

NYSARC, INC. COMMUNITY TRUST III

(A Trust for Persons with Disabilities)

MASTER TRUST

NYSARC, Inc.
29 British American Blvd.
Latham, New York 12110

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Revised 2020

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(A Trust for Persons with Disabilities)

MASTER TRUST

As Amended

THIS TRUST made this 16th day of July, 2020 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 V Section 5.1 as Co-Trustees (hereinafter referred to as Co-Trustee), amends, modifies and restates a certain Trust Agreement dated October 23, 2003 and subsequently modified on April 2, 2004; September 30, 2010; June 13, 2012; September 30, 2014; and June 11, 2016; by and between NYSARC, Inc. as Settlor and NYSARC, Inc. as Trustee and a financial institution, as selected in Article V Section 5.1 as Co-Trustee.

WITNESSETH:

WHEREAS, Settlor on October 23, 2003 by Trust Agreement desires to establish a Trust known as the **NYSARC, INC. COMMUNITY TRUST III**; and

WHEREAS, Settlor has amended, modified and restated since October 23, 2003 as of April 2, 2004; September 30, 2010; June 13, 2012; September 30, 2014; and June 11, 2016 and

WHEREAS, Settlor desires to amend, modify and restate that original Trust Agreement;
and

WHEREAS, in accordance with the provisions of the predecessor Trust Agreement, the Executive Committee on June 4, 2020 approved the modifications and amendments contained herein; and

WHEREAS, Settlor has previously deposited with the Trustee certain property and establishes a Trust known as the "**NYSARC, INC. COMMUNITY TRUST III**" to solely further Settlor's program to provide a broad spectrum of benefits for persons with disabilities as set forth more fully herein.

NOW, THEREFORE, IT IS AGREED that the Trustee 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. COMMUNITY TRUST III

1.2 Definitions:

For all purposes under this instrument:

- a. "NYSARC, INC. COMMUNITY TRUST III": shall mean a Supplemental Needs Trust (SNT) that is created pursuant to the federal and state laws under the Omnibus Budget Reconciliation Act of 1993 (OBRA '93).
- b. "OBRA '93": authorizes the establishment of trusts containing the assets of persons with disabilities so long as the assets are managed by non-profit

associations.

- c. "Settlor": the not-for-profit association establishing a Supplemental Needs Trust.
- d. "Donor": shall mean the person who is donating property.
- e. "Trustee": shall mean NYSARC, INC. who holds legal title to property "in trust" for the benefit of another person.
- f. "NYSARC, INC.": is a not for profit corporation created under the laws of the State of New York.
- g. "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 Trustee in accordance with the Joinder Agreement who may receive the benefits of the Trust property.
- h. "Distribute": shall mean to pay over, convey, deliver, transfer, and assign absolutely and in fee simple forever, free of all trusts created hereunder.
- i. "Trust Account": shall mean the pooled accounts.
- j. "Sub-Trust Account": shall mean a separate account maintained for each beneficiary of the Trust.
- k. "Joinder Agreement": shall mean the instrument that is executed by the Settlor for purposes of establishing a separate sub-trust account for the benefit of a person with a disability.
- l. "Remainderman": the individual or entity receiving proceeds upon termination of the sub-trust account.
- m. "Remainder Sub-Trust Account": shall mean the separate account

maintained by the Trustee to which shall be credited any and all amounts remaining in a Beneficiary's Sub-Trust Account upon the death of said Beneficiary.

n. "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 as defined in POMS SI 01120.225.

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 in Social Security Law Section 1614 (a) (3) [42 USC 1382c(a) (3)] for whom trust accounts (hereinafter called "Sub-Trust Account") are established and upon the death of the beneficiary, the funds that are received by the Trust shall either be distributed in accordance with Section 8.3 or retained by the NYSARC, INC. COMMUNITY TRUST III and administered by the Trustee to further the express purpose of the Trust as more fully stated below. This Trust is intended to provide, in the sole and absolute discretion of the Trustee, 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 future 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 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, even though other family members may incidentally benefit. Nothing benefits the Beneficiary exclusively, because he/she is a beloved member of a family unit. Notwithstanding the above, the Trustee retains the full discretion to determine the appropriateness of said expenditures.

Notwithstanding anything to the contrary contained herein, any and all amounts remaining in the Trust upon the death of any Beneficiary, to the extent they are not otherwise distributed pursuant to section 8.3 *infra*, shall be credited to the "Remainder Sub-Trust Account" which amounts shall be retained by the trust and administered in accordance with applicable federal and New York State laws and regulations.

To the extent that amounts remaining in a Beneficiary's account upon the death of the Beneficiary are not retained by the trust and credited to the Remainder Sub-Trust Account, to be used in furtherance of the purpose of the Trust, the Trust shall pay to the State(s) from the amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the individual under the State Medicaid plan(s). To the extent that the trust does not retain the funds in the account, the State(s) shall be the first payee(s) of any such funds and the State(s) shall have priority over payment of other debts and administrative expenses as listed in the POMS SI 01120.203B.3.a.

2.1.1 Compliance with Federal and State Law: This Trust is established pursuant to, and is intended to comply with the provisions of 42 USC 1396 (p) (d) (4) (commonly known as OBRA '93), New York Social Services Law Section 366 (2) (b) (2) (iii) (B), the New York State Department of Health and rules and regulations promulgated thereunder and shall be construed accordingly. The Trustee shall provide to the New York State Department of Social Services and/or the appropriate social services district of the State of New York such notices as are required by statute and regulation.

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.
- 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 Trustee. A sample of the Joinder

Agreement is attached hereto. Upon delivery to and acceptance by the Trustee of cash, its equivalent, or then marketable securities, the Trust, as to the Beneficiary, shall be irrevocable and said property shall be non-refundable. 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 Trustee.

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 Trustee, the Trustee agrees to hold, administer, and distribute the income and principal of the Trust in accordance with the terms and provisions hereinafter set forth.

ARTICLE THREE

3.0 EXPENDITURES:

3.1 The Trustee may, at its 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 sources.

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 Trust and of 42 U.S.C. 1396p(d)(4)(C), Social

Services Law 366 (2)(b)(2)(iii)(B) and the New York Estate Powers and Trusts Law (EPTL) Section 7-1.12. This provision is intended to negate and eliminate any discretion granted to any Court by EPTL 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 if the Trustee receives any contributions from the Beneficiary, whether as an outright gift or pursuant to a Court Order, that these Trust assets are to be protected by the terms of this Supplemental Needs Trust. The Settlor and Trustee intend that the Beneficiary have the same property rights as any other person who does not have a disabling condition.

Notwithstanding the provisions above, the Trustee in consultation with the legal guardian, if any, may make distributions to meet the Beneficiary's need for food, clothing, shelter or 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 Trustee determines (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 Trustee's 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 Trustee's 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 distribution of funds can be made.

ARTICLE FOUR

4.0 TRUSTEE FEES

- 4.1 The Trustee shall be entitled to an annual fee from each sub-trust account. The annual fee shall be calculated based upon the sub-trust account's status and in accordance with the published fee schedule then in effect which is subject to and may change from time to time.

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 which 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 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, but 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 money or property of the Trust shall be pledged, assigned, transferred, sold in any manner anticipated, charged or encumbered by any Beneficiary, remainderman or other Beneficiary hereunder, except by operation of law, or be in any manner liable while in the possession of the Trustee for his/her or their debts, contracts, obligations, or engagements, voluntary or involuntary, or for any claims, legal or equitable, against such remainderman, beneficiary, or beneficiaries. No Trust property shall be available to any Beneficiary, remainderman, or any other Beneficiary until actually delivered to or for the benefit of him or her.

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 reasonably 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 SUCCESSORS

7.1 This Trustee may resign at any time: In the event a Trustee resigns, the successor shall be selected and appointed by NYSARC, Inc. If NYSARC, Inc. does not appoint a successor within thirty (30) days of its resignation its successor shall be selected and appointed by a court of appropriate jurisdiction in Albany County, New York. Upon resignation, the Trustee shall prepare a final accounting which accounting shall be approved by a special committee created by the Board of Governors of NYSARC, Inc. and the successor Trustee, if required, shall seek approval by a court of appropriate jurisdiction in Albany County, New York.

7.2 Rights and Powers of Successor Trustees: Every successor Trustee or additional Trustee appointed to and accepting a Trusteeship hereunder shall have all the rights, title, powers, duties, exemptions and limitations of the original Trustee; but no successor 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 Trustee. The Trustee shall promptly notify the Executive Committee of the Board of Governors of NYSARC, Inc. and the Beneficiaries and their representatives upon the happening of any change in the personnel of Trusteeship.

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 [REPEALED]

8.3 Death Of Beneficiary

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. Upon the death of the Beneficiary, the Trustee shall cause to be determined the dollar amount of any Medicaid lien which is or would be imposed against the deceased Beneficiary's assets, without regard to the existence of and the Beneficiary's participation in the Trust. It is anticipated that the lien amount will be equal to the unreimbursed cost of Medicaid that the Beneficiary received throughout his/her lifetime.
- b. After the determination in (a) above is made, any remaining balance in the deceased Beneficiary's sub-trust account will be distributed or retained as follows:

- a) If the balance in the deceased Beneficiary's sub-trust account is less than the amount of money that would be due Medicaid, as if this Trust were a 1396(p)(d)(4)(A) self-settled OBRA payback Trust, then all remaining amounts in the deceased Beneficiary's sub-trust account shall be retained by the **NYSARC, INC. COMMUNITY TRUST III** and administrated in accordance with applicable federal and New York State laws and regulations.
- b) If the balance in the deceased Beneficiary's sub-trust account is greater than the amount of money that would be due Medicaid, as if this Trust were a 1396(p)(d)(4)(A) self-settled OBRA payback Trust, then any remaining amounts in the deceased Beneficiary's sub-trust account will be distributed as follows and in the following order:
 - i. First, the trust shall pay to the State(s) from the amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the individual under the State Medicaid plan(s). To the extent that the trust does not retain the funds in the account, the State(s) shall be the first payee(s) of any such funds and the State(s) shall have priority over payment of other debts and administrative expenses except as listed in the POMS SI 01120.203B.3.a.
 - ii. Second, NYSARC, Inc. will be paid an amount equal to twenty-five percent (25%) of the remaining balance after subtraction of

the amount due the State in (i) above.

- iii. Third, the balance to be distributed in accordance with the executed Joinder Agreement or as defined in subsequent approved, written notice submitted to NYSARC, Inc.

8.4 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. Upon the death of the beneficiary, the funds that are received by the Trust shall be retained by the **NYSARC, INC. COMMUNITY TRUST III** and administered by the Trustee in accordance with applicable federal and New York State laws and regulations.

ARTICLE NINE

9.0 DISCLOSURE OF POTENTIAL CONFLICTS OF INTEREST

9.1 There may be a potential conflict of interest in the administration of the Trust since the Trust may retain those funds remaining in the Trust at the time of death of the beneficiary. Funds remaining in the Trust may be used to pay for ancillary and/or supplemental services for beneficiaries and potential beneficiaries which services may be rendered by a Chapter of NYSARC, Inc. or by NYSARC, Inc. itself.

The Donors executing the Joinder Agreements 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 be initially 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 seventeen (16) pages, including this page, on the date first above written.

NYSARC, INC., as Settlor

BY: _____

As Its: President

DocuSigned by:

Sharon C. Zylke

8FC393C7090247A...

NYSARC, INC., as Trustee

BY:

DocuSigned by:

Dr. John Kowalczyk

8FC393C7090247A...

As Its: President

STATE OF NEW YORK)
COUNTY OF *Albany*) s.s.:

On this 15 day of July, 2020, before me personally came Dr. John Kowalczyk to me known, did depose and say that he is the President of NYSARC, Inc., the corporation described herein and which executed the foregoing instrument, and that he signed his name thereto by authority of the Board of Directors of said corporation.

Bridget A. Farrell

NOTARY PUBLIC
BRIDGET A. FARRELL
Notary Public, State of New York
No. 01FA5050227

Qualified in Rensselaer County 21

Key Bank NA Commission Expires 9/25/2021, as Co-Trustee
Financial Institution

BY:

As Its:

Cynthia J McParad

STATE OF NEW YORK)
COUNTY OF *Albany*) s.s.:

On this 16 day of July, 2020, before me personally came Cynthia J McParad to me known, did depose and say that he/she is the Senior Vice President of Key Bank NA, 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.

WENDY L KISSELBACK
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01K14888290
Qualified in Albany County
Commission Expires March 30, 2023

Wendy L Kisselback
NOTARY PUBLIC