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Circular Letter No.: 23-2010  
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### **CIRCULAR LETTER**

**TO : ALL PRE-NEED COMPANIES AND TRUST ENTITIES  
AUTHORIZED TO ACT AS TRUSTEE FOR PRE-NEED  
TRUST FUNDS**

**SUBJECT : TEMPLATE OF TRUST AGREEMENT**

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In view of the enactment of Republic Act No. 9829, otherwise known as the "Pre-Need Code of the Philippines," the Insurance Commission hereby issues the attached template of trust agreement to be used by all pre-need companies and trust entities authorized to act as trustee for pre-need trust funds.

All existing trust agreements shall be replaced using this new template and accordingly pre-need companies are required to submit the names of their respective trustees together with copies of their new trust agreements not later than July 20, 2010.

For strict compliance.

**SANTIAGO JAVIER RANADA**  
Insurance Commissioner

# TRUST AGREEMENT

## KNOW ALL MEN BY THESE PRESENTS:

This Agreement (the "**Agreement**") made and entered into on this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, at the City of \_\_\_\_\_, the Republic of the Philippines, by and between:

**(Name of the Pre-Need Corporation)** \_\_\_\_\_, a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at \_\_\_\_\_, \_\_\_\_\_ City, the Republic of the Philippines, represented in this act by its \_\_\_\_\_ (position/item) \_\_\_\_\_, **MR.** \_\_\_\_\_, duly authorized for this purpose and hereinafter referred to as the "**TRUSTOR**";

- and -

**(Name of the Trustee)** \_\_\_\_\_, a **(trust company/trust department of a bank/investment house)** duly organized and existing under the laws of the Republic of the Philippines and licensed to engage in trust and other fiduciary business by the Bangko Sentral ng Pilipinas (BSP), with office address at \_\_\_\_\_, the Republic of the Philippines, represented herein by its \_\_\_\_\_ (position/item) \_\_\_\_\_, **MR.** \_\_\_\_\_, duly authorized for this purpose and hereinafter referred to as the "**TRUSTEE**";

(the **TRUSTOR** and the **TRUSTEE** are hereinafter collectively referred to as the "**PARTIES**").

## WITNESSETH THAT:

**WHEREAS**, Republic Act No. 9829, otherwise known as the "**Pre-Need Code of the Philippines ("Pre-Need Code")**" require issuers of pre-need plans to establish a Trust Fund with a trust company, trust department of a bank or investment house that is authorized to perform trust and other fiduciary functions by the Bangko Sentral ng Pilipinas (the "**BSP**") for the benefit of the Planholders;

**WHEREAS**, the Trust Fund is established to ensure the delivery of the guaranteed benefits and services to its planholders and/or their designated beneficiary/ies provided under a pre-need plan contract;

**WHEREAS**, in compliance with the **Pre-Need Code**, the **TRUSTOR** wishes to establish a Trust Fund for its Life Plan (the "Plan") with the **TRUSTEE** for the benefit of the planholders and/or their designated beneficiary/ies;

**WHEREAS**, the Trust Fund and this Agreement shall be governed by the **Pre-Need Code and its Implementing Rules and Regulations**, present pertinent rules and regulations and such other rules that the Insurance Commission (hereinafter referred to as "Commission") may issue in the future;

**WHEREAS**, the **TRUSTOR** has designated the **TRUSTEE** for such amounts as the **TRUSTOR** will from time to time remit, deliver and deposit in trust into such a Trust Fund out of the payments or installments collected by it from the Planholders in such amounts based on or in accordance with the rates used in the actuarial studies submitted by the **TRUSTOR**, and approved by the Commission in connection with the registration of the Plan, for the account of the Planholders, who are the beneficiaries of the TRUST and the **TRUSTEE** has accepted the appointment to be the Trustee of the Trust Fund;

**NOW THEREFORE**, for and in consideration of the foregoing premises and of the mutual covenants, undertakings and stipulations set herein, the parties hereto agree as follows:

**ARTICLE I**  
**Creation of the Trust Fund**

The **TRUSTOR** hereby creates and establishes with the **TRUSTEE** a Trust Fund, designated as Trust Fund (Account) No. \_\_\_\_\_, in trust for the planholders of (**Name of Pre-Need Corporation**) consisting of an initial deposit in the amount of PESOS: \_\_\_\_\_, Philippine currency, made concurrently with the delivery hereof and such money as shall, from time to time, be deposited or delivered to the **TRUSTEE**, and such earnings, profit, increments and accrual thereon, as may occur from time to time. All such money and all investments made therewith and proceeds thereof, and all earnings and profits thereon, less payments, if any which at the time of reference shall have been made by the **TRUSTEE**, as authorized herein, are hereinafter referred to as the "**TRUST FUND**". The **TRUST FUND** is hereby being established exclusively and solely for (**Type of Pre-Need Plan**) \_\_\_\_\_, pursuant to the **Pre-Need Code** that

requires a separate trust to be established for each plan type.

The management of this Trust shall be subject to the provisions of the **Pre-Need Code, its Implementing Rules and Regulations**, present pertinent rules and regulations and such other rules that the Commission may issue in the future. In the event that more than one trustee manages or will manage the Trust Fund for a particular plan type, the provisions of the New Pre-Need Code and its Implementing Rules and Regulations on limits, schedules and conditions on Trust Fund deposits, disbursements, withdrawals, investments, as well as other relevant matters shall be applied to the totality of the fund per plan type managed by the trustees. In such case, the **TRUSTEE** shall closely coordinate with the **TRUSTOR** and other trustee/s, if necessary, to ensure compliance herewith.

**ARTICLE II**  
**Amount and Schedule of Deposits to the Trust Fund**

The **TRUSTOR** shall make monthly deposits to the **TRUST FUND** in an amount determined by the accredited actuary, sufficient to pay the benefits promised under the contract.

For plans paid in full, the **TRUSTOR** shall deposit into the Trust Fund at least forty-five percent (45%) of said full payment or such higher amounts as determined by the actuary. In case of installment payments, the minimum limits of the deposit contributions to the **TRUST FUND**, unless the viability study done by the actuary requires otherwise, shall be in accordance with the following schedule:

	Life Plans	Other Plans
Collection of the 1 <sup>st</sup> 20% of Contract Price	5%	5%
Collection of the 2 <sup>nd</sup> 20% of Contract Price	10%	10%
Collection of the 3 <sup>rd</sup> 20% of Contract Price	70%	80%
Collection of the 4 <sup>th</sup> 20% of Contract Price	70%	80%
Collection of the 5 <sup>th</sup> 20% of Contract Price	70%	80%

Contributions to the **TRUST FUND** shall not form part of the income or gross receipts of the **TRUSTOR** and, therefore, shall not be available for dividend declaration or payment to creditors.

The deposits to the **TRUST FUND** shall be made within twenty (20) days from the end of each reference month for payments received from plans whether paid for in full or in installments.

Should the Commission discover a deficiency in the **TRUST FUND**, it shall give notice of the same to the **TRUSTOR** and require the latter to make additional deposits.

The **TRUSTOR** shall have thirty (30) days from receipt of notice to make the said deposits and correct the deficiency.

For plans sold prior to the effectivity of the **Pre-Need Code**, the minimum contributions to the **TRUST FUND** shall be governed by the rules and regulations in force at the time of sale.

### **ARTICLE III Withdrawals and Payments made out of the Trust Fund**

No withdrawal shall be made from the Trust Fund except for paying the Benefits such as monetary consideration, the cost of services rendered or property delivered, trust fees, bank charges and investment expenses in the operation of the Trust Fund, termination values payable to the Planholders, annuities, contributions of cancelled plans to the fund, and taxes on Trust Funds. Furthermore, only reasonable withdrawals for minor repairs and costs of ordinary maintenance of trust fund assets shall be allowed. Except as otherwise provided under this Article, the Pre-Need Code and its Implementing Rules and Regulations, no withdrawal shall be made from the TRUST FUND unless approved by the Commission. The TRUST FUND shall at all times be sufficient to cover the required pre-need reserve.

### **ARTICLE IV Responsibilities, Duties and Liabilities of the TRUSTEE**

The Trust Fund, inclusive of earnings, shall be administered and managed by the **TRUSTEE**, for the protection of the planholders. The Trust Fund shall be under the management and control of the **TRUSTEE**. The **TRUSTEE** shall administer and manage the Trust Fund with utmost good faith, care and prudence required by a fiduciary relationship. Any provision or stipulation allowing the direction of the Trust Fund by the **TRUSTOR** or any arrangement requiring prior approval or consent by the **TRUSTOR** on any matter involving the management of the Trust Fund is not allowed.

The **TRUSTEE** shall have exclusive management and control over the Trust Funds and the right at any time to sell, convert, invest, change, transfer or otherwise change or dispose of the assets comprising the Trust Fund within the parameters prescribed by the **TRUSTOR** and provided that these parameters are compliant with the Commission's regulations.

The **TRUSTEE** shall not use the Trust Fund to invest in or extend any loan or credit accommodation to the **TRUSTOR**, its directors, officers, stockholders, and related interests as well as to persons or enterprises controlling, owned, or controlled by, or under common control with said **TRUSTOR**, its directors, officers, stockholders and related interests except for entities which are direct providers of the **TRUSTOR**.

The **TRUSTEE** shall abide by the rules and regulations of the Commission with respect to the Trust Fund.

Except for its failure to exercise the skill, care and prudence required by the Pre-Need Code and its Implementing Rules and Regulations or due to its fraud, gross negligence or evident bad faith, the **TRUSTEE** shall not be liable for any loss or depreciation in the value of the assets of the Trust Fund resulting from any of the investment or reinvestment operations made by it pursuant to this Agreement and the exercise of discretionary powers given to it under the same. In case of substantial losses of the Trust Fund as a result of the **TRUSTEE's** fraud, gross negligence or bad faith, it shall be liable to the **TRUSTOR** to the extent of the actual and/or incidental losses to the Trust Fund proven to be the result of such fraud, gross negligence or bad faith.

### **ARTICLE V Investment of the Trust Fund**

To ensure the liquidity of the Trust Fund, guarantee the delivery of the benefits to the planholders under the plan contract, and likewise to obtain sufficient capital growth to meet the growing actuarial reserve liabilities, all investments of the Trust Fund of the **TRUSTOR** shall be

limited to the following and subject to limitations to wit:

1. Fixed Income Instruments – These may be classified into short-term and long-term instruments. The instrument is short-term if the maturity period is three hundred sixty-five days (365) or less. This category includes:

- i) Government securities which shall not be less than ten percent (10%) of the trust fund amount;
- ii) Savings/time deposits and unit investment trust funds maintained with and managed by a duly authorized bank with satisfactory examination rating as of the last examination of the BSP;
- iii) Commercial papers duly registered with the SEC with a credit rating of “1” for short-term and “AAA” for long-term based on the rating scale of an accredited Philippine Rating Agency or its equivalent at the time of investment.

The maximum exposure to long-term commercial papers shall not exceed fifteen (15%) of the total Trust Fund amount while the exposure to each commercial paper of the issuer shall not exceed ten percent (10%) of the allocated amount; and

- iv) Direct loans to corporations which are financially stable, profitable for the last three (3) years and have a good track record of paying their previous loans.

These loans shall be fully secured by a real estate mortgage up to extent of sixty percent (60%) of the zonal valuation of the property at the time the loan was granted.

The property shall be covered by a transfer certificate of title registered in the name of the mortgagor and free from any liens and encumbrances.

The maximum amount to be allocated for direct loans shall not exceed five percent (5%) of the total Trust Fund amount while the amount to be granted to each corporate borrower shall not exceed ten percent (10%) of the amount allocated. The maximum term of the loan should be no longer than four (4) years.

Direct loans to planholders are exempt from the limitations set forth under this item provided, that such loans to planholders shall not exceed ten percent (10%) of the total Trust Fund amount.

2. Equities – Investment in equities shall be limited to stocks listed on the main board of a local stock exchange.

Investments in duly registered collective investment instruments such as mutual funds are allowed provided, that such funds are invested only in fixed income instruments and blue-chip securities, subject to the limitations prescribed by laws, rules and regulations. These investments shall include stocks issued by companies that are financially stable, actively traded, possess good track record for growth and have declared dividends for past three (3) years.

Notwithstanding the prohibition against transactions with directors, officers, stockholders, and related interests, the TRUSTEE may invest in equities of companies related to the TRUSTEE provided these companies comply with the foregoing criteria provided in this item for equity investments.

The amount allocated for this purpose shall not exceed thirty percent (30%) of the Trust Fund while the investment in any particular issue shall not exceed ten percent (10%) of the allocated amount. The investment shall be recorded at the aggregate of the lower of cost or market.

