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Department of Finance
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Circular Letter No.: 2 - 2013
Date : February 5, 2013

CIRCULAR LETTER

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

SUBJECT : REVISED TEMPLATE OF TRUST AGREEMENT

The Insurance Commission hereby issues the attached revised 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 are deemed to have incorporated the revisions/corrections contained in this revised template.

This supersedes Circular Letter No. 23-2010 dated June 25, 2010.

For immediate compliance.


EMMANUEL F. DOOC
Insurance Commissioner

Encls:a/s

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 _____ Plan (indicate 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%) for life plans and fifty one percent (51%) for education and pension plans 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 1st 20% of Contract Price	5%	5%
Collection of the 2nd 20% of Contract Price	10%	10%
Collection of the 3rd 20% of Contract Price	70%	80%
Collection of the 4th 20% of Contract Price	70%	80%
Collection of the 5th 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, 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 undertake to 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.

Existing investments which are not in accordance herewith shall be disposed of within three (3) years from the effectivity of this Act.

3. Real Estate – Income generating commercial and residential real estate properties, unless otherwise disallowed by the Commission.

These shall include real estate properties located in strategic areas of cities and first class municipalities. The Transfer Certificate of Title (TCT) shall be under the name of the seller, free from any liens and encumbrances and shall be transferred in the name of the **TRUSTEE** in trust for the planholders unless the seller/transferor is the **TRUSTOR** wherein an annotation to the TCT relative to the sale/transfer may be allowed. It shall be recorded at acquisition cost.

The real estate shall be appraised every three (3) years by a licensed real estate appraiser, accredited by the Philippine Association of Real Estate Appraisers, to reflect the increase or decrease in the value of the property. In case the appraisal would result in an increase in the value, only sixty percent (60%) of the appraisal increase is allowed to be recorded in the books of the Trust Fund but in case of decline in value, the entire decline shall be recorded. Appraisal increment should not be used to cover up the required monthly contribution to the Trust Fund.

The total recorded value of the real estate investment shall not exceed ten percent (10%) of the total Trust Fund amount. In the event that the existing real estate investment exceeds the aforesaid limit, the same shall be leveled off to the prescribed limit within three (3) years from the effectivity of the Pre-Need Code.

Investment to the Trust Fund, which is not in accordance with the preceding paragraphs, shall not be allowed, unless prior written approval of the Commission is secured and provided further, that no deposit or investment in any single entity shall exceed fifteen percent (15%) of the total value of the Trust Fund: provided finally that the Commission is authorized to adjust the percentage allocation per category set forth herein not in excess of two percentage (2%) points upward or downward and no oftener than once every five (5) years. The first adjustment hereunder maybe made no earlier than five (5) years from the effectivity of the Pre-Need Code. The **TRUSTOR** shall not use the Trust Fund to extend any loan or to invest in its directors, stockholders, offices or affiliates.

ARTICLE VI
No Guarantee of Income
No PHILIPPINE DEPOSIT INSURANCE CORPORATION (PDIC) Coverage

This account is not a deposit but a trust account. It is understood that a fixed rate of interest or a fixed return on the Trust Fund is neither assured nor guaranteed by the **TRUSTEE**. THIS AGREEMENT IS NOT COVERED BY THE PDIC, and losses, if any, shall be for the account of the Trust Fund.

ARTICLE VII
The Liquidity Reserve Fund

The **TRUSTEE** shall at all times maintain a liquidity reserve which shall be sufficient to cover at least fifteen percent (15%) of the Trust Fund but in no case less than one hundred twenty – five percent (125%) of the amount of the availing plans for the succeeding year. For this purpose, the **TRUSTOR** timely shall submit to the **TRUSTEE** a summary of benefits payable for the succeeding year.

The following shall qualify as investments for the Liquidity Reserve Fund:

1. Loans secured by a hold-out on assignment or pledge deposits maintained either with the **TRUSTEE** or other banks, or of deposit substitute of the **TRUSTEE** itself or mortgage and chattel mortgage bonds issued by the **TRUSTEE**;
2. Treasury notes or bills, other government securities or bonds, and such other evidences of indebtedness or obligations the servicing and repayment of which are fully guaranteed by the Republic of the Philippines;
3. Repurchase agreements with any of those mentioned in item (2) above, as underlying instruments thereof; and
4. Savings or time deposits with government-owned banks or commercial banks.

ARTICLE VIII
Prohibited Investments

Unless otherwise allowed by the Pre-Need Code, the Implementing Rules and Regulations or by the Commission, 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, and to/from any of the **TRUSTEE**'s departments, directors, officers, stockholders and related interests.

ARTICLE IX
Recognition and Measurement of Trust Fund Assets and Liabilities

The Trust Fund assets and liabilities shall be recognized in accordance with the provisions of the effective Philippine Accounting Standards (PAS) and Philippine Financial Reporting Standards (PFRS) and their interpretations including the PAS 39 for Financial Instruments and PAS 40 for Investment Property.

ARTICLE X
Accounting and Reporting

The **TRUSTEE** shall keep and maintain books of accounts and other accounting records as required by law, the Pre-Need Code, its Implementing Rules and Regulations, present pertinent rules and regulations and such other rules which may in the future be issued by the Commission, the BSP and other regulatory agencies.

An **Annual Investment Strategy** shall be submitted by the **TRUSTEE** to the Commission and to the **TRUSTOR** on or before the end of February of each year, showing the allocation of the proposed investment for the next three (3) years.

A **monthly report** on the Trust Fund shall be submitted by the **TRUSTEE** to the **TRUSTOR** and the Commission within twenty (20) days after the end of each month for reconciliation purposes of the **TRUSTOR** and the Commission and shall include at least the following:

- a) Balance Sheet

The equity portion of the Trust Fund Balance Sheet shall state the following:

- i). Contributions and withdrawals for the reporting period shall be segregated from the prior year's accumulated figures.
- ii). Retained earnings for the reporting period shall be segregated from the prior year's accumulated surplus.

- b) An Income Statement, three (3) column report to include:
 - i). Month to Date income with equivalent Return On Investment (ROI)
 - ii) Year to Date income with equivalent ROI
- c) ROI Computation Schedule
 - i) For the Month
 - ii) Year to Date

The total portfolio shall be computed net of taxes and fees and inclusive of mark-to-market gains and losses. The standard formula for computing ROI shall be as provided in the applicable rules and regulations of the Commission.
- d) Schedule of Earning Assets including Mark-to-Market (M-T-M) Gains and Losses as of each ROI reporting date in the preceding paragraph.
- e) Special Transactions Report which lists transactions, outstanding balances and pertinent investment details on DOSRI Investments
- f) Investment Activity Report/Summary of Transactions Schedule
- g) Portfolio analysis schedule
- h) **TRUSTEE's** Certificate on Trust Fund Balance
- i) Summary of accounting policies on each significant trust fund assets and liabilities. If there would be no change in the policies for the succeeding months, a mere statement of consistent application would suffice.
- j) Explanatory or disclosure notes on significant items as required under PAS 32, 39, 40 and PFRS 7
- k) Such other statements and schedules as may be reasonably requested by the **TRUSTOR**.

An annual statement of the Trust Fund shall be submitted by the TRUSTEE to the Commission and to the TRUSTOR. The annual statement shall be in the form prescribed by the Commission and shall include details such as the income, disbursements, assets and liability items and such other details as may be required by the Pre-Need Code, its Implementing Rules and Regulations and such pertinent rules and regulations as may be promulgated from time to time by the Commission, the BSP and other regulatory agencies. The annual statement shall be certified under oath by at least two (2) of the highest ranking officers of the TRUSTEE. (Section 46 (b) of the Implementing Rules and Regulations)

The TRUSTEE undertakes to submit other data or information as may be prescribed or required by the Commission and shall submit to the continuing power of the Commission's duly authorized representatives to examine and verify the Trust Fund.

ARTICLE XI Trust Fees

For services rendered under this Agreement, the TRUSTEE shall charge a trust fee of _____.
(Please provide an itemized breakdown of fees.)

ARTICLE XII Powers of the Commission

Inspection of the Books of the Trust Fund – The books of accounts and all other relevant records including the securities held in custody by the TRUSTEE shall be subject to examination by the Commission from time to time to the extent and in the manner prescribed by the Commission. The Commission shall provide the TRUSTEE prior written notice containing the proposed date of inspection including the specific purpose and records to be reviewed.

Relevant Information – The Commission may demand any relevant information from the TRUSTEE.

Amendments to the Contract – This Agreement shall not be amended or modified without prior approval by Commission. Should there be any side, additional or other material agreements between the **TRUSTOR** and the **TRUSTEE** apart from the provisions of this Agreement, the same shall be submitted for approval to the Commission within forty-eight (48) hours from the date of execution thereof. The provisions of the side agreement shall take effect only after approval of the Commission is secured.

Termination of the Contract - Termination of the Agreement by either the **TRUSTOR** or **TRUSTEE** shall be subject to prior notice and approval by the Commission. In the event that the termination of the Trust Agreement is allowed by the Commission, the **TRUSTEE** shall submit within sixty (60) days from such termination its **final Termination Report** to the **TRUSTOR** and the Commission. The trust agreement with the successor-trustee shall be executed only upon prior approval of the Commission of the terms and conditions stated therein. In the event that there is already an existing trust agreement with the trustor pre-need corporation and the successor-trustee, there must be a clear acceptance on the part of the trustee of its designation/appointment as such.

Conversion of Trust Fund Assets - The Commission may, at its discretion, demand for the conversion to cash or other near cash assets of the investments made by the **TRUSTEE** to protect the interest of the Planholders.

Amendment or Revocation of Trust Agreement – The Commission may require amendment of the Trust Agreement, or revoke the same to ensure compliance with the **Pre-Need Code and its Implementing Rules and Regulations other pertinent rules and regulations** to protect the interest of the planholders and the investing public.

Inconsistency with other Rules and Regulations- In the event of inconsistency between the provisions of this Agreement and the **Pre-Need Code and its Implementing Rules and Regulations**, and such other rules, the rules of the Commission shall prevail.

ARTICLE XIII **Compliance with the AMLA, as amended**

The **PARTIES** hereby agree to abide by the provisions of Revised Rules and Regulations Implementing Republic Act No. 9160, otherwise known as The Anti-Money Laundering Act of 2001, as amended by Republic Act No. 9194 and Republic Act 10167 (the AMLA, as amended) particularly with regard to requirements on customer identification, record keeping and reporting of covered and suspicious transactions reports, with the end view of preventing money laundering and terrorism financing.

The **TRUSTOR** hereby declares that it is acting for the account of the beneficial owners of the trust fund who are planholders of the plans.

Any other stipulation that may be agreed upon by the **PARTIES** shall be contained in a supplemental document which shall be submitted to the Commission for review and approval.

IN WITNESS WHEREOF, the parties hereto affix their signatures on the date and place above written.

TRUSTOR

TRUSTEE

By:

By:

(Position)

(Position)

(Position)

(Position)

(Position)

(Position)

Signed in the presence of:

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
_____) S.S.

BEFORE ME, a Notary Public for and in the above jurisdiction, this _____ day of _____, 20____ personally appeared:

Name	Community Tax Certificate No.	Date/Place Issued
_____	_____	_____
_____	_____	_____
_____	_____	_____

all known to me to be the same person who executed the foregoing Trust Agreement and they acknowledge to me that the same is their own free and voluntary net and deed of will as that of the Corporation herein requested.

WITNESS MY HAND AND NOTARIAL SEAL on the date and at the place first above written.

Notary Public

Doc. No. _____;
Page No. _____;
Book No. _____;
Series of _____.