

OFFICE OF THE ATTORNEY GENERAL  
OF THE STATE OF NEW YORK

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In the Matter of the

**Investigation by Eric T. Schneiderman,  
Attorney General of the State of New York, of**

Assurance No. 14-145

Disabled Veterans National Foundation, RBS  
International Direct Marketing, LLC, Quadriga  
Art, LLC, Brick Mill Studios, Inc., PEP Direct,  
LLC, PEP Response Systems, LLC, and  
Convergence Direct Marketing, LLC, *et al.*

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**ASSURANCE OF DISCONTINUANCE**

The Office of the Attorney General of the State of New York, Eric T. Schneiderman (the "OAG") has commenced an investigation, pursuant to Section 63 and Article 7-A of the New York State Executive Law ("Exec. Law"), Section 112 of the Not-for-Profit Corporation Law ("N-PCL"), Section 8-1.4 of the Estates, Powers, and Trusts Law ("EPTL"), and its *parens patriae* authority, to determine, *inter alia*, whether a proceeding or action should be instituted against the Disabled Veterans National Foundation ("DVNF"), certain directors and officers of DVNF who are parties hereto, and DVNF's direct mail vendors, RBS International Direct Marketing, LLC, Quadriga Art, LLC, Brick Mill Studios, Inc., PEP Direct, LLC, PEP Response Systems, LLC, and Convergence Direct Marketing, LLC, in connection with DVNF's direct mail fundraising campaign and in connection with the Quadriga Entities' (as defined herein) participation in funded mailing campaigns for charities involved in veterans' causes, including the campaign for DVNF from its inception to the Effective Date of this Assurance of Discontinuance (the "Investigation").

This Assurance of Discontinuance ("Assurance") contains certain findings of the Investigation and sets forth the relief agreed to by the OAG and the other parties hereto.

### **FINDINGS**

The OAG finds as follows:

#### **Background and Parties**

1. Since its founding in late 2007, DVNF has relied on nationwide direct mail campaigns to raise over \$115,000,000 in charitable donations from the donating public, ostensibly to advance the organization's mission of providing public attention to and support for America's disabled and needy veterans. The mailings through which this sum was raised contained numerous misleading statements regarding the nature, programs and effectiveness of DVNF. In addition, over 90% of the charitable funds donated to DVNF were used to cover the organization's direct mail expenses, and despite having already paid over \$104 million to its direct mail vendors, DVNF is still in debt to them in the amount of nearly \$14 million. The Parties entering into this Assurance share responsibility for the fundraising misconduct the OAG finds to have occurred.

2. DVNF is a Louisiana not-for-profit corporation incorporated on November 21, 2007. Since 2010, it has maintained an office in Washington, D.C.. According to its certificate of incorporation, DVNF's purpose is to "celebrate, commemorate, promote, and recognize the contributions and work of both men and women in service in the military in the past and present by promoting the service of future generations" and to "provide support directly and indirectly to veterans and their families in need." Under the heading of "mission," DVNF's website stated for several years that the organization existed "to change the lives of men and women who came home wounded or sick after defending our safety and freedom." DVNF has been registered with

the OAG's Charities Bureau to solicit charitable donations from persons resident in the State of New York since December 17, 2007. DVNF is similarly registered in all other States that require registration. DVNF's direct mail fundraising campaigns have been carried out on a nationwide basis, and have not solicited funds for programs or activities conducted in any particular State.

3. DVNF's founding President, Delilah Washburn, died in April 2010. Four of the charity's other initial directors (collectively with Ms. Washburn, the "Founding Directors") continue to serve as directors, and in some cases as officers, of DVNF. They are: Precilla Wilkewitz ("Wilkewitz"), President of DVNF since May 2010; Pamela Luce ("Luce"), formerly Secretary and currently Treasurer of DVNF; Bertha Cruz Hall ("Hall"), formerly DVNF's Treasurer; and Lynda Waldroop ("Waldroop"), currently Secretary of DVNF.

4. When DVNF was established, its five Founding Directors, who were themselves military veterans, worked as veterans benefits coordinators for their respective home states' Departments of Veterans Affairs and also served as members and/or directors of the National Association of State Women's Veterans Coordinators ("NASWVC"), a small Louisiana not-for-profit entity with minimal annual revenues. The membership of NASWVC was, and remains, limited to current or former state-employed and state-appointed women veterans benefit coordinators. NASWVC's principal activity was, and still is, to hold an annual conference for its members. Ms. Washburn served as NASWVC's President in 2009 until her death in 2010; Wilkewitz was President of NASWVC in 2010-11 and currently is a "Senior Adviser" to the organization; Waldroop is a former President and now "President Emeritus" of NASWVC; and Luce was until recently the President of NASWVC. None of the Founding Directors had any experience with direct mail campaigns or large-scale fundraising prior to forming DVNF.

5. RBS International Direct Marketing LLC ("RBS") is a Delaware for-profit limited liability company. RBS is a holding company for numerous direct and indirect subsidiaries in the United States, China, Hong Kong and elsewhere which are directly or indirectly involved in the direct mail business. That business includes the design, printing, manufacture and mailing of letters, packages, gifts or "premiums," and package inserts, the collection or "caging" of responses, and database creation, maintenance and analysis that promote a particular cause or product on behalf of primarily not-for-profit clients. Three of RBS' subsidiaries based in the United States are Brick Mill Studios, Inc., Quadriga Art LLC and PEP Direct LLC.

6. Brick Mill Studios, Inc. ("Brick Mill") is a New Hampshire for-profit corporation with its principal place of business in Baltimore, Maryland. In January 2008, Brick Mill registered in New York and other States as "fundraising counsel" to DVNF and served in that capacity until June 2010. In addition, Brick Mill has provided database services to DVNF for all of DVNF's direct mail fundraising campaigns from 2008 to present.

7. Quadriga Art, LLC ("QA") is a Delaware for-profit limited liability company with its principal place of business in New York, New York. QA designed, printed, manufactured and mailed DVNF's fundraising solicitations, often including a "premium" gift item, such as address labels, greeting cards, or a calendar, watch, calculator or blanket intended to induce a donation from the recipient, for all of DVNF's direct mail fundraising campaigns from 2008 to present.

8. PEP Direct, LLC ("PEP") is a New Hampshire for-profit limited liability company with its principal place of business in Wilton, New Hampshire. PEP Response Systems, LLC ("PEP Response") is a Delaware for-profit limited liability company with its principal place of business in Wilton, New Hampshire. Both PEP and PEP Response have served as DVNF's "cager," the entity that collects and processes donations received in response to DVNF's direct

mail campaigns from 2008 to present. Except where otherwise noted, PEP and PEP Response are hereinafter referred to collectively as "PEP."

9. R. Mark Schulhof is President and Chief Executive Officer of RBS, and his uncle Thomas B. ("Tommy") Schulhof is Chairman of the Board of RBS. At all times relevant to the Investigation, Mark Schulhof and Thomas Schulhof have been directors and/or officers of RBS, and have had supervisory responsibility over its subsidiaries, including QA, Brick Mill, and PEP. At all relevant times, as officers and directors, Mark Schulhof and Thomas Schulhof had supervisory responsibility for the conduct of the Quadriga Entities at issue in this Investigation and carried out, or failed to carry out, that responsibility, including from the offices that each of them maintains in New York City.

10. When working together, as they did for DVNF, Brick Mill, QA and PEP form a full-service fundraiser capable of implementing nearly every aspect of a large-scale nationwide direct mail campaign to solicit, handle and process donations on behalf of charitable entities. Clients, including DVNF, may not draw a distinction between the different corporate entities, and often refer to them collectively as "Quadriga." QA, Brick Mill, PEP, PEP Response, RBS, Mark Schulhof and Thomas Schulhof are referred to collectively herein as the "Quadriga Entities."

11. Convergence Direct Marketing, LLC ("Convergence") is a Delaware for-profit limited liability company with its principal office located in Bethesda, Maryland. Convergence is co-owned by Craig W. Irwin ("Irwin"), its founder and Chief Executive Officer, and Nathan Snelson ("Snelson"), its Executive Vice President, and its principal business activity is advising not-for-profit clients on the design and execution of direct mail campaigns. Convergence is a vendor for service for the Quadriga Entities which has provided services for the benefit of DVNF since late 2007 as well as for other charitable organizations under contract with the Quadriga

Entities. In June 2010, Convergence, which is registered with New York State as fundraising counsel, entered into a contract to provide fundraising counsel services directly to DVNF and filed that contract with the OAG's Charities Bureau. Convergence has continued to serve as DVNF's fundraising counsel to the present.

#### **The "Funded Model" and the Founding of DVNF**

12. Starting in the mid-2000's, various U.S.-based subsidiaries of RBS began incorporating "funded mailing" arrangements with some charity clients as part of their business model. Generally, in a funded mailing arrangement, the fundraiser assumes the up-front cost, as well as the risk of non-payment, of the client's direct mail campaign. The charity is not obligated to pay the fundraiser from its general funds, but solely out of the monies raised as a result of the campaign; if those monies are insufficient to cover the fundraiser's costs, neither the charity nor its directors or officers are obligated to cover the shortfall, but rather it accumulates as debt to be paid through funds raised in other mailings. The fundraiser's risk of nonpayment may be mitigated by a lien it can obtain on the charity's donor list or a right to rent names on the list, until the debt is paid in full. In addition, the fundraiser may obtain contractual control over all of the charitable funds it raises on behalf of the charity until those funds exceed the amounts due to the fundraiser.

13. In theory, funded mailings are designed to allow an organization, including a "start-up" charity (i.e., a new charity lacking a proprietary list of established donors), to conduct mass mailings without bearing the financial risk that the mailings will cost more than is raised in the funded mailings, and then to offset that debt against later profitable mailings. In practice, and as the OAG's findings in this Investigation demonstrate, the funded mailing model may create incentives to represent a start-up charity as something that it is not, and may cause the charity

and its fundraisers to authorize funded mailings that generate substantial donations but comparatively small proceeds for the charity.

14. In or before 2007, the Quadriga Entities and Larry Rivers ("Rivers"), an active member of the veterans charity community, entered into an unwritten commission agreement. Under the agreement, the Quadriga Entities have paid Rivers a commission based upon the net dollar value to the Quadriga Entities of the services paid for by any charity Rivers introduced to the companies.

15. Rivers had longstanding relationships in the veterans community, he was a neighbor and friend of Wilkewitz's, and he was acquainted with other directors of NASWVC as well. Through these connections, Rivers introduced the Quadriga Entities to NASWVC in 2007 and arranged for representatives of NASWVC and Brick Mill to meet in November 2007. At the time, NASWVC's program efforts were limited to organizing a small annual conference for its dozens of members; its 2007 conference cost the organization less than \$10,000.

16. The November 2007 meeting between NASWVC and Brick Mill included Ms. Washburn and Wilkewitz, neither of whom had any prior experience with direct mail campaigns, large-scale charitable solicitations, or the running of any charity other than NASWVC.

17. Brick Mill's representative explained that NASWVC could raise money through a national direct mail fundraising campaign. When it became clear that NASWVC had neither its own donor list nor the funds to pay for one, Brick Mill offered to carry out nationwide fundraising for the organization using the funded mailings. At this meeting or shortly thereafter, Brick Mill, Rivers or both also suggested that NASWVC could test-run two campaigns, one in the name of NASWVC, and another in the name of a new, to-be-established "foundation."

18. At the initial meeting with Brick Mill or shortly thereafter, NASWVC's representatives agreed to accept Brick Mill's offers. By written agreement dated November 19, 2007, NASWVC engaged Brick Mill as its fundraising counsel to conduct a national direct mail solicitation campaign. NASWVC's representatives also agreed to establish a new entity, with a different name, which would simultaneously carry out a similar campaign, also using Brick Mill as fundraising counsel.

19. That new entity was the Disabled Veterans National Foundation ("DVNF"). The Quadriga Entities' legal counsel, the Kansas City-based Copilevitz & Canter firm, represented Brick Mill in the contract drafting. As counsel to DVNF, Copilevitz & Canter incorporated DVNF in Louisiana, applied to the IRS for tax-exempt status on behalf of DVNF under Section 501(c)(3) of the Internal Revenue Code, and registered DVNF for the purpose of soliciting contributions in all States that require registration.

20. By December 12, 2007, the newly-established DVNF had engaged Brick Mill as its fundraising counsel under a contract, drafted by Copilevitz & Canter, that was virtually identical to the one that had recently been signed between NASWVC and Brick Mill.

21. When it was formed, and for approximately two years thereafter, DVNF was an entity separate from NASWVC in name only. DVNF had no office, no employees, and few programs or missions other than to support the NASWVC in its limited activities. DVNF's board of directors, including the Founding Directors, consisted of the same individuals who comprised the board of NASWVC, and did not hold an in-person board meeting until nearly two years after DVNF was established.

22. Promptly upon being retained as fundraising counsel by NASWVC and DVNF, and as provided in its contracts, Brick Mill began to carry out direct mail fundraising campaigns on



behalf of both entities, setting DVNF up with its affiliate QA to handle the letter printing, premium sourcing, manufacturing and mailing aspects of the campaigns, and with its affiliate PEP to handle the receipt and processing, or “caging,” of donated funds.

23. In addition, Brick Mill subcontracted with Convergence to handle other important aspects of the fundraising campaigns, including the responsibility for drafting the language of the solicitations in the fundraising letters, obtaining DVNF’s approval of the solicitation materials, evaluating the effectiveness of different components of the campaigns, and providing strategic advice as to how DVNF and the fundraisers could maximize financial returns and grow DVNF’s donor file from the mailings. For these services, the Quadriga Entities paid Convergence a retainer, and a commission based on the number of mailings sent by the fundraisers on behalf of DVNF. In June 2010, Convergence replaced Brick Mill as fundraising counsel to DVNF, but the functional roles of the Quadriga Entities and Convergence in DVNF’s direct mail campaigns did not materially change.

24. In its presentations to DVNF and NASWVC prior to their signing their contracts with Brick Mill, and in the contracts themselves, Brick Mill did not adequately disclose the following, among other, information:

- a. the annual or total projected costs of the campaign and the annual or total projected revenues it would generate. The full scale of the fundraising campaign would prove to be far larger than the NASWVC and DVNF board members had anticipated; one member of the board expected the initial campaign to raise only \$50,000;
- b. full pricing information for the letters, premium inserts and packaging to be mailed on the not-for-profits’ behalf, or for the mailing costs associated with the campaign;
- c. that QA and PEP were Brick Mill’s corporate affiliates, and that

Convergence would be compensated in part based on the volume of campaign mailings; and

d. that Brick Mill would not conduct any bidding or other efforts to determine who could provide production services at the most competitive rates.

25. The Quadriga Entities, as well as Rivers, also did not adequately disclose information to DVNF about the financial relationship between the two, pursuant to which Rivers was compensated based on the dollar value of the campaign collections realized by Quadriga. At least two of DVNF's directors, for example, understood or assumed that Rivers was paid a one-time introduction fee of a few thousand dollars. In actuality, directly or through his wholly owned subsidiaries, Rivers has received approximately \$2,342,000 from the Quadriga Entities since 2007 on account of the continuing DVNF-related revenues that Rivers' introduction generated for them. Rivers served as an "unpaid financial consultant" to DVNF from its inception until at least late 2012, and advised the charity about organizational and operational matters as well as the merits of its direct mail fundraising campaign.

**DVNF Raises Millions in Charitable Donations But Falls Deeply into Debt**

26. In early 2008, the Quadriga Entities, on behalf of NASWVC and DVNF, began mailing to potential donors across the United States the letters, premiums and packages that Convergence had helped design and create. The pilot test carried out in the name of the two entities produced a clear direct mail winner: NASWVC's campaign produced total donations in 2008 of only \$143,000, whereas DVNF's mailings in 2008 generated \$10,175,272 in donations from donors to this brand-new entity as well as an initial donor file of nearly 425,000 names.

27. Both campaigns, however, also generated substantial deficits for the organizations. The Quadriga Entities' billings to NASWVC for its services in 2008 totaled \$622,000 (creating a deficit of over \$480,000), and its billings to DVNF that year were \$15,611,287. Together with

other advances the Quadriga Entities made to DVNF that year, the direct mail campaign left DVNF over \$8.4 million in debt to its fundraisers by the end of its first full year of existence.

28. With the superior fundraising appeal of the DVNF "brand" having been clearly established in the pilot campaigns, fundraising in the name of NASWVC was discontinued before the end of 2008. Fundraising campaigns carried out in the name of DVNF, on the other hand, picked up further steam in 2009, generating \$18,869,231 in charitable donations that year. Billings to DVNF for that year's campaigns, however, again substantially exceeded the amount raised, leaving DVNF with an accumulated \$11,023,680 deficit to its fundraisers by the end of 2009.

29. NASWVC's nearly \$500,000 obligation to Quadriga for its 2008 test campaign was paid out of the charitable funds donated to DVNF, and reported by DVNF as a "grant" to NASWVC in its 2008 tax filings. DVNF also reported as a "grant" that year, and again in 2009 and 2010, the approximately \$100,000 annual payments that it made to another non-profit veterans' organization, the Disabled Veterans Life Memorial Foundation ("DVLMF"), which also was a client of the Quadriga Entities and Convergence. The payments were made pursuant to a settlement agreement that the Quadriga Entities had helped negotiate to resolve claims asserted by DVLMF against DVNF, the Quadriga Entities and Convergence for their use in DVNF campaigns of a of logo that was similar to DVLMF's logo.

30. DVNF's board members abdicated to Quadriga many of their decision-making responsibilities in these early years of DVNF's existence. Among other things, some or all of the Founding Members failed to ask for or review any detailed fundraising analyses or projections; failed to review each of the fundraising appeals sent out in DVNF's name; delegated to DVNF's fundraisers the handling of most accounting matters, including the retention of the organization's

outside auditors; and failed to maintain a ledger of the organization's receipts and payments. Further, the minuscule grant-making activity that DVNF conducted in the early years, with the modest disbursements that it received out of the PEP-administered caging account, was done without any documented criteria.

31. Indeed, until at least the Spring of 2010, DVNF had no employees, no other staff, and no business office or phone line; and its board had met in person only once, in June 2009, for a meeting in Manchester, New Hampshire, after which the board members toured PEP's Wilton, New Hampshire manufacturing facility. In these early years, the Founding Directors, who at no time received any salary from DVNF, held regular jobs in their respective States and did not exercise meaningful oversight of DVNF's financials and fundraising activities.

32. Through November 2009, DVNF's program activity -- chiefly, the approval of a handful of \$500-\$1,000 grants to individuals and organizations -- was incommensurate with the over \$30 million the organization had raised in its first two years of operations. In November and December 2009, Quadriga and Convergence, with the assistance of Rivers, helped DVNF enter into a large-scale gift-in-kind ("GIK") program. Under this program, DVNF paid a third-party vendor, Charity Services International ("CSI"), for CSI's services in obtaining donated goods from "upstream" donors, documenting the donors' valuation and transfer of title of these goods to DVNF, and transporting the goods to "downstream" recipients, including veterans' homeless shelters and "stand-downs" (sites where goods are distributed to needy veterans and their families).

33. GIK is an attractive program for many charities because, with the expenditure of a relatively small amount of cash for processing and transportation costs, it allows the charity to report as revenue, and as "program expense," the relatively large dollar amount of goods donated

to and by the charity, thereby reducing the reported percentage spent on fundraising and administrative expenses and improving the charity's perceived efficiency in the eyes of donors.

34. In 2009, the GIK program enabled DVNF to ship goods to veterans with a total reported value of over \$2 million. The shipments accounting for the largest dollar value that year consisted of vitamins sent to homeless shelters and veterans aid organizations under a program the details of which were not reviewed by the DVNF board. Even after 2009, DVNF's board failed to ensure that many of the steps necessary to properly account for GIK revenues and expenses -- including verifying the upstream donors' valuations of the goods; confirming that they had valid title to the goods donated; obtaining custody of and title to the goods in question; and documenting the end uses of the donations -- were properly conducted. Moreover, DVNF and its board persistently failed to direct the donated goods to support *disabled* veterans, or ensure that the goods had any useful purpose at all. GIK programs have accounted for the majority of DVNF's program activities to the present date. DVNF terminated its business relationship with CSI effective May 12, 2014.

35. Upon replacing Brick Mill as DVNF's fundraising counsel in June 2010, Convergence did not solicit any competitive bids for DVNF's direct mail services previously provided by the Quadriga Entities. Nor did Convergence disclose to DVNF that it had previously received a retainer or commissions from the Quadriga Entities for direct mail services, or that it was continuing to receive a commission from CSI on account of Convergence's role in directing DVNF's GIK business to CSI.

36. From 2008 until 2013, when DVNF hired a new Chief Executive Officer and engaged independent legal counsel, the Quadriga Entities exerted influence and control over DVNF's activities in a variety of ways. In addition to those already described, these included, among

others:

a. Routinely providing guidance to and consulting with Larry Rivers, who was being paid by the Quadriga Entities, about DVNF's program activities, budget, board matters and the public relations defense of DVNF's direct mail fundraising campaign, all while Rivers served as a trusted consultant to the charity's board;

b. Supporting the hiring of Raegan Rivers, Larry Rivers' daughter, as DVNF's Chief Administrative Officer in March 2010, a position Ms. Rivers held until September 2012. Ms. Rivers was 27 when she was hired and had only limited post-college work experience. DVNF did not post a job announcement for the Chief Administrative Officer position or interview any other candidates before hiring Ms. Rivers. Ms. Rivers communicated often with her father, the Quadriga Entities and Convergence about DVNF matters, and sometimes obtained guidance and direction from them, before communicating with the DVNF board about the same matters;

c. Helping select DVNF's first, and second, outside auditing firm;

d. Engaging a university professor with expertise in charitable fundraising to conduct, nominally on behalf of DVNF, an analysis of DVNF's fundraising campaign; and

e. Managing DVNF's public relations response to critical media reports about the organization that were raised first in 2010 and then again in 2012.

37. The following table sets forth the annual cash donations DVNF has received from donors nationwide in response to its direct mail campaign, the charity's annual direct mail and related costs (inclusive of cost for postage and list rentals advanced by the Quadriga Entities), and the charity's cumulative debt to the Quadriga Entities as at the end of each year:

	2008	2009	2010	2011	2012	2013	TOTAL
Cash Contributions to DVNF	\$10,175,272	\$18,869,231	\$21,126,906	\$20,283,690	\$21,808,319	\$24,029,967	\$116,293,385
Direct Mail and Related Costs	\$15,611,287	\$20,063,489	\$25,854,527	\$20,297,045	\$19,165,299	\$19,971,876	\$120,963,523
Annual Direct Mail Surplus/ (Deficit)	\$(5,436,015)	\$(1,194,258)	\$(4,727,621)	\$(13,355)	\$2,643,020	\$4,058,091	N/A
Cumulative Total Trade Accounts Payable	\$8,428,111	\$11,023,680	\$14,692,853	\$17,056,375	\$16,499,550	\$14,438,837	N/A

Of the direct mail and related costs reflected above, approximately \$30 million represents monies advanced by the Quadriga Entities to cover DVNF's postage costs.

38. OAG has found no evidence that any of the Quadriga Entities, acting as cagers, misappropriated or failed properly to account for any of the DVNF funds received by them.

39. On December 31, 2013, during the pendency of the Investigation, Quadriga forgave \$1,200,000 of DVNF's debt. As of the Effective Date of this Assurance, DVNF owes Quadriga approximately \$13.8 million.

40. Since 2010, DVNF has expanded its charitable programs, established its headquarters in Washington, D.C., and hired full-time staff. In 2013, DVNF hired its first full-time Chief Executive Officer.

### **DVNF's and Its Direct Mail Vendors' Numerous Misleading Solicitations**

41. The Quadriga Entities and DVNF caused tens of millions of solicitation letters to be sent to donors and potential donors nationwide. Typically these letters would be accompanied by "premium" gifts, patriotic items such as address labels, greeting cards, calendars, mugs, blankets, calculators, watches, tote bags and pins. These premium gifts were keyed to a campaign theme set forth in the accompanying letter. For example, a blanket bearing the DVNF logo was sent with a letter asking a donor to "blanket our heroes with care."

42. These solicitation letters, drafted by Convergence and mailed by the Quadriga Entities on behalf of DVNF, variously contained numerous misleading statements concerning DVNF itself, the individuals helped by DVNF, and the impact of a donor's contribution in advancing DVNF's mission:

a. Since the charity's inception, DVNF's solicitation letters have variously claimed that the organization has a robust, nationwide network of "advocates," "coordinators," "partners and volunteers," "professional veterans' coordinators," and "veterans' benefits coordinators" that directly assists disabled veterans to obtain desperately-needed benefits, services, and care. The letters claimed that these DVNF advocates and benefit coordinators provide a safety net that catches disabled veterans when the Veterans Administration (VA) fails to care for them, representing that "a DVNF advocate is the best friend any hero could have." In reality, DVNF has not ever had its own national network; for the first two and a half years of DVNF's existence, the charity had *no* employees, volunteers or offices; and since mid-2010, it has had only a small administrative staff in its Washington, D.C. office;

b. DVNF's solicitation letters have variously represented that DVNF helps specific veterans movingly described in the solicitation letters. Yet many of these characters are



either fictional or composite figures compiled from the stories of veterans who may or may not have had any connection to DVNF. One such figure who has appeared repeatedly in DVNF's solicitation letters is named "Arnie." According to DVNF, Arnie suffered severe brain and leg injuries in Afghanistan after his vehicle was hit by an improvised explosive device and now lives in a snow-covered car that is "home to a hero who's home from fighting for our country!" According to DVNF, Arnie lost his job as a steelworker and, has been unable to apply for disability due to his brain injury. DVNF claimed:

We found Arnie through a shelter for homeless veterans, one of our partners in the mission of the Disabled Veterans National Foundation. They're trying to get Arnie out of his car and under a roof, but PTSD makes this man very suspicious of getting help from the VA or anyone else. Arnie believes we want to talk him into going to the VA for medical care and, well, he's right. We want him to start taking the steps necessary to change his whole life... Another urgently important gift of \$10... \$15... or \$20 today can lay that blanket of security and concern over a hero like Arnie. . . . Help the [DVNF] bring another Arnie home from war and back into the mainstream of life!

DVNF never provided help to any figure named "Arnie." DVNF's stories of providing assistance to him, and to certain other disabled veterans like him, were false;

c. When DVNF instituted its GIK program, DVNF's solicitation letters added representations with respect to how far a donated dollar would go to assist disabled veterans. An oft-repeated claim has been that the charity turns every dollar donated to it into ten dollars' worth of goods for disabled veterans ("your gifts deliver \$100 in assistance for every \$10 you send!"). This claim is misleading because over 90% of the funds donated to DVNF were used to pay the charity's direct mail costs; and

d. Other DVNF letters have asserted that the charity serves exclusively disabled veterans -- as its very name suggests -- as opposed to veterans generally. According to one letter signed by DVNF's President, "I can assure you that we'll put your contributions to use

helping **injured veterans.**" [Emphasis added.] In reality, the substantial majority of the aid the charity has provided has been donated to homeless veterans shelters and "stand-down" distribution centers with little to no effort made to ensure that the aid reaches disabled veterans in particular.

43. By engaging in the conduct described above, certain members of the Board of DVNF failed to discharge the duties of their respective positions with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

### **Conclusions of Law**

The OAG makes the following conclusions of law:

44. Where fundraising counsel provide advice to a not-for-profit client on all aspects of their fundraising campaigns, have superior expertise, and have fostered a relationship of trust and confidence, they are fiduciaries of their clients with all of the duties and responsibilities attendant to that role. Those duties and responsibilities include, without limitation, primary allegiance to the interests of their not-for-profit client; full disclosure to the client of all actual or potential conflicts of interest, including the financial or other relationships with affiliates, subcontractors, third-party vendors, outside commissioned sales representatives and their family members; and providing to the client thorough projections or estimates, in writing, of all material elements of the proposed fundraising campaigns, including projected revenues, costs, and all pertinent fee, rate and billing information.

45. By engaging in the conduct described above, the Quadriga Entities:

- a. because of the misleading statements contained in fundraising solicitations, violated Sections 63(12) and 172-d(2) of the Executive Law;
- b. breached their fiduciary duty to DVNF; and

c. failed to properly register with the OAG's Charities Bureau in violation of Section 173 of the Executive Law.

46. By engaging in the conduct described above, Convergence, because of the misleading statements contained in fundraising solicitations, violated Sections 63(12) and 172-d(2) of the Executive Law.

47. By engaging in the conduct described above, DVNF:

a. because of the misleading statements contained in fundraising solicitations, violated Section 172-d(2) of the Executive Law; and

b. failed to apply charitable contributions in a manner substantially consistent with claims made in their charity solicitations, in violation of Section 172-d(4) of the Executive Law.

#### **PROSPECTIVE RELIEF**

WHEREAS, the Quadriga Entities, Convergence, Irwin and Snelson (Irwin and Snelson are referred to collectively as the "Convergence Guarantors"), and DVNF, Wilkewitz, Luce, Hall and Waldroop (DVNF, Wilkewitz, Luce, Hall and Waldroop are referred to collectively as the "DVNF Parties", and the Quadriga Entities, Convergence, the Convergence Guarantors and the DVNF Parties are referred to collectively as the "Parties"), neither admit nor deny the OAG's findings recited in paragraphs 1 through 43 above and deny any violation of law in this matter;

WHEREAS, the OAG and the Parties have cooperated to address the concerns raised by the OAG in this Investigation, and to fashion appropriate and meaningful steps to address those concerns, as further set forth in this Assurance;

WHEREAS, the OAG finds the relief and agreements in this Assurance to be in the public interest, accepts the terms of this Assurance pursuant to Exec. Law § 63(15) in lieu of commencing an action or proceeding, and hereby discontinues its Investigation; and

WHEREAS, the Parties each believe that the obligations imposed by this Assurance are prudent and appropriate;

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties and the OAG that in consideration of the making and execution of this Assurance:

**MONETARY RELIEF**

48. DVNF's direct mail vendors shall pay damages, restitution and costs in the aggregate sum of \$24,600,000 in the following manner, amounts, and on the following dates:

a. Upon the Effective Date of this Assurance, the Quadriga Entities shall pay restitution to DVNF in the aggregate amount of \$13,800,000, representing the total amount currently owed to QA, Brick Mill, and PEP (the "DVNF Debt"), by forgiving and making no further effort, directly or indirectly, to collect upon the DVNF Debt;

b. In compensation for amounts that otherwise could have gone to support and improve the welfare of disabled veterans of the United States military, RBS, QA, Brick Mill and PEP shall pay damages in the aggregate amount of \$9,700,000, by delivering payments in the following amounts on or before the following dates: \$6,700,000 upon the Effective Date of this Assurance and \$3,000,000 in six quarterly installments of \$500,000 each on or before January 15, 2015, April 15, 2015, July 15, 2015, October 15, 2015, January 15, 2016, and April 15, 2016;

c. Convergence shall pay damages in the aggregate amount of \$300,000 by delivering payments in the following amounts on or before the following dates: (i) \$75,000 on

or before July 15, 2014; (ii) \$100,000 on before July 15, 2015; and (iii) \$125,000 on or before April 15, 2016;

d. Consistent with the purposes for which charitable donations to DVNF were solicited, payments pursuant to subparagraphs (b) and (c) above shall be distributed by the OAG to support federally-managed research and development programs to improve the care, treatment and rehabilitation services available to disabled veterans of the United States military, including those who have incurred service-related injuries, who experience post-traumatic stress disorder and/or who have other mental and physical health conditions;

e. Upon the Effective Date of this Assurance, the Quadriga Entities shall deliver payment to the New York Department of Law in the amount of \$800,000 to defray the OAG's costs and fees;

f. All payments under subparagraphs b, c and e above shall be made by wire transfer, certified check and/or bank check;

g. The Quadriga Entities' obligations under subparagraph b above are joint and several obligations of RBS, QA, Brick Mill and PEP;

h. In the event any portion of the Quadriga Entities' payment is not made when due, upon failure to pay within thirty (30) days after demand, the full amount(s) then outstanding under subparagraphs b and d shall become immediately due and payable, and the OAG, in addition to all other remedies available, may: (a) collect the full outstanding amount(s) from any and all of RBS, QA, Brick Mill and PEP; and (b) if any amounts thereafter remain due and unpaid, prohibit without further notice any and all Quadriga Entities from engaging, directly and indirectly, in any fundraising activities in New York;

i. The Convergence Guarantors each personally guarantee the payment of Convergence, including any successor or assign of Convergence, under subparagraph c above and, in the event any such payment is not made when due, upon failure to pay within thirty (30) days after demand, the full amount(s) then outstanding under subparagraph c shall become immediately due and payable from the Convergence Guarantors, and the OAG, in addition to all other remedies available, may: (a) collect the full outstanding amount(s) from any and all of Convergence and the Convergence Guarantors; and (b) if any amounts thereafter remain due and unpaid, prohibit without further notice Convergence, the Convergence Guarantors and their successors and assigns from engaging, directly or indirectly, in any fundraising activities in New York; and

j. None of the Parties making any payment hereunder shall claim a charitable deduction on account of any such payment.

#### **FUNDRAISING REFORMS – THE QUADRIGA ENTITIES AND CONVERGENCE**

##### **Relationship with DVNF**

49. Upon the Effective Date of this Assurance, (a) all existing fundraising and database agreements between the Quadriga Entities, Convergence or the Convergence Guarantors, on the one hand, and DVNF, on the other hand, are rescinded, void and of no further effect, and (b) none of the Quadriga Entities, Convergence or the Convergence Guarantors shall have a lien, encumbrance or other interest in any list of DVNF donors, and DVNF shall have full title to any such list with the right to use such list(s) free and clear of any claims by the Quadriga Entities, Convergence or the Convergence Guarantors.

50. The Quadriga Entities have terminated any existing agreements, formal or informal, with Larry Rivers, Raegan Rivers or any company controlled by either of them insofar as the

agreement(s) provide for any compensation on account of DVNF-related billings or collections, and shall not make any future payments to Larry Rivers, Raegan Rivers or any company controlled by either of them on account of any such billings or collections.

51. Except as provided below, from the Effective Date until July 15, 2017, none of the Quadriga Entities, Convergence and the Convergence Guarantors, and none of their successors or assigns, shall directly or indirectly provide to DVNF, or enter into or bid for any contract to provide DVNF, any advice or services of any kind in connection with any of DVNF's direct mail fundraising activities; provided however, that the Quadriga Entities are not prohibited during this period from providing the following direct mail goods and services: printing, manufacturing, packaging, mailing, and sourcing (including premiums), but only if (a) such goods and services are provided to DVNF under a non-funded mailing model agreement awarded as part of a competitive bidding process conducted by DVNF or a third party independent of the Quadriga Entities, Convergence and the Convergence Guarantors; and (b) Convergence and the Convergence Guarantors do not provide any services to or receive any compensation from the Quadriga Entities in connection with any services provided by the Quadriga Entities to DVNF during this period.

52. To assist DVNF in its transition to new fundraising counsel and related database and caging vendors, at the request of DVNF, the Quadriga Entities and Convergence shall continue to provide services for which they shall be compensated by DVNF at these vendors' then current billing rates, as follows: (a) until September 30, 2014, Convergence may continue to provide fundraising counsel advice and services, and the Quadriga Entities may continue to provide printing, manufacturing, packaging, mailing, and sourcing (including premiums), goods and services, for funded mailings; and (b) the Quadriga Entities may continue to provide database

goods and services until December 31, 2014 and caging services until April 30, 2015. During this transition period, (c) the existing escrow account and agreement between PEP and DVNF shall remain in place, and (d) the Quadriga Entities, Convergence and the Convergence Guarantors shall cooperate fully with DVNF in its transition to one or more other fundraising agencies, fundraising counsel, cagers and database managers.

**Funded Mailings**

53. Upon the Effective Date, the Quadriga Entities shall adopt and adhere to the reforms set forth in Exhibit A annexed hereto and made a part hereof.

**All Fundraising Activities**

54. From the Effective Date until July 15, 2019, with respect to all fundraising activities in the United States on behalf of any not-for-profit client, each of the Quadriga Entities, Convergence and the Convergence Guarantors shall:

a. Not enter into any agreement with a start-up not-for-profit entity (as that term is defined in Exhibit A hereto), unless the entity is represented by counsel that does not also represent any of the Quadriga Entities, Convergence or Convergence Guarantors, as the case may be, in the matter. Further, with respect to all not-for-profit entities, if the counsel for the not-for-profit entity represents the Quadriga Entities, Convergence or Convergence Guarantors in other fundraising matters, the Quadriga Entities, Convergence or the Convergence Guarantors, as the case may be, will disclose this relationship to the not-for-profit entity in writing;

b. Disclose, in writing, the identity of and the nature of the financial arrangements with any outside commissioned salesperson, affiliated party, and fundraising counsel or agency subcontractor engaged or compensated in connection with the fundraising activities for that client, as well as any commissions or other compensation to be received by the



Quadriga Entities, Convergence or the Convergence Guarantors, as the case may be, from any third party providing services to the not-for-profit entity;

c. Prior to the client's agreement to engage either the Quadriga Entities, Convergence or the Convergence Guarantors, as the case may be, for any fundraising campaign, provide the client with a complete written description of the elements of the proposed campaign, the costs and rate structure associated with each such element, and the projected total costs and donation revenues associated with the campaign and any discrete segment thereof; and

d. When acting as fundraising counsel, or in providing advice with respect to the content of fundraising solicitations, engage in sufficient and reasonable due diligence to satisfy itself that the representations of fact made in mailed solicitations on behalf of a not-for-profit entity are not deceptive or materially misleading.

**Filings with the OAG's Charities Bureau**

55. QA, BMS, and PEP each will register as "fundraising counsel" with the OAG's Charities Bureau, and file all documents and other records required to be filed by fundraising counsel. The Quadriga Entities will file with the OAG's Charities Bureau each contract with a not-for-profit engaged in a funded mailing program with a Quadriga Entity. In addition, (a) if, despite their separate incorporation, the fundraising activities of one or more Quadriga Entities for a given client include both fundraising counsel and caging services, at least one of the entities shall file on behalf of all of the Quadriga Entities servicing that client all reports (on a consolidated basis) that would be required of a "professional fundraiser" as that term is used under New York law; and (b) if the activities of QA, BMS, PEP or any other Quadriga Entity affiliate separately comes within the definition of "professional fundraiser" as that term is used under New York law, each such entity shall so register with the OAG's Charities Bureau.

## **GOVERNANCE REFORMS - DVNF**

### **Officers and Directors**

56. Within 10 days of the Effective Date, (a) Wilkewitz, Hall, Waldroop and Luce shall resign all positions they hold as officers of DVNF; (b) DVNF's board of directors shall elect a new President and Treasurer, other than one of Founding Directors or a DVNF employee; and (c) Wilkewitz, Hall, Waldroop and Luce shall deliver to DVNF letters of resignation as directors of the organization, effective in the cases of Hall and Waldroop on September 1, 2014 and in the cases of Wilkewitz and Luce on December 31, 2014. Following the effective date of their respective resignations as directors of DVNF, Wilkewitz, Hall, Waldroop and Luce shall not serve as a director, officer, fiduciary, employee, independent contractor or consultant of DVNF.

57. DVNF shall promptly conduct a search for not less than five new directors, with the objective of adding to its board new directors with experience and skill in the areas of accounting, not-for-profit administration, social services and board governance. No later than September 1, 2014, and after consulting with and receiving no objection from the OAG, DVNF's board shall nominate and elect five new directors.

### **Board Governance**

58. Upon the election of its five new directors, the DVNF board shall establish an ad hoc committee of the board, not including any of the Founding Directors, to review and report to the board on DVNF's GIK program (the "GIK Committee"). The mandate of the GIK Committee shall include the making of recommendations to the board concerning: (a) whether to continue DVNF's GIK programs and, if so, the identity of any entity to replace CSI; (b) the identification of recipients of donated goods or services; (c) effective measures to increase the level of donated goods and services directed specifically to disabled veterans; and (d) the documentation and

processes necessary to ensure the propriety of DVNF's accounting for GIK revenues and program expenses.

59. Upon the election of its five new directors, the DVNF board shall establish a standing audit committee, consisting of not less than three independent board members and not including any of the Founding Directors, and which shall be chaired by a director with experience, skill or training in accounting matters. The audit committee shall oversee the accounting and financial reporting processes of DVNF and the audit of the organization's financial statements. Its duties shall include, but not be limited to: (a) reviewing with DVNF's independent auditor the scope and planning of its annual audit prior to the audit's commencement, (b) reviewing the results of the audit, including any deficiencies noted by the auditor, (c) annually considering the performance and independence of the auditor, and (d) reporting on the committee's activities to the board.

60. Upon the effective date of their respective resignations from the board of DVNF, each of Wilkewitz, Hall, Waldroop and Luce shall be permanently barred from serving as an officer, director, trustee or fiduciary, or as an employee with control, discretion or authority over the funds, of any not-for-profit corporation or charitable entity incorporated, registered and/or soliciting contributions in the State of New York.

#### **Certain Relationships Prohibited**

61. DVNF recently terminated its business relationship with CSI and has no current business or advisory relationship, formal or informal, with Larry Rivers or Raegan Rivers. DVNF shall not engage CSI, Larry Rivers or Raegan Rivers to provide any future services, and shall not make any further payments of any kind to any of them.

62. Except as specifically permitted by this Assurance, from the Effective Date until July

15, 2017, DVNF shall not pay any compensation to, and shall not enter into any agreement concerning fundraising activities with, any of the Quadriga Entities, Convergence, the Convergence Guarantors, or any of their successors or assigns.

**CERTAIN FUNDRAISING CLAIMS PROHIBITED**

63. No later than 90 days from the Effective Date, in connection with any of DVNF's fundraising activities in the United States, DVNF, the Quadriga Entities, and Convergence shall not:

a. Make any claim that DVNF itself has or is comprised of a nationwide network of "advocates," "coordinators," "partners and volunteers," "professional veterans' coordinators," "veterans' benefits coordinators" or similar claims concerning such purported support systems, unless DVNF employs or controls such persons or networks or such claims are qualified by a clear statement that DVNF only has access to or works with other organizations' networks, coordinators, partners and/or volunteers;

b. Employ the use of any fictional or composite characters and stories without a prominent disclaimer that the individual(s) and/or stories described are not actual characters and/or events;

c. Employ any language suggesting that a donation of any amount will produce benefits of any multiple of that amount; and

d. Make any claim that DVNF is providing aid solely or primarily to disabled veterans.

**ADDITIONAL PROVISIONS**

64. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by the Quadriga Entities, Convergence, the Convergence

Guarantors and the DVNF Parties concerning the matters addressed in this Assurance and the OAG's own factual Investigation as set forth in the findings above. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

65. Acceptance of this Assurance by the OAG shall not be deemed approval by the OAG of any of the practices or procedures referenced herein, and the Quadriga Entities, Convergence, the Convergence Guarantors and the DVNF Parties shall make no representation to the contrary. Without limiting the foregoing, the OAG and the Quadriga Entities have agreed to the terms set forth in Exhibit A hereto in recognition of the unique risk features associated with funded mailings, both for the start-up not-for-profit entity that decides to engage in them and for members of the public who may, as a result of the funded mailing, donate funds to a charitable organization that may be assuming significant levels of debt and find itself unable to carry out significant levels of current charitable program activity. Nothing contained herein constitutes or shall be construed as an endorsement or approval by the OAG of funded mailings in general, or any particular funded mailing program, and the Quadriga Entities, Convergence, the Convergence Guarantors and the DVNF Parties shall make no representation to the contrary.

66. Nothing contained in this Assurance is intended or shall operate to replace, remove, weaken or lower the requirements and standards applicable to the Quadriga Entities', Convergence's or DVNF Parties' fundraising activities under New York law.

67. This Assurance constitutes the entire agreement among the Parties and OAG and supersedes all prior agreements and understandings, written or oral, among the them with respect to the subject matter of this Assurance. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by any of

the Quadriga Entities, Convergence, the Convergence Guarantors or the DVNF Parties in agreeing to this Assurance.

68. Each of the Parties hereby acknowledges that it, he or she has been represented by counsel in agreeing to this Assurance.

69. The Quadriga Entities, Convergence, the Convergence Guarantors and the DVNF Parties represent and warrant, through their signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized.

70. While the Quadriga Entities, Convergence, the Convergence Guarantors and the DVNF Parties neither admit nor deny the OAG's findings, and deny the OAG's conclusions of law, none of them shall take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects the Quadriga Entities', Convergence's, the Convergence Guarantors' and the DVNF Parties': (a) testimonial obligations; or (b) right to take contrary legal or factual positions in pursuit or defense of litigation or other legal proceedings to which the OAG is not a party. The OAG and the Parties acknowledge and agree that this Assurance constitutes and comprises the settlement of claims asserted by the OAG that the Parties dispute, and therefore this Assurance shall not be used by any third party in any other proceeding and is not intended, and should not be construed, as an admission of liability by any of the Quadriga Entities, Convergence, the Convergence Guarantors or the DVNF Parties.

71. This Assurance shall be binding on and inure to the benefit of the parties to this Assurance and their respective successors and assigns, and none of the Parties, other than the OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG. This Assurance does not impact the

rights, claims, obligations and liabilities, and does not inure to the benefit, of any person or entity not a party to this Assurance.

72. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

73. From the Effective Date until July 15, 2019, to the extent not already provided under this Assurance, the Quadriga Entities, Convergence, the Convergence Guarantors, DVNF and the Founding Directors shall, upon request by the OAG and within reasonable periods of time, provide all non-privileged documentation and information necessary for the OAG to verify compliance with this Assurance.

74. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

If to the OAG, to:

Michael R. Torrasi  
Assistant Attorney General, Charities Bureau  
120 Broadway, 3rd Floor  
New York, NY 10271

If to any of the Quadriga Entities, to:

Joseph L. Forstadt  
Stroock & Stroock & Lavan LLP  
180 Maiden Lane  
Suite 32108  
New York, NY 10038

and

**Cameron G. Shilling**  
**McLane, Graf, Raulerson & Middleton, P.A.**  
**900 Elm Street, P.O. Box 326**  
**Manchester, NH 03105-0326**

**If to any of Convergence or the Convergence Guarantors, to:**

**Tracy L. Boak and Seth Perlman**  
**Perlman and Perlman LLP**  
**41 Madison Avenue**  
**Suite 4000**  
**New York, NY 10010**

**If to any of the DVNF Parties, to:**

**Pamela Mann**  
**Carter Ledyard & Milburn LLP**  
**2 Wall Street**  
**New York, NY 10005**

**75. All correspondence and payments related to this Assurance must reference Assurance No. 14-145.**

**76. If the OAG believes any of the Parties have violated this Assurance, the OAG shall give the Party or Parties allegedly in violation notice, in writing, of the alleged violation or violations and thirty (30) days to cure. Pursuant to Exec. Law § 63(15), evidence of a violation of this Assurance by a particular party shall constitute prima facie proof of violation of the applicable law as to that party in any action or proceeding thereafter commenced by the OAG.**

**77. If a court of competent jurisdiction determines that any of the Quadriga Entities, Convergence, the Convergence Guarantors or the DVNF Parties has breached this Assurance, the Party or Parties in breach shall pay to the OAG the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.**

**78. Each of the Quadriga Entities, Convergence, the Convergence Guarantors, DVNF and the Founding Directors (a) agrees not to raise or interpose in any way their residency, state**



of incorporation, or any other jurisdictional objection as a defense to any cause of action, claim or argument arising from the OAG's enforcement of this Assurance, and (b) consents to the jurisdiction of the courts of New York State, New York County, for the purpose of interpreting, carrying out the terms of this Assurance and/or granting such other and further relief as may be necessary for its enforcement.

79. Each of the Quadriga Entities, Convergence, the Convergence Guarantors, DVNF and the Founding Directors agrees not to raise or interpose in any way any statute of limitations or laches defense, claim or argument arising from the OAG's enforcement of this Assurance.

80. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. The OAG is willing to accept this Assurance pursuant to Exec. Law §63(15), in lieu of commencing a statutory proceeding. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

81. If required or requested to produce, provide, reveal, disclose, or otherwise make available or accessible to any other person, including any other state or federal governmental agency, any document, data or information obtained from the Quadriga Entities, Convergence, the Convergence Guarantors, the DVNF Parties, or any third party pursuant to any subpoena issued by the OAG to any of them, based on any testimony of any witness taken in the course of this matter, or acquired in any other manner in the Investigation, and to the extent consistent with the provisions of New York's Freedom of Information Law, the OAG shall provide the Parties with notice and sufficient time and opportunity to challenge in a court of competent jurisdiction prior to making any such production or disclosure of the document, data or information.

82. This Assurance may not be amended except by an instrument in writing signed on behalf of the OAG and all the Parties to this Assurance. This Assurance may be executed in one

or more counterparts, and shall become effective when such counterparts have been signed by the OAG and each of the Parties. The Effective Date of this Assurance is the last date on which the OAG and all of the Parties hereto have signed this Assurance.

83. Except as otherwise set forth herein, nothing contained herein shall be construed as to deprive any person of any private right under the law.

IN WITNESS WHEREOF, this Assurance is executed by OAG and the Parties hereto:

Dated: June 11, 2014

RBS INTERNATIONAL DIRECT  
MARKETING, LLC

By: R. Mark Schulhof  
R. Mark Schulhof  
Chief Executive Officer

Dated: June 11, 2014

QUADRIGA ART, LLC

By: R. Mark Schulhof  
R. Mark Schulhof  
President

Dated: June 11, 2014

BRICK MILL STUDIOS, INC.

By: R. Mark Schulhof  
R. Mark Schulhof  
Treasurer

Dated: June 11, 2014

PEP DIRECT, LLC

By: R. Mark Schulhof  
R. Mark Schulhof  
President

Dated: June 11, 2014

PEP RESPONSE SYSTEMS, LLC

By: R. Mark Schulhof  
R. Mark Schulhof  
President

Dated: June 11, 2014

MARK SCHULHOF

R. Mark Schulhof  
R. Mark Schulhof

Dated: June \_\_, 2014

THOMAS B. SCHULHOF

Thomas B. Schulhof

Dated: June \_\_, 2014

CONVERGENCE DIRECT  
MARKETING, LLC

By: \_\_\_\_\_  
Craig W. Irwin  
Chief Executive Officer

Dated: June \_\_, 2014

CRAIG W. IRWIN

Craig W. Irwin

Dated: June \_\_, 2014

NATHAN SNELSON

Nathan Snelson

Dated: June \_\_, 2014

PEP RESPONSE SYSTEMS, LLC

By: \_\_\_\_\_  
R. Mark Schulhof  
President

Dated: June \_\_, 2014

MARK SCHULHOF

\_\_\_\_\_  
R. Mark Schulhof

Dated: June 11, 2014

THOMAS B. SCHULHOF

\_\_\_\_\_  
Thomas B. Schulhof

Dated: June \_\_, 2014

CONVERGENCE DIRECT  
MARKETING, LLC

By: \_\_\_\_\_  
Craig W. Irwin  
Chief Executive Officer

Dated: June \_\_, 2014

CRAIG W. IRWIN

\_\_\_\_\_  
Craig W. Irwin

Dated: June \_\_, 2014

NATHAN SNELSON

\_\_\_\_\_  
Nathan Snelson

Dated: June \_\_, 2014

PEP RESPONSE SYSTEMS, LLC

By: \_\_\_\_\_  
R. Mark Schulhof  
President

Dated: June \_\_, 2014

MARK SCHULHOF

\_\_\_\_\_  
R. Mark Schulhof

Dated: June \_\_, 2014

THOMAS B. SCHULHOF

\_\_\_\_\_  
Thomas B. Schulhof

Dated: June 12, 2014

CONVERGENCE DIRECT  
MARKETING, LLC

By:  \_\_\_\_\_  
Craig W. Irwin  
Chief Executive Officer

Dated: June 12, 2014

CRAIG W. IRWIN

 \_\_\_\_\_  
Craig W. Irwin

Dated: June 13, 2014

NATHAN SNELSON

 \_\_\_\_\_  
Nathan Snelson

Dated: June \_\_\_, 2014

PAMELA LUCE

  
Pamela Luce

Dated: June \_\_\_, 2014

BERTHA CRUZ HALL

\_\_\_\_\_  
Bertha Cruz Hall

Dated: June \_\_\_, 2014

LYNDA WALDROOP

\_\_\_\_\_  
Lynda Waldroop

Dated: June \_\_\_, 2014

PRECILLA WILKEWITZ

\_\_\_\_\_  
Precilla Wilkewitz

Dated: June \_\_\_, 2014

DISABLED VETERANS NATIONAL  
FOUNDATION

By: \_\_\_\_\_  
Precilla Wilkewitz  
President

Dated: June \_\_\_, 2014

ERIC T. SCHNEIDERMAN  
*Attorney General of the State of New York*  
120 Broadway  
New York, NY 10271

By: \_\_\_\_\_  
David E. Nachman  
Senior Enforcement Counsel,  
Executive Division

Dated: June \_\_\_, 2014

PAMELA LUCE

\_\_\_\_\_  
Pamela Luce

Dated: June 11, 2014

BERTHA CRUZ HALL

\_\_\_\_\_  
*Bertha Cruz Hall*  
Bertha Cruz Hall

Dated: June \_\_\_, 2014

LYNDA WALDROOP

\_\_\_\_\_  
Lynda Waldroop

Dated: June \_\_\_, 2014

PRECILLA WILKEWITZ

\_\_\_\_\_  
Precilla Wilkewitz

Dated: June \_\_\_, 2014

DISABLED VETERANS NATIONAL  
FOUNDATION

By: \_\_\_\_\_  
Precilla Wilkewitz  
President

Dated: June \_\_\_, 2014

ERIC T. SCHNEIDERMAN  
*Attorney General of the State of New York*  
120 Broadway  
New York, NY 10271

By: \_\_\_\_\_  
David E. Nachman  
Senior Enforcement Counsel,  
Executive Division

Dated: June \_\_, 2014

PAMELA LUCE

\_\_\_\_\_  
Pamela Luce

Dated: June \_\_, 2014

BERTHA CRUZ HALL

\_\_\_\_\_  
Bertha Cruz Hall

Dated: June 12, 2014

LYNDA WALDROOP

\_\_\_\_\_  
*Lynda Waldroop*  
Lynda Waldroop

Dated: June \_\_, 2014

PRECILLA WILKEWITZ

\_\_\_\_\_  
Precilla Wilkewitz

Dated: June \_\_, 2014

DISABLED VETERANS NATIONAL  
FOUNDATION

By: \_\_\_\_\_

Precilla Wilkewitz  
President

Dated: June \_\_, 2014

ERIC T. SCHNEIDERMAN  
*Attorney General of the State of New York*  
120 Broadway  
New York, NY 10271

By: \_\_\_\_\_

David E. Nachman  
Senior Enforcement Counsel,  
Executive Division



Dated: June \_\_, 2014

PAMELA LUCE

\_\_\_\_\_  
Pamela Luce

Dated: June \_\_, 2014

BERTHA CRUZ HALL

\_\_\_\_\_  
Bertha Cruz Hall

Dated: June \_\_, 2014

LYNDA WALDROOP

\_\_\_\_\_  
Lynda Waldroop

Dated: June 11, 2014

PRECILLA WILKEWITZ

  
\_\_\_\_\_  
Precilla Wilkewitz

Dated: June 11, 2014

DISABLED VETERANS NATIONAL  
FOUNDATION

By:   
\_\_\_\_\_  
Precilla Wilkewitz  
President

Dated: June 30, 2014

ERIC T. SCHNEIDERMAN  
*Attorney General of the State of New York*  
120 Broadway  
New York, NY 10271

By:   
\_\_\_\_\_  
David E. Nachman  
Senior Enforcement Counsel,  
Executive Division

## **Exhibit A**

### **FUNDED MAILINGS**

Each of the Quadriga Entities (sometimes referred to separately herein as "the fundraiser") that are Parties to the Assurance of Discontinuance of which this Exhibit A is a part shall, until July 15, 2019, adhere to the following terms and conditions 1-13 in connection with any mailing for a start-up non-profit designed to acquire new donors ("acquisition mailing") and any mailing to individuals who are already on a start-up not-for-profit's existing donor files ("house file"), which are called a "house mailing", to United States residents, where costs related to the acquisition mailing or house mailing are paid only from proceeds received from the mailings for the start-up not-for-profit ("funded mailing"), and the not-for-profit entity is a "start-up." A not-for-profit entity is a start-up if the entity has been in operation for less than four years before the initial mail date of the funded mailing program.

#### **Independence of and Disclosure to the Not-for-Profit**

1. **Criteria for Not-for-Profit.** The fundraiser may perform funded mailings for a start-up not-for-profit only if the start-up not-for-profit has had a board, auditor and legal counsel independent of the fundraiser, and such independence is maintained throughout the period of the funded mailing program.
2. **Presentations and Acknowledgements.** Before the fundraiser enters into a contract for funded mailings with, or performs a funded mailing for, any start up not-for-profit, it shall make a written presentation to the board of the start-up not-for-profit concerning how funded mailing programs work, highlighting the fact that the start-up not-for-profit may incur substantial debt to build or grow its donor file via funded mailings, and setting forth the fundraiser's projections of the donations expected to be realized and the expected costs to the start-up not-for-profit of the funded mailing in its first five years (or the duration of the program, if shorter than five years). The fundraiser will require the chair, president or other authorized designee of the start-up not-for-profit's board to acknowledge in writing receipt and review of the presentation, and will require the start-up not-for-profit to acknowledge in writing review of the presentation with an independent auditor, accountant or legal counsel. The fundraiser will make at least one presentation each year to the full board of the start-up not-for-profit, to its finance committee, or to another authorized designee of the board reporting on the performance of all funded mailings that occurred in at least the prior year.
3. **Financial Reporting on Funding Mailings.** Prior to the initiation of any funded mailing program and no less than annually thereafter, the fundraiser will provide the start-up not-for-profit with a detailed report defining and analyzing the objectives of the funded mailing program, setting forth financial projections for the program over not less than five years or the contract's duration, whichever is less, and summarizing historical financial results of the program as of the date of the report (if such historical results exists). The fundraiser shall advise the start-up not-for-profit about the projected amount and timing of the start-up not-for-profit's receipt of income from the funded mailing program.

4. **Affiliates.** Before any affiliate of QA, Brick Mill, or PEP provides any goods or services to or for a start-up not-for-profit entity related to a funded mailing program, QA, Brick Mill, or PEP shall disclose to the start-up non-profit that the entity is an affiliate of QA, Brick Mill, PEP, disclose the goods and services that the affiliate is expected to provide and the compensation the affiliate is expected to receive, and obtain the start-up not-for-profit's written consent for the affiliate to provide such goods and services. Further, no affiliate of Quadriga shall serve as fundraising counsel or agency to a not-for-profit entity that also engages a Quadriga affiliate as printer, mailer or provider of premium products for its funded mailing program.

5. **Paid Contractors.** Before the fundraiser enters into a contract for funding mailings with, or performs a funded mailing for, a start-up not-for-profit, it will disclose to the start-up not-for-profit the identity of any independent contractor who may receive compensation or a commission from the fundraiser or any of its affiliates related in any way to the services provided by the fundraiser to the start-up non-profit related to the funded mailing program, as well as the amount and nature of the compensation or commission.

6. **Referrals.** The fundraiser will not make any referral to a start-up not-for-profit engaging in a funded mailing for professional services or services related to any "gift-in-kind" donations, including auditors, accountants, attorneys, or escrow agents, and shall not pay for any such services provided to the not-for-profit. If authorized by the not-for-profit, however, such services may be paid from the proceeds of the funded mailing program for the not-for-profit.

#### **Due Diligence and Disclosures to Donors and Potential Donors**

7. **Due Diligence.** When acting as fundraising counsel or providing advice with respect to the content of fundraising solicitations, the fundraiser will engage in sufficient and reasonable due diligence to satisfy itself that the representations made in the funded mailing about the start-up not-for-profit entity are not deceptive or materially misleading.

8. **Written Disclosure.** Each acquisition mailing in a funded mailing program will contain a disclosure that the funded mailing is intended to help the start-up not-for-profit build a donor base, and that, as a result, the start-up not-for-profit entity expects not to receive significant proceeds after paying the costs of the funded mailing. This disclosure will be made in addition to and consistent with the multi-state disclosures that are required to be made in each funded mailing.

9. **IRS Forms 990.** As a condition of the fundraiser's contract with a start-up not-for-profit for a funded mailing, the fundraiser will require the start-up not-for-profit to post its IRS Form 990 for at least the most recent three years on its website, if the start-up non-profit maintains a website capable of supporting such postings, in which case each funded mailing for the start-up not-for-profit will contain, in addition to the disclosures otherwise required by the law of New York and other States, a disclosure stating that the recipient may obtain a copy of the start-up not-for-profit's IRS Form 990 from its website.

## **Financial Requirements for Funded Mailing Programs**

10. **Terms of Payment.** Any payable to the fundraiser from the start-up not-for-profit related to a funded mailing program that is older than 36 months at the end of the program shall be forgiven by the fundraiser. Total payables to the fundraiser from the not-for-profit after 2 years of the funded mailing program related to that program shall not exceed the amount that the start-up not-for-profit's house file is projected to raise over the course of the following 36-month period, and any such excess shall be forgiven by the fundraiser. As a condition of the obligation of the fundraiser to forgive the foregoing debt, the fundraiser may have a lien on the house file and the right to rent the names on the house file, unless and until all non-forgiven debt owed to the fundraiser has been paid or recovered in full.
11. **Deposit of Donations.** All donations received as a result of funded mailings shall be deposited into a bank account owned and controlled by the start-up not-for-profit within a commercially reasonable period of receipt by the fundraiser or its affiliate, provided that the fundraiser and start-up non-profit may enter into an escrow agreement governing the disbursement of such funds. The determination of when to pay the fundraiser's billings shall at all times be the responsibility of the not-for-profit entity, subject only to the fundraiser's exercise of its lien rights in the event of nonpayment of debts as set forth above and below.
12. **Maximum Duration.** The maximum duration of a funded mailing program for a start-up non-profit shall be six years, unless the start-up not-for-profit (in consultation with its independent auditor or legal counsel) determines that a longer duration would be in the best interests of the start-up not-for-profit.
13. **Termination.** The fundraiser may provide in its contract with a start-up not-for-profit related to funded mailings that the start-up not-for-profit and the fundraiser both will have the right to terminate the contract without cause upon 90 days written notice to the other party. In such case, if terminated without cause by the start-up not-for-profit and debts for funded mailings remain unpaid and not forgiven, the contract may provide either that (a) the non-profit must pay those debts within 60 days after termination; or (b) the fundraiser may have a lien on the house file and the exclusive right to rent the names on the start-up not-for-profit's house file until such time as the debts are paid or recovered in full.