

NYSARC, INC.
THIRD PARTY COMMUNITY TRUST
*(A Trust for Persons with Disabilities
Funded by Family and Friends)*

MASTER TRUST

NYSARC, Inc.
29 British American Boulevard
Latham, New York 12110
Telephone: 518-439-8311

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*(A Trust for Persons with Disabilities
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MASTER TRUST

THIS TRUST made this 27th day of May, 2021, is established by and between NYSARC, Inc., a New York not-for-profit corporation, as Settlor, and NYSARC, Inc., a New York not-for-profit corporation as Trustee (hereinafter referred to as Trustee), and a financial institution as selected in Article 5 Section 5.1 as Co-Trustee (hereinafter referred to as Co-Trustee).

WITNESSETH:

WHEREAS, by this document Settlor establishes a Trust known as the **NYSARC, INC. THIRD PARTY COMMUNITY TRUST**; and

WHEREAS, the NYSARC Executive Committee has approved the creation and contents hereof; and

NOW, THEREFORE, IT IS AGREED that the Trustees shall administer and dispose of the Trust property as more specifically set forth hereinafter:

ARTICLE ONE

1.0 NAME OF TRUST AND DEFINITIONS

1.1 Name of Trust: NYSARC, INC. THIRD PARTY COMMUNITY TRUST

1.2 Definitions:

For all purposes under this instrument:

- a. "NYSARC, INC. THIRD PARTY COMMUNITY TRUST": shall mean a Supplemental Needs Trust (SNT) that is created pursuant to the federal and state laws.

- b. "Settlor": the not-for-profit association establishing a Supplemental Needs Trust.
- c. "Donor": shall mean the person who is donating property.
- d. "Trustee": shall mean NYSARC, Inc. who holds legal title to property "in trust" for the benefit of another person.
- e. "NYSARC, INC.": is a not-for-profit corporation created under the laws of the State of New York.
- f. "Beneficiary, Disabled Beneficiary or in-kind-Beneficiary": shall mean those persons with an intellectual and/or developmental disability or other disability as determined by the Trustees in accordance with the Joinder Agreement who may receive the benefits of the Trust property.
- g. "Distribute": shall mean to pay over, convey, deliver, transfer, and assign absolutely and in fee simple forever, free of all trusts created hereunder.
- h. "Trust Account": shall mean the pooled accounts.
- i. "Sub-Trust Account": shall mean a separate account maintained for each Beneficiary of the Trust.
- j. "Joinder Agreement": shall mean the instrument that is executed by the Donor for purposes of establishing a separate sub-trust account for the benefit of a person with a disability.
- k. "Remainderman": the individual or entity receiving proceeds upon termination of the sub-trust account.
- l. "Remainder Sub-Trust Account": shall mean the separate account maintained by the Trustees to which shall be credited all amounts remaining in a Beneficiary's Sub-Trust Account upon the death of said Beneficiary.

- m. "Co-Trustee" shall mean a financial institution employed by the Trustee to advise it, handle all trust investments, and render all accounting of funds held on its behalf under custodial, agency, or other Agreements. The Trustee retains ultimate managerial control over the trust, including any discretionary disbursements to or on behalf of beneficiaries, overall investment strategy and core managerial duties.
- n. "Beneficiary Liaison": means the individual who shall serve as the contact person between the Beneficiary and NYSARC, Inc. for all administrative purposes including disbursement requests, except as otherwise provided in the Joinder Agreement.

ARTICLE TWO

2.0 TRUST PURPOSE, ELIGIBILITY AND ACCEPTANCE

2.1 Trust Purpose:

The express purpose of this Trust is to provide for the collective management and distribution of the Trust Estate on behalf of eligible beneficiaries (the "Disabled Beneficiary" referred to in the Joinder Agreement) who are disabled as defined by New York Consolidated Laws, Estates, Powers & Trusts Law § 7-1.12. Individual Trust Accounts (hereinafter called "Sub-Trust Accounts") shall be maintained for each Beneficiary, but for the purposes of investment and management of Trust funds, the Trustees may pool these accounts and manage them collectively. Upon the death of a Beneficiary, the funds shall be administered as more fully stated below in Article 8 Section 8.2.

This Trust is intended to provide, in the sole and absolute discretion of the Trustees, extra and supplemental services and benefits for the care, support, comfort, education and

training of the Beneficiaries in addition to and over and above benefits they already receive, are entitled to receive or may receive or be entitled to receive in the future as a result of their present or intellectual, physical, psychological or developmental disabilities from any federal, state or local government program, agency or department.

Except as Donor's intent is otherwise expressed in the Joinder Agreement, Donor declares that in creating the Trust account provided for the Beneficiary, the Donor's primary purpose is to benefit the Beneficiary for all reasonable expenditures, as to both income and principal and not to preserve the principal for the benefit of any Remainderman. Donor directs that this purpose be carried out in determining any questions which may arise between the interests of the Beneficiary and the Remainderman.

It is the Donor's intent that the Beneficiary be treated as a full family member with the opportunity to participate in family activities, lifestyles and purchases, so long as those purchases are for the primary benefit of the Beneficiary. Therefore, it is Donor's intent that the Trustee has the broadest powers to encourage Beneficiary's family involvement and not be hampered nor prevented from making any expenditure which is appropriate for the benefit of the Beneficiary so long as that expenditure is for the primary benefit of the beneficiary and provides no more than a collateral benefit to any family members or loved ones. Notwithstanding the above, the Trustee retains the full discretion to determine the appropriateness of said expenditures.

Notwithstanding anything to the contrary contained herein, all amounts remaining in the Trust upon the death of any Beneficiary shall be administered as more fully stated below in Article 8 Section 8.2.

2.2 Eligibility

- a. Eligible Beneficiaries: This Trust is open to individuals who, by reason of their disabilities as defined in Social Security Law Section 1614 (a)(3), shall be eligible beneficiaries of this Trust. A Sub-Trust Account for the primary benefit of such a Beneficiary may be established by family members, friends of a Beneficiary, or any other person or entity other than the Beneficiary.
- b. Funding Trust Accounts: The Trust is established as of the day and year first above written. It shall be effective as to any Beneficiary upon execution of a Joinder Agreement, after proper certification by the Trustees. A Sub-Trust Account shall be funded with assets owned by family members, friends of a Beneficiary, or any other person or entity other than the Beneficiary. Deposits to fund the Sub-Trust Account shall be accepted at any time during the year. Said Contributions are to be administered in accordance with the Joinder Agreement, subject to proper certification by the Trustees

2.3 Acceptance: The Settlor hereby establishes a Master Trust for the convenience of individuals and families. If a Joinder Agreement is executed incorporating the provisions of this Trust by reference, and the Joinder Agreement has been approved by the Trustees, the Trustees agree to hold, administer, and distribute the income and principal of the Trust in accordance with the terms and provisions hereinafter set forth.

2.4 Management of Trust Accounts: The Trustees are authorized to pool, commingle and jointly manage the assets of all Sub-Trust Accounts for investment purposes. Each Sub-Trust Account shall be credited with its proportionate share of the net income from the Trust. The term "net income" shall mean the profits and income generated from investment

of pooled funds, minus losses and expenses generally attributable to administration of the Trust. Each Sub-Trust Account shall be charged separately with disbursements and distributions made on behalf of its designated Beneficiary or allocated to that Trust Account.

2.5 Beneficiary Liaison:

- a. The Donor may designate a liaison (the “Beneficiary Liaison”) who may serve as the contact person to NYSARC, Inc. for all administrative purposes including disbursement requests, except as otherwise provided in the Joinder Agreement. Said Liaison’s name shall be designated in the Joinder Agreement establishing the Sub-Trust Account and may only be changed by the current Beneficiary Liaison or the Donor by submitting a written notice to NYSARC, Inc.
- b. The purpose of the Beneficiary Liaison is to serve in an advisory capacity to the Trustee by identifying the needs of the Beneficiary that can be met by the funds held in the Trust and regularly communicating these needs to NYSARC, Inc. Notwithstanding the recommendations of the Beneficiary Liaison, the Trustee retains full discretion and authority regarding expenditures.
- c. The Trustee may interview the Beneficiary Liaison prior to the effective date of such person’s authority hereunder. If the Trustee does not approve the proposed Beneficiary Liaison following such interview, then the Trustee shall notify the Donor and the Donor shall provide the Trustee with an alternate Beneficiary Liaison. The Trustee retains full authority and discretion to remove and replace the Beneficiary Liaison, including the right to retain a professional advocate and pay that advocate from trust assets.

- d. If a designated Beneficiary Liaison is not fulfilling their duties, the Trustee may request that a new Liaison be designated by the current Beneficiary Liaison or the Donor. If the current Beneficiary Liaison and Donor are unable to identify a new, appropriate Beneficiary Liaison the Trustee may use trust funds to retain a third party case management service to provide Liaison services.

ARTICLE THREE

3.0 EXPENDITURES:

- 3.1 The Trustees may, at their discretion, disburse trust income or principal to purchase property or services for each Beneficiary, consistent with the purposes and objectives as referred to in this instrument. Disbursements shall be made according to the interests and location of each Beneficiary, taking into account the services and financial resources legally available to him or her from any source.
- 3.2 Notwithstanding the above, it is the further intent of the Settlor that no distribution be ordered in contravention of the intent of the New York Estates, Powers, and Trusts Law (EPTL) Section 7-1.12. This provision is intended to negate and eliminate any discretion granted to any Court by the New York Estates, Powers, and Trusts Law Section 7-1.6. The Settlor intends that the funds provided by any third party be utilized for the “supplemental needs” of the Beneficiary. Settlor intends that any contributions received by the Trustees are Trust assets and are to be protected by the terms of this Supplemental Needs Trust.

Notwithstanding the provisions above, the Trustees may make distributions to meet the Beneficiary’s need for food, clothing, shelter, and health care even if such distribution may result in an impairment or diminution of the Beneficiary’s receipt or eligibility for government benefits or assistance but only if the Trustees determine (i) that the

Beneficiary's basic needs cannot be met adequately without such expenditure, and (ii) that it is in the Beneficiary's best interests to suffer the consequent effect, if any, on the Beneficiary's eligibility for or receipt of government benefits or assistance; provided, however, that if the mere existence of the Trustees' authority to make distributions pursuant to this subparagraph shall result in the Beneficiary's loss of government benefits or assistance, regardless of whether such authority is actually exercised, this subparagraph shall be null and void and the Trustees' authority to make such distributions shall cease and shall be limited as otherwise provided herein to supplement and not supplant any government entitlement.

- 3.3 If the Beneficiary's residence changes from the State of New York to another state, distributions may cease until appropriate arrangements for the distributions of funds can be made.

ARTICLE FOUR

4.0 TRUSTEES FEES

- 4.1 The Trustees shall be entitled to a monthly fee from each Sub-Trust Account. The fee shall be calculated based upon the Sub-Trust Account's balance at the end of the previous calendar month and in accordance with the published fee schedule then in effect, which is subject to and may change from time to time.
- 4.2 The Trustees shall be further entitled to additional fees that may be assessed on a case-by-case basis due to accounts requiring special accommodations.

ARTICLE FIVE

5.0 ADMINISTRATIVE PROVISIONS

5.1 Selection of Co-Trustee: NYSARC, Inc. shall, on an annual basis, evaluate the performance of the financial institution that is serving as Co-Trustee and either reappoint the same or appoint a new Co-Trustee.

5.2 Management Board: NYSARC, Inc. shall appoint a management board to carry out its duties as Trustee.

5.3 Accountings: For accounting purposes, the Trust shall be operated on a calendar year basis. The Trustee, or its authorized agent, shall maintain records for each Trust sub-trust account in the name of, and showing the property contributed for, each Beneficiary. Periodic accounts not less often than annually shall be sent to each Beneficiary and/or the appropriate representatives or designees of each Beneficiary, showing additions to and disbursements from the funds held on account in Trust for that Beneficiary during the preceding calendar year. The Trustee shall file the accounting with the appropriate court having jurisdiction over the Beneficiary as may be required.

5.4 Trustee Powers: The Trustee shall have full power and authority in its absolute discretion, without recourse to any court or any notice whatsoever, to do all acts and things necessary to accomplish the purposes of this Trust, and to perform the Trustee's duties as such and to receive, hold, manage, and control all of the income arising from such Trust and the corpus thereof and do such other acts and things concerning the Trust as may be advisable, including by not limited to, all powers conferred upon fiduciaries by the EPTL, as of the date of the execution of this Master Trust, and the powers conferred upon the Trustee by said statute are hereby incorporated into this Trust by reference.

5.5 No Trust property can be pledged or assigned in any way by any Beneficiary or Remainderman except by operation of law. No Trust property can be liable for the debts, contracts, obligations, or engagements, voluntary or involuntary of any Beneficiary or Remainderman or for any claims, legal or equitable, against such Remainderman or Beneficiaries. No Trust property shall be available to any Beneficiary or Remainderman, until actually delivered to or for their benefit.

ARTICLE SIX

6.0 INDEMNIFICATION

- 6.1 The Trustee and Co-Trustee shall not be liable for any error of judgment, or for any loss arising out of any act or omission in the management of this Trust, so long as it acts prudently with due care, good faith and diligence.
- 6.2 The Trustee and Co-Trustee shall be fully protected in acting upon any instrument, certificate or paper believed by it to be genuine and to be signed or presented by the proper person or persons, and the Trustee shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing, but may accept the same conclusive evidence of the truth and accuracy of the statements therein contained.
- 6.3 All persons dealing with the Trustee and Co-Trustee are released from inquiry into the decision or authority of the Trustee and to the application of any monies, securities, or other property paid or delivered to the Trustee.
- 6.4 The Trustee and each of its agents and employees, as well as its agents' and employees' heirs and legal and personal representatives, shall be and are hereby indemnified by the Trust and the Trust property against all claims, liabilities, fines, or penalties and against all costs and expenses, including attorneys' fees and disbursements and the cost of reasonable

settlements imposed upon, asserted against, or reasonable incurred thereby in connection with or arising out of any claim, action, suit or proceeding in which he, she, or it may be involved by reason of being or having been a Trustee, whether or not he, she or it shall have continued to serve as such at the time of incurring such claim, liabilities, fines, penalties, costs or expenses or at the time of being subjected to the same. However, said persons and entities, or their heirs or legal representatives shall not be so indemnified with respect to matters as to which he, she, or it shall be finally determined to have been guilty of willful misconduct in the performance of any duty as such, by a court of competent jurisdiction. This right of indemnification shall not be exclusive of, or prejudicial to, other rights to which any such person or entity may be entitled as a matter of law or otherwise.

ARTICLE SEVEN

7.0 APPOINTMENT OF SUCCESSOR CO-TRUSTEE

7.1 The Co-Trustee may resign at any time: In the event the Co-Trustee resigns, the successor shall be selected and appointed by NYSARC, Inc. Upon resignation, the Co-Trustee shall prepare a final accounting which shall be approved by a special committee created by the Board of Governors of NYSARC, Inc. and the successor Co-Trustee, if required, shall seek approval by a court of appropriate jurisdiction in Albany County, New York.

7.2 Rights and Powers of Successor Co-Trustees: Every successor Co-Trustee or additional Co-Trustee appointed to and accepting a Co-Trusteeship hereunder shall have all the rights, title, powers, duties, exemptions and limitations of the original Co-Trustee; but no successor Co-Trustee shall in any way be liable or responsible for anything done or omitted in the administration of the Trust prior to the date of becoming successor Co-Trustee.

ARTICLE EIGHT

8.0 AMENDMENT AND TERMINATION OF TRUST

8.1 Amendment: The Executive Committee of NYSARC, Inc. shall have the right and power to amend the provisions of this Trust and the Joinder Agreement provided, however, that any such amendment shall not:

- a. alter the purpose or objective of the Trust;
- b. make gifts revocable that are otherwise irrevocable under this Trust or the Joinder Agreement;
- c. adversely affect a prior executed Joinder Agreement.

8.2 Death of Beneficiary: Upon the death of the Beneficiary, after the payment of any reasonable funeral expenses, the Trustees' reasonable fees for administration, and income taxes, amounts remaining in the Beneficiary's sub-trust account shall be distributed as follows:

- a. The balance then remaining will be distributed to the designated Remaindermen and contingent Remaindermen in accordance with the executed Joinder Agreement or as defined in subsequent written notice submitted to and approved by NYSARC, Inc.
- b. If no Remaindermen are designated in the Joinder Agreement, or all Remaindermen have predeceased the Beneficiary, the entire balance of the sub-trust account shall be retained by the NYSARC, Inc. Third Party Community Trust.
- c. The Trustee shall use due diligence under the facts and circumstances then and there existing, in accordance with law, to locate all Remaindermen designated in the Joinder Agreement or approved subsequent written notice. If a Remainderman

still cannot be located after twelve months, for the purposes of this Article 8 Section 8.2, he or she shall be treated as if he or she predeceased the Beneficiary.

- 8.3 NYSARC, Inc. is a corporation organized and existing under the Not-For-Profit Corporation law of the State of New York. NYSARC, Inc. is recognized as a qualified charitable organization under Section 501(c)(3) of the Internal Revenue Code.

ARTICLE NINE

9.0 DISCLOSURE OF POTENTIAL CONFLICTS OF INTEREST

- 9.1 Pursuant to Article 8 Subsection 8.2 (a), a Donor may elect to name NYSARC, Inc., or a Chapter of NYSARC, Inc., as a Remainderman of his or her sub-trust account. Pursuant to Subsection 8.2 (b), NYSARC, Inc. may potentially become the sole Remainderman of a sub-trust account. Accordingly, there may a potential conflict of interest in the administration of this Trust.

The Donors executing the Joinder Agreement are aware of the potential conflicts of interest that exist in the Trustees' administration of the Trust. Any Donor executing a Joinder Agreement to this Master Trust hereby waives any and all claims against the Trustee on account of self-dealing, conflict of interest or any other act. The Trustee shall not be liable to the Donor or to any party for any act of self-dealing or conflict of interest resulting from their affiliations with NYSARC, Inc. or with any Beneficiary or constituent agencies and/or Chapters.

ARTICLE TEN

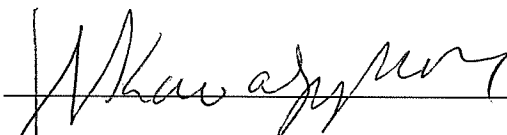
10.0 SITUS:

10.1 The Trust created by this Agreement has been accepted by the Trustee in the State of New York and will initially be administered by NYSARC, Inc. in the State of New York. The validity, construction, and all rights under this Agreement shall be governed by the laws of the State of New York. The situs of this trust for administrative and accounting purposes shall be in the County of Albany, the County where the majority of meetings concerning establishment of the Trust have occurred.

10.2 Invalidity of Any Provision: Should any provision of this Agreement be or become invalid or unenforceable, the remaining provisions of this Agreement shall be and continue to be fully effective.

IN WITNESS WHEREOF, the undersigned hereby subscribe to this **MASTER TRUST**, consisting of 14 pages, including this page, on the date first above written.

NYSARC, INC., as Settlor

BY: 
As Its: President

NYSARC, INC., as Trustee

BY: [Signature]
As Its: President

STATE OF NEW YORK)

COUNTY OF) s.s.:

On this 13th day of December, 2021, before me personally came Jack Kowalczyk, to me known, did depose and say that he/she is the President of NYSARC, Inc., the corporation described herein and which executed the foregoing instrument, and that he/she signed his/her name thereto by authority of the Board of Directors of said corporation.

[Signature]

NOTARY PUBLIC
VINCENT F. VETERE
Notary Public in the State of New York
Appointed in Oneida County 4914478
My Commission Expires Dec. 21, 2021

[Signature], as Co-Trustee
Financial Institution

BY: [Signature]
As Its: Cynthia J. McDonald

STATE OF NEW YORK)

COUNTY OF ALBANY) s.s.:

On this 20th day of December, 2021, before me personally came Cynthia J. McDong to me known, did depose and say that he/she is the Senior Vice-President of Key Bank, as the designated financial institution co-trustee described herein and which executed the foregoing instrument, and that he/she signed his/her name thereto by authority of the Board of Directors of said corporation.



NOTARY PUBLIC

