



## AMENDED AND RESTATED MASTER TRUST AGREEMENT

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of The Commonwealth of Massachusetts, with its principal office at \_\_\_\_\_, \_\_\_\_\_, Massachusetts ("Funeral Establishment") and \_\_\_\_\_, a national or state bank having trust powers or a trust company organized and existing under the laws of \_\_\_\_\_, with its principal office at \_\_\_\_\_, Massachusetts ("Trustee").

### RECITALS

The Funeral Establishment is licensed to provide funeral services in the Commonwealth of Massachusetts, and from time to time enters into contracts for the provision of funeral services and merchandise upon the future death of a named living person. The Funeral Establishment has reviewed this Amended and Restated Master Trust Agreement (the "Agreement") and wishes to participate in said Agreement by establishing separate trusts hereunder to receive certain monies paid to the Funeral Establishment under such contracts. The Trustee has agreed to act as trustee under this Agreement of the separate trusts established hereunder.

### WITNESSETH:

NOW, THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound, the Funeral Establishment and the Trustee hereby agree as follows:

1. Definitions. Unless the context clearly indicates otherwise, the following terms as used in this Agreement shall have the following meanings:
  - (a) Trustee: The national or state bank having trust powers or trust company whose name appears on the first page of this Agreement, its successors in interest and assigns, or any successor trustee appointed pursuant to this Agreement.
  - (b) Funeral Establishment: The proprietorship, partnership, or corporation whose name appears on the first page of this Agreement, its successors and assigns.
  - (c) NEFT Services: NEFT Services, Inc., a Massachusetts corporation with offices at 536 Broad Street, No. 4, Weymouth, Massachusetts which is a wholly owned subsidiary of the Massachusetts Funeral Directors Association, its successors and assigns.
  - (d) Master Trust: This Agreement, pursuant to which separate trust accounts shall be established and administered.
  - (e) Pre-Need Funeral Contract: A contract entered into by the Funeral Establishment for the provision of funeral services and merchandise upon the future death of a named living person. The form of Pre-Need Funeral Contract which may be used hereunder is attached as Exhibit A.
  - (f) Trust Account: The separate trust to be created, held and administered hereunder for the Beneficiary (or for the Purchaser, if no Beneficiary is designated) of each Pre-Need Funeral Contract with respect to which an amount is deposited hereunder.
  - (g) Purchaser: The person designated as such in a Pre-Need Funeral Contract.
  - (h) Beneficiary: The person designated as such in a Pre-Need Funeral Contract, or the Purchaser, if no Beneficiary is so designated.
  - (i) Total Deposit: The sum of the amounts deposited by the Funeral Establishment with the Trustee pursuant to a Pre-Need Funeral Contract.
2. Establishment of Master Trust.

The parties hereby establish the Master Trust, which shall be known as the "[Name of Funeral Establishment] Master Trust". The Master Trust shall be administered and the amounts deposited with the Trustee shall be held and invested pursuant to the terms of this Agreement.
3. Deposits and Creation of Trusts.

The Funeral Establishment may from time to time deposit with the Trustee amounts received under Pre-Need Funeral Contracts. A separate Trust Account shall be established in the name of the Purchaser upon the initial deposit with the Trustee of any amount received by the Funeral Establishment under a Pre-Need Funeral Contract and the Trustee's signing of the same Pre-Need Funeral Contract. Upon the initial deposit with the Trustee of any amount received by the Funeral Establishment under a Pre-Need Funeral Contract, the Funeral Establishment shall deliver to the Trustee the following:

  - (a) A copy of the Pre-Need Funeral Contract, duly executed by the Funeral Establishment and the Purchaser, including all exhibits thereto;
  - (b) The name, address, social security number and date of birth of the Purchaser and a Form W-9 for the Purchaser;
  - (c) The name, address, social security number and date of birth of the Beneficiary; and
  - (d) The amount of any administrative fee retained by the Funeral Establishment.

For any subsequent deposits under the same Pre-Need Funeral Contract, the Funeral Establishment shall furnish to the Trustee the information set forth in paragraphs (b) through (d) above at the time of delivery of the deposit to the Trustee. Upon acceptance of each Trust Account, or as soon thereafter as is possible, the Trustee shall deliver or cause to be delivered

to the Funeral Establishment a copy of the Pre-Need Funeral Contract, duly executed by the Trustee. Upon receipt of each deposit to a Trust Account, the Trustee shall issue or cause to be issued to the Funeral Establishment a deposit receipt acknowledging the receipt of such deposit. The Trustee shall have the right to refuse acceptance of any Trust Account and shall have no obligation to enforce any duty of the Funeral Establishment to make any deposit under any Pre-Need Agreement or to determine the amount or adequacy of any such deposit.

4. Maintenance of Separate Trust Accounts.

The Trustee shall maintain separate accounts for each Trust Account created hereunder and shall credit or charge, as the case may be, to each Trust Account all deposits, income, gain, loss, fees, expenses, distributions and other items with respect to such Trust Account.

5. Distributions from a Trust.

The Trustee shall only make distributions from a Trust Account in accordance with the terms of the Pre-Need Funeral Contract pursuant to which the Trust Account was established.

6. Use of Trust Funds.

Funds deposited in a Trust Account held hereunder may be used solely for the purpose of paying for funeral goods and/or services provided to the Beneficiary (or to the Purchaser, if no Beneficiary is designated).

7. Trustee's Administrative Powers and Duties.

In the administration of each Trust Account held hereunder, the Trustee shall in addition to and not in limitation of all common law and statutory authority have power, with regard to both real and personal property in the Trust and any part thereof, and without order or license of any court:

- (a) To lease with or without option to purchase and although for a term extending beyond the termination of the Trust Account, and to sell at public or private sale, all or any part of the real or personal property of the Trust Account without liability upon any person dealing with the Trustee to see to the application of any money or other property delivered to it;
- (b) To invest in any commingled investment fund maintained by the Trustee for investment of trust assets, or in any common trust fund of which a Trustee hereunder is Trustee, without giving notice to any person that such investment is to be made;
- (c) To keep any or all securities or other property in nominee form without disclosing its fiduciary capacity;
- (d) To participate in such manner as it deems proper in any reorganization, merger or consolidation affecting any of the Trust Account;
- (e) To determine who are the distributees hereunder and the proportions in which they shall take;
- (f) To receive additional property from any source;
- (g) To pay, compromise or contest any claim or other matter directly or indirectly affecting the Trust Account property;
- (h) To employ legal counsel, investment counsel, advisers, custodians, brokers, accountants, appraisers, attorneys or other agents, to determine whether or not to accept and act upon the recommendations of such persons or firms; and at any time and from time to time to delegate to any such persons or firms such ministerial or discretionary powers and authority as the Trustee may deem to be necessary, including, without limitation, delegating the power and authority to make and change investments of the Trust Account;
- (i) To pay all fees, expenses and costs incurred in the management of the Trust Account, including without limitation the fees and expenses of the persons mentioned in subparagraph (h), and NEFT Services' and the Trustee's fees in accordance with the fee schedules then in effect under the Trust Administration Agreement between the Trustee and NEFT Services, as amended from time to time (the "Trust Administration Agreement"), a copy of which is attached hereto as Exhibit B and the terms of which are incorporated herein by reference, and to apportion such fees, expenses and costs in the Trustee's discretion to income and principal or partly to each;
- (j) To exchange property for other property;
- (k) To retain any security originally transferred to it hereunder now or in the future;
- (l) To retain and invest and reinvest in securities or properties in such manner as from time to time it believes to be for the best interests of the Trust Account and the persons interested therein, including without limitation bank savings accounts and money market accounts, whether maintained by the Trustee or not, and annuity or life insurance contracts of any kind or nature on the life of the Beneficiary and to pay all premiums and costs thereof from the income or principal of the Trust Account;
- (m) To determine what shall be charged or credited to income and what to principal notwithstanding any determination by the courts, and specifically, but without limitation, to make such determination in regard to stock and cash dividends, rights and all other receipts in respect of the ownership of stock and to decide whether or not to make deductions from income for depreciation, amortization or waste and in what amount;
- (n) To make distributions or divisions of principal hereunder in property in kind at values determined by it;
- (o) To pay any and all taxes or other obligations attributable to the Trust Account, or imposed upon the Trustee while acting as such, which taxes or obligations shall be charged to the Trust Account as reasonably determined by the Trustee;
- (p) To file such reports, records, returns or accounts with such federal, state or local authorities as the Trustee reasonably believes to be required by law;
- (q) To obtain required tax identification numbers, and to provide reports required pursuant to this Agreement or by applicable state or federal law; and
- (r) To exercise such other powers as are granted to trustees under Massachusetts law, and to do any and all other acts as may be necessary or appropriate to carry out the terms of this Agreement.

Notwithstanding anything herein to the contrary, the Trustee shall invest and reinvest the property of each Trust Account in the investment options specified on the investment selection form provided to the Trustee by the Funeral Establishment from time to time, which investment selection form shall allow the Funeral Establishment to choose between the investment options selected by NEFT Services from time to time in accordance with the terms of the Trust Administration Agreement. In the absence of valid or effective instructions from the Funeral Establishment, the Trustee shall invest and reinvest the property of each Trust Account in the manner provided in paragraph (1) of this Article 7.

8. Fees.

The Trustee shall be entitled to compensation from each Trust Account hereunder for its services rendered in connection with the administration of each Trust Account in accordance with the compensation section of the Trust Administration Agreement, as amended from time to time. The Trustee shall also be entitled to reimbursement of its expenses incurred in connection with the administration of each Trust Account.

9. Annuity or Insurance Contracts.

With respect to any annuity or life insurance contracts or the proceeds thereof which are or shall become subject to any Trust Account:

- (a) No annuity, insurance or other company issuing any such contract shall be responsible for the application of any money or thing of value paid to the Trustee hereunder or for the carrying out of the provisions of this instrument or any of them.
- (b) The Trustee shall use its best efforts to collect all sums payable thereunder whenever any such contract shall, to the knowledge of the Trustee, have matured, but shall not be required to incur any expense or to take any legal proceedings until fully indemnified. The Trustee shall have no responsibility, except as above specified, as to such contracts or as to the premiums thereon or proceeds therefrom and shall have no responsibility to assess the financial condition of any insurance company.

10. Reports.

The Trustee shall furnish or cause to be furnished to the Funeral Establishment no less often than quarterly, reports which show the aggregate investments, market values, income, fees, and other transactions of each Trust Account and shall furnish to the Funeral Establishment copies of any required federal or state tax reporting forms relating to each Trust Account. The written approval of such report by the Funeral Establishment (or its failure to object to such report within sixty (60) days after it is so rendered) shall as to all matters and transactions stated therein be final and binding on all persons (whether in being or not) who are then or may thereafter become entitled to share in the principal or the income of the Trust Account for which the report is rendered. The Funeral Establishment shall make such reports and/or forms available to the Purchaser. The Funeral Establishment hereby agrees to indemnify and hold harmless the Trustee and its employees and agents for and against any harm, loss, liability, damage or expense it may pay or suffer as a result of any failure to deliver such reports to the Purchaser. The Trustee shall also maintain with respect to each Trust Account records containing the information set forth at 239 CMR 4.06(11)(a) and shall make such records available, upon request and during normal business hours, to the Funeral Establishment or to the duly authorized representative of the Board of Registration in Embalming and Funeral Directing or, within ten days after the receipt of a request to examine such records, to the Purchaser (or to the Beneficiary, if different than the Purchaser) or to the legal representative of the Purchaser (or of the Beneficiary of the Purchaser, if different than the Purchaser).

11. Protection of Trustee.

- (a) All acts and decisions made by the Trustee in good faith shall be final and binding on all parties in interest; and the Trustee shall be liable only for its own willful misconduct or gross negligence. The Trustee and any agent of the Trustee, including but not limited to NEFT Services (hereinafter an "Agent") shall be entitled to rely upon any affidavit, statement, investment instructions or certificate delivered to it by the Funeral Establishment, the Purchaser (the Beneficiary, if different from the Purchaser) or the legal representative of the Purchaser (or of the Beneficiary, if different from the Purchaser), and no claim or demand or liability may be made or asserted, directly or indirectly, against the Trustee or any Agent, as a result of any action taken or not taken by the Trustee or any Agent in reliance upon any such affidavit, statement, investment instructions or certificate. The Funeral Establishment shall cause to be inserted in every Pre-Need Funeral Contract a provision whereby the Purchaser, for himself, the Beneficiary (if different than the Purchaser), and their respective estates and heirs, and the Funeral Establishment each agrees that no claim or demand of any kind or nature whatsoever shall be made upon or asserted against the Trustee or any Agent hereunder resulting from or arising out of, directly or indirectly, any act or failure of the Trustee or such Agent to act caused by reliance on any affidavit, statement, investment instructions or certificate delivered to the Trustee or to such Agent hereunder, or any distribution by the Trustee or by such Agent from a Trust Account pursuant thereto; provided, however, that nothing herein shall be deemed to waive the rights of the Funeral Establishment, the Purchaser or the Beneficiary (if different than the Purchaser) in the event of the gross negligence or willful misconduct of the Trustee or of such Agent.
- (b) The Funeral Establishment shall indemnify and hold harmless the Trustee and any Agent from and against any and all damages, liabilities, actions, suits, proceedings, claims, demands, losses, costs and expenses (including reasonable attorneys' fees) that shall or may arise out of or in connection with the handling by the Funeral Establishment of any money or other thing of value paid by the Purchaser to the Funeral Establishment.

12. Resignation or Removal of Trustee.

The Trustee may resign as the Trustee under this Agreement (which shall constitute its resignation as the Trustee under all Trust Accounts hereunder) by giving to the Funeral Establishment at least sixty (60) days' written notice of its intention to do so. The Trustee may be removed by the Funeral Establishment as Trustee under this Agreement (which shall constitute its removal as Trustee under all Trust Accounts hereunder) by giving to the Trustee at least sixty (60) days' written notice of its intention to do so. Upon such resignation or removal, the Funeral Establishment shall appoint a successor trustee who is qualified to act as Trustee pursuant to this Agreement and applicable law, and who undertakes to act as successor, whereupon the Trustee shall deliver all of the property of each Trust Account affected by such resignation or removal to such successor upon the written direction of the Funeral Establishment. If the Funeral Establishment fails to appoint a successor, or if no successor is qualified, then the Trustee shall remain as Trustee hereunder and may apply to any court of competent jurisdiction to appoint such successor. If the Funeral Establishment has not appointed a successor Trustee within sixty (60) days after the effective date specified in the written notice of the removal of the Trustee, the Funeral Establishment shall reimburse the Trustee for expenses reasonably incurred by the Trustee in applying to a court for the appointment of a successor Trustee. Any successor Trustee shall qualify at such time as his, her or its written acceptance is attached to this instrument. Any successor Trustee shall have all the powers, immunities and discretions conferred herein upon the original Trustee. No Trustee or successor Trustee shall be required to give any bond. No successor Trustee shall be liable or responsible in any way for any acts or defaults of any predecessor Trustee or for any loss or expense from or occasioned by anything done or neglected to be done by any predecessor Trustee; and with the consent of the Funeral Establishment any Trustee may accept the account rendered and the assets and property delivered to it by a predecessor Trustee, and shall incur no liability or responsibility to any person interested under this instrument by reason of so doing.

13. Removal of Trustee by NEFT Services.

Under the terms of the Trust Administration Agreement, NEFT Services possesses the right to remove the Trustee upon sixty (60) days prior written notice. If the Trustee is removed under this Article 13, the procedures for electing and qualifying a successor Trustee set forth in Article 12 shall apply, except that NEFT Services shall have the right to appoint such successor Trustee.

14. Assignment or Alienation.

The Funeral Establishment's interest in this Agreement and the Trust Accounts hereunder may only be assigned by the Funeral Establishment (a) to another funeral establishment authorized under Massachusetts law to sell pre-need agreements and (b) upon prior written consent of the Trustee, which consent shall not unreasonably be withheld. Notwithstanding anything in the preceding sentence to the contrary, the Funeral Establishment's interest in any Trust Account may only be assigned in accordance with the provisions of the Pre-Need Funeral Contract pursuant to which the Trust Account was established. Except as otherwise provided hereunder or in such Pre-Need Funeral Contract, the interest of any Purchaser or Beneficiary (if different from the Purchaser) hereunder, either as to the principal or income of any Trust Account, shall not be anticipated, alienated or in any other manner assigned by such Purchaser or Beneficiary (if different from the Purchaser) and shall not be subject to any legal process, bankruptcy proceedings or the interference or control of creditors or others. The Trustee's interest in this Agreement may only be assigned in accordance with the provisions of Articles 12 and 13 hereof.

15. Agreement to Govern.

In the case of any conflict between the terms of this Agreement and the terms of any Pre-Need Funeral Contract, the provisions of this Agreement shall control, and in the event of such conflict, the Trustee shall have no liability to any person for complying with the terms of this Agreement.

16. Compliance with Law.

This Agreement and each Trust Account hereunder shall be governed by and construed in accordance with Massachusetts law.

17. Notices.

All notices shall be deemed to have been made if delivered in person or by mail, first class, postage prepaid, at the address set forth herein or to such other address as any person may subsequently designate in writing, and deliver as provided herein.

18. Amendments.

Pursuant to the terms of the Trust Administration Agreement, this Agreement may be altered or amended at any time or from time to time by the mutual agreement of the Trustee and NEFT Services; provided, however, that any such alteration or amendment is not then inconsistent with the requirements of 239 CMR 4.00 et seq. or any successor regulation thereto and does not adversely affect the interests of the Beneficiaries (or of the Purchasers if no Beneficiaries are designated) of Trust Accounts established pursuant to this Agreement. Any such amendment shall be by an instrument in writing signed by the Trustee and NEFT Services.

IN WITNESS WHEREOF, this Agreement is executed the day and year first above written.

Witness:

FUNERAL ESTABLISHMENT

Name \_\_\_\_\_

Funeral Establishment will receive distributions by check mailed to principal office.

By: \_\_\_\_\_  
Authorized Person

TRUSTEE

Name \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Person

Attest: \_\_\_\_\_

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Exhibit A Form of Pre-Need Funeral Contract

Exhibit B Trust Administration Agreement