

Agreement #000000

INTERGOVERNMENTAL AGREEMENT

This Agreement is between the State of Oregon, acting by and through its Department of Human Services, Office of Medical Assistance Programs, hereinafter called “**DHS**,” and **Broker**, hereinafter called “**Regional Broker**” (collectively the ‘Parties’).

I. PURPOSE

DHS is responsible for administering the State of Oregon’s Medicaid plan as a “single state agency” for persons who are eligible for assistance under Title XIX of the Social Security Act and meet specified eligibility criteria. DHS is thereby responsible for providing non-emergent medical transportation pursuant to Title XIX in the State of Oregon. Pursuant to ORS 190.110, DHS may enter into agreements with units of local government or other state entities to establish a brokerage program that provides eligible Clients with Cost Effective and appropriate means of transportation to medical services. Regional Broker shall provide non-emergent medically necessary transportation services for DHS Clients on behalf of DHS in accordance with the Transportation Provider Standards set forth in Attachment A, the provisions of which are incorporated herein by reference.

II. DEFINITION OF TERMS: In addition to any terms that may be defined elsewhere in the Agreement, the following terms shall have the following meanings

- A. “**Central Dispatch**” means the Regional Broker’s centralized authorization and dispatch call center.
- B. “**Client**” means any person properly receiving benefits under one or more of the medical assistance programs administered by DHS. For purposes of this Agreement all DHS Clients must be eligible for services either under the Oregon Health Plan Medicaid Demonstration Project or the Children’s Health Program, or both.
- C. “**Cost Effective**” means a health care service that cannot, in the judgment of DHS, be provided through a less expensive alternative while meeting the medical needs of the Client.
- D. “**Covered Service**” means a service for which DHS is responsible for payment as contained in DHS General Rules and the Medical Transportation Services rules under OAR 410-136-0020 et seq.
- E. “**DHS**” means the Oregon Department of Human Services.

- F. “Emergent Medical Transportation Services”** means transportation immediately necessary when a sudden, unexpected occurrence creates a medical crisis requiring emergency medical services, as defined in OAR 410-120-0000(49) and requiring immediate transportation to a site, usually a hospital, where appropriate emergency medical care is available.
- G. “Non-emergent Medical Transportation Services” or “Services”** means transportation to or from a source of Covered Service which does not involve a sudden, unexpected occurrence that creates a medical crisis requiring emergency medical services, as defined in OAR 410-120-0000(49), and requiring immediate transportation to a site, usually a hospital, where appropriate emergency medical care is available.
- H. “Oregon Health Plan”** mean the federal and State funded portion of the Medical Assistance programs established by Titles XIX and XXI of the Social Security Act, as amended, which is administered in Oregon by DHS under a waiver from the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS).
- I. “Provider”** means one or more public agencies, non-profit or for-profit companies, or individuals that Regional Broker subcontracts with to provide Non-emergent Medical Transportation Services. Regional Broker, at its discretion, also may be a Provider under this Agreement if it provides Non-emergent Medical Transportation Services.
- J. “Ride”** means Non-emergent Medical Transportation Services for a Client either to or from a location where Covered Services are provided. “Ride” does not include Client reimbursed medical transportation and ambulance transportation.
- K. “Service Area”** means **X, X and X** counties. When Regional Broker provides Rides outside the Service Area, these Rides are also included within the definition of Service Area under the following circumstances: (1) A Client resides outside the Service Area, but is receiving a Covered Service in the Service Area; (2) A Covered Service is not available within the Service Area, and the Client can receive the Covered Service in another area of the State; (3) A Covered Service is within the States of California, Idaho or Washington and is no more than 75 miles from the Oregon border, or (4) A Client from outside the Service area has received medical care in the Service area and requires medical transportation to an area outside the Service area either in Oregon or no more than 75 miles from the Oregon border.
- L. “State”** means the State of Oregon.
- M. “Transportation Program”** means the program administered by DHS to provide Clients Non-emergent Medical Transportation Services, as described in this Agreement.

- N. “Provider Standards”** means the service standards which DHS requires Regional Broker to meet. The Provider Standards are attached hereto as Attachment A, and are incorporated herein by reference.

III. STATEMENT OF WORK

A. Client Access

1. Regional Broker shall maintain a business location that is conducive to responding to inquiries and requests for Rides made by Clients residing in the Service Area. Regional Broker shall provide Clients access to Central Dispatch during the DHS approved operating schedule with the exception of New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving, and Christmas and closures approved by DHS pursuant to this section. Regional Broker shall ensure that Non-Emergent Medical Transportation Services for Clients are available 24 hours a day. During hours that the Regional Broker’s Central Dispatch office is closed, Regional Broker shall refer Clients to a Provider through a recording and shall determine whether it will authorize the Ride after the Ride has been provided.
2. Regional Broker shall obtain DHS approval of intended days of Regional Broker Central Dispatch closure, with the exception of the days identified in Section III(A)(1) of this Agreement, by notifying DHS at least thirty (30) calendar days in advance of closure. If DHS does not deny the request within ten (10) calendar days of request notification, the request shall be considered approved.

B. Determination of Eligibility For Services

Regional Broker shall receive all requests for Non-emergent Medical Transportation Services for Clients and shall verify eligibility of the Clients to receive the service. Regional Broker shall rely upon the list of eligible Clients and the criteria for eligibility provided by DHS.

1. Regional Broker shall verify Client eligibility by:
 - a. Reviewing eligibility information provided by DHS; or
 - b. Calling the local DHS branch to confirm the Client’s eligibility if files are not available.
2. Regional Broker shall verify that the Client meets a needs test for Non-emergent Medical Transportation Services by:
 - a. Verifying with the Client that the Client has no other available means of

transportation for the requested trip;

- b. Verifying that the requested transport is to or from a provider of a Covered Service and within the Service Area; and
- c. Verifying, as necessary, with the local DHS branch that the Client's other transportation resources are inadequate or inappropriate to meet the Client's needs.

C. Determination of Appropriate Service Level and Appropriate Provider of Transportation

1. Regional Broker shall assign the Providers to provide Rides to Clients based upon an evaluation of several factors, including, but not limited to: cost; appropriate transportation; appropriate equipment; any factors related to Provider capabilities, Provider availability, and Provider past performance; and any other reasonable factors. Rides shall be assigned to Providers by Regional Broker in its sole discretion.
2. When Regional Broker makes a Provider assignment that is not Cost Effective or that is not based on the factors specified above, Regional Broker shall maintain records of the reasons for such assignment.

D. Service Area

1. Regional Broker shall provide Non-emergent Medical Transportation Services to all Clients requesting Rides within the Service Area.
2. Regional Broker is not responsible for, and may not authorize out of state transportation requests, where the Covered Service destination is beyond the Service Area.

E. Records of Non-emergent Medical Transportation Services

1. Regional Broker shall maintain documentation of Rides provided to Clients. This documentation shall consist of, but may not be limited to:
 - a. The name of the Client or person requesting the Ride on behalf of the Client (both if different);
 - b. Client's DHS assigned ID number ("Prime Number");
 - c. Date and time of request;
 - d. Date and time of requested transportation;

- e. Type of transportation authorized for Client;
- f. Pick up location;
- g. Destination;
- h. Covered Service Client is being transported to;
- i. Availability of other transportation resources;
- j. Approval or denial of transport and level of transportation authorized;
- k. Reason for denying transportation to a Client;
- l. Justification of type of transportation authorized (if appropriate);
- m. Person approving/denying request;
- n. Provider assigned;
- o. Date and time Provider notified.

F. Documentation of Monthly Activity

Regional Broker shall maintain monthly billing files organized by Provider, that justify the number of transports and, for audit purposes, can be cross referenced to actual Rides and specific Clients transported.

G. Service Reports

Regional Broker shall submit monthly to DHS reports which document the numbers of provided Rides for Non-emergent Medical Transportation Services, modes of transportation being utilized, and operating costs of the Transportation Program for the immediately preceding month. These reports will be used by DHS to monitor the Transportation Program. Regional Broker shall also submit monthly to DHS a report detailing Client Ride request denials and the reason for the denial. In addition, DHS may request Regional Broker to submit ad hoc reports summarizing information specified by DHS.

H. Subcontracts

Regional Broker shall provide Non-emergent Medical Transportation Services to Clients directly or through subcontracts with Providers. Regional Broker will incorporate by reference the Provider Standards set forth in Attachment A in all subcontracts issued to Providers.

I. Emergent Need

Providing Emergent Medical Transportation Service is not part of Regional Broker's obligations under this Agreement. However, Regional Broker shall have procedures for referring Clients requesting Emergent Medical Transportation Services to the appropriate emergency transportation resources.

J. Approval of Materials

Regional Broker may have the right to use informational materials for the purpose of marketing or promotion of the Non-emergent Medical Transportation Services as contemplated under this Agreement. Regional Broker shall obtain written approval from DHS prior to using materials for such purpose.

K. Audits

In addition to the requirements of Section VII (I), Regional Broker shall permit, and require all Providers to permit, authorized representatives of DHS, the Oregon Secretary of State Audits Division, the Oregon Department of Justice Medicaid Fraud Unit, and the federal government to review the records of Regional Broker and Providers to conduct audits on an annual basis or to investigate unresolved questions of fact. DHS may audit either Regional Broker's or Providers' records, or both, to review Regional Broker's financial status, Regional Broker's performance or operation of the Transportation Program or quality of Non-emergent Medical Transportation Services provided, for purposes which include, but are not limited to the following:

1. To document the relationship between the funds provided by DHS under this Agreement and the amounts expended by Regional Broker or Providers on the delivery of Non-emergent Medical Transportation Services;
2. To document that the amounts expended by Regional Broker or Providers on the delivery of Non-emergent Medical Transportation Services are reasonable and necessary to ensure quality of Non-emergent Medical Transportation Services.

Regional Broker shall permit, and shall cause Providers to permit, the auditors of DHS or the federal government, or both, to inspect the records of Regional Broker and any Providers in order to verify delivery of service and contract compliance.

L. Transportation Advisory Group

DHS has established the Tri-County Transportation Advisory Group (the "Advisory Group") to provide Regional Broker and DHS with input on the Transportation Program provided pursuant to this Agreement. The Advisory Group shall act in an

advisory capacity, and voting members shall consist of representatives from area agencies on aging, DHS agencies, and representatives of DHS Client advocacy groups from within the Service Area. Representatives from Regional Broker, and a representative from DHS will attend Advisory Group meetings to provide consultation and staff support. The Advisory Group's duties shall consist of, but not be limited to:

1. Assisting in monitoring and evaluating the Transportation Program provided pursuant to this Agreement;
2. Advising Regional Broker and DHS on priorities for policy changes and program improvements for the transportation brokerage system; and,
3. Identifying service issues and developing recommendations for policy or procedure changes to improve transportation service delivery. The Advisory Group shall forward recommendations to DHS for consideration.

IV. RESPONSIBILITIES OF EACH PARTY

A. In addition to Regional Broker's obligations set forth elsewhere in this Agreement, Regional Broker is responsible for the tasks set forth below. Regional Broker shall:

1. Serve as the designated broker of Non-emergent Medical Transportation Services for Clients receiving Covered Services in the Service Area;
2. Maintain the Central Dispatch for Non-emergent Medical Transportation in the Service Area;
3. Provide all Non-emergent Medical Transportation Services for Clients receiving Covered Services in the Service Area, with the exception of:
 - a. Medical transportation for which DHS directly reimburses the Client; and,
 - b. Ambulance transportation.
4. Not deny, and shall cause all Providers to not deny, any Client Non-emergent Medical Transportation Services on the basis of race, color, sex, sexual orientation, religion, national origin, creed, marital status, age, health status or the presence of any sensory, mental, or physical disability;
5. Make every effort to arrange Rides on short (one half-hour or less) or same day notice. Regional Broker will have procedures in place to accommodate occasional urgent, short notice or same day rides;
6. Schedule a Ride with an alternate Provider if the Provider originally

authorized to provide the Ride is unable to provide the Ride;

7. Schedule Rides for ongoing Client appointments for a minimum of one month and accept multiple Ride requests at one time for a Client;
8. Provide all equipment necessary for adequate operation of the Transportation Program, including the purchase of workstations, computers, computer peripherals, and software (hereinafter "Equipment"). Vehicles are excluded from the definition of Equipment and from reimbursement under this Agreement;
9. Report to DHS as specified by 42 CFR 455.17 suspected fraud or abuse of Non-emergent Medical Transportation Services. If Regional Broker or DHS determine that Provider fraud has occurred, Regional Broker shall immediately terminate its subcontract with the Provider in question;
10. Establish a Client grievance and appeals process as required by 42 CFR 431;
11. Establish an immediate secondary review process by an employee other than the initial screener prior to the denial of any Ride;
12. Within 72 hours of denying a Ride, send a letter to the Client, with a copy to the Client's local DHS branch, explaining why the Client's Ride has been denied;
13. Reinstate denied Non-emergent Medical Transportation Services under certain circumstances consistent with 42 CFR 431.231;
14. Work with DHS in the development of a Client satisfaction survey that DHS will conduct periodically and the results of which will be used to identify potential operational deficiencies within the Transportation Program;
15. Develop and implement processes to deliver Non-emergent Medical Transportation Services efficiently, and in a manner that minimizes costs and maximizes value for the State, while meeting Clients' needs;
16. Screen all Ride requests to ensure that Client's requested transport is to or from a provider of a Covered Service and within the Service Area; check on Client attendance for continuing services requests; and conduct verification by contacting the provider of the Covered Service on a minimum of five percent (5%) of all Rides provided under this Agreement prior to ride to ensure that Regional Broker is transporting a Client to a Covered Service; and,
17. No later than December 31st of each year, submit a cost allocation plan,

certified by Regional Broker's Chief Financial Officer, to OMAP.

B. DHS agrees to:

1. Create and maintain the list of eligible Clients on the DHS website that Regional Broker will use to determine eligibility for Non-emergent Medical Transportation Services;
2. Pay Regional Broker according to the terms specified in Section V, Consideration, of this Agreement;
3. Notify the Regional Broker of changes in the administrative rules and information applicable to Non-emergent Medical Transportation Services and Client eligibility;
4. Develop and administer a Client satisfaction survey that DHS will conduct periodically and the result of which will be used to identify potential operational deficiencies within the Transportation Program; and
5. Provide the necessary administrative staff support and resources necessary to expeditiously resolve issues, such as complaints by Clients or problems identified by the Advisory Group, related to the Transportation Program. Specify a liaison to work with the Regional Broker to lead this effort.

C. Equipment.

1. Title to all Equipment purchased by Regional Broker with funds paid to it under this Agreement shall vest in DHS immediately upon purchase and shall be identified in a separate inventory as State-owned property. None of the State-owned Equipment shall be encumbered at any time, nor shall any interest in such property vest in any person or entity other than the State. Regional Broker shall maintain a current inventory of all State-owned Equipment under its control, including the following items: (a) a description of the Equipment, (b) serial number, (c) the source of the Equipment, (d) the acquisition date, (e) cost of the Equipment, and (f) the location, use, and condition of the Equipment. Regional Broker shall provide to DHS upon request the updated list containing such information.
2. Upon expiration or termination of this Agreement, Regional Broker shall immediately deliver all State-owned Equipment to DHS at Regional Broker's sole expense. All such Equipment shall be in good condition and proper working order, less reasonable wear and tear. Should such Equipment not meet these standards, Regional Broker shall pay the State the fair market value of equivalent Equipment in the condition in which the Equipment was required to be delivered.

3. DHS requires Regional Broker to utilize the TABS Oregon Software. Upon expiration or termination of this Agreement, Regional Broker shall take all steps necessary to facilitate return of the TABS Oregon Software to DHS.

V. CONSIDERATION

- A. DHS shall pay Regional Broker the fixed rate of \$XX.00 per Ride. The rate is calculated based on the following formula:

$$\frac{\text{Direct Costs (transportation costs + administrative costs) + Indirect Costs}}{\text{Number of Projected Monthly Rides}}$$

The Parties recognize that the fixed rate of \$XX.00 per Ride is based upon the configuration and scope of the DHS program at the time of execution of this Agreement. The Parties will review this rate periodically, including at such times that DHS makes any program changes affecting eligibility or scope or if there are other factors that impact the cost of delivering service, to determine if the rate needs to be modified. Any modification of the rate will be by mutual agreement based on the formula specified above. Regional Broker may request a rate adjustment by sending a written request to DHS using a rate change form approved and provided by OMAP. Any such request may only be made by the Regional Broker's contract administrator or designee approved by OMAP. DHS shall approve or disapprove Regional Broker's rate adjustment request via email. The maximum, not-to-exceed compensation payable to Regional Broker under this Agreement is XXXXXXXX dollars. (~~XXXXXXXX.00~~).

- B. Regional Broker shall keep, under its usual business policies and accounting practices, a separate account for the Non-emergent Medical Transportation Services provided under this Agreement.
- C. DHS and Regional Broker will meet periodically, as needed, to review the financial and operational status of the Transportation Program.
- D. Regional Broker shall submit data files to DHS on a weekly basis using the standardized electronic billing format prescribed by DHS.
- E. DHS shall pay Regional Broker by check following receipt of and approval by DHS of Regional Broker's data files.
- F. Regional Broker shall not exceed, and DHS shall not pay any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Agreement, the amendment must be fully effective before Regional Broker performs Services subject to the amendment.
- G. DHS shall not pay Regional Broker for any Services performed or any direct or

indirect costs incurred before the beginning date or after the expiration date of this Agreement.

- H. DHS and Regional Broker will conduct an annual audit to determine any overpayment or underpayment for billings for the number of Rides provided.
- I. DHS will follow the dispute resolution process as outlined in Section VII(R) of the General Provisions of this Agreement to assure prompt resolution of billing disputes.
- J. Regional Broker shall not bill or hold any Client responsible for payment for Non-emergent Medical Transportation Services which have been denied to Regional Broker by DHS.
- K. DHS shall pay for Rides authorized and provided in good faith by Regional Broker at the effective rate for the date of the Non-emergent Medical Transportation Service. Regional Broker provides Rides in good faith when it verifies Client eligibility on the date of service and through the means provided by DHS.
- L. The parties recognize that the rate reimbursement formula set forth above in this section V. (A) allows Regional Broker, consistent with OMB circular A-87, to establish a working capital reserve. Any such reserve established by Regional Broker with funds paid by DHS shall not exceed 30 days cash expenses for normal operating purposes. Regional Broker may carry forward this reserve upon the expiration of this Agreement provided Regional Broker enters into a subsequent Agreement with DHS for the provision of Non-emergent Medical Transportation Services beginning immediately following the expiration of this Agreement. If the parties elect not to contract further for Non-emergent Medical Transportation Services, or upon termination of this Agreement pursuant to section VII. (E), Regional Broker shall refund to DHS within 90 days Regional Broker's working capital reserve fund established under this Agreement or any previous Agreement for Non-emergent Medical Transportation Services.

VI. TERM

This Agreement shall become effective on **Date**, or the date at which all Parties have signed this Agreement and all State approvals have been obtained, whichever date is later. This Agreement shall expire, unless otherwise terminated or extended, on **Date**. The expiration or termination of this Agreement shall not extinguish either Party's right to enforce this Agreement with respect to any default or defect in performance that has not been cured.

VII. GENERAL PROVISIONS

A. Retirement System Status

Regional Broker is responsible for making all benefit program contributions for its employees, agents and officers that arise out of Regional Broker's performance under this Agreement. These programs may include, but are not limited to: Retirement Program contributions, Union contributions, Federal Social Security, Unemployment Insurance and Workers' Compensation.

B. Government Employment Status

Regional Broker certifies that it is not currently employed by the federal government for the Non-emergent Medical Transportation Services being performed under this Agreement.

C. Dual Payment

Regional Broker shall not be compensated by any other department or agency of the State of Oregon or the federal government, including by CMS under the Medicare program, for the Non-emergent Medical Transportation Services performed under this Agreement.

D. Funds Available and Authorized

DHS certifies at the time this Agreement is executed that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within DHS's biennial appropriation or limitation. Regional Broker understands and agrees that DHS's payment of amounts under this Agreement attributable to Services performed after the last day of the current biennium is contingent on DHS receiving from the Oregon Legislative Assembly appropriations, limitations, or other expenditure authority sufficient to allow DHS, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.

E. Termination

1. This Agreement may be terminated by mutual consent of the Parties, or by either Party upon one-hundred twenty (120) days notice in writing, and delivered by certified mail or in person. Regional Broker shall be compensated as set forth under Section V, for all Services performed under this Agreement up to the effective termination date. Any such termination of this Agreement shall be without prejudice to any obligations or liabilities of either Party already accrued prior to such termination.
2. DHS may terminate this Agreement, immediately upon written notice to Regional Broker, under any of the following conditions:
 - a. If DHS funding from federal, state, or other sources is not obtained

- and continued at levels sufficient to allow for purchase of the Services. When possible, and when agreed upon, the Agreement may be modified to accommodate a reduction in funds;
- b. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the Services are no longer allowable or appropriate under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement; or,
 - c. If any license or certificate required by law or regulation to be held by Regional Broker to provide the Services required by this Agreement is for any reason denied, revoked, or not renewed.
3. Upon receiving a notice of termination under this Agreement by DHS, Regional Broker shall immediately cease all activities under this Agreement, unless DHS expressly directs otherwise in such notice of termination. Upon termination of this Agreement, Regional Broker shall deliver to DHS all documents, information, works-in-progress and other property that are or would be deliverables had the Agreement been completed. Regional Broker shall also promptly supply all information necessary for the payment of any completed Non-emergent Medical Transportation Services.

F. Indemnification

1. INDEMNITY BY REGIONAL BROKER: SUBJECT TO THE LIMITS ESTABLISHED UNDER THE OREGON TORT CLAIMS ACT, REGIONAL BROKER SHALL INDEMNIFY THE STATE AGAINST LIABILITY FOR DAMAGE TO LIFE OR PROPERTY ARISING FROM REGIONAL BROKER'S ACTIVITY UNDER THIS AGREEMENT, PROVIDED REGIONAL BROKER SHALL NOT BE REQUIRED TO INDEMNIFY THE STATE FOR ANY SUCH LIABILITY ARISING OUT OF THE WRONGFUL ACTS OF EMPLOYEES, SUBCONTRACTORS, OR AGENTS OF THE STATE.
2. INDEMNITY BY THE STATE: TO THE EXTENT PERMITTED BY ARTICLE XI, SECTION 7 OF THE OREGON CONSTITUTION AND SUBJECT TO THE LIMITS ESTABLISHED UNDER THE OREGON TORT CLAIMS ACT, THE STATE SHALL INDEMNIFY REGIONAL BROKER AGAINST LIABILITY FOR DAMAGE TO LIFE OR PROPERTY ARISING FROM THE STATE'S ACTIVITY UNDER THIS AGREEMENT, PROVIDED THE STATE SHALL NOT BE REQUIRED TO INDEMNIFY REGIONAL BROKER FOR ANY SUCH LIABILITY ARISING OUT OF THE WRONGFUL ACTS OF EMPLOYEES, SUBCONTRACTORS, OR AGENTS OF THE REGIONAL BROKER.

G. Breach of Agreement

DHS or Regional Broker shall breach this Agreement if they fail to perform any material obligation under the Agreement. In the event of a breach, the non-breaching Party shall provide the other Party written notice of the breach allowing the other Party no less than thirty (30) days to remedy the breach. If the breach is

not remedied within the specified time, the Agreement shall terminate upon expiration of the last day to remedy as specified in the notice.

H. Force Majeure

Neither DHS nor Regional Broker shall be held responsible for delay or default caused by fire, riot, acts of God, or war where such cause was beyond the reasonable control of DHS or Regional Broker, respectively. DHS and Regional Broker shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of their obligations under this Agreement.

I. Records Maintenance; Access

Regional Broker shall permit, and shall cause Providers to permit, DHS, the Secretary of State's Office of the State of Oregon, the Oregon Department of Justice Medicaid Fraud Unit, the U.S. Department of Health and Human Services, the U.S. Comptroller General, and any of their duly authorized representatives to have access to its fiscal records, and other books, documents, papers, and records of Regional Broker and/or its Providers which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts. Regional Broker shall retain, and shall cause Providers to retain, and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payments and termination of this Agreement, or until conclusion of any audit, controversy, or litigation arising out of or related to this Agreement, whichever date is later.

J. Ownership of Work Product

1. Regional Broker shall maintain the Tabs Oregon software.
2. All client data and databases created by Regional Broker shall be deemed "work made for hire" within the meaning of the U.S. Copyright Act of 1976, as amended. If any client data or database is determined not to be a work made for hire, Regional Broker hereby assigns to the State of Oregon all right, title, and interest in and to such client data and database, as well as all related copyright and all other related proprietary rights therein. Regional Broker agrees to execute any documents reasonably requested by DHS to vest fully such rights in the State of Oregon.
3. Upon termination of this Agreement, Regional Broker shall deliver to DHS all client data and all databases created by Regional Broker under this Agreement in a format readable by Tabs Oregon software.

K. Compliance with Applicable Law

Regional Broker shall comply and shall require its Providers to comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Non-emergent Medical Transportation Services under this Agreement. Without limiting the generality of the foregoing, Regional Broker expressly agrees to comply and shall require its Providers to comply with: (i) Title VI of Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) Title II of the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. DHS's performance under this Agreement is conditioned upon Regional Broker's compliance with the provisions of ORS 279B.220, 279B.225, 279B.230, and 279B.235 and 279B.279, which are incorporated by reference herein. Regional Broker shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper (as defined in ORS 279A.010(ee)), recycled PETE products (as defined in ORS 279A.010(ff)), and other recycled products (as "recycled product" is defined in ORS 279A.010(gg)).

L. Amendment

The terms of this Agreement shall not be waived, altered, modified, or amended, except by written agreement signed by both Parties with all legally required approvals obtained. Amendments to this Agreement during the term of the Agreement may be made for reasons, including but not limited to the following: 1) Changes to the scope of Services or Service Area; 2) Adjustments to Ride reimbursement rate, total reimbursement amount, or duration of Agreement; 3) Changes to Attachment A, Transportation Provider Standards; and, 4) Changes required for compliance with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the Services under this Agreement. As required by the State Medicaid Manual at 2080.11, amendments may not be used to avoid renegotiation of this Agreement or to limit open competition to the maximum extent practical.

M. Confidentiality

Regional Broker shall treat and shall require its Providers to treat all information and, in particular, information relating to Clients and providers of Covered Services which is obtained by or through its performance under this Agreement, as confidential information to the extent that confidential treatment is provided for under State and federal law as defined in 42 CFR §§ 431.300 to 431.307 and ORS 411.320. Regional Broker shall, and shall cause its Providers to, safeguard such information and shall not use any information so obtained in any manner except as necessary to the proper discharge of its obligations hereunder.

N. Severability

The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

O. Insurance and Self-Insurance Reserve Fund

1. Regional Broker Insurance

- (a) During the term of this Agreement, Regional Broker shall maintain in force at its own expense each insurance noted below at (i) through (iii):
- (i). **Worker's Compensation:** All employers, including Regional Broker, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required workers' compensation coverage, unless such employers are exempt under ORS 656.126(2).
 - (ii). **Commercial General Liability** insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage. This policy shall include contractual liability coverage for the indemnity provided under this Agreement. The policy, or an endorsement/amendment to the policy, shall provide that the State of Oregon, Department of Human Services, and their divisions, officers and employees are "Additional Insureds" under the policy, but only with respect to the Regional Broker's Services to be provided under the Agreement."
 - (iii). **Automobile Liability** insurance with a combined single limit, or the equivalent, of not less than \$500,000 for Bodily Injury and Property Damage to one person for any one accident, \$1,000,000 for Bodily Injury and Property Damage to two or more persons for any one accident, including coverage for all owned, hired, or non-owned vehicles, as applicable. The policy, or an endorsement/amendment to the policy, shall provide that the State of Oregon, Department of Human Services and their divisions, officers, and employees are "Additional Insureds" under the policy, but only with respect to the Regional Broker's Services provided under this Agreement.
- (b) **Notice of Cancellation or Change:** There shall be no cancellation, material change, reduction of aggregate limits or intent not to renew the insurance coverages set forth at O.(1)(a) (i) through (iii) above without thirty (30) days written notice from the Regional Broker or its insurer(s) to DHS.

2. Provider Insurance

Regional Broker's Provider contracts shall require the Provider to maintain insurance as specified at subsections (i) through (iii) of O.(1)(a) above, and to provide notice as specified by O.(1)(b) from the Provider or its insurer(s) to Regional Broker.

3. Self-Insurance Reserve Fund

(a) As part of the fixed rate per ride reimbursement provided for in Section V, Regional Broker may elect to establish and maintain a Self-Insurance Reserve Fund for services provided under this Agreement. The Self-Insurance Reserve Fund shall comply with OMB Circular A-87 (Attachment B, Subsection 22, "Insurance and Indemnification"), including, but not limited to, the following requirements:

- (i). Contributions to the Reserve must be based on sound actuarial principles using historical experience and reasonable assumptions, to include market costs of comparable insurance levels;
- (ii). Reserve levels must be analyzed and updated at least biennially for each major risk being insured and take into account any reinsurance, coinsurance, etc.; and
- (iii). Reserve levels in excess of the amounts based on the above must be identified and justified in the cost allocation plan or indirect cost rate proposal.

(b) If the parties elect not to contract beyond the term of this Agreement for Non-emergent Medical Transportation Services, or upon termination of this Agreement pursuant to section VII. (E), Regional Broker shall refund to DHS the balance of any Self-Insurance Reserve Fund established under this Agreement, or any previous Agreement with DHS for Non-emergent Medical Transportation Service, no later than the longer of: (i) two years from the expiration or termination of this Agreement; or, (ii) the conclusion of any claim or litigation, relating to the provision of services under this Agreement.

(c) The amount of any Self-Insurance Reserve Fund established by Regional Broker to insure the services provided under this Agreement shall be limited to the maximum tort liability of a public body under ORS 30.270 or \$500,000. The level of insurance established under this Section (O)(3) is in lieu of all insurance requirements of Section (O)(1).

P. Special Federal Requirements

The funds to reimburse Regional Broker for all of its activities under this Agreement are both federal and state funds and Regional Broker shall comply with the relevant parts of 45 CFR Part 74, Part 80, Part 84, Part 86, Part 90, Part 91, Part 92, OMB Circular A-133, and OMB Circular A-87 as appropriate, including the requirements at (1) through (7) below. Regional Broker may award DHS transportation Provider subcontracts to Providers pursuant to blanket purchase orders or other small purchase procedures, regardless of total contract amount.

1. Regional Broker shall comply with Executive Order 11246 entitled Equal Employment Opportunity as amended by Executive Order 11375 dated September 24, 1965 and as supplemented in Department of Labor Regulation 41 CFR Part 60, Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973 as implemented by 45 CFR 84.4; and the provisions of ORS Chapter 659. Regional Broker shall cause Providers to comply with these provisions.
2. To the extent it is required to do so by law, Regional Broker shall abide by all mandatory standards and policies which relate to energy efficiency and which are contained in the State of Oregon Energy Conservation Plan which was issued in compliance with the Energy Policy and Conservation Act (PL94-385). Regional Broker shall cause all Providers to comply with the foregoing.
3. If the sum payable under this Agreement exceeds or may exceed \$100,000, Regional Broker shall provide the State of Oregon with written assurance that Regional Broker will comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 7606 et. seq.), the Federal Water Pollution Control Act, as amended (33 USC 1251 et. seq.), Executive Order 11738 and Environmental Protection Agency regulations (40 CFR Part 32). Regional Broker shall promptly report all infractions to the State of Oregon, the U.S. Department of Health and Human Services, and the U.S. Environmental Protection Agency. Regional Broker shall cause all Providers to comply with these provisions.
4. Regional Broker shall comply, at its expense, and shall cause all Providers to comply at their expense, with all requirements under OMB Circular A-133 for audits of its operations and with all requirements under OMB Circular A-87 for determining allowable costs.
5. Regional Broker shall not contract with any person or entity to be a Provider if the person or entity is listed on the non-procurement portion of the General Service Administration's list of parties excluded from federal procurement or non-procurement programs in accordance with Executive Orders 12549 and 12689.
6. To the extent it is required to do so by federal law, Regional Broker certifies

that it will provide a drug-free workplace and shall require its Providers to provide a drug-free workplace by:

- a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in Regional Broker's or Providers' workplace and specifying the actions that will be taken against employees for violation of such prohibition.
- b. Establishing a drug-free awareness program to inform employees about:
 - (1) The dangers of drug abuse in the workplace;
 - (2) Regional Broker's and Providers' policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations.
- c. Requiring that each employee providing Services under this Agreement, or under a subcontract with Providers, be given a copy of the statement required by the above.
- d. Notifying the employee in the statement required by the above that as a condition of employment the employee shall:
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer of any criminal drug statute conviction of that employee for a violation occurring in the workplace no later than five (5) days after such conviction.
- e. Notifying DHS within ten (10) days after receiving notice as defined above, from an employee or otherwise receiving actual notice of such conviction.
- f. Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by section 703 of the Drug-Free Workplace Act of 1988.
- g. Making a good faith effort to continue to maintain a drug-free

workplace through implementation of above subparagraphs.

7. Regional Broker certifies, to the best its knowledge and belief, that:
 - a. No federal appropriated funds have been paid or will be paid, by or on behalf of Regional Broker, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, Regional Broker shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - c. The undersigned shall require that the language of this certification be included in all subcontracts with Providers and that all Providers shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. Regional Broker shall cause all Providers to make similar certification.

Q. SPECIAL PROVISIONS

1. Confidentiality of Client Information

- a. All information as to personal facts and circumstances obtained by the Contractor on the client shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the written consent of the client, his or her attorney, the responsible parent of a minor child, or his or her guardian except as

required by other terms of this contract. Nothing prohibits the disclosure of information in summaries, statistical, or other form, which does not identify particular individuals.

- b. The use or disclosure of information concerning clients shall be limited to persons directly connected with the administration of this contract. Confidentiality policies shall be applied to all requests from outside sources.
- c. DHS, Contractor and any subcontractor will share information as necessary to effectively serve DHS clients.

2. Information Privacy/Security

If the Work performed under this contract requires Contractor to have access to or use of any DHS computer system or other DHS Information Asset for which DHS imposes security requirements, Contractor shall comply and require subcontractors to comply with information security requirements imposed under this section. For purposes of this section, "Information Asset" refers to all confidential information in any form (e.g., written, verbal, oral or electronic) for which DHS determines requires security measures, including confidential information created by DHS, gathered for DHS or stored by DHS for external parties. All other terms not defined in this section shall have the meaning used in the HIPAA Security Rules, 45 CFR § 164.304.

- a. The Contractor shall comply with the following requirements. For purposes of this section, all requirements imposed on Contractor shall also apply to its officers, employees, agents and subcontractors that have access to any DHS information computer system or other DHS Information Asset, and Contractor shall include these requirements in any subcontract that may provide such access by a subcontractor, its officers, employees or agents to any DHS computer system or other DHS Information Asset. Contractor shall:
 - 1. Cooperate with the DHS contract administrator in identifying Information Assets that will be utilized in the performance of the Work and applicable security measures that will be undertaken to protect the Information Assets, and provide updated information to the DHS contract administrator within fourteen (14) calendar days of the date such information changes for any reason;
 - 2. Implement security measures that reasonably and appropriately provide administrative, physical and technical safeguards that protect the confidentiality, integrity and

availability of the Information Assets that it creates, receives, maintains or transmits on behalf of the DHS. Contractor's security measures must be documented in writing and be available for review by DHS upon request. DHS review of the reasonableness of security measures, as well as Contractor's compliance with DHS assigned access control or security requirements, will take into account the Contractor's physical, administrative, and technical capabilities related to security measures and the potential risk of unauthorized use or disclosure of information assets by Contractor, its officers, employees, agents or subcontractors.

3. Prevent any unauthorized access to or disclosure of DHS information systems or information assets.
4. Take necessary actions to comply with DHS determinations of the level of access that may be granted, as well as changes in level of access, or suspension or termination of access as determined by DHS;
5. Keep any DHS-assigned access control requirements such as identification of authorized user(s) and access-control information in a secure location until access is terminated; monitor and securely maintain access by Contractor and its agents or subcontractors in accordance with security requirements or access controls assigned by DHS; and make available to DHS upon request all information about contractor' use or application of access-controlled DHS computer systems or Information Assets.
6. Report to the DHS, Information Security Office, and to the DHS contract administrator, any privacy or security incidents by Contractor, its officers, employees, agents or subcontractors that compromise, damage, or cause a loss of protection to the DHS Information Assets. Contractor shall report in the following manner:
 - (i) Report to the DHS, Information Security Office, and to the DHS contract administrator, in writing within five (5) business days of the date on which Contractor becomes aware of such incident; and
 - (ii) Provide the DHS, Information Security Office, and the DHS contract administrator, the results of the incident assessment findings and resolution strategies

Contractor will comply with DHS requests for corrective action

concerning a privacy or security incident, and with laws requiring mitigation of harm caused by the unauthorized use or disclosure of confidential information, if any.

- b. If DHS determines that Contractor's security measures or actions required under subsection (1) of this section are inadequate to address the security requirements of DHS, DHS will notify the Contractor. DHS and Contractor may meet to discuss appropriate security measures or action. If security measures or corrective actions acceptable to DHS cannot be agreed upon, DHS reserves the right to take such actions as it determines appropriate under the circumstances. Actions may include but are not limited to restricting access, or amending or terminating the contract.
- c. DHS reserves the right to request additional information from Contractor related to security measures, and to change, suspend or terminate access to or use of a DHS computer system or Information Assets by Contractor, its officers, employees, agents or subcontractors.
- d. Wrongful use of DHS computer systems, wrongful use or disclosure of Information Assets by Contractor, officers, its employees, agents or its subcontractors may cause the immediate suspension or revocation of any access granted through this contract, in the sole discretion of DHS. DHS may also pursue any other legal remedies provided under the law.

R. Mediation

Should any dispute arise between the Parties concerning this Agreement which is not resolved by mutual agreement, the Parties agree that the dispute will be submitted to mediated negotiation as a condition precedent to any Party commencing litigation. In such an event, the Parties agree to participate in good faith in a non-binding mediation process.

The mediator shall be selected by mutual agreement of the Parties, but in the absence of such agreement, each Party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. All costs of mediation shall be borne equally by the Parties; provided, however, DHS shall not pay more than \$10,000 of mediation costs without executing a separate mediation contract.

S. Governing Law

The provisions of this Agreement shall be construed in accordance with the laws of the State of Oregon. Any claim, action, suit, or proceeding between DHS and Regional Broker that arises out of or relates to this Agreement shall be brought

and conducted in the Circuit Court of Marion County for the State of Oregon.

T. Merger Clause; Waiver

THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES ON THE SUBJECT MATTER. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES AND ALL NECESSARY STATE OF OREGON APPROVALS HAVE BEEN OBTAINED. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THE FAILURE OF DHS TO ENFORCE ANY PROVISION OF THIS AGREEMENT SHALL NOT CONSTITUTE A WAIVER BY DHS OF THAT OR ANY OTHER PROVISION.

U. Third Party Beneficiaries

DHS and Regional Broker are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

V. Survival

Section IV. (C.) and Sections VII. (I.), (J.), (O)(3)(b), (Q.) and (V.) of this Agreement shall survive Agreement expiration or termination, as well as those provisions of this Agreement that by their context are meant to survive.

IX. SIGNATURES

EACH PARTY, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

Broker Date

Division of Medical Assistance Programs Date

Approved as to Legal Sufficiency:

Assistant Attorney General Date

REVIEWED:

OMAP PPS Date

DHS Contracts Date

ATTACHMENT A
Intergovernmental Agreement #000000

TRANSPORTATION PROVIDER STANDARDS

Regional Broker shall cause all Providers to comply with the following requirements and shall include these requirements in all subcontracts with Providers:

A. Confidentiality

Providers shall treat every aspect of Non-emergent Medical Transportation Services as confidential, including the fact of Oregon Health Plan eligibility and any or all information pertaining to a Client's physical or mental health status or condition.

B. Payment

Providers shall accept as payment in full, the amounts paid by Regional Broker and shall not bill Clients for Non-emergent Medical Transportation Services, as specified in 42 CFR § 447.15.

C. Non-emergent Medical Transportation Providers

1. Providers shall comply with all applicable local, state, and federal licenses, and certifications. Providers shall possess current appropriate local, state and federal licenses required by respective jurisdictions.
2. Providers shall comply with appropriate local, state, and federal transportation safety standards regarding passenger safety and comfort. This will include, but not be limited to, proper equipment, accessibility, maintenance, seat belts, and all equipment necessary to transport Clients using wheelchairs.
3. In addition to the automobile liability insurance required by Section VII(O) of Regional Broker's Agreement with DHS, Provider shall obtain and maintain throughout the term of the subcontract with Regional Broker, automobile collision and comprehensive insurance coverages. Provider shall name the State of Oregon, DHS, Regional Broker, their officers, employees, and agents as additional insureds on any insurance policies required under the subcontract with Regional Broker with respect to Provider's activities being performed under the subcontract with Regional Broker. Such insurance shall be evidenced by a Certificate of Insurance, issued by an insurance company licensed to do business in Oregon, containing a 30-day Notice of Cancellation endorsement and shall be forwarded to Regional Broker prior to commencement of the Services under the applicable subcontract. In addition, in the event of unilateral cancellation or restriction by Provider's insurance company of any insurance coverage required herein, Provider shall notify Regional Broker orally and in writing within three (3) days of

notification by the insurance company to Provider.

D. Vehicle Standards

1. Providers must assure the comfort and safety of Clients by proper maintenance of their vehicles. This includes, but is not limited to:
 - a. Interior cleanliness of the vehicles;
 - b. Smoke free environment within the vehicles;
 - c. Appropriate safety equipment must be present and operable, including but not limited to:
 - (1) First Aid Kit;
 - (2) UL approved Fire Extinguisher;
 - (3) Accident Report Forms;
 - (4) Roadside reflective or warning devices;
 - (5) Flashlight;
 - (6) Chains or other traction devices (when appropriate);
 - (7) Disposable gloves.
 - d. Vehicles in good operating condition, including but not limited to:
 - (1) Seatbelts;
 - (2) Side and rear view mirrors;
 - (3) Horn;
 - (4) Working turn signals, headlights, taillights, and windshield wipers.
2. Providers will maintain a preventative maintenance schedule which incorporates, at a minimum, the schedule recommended by the vehicle manufacturer.

E. Drivers

1. Providers will inform drivers of their job duties and responsibilities and provide training for all equipment related to their vehicles. This will include, but not be

limited to:

- a. Briefing about the Transportation Program, reporting forms, vehicle operation, and the geographic area in which they will be providing service;
 - b. Road testing with the type of vehicle the driver will be operating;
 - c. Completion of the National Safety Council Defensive Driving course, or an equivalent, within six months of date of hire;
 - d. Approved First Aid, Cardiopulmonary Resuscitation and blood spill procedures within six months of date of hire;
2. Providers' selection of its drivers shall include:
- a. Verification that the driver has an appropriate and valid Oregon driver's license;
 - b. Verification that the applicant or employee has had no more than three moving violations and/or accidents within the last three years and that the applicant or employee has had no more than two moving violations, two accidents or a combination of more than two moving violations and/or accidents within the last twelve months. Verification consists of a three-year personal driving record check and a three-year commercial or business driving record check or a five-year combined check;
 - c. Verification that the driver has not been convicted of any crimes against people or any drug or alcohol related offenses. Any exceptions to this policy shall be made with the approval of Regional Broker based on the Regional Broker's established protocol for criminal background checks and shall be dependent upon when the crime occurred, nature of the offense, and other circumstances to assure Clients will be in no jeopardy from the driver.

F. Service Provision

1. Average waiting time for pick up and delivery to Covered Service for pre-scheduled transportation shall not exceed thirty (30) minutes.
2. Providers will establish procedures for drivers to deal with situations in which emergency care is needed for Clients that they have been assigned to transport.
3. Providers shall only pick up and deliver Clients to locations assigned by Regional Broker Central Dispatch.

4. Providers shall report suspected fraudulent use of transportation services to Regional Broker Central Dispatch.