

## ASSURANCE OF VOLUNTARY COMPLIANCE

In the matter of

THE HERITAGE COMPANY, INC.

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The undersigned state and agree as follows:

1. The State of Iowa ex rel. Thomas J. Miller, Iowa Attorney General, enters into this Assurance of Voluntary Compliance (“Assurance” or “AVC”) with The Heritage Company, Inc. (“Heritage” or “Respondent”) to resolve the Attorney General’s concerns with Respondent’s compliance with Iowa Code § 714.16 (2009), the Iowa Consumer Fraud Act (“CFA”), in connection with the solicitation of donations in Iowa.
2. Respondent is an Arkansas corporation.
3. John C. Braune is President and CEO of, and has an ownership interest in, Heritage.
4. Respondent denies wrongdoing or liability of any kind, but has agreed to enter into this Assurance in order to resolve the dispute with the Attorney General regarding the solicitation of donations in Iowa. Respondent enters into this Assurance solely for the purpose of settlement and nothing contained herein constitutes an admission of any liability or wrongdoing.
5. This Assurance constitutes a full and final resolution of any and all claims by the Iowa Attorney General against Heritage for violations of the CFA that occurred prior to the effective date of this AVC in connection with the solicitation of donations in Iowa.

**IT IS THEREFORE AGREED** that Respondent shall refrain from engaging, directly or indirectly, in the practices described in the lettered paragraphs below in connection with the solicitation of contributions for charitable purposes, either directed to Iowa residents or from an Iowa location.

For purposes of this Assurance:

“*Consumer*” includes each person who is contacted by a representatives of Respondent and is solicited to provide material support to a donee organization by donating funds,

becoming a sponsor, buying advertising, making a purchase, or otherwise; “consumer” includes any person from whom such support is solicited, whether or not the person in fact provides any support.

“*Donee organization*” means any entity for which Respondent engages in fundraising.

“*Fundraising*” means any and all forms of soliciting donations and/or raising funds for a donee organization, pursuant to an arrangement that provides *inter alia* for how the proceeds of fundraising are to be divided between Respondent and the donee organization; “fundraising” includes without limitation the sale of advertising, sponsorships, event tickets, or other merchandise in connection with supporting a donee organization. “*Fundraiser*” means one who engages in fundraising.

“*Merchandise*” has the meaning set forth at Iowa Code § 714.16 (1) (i) (2009).

“*TSR*” stands for Telephone Sales Representative, and includes each person who acts for Respondent, whether as an employee, as an independent contractor, or as an employee of an independent contractor, in using the telephone to raise funds through direct contact with Iowa residents (including businesses).

A. Stating or implying that a TSR is a member of, an employee of, or a volunteer for a donee organization, or is otherwise associated with such organization in any manner other than as a professional fundraiser or a representative of a professional fundraiser.

B. Failing in the course of a fundraising contact, prior to any description of the cause for which funds are being raised, any description of the donee organization, or any actual solicitation, to state clearly: the name of the corporation acting as the professional fundraiser (e.g., “The Heritage Company”); the fact that such entity is a professional fundraiser; and that the purpose of the contact is to make a fundraising request. Without limiting the foregoing, it is a violation of this paragraph to substitute a dba, a division name, or the like, whether “Youth Services” or otherwise, for the full name of the corporation, if such substitution promotes

uncertainty or confusion about the fact that the caller is a representative of a for-profit professional fundraising company.

C. Failing to establish procedures, policies and practices reasonably designed to ensure that a TSR responding to a consumer's question about the percentage or proportion of donations that are ultimately provided for the use of the donee organization, and/or the percentage or proportion of donations that are directed to the entity engaged in professional fundraising, provides an accurate and informative response and does not claim a lack of knowledge or refer the consumer to a website or other potential source of information. To the extent that the division of donated sums is contingent and cannot reasonably be ascertained at the time, a proper response shall be based on the division from the previous year, accompanied by an explanation of that fact, or, if a record of fundraising for the organization from the previous year does not exist or would be misleading, a proper response shall be based on a reasonable, good faith projection, informed by Respondent's fundraising experience with comparable organizations. Without limiting the foregoing, a representation by a TSR, in response to a consumer's question about the percentage or proportion of donations that are ultimately provided for the use of the donee organization, that a donor's check or donation will be sent directly to the donee organization, or that the donee organization controls the funds, is misleading and is prohibited by this subparagraph unless immediately accompanied by such additional explanation of the actual distribution of donated funds as is necessary to state clearly how the funds are divided.

D. Stating or implying that a TSR is calling from some location other than the location from which the TSR in fact is calling.

E. Stating or implying that a donation will provide more of a benefit to the consumer's own community, region, or state than is in fact the case.

F. Stating or implying that a consumer will be contacted less often than, or not as soon as, applicable policies and/or practices actually provide for.

G. Making any false or misleading representation, express or implied, of a material fact in the course of fundraising.

H. Providing to TSRs, or any employee who directly supervises TSRs, any form of performance bonus, such as a pay boost, periodic bonus, or other financial incentive, based on the number of donations or dollar volume of donations pledged, or the number or dollar volume of donations received, unless the provision of such performance bonus is also expressly contingent on compliance by the TSR or supervisor receiving the bonus with the requirements of this Assurance, company policies, procedures and practices established pursuant to this Assurance, and the laws of Iowa.

I. Failing to provide to the office of the Iowa Attorney General, within five business days of receipt of a written (including faxed or e-mailed) request from that office, a list of TSRs (including last known addresses and phone numbers, and beginning and ending dates of employment) (i) who are then employed by a defendant or who were so employed at any time in the sixty (60) days preceding receipt of the request; and (ii) whose employment involved making one or more contacts of Iowa residents for the purpose of soliciting donations or other payments.

J. Failing to establish procedures, policies and practices reasonably designed to ensure that, to the extent Respondent is making fundraising calls to residents of Iowa: (i) a sufficient number of telephone the calls made to Iowa residents are recorded to result in the creation on a weekly basis of at least ten (10) recordings that involve a presentation to a consumer and are at least sixty (60) seconds in length; (ii) such recordings are clearly audible; and (iii) such recordings are preserved intact for at least ninety (90) days. Such recording shall be conducted in such a manner that no representative whose calls are or may be recorded has any information bearing on which calls are being recorded and which are not.

K. Failing to provide to the office of the Iowa Attorney General, within five business days of receipt of a written (including faxed or e-mailed) request from that office, such copies of recordings of telephone solicitations directed to one or more Iowa residents as the Attorney

General may reasonably request.

L. Failing within thirty (30) days of entry of the execution of this Assurance to implement hiring, training, supervision, monitoring, compensation, and subcontracting policies and practices reasonably designed to ensure that employees, subcontractors, and other agents under the control or supervision of Respondent are in full compliance with this Assurance.

**IT IS FURTHER AGREED** that Respondents pay to the State of Iowa, in the manner the Attorney General directs, the amount of \$15,000.00, to be used by the Attorney General for the administration and implementation of the CFA pursuant to Iowa Code §714.16(7), and to be deposited into the fund created by Iowa Code §714.16C (2009).

**IT IS FURTHER AGREED** that a violation of this AVC is deemed a violation of the CFA for purposes of enforcement by the Attorney General, and that in any enforcement action in which one or more violations of this AVC are established by the Attorney General by a preponderance of the evidence, and in which such violation(s) are not shown by the Respondent to have been inadvertent and isolated and to have occurred in spite of efforts reasonably designed to prevent such violations, each such violation shall presumptively give rise to the highest civil penalty provided under the CFA (\$40,000.00), in addition to other remedies provided by law.

The Undersigned who have the authority to consent and sign on behalf of the Attorney General of Iowa and Respondent hereby consent to the form and contents of the foregoing Assurance of Voluntary Compliance, which is to take effect immediately upon execution by all signatories indicated below. Respondent acknowledges having had a full opportunity to consult with and retain legal counsel in connection with any and all aspects of this matter, and that

Respondent has voluntarily and knowingly elected to negotiate and finalize this matter without legal representation.


**THE HERITAGE COMPANY, INC.:**

Date: September 3, 2010

  
For The Heritage Company, Inc.

**IOWA ATTORNEY GENERAL:**

Date: September 13, 2010

  
By Steve St. Clair  
Assistant Iowa Attorney General