agreement as dictating the terms of the Trust Sub-Account created in the Umbrella Pooled Trust.

**C. Establishor(s) Information:**

Select One: Self / Parent / Grandparent / Legal Guardian / Court Name:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

**D. Beneficiary Information:**

1. Contact Information:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ Email: \_\_\_\_\_

2. Identification Information:

DOB: \_\_\_\_\_  
SSN: \_\_\_\_\_

3. The Beneficiary’s disabilit(ies): \_\_\_\_\_

4. Benefits Information:

**Sources of Income**

SSI payment amount: \_\_\_\_\_  
SSDI payment amount: \_\_\_\_\_  
Employment: \_\_\_\_\_  
Other: \_\_\_\_\_  
Unknown

**Health Insurance**

Medicaid Account number: \_\_\_\_\_  
Medicare Account number: \_\_\_\_\_  
Special Assistance number: \_\_\_\_\_  
Other: \_\_\_\_\_  
Unknown

## Food & Housing

Section 8, Reduced Rent Payment: \_\_\_\_\_

SNAP monthly benefit amount: \_\_\_\_\_

### **E. Information Regarding the Beneficiary's Legal Representative(s):**

*Please Provide Name, Address, and Phone Number for legal representative(s) of the Beneficiary*

- Guardian (provide copy of court order): \_\_\_\_\_
- SSA Representative Payee: \_\_\_\_\_
- Power of Attorney (provide copy): \_\_\_\_\_

### **F. Source and Amount of Trust Sub-Account Funding:**

Source: Personal Injury / Inheritance / Sale of Property / Benefits Back-Pay

Approximate value of assets funding sub-account: \$ \_\_\_\_\_

### **G. Trust Sub-Account Distributions to the Beneficiary:**

Distributions of principal and income from the Trust Sub-Account will be made on behalf of the Beneficiary, in the Trustee's sole and absolute discretion, and pursuant to the terms of the Umbrella Pooled Trust Instrument. All distributions will be for the sole benefit of the Beneficiary and shall consider the Beneficiary's special needs.

In addition, if the Trust Sub-Account receives funds from a representative payee in the form of social security disability (including DAC) or supplemental security income benefits, all such funds and any income and growth on such funds (hereinafter the "Rep Payee Funds") shall be used as follows:

1. The Rep Payee Funds will be used to provide for the Beneficiary's current and reasonably foreseeable needs.
2. The Rep Payee Funds shall only be used for purposes that would be permitted by a representative payee appointed by the Social Security Administration on behalf of the Beneficiary.

### **H. Distribution of Funds Remaining in the Trust Sub-Account upon its Termination:**

1. Because trust sub-accounts are funded with a beneficiary's own funds, the termination of any trust sub-account must comply with 42 U.S.C § 1396p(d)(4)(C) and any applicable state law not in conflict with the federal law. Pursuant to governing law, assets remaining in the Trust Sub-Account at its termination may be retained by Guidance Carolina. To the extent Guidance Carolina does not retain all remaining funds in the Trust Sub-Account, any assets remaining are subject to a reimbursement claim by the State for any Medicaid benefits paid on the Beneficiary's behalf.

2. Upon the termination of this Joinder Agreement and Trust Sub-Account, distributions shall be made to the following individuals or entities:
  - a. First, unless otherwise limited by law, Guidance Carolina may retain 100% of the funds remaining in the Trust Sub-Account at the termination of the Joinder Agreement. If retention is limited by law, Guidance Carolina may retain the maximum amount allowed by law.
    - i. Alternatively, in its sole and absolute discretion, Guidance Carolina may elect to retain less than 100% of the funds remaining in the Trust Sub-Account at termination of the Joinder Agreement (or the maximum amount allowed by law). For example, Guidance Carolina may establish a retention schedule whereby it retains a percentage of remaining trust sub-account funds on a sliding scale, correlating to the number of years a beneficiary's funds were held in their trust sub-account.
    - ii. In the event Guidance Carolina chooses to retain less than 100% of the funds remaining in the Trust Sub-Account at termination of the Joinder Agreement (or the maximum amount allowed by law), Guidance Carolina may retain any percentage of the funds remaining in the Trust Sub-Account, in its sole and absolute discretion, to the extent such retention is not prohibited by law.
  - b. Second, if Guidance Carolina retains less than 100% of the funds remaining in the Trust Sub-trust Account upon termination of the Joinder Agreement, Guidance Carolina shall repay Medicaid an amount up to that amount remaining in the Trust Sub-Account. However, the amount paid to Medicaid shall not be more than the total amount of medical assistance paid on behalf of the Beneficiary, and in no event shall the amount be greater than the minimum amount required by law to satisfy any claim Medicaid may have against the Trust Sub-Account's remaining assets.
  - c. Third, after any retention by Guidance Carolina and any payment to Medicaid, all remaining funds, if any, shall be distributed in accordance with any limited power of appointment exercised by the Beneficiary (as stated in the Umbrella Pooled Trust Instrument). In the event no legal document exercising this limited power of appointment is presented to the Trustee within 60 days of the Beneficiary's death, the remaining Trust Sub-Account assets shall be retained by Guidance Carolina.

**I. Trust Advisory Committee for Trust Sub-Account:**

1. The Trustee may from time to time convene a Trust Advisory Committee (hereinafter the "TAC") for the purpose of making recommendations and advising the Trustee as to distributions that would be in the Beneficiary's best interest, however, the TAC shall not have the power to override distributions made in the Trustee's sole and absolute discretion.
2. Once convened, the TAC shall advise the Trustee regarding distributions for

supportive services (e.g. professional care management, supplemental attendant care, therapy, educational assistance, etc.), any major purchases (e.g. home or an automobile), or any other disbursement request presented by the Trustee for TAC consideration.

3. The Trustee shall give consideration to any recommendations and advice provided by the TAC but is under no duty to follow any guidance received from the TAC. The Trustee is not required to convene a TAC or consult with an existing TAC prior to making distributions of funds from the Trust Sub-Account or for any other reason. This Section in no way affects the sole and absolute discretion of the Trustee under this Joinder Agreement.
4. The TAC has no authority to amend any provision of the Umbrella Pooled Trust Instrument or this Joinder Agreement. The TAC has no duty to monitor or supervise any trustee or trust sub-account created under this agreement. The TAC is entitled to view Trust Sub-Account financial records at its request, but only to an extent it is reasonably necessary to provide the Trustee advice regarding distributions from the Trust Sub-Account.
5. The TAC members shall be selected by the Trustee and shall include individuals with knowledge and experience assisting persons with disabilities and/or individuals who are familiar with the Beneficiary's specific needs. Such individuals are likely to include some combination of the following: the Beneficiary's legal representative, care providers, natural supports, representative(s) of the Trustee, and when appropriate, the Beneficiary. At least one member of the TAC must be familiar with Medicaid and other public benefit programs as well as the Beneficiary's service needs.
6. Service on the TAC is in an advisory capacity role only; it is not a fiduciary role. No TAC member will be compensated for services rendered in such capacity. However, every TAC member is entitled to reimbursement from the Beneficiary's Trust Sub-Account for reasonable costs and expenses incurred in connection with TAC duties under this Joinder Agreement.
7. No member of the TAC may be held liable for the negligent or fraudulent action of any other committee member, nor for the negligent or fraudulent action of the Trustee. Likewise, the Trustee shall not be held liable for any negligent or fraudulent action of a TAC member.

**J. Trust Protector:**

The Establishor(s) may appoint a Trust Protector. The Trust Protector has the power to demand that the Trustee transfer the Beneficiary's Trust Sub-Account to another pooled special needs trust that complies with 42 U.S.C. § 1396p(d)(4)(C) or to an individual special needs trust that complies with 42 U.S.C. § 1396p(d)(4)(A). Neither the Beneficiary nor the Beneficiary's spouse may be appointed as the Trust Protector. An appointed Trust Protector is the Establishor(s)' designee for purposes of receiving notices under N.C. Gen. Stat. § 36D.

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_  
Relationship to the Beneficiary: \_\_\_\_\_

Successor Trust Protector  
*(to serve only in the event that the named Trust Protector fails or ceases to serve)*

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_  
Relationship to the Beneficiary: \_\_\_\_\_

**K. Fees and Expenses:**

The Establishor(s) agrees that the Beneficiary will be responsible for paying all fees in accordance with the Trustee's published fee schedule at the time services are rendered. The current fee schedule is attached to this Joinder Agreement as **Exhibit B** and may be amended from time to time. Additionally, the Establishor(s) agrees that the Trustee can be reimbursed for any reasonable expenses incurred in the fulfillment of its duties. All fees and expenses may be paid from the Trust Sub-Account without prior notice to or approval by the Beneficiary.

**L. Acknowledgments by the Establishor(s) on behalf of the Beneficiary:**

1. The Establishor(s) acknowledges and confirms that any and all distributions from the Trust Sub-Account, whether from principal or income, will be distributed at the sole and absolute discretion of the Trustee.
2. The Establishor(s) acknowledges and confirms that the Trust Sub-Account is for the supplemental needs and supplemental care of the Beneficiary and is not a support trust.
3. The Establishor(s) acknowledges and confirms that this Trust Sub-Account is for the sole benefit of the Beneficiary.
4. The Establishor(s) acknowledges and confirms that this Joinder Agreement may be unilaterally amended by the Trustee to comply with any changes in the law or an administrative agency's policy, or for the proper and efficient administration of the Umbrella Pooled Trust as determined in the Trustee's sole discretion, without notice to the Beneficiary or the Beneficiary's legal representative(s).
5. The Establishor(s) acknowledges and confirms that the Trustee may conclusively rely upon the Beneficiary or his/her legal representative to identify and apply to programs that may be of social, financial, developmental or other assistance to the Beneficiary.

6. The Establishor(s) acknowledges and confirms that the Trustee, in its discretion, may engage professionals to assist it in exercising its duties and may charge the Beneficiary's Trust Sub-Account for these services. Such professionals may include accountants, attorneys, health care professionals, social workers, life care planners, care managers, etc.
7. The Establishor(s) recognizes and acknowledges the uncertainty and changing nature of the guidelines, laws, and regulations pertaining to governmental benefits and the Establishor(s) confirms that the Trustee shall not in any event be liable to the Establishor(s), Beneficiary, or any other party for any loss of benefits so long as the Trustee acts reasonably and in good faith.
8. The Establishor(s) acknowledges and confirms that the Trustee, its agents and employees, as well as their agents' and employees' heirs and legal and personal representatives, shall not in any event be liable to the Establishor(s), Beneficiary, or any other party for its acts as trustee so long as it acts reasonably and in good faith.
9. The Establishor(s) acknowledges and confirms that any modification of this Joinder Agreement does not change the irrevocable nature of the Trust Sub-Account established for the Beneficiary in the Umbrella Pooled Trust.
10. The Establishor(s) acknowledges and confirms that the Beneficiary has no interest, rights, or control over any assets contributed to the Trust Sub-Account or any interest or income earned thereon.
11. The Establishor(s) acknowledges that the Beneficiary has been advised to have the Umbrella Pooled Trust Instrument and this Joinder Agreement reviewed by his or her own attorney prior to executing this Joinder Agreement and that the Beneficiary and/or his or her legal representative(s) has reviewed and understands to his or her satisfaction the legal, economic and tax effects of the Umbrella Pooled Trust Instrument and this Joinder Agreement.

**M. Legal Counsel:**

The attorney reviewing or advising the Establishor(s), and/or the Beneficiary, and/or the Beneficiary's legal representative(s) on executing this Joinder Agreement is

\_\_\_\_\_.

IN WITNESS WHEREOF, the undersigned Establishor(s), and/or Beneficiary, and/or his or her legal representative(s) has reviewed and signed this Joinder Agreement, understands it and agrees to be bound by its terms, the Trustee has accepted this Joinder Agreement, and all parties declare the Joinder Agreement to be effective as of the date first written above.

*(Signature Pages Follow)*

*First Signature Page for the \_\_\_\_\_ Joinder Agreement for  
Guidance Carolina's Umbrella Pooled Trust*

**ACKNOWLEDGMENT BY ESTABLISHOR(S) / BENEFICIARY**

By: \_\_\_\_\_  
\_\_\_\_\_, Establishor

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me, \_\_\_\_\_,  
and being by me duly sworn says that he or she executed the foregoing and annexed Umbrella  
Pooled Trust Instrument.

(SEAL)

\_\_\_\_\_  
Official Signature of Notary Public

\_\_\_\_\_  
Printed/Typed Name

My Commission Expires: \_\_\_\_\_

Second Signature Page for the \_\_\_ **Joinder Agreement** for  
Guidance Carolina's Umbrella Pooled Trust

**ACCEPTANCE BY TRUSTEE**

Guidance Carolina, as Trustee

By: \_\_\_\_\_  
**Dorian Sylvester**, Executive Director

STATE OF NORTH CAROLINA

COUNTY OF GUILFORD

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, personally appeared before me, **Dorian Sylvester**, and being by me duly sworn says she is the Executive Director of Guidance Carolina and is authorized to execute this Umbrella Pooled Trust Instrument accepting the position of Trustee on behalf of Guidance Carolina.

\_\_\_\_\_  
Official Signature of Notary Public

\_\_\_\_\_  
Printed/Typed Name

My Commission Expires: \_\_\_\_\_

(SEAL)