

## JOB RECRUITMENT ADVERTISING SERVICES CONTRACT

THIS CONTRACT is made this 28<sup>th</sup> day of February, 2014 by and between THE BALTIMORE SUN COMPANY, LLC and the MARYLAND DEPARTMENT OF BUDGET AND MANAGEMENT.

IN CONSIDERATION of the premises and the covenants herein contained, the parties agree as follows:

### Definitions

In this Contract, the following words have the meanings indicated:

- 1.1 "Agency" means the unit of Maryland State government procuring Services (as defined in section 2.1, below) through this Contract, including but not limited to the Department.
- 1.2 "Agency Coordinator" means the respective designated Agency representative and single point of contact responsible for coordinating Agency Services with the Contractor.
- 1.3 "Contract" means this Contract for job recruitment advertising services.
- 1.4 "Contractor" means the Baltimore Sun Company, LLC, whose principal business address is 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808 and address in the State is 501 N. Calvert St., P. O. Box 1377, Baltimore, Maryland 21278-0001.
- 1.5 "Contract Manager" means the manager designated by the Department, who is Jamie Tomaszewski. The Department may change the Contract Manager at any time by written notice.
- 1.6 "Department" means the Maryland Department of Budget and Management.
- 1.7 "Procurement Officer" means the officer designated by the Department, who is Jamie Tomaszewski. The Department may change the Procurement Officer at any time by written notice.
- 1.8 "State" means the State of Maryland.

### 2. Scope of Work

- 2.1 The Contractor shall:
  - a. Provide and place job recruiting advertising notices in a uniform manner in the Baltimore Sun Company publications best suited to reach the targeted audience, for Agencies; and
  - b. Provide dedicated recruitment advertising sales representatives for Agencies. The Contractor will provide the Department with a list of all Contractor sales representatives and update the list each time it changes. If an Agency already has a dedicated representative, the Agency will continue that working relationship. (The Department will

be responsible for informing Agencies of the new advertising procedures and contact information in order to receive the reduced advertising rate); and

- c. Manage each Agency relationship and recruitment strategy on an individual level to find the best fitting modular size for the particular advertisement; and
- d. Separately invoice at the established reduced modular ad unit and display advertising rates each Agency that submits a job ad; and
- e. Submit monthly aggregate billing statements to the Department in an Excel spreadsheet itemizing usage by all Agencies to enable the Department to monitor usage and spending levels by Agency and in the aggregate; and
- f. Provide to Agencies the option to purchase a 30-day Careerbuilder.com online job posting at the State 25% discounted rate of \$299.25 when bundled with a print ad purchase.

Sections 2.1 (a) through (f) are collectively referred to herein as "Services."

**2.2** The advertising recruitment Services shall be provided in accordance with this Contract and the following Exhibits, which are attached hereto and incorporated herein by reference:

- Exhibit A – State Bid/Proposal Affidavit Addendum;
- Exhibit B – State Contract Affidavit Addendum;
- Exhibit C – Living Wage Affidavit Agreement; and
- Exhibit D – Advertising Dollar Volume Agreement.

If there are any inconsistencies or conflicts between this Contract and Exhibits A through D, the terms of this Contract shall control. If there is any conflict among the Exhibits, the order of precedence among the Exhibits shall determine the prevailing provision.

**2.3** The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract. No other order, statement or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor shall assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

### **3. Time for Performance**

The Contractor shall begin providing Services under this Contract on March 1, 2014 and shall continue to provide Services until February 28, 2015, unless terminated earlier as provided in this Contract. Audit, confidentiality, document retention, and indemnification obligations under this Contract shall survive expiration of the Contract.

#### 4. Consideration and Payment

In consideration of the satisfactory performance of the work set forth in this Contract, the individual Agencies receiving Services shall pay the Contractor in accordance with the terms of this Contract and at the rates specified below in Section 4.1.

4.1 On the presumption that Agencies will collectively place \$75,000 worth of job advertising recruitment Services within the one-year contract period, the following guaranteed advertising rates shall be charged to all State Agencies from the beginning of the Contract:

A. Sunday Modular Ad Units are as follows:

Small – 1 column;	2.29" wide, 0.30" deep	\$135.00
Medium – 1 column;	2.29" wide, 0.60" deep	\$247.50
Large – 1 column;	2.29" wide, 0.95" deep	\$450.00
Extra Large – 1 column;	2.29" wide, 1.95" deep	\$825.00

B. Sunday Display Advertising Rates are as follows:

1/32 – 1 column;	2.29" wide, 2.27" deep	\$ 975.00
1/16 – 1 column;	2.29" wide, 4.64" deep	\$1,500.00
1/8 – 1 column;	4.75" wide, 4.64" deep	\$2,400.00
1/4 Vertical – 1 column;	4.75" wide, 9.35" deep	\$3,825.00
1/4 Horizontal – 2 columns;	9.66" wide, 4.64" deep	\$3,825.00
Half Page – 4 columns;	9.66" wide, 9.66" deep	\$6,112.50
Full Page – 4 columns;	10.00" wide, 20.45" deep	\$9,750.00

C. Wednesday Modular Ad Units are as follows:

Small – 1 column;	2.29" wide, 0.30" deep	\$108.00
Medium – 1 column;	2.29" wide, 0.60" deep	\$198.00
Large – 1 column;	2.29" wide, 0.95" deep	\$360.00
Extra Large – 1 column;	2.29" wide, 1.95" deep	\$660.00

D. Wednesday Display Advertising Rates are as follows:

1/32 – 1 column;	2.29" wide, 2.27" deep	\$ 780.00
1/16 – 1 column;	2.29" wide, 4.64" deep	\$1,200.00
1/8 – 1 column;	4.75" wide, 4.64" deep	\$1,920.00
1/4 Vertical – 1 column;	4.75" wide, 9.35" deep	\$3,060.00
1/4 Horizontal – 2 columns;	9.66" wide, 4.64" deep	\$3,060.00
Half Page – 4 columns;	9.66" wide, 9.66" deep	\$4,890.00
Full Page – 4 columns;	10.00" wide, 20.45" deep	\$7,800.00

E. If an Agency purchases multiple days of job advertising recruitment services, the price for each day of advertising will be additionally discounted as follows: 2 days = 10% additional off the rates; 3 days = 15% additional; or 4 days = 25% additional off the rates listed above in Sections 4.1A through 4.1D.

4.2 Payment to the Contractor for the Services pursuant to this Contract shall not exceed the total sum of \$600,000. The Contractor shall not receive any other payment for the Services. The

Contractor shall notify the Contract Manager, in writing, at least sixty (60) days before payments are projected to reach \$600,000. After notification by the Contractor, if the State fails to increase the Contract amount, the Contractor shall have no obligation to perform under this Contract after payments reach the stated amount; provided, however, that, prior to the stated amount being reached, the Contractor will promptly consult with the Contract Manager and work in good faith to establish a plan of action to assure that every reasonable effort has been undertaken by the Contractor to complete State-defined critical work in progress prior to the date the stated amount will be reached.

**4.3** The Contractor shall separately invoice each requesting Agency Coordinator for receipt of payment. Payments from Agencies to the Contractor shall be made no later than thirty (30) days after the requesting State Agency Coordinator's receipt of a proper invoice for Services provided by the Contractor, acceptance by the Agency Coordinator of Services provided by the Contractor, and pursuant to the conditions outlined in Section 4 of this Contract. Each invoice for Services rendered shall include the Contractor's Federal Tax Identification Number which is [REDACTED]. Charges for late payment of invoices other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, are prohibited. Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption. Contractor's eMarylandMarketplace vendor ID number is [REDACTED].

**4.4** In addition to any other available remedies, if, in the opinion of the Agency Coordinator, the Contractor fails to perform in a satisfactory and timely manner, the Agency Coordinator may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Agency Coordinator.

**4.5** The Contractor may notify the Contract Manager if any non-disputed and correctly submitted invoice to an Agency Coordinator has not been paid within sixty (60) days from the date of the invoice submission. The Contract Manager shall attempt to expedite payment to the Contractor.

**4.6** If by the end of the Contract period, the Agencies have collectively failed to place the minimum annual rate of \$75,000 in Services, the Contractor may submit a single supplemental invoice to each Agency that ran one or more advertisements that were billed pursuant to sections 4.1(A) through (D) of this Contract (collectively, the "Print Services") during the Contract term. This single supplemental invoice shall cover short-fall billing for Print Services placed by the Agency during the Contract term and shall separately reference the original purchase date and pricing of the Print Services with the new adjusted short-fall price and current amount owed. The short-fall billing may not exceed a 25% surcharge on the rates listed in Sections 4.1(A) through (D). The Contractor may not short-fall bill for the Services described in section 4.1(E). All invoices under this Section 4.6 shall be submitted to the respective Agency Coordinator by April 30, 2015.

## **5. Use by Non-State of Maryland Government Entities**

Maryland not-for-profit entities and Maryland county, municipal, and other non-State of Maryland governments within Maryland may purchase from the Contractor goods or services covered by this Contract at the same prices chargeable to the State. All such purchases by Maryland not-for-profit

entities and non-State of Maryland governments: (1) shall constitute Contracts between the Contractor and that government, agency or organization; (2) shall not constitute purchases by the State or State agencies under this Contract; (3) shall not be binding or enforceable against the State; and (4) may be subject to other terms and conditions agreed to by the Contractor and the purchaser. The Contractor may only contact the Contract Manager to determine whether a government entity that proposes to use this contract is an agency of the State of Maryland. The Contract Manager will have no involvement of any kind regarding the usage of this contract by any non-State of Maryland governmental entity or Maryland not-for-profit entity. Nonetheless, the Contractor shall report quarterly to the Contract Manager non-State of Maryland governments and Maryland not-for-profit entities which have obtained services under the provisions of this Contract and the aggregate value of such usage, along with an annual and end of Contract summation of the contents of these quarterly reports. The Contractor bears the risk of determining whether or not a government, agency or organization with which the Contractor is dealing is a State of Maryland agency.

**All Contract prices, terms and conditions must be provided to any Maryland local government or not for profit organization requesting services under this Contract.**

## **6. Patents, Copyrights, Intellectual Property**

**6.1** If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent, trademark or service mark, or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items.

**6.2** The Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by the Contractor infringes any patent, trademark, service mark, copyright, or trade secret. If a third party claims that a product infringes that party's patent, trademark, service mark, trade secret, or copyright, the Contractor will defend the State against that claim at Contractor's expense and will pay all damages, costs and attorney fees that a court finally awards, provided the State (i) promptly notifies the Contractor in writing of the claim; and (ii) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in Section 5.3 below.

**6.3** If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: a) procure for the State the right to continue using the applicable item, b) replace the product with a non-infringing product substantially complying with the item's specifications, or c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

## **7. Confidentiality**

Subject to the Maryland Public Information Act and any other applicable laws all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents and employees to the extent that such disclosure is

necessary for the performance of their duties under this Contract, provided that the data may be collected, used, disclosed, stored and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already in the possession of such party, (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information or (e) which such party is required to disclose by law.

#### **8. Non-Hiring of Employees**

No official or employee of the State as defined under State Government Article section 15-102, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract shall, during the pendency and term of this Contract and while serving as an official or employee of the State become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

#### **9. Disputes**

This Contract shall be subject to the provisions of Title 15, Subtitle 2, of the State Finance and Procurement Article of the Annotated Code of Maryland and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within 30 days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within 30 days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

#### **10. Maryland Law**

This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland. The Maryland Uniform Computer Information Transactions Act, Maryland Code Annotated, Commercial Law Article, Title 22, does not apply to this Contract, or to any purchase order, or Notice to Proceed, issued under this Contract. Any and all references to the Annotated Code of Maryland contained in this Contract shall be construed to refer to such Code sections as from time to time amended.

#### **11. Nondiscrimination in Employment**

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or disability of a qualified individual with a disability, sexual orientation, genetic information, or any otherwise unlawful use of characteristics; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

**12. Contingent Fee Prohibition**

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the Contractor to solicit or secure this Contract, and that it has not paid or agreed to pay any person, partnership, corporation or other entity, other than a bona fide employee, bona fide salesperson or commercial selling agency, any fee or other consideration contingent on the making of this Contract.

**13. Nonavailability of Funding**

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

**14. Termination for Cause**

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

**15. Termination for Convenience**

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract; provided, however, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2).

**16. Delays and Extensions of Time**

The Contractor agrees to perform the work under this Contract continuously and diligently. No charges or claims for damages shall be made by the Contractor for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

**17. Suspension of Work**

The State unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

**18. Pre-Existing Regulations**

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR Title 21) in effect on the date of execution of this Contract are applicable to this Contract.

**19. Financial Disclosure**

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreement with the State or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more, shall within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State certain specified information to include disclosure of beneficial ownership of the business.

**20. Political Contribution Disclosure**

The Contractor shall comply with the Election Law Article, Sections 14-101 through 14-108, of the Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county or an incorporated municipality or their agencies, during a calendar year under which the person receives in the aggregate \$100,000 or more, shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or



contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

**21. Retention of Records**

The Contractor shall retain and maintain all records and documents in any way relating to this Contract for three years after final payment by the State under this Contract or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or the Procurement Officer's designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section. In the event of any audit, Contractor shall provide assistance to the State, without additional compensation, to identify, investigate and reconcile any audit discrepancies and/or variances. This Section 21 shall survive expiration of the Contract.

**22. Compliance with Laws**

The Contractor hereby represents and warrants that:

- A. It is qualified to do business in the State and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- B. It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- C. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and,
- D. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

**23. Cost and Price Certification**

By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of this Contract.

The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of this Contract, was inaccurate, incomplete, or not current.

**24. Subcontracting; Assignment**

The Contractor may not subcontract any portion of the Services provided under this Contract without obtaining the prior written approval of the Procurement Officer, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval

of the Procurement Officer provided, however, that a contractor may assign monies receivable under a contract after due notice to the State. Any such subcontract or assignment shall include the terms of sections 7, and 9 through 22 of this Contract and any other terms and conditions that the State deems necessary to protect its interests. The Contract shall not be assigned until all approvals, documents, and affidavits are obtained, completed and properly registered. The State shall not be responsible for the fulfillment of the Contractor's obligations to the subcontractors.

**25. Indemnification**

**25.1** The Contractor shall hold harmless and indemnify the State from and against any and all liability for any costs, expenses, loss, suits, actions, or claims of any character arising from or relating to the performance of the Contractor or its subcontractors under this Contract.

**25.2** The State has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.

**25.3** The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.

**25.4** The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from, or relating to, the Contractor's obligations under the Contract, and will cooperate, assist and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of, or relating to, the Contractor's performance under this Contract.

**25.5** The State shall not assume any obligation to indemnify, hold harmless, or pay collection and/or attorneys' fees that may arise from or in any way be associated with the performance or operation of this Contract.

**25.6** This Section 25 shall survive termination of this Contract.

**26. Living Wage**

**26.1** A State contract for services valued at \$100,000 or more may be subject to Title 18, State Finance and Procurement (SFP) Article, Annotated Code of Maryland. This Contract has been deemed to be a Tier 1 contract.

**26.2** Contractors and subcontractors subject to the Living Wage Law shall pay each covered employee the current hourly rate established by the Department of Labor, Licensing and Regulations (DLLR). Refer to the DLLR website for specific information.

**26.3** The Contractor shall comply with Title 18, State Finance and Procurement Article, Annotated Code of Maryland, including the submission of payroll reports to the Commissioner of Labor and Industry and the posting in a prominent and easily accessible place at the work site(s) of

covered employees a notice of the Living Wage Rates, employee rights under the law, and the name, address, and telephone number of the Commissioner.

**26.4** The Contractor shall make any subcontractor on this Contract aware of the Living Wage law requirements.

**27. Commercial Non-Discrimination**

**27.1** As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

**27.2** The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by the Department, in all subcontracts.

**27.3** As a condition of entering into this Contract, upon the request of the Maryland Commission on Civil Rights, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken within the state of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

**28. Prompt Pay Requirements**

**28.1** If the Contractor withholds payment of an undisputed amount to its subcontractor, the State, at its option and in its sole discretion, may take one or more of the following actions:

- A. Not process further payments to the Contractor until payment to the subcontractor is verified;

- B. Suspend all or some of the Contract work without affecting the completion date(s) for the Contract work;
- C. Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
- D. Place a payment for an undisputed amount in an interest-bearing escrow account; or
- E. Take other or further actions as appropriate to resolve the withheld payment.

**28.2** An “undisputed amount” means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute, including any retainage withheld, and includes an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

**28.3** An act, failure to act, or decision of a procurement officer or a representative of the Department or the State, concerning a withheld payment between the Contractor and subcontractor under this Contract, may not:

- A. Affect the rights of the contracting parties under any other provision of law;
- B. Be used as evidence on the merits of a dispute between the State and the Contractor in any other proceeding; or
- C. Result in liability against or prejudice the rights of the State.

**28.4** The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise program.

**28.5** To ensure compliance with certified MBE subcontract participation goals, the State may, consistent with COMAR 21.11.03.13, take the following measures:

- A. Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule.
- B. This verification may include, as appropriate:
  - (1) Inspecting any relevant records of the Contractor;
  - (2) Inspecting the jobsite; and
  - (3) Interviewing subcontractors and workers.
  - (4) Verification shall include a review of:
    - (a) The Contractor’s monthly report listing unpaid invoices over 30 days old from certified MBE subcontractors and the reason for nonpayment; and
    - (b) The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding 30 days and invoices for which the subcontractor has not been paid.
- C. If the State determines that the Contractor is in noncompliance with certified MBE participation goals, then the State will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action.

- (1) Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.

D. If the State determines that the Contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the State requires, then the State may:

- (1) Terminate the Contract;
- (2) Refer the matter to the Office of the Attorney General for appropriate action;  
or
- (3) Initiate any other specific remedy identified by the Contract, including the contractual remedies regarding the payment of undisputed amounts.

E. Upon completion of the contract, but before final payment or release of retainage or both, the contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

## **29. Electronic Procurement Transactions Authorized**

**29.1** Under COMAR 21.03.05, unless otherwise prohibited by law, the Department may conduct procurement transactions by electronic means, including the execution, and administration of a contract, as provided in the Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21, Annotated Code of Maryland.

**29.2** Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the bidder/offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the Contract.

**29.3** "Electronic means" refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, electronic mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g. eMarylandMarketplace.com), and electronic data interchange.

**29.4** In addition to specific electronic transactions specifically authorized in other sections of the Contract (e.g. §4.3 related to EFT) and subject to the exclusions noted in section 29.5 of this subsection, the following transactions are authorized to be conducted by electronic means on the terms described: The Procurement Officer, the State's Contract Manager and the Contractor may conduct day-to-day Contract administration, except as outlined in section 29.5 of this subsection utilizing e-mail, facsimile or other electronic means if authorized by the Procurement Officer or Contract Manager.

**29.5** The following transactions related to this procurement and any Contract awarded pursuant to it are *not authorized* to be conducted by electronic means:

1. filing of protests;

2. filing of Contract claims;
3. submission of documents determined by the Department to require original signatures (e.g. Contract execution, Contract modifications, etc); or
4. any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor, Bidder or Offeror be provided in writing or hard copy.

**29.6** Any facsimile or electronic mail transmission is only authorized to the facsimile numbers or electronic mail addresses for the identified person as provided in the Contract or in the direction from the Procurement Officer or Contract Manager.

**30. Administrative**

**30.1 Procurement Officer.** The work to be accomplished under this Contract shall be performed under the direction of the Procurement Officer who is designated as Jamie Tomaszewski. All matters relating to the interpretation of this Contract shall be referred to the Procurement Officer for determination.

**30.2 Notices.** All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid as follows:

If to the State:

Jamie Tomaszewski, Procurement Officer  
State of Maryland  
Department of Budget of Management  
Division of Procurement Policy & Administration  
45 Calvert Street, Room 134  
Annapolis, MD 21401  
410-260-7386

If to the Contractor:

Shannon N Cashour, Media Sales Consultant, Recruitment Division or  
Tricia Baldwin, Recruitment Supervisor  
501 N. Calvert Street, P. O. Box 1377  
Baltimore, Maryland 21278-0001

IN WITNESS THEREOF, the parties have executed this Contract as of the date hereinabove set forth.

CONTRACTOR

 (SEAL)

By:

1/31/14  
Date



Witness/Attest

MARYLAND DEPARTMENT OF BUDGET AND MANAGEMENT



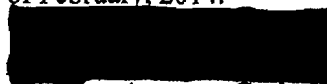
By: T. Eloise Foster, Secretary

2/28/2014  
Date



Witness

Approved for form and legal sufficiency this 25<sup>th</sup> day of February, 2014.

  
Assistant Attorney General

APPROVED BY THE BPW:

2/19/2014  
(Date)

11-S  
(BPW Item #)

THE BALTIMORE SUN  
MEDIA GROUP

**Advertising Dollar Volume Agreement**

This document represents an agreement between The Baltimore Sun Company and the State of Maryland ("Advertiser"), where the Advertiser agrees to a spending commitment of \$75,000.00 ("contract level"), for the time period beginning on March 1, 2014 and ending on February 28, 2015 ("contract term"). The Baltimore Sun agrees to bill all advertising at this contract level.

If the Advertiser's spending during the contract term meets the next higher contract level on the rate card, we will bill the Advertiser for the remaining portion of the contract term, excluding previously published advertising, at rates that reflect the earned contract level. During this contract term, the Advertiser may sign one revised contract that supersedes the existing contract going forward.

**Advertising Parameters**

This agreement allows the Advertiser to purchase advertising at the rate associated with the contract level, without a commitment to a specific form of advertising. The achievement of this contract level will be based on the total net spending, after adjustments, of all advertising run by the Advertiser in The Baltimore Sun and on the BaltimoreSun.com website. If the Advertiser would like to take advantage of another contract or rate for a specific type of advertising, the advertiser must sign a separate contract for such advertising. If an advertiser does not meet the contract level for such advertising, the rate charged will be adjusted to the earned rate card level.

THE TERMS AND CONDITIONS APPEARING ON THE REVERSE SIDE ARE PART OF THE AGREEMENT.

Advertiser/Firm Name: The State of Maryland

Account Number (n/a for new account): \_\_\_\_\_

Address: 45 Calvert Street

City, State, and Zip Code: Annapolis, Maryland 21401

Phone Number: 410-260-7386 Date: 2/28/2014

By: \_\_\_\_\_, its authorized representative

Print Name: T. Eloise Foster Title: Secretary of the Department of Budget and Management

**Accepted for The Baltimore Sun Company**

By: \_\_\_\_\_, its authorized representative

Print Name: Shannon Cashour Date: 1/31/14

Manager Approval: \_\_\_\_\_

Finance Dept. Approval: \_\_\_\_\_



# TRIBUNE PUBLISHING GENERAL TERMS AND CONDITIONS THE BALTIMORE SUN

X

These terms and conditions are Addendum hereby made part of the attached [Rate Card/and/or Contract/Agreement] (the "Advertising Agreement") by and between The Baltimore Sun Company (Publisher) and the advertiser named therein and party thereto ("Advertising Party") and its advertising agency, if any ("Advertising Agency," and together with Advertising Party, "Advertiser"). Each such party acknowledges that the following additional terms and conditions are incorporated in and made a part of the Advertising Agreement. This Addendum, including the attached Advertising Agreement (along with any supplements, amendments, exhibits, schedules or addendums thereof, collectively, the "Agreement"), shall be binding upon the parties.

## 1. ADVERTISING ACCEPTANCE; PUBLISHER'S RIGHT TO REJECT OR ALTER

(a) Submission of an advertisement to Publisher does not constitute a commitment by Publisher to publish the advertisement. Publisher accepts advertising only by publishing such advertisement. Upon such acceptance, Advertiser acknowledges that (i) the terms and conditions set forth in this Agreement shall apply to all advertising orders unless such terms and conditions are modified, superseded or otherwise altered by a written instrument signed by an authorized representative of Publisher, (ii) the terms and conditions set forth in this Agreement shall prevail over any inconsistent terms and conditions set forth in any order or contract form of any Advertiser/Agency and (iii) incorrect rates on insertion orders which do not correspond to the rate card will be regarded as clerical errors and the advertisements will be published and charged for at the applicable rate at the time of publication. Incorrect rates quoted for specific classifications of advertising will be adjusted after management reviews the ad. (iv) insertion orders containing disclaimers or sequential liability are not acceptable and are not legally binding or valid. Publisher has the right, in its sole and absolute discretion, to reject any advertisement or any portion thereof. Publisher's publication of an advertisement shall not affect its right to reject such advertisement thereafter.

(b) Publisher reserves the right to alter any advertising material in order for the material to conform to its current mechanical specifications. The rates stated in the Advertising Agreement shall remain the same upon a reduction in the size of any advertisement as long as the advertisement maintains the same proportion of the entire page. Publisher rates are based on column inch size rather than actual published size, which may have shrinkage related to the printing process.

(c) Advertising will be billed based on the amount of space the ad uses if the insertion order varies from the actual ad size.

(d) Except as stated otherwise, the agreement is automatically renewed annually on the effective date, unless the advertiser gives written notice to the Publisher or the Publisher gives written notice to the advertiser of the intent to terminate the agreement at least 30 days prior to the renewal date.

## 2. LAWFUL ADVERTISING; INDEMNIFICATION

Advertising Party and Advertising Agency, if applicable, jointly and severally represent and warrant that (a) any and all material submitted to Publisher (i) is accurate and original, (ii) does not violate any law or contract or infringe the copyrights, trademarks, trade names, patents or other intellectual property rights of any person, (iii) does not constitute unfair competition, and (iv) contains no matter which is libelous, an invasion of privacy or publicity, an unlawful appropriation of any name or likeness or is otherwise injurious to the rights of any person; and (b) each of Advertising Party and Advertising Agency, if applicable, has obtained all necessary consents for publication prior to submission to Publisher. Advertising Party and Advertising Agency, if applicable, jointly and severally agree to defend, indemnify and hold Publisher and its affiliates and their respective directors, officers, principals, managers, members, partners, shareholders, employees, and controlling persons and their affiliates (Publisher and each such person being an "Indemnified Party"), harmless from and against all damages to and liabilities resulting from or relating to demands, claims, actions or causes of action, assessments or other losses, costs and expenses relating thereto, interest and penalties thereon and attorneys' fees, legal fees and any other expenses in respect thereof or in enforcing their rights hereunder, by reason of or resulting from or attributable to its breach of this Agreement, the publication of any advertisement by Publisher (whether or not Publisher assisted in the preparation of the advertisement), or the distribution of any sample product submitted by Advertising Party and/or Advertising Agency.

## 3. MATERIALS; COPYRIGHTS, TRADEMARKS AND INTELLECTUAL PROPERTY.

(a) Publisher has no obligation to return any material submitted to Publisher by or on behalf of Advertiser to Advertiser or any other party, and Publisher shall have no liability for its loss or destruction.

(b) Publisher shall have the right to use any advertising published in Publisher's publication for the purpose of promoting any of the products and services of Publisher. Advertiser grants Publisher a non-exclusive, perpetual, irrevocable and worldwide license to publish any and all advertising content created by Advertiser or its agents or Publisher, including but not limited to photographs, artwork, text and graphics, in any media, presently known or unknown, including but not limited to Publisher's electronic publications on the Internet and in any archival retrieval system whether that information is digitally stored or stored on any other media. To the extent feasible and with the use of known technological resources, Publisher agrees that it will make reasonable efforts to prevent the reproduction of coupons capable of redemption by a consumer in any of Publisher's electronic publications.

## 4. POSITION REQUESTS

Publisher shall not be deemed in breach of this Agreement in the event that it does not honor a specific position agreement due to conflicting editorial needs, in Publisher's sole discretion. In the event Advertiser has paid a premium for a particular position, reimbursement for failure to publish in a particular position shall be limited to the refund of such premium to Advertiser.

## 5. LIABILITY FOR ERRORS, OMISSIONS OR FAILURE TO PUBLISH OR DISTRIBUTE

(a) Publisher's liability for errors or omissions in advertisements or advertising inserts shall be limited to the cost of advertising space in an amount equal to the erroneous advertisement. Publisher's liability for failure to publish any advertisement or distribute any advertising insert shall be limited to a refund of any amount paid to Publisher for such advertisement or insert. Notwithstanding the foregoing, Publisher shall have no liability for, and no credit shall be issued to Advertiser for, errors that do not materially affect the value of the advertisement or advertising insert or where Advertiser is responsible for the error or omission. Credits for errors in advertisements or advertising inserts materially affected by the error are allowed for the first publication or distribution only.

(b) Notwithstanding anything to the contrary herein, in no event shall Publisher be liable to Advertiser or to any other parties for any further damages of any kind arising from any breach of this Agreement or any other advertising contract, written or oral, or act or omission of Publisher with respect to an advertisement or advertising insert, including but not limited to, direct, indirect, special, consequential, or punitive damages.

(c) Publisher is not responsible for errors involving orders, cancellations or corrections given orally. Written or facsimile confirmation of orders, cancellations or corrections must be received prior to Publisher's cancellation deadline. Publisher will publish advertisements and bill Advertiser for all advertising orders that are not canceled prior to the deadline. Advertiser may be subject to a cancellation charge when such cancellation results in production delays.

## 6. PAYMENT; DISPUTES

(a) Advertiser shall pay all invoices upon presentation. Advertiser waives any dispute regarding any item included in an invoice unless notice of such dispute is provided to Publisher in writing within 30 days of the invoice date.

(b) Any agency, entity or person placing advertising shall pay the Publisher the full Agreement amount and shall not disclaim liability as an agent, even if the third party on whose behalf the advertising was placed fails to pay the agency, entity or person.

(c) In circumstances where credit is allowed to the Advertiser/Agency, payment for all amounts shown as owed on the statement is due within 15 days from the statement date.

## 7. AMENDMENTS; WAIVERS; RATE CHANGES

(a) Waiver of any term of this Agreement or failure of Publisher to terminate this Agreement on account of any breach by Advertiser shall not be deemed a waiver of Publisher's rights to subsequently enforce any term or to terminate this Agreement by reason of any subsequent breach by Advertiser. No waiver by either party on any one occasion shall extend to or effect or be construed as a waiver of any right or remedy on any future occasion or with respect to any prior occasion. No course of dealing of any person nor any delay or omission in exercising any right or remedy shall constitute an amendment of this Agreement or a waiver of any right or remedy of any party hereto.

(b) Except as set forth in subsection (c) of this Section 7, no amendment of any term, provision or condition of this Agreement shall be effective, unless in a writing executed by each of the parties hereto that specifically refers to this Agreement.

(c) Publisher shall have the right to revise the advertising rates set forth in this Agreement at any time upon notice to Advertiser of such rates. Advertiser may terminate this Agreement on the date the new rates become effective by giving written notice within 30 days of such termination. In the event of such termination, Advertiser shall be liable for advertising published prior to such termination at the Current Agreement Rate. "Current Agreement Rate" is defined as the billing rate in effect at the time of publication.

## 8. TERMINATION OF AGREEMENT; EFFECT OF TERMINATION

(a) Publisher shall have the right to terminate this Agreement at any time, with or without notice to Advertiser, for Advertiser's failure to remit payment for invoices by the due date of such bills.

(b) Publisher reserves the right to review the volume of advertising placed on a quarterly basis and in its sole discretion to cancel the contract or require that the Agreement rate be revised upward in its sole discretion if advertising placed falls 15% or more below the quarterly average volume needed to fulfill the twelve-month contract amount, if Advertiser has such a contract with Publisher. The

Publisher also reserves the right to alter payment terms upon any material change in the Advertiser's financial status or credit worthiness as determined by the Publisher. Failure of Publisher to review the frequency of advertising or cancel the contract for any reason shall not be deemed a waiver of the right to cancel in the future or to impose any applicable rate adjustment.

(c) If the advertiser defaults in the timely payment of any sums due under this Agreement or any other Agreement heretofore or hereafter entered into with the Publisher, Publisher may, at its option, terminate all such Agreements, and the entire unpaid balance of all such Agreements shall be immediately due and payable.

(d) Subject to the terms of subsection (e) of this Section 8, Advertiser shall have the right to terminate this Agreement at any time by written notice to Publisher.

(e) Publisher shall have the right to terminate this Agreement for any reason and at any time by written notice to Advertiser, in which event and so long as Advertiser has been meeting its revenue, volume or other commitment to Publisher over time in a way that is consistent with Advertiser reaching its final commitment, Advertiser shall be liable for advertising prior to such termination at the Current Agreement Rate.

(f) Except for a termination under Section 7 above, in the event the Agreement is terminated or for any other reason Advertiser fails to purchase during the term of the Advertising Agreement the advertising generating the revenue, volume or other commitment due to Publisher, Advertiser immediately shall pay to Publisher the lesser of the following:

(i) the original commitment made to Publisher under the Advertising Agreement or  
(ii) an amount for all advertising published during the term including advertising previously billed ("Amount Due"), adjusted for space, inserts and color actually used. The unpaid balance of such adjusted Amount Due shall be based upon the "Actual Rate Earned" for advertising during the term. The "Actual Rate Earned" is defined as the rate which would have been payable by Advertiser if the amount of advertising actually purchased during the term had been contracted for in the first instance, and such Actual Rate Earned shall be ascertained by reference to the applicable Publisher rate card in effect on the date that the advertising was published.

## 9. INTEGRATION

Advertiser agrees that no representations of any kind have been made to Advertiser by Publisher or by any of its agents and that no understanding has been made or agreement entered into other than as set forth herein.

## 10. FORCE MAJEURE

Publisher shall not be liable for failure to publish or distribute any advertisement because of strikes, labor disputes, government action, war, fire, breakdown of equipment, terrorist act, or any other cause beyond its reasonable control.

## 11. OTHER SERVICES

(a) The rates provided for in any appropriate Agreement are for purchase of advertising space only and do not include production services provided by the Publisher. Production services provided by the Publisher may be discontinued or charged for at any time at its sole discretion.

(b) Except as stated otherwise, payments by Advertiser to Publisher for services or goods other than advertising space, inserts and color shall not be applied toward any revenue totals set forth in the Agreement.

## 12. COLLECTIONS

Any agreement entered into between the Advertiser/Agency and the Publisher shall be governed by the laws of the State of Maryland. Baltimore City shall have venue in any legal proceedings relating to this agreement.

In the event the Advertiser/Agency fails to pay any amount due for advertising and the Publisher finds it necessary to refer the account to any attorney or third party for collection, an additional 25% of the balance owing shall be assessed for collection and/or attorney's fees in addition to any court costs associated with collection. Advertiser shall be liable for all costs incurred by Publisher, including but not limited to attorneys' fees and expenses, in collecting past due accounts and in defending any and all claims asserted in the action.

## 13. TAXES

Any and all taxes levied against advertising shall be added to the advertising charges, including but not limited to any sales taxes.

## 14. PREPARATION OF ADVERTISING

Advertiser represents and warrants that it is familiar with all laws and regulations applicable to its advertisement(s), and that advertising material submitted to Publisher shall be in compliance with such laws and regulations.

On request, Publisher may assist Advertiser in preparing its advertisement(s) for publication. This assistance may include design, composition, text and artwork. Publisher does not assume any obligations to perform a legal review of Advertiser's advertisement(s). Advertiser remains solely responsible for the contents of the advertisement(s) and for compliance with any laws regulating such advertising.

## 15. ASSIGNMENT; COMBINING SPACE

This Agreement and the rights and obligations hereunder are personal to Advertiser and may not be assigned by any act of Advertiser or by operation of law, change of control of Advertiser or otherwise without the prior written consent of Publisher, to be granted or not granted in Publisher's sole and absolute discretion. Advertiser may not assign to, nor utilize for the benefit of another person or entity, any of the space reserved to be purchased by Advertiser without Publisher's prior written consent, to be granted or not granted in Publisher's sole and absolute discretion.

Two or more advertisers will not be allowed to combine space or insertions, nor will advertising agencies be allowed to combine space or insertions of their clients or accounts unless the businesses advertised are under common ownership and the prior approval of the Publisher has been obtained.

## 16. SEVERABILITY

If any provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other provision, and such invalid or unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permissible the intent of the parties set forth in this Agreement. To the full extent, however, that the provisions of any applicable law may be waived, they are hereby waived to the end that this Agreement be deemed a valid and binding agreement enforceable in accordance with its terms.

## 17. JOINT AND SEVERAL LIABILITY OF ADVERTISING PARTY AND ADVERTISING AGENCY

Advertising Party and Advertising Agency are each hereby obligated, jointly and severally, to pay any and all amounts owed to Publisher, as and when the same shall become due and payable, in accordance with the terms hereof. All written agreements between Advertising Party and Advertising Agency, shall include provisions whereby each such party agrees that Publisher has a right to recover any and all amounts owed hereunder from either such party directly. Publisher shall be a third-party beneficiary of all such agreements. Publisher is hereby irrevocably appointed as each of Advertising Agency's and Advertising Party's attorney-in-fact, coupled with an interest, with exclusive power to collect, receive and retain any amounts owing from Advertising Party to Advertising Agency, or Advertising Agency to Advertising Party, as the case may be, pursuant to such agreements and Publisher shall retain such amounts to offset amounts due hereunder. Each of Advertising Agency and Advertising Party shall immediately upon receipt pay directly to Publisher any and all amounts that it receives from Advertising Party or Advertising Agency, as the case may be, for payment of amounts owed pursuant to this Agreement.

## 18. REPRESENTATIONS AND WARRANTIES

Each of Advertising Party and Advertising Agency, hereby represents and warrants to Publisher:

(a) It is duly incorporated or formed, as the case may be, validly existing and in good standing under the laws of the state of its incorporation or formation, as the case may be, and has all requisite power to own, lease and operate its property and to carry on its business as now being conducted.

(b) All action on the part of such party necessary for the authorization, execution and delivery of, and the performance of all of its obligations under, this Agreement has been duly taken. This Agreement constitutes a valid and binding obligation of such party, enforceable against it in accordance with its terms.

(c) The execution and delivery by such party of this Agreement do not, and the consummation of the transactions contemplated hereby will not, (i) violate or conflict with the organizational documents of such party or (ii) constitute a material breach or default or give rise to any lien or other encumbrance, third-party right of termination, cancellation, material modification or acceleration under any material agreement, understanding or undertaking to which it is a party or by which it is bound, or violate or conflict with any applicable law.

(d) All written agreements between Advertising Party and Advertising Agency include provisions whereby each such party agrees that Publisher has a right to recover any and all amounts owed hereunder from either such party directly.

(e) Advertising Agency is authorized and has the power to (i) enter into this Agreement on behalf of or in the name of Advertising Party and (ii) bind Advertising Party to this Agreement without the prior written consent of Advertising Party.

(f) Advertising Party is authorized and has the power to (i) enter into this Agreement on behalf of or in the name of Advertising Agency and (ii) bind Advertising Agency to this Agreement without the prior written consent of Advertising Agency.