

# TENNESSEE OPIOID ABATEMENT FUND TRUST AGREEMENT

This Trust Agreement (the “Agreement”) is made effective as of this \_\_\_ day of \_\_\_\_\_, 2021, by the Trustees of the Opioid Abatement Fund (the “Trustees” or the “Board of Trustees”).

## RECITALS:

**WHEREAS**, the State of Tennessee 112<sup>th</sup> General Assembly has passed and Governor Bill Lee has signed 2021 Tenn. Pub. Acts, ch. 491, which addresses abatement and remediation of the opioid epidemic in the State of Tennessee; and

**WHEREAS**, the opioid abatement fund is established and funded pursuant to Section 2 of 2021 Tenn. Pub. Acts, ch. 491 (the “Fund Act”); and

**WHEREAS**, the opioid abatement fund may receive funds from various sources if the funds will be dedicated to opioid abatement, and the opioid abatement fund is the designated repository of funds that are either dedicated to opioid abatement or remediation or are otherwise directed to abatement or remediation and that are received by the state pursuant to a judgment on opioid-related claims, a recovery in bankruptcy on opioid-related claims, or a settlement of opioid-related claims; and

**WHEREAS**, the opioid abatement fund is to operate as an irrevocable trust administered by the State Treasurer; and

**WHEREAS**, the Tennessee Opioid Abatement Council (the “Council”) was created pursuant to Sections 4 through 9 of 2021 Tenn. Pub. Acts, ch. 491; and

**WHEREAS**, disbursements from the opioid abatement fund must be made as determined by the Council or as otherwise required by law;

**NOW, THEREFORE**, in consideration of the premises, the Trustees hereby establish the Tennessee Opioid Abatement Fund Trust Agreement as follows:

## I. NAME OF TRUST

The name of the opioid abatement fund shall be the “Tennessee Opioid Abatement Fund Trust” (the “Trust”).

**II.**  
**IRREVOCABLE**

The Trust is irrevocable.

**III.**  
**PURPOSE OF TRUST**

The Trust may receive funds from various sources if the funds will be dedicated to opioid abatement and certain costs specified in 2021 Tenn. Pub. Acts, ch. 491, and the Trust is the designated repository of funds that are either dedicated to opioid abatement or remediation or are otherwise directed to abatement or remediation and that are received by the State of Tennessee pursuant to a judgment on opioid-related claims, a recovery in bankruptcy on opioid-related claims, or a settlement of opioid-related claims. Funds deposited in the Trust are hereinafter referred to as “Funds” or “Trust Funds.” To the extent allowed by law, the Trustees shall have only a ministerial role and not a discretionary role in the distribution of Funds as directed by the Council. This Agreement is intended to comply with the provisions of 2021 Tenn. Pub. Acts, ch. 491.

**IV.**  
**TRUSTEES**

1. **Appointment of Trustees.** There shall be three (3) Trustees who are collectively referred to as the “Board of Trustees.” The three (3) Trustees shall be as follows:
  - a. The Commissioner of the Department of Finance and Administration;
  - b. The State Treasurer; and
  - c. The Chair of the Opioid Abatement Council.
  
2. **No Compensation; Reimbursement of Expenses.** Each member of the Board of Trustees shall serve without compensation but may be reimbursed for actual and necessary expenses, including travel in accordance with the comprehensive travel regulations as promulgated by Department of Finance and Administration and approved by the Attorney General and Reporter.
  
3. **Legal Advisor to Board of Trustees.** The Attorney General and Reporter (or his or her designee) shall serve as legal advisor to the Board of Trustees.

**V.**  
**GOVERNANCE AND TRUST ADMINISTRATION**

1. **Chair of the Board of Trustees.** The State Treasurer shall serve as the Chair of the Board of Trustees and shall preside over all meetings and proceedings of the Board of Trustees. If a temporary vacancy occurs in the position of Chair, the Board of Trustees may elect one of its members to serve as Chair during such vacancy.

2. **Vice Chair of the Board of Trustees.** The Board of Trustees may appoint a Vice Chair, to serve at the pleasure of the Board of Trustees, who shall perform such duties and have such powers as may be described by the Board of Trustees.

3. **Secretary of the Board of Trustees.** The Board of Trustees may appoint a Secretary, who need not be a Trustee, to serve at the pleasure of the Board of Trustees. The Secretary shall: (i) attend and prepare minutes of meetings of the Board of Trustees and all Committees, if any; (ii) give, or cause to be given, notice of all meetings of the Board of Trustees and all Committees, if any; and (iii) perform such other duties as may be prescribed by the Board of Trustees.

4. **Committees of the Board of Trustees.** The Board of Trustees may create one (1) or more Committees, which shall consist of one (1) or more Trustees, who shall serve at the pleasure of the Board of Trustees.

5. **Meetings and Records of the Board of Trustees.** The Board of Trustees may adopt bylaws governing the conduct of its meetings. The Board of Trustees shall meet at least once per year and as determined by the Chair upon notice to all members of the Board of Trustees. Meetings of the Trustees must comply with the open meeting requirements of title 8, chapter 44 of the Tennessee Code. Records of the Trustees are deemed to be public records for purposes of the open records law, compiled in title 10, chapter 7, of the Tennessee Code, subject to the confidentiality provisions of Tenn. Code Ann. § 10-7-504 and other laws or doctrines.

6. **Quorum: Vote of Board of Trustees.** Two (2) members of the Board of Trustees shall constitute a quorum. A majority vote of the members of the Board of Trustees present at a meeting and voting shall be necessary for all decisions by the Board of Trustees.

7. **Powers of the Board of Trustees.** The Board of Trustees shall have all powers provided by the laws of the State of Tennessee for fiduciaries acting in a similar capacity, subject to the provisions of the Fund Act and this Agreement, which powers are intended to include all powers enumerated in the Tennessee Uniform Trust Code and Tenn. Code Ann. § 35-50-110, with the exception of subsections (8) and (9), which are specifically excluded.

8. **Administration of the Trust: Books and Records; Accountings, and Reports.**

a. Subject to the oversight of the Board of Trustees, the State Treasurer shall be responsible for the administration of the Trust. The State Treasurer's administration of the Trust shall consist of assisting the Department of Mental Health and Substance Abuse Services in establishing an account in the State Pooled Investment Fund (SPIF) for the investment of Funds. The Department of Mental Health and Substance Abuse Services may request disbursement of Funds in accordance with the Opioid Abatement Council's directives.

b. The books and financial records of the Trust shall be maintained by the Department of Mental Health and Substance Abuse Services in accordance with generally

accepted accounting principles. Such records shall be subject to audit by the Comptroller of the Treasury or the Comptroller's designee.

c. The Department of Mental Health and Substance Abuse Services shall provide the Board of Trustees an annual report with respect to the Department's SPIF account associated with the Trust.

## VI. INVESTMENT OF ASSETS

1. **Establishment of Investment Policies.** The Trustees hereby adopt this Article VI as the investment policy authorizing how Funds may be invested.

2. **Responsibility for Investment of Assets.** The Trustees hereby delegate to the State Treasurer the responsibility for the investment and reinvestment of Funds in accordance with policies and guidelines established by the Trustees.

3. **Authorization to Invest in Securities and Other Investments.** Trust Funds shall be invested and reinvested for the benefit of the Trust by the State Treasurer pursuant to Tenn. Code Ann. § 9-4-603.

4. **Commingling of Assets.** All or a portion of the Funds may be invested, reinvested, and coinvested with other funds, not part of the Trust, which are held by the State Treasurer, including, but not limited to, assets of the state pooled investment fund established pursuant to Title 9, Chapter 4, Part 6 of the Tennessee Code. Provided, however, that the State Treasurer shall account for the Trust Funds in one (1) or more separate accounts in accordance with the Fund Act and other law.

## VII. DISTRIBUTIONS FROM TRUST

1. **Role of Trustees in Distribution of Trust Assets.** To the extent not prohibited by law, the Trustees shall not act contrary to the direction of the Council and shall uphold the decisions the Council renders regarding disbursement of Funds. The Trustees shall have only a ministerial role and not a discretionary role in the distribution of Funds as directed by the Council. Unless required by law, the Trustees have no duties concerning the Trust other than those duties set forth in the Fund Act and this Agreement.

2. **Permissible Expenditures.** Trust Funds shall be spent only for the following purposes:

- a. Prospective opioid abatement and remediation;
- b. Expenses incurred in administering and operating the Council;
- c. Related expenses permitted under 2021 Tenn. Pub. Acts, ch. 491, § 7(b).

d. Expenses associated with administering, investing, and disbursing Funds.

3. **Certain Reimbursements Prohibited.** Trust Funds shall not be used to reimburse expenditures incurred prior to the effective date of the Fund Act.

4. **Other Prohibited Expenses.** Trust Funds shall not be used to pay litigation costs, expenses, or attorney fees arising from the enforcement of legal claims related to the opioid epidemic.

5. **No Reversion to General Fund.** Trust Funds shall not revert to the general fund of the State.

6. **Termination.** The Trust will terminate if and when all opioid abatement monies being paid pursuant to existing settlements, judgments, or court orders, or other monies deposited in the Trust, have been received and disbursed, unless the Attorney General and Reporter certifies that additional funds are anticipated within one (1) year.

## VIII. TRUST BENEFICIARIES

1. **Opioid Abatement and Remediation Purposes.** “Opioid abatement and remediation purposes” are defined in the Opioid Abatement Council Act, 2021 Tenn. Pub. Acts, ch. 491, §§ 4–9 (the “Council Act”), to mean “programs, strategies, expenditures, and other actions designed to prevent and address the misuse and abuse of opioid products and treat or mitigate opioid use or related disorders or other effects of the opioid epidemic.”

Section 8 of the Council Act, mandates that the Council shall direct the disbursement of Funds held in the Trust for opioid abatement and remediation purposes by decisions approved by a majority of the Council, subject to statutory provisions and the terms of state-subdivision opioid abatement agreements or statewide opioid settlement agreements concerning funds paid pursuant to such agreements.

2. **Disbursement Percentages for Certain Proceeds.** The Council Act provides that for proceeds received from a statewide opioid settlement agreement with McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Corporation, or Johnson & Johnson or affiliates or subsidiaries of these entities deposited with the Trust, the Council must disburse thirty-five percent (35%) of the proceeds to counties that join the settlement in accordance with 2021 Tenn. Pub. Acts, ch. 491, §§ 6(q)–(s). Under the Council Act, the other sixty-five percent (65%) of the proceeds are to be disbursed by the Council for statewide, regional, or local opioid abatement and remediation purposes pursuant to 2021 Tenn. Pub. Acts, ch. 491, § 8. Only those proceeds received from such statewide opioid settlement agreement(s) for these four companies are subject to the allocation percentages in this paragraph and only to the extent the Council Act is not amended. If the Council Act is amended to alter the disbursements contemplated in this Paragraph, the Board of Trustees shall meet within ninety (90) days of the effective date of the amendatory act to bring this Paragraph into compliance with the amended Council Act.

3. **Notification from Council Regarding Disbursement Decisions.** The Council shall notify the State Treasurer and the Department of the specific disbursements of Trust Funds to be made by the Department from the Department's SPIF account within ten (10) business days after the Council's decisions. The notification shall include sufficient information to indicate that each of the Council's disbursement decisions complies with all applicable laws, as well as such other information specified by the Board of Trustees that is necessary for the efficient administration of the Trust. Such information shall also be used to support the disbursements requested by the Department and processed through the State's financial system.

**IX.**  
**GOVERNING LAW AND CONSTRUCTION**

1. **Tennessee Law.** This Agreement and the Trust created herein shall be governed and construed according to the laws of the State of Tennessee.

2. **Headings of Articles, Paragraphs, and Subparagraphs.** The headings of Articles, paragraphs, and subparagraphs used within this Agreement are included solely for the convenience and reference of the reader and shall have no significance on the interpretation or construction of this Agreement.

**X.**  
**AMENDMENT**

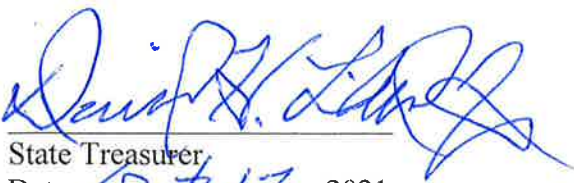
The terms of this Agreement shall not be substantively amended except by unanimous approval of the Board of Trustees, the Council, and the Attorney General and Reporter.

**XI.**  
**APPROVAL**

The terms of this Agreement have been approved by the Attorney General and Reporter and the State Treasurer, prior to adoption by the Board of Trustees.

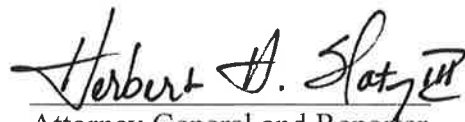
APPROVED:

David H. Lillard, Jr.

  
State Treasurer  
Date: Sept. 17, 2021

APPROVED:

Herbert H. Slatery III

  
Attorney General and Reporter  
Date: Sept. 1, 2021

**THE BOARD OF TRUSTEES OF THE TENNESSEE OPIOID ABATEMENT FUND TRUST ADOPTED THIS TRUST AGREEMENT AT ITS MEETING ON \_\_\_\_\_, 2021.**

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Signed

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