

## LIFE PLAN OF KENTUCKY, INC. POOLED TRUST JOINDER AGREEMENT



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

The undersigned Grantor, in consideration of the mutual covenants, promises, and representations contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, hereby enrolls in and adopts the Life Plan of Kentucky, Inc. Declaration of Trust (the “Trust”), executed by the board of Directors of Life Plan of Kentucky, Inc. (the “Trustee”), and dated December 7, 2011, establishing the Trust, which is attached hereto as Exhibit A and incorporated into this document by reference as if set out fully herein. The effect of joining the Trust through this Life Plan of Kentucky, Inc. Pooled Trust Joinder Agreement (the “Agreement”) shall be to establish a Trust sub-account for the sole benefit of the following named Life Beneficiary, \_\_\_\_\_ . This Agreement and the Trust sub-account hereunder, shall be irrevocable by the Beneficiary, the Beneficiary’s heirs or assigns, upon acceptance of the Agreement by the Trustee.

### **Article 1. Definitions**

Terms used in this Agreement shall have the same meanings as set forth in the Master Trust.

### **Article 2. Distributions from Sub-Account During Life of Beneficiary**

The Grantor acknowledges that upon signing this Agreement and funding the Beneficiary’s Trust sub-account, the Grantor shall have no further interest in and does thereby relinquish and release all rights in and control over and all incidents of ownership in the contributed assets and any income thereafter generated by, from or in the contributed assets. Distributions from the Beneficiary’s Trust sub-account may be made during the life of the Beneficiary in accordance with the provisions of Trust delineated as follows:

- 2.01 Trust sub-account. While the Beneficiary is living, the Beneficiary’s Trust sub-account will be administered solely for the benefit of the Beneficiary.
- 2.02 Request by Grantor Regarding Use of Funds. The Grantor recognizes that all distributions from a Beneficiary’s Trust sub-account are at the Trustee’s sole discretion. While recognizing that the trustee will make distributions only for the Beneficiary’s supplemental needs and supplemental care, the Grantor may, and is encouraged to, express desires as to how assets in the Trust sub-account may be used on behalf of the Beneficiary during the Beneficiary’s lifetime.

- 2.03 Government Assistance. The Beneficiary or the Beneficiary's representative must, within five (5) days of the event, notify the trustee whenever the Beneficiary:
- a. applies for governmental assistance,
  - b. has an application for governmental assistance approved or denied, or
  - c. has governmental assistance terminated.

Notice under this provision must be made in writing, to the Trustee, at such address as the Trustee may designate. The Trustee shall not be held liable for making any disbursements which result in a reduction of government assistance, termination of government assistance or ineligibility for government assistance when the Trustee did not have actual notice of such government assistance or of circumstances giving rise to reduction, termination or ineligibility at the time such disbursements were requested or made. In addition, if a Beneficiary or the Beneficiary's representative waives Trustee liability in a signed writing as a condition to receiving a distribution that would, or could be expected to, result in a reduction, termination or determination of ineligibility for government assistance, the Trustee shall not be held liable for the results of the distribution.

- 2.04 Administrative Expenses. Under the provisions of Articles 11 and 12 of the Declaration of Trust, payments may be made to attorneys, financial advisors or other professionals as deemed necessary by the Trustee to assist in the administration of the Trust. If such advice is necessary or advisable, as determined by the Trustee, the Grantor acknowledges that such expenses shall be a proper expense of the trust and may be apportioned on a pro rata basis to all Trust sub-accounts, or may be charged only against the Trust sub-account about which the Trustee seeks such advice or assistance.

### **Article 3. Distributions Upon the Death of the Beneficiary**

Upon the death of the Beneficiary, the termination of the trust shall be governed by 42 U.S.C. §1396p(d)(4)(C)(iv), 907 KAR 1:650, SSI POMS SI §01120.203.B.2.g, and SSI poms SI §01120.203.B.3. Accordingly, to the extent that assets are not retained by the trust, the Kentucky Cabinet for Health and Family Services (and any other state in its proportionate share as set forth below) shall be first payee up to the full amount that the Kentucky Cabinet for Health and Family Services has spent on behalf of the Beneficiary during the Beneficiary's lifetime, both before and after the creation of this trust, and shall have priority of payment over any other debts and administrative expenses, except those listed in SSA POMS SSI SI § 01120.203.B.3.a. Any assets retained by the trust pursuant to 42 U.S.C. §1396p(d)(4)(C)(iv) shall be used for the direct or indirect benefit of other beneficiaries of the trust; in furtherance of the trust's charitable mission; to add disabled persons, as defined in 42 U.S.C. §1382(c)(a)(3), who are indigent as Beneficiaries of the trust; or to provide disabled persons, as defined in 42 U.S.C. §1382(c)(a)(3), with equipment, medication, or other such services deemed suitable for such persons by the trustee.

If the Beneficiary has received Medicaid benefits in more than one state, each state that has provided benefits shall be repaid. If there is an insufficient amount left in the Beneficiary's sub-account upon his or her death to cover all benefits paid from all states, then each state shall be paid its proportionate share of the amount remaining in the Beneficiary's sub-account at the time of his or her death, based upon the monetary value of the support provide by each state.

If, however, sufficient funds remain in the deceased Beneficiary's Trust sub-account at the time of the Beneficiary's death to fully repay any and all State Medicaid liens against the deceased Beneficiary, then the Trustee agrees to fully repay all such Medicaid liens, then retain the greater of \$5,000.00 or 5% of the sub-account balance after repayment of the Medicaid lien(s), after which the balance of the sub-account shall be distributed to named Secondary Remainder Beneficiaries, if any, or if none, to the deceased Beneficiary's estate. If insufficient funds remain in the deceased Beneficiary's sub-account, then the Trust shall retain all funds remaining in the Beneficiary's sub-account.

#### **Article 4. Trustee Compensation**

The Trustee shall be entitled to compensation for services. Fees for such services are not refundable and shall be deemed earned when paid. Fees are as described in Exhibit F, attached hereto.

#### **Article 5. Miscellaneous Provisions**

- 5.01 Qualification for Programs and Services. Grantor acknowledges that the Trustee has no duty to seek out programs of government assistance that may be available to the Beneficiary. Grantor and Grantor's representative(s) shall identify and pursue qualification for government and other programs, as appropriate for the benefit of the Beneficiary, that may be of financial, social, developmental or other benefit or assistance to the Beneficiary.
- 5.02 Irrevocability of Joinder Agreement. The provisions of this Agreement may not be amended or modified by the Grantor, Trustee or Beneficiary.
- 5.03 Indemnification. The Grantor agrees to indemnify and hold harmless the trustee, its agents and employees, for actions taken on behalf of the Beneficiary so long as the Trustee acted in good faith. Grantor recognizes and acknowledges the uncertainty and changing nature of laws, regulations, policies and procedures relating to government assistance and the Trustee shall not be liable for any loss of benefits resulting from the same as long as the Trustee acted in good faith.
- 5.04 Tax Treatment. The Grantor acknowledges that the Trustee has made no representations to the Grantor that contributions to the Trust are deductible on any tax returns as charitable contributions, gifts or otherwise. The Grantor acknowledges that the Trustee has made no representations as to gift or income tax consequences affecting funds in the Trust sub-account, except as specified in Article 11 of the Declaration of Trust. The Trust sub-account, 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. In the event Trust sub-account income is taxable to the Trust, such taxes may be payable directly from the sub-account causing such taxation.
- 5.05 Governing Law. This Agreement is created and shall be construed under and according to the laws of the Commonwealth of Kentucky and the laws of the United States of America.

- 5.06 Dispute Resolution. Any dispute which may arise between the parties hereto, including the Beneficiary, concerning any matter related to or arising from this Agreement or the Trust, shall be resolved exclusively by binding arbitration between the parties. Said arbitration shall be conducted pursuant to the rules in effect at the time of the dispute of the American Arbitration Association. Such arbitration shall be conducted in Lexington, Kentucky at a location to be designated by the arbitrator(s).
- 5.07 Full and Complete Disclosure. The Grantor acknowledges that the grantor must provide complete and accurate information regarding the Grantor/Beneficiary at all times. Any change in circumstances that might affect the Beneficiary, this Trust, the duties of the Trustee as those duties pertain to the Beneficiary, including the death of the Beneficiary, must be reported as soon as possible. Grantor acknowledges that the Trustee will administer the Trust for the Beneficiary based on information that the Grantor provides.
- 5.08 Agreement Constitutes Entire Agreement Between the Parties. This agreement, together with the attached Exhibits A through F, which are incorporated herein by reference, constitutes the entire understanding between the parties. No promises, agreements or representations, express or implied, have been made except as contained in this writing, and all corrections, additions or amendments hereto shall be in writing, specifically designated as an addition or amendment to this Agreement, and signed by the parties.
- 5.09 Opportunity to Seek Legal Counsel. The Grantor hereby acknowledges that the Grantor has reviewed this Agreement and fully understands its terms, has been advised to, and has been given the opportunity to, seek the advice of legal counsel concerning this Agreement, agrees to be bound by the terms of the Agreement, and is not executing this Agreement because of any promises, covenants or representations other than those contained in this Agreement and Trust.
- 5.10 Severability. The invalidity or unenforceability of any provision of this Agreement, or the application thereof to any person or circumstance, in any jurisdiction shall in no way impair, affect or prejudice the validity or enforceability of the remainder of this Agreement in that jurisdiction or that of any other jurisdiction, including the unenforceable or invalid provision, or the application thereof to other persons and circumstances in any other jurisdiction.
- 5.11 Headings. The headings, titles and subtitles herein are inserted solely for convenient reference and shall not be construed as containing any other meaning.

IN WITNESS WHEREOF, the undersigned Grantor has signed this Agreement on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and the Trustee has accepted and signed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Grantor's Signature

\_\_\_\_\_  
Grantor Printed Name

\_\_\_\_\_  
Grantor address

COMMONWEALTH OF KENTUCKY     )  
COUNTY OF \_\_\_\_\_ )

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

My commission expires: \_\_\_\_\_. My ID # is  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State at Large

LIFE PLAN OF KENTUCKY, INC.:

By: \_\_\_\_\_  
Signature and Title

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

Address:

Life Plan of Kentucky, Inc.  
2333 Alexandria Drive  
Lexington, KY 40504

