

Acceptance Date: \_\_\_\_\_

Trust sub-account number: \_\_\_\_\_

(To be provided by Trustee)

*Top is For Office Use Only*

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## **JOINDER AGREEMENT FOR THE THERESA FOUNDATION POOLED TRUST OF NEW YORK**

In consideration of the covenants, promises, and representations contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby enrolls in and adopts the Declaration of Trust for The Theresa Foundation Pooled Trust of New York (the "Declaration of Trust"). The Declaration of Trust was originally executed by The Center for Special Needs Trust Administration, Inc. as Settlor and as Trustee (the "Trustee"), and by Suffolk County National Bank as Co-Trustee on the 28<sup>th</sup> day of February, 2008, and approved by The Human Resources Administration ("HRA"), Office of Legal Affairs, Liens and Recovery Litigation Division, 180 Water Street, 18th Floor, New York, New York 10038, to be effective as of April 14, 2008, establishing The New York Pooled Trust. Subsequent to its approval, the Declaration of Trust was amended and restated to effectuate a name change as The Theresa Foundation Pooled Trust of New York. Such Amended and Restated Trust was re-approved by HRA on the 3<sup>rd</sup> day of December, 2010 and executed to be effective on the 4<sup>th</sup> day of April, 2011. The effect of joining the Trust through this Pooled Trust Joinder Agreement (the "Agreement") shall be to establish a Trust sub-account for the following named Beneficiary: \_\_\_\_\_. More particular information about the Beneficiary has been provided to the Trustee in the attached Exhibit "A," which is incorporated herein by reference. This Agreement, and the Trust sub-account created hereunder, shall be irrevocable upon acceptance of the Agreement by the Trustee and shall be established with resources, including assets and/or income, belonging solely and exclusively to the Beneficiary.

### **Establishment of Trust**

The Pooled Trust sub-account established through this Agreement, together with the Declaration of Trust, is an OBRA 1993 Trust created pursuant to: 42 U.S.C. §1396p (d)(4)(C), amended August 10, 1993, by the Omnibus Budget Reconciliation Act of 1993 (OBRA 93); the Social Security Policy Operation Manual (POMS) SI 01120.203, *Exceptions to Counting Trusts Established on or after 1/1/00*, and New York EPTL §7-1.12; NYCRR Title 18, Section 360-4.5; and, New York SSL §366 (2)(b)(2)(iii-v), all of which is hereinafter referred to collectively as the "controlling authority". Accordingly, the Trust sub-account has been specifically created and established to be an exempt trust and to comply with the controlling authority, and it is the mutual intent of the Grantor and Trustee that the Trust sub-account be managed and administered so as to maintain such compliance in all respects.

### **Article I Definitions**

1.01 The term, "Trustee," means The Center for Special Needs Trust Administration, Inc., or its successor or successors, provided however, that any successor hereunder shall be a non-profit association in compliance with all the controlling authority.

1.02 The term, "Co-Trustee" means the financial institution that has been selected by The Center for Special Needs Trust Administration, Inc. to serve as Co-Trustee.

1.03 The terms, “supplemental needs,” “supplemental care,” and “government assistance” all have the same meaning that is defined in Article II of the Declaration of Trust.

1.04 The term “state” shall include, but not be limited to, the State of New York and the New York State Department of Social Services, or such other state agency responsible for administering government assistance programs, as the context might require or change from time to time.

## **Article II**

### **Distributions From Trust Sub-account During Life of Beneficiary**

Distributions from the Beneficiary’s Trust sub-account may be made during the life of the Beneficiary in accordance with the provisions below.

2.01 Individualized Care Plan. At the Trustee’s discretion, an individualized care plan shall be prepared for the Beneficiary, which the Trustee may consider, in its sole and absolute discretion, when reviewing requests for any distribution from the Beneficiary’s Trust sub-account.

2.02 Benefit Solely for Beneficiary. The Beneficiary’s Trust sub-account is established for the sole benefit of the Beneficiary, and all distributions shall be made only for the sole benefit of the Beneficiary, both at the time this Trust sub-account is established and/or anytime in the future.

2.03 Distributions Pending Preparation of an Individualized Care Plan. Pending the final preparation of an individualized care plan established for the Beneficiary, if applicable and/or required by the Trustee, any nonsupport items that are required for maintaining the Beneficiary’s health, safety, and welfare may be provided for the benefit of the Beneficiary when, in the sole and absolute discretion of the Trustee, such needs are not being met by any public agency, or are not otherwise being provided by any other source of income available to the Beneficiary.

2.04 Discretion of Trustee; Use of Assets; Desires for Use of Assets. The Grantor recognizes and acknowledges that all distributions are subject to the Trustee’s sole and absolute discretion; that the Trust sub-account is not a support trust; that the Trustee shall only make distributions solely for the Beneficiary’s supplemental needs and supplemental care; and, that the Trustee shall possess and exercise the authority to allocate all distributions between principal and income as it determines in its sole and absolute discretion. With this recognition and acknowledgment in mind, the Grantor has expressed the Grantor’s desires as to how assets in the Trust sub-account might be used on behalf of the Beneficiary during the Beneficiary’s lifetime.

2.05 Notice of Application; Acceptance, Denial; Termination of Benefits. In order to enjoy the benefits of the Trust to the fullest extent possible, the Beneficiary, or the Beneficiary’s legal representative, shall be required to notify the Trustee whenever the Beneficiary: a) applies for government assistance; b) has an application for government assistance approved; c) has an application for government assistance denied; and/or, d) has government assistance terminated. Notice shall be in writing, by certified mail, return receipt requested, in care of the Trustee, The Center for Special Needs Trust Administration, Inc., at the address set forth in the General Instructions hereto, and which is also set forth on the last page of this Agreement, or at such other address as the Trustee may designate from time to time. Such notice to the Trustee shall be made within 10 (ten) days of the event that triggers the Beneficiary’s duty to give notice under this paragraph 2.05. In no event shall the Trustee be liable for making disbursements and/or distributions which result in a reduction of government assistance, a

termination of government assistance, or ineligibility for government assistance when the Trustee did not have actual notice of such government assistance, or such other circumstances giving rise to such termination, reduction, and/or ineligibility, at the time such disbursements may have been made or requested, or when the Beneficiary or the Beneficiary's representative waives such liability in a signed writing. Consistent with the Beneficiary's affirmative duty to notify any relevant government agencies administering the Beneficiary's government assistance program(s) of any material change in circumstances, all such duties to notify shall continue to be the Beneficiary's in the event that distributions and/or disbursements may have such a material effect, and the Trustee shall have no duty in this regard.

### **Article III**

#### **Termination of Trust; Distributions Upon the Beneficiary's Death**

3.01 Termination of Trust. In the event the Trust sub-account should be terminated prior to the Beneficiary's death for any reason whatsoever, then all amounts remaining in the Trust sub-account shall first be paid to the New York State Department of Social Services, or such other agency as the state may designate for such purposes, up to an amount equal to the total medical assistance paid on behalf of the Beneficiary. After reimbursement to the State, any remaining assets will be distributed to the Beneficiary. In the event of the Beneficiary's death, any assets that remain shall be treated in accordance with the provisions below.

3.02 Assets in Trust. If any assets remain in the Beneficiary's separate Trust sub-account at the Beneficiary's death, such assets shall be deemed surplus Trust property and shall be retained by the Trust pursuant to all of the relevant and applicable provisions of 42 U.S.C. § 1396p, including all related statutes, regulations, and/or rules and the controlling authority.

3.03 Use of Retained Assets. In the Trustee's sole and absolute discretion, retained surplus Trust property shall be used:

- a) for the direct or indirect benefit of other Beneficiaries;
- b) to add disabled persons, as defined in 42 U.S.C. § 1382c(a)(3), who are indigent, to the Trust as Beneficiaries; or,
- c) to provide disabled persons, as defined in 42 U.S.C. § 1382c(a)(3), with equipment, medication, or such other services deemed suitable for such persons by the Trustee.

To the extent that any amounts remaining in the Beneficiary's separate Trust sub-account are not retained by the Trust, the Trustee shall pay to the state the amount remaining in the Trust sub-account equal to the total amount of medical assistance paid on behalf of the Beneficiary. The Grantor and Trustee recognize and acknowledge that 42 U.S.C. § 1396p, together with related state statutes and administrative rules, require repayment to the state for medical payments made on behalf of the Beneficiary over his or her lifetime, and the repayment provisions of the Trust hereunder are intended to meet this requirement by specifically providing for such repayment.

3.04 Intent of This Article III to Meet Repayment Requirements. In setting forth the terms provided in this Article III, it is the mutual intent of the Grantor and the Trustee that any amounts remaining in the Beneficiary's separate Trust sub-account be administered so as to conform with all of

the requirements of 42 U.S.C. §1396p and/or related statutes and controlling authority that pertain to reimbursement to the states for government assistance provided on behalf of the individual Beneficiary over the Beneficiary's lifetime. For all such purposes of retention and repayment hereunder, the Trustee and all of the States where the Beneficiary may have received government assistance are clearly identifiable residual beneficiaries and have standing to challenge any attempt by the Beneficiary or any other party to revoke this irrevocable Agreement.

#### **Article IV**

#### **Trustee Fees and Administrative Expenses**

The Trustee shall be entitled to a reasonable trustee fee as compensation for its administrative services, provided such fee is compatible with the trustee fees that it normally charges for Trust sub-accounts of a similar size and complexity. Also, the Trustee shall be entitled to reimbursement for any reasonable costs that it might normally occur from time to time in the fulfillment of its administration duties without prior notice to any party.

#### **Article V**

#### **Miscellaneous Provisions**

5.01 Amendments. Notwithstanding the irrevocability of this Agreement, this Joinder Agreement may be amended from time to time so that it conforms with any changes and/or interpretations of statutes, rules, or regulations that are approved by any governing body or agency relating to 42 U.S.C. § 1396p or related statutes, including but not limited to state statutes and regulations that are consistent with the provisions and purposes of the Omnibus Budget Reconciliation Act of 1993, amending 42 U.S.C. § 1396p such as New York EPTL §7-1.12; NYCRR Title 18, Section 360-4.5; and, New York SSL §366 (2)(b)(2)(iii-v) as determined in the Trustee's sole discretion without notice to the Beneficiary and/or representative. The Human Resources Administration shall be provided with written notice of any and all such amendments as provided in paragraph 9.2 of the Declaration of Trust.

5.02 Taxes. The Grantor acknowledges that: a) the Trustee has made no representations to the Grantor that contributions to the Trust are deductible as charitable gifts, or otherwise; b) 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; and, c) Trust sub-account income may be taxable to the Trust, and when this is the case, such taxes shall be payable directly from the Trust sub-account that requires such taxes to be paid. For the sole purpose of determining tax liability and having the Beneficiary's trust sub-account treated as a grantor trust, the Trustee may apply trust income to the payment of premiums on policies of insurance on the life of the Beneficiary without the approval or consent of any adverse party within the meaning of Section 672(a) of the Internal Revenue Code of 1986, as amended. For purposes of this paragraph 5.02, "trust corpus" shall have the same meaning as "Trust sub-account" used elsewhere throughout this Joinder Agreement and the Declaration of Trust. Further, nothing in this paragraph 5.02 shall in any way affect or modify the intent and/or purpose of the Trust or any of the provisions found in this Joinder Agreement and/or the Declaration of Trust. The Trustee may make distributions directly to the taxing authority of any such amounts of income or principal of the Trust as may become necessary to satisfy the Beneficiary's tax obligations upon the Beneficiary making such request to the Trustee. The Trustee shall have the sole and independent discretion to claim any tax deductions or elections useful to reduce the tax paid by the Trust.

5.03 Testamentary Power of Appointment Over Residue. Subject to the provisions of Article III above, and all other relevant provisions, laws, and/or regulations requiring the Trustee to reimburse each state in which the Beneficiary received government assistance, the Beneficiary shall have the power, through his or her Last Will and Testament, and by making express reference to this power, to direct that part or all of the property remaining in the Trust may be delivered to such persons or their issue as the Beneficiary so directs. However, under no circumstances shall the Beneficiary have the power to direct that such property be delivered to: the Beneficiary; the Beneficiary's estate; the Beneficiary's creditors; or the creditors of the Beneficiary's estate. For purposes of this paragraph 5.03, the purpose of which is to prevent any gift tax liability, the term "property" refers to any such residual amounts as may remain after the Trustee follows the provisions set forth in Article III above.

5.04 Trustee's Duty Regarding Government Assistance Programs. In providing for the Beneficiary's special needs, and/or in making determinations regarding disbursements and/or distributions for the benefit of the Beneficiary's special needs, the Trustee shall always consider the government assistance for which the Beneficiary is currently eligible, or for which the Beneficiary may be attempting to become currently eligible, and the Trustee shall make no disbursements and/or distributions that would cause the Beneficiary to be or become ineligible for such government assistance. Distributions that the Trustee may or may not have made in the past because of less restrictive government assistance programs, more restrictive government assistance programs, or government assistance programs that the Beneficiary did not apply for, qualify for, and/or receive, shall not serve as a pattern, or be construed to serve as a pattern, of any sort that establishes a duty or discretion in the Trustee to continue making such distributions, to continue refusing such distributions, or to make or to refuse such distributions in the future as the individual case may be. The Trustee shall have no discretion in this regard, and it shall be an absolute duty of the Trustee to follow the directions herein.

5.05 Information Concerning Grantor and Beneficiary. All information concerning the Grantor and the Beneficiary hereunder, as may be required by the Trustee, shall be provided by the Grantor. The Grantor hereby warrants that all information provided to the Trustee, both at the time of establishing the Beneficiary's sub-account and at all times thereafter, is true and complete to the best of the Grantor's knowledge as of the time of the Grantor providing such information. The Trustee and its Co-trustees, their employees and/or agents shall be entitled to rely on all such information in performing their duties hereunder toward the Grantor and/or the Beneficiary without being required to make further inquiry as to the accuracy or completeness of such information. The sufficiency of such information shall be determined by the Trustee in its sole and absolute discretion, and the Trustee shall in no event be required to inquire further as to the accuracy, veracity, authenticity, or completeness of any information submitted by the Grantor.

5.06 Appointment of Advocate or Advisor. The Trustee may appoint and retain an advocate and/or advisor for the express purpose of assisting the Trustee in evaluating trust disbursements and evaluating the Beneficiary's special needs. The Trustee shall compensate any such advocate and/or advisor from the Trust estate at a rate equal to the usual and customary fee for such services, provided such fees are reasonable and appropriate in the Trustee's sole discretion. The Trustee may also engage the services of service providers and shall have the specific authority to set the terms and conditions of such engagement.

5.07 Governing Law. This Joinder Agreement is created under, and shall be governed by, and interpreted in accordance with, the laws of the United States and the State of New York.

5.08 Dispute Resolution. Any dispute which may arise between the parties hereto, including the Beneficiary, concerning any matter related to or arising from this Joinder Agreement and/or the Trust, shall be resolved exclusively by binding arbitration between the parties. Said arbitration shall be conducted pursuant to the then-obtaining arbitration rules of the American Arbitration Association. The arbitration shall be conducted in Clearwater, Florida, at a location to be designated by the arbitrator(s), or such other location as may be mutually agreed by the parties.

5.09 Authority of Grantor to Contribute on Behalf of Beneficiary. The Grantor shall furnish to the Trustee such proof as the Trustee, in its sole and absolute discretion, may require in order to satisfy itself that the Grantor has the requisite status under law to establish and/or contribute to the Trust on behalf of the Beneficiary. The sufficiency of such proof shall be determined by the Trustee in its sole and absolute discretion. Further, such proof shall be deemed to be conclusive evidence that the Grantor enjoys such requisite status. The Trustee shall in no event be required to inquire further as to the accuracy, veracity, authenticity, or completeness of any proof submitted by the Grantor.

5.10 Agreement Understood by Grantor. The Grantor hereby agrees to and acknowledges that the Grantor:

- a) has reviewed this Joinder Agreement and fully understands its terms;
- b) has had a full, complete, and fair opportunity to seek the advice of legal counsel concerning this Joinder Agreement, whether or not the Grantor has done so;
- c) agrees to be bound by the terms of this Joinder Agreement, and said Agreement is binding on the Grantor's heirs, successors, and assigns; and,
- d) is not executing this Joinder Agreement because of any promises, covenants or representations other than those contained in this Joinder Agreement and the Declaration of Trust.

5.11 Agreement Constitutes Entire Understanding Between Parties. This Joinder Agreement, together with the Declaration of Trust, which the Grantor specifically acknowledges having received and reviewed by entering into this Agreement, constitutes the entire understanding between the parties. No promises, agreements or representations, expressed or implied, have been made, except those contained in this writing, and all corrections and additions hereto shall be in writing, specifically designated as an addition or amendment to this Joinder Agreement, and signed by the parties.

5.12 Severability. Any provision of this Joinder Agreement that is adjudged invalid or unenforceable under the laws of any place where the terms of the Agreement are to be performed, or are sought to be enforced, shall be deemed inoperative without invalidating such provision elsewhere or any of the other provisions of this Agreement.

5.13 Section Headings. Section headings are for purposes of convenience only and shall have no bearing on the interpretation of any provision of this Joinder Agreement or the Declaration of Trust.

5.14 Rules of Construction. In entering this Agreement, it is the intent of the Grantor and Trustee to comply fully with all of the controlling authority first cited above, both Federal and State, which pertains to Pooled Trusts and/or Special Needs Trusts, and all such enabling legislation such as 42. U.S.C. §1396p(d)(4)(C), together with all related rules and regulations. As such, this Agreement

shall be construed as broadly as possible to meet this purpose, and any ambiguities that may arise and/or be advisable to be clarified during the administration of the Trust sub-account relative to the Trustee and/or any reviewing agency shall be resolved in favor of achieving this broad objective of compliance.

IN WITNESS WHEREOF, the undersigned Grantor acknowledges having received and reviewed a copy of The Theresa Foundation Pooled Trust of New York Amended and Restated Declaration of Trust, acknowledges an intent to join to it and to be bound by its terms, and has signed this Joinder Agreement on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_; and, the Trustee has accepted and signed this Joinder Agreement on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

GRANTOR'S SIGNATURE

WITNESS SIGNATURES (2)

\_\_\_\_\_  
Grantor Signature

1. \_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Please Print Name

\_\_\_\_\_  
Please Print Name

Address: \_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

2. \_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Please Print Name

Address: \_\_\_\_\_  
\_\_\_\_\_

STATE OF NEW YORK                    ))  
COUNTY OF \_\_\_\_\_            ))ss.:

Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_ who [ ] is personally know by me, or who [ ] produced  
\_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public

**The Center for Special Needs  
Administration, Inc., Trustee**

**WITNESS SIGNATURES (2)**

By: \_\_\_\_\_

1. \_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Please Print Name  
Address: The Center for Special Needs  
Trust Administration, Inc.  
4912 Creekside Drive  
Clearwater, FL 33760

\_\_\_\_\_  
Please Print Name  
Address: \_\_\_\_\_  
\_\_\_\_\_

2. \_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Please Print Name  
Address: \_\_\_\_\_  
\_\_\_\_\_

STATE OF \_\_\_\_\_ ))  
COUNTY OF \_\_\_\_\_ ))

Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_ who [ ] is personally know by me, or who [ ] produced  
\_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public