

AGREEMENT TERMS AND CONDITIONS FOR THE SALE OF SERVICES

AMERICAN REMEMBRANCE, LLC (“**COMPANY**”) PROVIDES THE SERVICES DESCRIBED AND ORDERED ON ITS WEBSITE (www.rememberheroes.org) (“**WEBSITE**”) BY THE PERSON ORDERING THEM (“**CUSTOMER**”) SOLELY ON THE TERMS AND CONDITIONS SET FORTH BELOW (“**TERMS**”), IN THE COMPANY’S TERMS OF USE AT www.rememberheroes.org/termsfuse, AND IN THE ORDER AS DEFINED BELOW (THE TERMS, TERMS OF USE, AND THE ORDER BEING REFERRED TO TOGETHER AS THE “**AGREEMENT**”) AND ON THE CONDITION THAT CUSTOMER ACCEPTS AND COMPLIES WITH THE AGREEMENT. **BY CHECKING THE "ACCEPT" BOX ON THE ORDER FORM YOU (A) ACCEPT THIS AGREEMENT AND AGREE THAT YOU ARE LEGALLY BOUND BY THE AGREEMENT;** AND (B) REPRESENT AND WARRANT THAT: (I) YOU ARE 18 YEARS OF AGE OR OLDER OR OTHERWISE OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT; AND (II) IF CUSTOMER IS A CORPORATION, GOVERNMENTAL ORGANIZATION OR OTHER LEGAL ENTITY, YOU HAVE THE RIGHT, POWER AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF CUSTOMER AND BIND CUSTOMER TO ITS TERMS.

1. Applicability. The Agreement comprises the only terms which govern the sale of the services hereunder. This Agreement is exclusively an agreement with respect to the delivery of services, and there is no agreement or other obligation between Customer and Company for the delivery of goods with respect to or in any way related to the Services.
2. Services. The services provided hereunder (“**Services**”) are agreed to be floral delivery and documentation services described on the Company’s Website and in the online order document which Customer has completed and submitted (“**Order**”) at the time of its acceptance of this Agreement. The Services will generally include: (a) the Company’s purchase of a floral arrangement (the “**Tribute**”), (b) arranging for the delivery and placement of the Tribute, and a photographic recording (the “**Virtual Tour**”) of the completed placement of the Tribute, by third party volunteers and other Company service contractors at a gravesite specified in the Order, and (c) Internet access to the Virtual Tour through Company’s Internet website (the “**Website**”) to Customer and its designees. Access to the Virtual Tour on the Company’s Website will be maintained for the period described in the Order.
3. Delivery. The Services will be delivered substantially as indicated in the Order, subject to any exceptions in the following. Services will be delivered at the location specified in the Order, and the risk of loss from incorrect identification of delivery location by the Customer will remain with Customer. The Services will be delivered

within a reasonable time after the receipt of the Order, on or before the date specified in the Order, except where a factor beyond Company's reasonable control prevents or delays timely delivery. In the event that timely delivery is so prevented or delayed, Company will deliver the Services as soon as reasonably practicable thereafter. Such events beyond Company's control may include any force majeure factor under Paragraph 11 below, and may include but not be limited to inclement weather or the closing or limitation of access to the designated delivery location. The uploading of the Virtual Tour by Company or its contractor to the Company Website shall be conclusive evidence of the delivery and placement of the Tribute.

4. Price. The price for the Services shall be the price indicated on the Website, plus applicable taxes, all as indicated in the Order. Customer is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Customer pursuant to the Order.

5. Payment Terms. Customer shall pay all agreed amounts due to Company under the Order by online credit or debit card transaction, and Company is authorized to charge Customer's credit or debit card immediately upon Customer's online submission of the Order. Customer agrees not to withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Company, whether relating to Company's breach, bankruptcy or otherwise.

6. Property Rights.

(a) Website and Virtual Tour. Company is and shall be, the sole and exclusive owner of all right, title and interest throughout the world in and to all intellectual property rights in and with respect to the Website and any Virtual Tour, including without limitation any image, file or other representation comprising the whole or a component part of any Virtual Tour (the "**Virtual Tour IP**"). Customer is hereby granted a nonexclusive, limited term, revocable right and license to access, view, download and distribute, exclusively for Customer's personal use and that of its family and friends and not for commercial exploitation in any way, the Virtual Tour on Company's Website, subject to any time or other limitations stated in the Order, and further subject to the Company's Terms of Use at www.rememberheroes.org/termsfuse, Terms of Sale at www.rememberheroes.org/termsforsale, Copyright Policy at www.rememberheroes.org/copyright, and Privacy Policy at www.rememberheroes.org/privacy, all of which are hereby incorporated herein by reference. The foregoing license does not include the right to modify or make derivative works from the Virtual Tour IP, nor to distribute any such modified or derivative version.

(b) Tribute. Title to the floral arrangement and other goods, if any, associated with the delivery or performance of Services does not pass to Customer, and Customer has no rights in such goods.

7. Limited Warranty. (a) Company warrants that it will provide its reasonable efforts to perform the Services specified in this Agreement, and that such efforts will be provided in a workmanlike manner.

(b) EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 7(a) ABOVE, COMPANY MAKES NO OTHER WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES, AND DISCLAIMS ANY SUCH OTHER WARRANTY INCLUDING ANY (1) WARRANTY OF MERCHANTABILITY; (2) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (3) WARRANTY OF TITLE; (4) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; (4) WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE; (5) WARRANTY OF CONFORMITY OF THE TRIBUTE OR VIRTUAL TOUR TO SAMPLE PICTORIAL REPRESENTATIONS PROVIDED ON THE WEBSITE.

(c) The Company shall not be liable for a breach of the warranty set forth in 7(a) above unless: (i) Customer gives written notice of the defect, reasonably described, to Company within three days of the date scheduled for placement of the Tribute in the Order, and (ii) Company reasonably verifies Customer's claim that the Services are defective.

(d) Subject to Section 7 (b) and Section 7(c) above, with respect to any such defective Services found by Company to be defective, Company shall, in its sole discretion, either: (i) reperform the Services (or the defective part) or (ii) credit or refund the price of such Services.

(e) THE REMEDIES SET FORTH IN SECTION 7(d) SHALL BE THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND COMPANY'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 7(a).

8. Limitation of Liability.

(a) IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THE AGREEMENT, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY CUSTOMER OR COULD HAVE BEEN REASONABLY FORESEEN BY CUSTOMER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE

FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT SHALL CUSTOMER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO CUSTOMER SELLER FOR THE SERVICES SOLD UNDER THE APPLICABLE ORDER.

9. Termination. In addition to any remedies that may be provided under these Terms, Company may terminate this Agreement with immediate effect, if Customer: (i) fails to pay any amount when due under this Agreement or (ii) otherwise violates its obligations or Company's rights under this Agreement.

10. Waiver. No waiver by Company of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Company. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

11. Force Majeure. The Company shall not be liable or responsible to Customer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Company including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes, or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage, inclement weather at the designated Tribute placement site, or the closing or limitation of access to the designated Tribute placement site.

12. Assignment. Customer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Company. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Customer of any of its obligations under this Agreement.

13. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or

equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

14. Governing Law. All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Texas.

15. Submission to Jurisdiction. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Texas in each case located in the City of Fort Worth and County of Tarrant, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

16. Notices. All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

17. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

18. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Order including, but not limited to, the following provisions: Confidentiality, Governing Law, Submission to Jurisdiction, and Survival.