

# **NYSARC, INC. COMMUNITY TRUST I**

*(A Trust for Persons with Disabilities)*

## **MASTER TRUST**

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

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Revised 2020

**NYSARC, INC. COMMUNITY TRUST I**  
***(A Trust for Persons with Disabilities)***

**MASTER TRUST**

**As Amended**

**THIS TRUST** made this 19<sup>th</sup> day of January, 2021 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 April 19, 1997 and subsequently modified on April 20, 2001; October 17, 2002; October 23, 2003; April 2, 2004; September 30, 2010; June 13, 2012; September 30, 2014; June 11, 2016; and on July 16, 2020 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 April 19, 1997 by Trust Agreement established a Trust known as the **NYSARC, INC. COMMUNITY TRUST I**; and

**WHEREAS**, Settlor amended, modified and restated the original Trust Agreement since April 19, 1997 as of April 20, 2001; October 17, 2002; October 23, 2003; April 2, 2004; September 30, 2010; June 13, 2012; September 30, 2014; June 11, 2016; and on July 16, 2020 and

**WHEREAS**, Settlor desires to once again 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 established a Trust known as the "**NYSARC, INC. COMMUNITY TRUST I**" solely to 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 I

#### 1.2 Definitions:

For all purposes under this instrument:

- a. "NYSARC, INC. COMMUNITY TRUST I": 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 accountings of funds held on its behalf under custodial, agency, and 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 be retained by the NYSARC, INC. COMMUNITY TRUST I and administered by the Trustee to further the express

purpose of the Trust as more fully stated below. A Sub-Trust Account may be established through the actions of the disabled individual, their parent(s), their grandparents, their legal guardian(s), or a court. 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 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... 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 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.

However, to the extent that amounts remaining in a Beneficiary's account upon the death of the Beneficiary are not in fact retained by the trust, the trust shall pay to the State(s) from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary 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 SI1120.203B.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) and 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 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 the New York Estates, Powers and Trust Law Section 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 retained by the NYSARC, Inc. Community Trust I and administered in accordance with applicable federal and New York State laws and regulations. However, to the extent that amounts remaining in the individual's account upon the death of the individual are not in fact retained by the trust, the trust shall pay to the State(s) from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the individual under the 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.

- 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 I and administered by the Trustee to further the purposes of the Trust.

## 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 retains 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 Invalidation 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.

10.3 Amendment: No modifications or amendments made herein to the to the original Trust Agreement dated April 19, 1997 shall in any way adversely affect any beneficiary or a beneficiary's interest in the Trust that was in existence pursuant to the original Trust Agreement but prior to the effective date hereof.

**IN WITNESS WHEREOF**, the undersigned hereby subscribe to this **MASTER TRUST**, consisting of fifteen (15) pages, including this page, on the date first above written.

NYSARC, INC., as Settlor

BY: DocuSigned by:  
Dr. John Kowalezyk  
AFC393C7090247A  
As Its: President



NYSARC, INC., as Trustee

BY: DocuSigned by:  
Dr. John Kowalczuk  
8FC393C7000247A...  
As Its: President

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

On this 19 day of January, 2021, before me personally came John Kowalczuk, 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.

Registration No. 02AR629807  
Qualified in Albany County  
Commission Expires 3/16/23

Nadia Issel Breitenstein  
NOTARY PUBLIC

Curt J. McDonald, as Co-Trustee  
Financial Institution

BY: Senior Vice President  
As Its:

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

On this 19 day of January, 2021 before me personally came CYNTHIA S McDONALD to me known, did depose and say that he/she is the SR 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.

**FRANK SCHEU**  
Notary Public, State of New York  
Qualified in Albany County  
Reg. No. 4234874  
My Commission Expires July 29, 2021

[Signature]  
# 4984674  
NOTARY PUBLIC  
FRANK SCHEU  
Ex 1/29/2021