

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (hereinafter, "MOU"), as may be amended, modified, supplemented or restated from time to time is made and entered into, by and between The Arc of Oregon, an Oregon nonprofit corporation as Trustor of the Oregon Special Needs Trust (hereinafter, "OSNT"), and Oregon Department of Human Services, Adults and Persons with Disabilities, a governmental entity (DHS). OSNT and DHS are sometimes referred to individually as a Party and collectively as the Parties.

1. RECITALS

1.1 The Arc of Oregon is an Oregon nonprofit corporation and is Trustor of the OSNT, a pooled trust subject to and authorized by 42 USC 1396p (d)(4)(C). The Arc provides advocacy and other services to Oregonians with disabilities. The OSNT was created to enable individuals with disabilities (the Beneficiary or Beneficiaries), their parents and family members, to create low-cost trusts to provide for the Beneficiary's supplemental care.

1.2 DHS is a governmental entity, whose mission is to assist Oregonians in their own communities achieve wellbeing and independence through opportunities that protect, empower, respect choice and preserve dignity. DHS is an operating agency of the State Medicaid Agency. Medicaid is a federal-state funding partnership that provides essential long-term medical care and supportive services that assist persons with disabilities to remain as independent as possible.

1.3 This MOU is intended to serve as the contractual agreement between OSNT and the State of Oregon referenced in section 2.3(a)(i) of OSNT's Master Trust Agreement under "Distribution of Remainder and Medicaid Payback" and the OSNT's Joinder Agreement (1st Party) under "Distributions Upon Death of the Beneficiary."

1.4 The Parties enter into this MOU to meet the intent and scope of the federal law 42 U.S.C. § 1396p(d)(4)(c). The purpose of this federal law is to establish a means, through a particular type of pooled trust, for individuals with disabilities to transfer assets to such a trust and remain

eligible for Medicaid and/or Social Security Administration benefits even if the individual with disabilities earns or obtains funds beyond an established asset cap.

NOW, THEREFORE, in consideration of the foregoing, the Parties agree to the following:

Agreement

2. Terms. The Parties agree:

2.1 This MOU applies to subaccounts containing the funds of the individual with disabilities, as the term "assets" is defined by 42 USC 1396p(h)(1). If a beneficiary's assets are co-mingled with third-party funds, then the entire sub-account is subject to 42 U.S.C. § 1396p(d)(4)(c).

2.2 Upon the death of a sub-account holder ("Beneficiary"), the OSNT will retain 50% of the funds remaining in the decedent's sub-account, subject to terms 2.9 and 2.10 below.

2.3 For any Beneficiary whose death certificate is obtained by OSNT after the date of execution of this MOU, within 60 calendar days from OSNT's receipt of a Beneficiary's death certificate, OSNT will notify DHS of the Beneficiary's death and provide an accounting to DHS. If applicable, OSNT shall provide the same notice to any other state Medicaid agency. The accounting of the sub-account of the Beneficiary shall include: the amount of the funds in the sub-account as of the date of the Beneficiary's death and explanations of any disbursements made by OSNT after death. The notice and accounting required by this section to DHS should be directed to the Estate Administration Unit, Office of Payment Accuracy and Recovery, Department of Human Services, PO Box 14021, Salem, Oregon 97309-5024.

2.4 If the deceased Beneficiary received Medicaid benefits during his or her lifetime, DHS may make a claim in the amount of Medicaid services provided to the deceased sub-account-holder for reimbursement from the remaining 50% of the funds in the decedent Beneficiary's sub-account.

2.5 Upon presentation of a claim by DHS for reimbursement, OSNT shall pay funds to DHS an amount up to the total of DHS' claim, to the extent the remaining funds in the decedent's sub-account allow but not

including any portion of funds retained by OSNT as permitted under this MOU.

2.6 Any funds remaining out of the portion of decedent Beneficiary's sub-account that is subject to recovery by DHS after payment of DHS' or another State's priority claim will be distributed to other named remainder beneficiaries, if any.

2.7 Excluding Medicaid fraud cases, as long as the terms of this MOU are met, the State of Oregon agrees it will not pursue recovery from the OSNT, The Arc, or any OSNT remainder beneficiary for any further reimbursement of DHS' claim if DHS' claim is not satisfied in full.

2.8 For Beneficiaries that have died and for whom OSNT has received death certificates before the execution of this MOU but after June 30, 2009 (and no further back), the parties agree the requirements of this MOU shall apply retrospectively to allow for DHS to make claims for reimbursement. OSNT shall have 90 calendar days from the Effective Date of this MOU to provide notice of the death and accounting as to those sub-accounts (2009-2018). Within 365 days of DHS' receipt of the notice and accounting, DHS shall make a final claim for reimbursement from the corresponding sub-account. After 365 days from notice to EAU, if no claim is made, OSNT may retain the funds and DHS may no longer seek reimbursement. The accounting of the sub-account of the Beneficiary shall include: the amounts in the sub-account as of the date of the Beneficiary's death and explanations of any disbursements made by OSNT after death. The notice and accounting required by this section to DHS should be directed to the Estate Administration Unit, Office of Payment Accuracy and Recovery, Department of Human Services, PO Box 14021, Salem, Oregon 97309-5024.

2.9 Any amounts retained by OSNT from a Beneficiary's sub-account following the death of a Beneficiary may be used by OSNT for services for other Beneficiaries, other individuals with disabilities, and for operating expenses of the OSNT itself as determined by the Board of the Arc of Oregon. OSNT funds shall not be used for general operations of the Arc of Oregon.

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2.10 Disbursements by OSNT both during the lifetime and after the death of Beneficiaries are intended to, and shall, comply with federal laws allowing OSNT sub-accounts to qualify as exceptions to assets when a governmental agency determines financial eligibility for Medicaid and/or Social Security Administration benefits.

3. Payments.

3.1 OSNT shall pay DHS within thirty (30) days of the date of DHS' claim referenced in sections 2.4 and 2.5. An exception to the 30 day payment deadline occurs only when OSNT notifies DHS in writing within 30 days that another state has a pending reimbursement claim but the amount of the claim is unknown and a final accounting is pending.

3.2 If not paid within thirty (30) days, DHS shall be entitled to interest at the rate of five (5) percent per annum on its claim until DHS' claim is satisfied. OSNT is reimbursing Medicaid on behalf of the deceased sub-account holder and as such asserts it is not a debtor of the State of Oregon, unless and until a payment is sixty (60) days or more past due. The rate of interest on past due accounts shall be five (5) percent per annum. DHS' claim shall be satisfied in accordance with section 2.5 above.

3.3 Payments shall be sent to: Estate Administration Unit, Office of Payment Accuracy and Recovery, Department of Human Services, PO Box 14021, Salem, Oregon 97309-5024.

4. Term and Termination.

4.1 Term. This MOU shall be effective when fully executed by all parties (the Effective Date) and shall continue for 36 months at which time it expires, unless terminated earlier. The parties may mutually agree in writing to extend the 36-month term of this MOU.

4.2 Termination. If DHS determines that the OSNT is not in compliance with all or part of this MOU, or OSNT has violated state or federal law applicable to this MOU, DHS will notify OSNT of the default and provide twenty calendar days, or such additional time as specified in the notice of default, for the OSNT to cure the default. If OSNT does not cure the default within the required time, DHS will take appropriate action, which may include any combination of: (1) termination of the MOU, (2) seeking specific performance, or (3) other remedies. If federal or state laws, regulations, or guidelines are modified or interpreted by the U.S. Court of

Appeals for the Ninth Circuit or the U.S. Supreme Court in such a way that this MOU would be in violation of said provisions, either party may provide notice to the other of termination of this MOU. Termination of this MOU is permitted with 270 days' written notice to either party.

4.3 Modification. The parties prefer modifications to termination of the agreement. Modification may be required due to a material change in circumstances, including but not limited to changes in federal law or guidance, such as from CMS, the 9th Circuit Court of Appeals, or the Social Security Administration. This MOU may only be modified by a written agreement of the Parties signed by an authorized representative of each Party. Modifications within the scope of this MOU shall be made with the mutual consent of the parties by the issuance of a written amendment, signed and dated by both parties, prior to any changes being effective.

5. General.

5.1 Separate Entities. This MOU shall not create the relationship of employer and employee, a partnership, or a joint venture between any or all of the Parties.

5.2 Entire Agreement. This MOU contains the entire agreement of the Parties regarding the subject matter described herein, and all other promises, representations, understandings, arrangements and prior agreements are merged into and superseded by this MOU.

5.3 No Interpretation Against Drafter. The terms and conditions of this MOU were negotiated by the Parties and shall not be construed against the drafter.

5.4 Counterparts. For the convenience of the Parties, this MOU and any subsequent amendments may be executed, delivered and received in counterpart originals, including by means of facsimile or email transmission, and such counterparts, taken together, shall constitute a single instrument.

5.5 Notices. All notices or other communications hereunder shall be in writing and delivered to the Key Contact People in accordance with Section 7. Such addresses may be changed by notice to the other Party in accordance with this section.

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5.6 No Third Party Beneficiaries. Nothing in this MOU, express or implied, is intended to nor shall be construed to confer upon any person or entity, any remedy or claim under or by reason of this MOU as third-party beneficiaries or otherwise. The terms and conditions of this MOU are for the sole and exclusive benefit of the Parties to this MOU.

5.7 Assignment. Neither Party may assign its rights or obligations hereunder, whether by written agreement, operation of law or in any other manner whatsoever, not expressly assignable under the terms of this MOU without the other Party's prior written consent, which consent shall not be unreasonably withheld. The provisions of this MOU shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns, if any.

5.8 Survival. The expiration or termination of this MOU shall not extinguish or prejudice DHS' right to enforce this MOU with respect to any default by OSNT that has not been cured.

5.9 Severability. In the event any provision or part of this MOU is found to be invalid or unenforceable, only that particular provision or part so found, and not the entire MOU, will be inoperative.

6. MISCELLANEOUS

6.1 Any ambiguity in this MOU shall be resolved so as to permit the State of Oregon and OSNT to comply with any applicable laws.

6.2 No provision of this MOU may be waived except by an agreement in writing signed by the waiving party. A waiver of any term or provision shall not be construed as a waiver of any other term or provision.

6.3 The persons signing below certify they have the right and authority to execute this MOU and no further approvals are necessary to create a binding agreement.

6.4 Each Party agrees to comply with all local, state and federal ordinances, statutes, laws and regulations that are applicable to this MOU.

6.5 This MOU shall be construed in accordance with and governed by the laws of the State of Oregon.

6.6 Each Party shall give the other Party immediate written notice of any action or suit filed or any claim made against that Party that may result in litigation in any way related to this MOU.

6.7 This MOU is contractual and not a mere recital.

6.8 The performance and enforcement of this MOU is subject to the contracting covenant of good faith and fair dealing.

7. Key Contact People

All notices regarding this MOU should be sent to the Parties at the following addresses:

To DHS:

500 Summer Street NE, E-02
Salem, OR 97301
Attn: Mike McCormick, Deputy Director APD
Telephone: (503) 945-6229
Facsimile: (503) 373-7823
E-mail: mike.r.mccormick@state.or.us

To OSNT:

Notice Address:
The Arc of Oregon, an Oregon nonprofit corporation
as Trustor of the Oregon Special Needs Trust
2405 Front Street NE
Salem, OR 97301
Attn: Paula Boga, Executive Director
Telephone: (503) 581-2726
Facsimile: (503) 363-7186
E-mail: pgoba@thearcoregon.org

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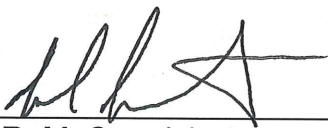
THE PARTIES, by execution of this MOU, hereby acknowledge that their signing representatives have read this MOU, understand it, and agree to its terms and conditions.

**THE ARC OF OREGON, AN
OREGON NONPROFIT
CORPORATION AS TRUSTOR OF
THE OREGON SPECIAL NEEDS
TRUST**

By:  Digitally signed by Paula Boga
DN: cn=Paula Boga, o=The Arc
Oregon, ou=Executive Director,
email=pboga@thearcoregon.org,
c=US
Date: 2018.08.07 16:51:50 -07'00',
Paula Boga
Executive Director

Date: August 7, 2018

**OREGON DEPARTMENT OF
HUMAN SERVICES**

By: 
Mike R. McCormick
Deputy Director, Aging and People
with Disabilities Program

Date: 8/13/18