

## NORTH DAKOTA POOLED TRUST JOINDER

### PLEASE READ BEFORE COMPLETING THE JOINDER AGREEMENT

The following is information to consider when completing a Trust Joinder Agreement for Trust Sub-Accounts funded with the Beneficiary's own money such as lawsuit settlements, inheritances, SSI back payments, etc.

In many case, the Grantor's birth date and social security number are not required to complete this form. If the Grantor is a legal guardian or judge, simply say "not applicable" in those two spaces on page one, Section B.

The Primary Representative is the person that will request disbursements from the trust Sub-Account for the benefit of the Beneficiary and will receive correspondence and financial reports. Oftentimes, the legal guardian or parent is the Primary Representative and Grantor. If the Primary Representative is someone other than the Grantor, please make note to GaPS staff clarifying who the Primary Representative is and put the Primary Representative's identifying information in Section E.

We ask for a second alternate to the Primary Representative, if there is one, (Section E) so that GaPS staff will have someone to contact concerning the needs of the Beneficiary in the absence of the Primary Representative.

Concerning Section L, distribution of the remainder upon the death of Beneficiary: Guardian and Protective Services, Inc. needs to be very clear who the Grantor wishes remainder money to go to after satisfying the State's claim for Medicaid reimbursement. If "descendants" or "heirs" is used in this space, please include an attachment or cover letter concerning whom we may be able to contact to locate descendants to distribute remainder money to. As a last resort, if we do not have someone to contact, we will pay remaining funds to the North Dakota Unclaimed Property Division and they will list the remainder as unclaimed funds.

The last page of the Joinder Agreement is the required checklist. This checklist is an assurance to GaPS that the Primary Representative is aware of those items on the checklist. GaPS strongly recommends that an attorney be consulted that is familiar with trust and benefits issues before checking the checklist and signing at the bottom. Some individuals choose not to review those items with an attorney. If this is the case, please make note that you are waiving that right and sign and date.

**Check writing instructions:** Please make the check funding the trust account payable to Kirkwood Bank & Trust and send to Guardian and Protective Services, Inc. for accurate recording along with the Joinder Agreement to 316 North 5<sup>th</sup> Street, Suite 112, Bismarck, North Dakota 58501.

Please call our Bismarck office at (701) 222-8678 if you have any questions while you are completing this Joinder Agreement. Thank you for your interest in the North Dakota Pooled Trust.

**APPENDIX 2**

**This is a legal document. You are encouraged to seek independent, professional advice before signing.**

**JOINDER AGREEMENT  
FOR  
NORTH DAKOTA POOLED TRUST**

**A. The undersigned hereby enrolls in and adopts the North Dakota Pooled Trust Agreement which is incorporated herein by reference.**

**B. Grantor** *(please enter the name(s) of individual(s) creating Sub-Account):*

- 1. Name: \_\_\_\_\_
- 2. Address: \_\_\_\_\_
- 3. Telephone: Day: \_\_\_\_\_ Night: \_\_\_\_\_
- 4. Relationship to Beneficiary: \_\_\_\_\_

**C. Beneficiary:**

- 1. Name: \_\_\_\_\_
- 2. Address: \_\_\_\_\_
- 3. Social Security Number: \_\_\_\_\_
- 4. Telephone: Day: \_\_\_\_\_ Night: \_\_\_\_\_
- 5. Birthdate: \_\_\_\_\_
- 6. Place of birth: Hospital: \_\_\_\_\_  
City/State: \_\_\_\_\_
- 7. Is the Beneficiary disabled according to Social Security Disability criteria? **YES NO**  
Circle one

**You must provide a benefit determination letter from Social Security or another disability determining agency that uses the same criteria as Social Security.**

**D. Guardians or Representatives:**

If the Beneficiary has a legal representative (e.g., legal guardian, conservator, representative payee, attorney-in-fact acting under the authority granted in a durable power of attorney, trustee, or other legal representative or fiduciary), what is the name, address, and relationship of such person to the Beneficiary: If you have more than one (1), please attach a separate sheet with the same information as requested below. *(please provide a photocopy of the relevant document):*

- 1. Name: \_\_\_\_\_
- 2. Address: \_\_\_\_\_
- 3. Telephone: Day: \_\_\_\_\_ Night: \_\_\_\_\_
- 4. Legal Relationship: \_\_\_\_\_

**E. Primary Representative:**

Unless the Grantor requests otherwise and until the Grantor is no longer able to serve as such, the Grantor shall be the Beneficiary's Primary Representative. When the Grantor is no longer able to act as the Beneficiary's Primary Representative, the Guardian or representative listed under Section D above shall be the Primary Representative (with a court-appointed Guardian, if any, taking precedence). If the person listed in Section D ceases to serve, please list below, in order, the person(s) that you would like to be successor Primary Representatives:

***First Alternate:***

- 1. Name: \_\_\_\_\_
- 2. Address: \_\_\_\_\_
- 3. Telephone: Day: \_\_\_\_\_ Night: \_\_\_\_\_
- 4. Relationship: \_\_\_\_\_

***Second Alternate:***

- 1. Name: \_\_\_\_\_
- 2. Address: \_\_\_\_\_
- 3. Telephone: Day: \_\_\_\_\_ Night: \_\_\_\_\_
- 4. Relationship: \_\_\_\_\_

***No Alternates Remaining:***

If none of the named Primary Representatives or successors are able to serve, how would you like the Trustee to select another Primary Representative (i.e. family member, public official, non-profit corporation, court appointment)?

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**F. Current Benefits:**

1. Does Beneficiary receive Supplemental Security Income? **YES NO**  
(SSI) Circle one

If yes, how much per month? \$ \_\_\_\_\_

2. Does Beneficiary receive Social Security? (SSDI) **YES NO**  
Circle one

If yes, how much per month? \$ \_\_\_\_\_

3. Does Beneficiary receive Medicaid? **YES NO**  
Circle one

If yes, what is the Medicaid card number? \_\_\_\_\_

4. List all other forms of government assistance that the Beneficiary receives:

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**G. Has the Beneficiary received Medicaid or Medical Assistance from any other state** **YES NO**  
Circle one

If the answer above is yes, please list the other states that the Beneficiary has received Medicaid or Medical Assistance from.

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**H. If the Beneficiary is covered under any policy of health insurance, what is the insurer's name and address, and what is the policy number?**

- 1. Insurer: \_\_\_\_\_
- 2. Address: \_\_\_\_\_
- 3. Policy Number: \_\_\_\_\_

**I. If the Beneficiary is covered under any Medicare D policy, what is the insurer's name and address and what is the policy number?**

- 1. Insurer: \_\_\_\_\_
- 2. Address: \_\_\_\_\_
- 3. Policy Number: \_\_\_\_\_

**J. If the Beneficiary is covered under any prepaid funeral or burial insurance plan, what is the insurer's name and address, and what is the policy number?**

- 1. Insurer: \_\_\_\_\_
- 2. Address: \_\_\_\_\_
- 3. Policy Number: \_\_\_\_\_

**Are there any other funeral arrangements (i.e. life insurance, certificate of deposit, etc.)?**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**K. Disability:**

1. What is the nature of the Beneficiary's disability?

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2. If the Beneficiary's condition has been medically diagnosed, what is the diagnosis?

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3. What is the prognosis at this time?

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**L. Distributions of the Remainder upon the Beneficiary's death:**

1. All unspent amounts remaining in the Beneficiary's Sub-Account at death must first be used to reimburse the State of North Dakota or other states for Medicaid/Medical Assistance received (see "State Reimbursement Claims" in Article XII of the North Dakota Pooled Trust Agreement).
2. The Sub-Account shall then be used to pay any unpaid funeral expenses of the Beneficiary and any necessary administrative costs, such as the fees to settle the Sub-Account, and accountant or legal fees.
3. If there are funds remaining in the Beneficiary's Sub-Account after the State Reimbursement Claims and last expenses have been paid, then the balance of the funds in the Sub-Account of the deceased Beneficiary shall be handled as follows:

<b>Is the Beneficiary receiving SSI (or applying for SSI)?</b>	<b>YES NO</b> Circle one
If yes, then the remaining funds shall distribute to the Descendants <sup>1</sup> of the Beneficiary.	

**If the Beneficiary is not receiving SSI and has not applied for SSI, then check below:**

\_\_\_\_\_ to Descendants<sup>1</sup> of Beneficiary  
 \_\_\_\_\_ to Heirs<sup>2</sup> of the Beneficiary  
 \_\_\_\_\_ Other (must give details)

Include below the full names (including middle initials), addresses and telephone numbers of each Final Remainder Beneficiary. If a Final Remainder Beneficiary is an entity, include its full name and business address.

Name	Address	Phone	%

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1. "Descendants of the Beneficiary" means the children, grandchildren, etc. of the Beneficiary.

2. "Heirs of the Beneficiary" means the heirs of the Beneficiary, determined by the state intestate succession statute, which is the state law prioritizing inheritance in the Beneficiary's family tree by who the law determines is/are the Beneficiary's closest living relatives i.e. spouse, children, parents, siblings, nieces, cousins, etc.

4. If any Final Remainder Beneficiary is deceased at the time of distribution, the allocation of funds that would have been distributed to that Beneficiary will instead be distributed to his or her descendants, per stirpes. If a Final Remainder Beneficiary does not have descendants, then this allocation shall lapse and be distributed proportionately among any other Final Remainder Beneficiaries then living.
5. **Locating Final Remainder Beneficiaries.** Grantor acknowledges that the North Dakota Pooled Trust may incur additional costs if Final Remainder Beneficiaries cannot be located easily. Grantor acknowledges and agrees that the manager may recover its reasonable costs and expenses associated with locating such Final Remainder Beneficiaries.

**M. Fees.**

Grantor agrees to pay the fees in accordance with Schedule A that is attached hereto and that may be amended from time to time. If fees are not paid in advance by Grantor, the Manager and Trustee are authorized to charge such fees to a Beneficiary's Sub-Account.

Fees are not refundable

**N. The Grantor recognizes that all disbursements are discretionary, as directed by the Trustee and may be limited under law. With this in mind, the Grantor expresses the following desires as to how funds in the Trust Sub-Account might be used:**

Anticipated Special/Supplemental Needs which include, but are not limited to, the following:

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1. The Trust Sub-Account will be managed and administered for the benefit of the Beneficiary.
2. Pending the preparation of the Case Assessment and Supplemental Needs Plan for the Beneficiary, disbursements for any non-support items for the benefit of the Beneficiary may be made when, in the discretion of the Trustee, such special needs, supplemental needs or supplemental cares are not being provided by any public agency, or are not otherwise being provided by any other source of income available to the Beneficiary.



**O. Contact Information Regarding the Sub-Account Disbursements and Other Matters:**

Contact information for the North Dakota Pooled Trust and the Funds Manager are included on Schedule B, and may be amended from time to time.

**P. Miscellaneous:**

1. **All contributions to this Sub-Account must be assets of the Beneficiary. No one may contribute to this Sub-Account except the Beneficiary.**
2. The provisions of this Joinder Agreement may be amended as the Grantor and the Trustee may jointly agree, so long as any such amendment is consistent with the North Dakota Pooled Trust Agreement and the then-applicable law. Provided, however, that after a Sub-Account is funded the Grantor may not revoke a transfer nor amend Sections C, nor L of this Joinder Agreement.
3. Taxes:
  - a. The Grantor acknowledges that the Trustee has made no representation to the Grantor that contributions to the Trust are deductible as charitable gifts, or otherwise.
  - b. Grantor acknowledges that the Trustee has made no representations as to the gift or tax consequences of directing funds to the Trust and has recommended that the Grantor seek independent legal and tax advice.
  - c. Trust Sub-Account income, whether paid in cash or distributed in other property, may be taxable to the Beneficiary subject to applicable exemptions and deductions. Professional tax advice is recommended.
  - d. Trust Sub-Account income may be taxable to the Trust, and when this is the case, such taxes shall be payable from the applicable Sub-Accounts.
4. If the Grantor intends to enroll more than one Beneficiary under one Trust Sub-Account, an additional agreement is required between the Grantor and the Trustee regarding such matters as the enrollment fee or consultation fees for funded enrollments, Special Assessments, and other fees (as described on Schedule A).
5. The Trust managed by the Trustee is a pooled trust, governed by the laws of North Dakota, in conformity with the provisions of 42 U.S.C. § 1396p, amended August 10, 1993, by the Omnibus Budget Reconciliation Act of 1993. To the extent there is conflict between the terms of this Trust and the governing law, the law and regulations shall control.

**Q. ACKNOWLEDGEMENT BY GRANTOR**

**Each Grantor acknowledges that he or she has been advised to have the North Dakota Pooled Trust Agreement and this Joinder Agreement reviewed by his or her own attorney prior to the execution of this Joinder Agreement.**

**Each Grantor acknowledges that the Funds Manager is a financial institution and is not licensed or skilled in the field of social services. Grantors acknowledge and agree that the Funds Manager may conclusively rely upon the Trustee to identify programs that may be of social, financial, developmental or other assistance to Beneficiaries. The Funds Manager, its agents and employees, as well as their agents' and employees' heirs and legal personal representatives, shall not in any event be liable to any Grantor or Beneficiary or any other party for its acts as Funds Manager so long as the Funds Manager acts reasonably and in good faith.**

**Each Grantor recognizes and acknowledges the uncertainty and changing nature of the guidelines, laws, and regulations pertaining to governmental benefits and each Grantor agrees that the Trustee will not in any event be liable for any loss of benefits as long as the Trustee acts in good faith.**

**Each Grantor acknowledges and agrees that the Trustee, its agents and employees, as well as their agent's and employees' heirs and legal and personal representatives, shall not in any event be liable to any Grantor or Beneficiary or any other party for its acts as Trustee so long as the Trustee acts reasonably and in good faith.**

**Each Grantor acknowledges that upon execution of the Joinder Agreement by Grantor and the Trustee, and the funding of a Sub-Account for a Beneficiary, that this Trust, as to the Grantor and the Beneficiary, is irrevocable. Each Grantor acknowledges that after the funding of a Sub-Account, the Grantor shall have no further interest in and does thereby relinquish and release all rights in, control over, and all incidents of interest of any kind or nature in and to the contributed assets and all income thereon.**

**Each Grantor represents, warrants and agrees that he or she has not been provided, nor is he or she relying upon, any representation of or any legal advice by GaPS in deciding to execute this Joinder Agreement.**

**Each Grantor further represents, warrants, and agrees:**

- 1. that he or she is entering into this Joinder Agreement voluntarily, as his or her own free act and deed;**
- 2. that if he or she has not had the North Dakota Pooled Trust Agreement or the Joinder Agreement reviewed by his or her own attorney, that he or she voluntarily waives and relinquishes such right;**
- 3. that he or she has been provided a true and correct copy of the North Dakota Pooled Trust Agreement and this Joinder Agreement prior to the signing of this Joinder Agreement; and,**

4. **that he or she has reviewed and understands to his or her full satisfaction the legal, economic and tax effects of these instruments.**

**R. FEDERAL TAXES; INDEMNIFICATION BY GRANTOR**

Each Grantor acknowledges that the Grantor, the Primary Representative, or the Beneficiary shall be responsible for mailing their own federal and/or state income tax returns to report the income of the Trust which is taxable to them as their interest may appear. Each Grantor hereby indemnifies the Trustee and the Manager from any and all claims for income tax liabilities of his or her Sub-Account.

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**SCHEDULE A**  
**TO THE JOINDER AGREEMENT, WHICH IS APPENDIX 2**  
**TO DECLARATION OF**  
**NORTH DAKOTA POOLED TRUST**  
**FEES EFFECTIVE AS OF DECEMBER 1, 2010**

The following fees, which may be changed from time to time, may be charged by the North Dakota Pooled Trust.

An enrollment fee will be charged to the Trust Sub-Account on the total of deposits made within the first year of the Trust Sub-Account setup. The enrollment fee covers the cost of opening a Trust Sub-Account for the Beneficiary, including the initial meeting and travel costs. The chart below indicates the amount due for the enrollment fee based on the amount funding the Sub-Account. For example, if the total deposits made within the first year are \$1,000, then the enrollment fee is \$50; if the total deposits made within the first year are \$17,500, then the enrollment fee is \$500.

<b>Amount of Deposits Made Within the First Year</b>	<b>Enrollment Fee</b>
\$1 - \$999	Waived
\$1,000 - \$9,999	5%
\$10,000 - \$49,999	\$500
\$50,000 – \$99,999	\$750
\$100,000 +	\$1,000

After the Sub-Account has been funded, the following fees apply:

1. Annual Administrative Fees  
An annual fee of \$100.00 will be charged all Sub-Accounts beginning January 1, 2011. This fee covers Pooled Trust accountings, bank reconciliations, and annual reports. First year Sub-Accounts will be assessed the annual fee on a quarterly amortization.  
  
An annual Insurance Fee of \$50.00 will be charged to all Sub-Accounts beginning January 1, 2011. This fee covers liability and bonding insurance that protects your account in the event of any fraudulent activity. First year Sub-Accounts will be assessed the annual fee on a quarterly amortization.
2. Trustee’s hourly fee  
In addition to the annual fee, there is a fee of \$60.00 per hour for all direct trust services performed by the Trustee (i.e. trust questions, review and approval of payment requests, payment requests to Funds Manager and special reports).
3. Funds Manager’s annual fee  
The Funds Manager charges an annual maintenance fee of 1% of the corpus of the Trust Sub-Account. The Trustee shall collect and pay the maintenance fee to the Funds Manager on a monthly basis. The monthly fee amount is calculated by dividing one percent of the balance of the Sub-Account at the end of each month by twelve months. For example, if the balance of the Sub-Account at the end of the month is \$6,000.00, then the fee for that month will be equal to \$5.00 ( $\$6,000.00 \times .01 = \$60.00$ ;  $\$60.00/12 = \$5.00$ ).

Special Assessments:

The Trustee and the Manager have authority from time to time, as necessary, to assess all Sub-Accounts or certain Sub-Accounts with special assessments for specific costs such as the cost of defending a Sub-Account of the Trust, or taking actions to preserve a Beneficiary’s Government Assistance. See Section 7.9 of the North Dakota Pooled Trust Agreement for a description of possible defense costs.

**SCHEDULE B**  
**TO THE JOINDER AGREEMENT, WHICH IS APPENDIX 2**  
**TO NORTH DAKOTA POOLED TRUST**

**Contact Information**

For information regarding a Beneficiary's Sub-Account, or for requests for disbursements,  
call, fax, or write Guardian, and Protective Services, Inc., at:

Guardian, and Protective Services, Inc.  
316 North 5<sup>th</sup> Street, Suite 112  
Bismarck, ND 58501

Telephone:  
(701) 222-6600  
(888) 570-4277 (toll free)

Fax Number:  
(701) 222-6666

For information regarding how the funds in a Beneficiary's Sub-Account are invested,  
please contact Kirkwood Bank & Trust at:

Kirkwood Bank & Trust  
  
(701) 355-5370  
(800) 492-4955 (toll free)

It is not GaPS' intention to provide legal advice. The attorney representing the Grantor should be experienced in trust and government benefits issues. GaPS urges attorneys who are not experienced in these areas for persons with disabilities to direct the Grantor to an attorney who has such experience.

**Please submit this checklist with the Joinder Agreement**

**ATTORNEY'S CHECKLIST FOR SELF-FUNDED SUB-ACCOUNTS TO  
NORTH DAKOTA POOLED TRUST**

- \_\_\_\_\_ 1. I have advised my client of the tax consequences of Trust Sub-Account profit.
- \_\_\_\_\_ 2. I have advised my client that, if the Beneficiary is receiving SSI, the Pooled Trust cannot disburse funds for basic needs (shelter or food).
- \_\_\_\_\_ 3. I have advised my client that the funds are budgeted for supplemental items which are appropriate to the Sub-Account Beneficiary's needs.
- \_\_\_\_\_ 4. I have advised my client that the Trustee may approve a disbursement for a prepaid burial plan, but cannot approve disbursements after the Beneficiary's death for a funeral except as provided in Article XII of the Pooled Trust Agreement
- \_\_\_\_\_ 5. I have advised my client that federal law requires that all unspent amounts in a Beneficiary Funded Sub-Account at the Beneficiary's death must be used to reimburse the State for Medicaid/Medical Assistance received.
- \_\_\_\_\_ 6. My client acknowledges that there are no Medicaid liens against these funds being deposited or being used to establish this Trust Sub-Account.
- \_\_\_\_\_ 7. My client acknowledges that there are no other liens or claims against his or her Trust Sub-Account funds.
- \_\_\_\_\_ 8. I have advised my client that the Beneficiary of the Trust must meet the definition of having a disability according to the Social Security definition. (check appropriate options.) The Beneficiary is currently eligible for SSI \_\_\_\_\_ SSDI \_\_\_\_\_ Medicaid \_\_\_\_\_, or the Beneficiary has obtained a disability determination by \_\_\_\_\_. My client acknowledges that GaPS has reviewed a copy of the Beneficiary's benefit letter from Social Security or another disability determining agency that uses the same criteria as Social Security.
- \_\_\_\_\_ 9. I have advised my client that it is their responsibility to keep GaPS informed of any disability changes.
- \_\_\_\_\_ 10. I have advised my client that a Beneficiary-Funded Sub-Account by a Beneficiary over age 65 is a Medicaid disqualifying transfer pursuant to 42 U.S.C. §1396(p)(c)(1).
- \_\_\_\_\_ 11. I have advised my client that all contributions to the Sub-Account, whether now or in the future, may only be assets owned by the Beneficiary.



**ATTORNEY'S CHECKLIST**

**YOU MUST SIGN EITHER SECTION 1 OR 2 BELOW**

**1. If Grantor is represented by an Attorney, please sign this Section 1.**

ATTORNEY:

GRANTOR:

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**2. If Grantor is not represented by an Attorney, please sign this Section 2.**

I (We) have read the above Attorney checklist and waive review by an attorney.

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date