

# **IRREVOCABLE/MEDICAID PRENEED AGREEMENT**

## **GUARANTEED PRICE EXCLUDING CASH ADVANCES**

<b>Funeral Firm (NYS registered funeral firm)</b>		
<b>Funeral Firm Name:</b>		PrePlan Account #:
<b>Funeral Director Name:</b>		
Street:	Phone:	
City:	NY	Zip:
Date:	Place:	Parrangement #:
<b>Replacement of Existing Revocable Customer Agreement</b> Yes No		
<b>If YES, Preplan Consumer Account #:</b>		
<b>Beneficiary</b> (person for whom preneed arrangements are being made)		SS#
Name of Beneficiary:		Phone:
INTENTIONALLY LEFT BLANK		Email:
Street:	Apt. / Suite:	
City:	State:	Zip:
Check Beneficiary Sex:	<input type="checkbox"/> Male <input type="checkbox"/> Female	Beneficiary Date of Birth:
<b>Purchaser</b> (person funding account)		<input type="checkbox"/> Check if same as beneficiary
Name of Purchaser:		Phone:
INTENTIONALLY LEFT BLANK		Email:
Street:	Apt. / Suite:	
City:	State:	Zip:
<b>Amount Received:</b> \$ _____	<b>Payment Type:</b>	<input type="checkbox"/> cash <input type="checkbox"/> check # _____ <input type="checkbox"/> credit card <input type="checkbox"/> ACH <input type="checkbox"/> other _____
<b>Alternate Person</b>		
<input type="checkbox"/> I decline to provide an alternate person		
<b>Alternate Name:</b>		Phone:
INTENTIONALLY LEFT BLANK		Email:
Street:	Apt. / Suite:	
City:	State:	Zip:
<b>Correspondence (If no one is selected, all confirmations will be mailed to the Purchaser)</b>		
Send correspondence to (select one): <input type="checkbox"/> Beneficiary <input type="checkbox"/> Purchaser <input type="checkbox"/> Alternate Person		
<b>Total Funeral Charges</b>		
Total Funeral Home Charges: \$ _____		
Total Cash Advances: \$ _____		
The total funeral charges set forth in the Preneed Itemization Statement is \$ _____		
<p><b>DISCLOSURE.</b> NEW YORK LAW REQUIRES THIS AGREEMENT TO BE IRREVOCABLE FOR APPLICANTS FOR AND RECIPIENTS OF SUPPLEMENTAL SECURITY BENEFITS UNDER SECTION TWO HUNDRED NINE OF THE SOCIAL SERVICES LAW OR OF MEDICAL ASSISTANCE UNDER SECTION THREE HUNDRED SIXTY-SIX OF THE SOCIAL SERVICES LAW, AND FOR THE MONIES PUT INTO A TRUST UNDER THIS AGREEMENT TO BE USED ONLY FOR FUNERAL AND BURIAL EXPENSES. WHETHER THE AGREEMENT IS FOR YOUR FUNERAL AND BURIAL EXPENSES OR FOR THOSE OF A FAMILY MEMBER, IF ANY MONEY IS LEFT OVER AFTER YOUR FUNERAL AND BURIAL EXPENSES HAVE BEEN PAID, IT WILL GO TO THE COUNTY. YOU MAY CHANGE YOUR CHOICE OF FUNERAL HOME AT ANY TIME. IF THIS AGREEMENT IS FOR THE FUNERAL AND BURIAL EXPENSES OF A FAMILY MEMBER, AFTER YOUR DEATH SUCH FAMILY MEMBER MAY CHANGE THE CHOICE OF FUNERAL HOME AT ANY TIME.</p>		

**Definitions.**

*PrePlan.* The preneed funeral services trust established in accordance with Section 453 of New York General Business Law

*Agreement.* This preneed agreement between the Purchaser and Funeral Firm

*Beneficiary.* The person upon whose death funeral services and merchandise are to be provided under the terms of a preneed agreement

*Purchaser.* The person who has provided funds to a Funeral Firm under or in conjunction with a preneed agreement for a Beneficiary

*Alternate Person.* The person not residing at the same address as the Purchaser to whom required notices will be sent if the

Purchaser or Beneficiary cannot be contacted

*Funeral Firm.* The party named in this Agreement, as funeral firm, which must be a New York State registered funeral firm

*Account.* The account established for depositing and investing funds for the Beneficiary under the Agreement

*Preneed Itemization Statement.* The statement of funeral services and merchandise

*Trustees.* The trustees of the PrePlan Funeral Trust

*Administrator.* Funeral Director Support Services, Inc. (FDSS), a wholly owned subsidiary of the New York State Funeral Directors Association

*Association.* The New York State Funeral Directors Association

**Purpose of this Agreement and the Funeral Arrangements.** The purpose of this Agreement is to establish a place and method for the deposit and administration of money paid now to be used later for funeral expenses. The Funeral Firm and the Purchaser have made funeral arrangements for the Beneficiary, with the current prices for same being provided on the Preneed Itemization Statement.

**Price Guarantee.** The Funeral Firm guarantees that upon the death of the Beneficiary the services and merchandise specified in the Preneed Itemization Statement, excluding cash advances as listed in Roman Numeral II, will be provided at prices not to exceed the total of the funds deposited under this Agreement plus accrued interest and/or dividends, provided that the deposit received is equal to the Total Funeral Charges under Roman Numeral III of the Preneed Itemization Statement. This price guarantee will be valid only if the original deposit and subsequent accrued interest and/or dividends remain in the account and if there are otherwise no charges or liens outstanding against such funds. Should the total amount of the funds held pursuant to this Agreement at the time of the provision of the services and merchandise for the Beneficiary exceed the total price for such services and merchandise based upon the prices then being charged to the general public by the Funeral Firm, any such surplus shall be paid by the Funeral Firm to the Social Services official responsible for arranging for indigent burials in the county where the Beneficiary resided.

**Cash Advances Excluded from the Price Guarantee.** Items described as cash advances on the Preneed Itemization Statement under Roman Numeral II, are specifically excluded from the price guarantee provisions of this Agreement. The Funeral Firm's only obligation under this Agreement with respect to cash advances is to credit the amount of money received under this Agreement for cash advances, and any accumulated interest or dividends attributable to that amount over time, to the actual future cost of those cash advances at the death of the Beneficiary. If at that time the proceeds attributable to cash advances are in excess of the actual prices, such surplus will be paid by the Funeral Firm to the Social Services official responsible for arranging for indigent burials in the local government subdivision where the Beneficiary resided at the time of death. If the proceeds attributable to cash advances are less than the actual prices, then the Purchaser or his legal representative will need to supplement the payments to the Funeral Firm to cover the difference or otherwise modify the selection of cash advances.

**When the Price Guarantee Becomes Voidable by the Funeral Firm.** In the event that any portion of the original deposit and all subsequent accrued interest and/or dividends are not maintained in an entirely intact manner, then the price guarantee provided by the Agreement shall be void, and the Funeral Firm will calculate the actual prices being charged to the public at the time of performance and the Purchaser or his legal representative shall have the option of paying any difference between the price calculated by the Funeral Firm and the funds available or modifying the arrangements.

**Applicability of Insurance Coverage.** Investments of the Trust are either issued by the federal government or insured by agencies of the federal government up to the maximum coverage available to the Purchaser. In accordance with the agencies' insurance rules, other bank accounts of the Purchaser held at the same bank, credit union or trust company which serves as depository for the PrePlan may be considered with the account of the Purchaser held in the PrePlan for the purposes of determining the amount of available insurance coverage.

**Relationship Between the Funeral Firm and the PrePlan.** The Funeral Firm has retained the trust administration services of the PrePlan for the purposes of holding and managing advance funeral payments received by the Funeral Firm. This relationship is governed by a trust agreement between the Funeral Firm and the Trustees. Under the trust agreement, the Funeral Firm has no authority to change or modify any portion of this Agreement or promise to do anything on behalf of the Trustees. Similarly, neither the Trustees nor any of its agents are responsible for performing any of the services or supplying any of the merchandise specified by the Preneed Itemization Statement completed by the Purchaser and the Funeral Firm.

**Limitations of Liability.** Responsibility of the Trustees, the Association and the Administrator and their officers, agents and employees under this Agreement is restricted to the performance of the trust administration services specified in this Agreement and the underlying trust agreement between the Funeral Firm and the Trustees under which the monies are held. In no event shall the Trustees be liable for more than the amount of the funds received by them, and accumulated income thereon. All deposits into the PrePlan must be in connection with a preneed agreement. Deposits will be provisionally credited until funds have cleared. The PrePlan shall not be liable for any returned items. The PrePlan reserves the right to refuse to accept any deposit.

**Right to Change Depository.** The Trustees retain the right to change the bank, credit union or trust company where they maintain the PrePlan accounts and investments. In the event there is a change in the institution in which funds are deposited, the Purchaser will receive written notification of that fact within thirty (30) days after the change in the institution.

**Administration and Fees.** FDSS is paid a fee for maintaining the PrePlan and for performing certain functions on behalf of the Trustees. The fee is equal to seventy-five hundredths of one percent based upon the average daily balance in the PrePlan. An additional investment advisory fee may be paid to an unrelated professional investment manager by the PrePlan.

**Information and Reports and Tax Responsibility.** Within thirty (30) business days after a payment has been received for deposit in the PrePlan, the Purchaser will receive an acknowledgement of the amount of the deposit, the account number assigned and the institution holding the deposit. The opening of the Account is subject to the collection of funds deposited. Following the end of each calendar year, the Purchaser will receive a statement showing any activity in the Account for the past year including interest credited and the location of the deposits. The Purchaser will also receive a tax reporting statement showing the total interest earned. All income or other taxes payable on the interest shall be the responsibility of the Purchaser.

**Merchandise and Service Substitution.** In the event that service or merchandise specified in the Preneed Itemization Statement cannot be provided at the time of performance, the Funeral Firm may substitute merchandise of substantially equal quality, value and workmanship and may provide substitute personnel to perform substantially similar services as specified in the Preneed Itemization Statement, in consultation with the Purchaser or his legal representative.

**Payments to the Purchaser.** This Agreement may be used only for those intended funeral recipients (Beneficiaries) who are applicants for or recipients of benefits from either the Supplemental Security Income (SSI) and/or Medicaid Program, or any extensions thereof, as provided by the US Department of Health and Human Services, Social Security Administration [(42USCS § 1382b et seq.) and (20 CFR 416.1231)] and Subdivision 6 of Section 209 of the New York State Social Services Law, and Title II, Medical Assistance, Article 5, Section 366 of the New York State Social Services Law or for specific family members as allowed by New York State law. Under these programs, the deposit and any accrued interest may not be returned to the Purchaser and may only be used as payment for the funeral of the Beneficiary.

**Meaning of Irrevocability.** The acceptance of this Agreement creates an irrevocable trust which means that any attempted withdrawal or other disposition of the deposits on account plus accrued interest, for any purpose, will be and must legally be refused by the Funeral Firm, the Trustees, the PrePlan and any officer, employee or agent. Completion of this Agreement shall constitute an itemized contract for future delivery of the merchandise specified or its comparable substitute, subject to other provisions of this Agreement.

**Irrevocability, Severability and Portability.** This Agreement is not revocable in any manner. However, the funeral arrangements are fully severable from this Agreement, and can be changed from time to time and at any time, and such changes can include the Purchaser's selection of a different Funeral Firm.

**Right to Statements on Request.** Within thirty (30) days of a request by the Purchaser or his legal representative, the Purchaser will be provided with a statement identifying the location of the Account in which the deposit is maintained, the Account balance and interest earned.

**Payments to the Funeral Firm.** Any deposit or deposits along with interest earned will be payable to the Funeral Firm upon presentation of a certified death certificate of the Beneficiary.

**Failure to Perform.** If the Funeral Firm cannot, for reasons beyond the control of the parties, provide the funeral services or merchandise contemplated in conjunction with this Agreement, then the Purchaser's sole remedy shall be the selection of a different funeral firm by the Purchaser or the Beneficiary's legal representative.

**Successor Rights.** In the event the Purchaser predeceases the Beneficiary where they are different persons, then the Beneficiary shall automatically assume all rights with respect to the Account as Purchaser. And, upon the death of the Beneficiary where the Purchaser is no longer living, the right to administer the Account shall pass to the person entitled to control the funeral of the Beneficiary in order of priority provided by law or any succeeding statute. For the purposes of this Agreement, where the Purchaser has predeceased the Beneficiary then Purchaser shall mean the Beneficiary or his or her successors as specified in this paragraph.

**General.** The Trustees shall not be liable for any damages incurred by the Purchaser or the Funeral Firm resulting from any false, incorrect, incomplete or misleading information provided to the Trustees or the Funeral Firm by the Purchaser nor shall the Trustees be liable for acting or failing to act when in good faith, they rely upon the genuineness of documents or signatures submitted to them.

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#### Request for Social Security Number and Certification

Purchaser's Social Security #: \_\_\_\_\_

Purchaser/Taxpayer's Name: \_\_\_\_\_

Certification - Under penalties of perjury, I certify that:

(1) The number shown on this form is my correct taxpayer identification number, and

(2) I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding.

**Certification Instructions** - You must cross out item (2) above if you have been notified by the IRS that you are currently subject to backup withholding because of underreporting interest or dividends on your tax return.

PLEASE SIGN HERE: (X) \_\_\_\_\_ DATE \_\_\_\_\_  
Signature of Purchaser/Taxpayer (person whose SS# appears above)

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**Deposit Acknowledgement.** The Funeral Firm acknowledges receipt of the amount set forth on page 1 of this Agreement on account for the funeral goods and services to be delivered upon the death of the Beneficiary. The Funeral Firm agrees to deposit this sum in the PrePlan depository within ten (10) business days. The deposit shall be maintained in commingled accounts in the name of the PrePlan Trust, and a separate account on the books and records of the PrePlan shall be established in the name of the Purchaser, indicating the beneficial interest of the Beneficiary. All credits to and deductions from the deposit shall be held by the PrePlan and reflected on the Account. Money received under this Agreement will be held in bank deposit account(s) or certificates of deposit insured by agencies of the federal government within the State of New York and other investments permitted by law. Checks should be made payable to 'PrePlan'.

**Acceptance.** I have read the terms and conditions of the "Pre Need Irrevocable Customer Agreement" and I expressly intend to obligate myself to them, and at the same time to acknowledge that the information provided above and within this Agreement is correct. Further, I attest that I am or the Beneficiary is an applicant for or recipient of SSI/Medicaid.

Purchaser's Signature \_\_\_\_\_

Funeral Director's Signature (on behalf of Funeral Firm) \_\_\_\_\_