

NYSARC, INC. THIRD PARTY AGENCY TRUST

(A Trust for Persons with Disabilities)

MASTER TRUST

NYSARC, Inc.
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NYSARC, INC. THIRD-PARTY AGENCY TRUST

(A Trust for Persons with Disabilities)

MASTER TRUST

As Amended

THIS TRUST Agreement, made as of the 26th day of January, 2006 by and between the New York State Office of Mental Retardation and Developmental Disabilities, the New York State Office of Mental Health, said agencies acting by and through the State of New York, both of whom are hereinafter collectively called the "Grantor" and NYSARC, Inc., a New York State not for profit corporation, with principal offices located at 393 Delaware Avenue, Delmar, New York, and a financial institution as selected in Article V as co-trustee (hereinafter collectively referred to as "Trustee").

WITNESSETH:

WHEREAS, the Grantor shall be New York State agencies, specifically the New York State Office of Mental Retardation and Developmental Disabilities and the New York State Office of Mental Health, said agencies acting by and through the State of New York; and

WHEREAS, it is anticipated that the New York State agencies for a variety of reasons, including but not limited to the following two distinct circumstances, may wish to place monies into Trust for the benefit of persons with disabilities:

1. When a Court appointed Guardian provides the State Agency with a **voluntary** payment in (partial) satisfaction of a **non-Medicaid funded statutory debt**,

specifically a debt under Mental Hygiene Law Article 43 and its predecessors) the State Agency, consistent with its statutory authority under Mental Hygiene Law § 43.03(b), has decided to deposit a percentage of the **non-Medicaid funded statutory debt**, into this Third-Party Supplemental Needs Trust for the **lifetime** benefit of individuals with disabilities (the "Beneficiary"). Upon the death of the Beneficiary, the Trustee, after payment of commissions and reimbursement for outstanding expenses, shall pay the balance of the Beneficiary's sub-trust account to the respective State Agency, as referenced in the Joinder Agreement, to satisfy the above referenced statutory debt.

2. When the State Agency is the representative payee of a person with disabilities' social security benefit, and the State Agency has received a "lump sum award", the State Agency, as representative payee", can use the lump sum award to pay for future costs of care as authorized by Mental Hygiene Law §43.03 (a) and federal case law. Pursuant to Mental Hygiene Law §43.03(b), the State Agency can defer the collection of some or all of the lump sum award and instead deposit some or all of the money into this Third Party Supplemental Needs Trust. Upon the death of the Beneficiary, the Trustee, after payment of commissions and reimbursement for outstanding expenses, shall pay the balance of the Beneficiary's sub-trust account to the respective State Agency, as referenced in the Joinder Agreement, to satisfy the above referenced statutory debt; and

WHEREAS, the Grantor desires by this Agreement to establish a trust of the property hereinafter described, upon the conditions and for the purposes hereinafter set forth; and

WHEREAS, the Grantor, in consideration of the premises and the covenants herein contained, has assigned, transferred, conveyed and delivered to the Trustee the property described in Schedule "A", attached hereto, receipt of which is acknowledged by the Trustee; and

WHEREAS, the Grantor may, at any time and from time to time, with the consent of the Trustee, deposit with the Trustee, additional cash or securities and the Trustee agrees to hold, administer and distribute all such assets in accordance with the following terms and provisions:

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:

The name of this Trust shall be:

THE NYSARC, INC. THIRD PARTY AGENCY TRUST

1.2 Definitions:

For all purposes under this instrument:

- a. "NYSARC, INC. THIRD PARTY AGENCY TRUST": shall mean a Supplemental Needs Trust (SNT) that is created pursuant to New York State Estates Powers and Trusts Law (EPTL) §7-1.12.
- b. EPTL §7-1.12 authorizes the establishment of Supplemental Needs Trusts for Persons with Severe and Chronic or Persistent Disabilities.

- c. "Grantor": shall mean the New York State Agency, specifically either the New York State Office of Mental Retardation and Developmental Disabilities or the New York State Office of Mental Health, establishing a Supplemental Needs Trust and consistent with its powers under Mental Hygiene Law § 43.03 (b) funding, the trust property for the benefit of persons with disabilities.
- d. "Trustee": shall mean NYSARC, Inc. and a financial institution 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. "Developmental Disability" means developmental disability as defined in subdivision twenty-two of section 1.03 of the Mental Hygiene Law.
- g. "Government benefits or assistance" means any program of benefits or assistance which is intended to provide or pay for support, maintenance or health care and which is established or administered, in whole or in part, by any federal, state, county, city or other governmental entity.
- h. "Mental Illness" means mental illness as defined in subdivision twenty of section 1.03 of the Mental Hygiene Law.
- i. "Person with a severe and chronic or persistent disability" means a person with mental illness, developmental disability, or other physical or mental impairment whose disability is expected to, or does, give rise to a long-term need for specialized health, mental health, developmental disabilities, social or other related services; and who may need to rely on government benefits or assistance.

j. "Beneficiary or Disabled Beneficiary": shall mean those persons with mental retardation, mental health or other disabilities as identified in the Joinder Agreement who may receive the benefits of the Trust property.

k. "Distribute": shall mean to pay over, convey, deliver, transfer, and assign absolutely and in fee simple forever, free of all trusts created hereunder.

l. "Trust Account": shall mean the pooled accounts.

m. "Sub-Trust Account": shall mean a separate account maintained for each Beneficiary of the Trust.

n. "Joinder Agreement": shall mean the instrument that is executed by the Grantor for purposes of establishing a separate sub-trust account for the benefit of an individual with a disability.

o. "Remainderman": shall mean the New York State Agency, specifically either the New York State Office of Mental Retardation and Developmental Disabilities or the New York State Office of Mental Health, receiving the remaining proceeds upon termination of the sub-trust account.

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") for whom trust accounts (hereinafter called "Sub-Trust Account") are established.

The property shall be held IN TRUST, for the benefit of the Disabled Beneficiary and shall be held, managed, invested and reinvested by the Trustee, who shall collect the income there from and after deducting all charges and expenses properly attributed thereto, shall, at any time and from time to time, apply for the benefit of the Beneficiary, so much (even to the extent of the whole) of the net income and/or principal of this Trust as the Trustee shall deem advisable, in its sole and absolute discretion subject to the limitations set forth below.

Upon the death of the Beneficiary, the funds remaining in the Beneficiary's sub-trust account shall be paid back to the respective New York State Agency, hereinafter referred to as "State Agency", as referenced in the Joinder Agreement. 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 the benefits that 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 mental retardation, mental illness or physical, mental, psychological or developmental disabilities from any federal, state or local government program, agency or department.

Except as Grantor's intent is otherwise expressed in the Joinder Agreement, Grantor declares that in creating the Trust account provided for the Beneficiary, the Grantor'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 the respective New York State agency as the remainderman of the trust account. Grantor directs that this purpose be carried out in determining any questions which may arise between the interests of the Beneficiary and the remainderman. Any and all amounts remaining in the Trust upon the death of any

Beneficiary shall be paid to the respective New York State agency as specified in the Joinder Agreement establishing the sub-trust account.

2.1.1 Compliance with State Law: This Trust is established pursuant to, and is intended to comply with the provisions of New York Estates, Powers and Trusts Law §7-1.12.

2.2 Eligibility

- a. Eligible Beneficiaries: This Trust is open to individuals who (1) have outstanding debts owed to New York State which predate the Medicaid program established on April 1, 1968 (2) individuals for whom New York State acts as representative payee for lump sum social security, railroad retirement or veterans benefits, and who are receiving care from a New York State Agency; by which said State Agency can use the lump sum award to pay for future costs of care as authorized by Mental Hygiene Law §43.03(b) and federal case law and (3) such other OMH and OMRDD persons who have debts owed to the State Agency under Mental Hygiene Law Article 43. The State has identified these individuals and has agreed to settle their claims and allow a portion of the debt to be placed in 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 by an authorized representative of the respective State Agency and, 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.

2.3 Acceptance

The Grantor hereby establishes a Master Trust for the convenience of the State Agencies and for the ease of administration. 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.

2.4 Beneficiary Liaison

The Grantor shall provide each Beneficiary of the Trust with a liaison who shall serve as the sole contact person to the Trust Department for all administrative purposes including disbursement requests. Said liaison's name and contact information shall be supplied on the Joinder Agreement establishing the sub-trust account and may only be changed by submitting a written notice to the Trust Department.

ARTICLE THREE

3.0 EXPENDITURES:

3.1 The Trustee may, at its sole and absolute 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 and all sources.

3.2 It is the Grantor's intent to create a supplemental needs trust which conforms to the

provisions of section 7-1.12 of the New York Estates, Powers and Trusts law. The Grantor intends that the trust assets be used to supplement, not supplant, impair or diminish, any benefits or assistance of any federal, state, county, city, or other governmental entity for which the Beneficiary may otherwise be eligible or which the Beneficiary may be receiving. Consistent with that intent, it is the Grantor's desire that, before expending any amounts from the net income and/or principal of this trust, the Trustee consider the availability of all benefits from government or private assistance programs for which the Beneficiary may be eligible and that, where appropriate and to the extent possible, the Trustee endeavor to maximize the collection of such benefits and to facilitate the distribution of such benefits for the benefit of the Beneficiary.

- 3.3 None of the income or principal of this Trust shall be applied in such a manner as to supplant, impair or diminish benefits or assistance of any federal, state, county, city, or other governmental entity for which the Beneficiary may otherwise be eligible or which the Beneficiary may be receiving.
- 3.4 The Beneficiary does not have the power to assign, encumber, direct, distribute or authorize distributions from this Trust.
- 3.5 Notwithstanding the provisions above, the Trustee in consultation with the Beneficiary's Beneficiary Liaison and/or legal guardian or other authorized representative as specified in the Joinder Agreement, 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.

- 3.6 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

The Trustee shall be entitled to an annual trustee commission from each sub-trust account as set forth in the New York State Surrogate's Court Procedure Act §2309. Additionally, the Trustee shall be entitled to administrative fees which 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 accountings 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. In addition, said periodic accountings shall be sent to each Beneficiary Liaison referred to in Section 2.4, above. 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 New York State

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.

5.6 Deposits: Additional deposits to a Beneficiary's sub-trust account may be accepted or denied in the sole and absolute discretion of the Trustee.

ARTICLE SIX

6.0 INDEMNIFICATION

6.1 The 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 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 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 member of the Management Board appointed by the 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 Resignation of Co-Trustee: In the event the bank serving as Co-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 Trustee: 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 affects a prior executed Joinder Agreement.

8.2 Termination Prior to the Death of the Beneficiary

In the event that a Beneficiary of a sub-trust account is no longer a person with a severe and chronic or persistent disability, as defined in Section 1.2(i) above, and the State Agency advises that it no longer is going to provide the Beneficiary Liaison required in Section 2.4, and the Trustee is not provided with a successor liaison, the Trustee may, in its sole and absolute discretion, terminate the Beneficiary's sub-trust account or distribute in monthly payments all remaining funds in the sub-trust account directly to the Beneficiary after the payment of Trustee's fees and administrative expenses. The number of monthly payments shall be determined in the Trustee's sole and absolute discretion.

8.3 Death Of Beneficiary

Upon the death of the Beneficiary, any and all amounts remaining in the Beneficiary's sub-trust account shall be paid to the respective State Agency as specified in the Joinder Agreement, after the final payment of Trustee fees and outstanding administrative expenses.

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.

ARTICLE NINE

9.0 **SITUS:**

9.1 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.

9.2 **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.

9.3 **Amendment:** Modifications and/or amendments made to this original Trust Agreement dated January 26, 2006, shall in no way adversely affect any Beneficiary or a Beneficiary's interest in the Trust that was in existence pursuant to the original Trust Agreement.

IN WITNESS WHEREOF, the undersigned hereby subscribe to this **MASTER TRUST**,
consisting of 17 pages, including this page, on the date first above written.

**NEW YORK STATE, Office of Mental Retardation
and Developmental Disabilities**

BY: *James F. Moran*
As Its: *Deputy Commissioner*

NEW YORK STATE, Office of Mental Health

BY: *Reynold Stover*
As Its: *Director, Finance Group*

NYSARC, Inc., as Trustee

BY: *JL The*
As Its: *President of NYSARC, Inc.*

**J.P. MORGAN CHASE BANK NA, as Co-
Trustee**

BY: *Richard E. Exton V.P.*
As Its: *Richard E. Exton Vice President*

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

On this 20 day of MARCH, 2006 before me personally came JAMES F. MOGAN, to me known, did depose and say that he/she resides at 44 HOLLAND AVE, ALBANY, NY, and that he/she is a duly authorized agent of the State of New York and is hereby authorized to sign on behalf of the Office of Mental Retardation and Developmental Disabilities.

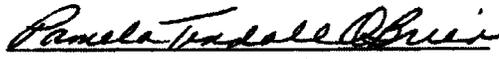
ROBERT R. MASCALI
Notary Public, State of New York
No. 4654667
Qualified in Albany County
Commission Expires April 30, 20 07



NOTARY PUBLIC

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

On this 20th day of March, 2006 before me personally came Roger Blauer, to me known, did depose and say that he/she resides at 44 Holland Ave Albany NY; and that he/she is a duly authorized agent of the State of New York and is hereby authorized to sign on behalf of the Office of Mental Health.



NOTARY PUBLIC

PAMELA A. TINDALL-O'BRIEN
Notary Public, State of New York
5031512
Qualified in Albany County
Commission Expires August 8, 20 06

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

On this 8th day of February, 2006, before me personally came Thomas Moore, to me known, did depose and say that he resides at 170 E. Mineola Avenue, Valley Stream, New York; and 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.

Yolanda Greene
NOTARY PUBLIC

YOLANDA GREENE
Notary Public, State of New York
No. 01GR8107388
Qualified in Nassau County
Commission Expires March 29, 2008

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

On this 2 day of MARCH, 2006, before me personally came Richard E. Exton, to me known, did depose and say that ~~he~~ she resides at FARMINGTON, N.Y.; that ~~s~~he is the Vice President of JP MORGAN CHASE BANK NA, the 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.

Rosanne Lawton-Taubold
NOTARY PUBLIC

ROSANNE LAWTON-TAUBOLD
Notary Public in the State of New York
Monroe County
Commission Expires January 3, 200