

# BIAWA POOLED FIRST PARTY SPECIAL NEEDS TRUST

## JOINDER AGREEMENT

**THIS JOINDER AGREEMENT** is entered into and shall be effective as of the date set forth below, by and between the Brain Injury Association of Washington, d/b/a the Brain Injury Alliance of Washington (“BIAWA” herein) and the Account Founder whose signature is set forth on this Joinder Agreement.

### DEFINITIONS

**Account Founder:** The individual or entity that executes the Joinder Agreement for the purposes of establishing an Individual Trust Account for a Beneficiary. An Account Founder is limited to the individuals and entities identified in 42 USC §1396p(d)(4)(C)(iii) and any applicable state law.

**Beneficiary:** A person who meets the disability criteria set forth in 42 USC §1382c(a)(3) for whom an Individual Trust Account is established under the BIAWA Pooled First Party Special Needs Trust. The Beneficiary may also be the Account Founder, as defined above.

**Disbursement Plan:** A plan, submitted by the Account Founder at the time of enrollment, that identifies the goods or services most likely to be appropriate to the supplemental needs of the Beneficiary, the anticipated duration of the Trust, and any potential future funds which may be contributed to the Trust. The Disbursement Plan may be periodically changed by amending this Joinder Agreement as provided in Article VII of the Terms & Agreement below.

**Disposition Plan:** A plan that directs how funds will be distributed on the death of the Beneficiary. See Article IV of the Terms & Agreement below.

**Final Remainder:** Any assets remaining in a Beneficiary’s Individual Trust Account at the time of his or her death.

**Individual Trust Account:** An account established and maintained by the Trustee under the terms of this Trust Agreement for an individual Beneficiary. The Individual Trust Account shall reflect:

- The initial value of the Beneficiary’s assets contributed to this Trust.
- Any additional contributions of the Beneficiary’s assets to this Trust.
- The Individual Trust Account’s proportionate share of the Trust’s earnings and appreciation.
- The Individual Trust Account’s proportionate share of the Trust’s taxes, expenses, depreciation, investment losses, and the fees set forth in the Joinder Agreement.
- Any distribution from this Trust for the Beneficiary.

**Joinder Agreement:** This agreement establishing the Account Founder’s consent to the BIAWA Pooled First Party Special Needs Trust and establishing the distribution, fees and management of the Individual Trust Account for the Beneficiary.

**Trust Manager:** Any individual or entity who the Trustee may delegate acts and duties to pursuant to the BIAWA Pooled First Party Special Needs Trust Agreement.

**Trustee:** The Brain Injury Alliance of Washington, as designated in the BIAWA Pooled First Party Special Needs Trust.

**Trustor:** The Brain Injury Alliance of Washington, as designated in the BIAWA Pooled First Party Special Needs Trust.

## **TERMS & AGREEMENT**

The undersigned Account Founder hereby enrolls in, and adopts and consents, to the BIAWA Pooled First Party Special Needs Trust Agreement dated \_\_\_\_\_, which is incorporated herein by reference.

**I. Parties:** Although other parties may be identified below, the Account Founder, Beneficiary, and his or her legal representative, if any, hereby agree that they are the only parties who are authorized to receive information about the Beneficiary’s Individual Trust Account from the BIAWA or the contractors hired by the BIAWA. The Account Founder, Beneficiary, and his or her legal representative, if any, agree to update the identity of and contact information for any of the parties listed below by promptly notifying the BIAWA of any such changes. The BIAWA is not responsible for determining if such updates are needed and will rely solely upon the information provided by the Account Founder, Beneficiary, and the Beneficiary’s legal representative, if any.

**Account Founder:**

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

**Beneficiary:**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_  
Birthdate: \_\_\_\_\_  
Social Security Number: \_\_\_\_\_

**Legal Representative(s), if any:**

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

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

**Case Manager, if any:**

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

**Caregiver(s), if any:**

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

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

**Other Interested Parties:**

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

**II. Current Government Benefits:**

Medicaid:	Yes _____ No _____ If so, Medicaid card number? _____
Medicare:	Yes _____ No _____ If so, Medicare number? _____
Supplemental Security Income (SSI)	Yes _____ No _____ Amount: \$ _____ / month
Social Security Disability Insurance (SSDI), Survivor's Benefits, or Childhood Disability Benefits (CDB)	Yes _____ No _____ Amount: \$ _____ / month
Section 8 Housing	Yes _____ No _____ Amount of Subsidy: \$ _____ / month Which Housing Authority?

Veteran's Administration Benefits	Yes _____ No _____ Amount: \$ _____ / month
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Please list all other forms of local, state and government assistance that the Beneficiary receives:

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Please list all other forms of non-government assistance that the Beneficiary receives:

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**III. Funding of the Individual Trust Account:** The Beneficiary's Individual Trust Account must be funded with the Beneficiary's own assets. A transfer of the Beneficiary's assets after the Beneficiary reaches the age of sixty-five (65) could be subject to a period of ineligibility for SSI and/or Medicaid benefits. While there is no age restriction for Beneficiaries of the Trust, an Account Founder should seek legal advice prior to establishing and/or transferring a Beneficiary's assets after he or she has reached the age of sixty-five (65).

Estimated amount funding Individual Trust Account: \$ \_\_\_\_\_

\_\_\_\_\_ (*initials*) This Individual Trust Account is being established with the proceeds from a settlement approved by the \_\_\_\_\_ County Superior Court. A copy of the Order that approves the settlement and the Order that directs the settlement proceeds to this Trust are attached to this Joinder Agreement.

\_\_\_\_\_ (*initials*) This Individual Trust Account is being established with the proceeds from a wrongful death or other action, which was intended to compensate the Beneficiary for the



**V. Disposition Plan:**

A. Disposition if Termination Prior to Death of Beneficiary. Neither the Beneficiary nor the Account Founder has a right to terminate or revoke an Individual Trust Account in the BIAWA Pooled First Party Special Needs Trust. However, an Individual Trust Account may be terminated by the Trustee if the Beneficiary is no longer disabled. If the Beneficiary's Individual Trust Account is terminated during his or her lifetime, it may be transferred to another pooled asset trust having the same requirements as this Trust. If not, every state that has provided Medicaid benefits to the Beneficiary will first be reimbursed for up to what they have spent in care. If anything is left after Medicaid reimbursement, it will be distributed directly to the Beneficiary, after payment of taxes and administrative expenses.

B. Distribution on Death of Beneficiary. If funds remain in the Individual Trust Account when the Beneficiary dies, the remaining funds will be paid in the following order:

1. Taxes and other reasonable fees and costs for administration of the Individual Trust Account will be paid first;
2. The Account Founder and/or the Beneficiary or his or her legal representative, if any, may leave some or all of the remaining funds in the Beneficiary's Individual Trust Account to be held for the benefit of other beneficiaries of the BIAWA Pooled First Party Special Needs Trust. See Paragraph V(C) below;
3. Every state that has provided Medicaid benefits to the Beneficiary will be reimbursed for up to the amount they have spent on the Beneficiary's care;
4. Supplemental funeral and burial expenses; and
5. If any funds remain, they will be passed to the Final Remainder Beneficiaries. See Paragraph V(D) below.

C. Optional Percentage for Other Trust Beneficiaries. The Account Founder and/or the Beneficiary or his or her legal representative, if any, may choose to have some or all of the funds remaining in the Beneficiary's Individual Trust Account be retained by the Trustee and held in the BIAWA Pooled First Party Special Needs Trust for the benefit of other beneficiaries. The Trustee will determine the timing and amount paid to the other beneficiaries. If the Account Founder and/or the Beneficiary or his or her legal representative, if any, make this choice, the percentage designated will not be available to reimburse Medicaid for what it has paid for the Beneficiary's care and will not be available for distribution under a Will, a Power of Appointment, or the laws of Intestate Succession. If the Account Founder and the Beneficiary or his or her legal representative, if any, disagree upon a choice under this Paragraph V(C), the choice of the Beneficiary or his or her legal representative, if any, shall control.

*Percentage Retained by Trust for Other Beneficiaries: \_\_\_\_\_%*

D. Final Remainder Beneficiaries. When the Beneficiary dies, if anything remains in the Individual Trust Account after the optional percentage chosen above to be retained by the Trustee for the benefit of other BIAWA Pooled First Party Special Needs Trust beneficiaries, and after every state that has provided Medicaid to you has been reimbursed, the Trust provides as follows:

1. If the Beneficiary has executed a valid Will or Power of Appointment, the balance of the Individual Trust Account shall be distributed in accordance with the provisions of such Will or Power.
2. If the Beneficiary has not executed a valid Will or Power of Appointment, the balance of the Individual Trust Account shall be distributed in accordance with



the laws of Intestate Succession for the state in which the Beneficiary resides at the date of his or her death.

E. Locating Final Remainder Beneficiaries. The Account Founder acknowledges that the Trustee may incur additional costs if Final Remainder Beneficiaries of the Individual Trust Account cannot be located easily. The Account Founder acknowledges and agrees that entities representing the Trustee may recover their reasonable costs and expenses associated with locating such beneficiaries from the Individual Trust Account prior to disbursement pursuant to the provisions above.

F. Custodial Account for Minor Beneficiaries. Except as provided in Paragraph V(F) below, in the event that any remainder beneficiary is under the age of eighteen (18) years, then any assets that would otherwise pass to that minor beneficiary shall instead be held in a Custodial Account for the minor pursuant to the Trust terms. You may designate a Custodian to serve below. If no Custodian is designated, the BIAWA will designate the custodian.

**Custodian:**

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

**Alternate Custodian:**

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

G. Trust for Remainder Beneficiaries. The Account Founder may, but is not required to, direct that a remainder beneficiary's share be held in an Individual Trust Account in the

BIAWA Basic Support and Maintenance Trust until the remainder beneficiary reaches a certain age. The age is to be determined by the Account Founder. To make such a direction complete the following:

\_\_\_\_\_ (*initials*) In the event a remainder beneficiary of the Individual Trust Account has not yet reached \_\_\_\_\_ years of age, his or her share shall be held in an Individual Trust Account in the BIAWA Basic Support and Maintenance Trust for the benefit of the remainder beneficiary until he or she reaches \_\_\_\_\_ years of age.

**VI. Fees:** \_\_\_\_\_ (*initials*) The Account Founder agrees to the payment of the enrollment fee, trustee fees, disbursement fees, and annual tax filing fees set forth in the Trustee's Fee Schedule, which is attached hereto as Schedule A, from the Individual Trust Account. The Trustee's Fee Schedule may be amended from time to time. The Trustee will provide written notice of such change. The Trustee is authorized to charge any and all fees set forth on Schedule A to the Beneficiary's Individual Trust Account. Fees are non-refundable.

**VII. Amendment of Joinder Agreement:** The provisions of this Joinder Agreement may be amended as the Account Founder, the Trustee, and the Beneficiary or his or her legal representative, if any, may jointly agree, so long as such amendment is consistent with the BIAWA Pooled First Party Special Needs Trust and applicable law.

**VIII. Disclosure Regarding Taxes:**

A. The Account Founder and the Beneficiary or his or her legal representative, if any, acknowledge that the Trustee has made no representation to the Account Founder that contributions to the BIAWA Pooled First Party Special Needs Trust are deductible as charitable gifts or otherwise.

B. The Account Founder and the Beneficiary or his or her legal representative, if any, acknowledge that the Trustee has made no representation as to the estate, gift, or income tax consequences of contributing funds to the BIAWA Pooled First Party Special Needs Trust and that the Account Founder and the Beneficiary or his or her legal representative, if any, have been advised to seek independent legal and tax advice with respect to establishing an Individual Trust Account and execution of this Joinder Agreement.

C. Individual Trust Account income, whether paid in cash or distributed in other property, may be taxable to the Beneficiary subject to applicable exemptions and deductions. It is recommended that the Account Founder and the Beneficiary or his or her legal representative, if any, seek professional tax advice. The Trustee shall pay any such income tax liability of the Beneficiary that is reported on the Beneficiary's income tax return(s), provided that such an amount is specified in writing and delivered to the Trustee. The funds used to pay such tax liability shall be paid by the Trustee either directly to the appropriate tax authority or, if the Beneficiary has paid such tax liability, the Trustee may in its discretion reimburse the Beneficiary.

D. Individual Trust Account income may be taxable to the Individual Trust Account, and when this is the case, such taxes shall be payable from the applicable Individual Trust Account.

**IX. Acknowledgement:** The Account Founder and the Beneficiary or his or her legal representative, if any, acknowledge that they have been advised to have the BIAWA Pooled First Party Special Needs Trust and this Joinder Agreement reviewed by his or her own attorney prior to the execution of this Joinder Agreement. In addition to and not in limitation of the provisions of the BIAWA Pooled First Party Special Needs Trust, the Account Founder and the Beneficiary or his or her legal representative, if any, agree to the following:

A. The Account Founder and the Beneficiary or his or her legal representative, if any, acknowledge that the Trustee shall not be considered an insurer of the BIAWA Pooled First Party Special Needs Trust or any Individual Trust Account.

B. The Account Founder and the Beneficiary or his or her legal representative, if any, acknowledge that upon execution of this Joinder Agreement by the Account Founder, the Beneficiary or his or her legal representative, if any, and the Trustee, and the funding of the Individual Trust Account for a Beneficiary, that the BIAWA Pooled First Party Special Needs Trust and the Individual Trust Account, as to the Account Founder and the Beneficiary, is irrevocable. The Account Founder further acknowledges that after the funding of the Individual Trust Account, the Account Founder shall have no further interest in and does thereby relinquish and release all rights in, control over, and all incidents of ownership of any kind or nature in and to the contributed assets and all income and appreciation thereon.

C. The Account Founder and the Beneficiary or his or her legal representative, if any, acknowledge that past performance of the Trust does not guarantee future results, and that current performance of the Trust may be lower or higher than past data presented.

D. The Account Founder and the Beneficiary or his or her legal representative, if any, acknowledge that investments carry inherent risk and that the investments within an Individual Trust Account may lose value.

E. The Account Founder and the Beneficiary or his or her legal representative, if any, represent, warrant, and agree that they have not been provided with, nor are they relying on, any representation of or any legal advice by the Trustee, its agents, employees or representatives, in deciding to execute this Joinder Agreement.

F. The Account Founder and the Beneficiary or his or her legal representative, if any, further represent, warrant, and agree:

1. That he or she is entering into this Joinder Agreement voluntarily, as his or her own free act and deed;
2. That the Beneficiary is the contributor of the assets and that the assets contributed to this BIAWA Pooled First Party Special Needs Trust are not owned by or contributed by a third party;
3. That he or she has been provided a true and correct copy of the BIAWA Pooled First Party Special Needs Trust and this Joinder Agreement prior to signing this Joinder Agreement and have been provided an opportunity to read said Trust and Joinder Agreement;
4. That if he or she has not had the BIAWA Pooled First Party Special Needs Trust or Joinder Agreement reviewed by his or her own attorney, that he or she voluntarily waives and relinquishes such right;
5. That he or she has reviewed and understands to his or her full satisfaction the legal, economic, and tax effects of these instruments; and
6. That the BIAWA Pooled First Party Special Needs Trust, or its designee may be a Final Remainder Beneficiary of a portion of the Individual Trust Account established upon the death of the Beneficiary.

**X. BIAWA Pooled First Party Special Needs Trust Controls:** In the event there are any inconsistencies between this Joinder Agreement and the Master Trust Agreement for the BIAWA Pooled First Party Special Needs Trust, the provisions of said Master Trust Agreement shall control. To the extent there is a conflict between the terms of this Joinder Agreement, the Master

Trust Agreement for the BIAWA Pooled First Party Special Needs Trust and the applicable laws and regulations of the State of Washington, the laws and regulations control.

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IN WITNESS WHEREOF, the undersigned Account Founder and the Beneficiary or his or her legal representative, if any, has reviewed and signed this Joinder Agreement, understand it and agree to be bound by its terms, and the Trustee has accepted this Joinder Agreement, the parties hereby execute this Joinder Agreement to be effective as of the \_\_\_\_\_.

ACCEPTED BY ACCOUNT FOUNDER:

\_\_\_\_\_

By: \_\_\_\_\_,  
Account Founder

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

ON THIS DAY before me personally appeared \_\_\_\_\_, to me known to be the individual described in and who executed the within and foregoing Joinder Agreement as the Account Founder, and acknowledged to me that he/she signed the same as his/her free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal on \_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_ (print name)  
Notary Public in and for the State of \_\_\_\_\_,  
Residing at \_\_\_\_\_.  
My commission expires \_\_\_\_\_.

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ACCEPTED BY BENEFICIARY:

\_\_\_\_\_  
By: \_\_\_\_\_,  
Beneficiary or Legal Representative

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

ON THIS DAY before me personally appeared \_\_\_\_\_, to me known to be the individual described in and who executed the within and foregoing Joinder Agreement as the Beneficiary, and acknowledged to me that he/she signed the same as his/her free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal on \_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_ (print name)  
Notary Public in and for the State of \_\_\_\_\_,  
Residing at \_\_\_\_\_.  
My commission expires \_\_\_\_\_.

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