



IRREVOCABLE AGREEMENT

Third Party Trust (funded with assets not owned by beneficiary)<sup>1</sup>

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 \_\_\_\_\_.

2. THIS TRUST IS IRREVOCABLE (cannot be changed)

3. BENEFICIARY<sup>2</sup>

This account is being established for the benefit of

\_\_\_\_\_.

4. CONTRIBUTION

The amount being contributed to establish this account is \$\_\_\_\_\_.

1 There is no Medicaid pay-back at the death of the Life Beneficiary when the trust is created with third-party funds.

2 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."

Additional contributions may be made by anyone (*referred to as a "Contributor"*) who wants to make a contribution, as long as the contributions do not come from the Beneficiary, the Beneficiary's spouse, or any government needs-based benefits like Social Security Income (SS) payments. All contributions must be in cash.

**5. REPRESENTATIVE<sup>3</sup>**

The Representative is the person or persons the Settlor appoints to request distributions on behalf of the Beneficiary and to 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 Alabama Family Trust Corporation, as Trustee, may appoint a Successor Representative.

*Note: A Settlor may serve as a Representative for this Third-Party Trust. The following may NOT serve as a Representative: Beneficiary, Beneficiary's spouse.*

**6. PAYMENTS TO REPRESENTATIVE**

The only distributions which may be made to a Representative are amounts to

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<sup>3</sup> The Representative is also referred to as the "Co-Trustee" under Alabama law. See § 38-9B-2(8), Ala. Code 1975.

reimburse the Representative for his or her out-of-pocket expenses on behalf of the Beneficiary.

#### **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 AMENDMENT**

This Trust may be changed to amend the Trust as required in order for the Trustee to comply with federal or state laws, rules, regulations and interpretations related to eligibility for Medicaid, SSI and other government benefits; to comply with the Internal Revenue Service and other tax authorities as needed; and to clarify questions that may arise related to administration of the Trust.

#### **9. TRUST TERMINATION**

At the Beneficiary's death, if the Beneficiary has not received AFT Trust income or principal, then, subject to the payment of administrative fees and expenses as established by the AFT Corporation, an amount equal to the current fair market value of the balance of the Beneficiary's account in the AFT Trust as determined on the date of distribution shall be distributed to the remainder beneficiaries. If the Beneficiary has received any AFT Trust income or principal, then, subject to the payment of administrative fees and expenses as established by the AFT Corporation, an amount equal to 95 percent of the fair market value of the principal balance of the Beneficiary's account (as determined on the date of distribution) shall be distributed

to the Remainder Beneficiaries. The remaining balance of the Beneficiary's account shall be distributed to the AFT Charitable Trust.

**10. REMAINDER BENEFICIARIES**

Sometimes referred to as Remaindermen, these are the entities or persons designated by the Settlor to receive net assets remaining at Trust termination. The Settlor has named the following Remainder Beneficiaries in the following amounts or percentages:

*Attach additional pages if more space is 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: \_\_\_\_\_

## 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.

\_\_\_\_ **Minimum Required to Open Account.** A minimum of \$1,500 is required to open this account.

\_\_\_\_ **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.

**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: \_\_\_\_\_

If Settlor cannot sign, list the capacity in which you are signing (agent under power of attorney, Guardian/Conservator, court order): \_\_\_\_\_

**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: \_\_\_\_\_