I. Merchandise and Services: Subject to the terms of this Contract, Purchaser agrees to purchase the Funeral Merchandise and Services at the current retail price established herein by paying Seller in the manner set forth in this Contract (Sections I & II), and upon the date of the Contract Beneficiary, the Seller shall furnish the Funeral Merchandise and Services as set forth in the Statement of Funeral Merchandise and Services Selected above, regardless of the cost of the merchandise or service at the date of the death of the Contract Beneficiary (see Disclosures 5 & 6). The Provider will be entitled to all trust funds on deposit including income (Sections I & II), even if in excess of the cost of Merchandise and Services at the time of the Contract Beneficiary’s death. This Contract provides benefits in the form of Funeral Merchandise and Services only, unless Non-Guaranteed Cash Advance Items are specified above.

Prior to selecting the Funeral Merchandise and Services, Purchaser acknowledges receipt of the General Price List, and that the Casket Price List and the Outer Burial Container Price List were made available to him/her. 

II. Contract Funding: Purchaser agrees to fund this Contract by Trust as indicated below.

Trust Funding: (See additional provisions in Disclosures 3 and 4) Purchaser agrees to pay Seller the Balance Due as follows: Number of Payments: __________  Payment Amount: $__________  Date of First Payment: __________

III. Acceptance by Seller: This Contract is not binding on Seller until it is signed by Seller’s authorized preneed sales agent in its home office and an executed copy has been received by the Purchaser.

IV. Revocability and Cancellation: This is a legally binding Contract. This Contract is revocable unless the Purchaser indicates otherwise by signing in the space provided below (see Disclosure 7). This Contract cannot be modified or changed without the written approval of the Seller.

By executing this Contract on the signature line below, Purchaser acknowledges and certifies that he or she has read this Contract and the personal information provided above is true and correct as the date thereof (see Disclosure 12).

YOU (THE PURCHASER) MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRTIETH DAY AFTER THE DATE OF THIS TRANSACTION BY GIVING THE SELLER WRITTEN NOTICE OF CANCELLATION AND RECEIVE A REFUND OF MONIES PAID ACCORDING TO THE TERMS OF THIS CONTRACT (see Disclosure 7).

IRREVOCABLE OPTION (See Disclosure 2)

I am signing this statement to waive and renounce my right to cancel this Contract. I understand that the Contract will be irrevocable and I will not be entitled to a refund of any of the money I have paid. I understand that I do not have to sign this irrevocable option in order to have a contract for Funeral Merchandise and Services. By my signature below, I am waiving my right to cancel this Contract because I want to qualify for public assistance such as Medicaid, Supplemental Security Income, or other public assistance.

PURCHASER’S SIGNATURE DATE

AUTHORIZED PRENEED SALES AGENT NAME

AUTHORIZED PRENEED SALES AGENT SIGNATURE DATE
DISCLOSURES

1. DEFINITIONS.

AUTHORIZING AGENT: The person who is lawfully authorized to control the final disposition of the Contract Beneficiary.

CONTRACT: Where the term “Contract” appears in bold, it refers to this document titled, “Contract for Preneed Funeral Merchandise and Services.”

CONTRACT BENEFICIARY: The person(s) who will be the recipient(s) of the Funeral Merchandise and Services and at his/her or their time of death.

PROVIDER: The person who will actually provide the Funeral Merchandise and Services under the terms of this Contract. The Provider may or may not be the Seller.

PURCHASER: The person who purchases this Contract either on his or her behalf or on behalf of the Contract Beneficiary.

SELLER: The person or entity offering or selling Funeral Merchandise and Services on a preneed basis. The Seller may or may not be the Provider.

2. FUNERAL MERCHANDISE AND SERVICES. The Provider shall provide the selected Funeral Merchandise and Services as shown in this Contract. The Provider will furnish the brands or makes of goods shown, or, if unavailable, goods of equivalent quality. This Contract is revocable unless the Purchaser indicates otherwise by signing in the space provided on the reverse side of this Contract, under IRREVOCABLE OPTION (Section IV).

3. THIS CONTRACT IS TRUST FUNDED. Unless Provider has furnished a surety bond or letter of credit acceptable to the Insurance Commissioner, Provider will deposit all funds in accordance with USE OF AMOUNT TO BE TRUSTED (Disclosure 4) required for Funeral Merchandise and Services in a state or national bank, trust company, federally insured savings and loan association or with a person lawfully appointed as fiduciary of the funds in accordance with Ala. Code § 27-17A-1 et seq. The trustee will be chosen by the Provider and the trust will be subject to a trust agreement approved by the Insurance Commissioner. The surety bond required by the Insurance Commissioner may purchase a surety bond in an amount not less than the aggregate value of outstanding liabilities on undelivered preneed contracts for merchandise, services and cash advances. The term outstanding liabilities means the original retail amount of services and cash advances and the actual cost to the Provider to provide the undelivered merchandise sold on each contract. In lieu of a surety bond, the Provider may purchase a letter of credit in the amount of the outstanding liabilities.

4. USE OF AMOUNT TO BE TRUSTED. Of the Contract price total, the Seller will place at least: (1) Seventy Five percent (75%) of the purchase price collected for all Funeral Merchandise and Services sold, other than outer burial containers; (2) Sixty percent (60%) of the purchase price collected for outer burial containers; (3) One hundred ten percent (110%) of the wholesale cost of memorials; and (4) One hundred percent (100%) of the purchase price collected for all cash advance items sold, in a trust.

5. MONEYS DUE AT TIME OF FULFILLMENT. If the Purchaser has not completed all required payments according to the terms of this Contract at the time of death or for any reason is not able to make the total payments then, less any amounts allocable to Funeral Merchandise and Services already delivered or performed, the difference between the total payment Contract price, including adjustments for non-guaranteed cash advance items, is due and payable to the Provider at the time of fulfillment (see also Disclosure 6).

6. GUARANTEE. Subject to the terms of this Contract, and upon the death of the Contract Beneficiary, the Provider shall furnish the Funeral Merchandise and Services as set forth in this Contract, regardless of the cost of the Funeral Merchandise and Services at the date of the death of the Contract Beneficiary.

THIS CONTRACT DOES NOT GUARANTEE THE PRICE OF CASH ADVANCE ITEMS. Cash Advance Items are paid by the Provider, on the Purchaser’s behalf, to third parties. The Provider has no way of guaranteeing Cash Advance Item prices at death, as they are estimated now. Any additional cost for Cash Advance Items will be the responsibility of the Purchaser or the Contract Beneficiary’s Legal Representative. Any additional items chosen which are not specifically included in this Contract will be paid for when the Funeral Merchandise and Services are provided. The Provider will be entitled to all trust funds on deposit including income, and all assigned insurance proceeds, even if in excess of the cost of Funeral Merchandise and Services, at the time of the Contract Beneficiary’s death. This Contract provides benefits in the form of Funeral Merchandise and Services only, unless Non-Guaranteed Cash Advance Items are specified.

7. CANCELLATION. Unless made Irrevocable (Section IV), Purchaser may cancel this Contract at any time prior to midnight of the thirtieth (30th) day of the date this Contract was executed by providing written notice to the Seller. Upon providing written notice, Purchaser shall be entitled to a refund of one hundred percent (100%) of all monies collected on this Contract was executed by providing written notice to the Seller. If cancelled after thirty (30) days, the Seller shall be entitled to the amount allocable to any Funeral Merchandise and Services that has been delivered or performed and a cancellation fee not to exceed twenty percent (20%) of the purchase price collected. The refund shall be made within thirty (30) days after receipt by the Seller of the Purchaser’s written request for cancellation.

In the event this Contract is made Irrevocable by the Purchaser’s signature (Section IV), the Purchaser or Authorizing Agent shall have the right to appoint a Provider other than the Seller of this preneed Contract (see Disclosure 8).

8. TRANSFER. In the event that a Provider is appointed other than the Seller, the Seller shall transfer to the appointed Provider the amount paid by the Purchaser less the amount allocable to any Funeral Merchandise and Services that has been delivered or performed and a reasonable transfer fee not to exceed twenty percent (20%) of the purchase price collected. No transfer shall occur without the acceptance of the appointed Provider.

9. DEFAULT BY PURCHASER. If the Purchaser is 90 days or more past due in making payment on the Contract, the Contract will be considered in default by the Provider. The Provider shall be entitled to cancel the Contract and withdraw the funds in trust. Upon making the withdrawal, the Provider shall refund to the Purchaser the amount collected under this Contract less any amounts allocable to Funeral Merchandise and Services already delivered or performed and a cancellation fee of not more than twenty percent (20%) of the purchase price collected. Any accumulated earnings allocable to the preneed Contract shall be retained by the Provider. The Provider must give the Purchaser thirty (30) days notice of its intention to exercise any of its rights under this provision.

10. FAILURE OF PERFORMANCE. Upon breach of Contract or failure of the Provider to provide Funeral Merchandise and Services under this Contract, the Purchaser shall be entitled to a refund of one hundred percent (100%) of all monies collected on the Contract. The refund shall be made within thirty (30) days after the Provider receives the Purchaser’s written request for refund.

11. DISCLAIMER OF WARRANTIES. Provider DOES NOT WARRANT the merchandise or goods covered by this Contract. The only warranty, IF ANY, is the warranty issued by the manufacturer of the purchased merchandise or goods.

ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, AND WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE EXCLUDED.

12. RECEIPT OF COPIES. Purchaser acknowledges receipt of a legible, complete, and executed copy of this Contract, and approves the terms contained therein.

By executing this Contract on the signature line provided on the reverse side (Section IV), Purchaser acknowledges and certifies that he or she has read this Contract and the personal information set forth on the reverse side is true and correct as the date thereof.

13. MISCELLANEOUS. All notices given hereunder shall be in writing and delivered to the respective party by personal service or by depositing the same in the United States mail, postage prepaid, to the address indicated herein or to such other address as a party shall have previously designated by Notice to the other party given in accordance with this paragraph. All Notices shall be deemed received on the date of mailing or service. The provisions hereof constitute the entire and complete agreement between the parties. Amendments to this Contract may be necessary to comply with changes in the law or to assure to each party that the economic benefits of this Contract are not changed because of changes in law or regulations or actions taken by regulatory agencies of the State of Alabama or the United States of America. Purchaser agrees to execute such amendments to this Contract and if Purchaser is not available or fails to act in good faith to sign such amendments, Provider hereby appoints the agent of Seller as his attorney-in-fact with full power to act in the place of Purchaser and bind Purchaser as to such amendment to this Contract. This Contract shall be construed in accordance with, and governed by, the laws of the State of Alabama. If any provision or part of this Contract is held for any reason to be unenforceable, the remainder of the Contract shall nevertheless remain in full force and effect. This Contract is for use solely for the Funeral Merchandise and Services of the Contract Beneficiary and shall not be assignable by Purchaser or any other person for use in connection with the death of any person other than the Contract Beneficiary. Upon death or incapacity of Purchaser, this Contract may be enforced by, and Provider shall have the right to offer performance and deal with, in lieu of Purchaser, either an heir or Legal Representative of the Contract Beneficiary or the attorney-in-fact, an heir or the Legal Representative of Purchaser.