



IRREVOCABLE AGREEMENT

Medicaid Payback Trust (funded with beneficiary's own assets)

THIS IS A BINDING LEGAL DOCUMENT. YOU MAY WISH TO OBTAIN PROFESSIONAL ADVICE BEFORE SIGNING.

1. SETTLOR

This Alabama Family Trust ("AFT") account is hereby created and established by:

\_\_\_\_\_, also known as the

Settlor. If the Settlor is unable to sign the documents, the name of the person acting on behalf of the Settlor is \_\_\_\_\_.

The person acting on behalf of the Settlor is doing so in his/her role as the Settlor's (initial where appropriate) \_\_\_guardian; \_\_\_conservator; \_\_\_agent under Durable Power of Attorney; \_\_\_other (such as court-appointed custodial parent or grandparent).

2. THIS TRUST IS IRREVOCABLE (cannot be changed)

3. BENEFICIARY<sup>1</sup>

This account is being established for the benefit of

\_\_\_\_\_. Sometimes the

<sup>1</sup> The Beneficiary is also referred to as the "Life Beneficiary" under Alabama law. See § 38-9B-2(11), Ala. Code 1975. AFT refers to the Life Beneficiary as the "Beneficiary," but all such references should be understood to mean "Life Beneficiary."

Beneficiary and the Settlor are the same person.

**4. CONTRIBUTION**

The amount being contributed to establish this account is \$\_\_\_\_\_. All contributions must be in cash.

**5. REPRESENTATIVE<sup>2</sup>**

The Representative is the person or persons the Settlor appoints who will request distributions on behalf of the Beneficiary and may have input in the investment option strategies offered by AFT. The Settlor designates the following Representatives to serve (initial where appropriate):

\_\_\_\_jointly or \_\_\_\_one at a time and in the order listed:

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If for any reason the Representative(s) is/are unwilling or unable to serve, then the Settlor agrees that the Alabama Family Trust Corporation, as Trustee, may appoint a Successor Representative.

Note: Neither a Beneficiary nor a Beneficiary's spouse may serve as Representative.

**6. PAYMENTS TO REPRESENTATIVE**

The only distributions which may be made to a Representative are amounts to reimburse the Representative for his or her out-of-pocket expenses on behalf of the \_\_\_\_\_ Beneficiary.

<sup>2</sup> The Representative is also referred to as the "Co-Trustee" under Alabama law. See § 38-9B-2(8), Ala. Code 1975.

## **7. TRUSTEE**

The Trustee is the Alabama Family Trust Corporation, which acts through its board of trustees, staff and the financial institution employed by AFT as agent, all of whom are acting on behalf of AFT and the Beneficiary.

## **8. TRUST TERMINATION**

At the Beneficiary's death, the account shall be terminated and distributed as follows:

(1) payment of any taxes due from the trust to the State of Alabama or any other state or the federal government because of the death of the Beneficiary; (2) payment of reasonable fees for administration of the trust such as an accounting of the trust to a court, completion and filing of documents, or other required actions associated with termination and wrapping up of the trust; (3) retention of 10 percent to AFT Corporation for the AFT Charitable Trust; (4) reimbursement to the State of Alabama or to any other state, the District of Columbia or any other commonwealth, territory, or jurisdiction of the United States for medical assistance paid on behalf of the Beneficiary under the plan of the respective jurisdiction; and (5) payment of the balance, if any, to remainder beneficiaries.

If the AFT account is terminated for any reason other than death, the account shall be terminated and distributed as follows: (1) payment of reasonable fees for administration of the trust such as an accounting of the trust to a court, completion and filing of documents, or other required actions associated with termination and wrapping up of the trust; (2) reimbursement to the State of Alabama or to any other

state, the District of Columbia, or any other commonwealth, territory, or jurisdiction of the United States, for medical assistance paid on behalf of the Beneficiary under the plan of the respective jurisdiction; and (3) payment of the balance, if any, to the Beneficiary.

## 9. REMAINDER BENEFICIARIES

Sometimes referred to as Remaindermen, these are the entities or persons designated by the Settlor as the Remainder Beneficiaries in the following amounts or percentages: [ATTACH ADDITIONAL PAGES IF MORE SPACE NEEDED]

**Remainder Beneficiary 1:** \_\_\_\_\_

Amount or Percentage \_\_\_\_\_

**Remainder Beneficiary 2:** \_\_\_\_\_

Amount or Percentage \_\_\_\_\_

**Remainder Beneficiary 3:** \_\_\_\_\_

Amount or Percentage \_\_\_\_\_

**Substitute Remainder Beneficiaries.** If a Remainder Beneficiary should cease to exist prior to termination of the account, then such Remainder Beneficiary's share shall be paid as follows (choose one of the following by placing your initials by your choice):

\_\_\_\_ To the deceased Remainder Beneficiary's descendants per stirpes; or

\_\_\_\_ Divided pro rata among the other Remainder Beneficiaries; or

\_\_\_\_ To this substituted recipient instead:

Name: \_\_\_\_\_

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

## 10. MINIMUM REQUIRED TO OPEN ACCOUNT

A minimum of \$1500 is required to open this account. AFT may accept trusts with a minimum below the required \$1500 if sufficient proof, such as a court order, is provided showing a steady stream of income or principal will be deposited into the trust meeting the required minimum. While the trust balance is below the minimum, the trust corpus will be held in escrow. During such time as the corpus is held in escrow, no distributions shall be made for the benefit of the Beneficiary, and the Beneficiary will not be eligible for distributions from the charitable trust. Funds held in escrow will be subject to tax preparation fees in accordance with the published schedule of fees. The Settlor understands that tax preparation fees will reduce the amount held in escrow when said fees are due and payable to AFT. Upon reaching the required minimum, the trust will be subject to all fees in accordance with the published schedule of fees.

## 11. ADDITIONAL TRUST PROVISIONS

The Settlor of this AFT account understands that "account" and "trust" both refer to the Beneficiary's trust account with AFT. The Settlor acknowledges the following (please initial each item):

\_\_\_\_\_ **Medical Eligibility.** AFT requires that the Beneficiary have a mental or physical disability that substantially limits one or more major life activities, regardless

of whether the impairment is congenital or caused by accident, injury, age or disease. Such condition must be verified by medical findings that meet the medical-vocational requirements for a finding of disability under Section 223(d) of the Social Security Act, 42 U.S.C. Section 4223(d), or under Section 1614 of the Social Security Act, 42 U.S.C. Section 1382c. Proof of this medical eligibility has been provided to the Trustee.

\_\_\_\_ **Use of Account.** The purpose of this account is to supplement, not to replace, the Beneficiary's government benefits and to improve his or her quality of life. The Representative may periodically request disbursements for the benefit of the Beneficiary, which if approved by the Trustee, may be used to purchase goods and services for the benefit of the Beneficiary.

\_\_\_\_ **Investments and Records.** While contributions to and earnings of the AFT Trust may be administered as one trust for purposes of investment and management, there will be a separate account for each Beneficiary. A financial institution selected by AFT serves as investment agent for investing the Beneficiary's account funds, and account information will be regularly available to the Settlor and Beneficiary.

\_\_\_\_ **Minimum Balance.** AFT may close the account if balance falls below \$395/grantor trust or \$525/complex trust.

\_\_\_\_ **Income Taxes.** Earnings accruing to this account may result in taxable income to the Beneficiary. The Trustee will provide evidence of such income annually.

\_\_\_\_ **Arbitration.** If the Representative and Trustee cannot agree concerning a

requested distribution, then either may request that the matter be resolved by arbitration.

\_\_\_\_ **Beneficiary has no control.** The Beneficiary may not demand any distribution from this trust. The Beneficiary may not assign, convey or otherwise encumber his or her account, nor shall any account assets be subject to any debt incurred by the Beneficiary or to the claims of any creditor of the Beneficiary.

\_\_\_\_ **Settlor has no control.** The Settlor acknowledges that this document is irrevocable (cannot be changed) and that the Settlor may not sell, assign, convey or otherwise encumber the Beneficiary's AFT assets.

**12. TO BECOME FAMILIAR WITH HOW AFT ACCOUNTS OPERATE,** the Settlor has reviewed the following forms from AFT and provided this information to the Representative(s):

\_\_\_\_ How Can Trust Funds Be Used?

\_\_\_\_ Request for Disbursement Form

\_\_\_\_ Mileage Form

\_\_\_\_ Schedule of Trustee Fees and Costs

----- **SIGNATURE PAGE FOLLOWS** -----

This Agreement is executed by the Settlor and by the Alabama Family Trust Corporation as Trustee on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**SETTLOR**

Settlor's Signature: \_\_\_\_\_

Settlor's Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_

**WITNESSES**

Witness Signature: \_\_\_\_\_

Witness Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_

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

Witness Signature: \_\_\_\_\_

Witness Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_

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

**ALABAMA FAMILY TRUST CORPORATION as Trustee**

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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