

**FIRST-PARTY  
OREGON SPECIAL NEEDS TRUST  
*(A Subtrust of the Oregon Special Needs Trust)***

THIS AGREEMENT is entered into the 25th day of November, 2015, and thereafter amended, is between, THE ARC OF OREGON, an Oregon nonprofit corporation (hereafter referred to as "The Arc") as "Trustor", and KEYBANK NATIONAL ASSOCIATION, as trustee (the "Trustee"). This is a subtrust of the Oregon Special Needs Trust and the subtrust created in this agreement shall be known as the "First-Party Oregon Special Needs Trust." The other subtrust created on this date is known as the "Third-Party Oregon Special Needs Trust." This agreement shall supersede and replace any and all previous Master Trust Agreements pertaining to the receipt and administration of assets belonging to a trust beneficiary and received by the Oregon Special Needs Trust from a trust the beneficiary. This subtrust shall be hereafter referred to as "First-Party OSNT".

**RECITALS**

A. The Arc is an Oregon nonprofit corporation providing advocacy and other services to residents of Oregon with disabilities. KeyBank National Association, is a national banking association authorized to conduct trust business in the state of Oregon.

B. The Arc recognizes the need to provide a mechanism for individuals with disabilities to safeguard assets to provide supplemental financial care and assistance. The Arc creates this First-Party OSNT to enable individuals with disabilities to create trusts to provide for the Beneficiary's supplemental care not adequately provided by federal, state and local agencies.

**AGREEMENT**

Trustor and Trustee agree that any and all property transferred to Trustee shall be managed, applied, and distributed pursuant to the terms of the First Party OSNT or the Third Party OSNT.

**SECTION 1  
ESTABLISHMENT OF SUB-TRUSTS; ACCEPTANCE OF CONTRIBUTIONS**

1.1. Establishment of Trusts. Persons desiring to establish a trust under this Agreement shall enter into a "Joinder Agreement" with Trustor. Each Joinder Agreement shall (a) incorporate the provisions of this First Party OSNT by reference, designate the person with disabilities for whom supplemental financial assistance shall be provided during his or her lifetime (the "Beneficiary"), (c) designate one or more persons or organizations ("Remainder Beneficiaries") to receive the trust assets remaining at the death of the Beneficiary, and (d) designate the shares or portions of the remaining trust assets distributable to each Remainder Beneficiary. Joinder Agreements may also contain such additional binding and nonbinding provisions as Trustor may deem advisable under the circumstances, but no such other terms and conditions may alter the provisions of this First Party OSNT or the rights, duties, and responsibilities of Trustee.

1.2. Contributions Permitted. Assets belonging to the Beneficiary may be accepted by the Trustee as trust assets, pursuant to 42 U.S.C. §1396p(d)(4)(C). Any such property shall, upon acceptance by Trustee and Trustor, become a part of this First-Party OSNT and shall be subject to all the terms and conditions of this agreement.

1.3. Separate Account for Unnamed Class of Beneficiaries. There shall be a separate sub-trust within the First-Party OSNT to fund services (including guardianship services) and special needs of unnamed individuals (the "Retained Supplemental Sub-trust"). Funds held in the Retained Supplemental Sub-trust shall be retained by the First-Party OSNT and administered in accordance with applicable federal and Oregon laws and regulations. Trustor shall direct the use of funds kept in the Retained Supplemental Sub-trust for the charitable purposes of providing support for individuals with disabilities to live healthy, safe, meaningful, and productive lives. Such funds may be distributed to individuals, groups of individuals (whether or not any such individuals are Beneficiaries), or The Arc of Oregon or other organizations for specified uses, provided that any such distribution is consistent with the charitable purpose of the Retained Supplemental Sub-trust.

1.4. Maintenance of Sub-trusts. Each sub-trust account established for a Beneficiary shall be held and administered by Trustee as a separate account or "sub-trust", but all such trust assets may be commingled by Trustee for investment and other purposes.

1.5. Accountings. For accounting purposes, the First-Party OSNT shall be operated on a calendar year basis. The Trustee, or its authorized agent, shall maintain records for each First-Party OSNT sub-trust account in the name of, and showing the property contributed for, each Beneficiary. Periodic accounts shall be sent no less often than annually to each Beneficiary and/or the appropriate representatives or designees of each Beneficiary showing in each case additions to and disbursements from the funds held in the sub-trust account in Trust for the Beneficiary during the preceding calendar year. The Trustee shall file the accounting with the appropriate court having jurisdiction over a Beneficiary as may be required.

## **SECTION 2**

### **DISTRIBUTION OF INCOME AND PRINCIPAL**

2.1. Distributions to Beneficiary. Trustor shall apply for the benefit of each Beneficiary, from the net income and (if net income is insufficient) principal of his or her sub-trust, such amounts as Trustor may from time to time direct in writing for the "Special Needs" of the Beneficiary. Accumulated income shall be added to principal at least annually. Trustor shall be solely responsible for determining the Special Needs of the Beneficiary. Trustee shall comply with Trustor's written directions without liability or any duty or inquiry, and without regard to the effect of distributions on the Beneficiary's eligibility for "Governmental Assistance" (as defined below).

2.2. Special Needs. For purposes of this agreement, a Disabled Beneficiary's "Special Needs" include only those extra and supplemental goods, services, and other benefits that Trustor believes are desirable to improve or enhance the Beneficiary's quality of life, over and above any benefits for basic maintenance, support, medical, dental and therapeutic care or services provided by any local, state, or federal governmental agency or department ("Governmental Assistance"). The purpose of this trust is to provide only for Special Needs, without affecting the Beneficiary's actual or potential entitlement to Governmental Assistance, and Trustor shall not direct any distributions of income or principal that would jeopardize Governmental Assistance otherwise available to the Beneficiary. Subject to these limitations, Trustor shall have absolute discretion to direct distributions of income and principal, and Trustor shall not be liable to any Grantor, Beneficiary, Remainder Beneficiary, Organization, or other person for any decision, direction, or other action taken in good faith.

2.3. Distribution of Remainder and Medicaid Payback. Pursuant to 42 U.S.C. § 1396p(d)(4)(C), upon the death of the Beneficiary, amounts remaining in the Beneficiary's sub-trust account shall be distributed or retained pursuant to the following:

(a) The sub-trust shall pay to the Retained Supplemental Sub-trust an amount equal to the negotiated percentage of the amounts remaining in the Beneficiary's sub-trust account pursuant to the current contractual agreement with the State of Oregon.

(b) After distributions under Section 2.3(a), the sub-trust shall pay to Oregon, and if applicable any other state, from amounts remaining in the account an amount equal to the total amount of medical assistance paid on behalf of the Beneficiary under the Oregon, and if applicable any other state, plan under subchapter XIX of title 42 of the United States Code. To the extent funds in the sub-trust are insufficient to repay all such states, distributions will be made in proportion to each state's share of the total amount of medical assistance paid on behalf of the Beneficiary, to be calculated by Trustor.

(c) The remaining assets after distributions under Section 2.3(a) and 2.3(b), if applicable, of his or her sub-trust (including any and all accrued and undistributed net income) shall be distributed as designated in the applicable Joinder Agreement. In the case of transfers made under instruments that do not designate Primary Remainder Beneficiaries, or if no designated Primary Remainder Beneficiary is alive or otherwise in existence at the death of the Beneficiary, the remaining trust assets shall be distributed to the Retained Supplemental Sub-trust.

2.4. Early Termination. If at any time Trustor has reasonable cause to believe that the income or principal of a sub-trust for any Beneficiary is or may become liable for the Beneficiary's basic maintenance, support, or medical, dental, or therapeutic care, or for any other care or services provided by a local, state, or federal governmental agency or department, Trustor may in its discretion terminate the sub-trust by written notice delivered to Trustee. Similarly, if at any time Trustor has reasonable cause to believe that it is impossible or impracticable to fulfill the purposes and objectives of a sub-trust for any Beneficiary, Trustor may in its discretion terminate the trust by written notice to the Trustee. Upon termination of any sub-trust pursuant to this Section 2.4, any remaining assets of the sub-trust shall be distributed as follows:

(a) Taxes payable to the State and Federal government, reasonable expenses associated with the termination of the trust, and claims for reimbursement for services by the State of Oregon or other state that has provided Medicaid benefits to the Beneficiary shall be satisfied in full if possible.

(b) Other than payment for those expenses listed in section 2.4(a), no entity other than the trust Beneficiary may benefit from the early termination of a sub-account, and after reimbursement to the State(s) all remaining funds shall be disbursed to the Beneficiary or, if available, the Beneficiary's account in another trust described in 42 U.S.C. § 1396p(d)(4)(C).

### **SECTION 3 GENERAL PROVISIONS**

3.1. Discretionary Payments. In directing discretionary payments of income or principal for the benefit of a Beneficiary, Trustor shall take into consideration any other public or private income or support received or property possessed by the Beneficiary and known to Trustor, but the extent to which such other income, support, or property must first be used or liquidated by the Beneficiary shall be in the absolute discretion of Trustor.

3.2. Protective Provision. The interests of Beneficiaries in principal or income shall not be subject to claims of their creditors or others, nor to legal process, and may not be voluntarily or involuntarily anticipated, alienated, or encumbered.

3.3. Limitation Required by Law. This First-Party OSNT shall automatically terminate on July 1, 2089. Upon termination, the remaining assets of each sub-trust subject to this agreement shall be distributed to the Remainder Beneficiaries in the shares or portions or designated in the applicable enrollment agreement. Trustor and Trustee may, however, by written instrument extend the term of this First-Party OSNT for periods of not more than ninety (90) years as to any sub-trusts created after the date of the extension.

3.4. Limited Power of Amendment. Trustor and Trustee may at any time and from time to time amend the provisions of this agreement as they deem necessary or appropriate to fulfill the purpose of the trust to provide extra and supplemental goods, services, and other benefits to improve or enhance the quality of life of Beneficiaries, without affecting the Beneficiaries' actual or potential entitlement to Governmental Assistance. Trustor and Trustee may, for example, amend the definition of "Special Needs" provided in Section 2.2 to ensure that all distributions comply with applicable law and fulfill the purposes of the trust. Notwithstanding the foregoing, no such amendment shall impair the rights of any Beneficiary or affect the irrevocability of any contribution to the trust.

3.5. Governing Law. This agreement and each sub-trust shall be governed and construed in all respects according to the laws of the state of Oregon.

## SECTION 4 ADMINISTRATIVE PROVISIONS

4.1. Trustor's Powers over Trust Corpus: The Trustor shall have the sole authority to determine what portion of the Trust Corpus the Trustee may invest.

4.2. Trustee's Powers. Subject to any restrictions contained in this agreement, Trustee shall have all the powers conferred upon a Trustee by the laws of the State of Oregon. Trustee shall also have the following powers:

(a) Trustee may invest and reinvest the assets of the trust designated by the Trustor for investment in such preferred or common stocks, securities, real estate, or other property, including any common trust fund administered by Trustee or an affiliate of Trustee, as Trustee may deem advisable. Trustee shall not be restricted to investments permissible for a trustee as prescribed by any present or future law and shall not be required to observe the principle of diversification of trust investments.

(b) Upon any division or distribution of trust assets, Trustee may in its discretion make non pro-rata distributions in cash, specific property, or undivided interests in specific property at valuations determined by Trustee, without regard to the income tax basis of specific property.

(c) Trustee may require indemnity to its satisfaction before taking any step that may subject it to loss.

(d) Trustee may invest in mutual funds or investment trusts without regard to whether Trustee or any subsidiary or affiliate of Trustee provides advisory, custodial, administrative, shareholder servicing, or other services. With respect to any such investments in affiliated mutual funds and investment trusts, Trustee shall provide Trustor at least annually with information describing the total compensation received by Trustee and its subsidiaries or affiliates, but Trustee shall not be required to provide any information relating to the trust's pro-rata share of any such compensation received.

(e) Trustee may employ any subsidiary or affiliate engaged in investment advisory, investment management, or brokerage services to assist and advise Trustee in investment matters, to perform the function of investment and portfolio manager, or to provide brokerage services for the trust. Any such entity so employed by Trustee shall perform such ministerial, discretionary, fiduciary, and advisory functions as Trustee may delegate to it, notwithstanding any self-dealing or other considerations that may be inherent in the relationship between Trustee and the entity employed.

(f) Trustee may in its discretion, and notwithstanding any present or future law to the contrary, retain any stock of Trustee or any subsidiary or affiliate, together with any increases resulting from stock dividends, stock splits, the exercise of purchase rights, and the purchase of fractional shares necessary to round out fractional share holdings, and Trustee may vote any such stock either directly or by proxy.

4.3. Resignation of Trustee. Trustee or any successor trustee may, without court approval, resign at any time by a written instrument delivered to Trustor.

4.4. Removal of Trustee. Trustor may remove Trustee or any successor trustee by a written instrument delivered to the trustee being removed.

4.5. Successor Trustees. In the event of the resignation or removal of Trustee or any successor trustee, Trustor may appoint a new trustee. If Trustor fails effectively to appoint a new trustee within one hundred twenty (120) days of the resignation or removal, any interested person may take appropriate steps to have a new trustee appointed by a court of competent jurisdiction. Any successor trustee appointed shall be a bank, trust company, or tax-exempt charitable organization authorized to act as trustee in the state of Oregon.


4.6. Powers and Liabilities of Successor Trustees. Any successor trustee appointed as provided above, or any corporate successor by consolidation, merger, transfer of trust business, or otherwise, shall have all the rights, powers, and authority, conferred upon its predecessor. No successor trustee shall be under any duty to examine, verify, or audit the books and records of any predecessor, and no successor trustee shall be liable in any way for any acts or omissions of any predecessor.

4.7. Trustor Provisions. Trustor or any successor Trustor may, without court approval, resign at any time by a written instrument delivered to Trustee. In the event of the resignation of Trustor or any successor Trustor, Trustor will appoint a new Trustor. Trustor may at any time delegate all or any part of its duties under this agreement as to one or more sub-trusts or assign and delegate all its rights and obligations under this agreement, to another appropriate organization or agency in Oregon that provides similar advocacy and

other services to persons with disabilities. Trustor shall have no duties or liabilities except as specifically provided in this agreement, and neither Trustor nor any successor Trustor shall be under any duty to examine, verify or audit the books and records of Trustee, any predecessor trustee, or any predecessor Trustor.

4. 8. Compensation. Trustor and Trustee shall be entitled to reasonable compensation for their services under this agreement.

**TRUSTOR: THE ARC OF OREGON**

  
\_\_\_\_\_  
Signature

Paula Boga  
\_\_\_\_\_  
Name Printed  
Executive Director  
\_\_\_\_\_  
Title  
4/24/2020  
\_\_\_\_\_  
Date

**TRUSTEE: KEY BANK NATIONAL ASSOCIATION**

  
\_\_\_\_\_  
Signature

Stephanie Toth on behalf of KeyBank, NA  
\_\_\_\_\_  
Name Printed  
Sr. Relationship Manager, AVP  
\_\_\_\_\_  
Title  
4/20/2020  
\_\_\_\_\_  
Date