ATTORNEY GENERAL OF THE STATE OF NEW YORK
BUREAU OF INTERNET & TECHNOLOGY

In the Matter of

Assurance No. 21-051

**Investigation by LETITIA JAMES,
Attorney General of the State of New York,** of

**INTERNET REFERRAL SERVICES, LLC
d/b/a TICKETS-CENTER.COM and
SEATS.COM,**

Respondent.

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York ("NYAG") commenced an investigation pursuant to Executive Law § 63(12) and General Business Law § 349 into the resale of event tickets by respondent Internet Referral Services, LLC ("Referral Services"), owner and operator of two ticket resale websites, tickets-center.com and seats.com. This Assurance of Discontinuance ("Assurance") contains the findings of NYAG's investigation and the relief agreed to by NYAG and Respondent, whether acting through its respective directors, officers, employees, representatives, agents, affiliates, or subsidiaries (collectively, the "Parties").

FINDINGS OF NYAG

1. Respondent Referral Services is a Delaware-based company, which at all relevant periods was engaged in the business of facilitating the resale of tickets to live events through its websites, tickets-center.com and seats.com (the "Resale Websites").

2. Respondent provided marketing services intended to direct internet traffic to the Resale Websites, where prospective buyers can search on the secondary market for tickets to

events, for example by event type, artist or team name, venue, or date. A search for tickets on the Resale Websites displayed tickets that independent third parties have listed for resale on a platform owned and operated by Referral Service's third-party vendor, Ticket Fulfillment Services, L.P. ("TFS"), a wholly-owned subsidiary of Vivid Seats LLC.

3. Referral Services displayed the TFS platform on the Resale Websites pursuant to a contract with TFS. When a consumer used the Resale Websites to purchase a ticket through the TFS platform, TFS managed, verified, and processed the order, and ensured the fulfillment of the order, including delivery of tickets. Referral Services did not itself offer any tickets for resale through the Resale Websites, and did not process or fulfill the orders that customers placed through the Resale Websites.

4. TFS also handled customer service on behalf of Referral Services. If a customer called the customer service telephone number displayed on the Resale Websites, opened up a live chat through a chat window on the Resale Websites, or sent an email through the site or to any customer service email address displayed on the Resale Websites, that communication was ultimately received and responded to by TFS. At times, however, TFS would consult with Referral Services about how to respond to a particular inquiry.

5. On a periodic basis, TFS disbursed to Referral Services the contractual commission it earned for any sales made on the platform through the Resale Websites. Referral Services had the ability to adjust the prices of or add service fees to tickets available on the platform through the Resale Websites, which in turn affected the amount of its commission.

6. The parties' contract obligated Referral Services to reimburse TFS for any amounts TFS had previously distributed to it, if the event for which the ticket was previously sold were canceled for any reason. TFS also had the right to deduct any such amounts from

future payments to Referral Services, in lieu of awaiting reimbursement.

7. Until March 2020, the Terms of Service available on the Resale Websites promised consumers that they would receive a refund if the event for which they were purchasing a ticket was canceled.

8. Over the course of February and March 2020, the threat of the novel coronavirus COVID-19 began to materialize in significant ways. With COVID-19 cases mounting in New York State, on March 12, 2020, New York Governor Andrew Cuomo issued Executive Order 202.1, temporarily prohibiting public gatherings of more than five hundred people. Public ticketed events were canceled en masse both within New York and around the country.

9. During the month of April 2020, Referral Services and TFS conferred about the extensive dislocation in the secondary market for ticket events, and its impact on Referral Services' and TFS's finances. TFS created and provided spreadsheets designed to quantify financial obligations arising from mass event cancellations. These documents compared the financial effect of continuing to offer cash refunds for all purchasers with various amounts of store credit.

10. As cancellations continued to pile up, Referral Services and TFS coordinated to limit Referral Services' exposure to a wave of refunds. On or about May 1, 2020, Referral Services and TFS privately agreed that the companies' policy of providing refunds to purchasers of canceled events would be changed to a credit policy. The agreement applied to all canceled events, regardless of the location of the venue or the residency of the purchaser, or whether the purchaser had completed the order at the time when the Resale Websites promised refunds for canceled events.

11. On or about May 6, 2020, a representative of Referral Services asked TFS to

provide the template that TFS had drafted for other partners to notify consumers that their event had been canceled and that they were eligible only for store credit. TFS provided the template later that day. On or about May 19, 2020, TFS provided Referral Services with a similar template, now branded with the logo of one of the Resale Websites, intended to notify consumers who may have already been notified that they would receive a refund that they were now eligible only for store credit. Consumers promptly began receiving notice of the change in policy.

12. The parties also sought to change the terms and conditions applicable to purchases made through the Resale Websites. For example, on or about May 19, 2020, the cancellation policy available in the "Terms & Privacy" section of tickets-center.com was revised to change the default option in the event of a cancellation from a refund to store credit, with the availability of a refund purportedly within the discretion of the sellers:

> If you return your tickets within 14 days after our notice was sent that the event is canceled, we will provide you with a credit for the purchase price (inclusive of the ticket price, service charges and delivery fees paid by you) for use on a future purchase (except we may, in our sole discretion and in lieu of a credit, choose to provide you with a cash refund of this amount).

13. Throughout this period, TFS would notify Referral Services of individual complaints they received through the customer service portals. Although the parties agreed in certain individual cases to provide refunds, they (through TFS's direct communications with consumers) continued to deny refunds to other purchasers entitled to refunds by law and to provide store credit as the default option—and failed to notify consumers that they might be entitled to refunds by law.

14. These practices harmed consumers by failing to provide refunds they were entitled to by law, deceiving consumers by misrepresenting their eligibility for a refund, and failing to honor express refund promises.

15. After being contacted by the NYAG as part of this investigation, on or about

August 26, 2020 Referral Services proactively requested that TFS notify all New York-based purchasers of tickets to canceled events, except those who had already used their store credit, to advise them that they were eligible to seek a refund. TFS sent this notification.

Regulatory Framework

16. Executive Law § 63(12) and General Business Law §§ 349 and 350 prohibit misrepresentation and deceptive acts or practices in the conduct of any business.

17. Executive Law § 63(12) also prohibits illegal practices in the conduct of any business. Arts and Cultural Affairs Law § 25.07 requires any person, firm, or corporation that facilitates the resale of event tickets to guarantee that it will refund to the purchaser the amount paid by the purchaser (including, but not limited to, all fees, regardless of how characterized) if the event for which such ticket has been resold is canceled, notwithstanding any other provision of law.

Respondent's Conduct Violated New York Law

18. NYAG finds that Respondent's conduct violated, *inter alia*, Executive Law § 63(12), which authorizes NYAG to pursue repeated fraudulent or illegal acts; GBL §§ 349 and 350, which prohibit deceptive acts and practices and false advertising; and Arts and Cultural Affairs Law § 25.07, which requires any person, firm, or corporation that facilitates the resale of event tickets to guarantee refunds to purchasers if the event for which the purchaser has bought a ticket is canceled.

19. Respondent neither admits nor denies NYAG's Findings, paragraphs 1–18 above.

20. NYAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, NYAG is willing to accept this Assurance pursuant to

Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of Executive Law § 63(12), GBL §§ 349 and 350, and Arts and Cultural Affairs Law § 25.07.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

RELIEF

21. Respondent shall not directly or indirectly – on its own or through any existing or future firm or other business structure – engage, or attempt to engage, in conduct in violation of Executive Law § 63(12), GBL §§ 349 and 350, and Arts and Cultural Affairs Law § 25.07, and expressly agrees and acknowledges that any such conduct is a violation of the Assurance, and that NYAG thereafter may commence the civil action or proceeding contemplated in paragraph 20, *supra*, in addition to any other appropriate investigation, action, or proceeding.

22. Within thirty (30) days of the Effective Date of this Assurance, Respondent shall notify or cause to be notified (i) all New York State residents who placed an order on the Resale Websites at any time prior to May 18, 2020 for an event to be held in any venue outside of New York State at any time after January 1, 2020, which event was thereafter canceled (the "NY Resident Purchasers"); and (ii) all consumers regardless of residency who placed an order on the Resale Websites for an event to be held in any venue within New York State at any time after January 1, 2020, which event was thereafter canceled (the "NY Venue Purchasers," and collectively with the NY Resident Purchasers, "Covered Purchasers"), that they are eligible for a refund of their entire purchase price, and may claim that refund, notwithstanding any credit the consumer may have already received in lieu of a refund, or in partial satisfaction thereof.

a. To the extent Respondent has refunded a Covered Purchaser in full for a Covered Order or has provided or delivered notice on or after August 26, 2020 to a Covered Purchaser of that Purchaser's eligibility for a refund for a Covered Order and have not through the Effective Date of this Assurance received a request for a refund, Respondent need not provide notice pursuant to this paragraph to the Covered Purchaser with respect to the Covered Order for which that Purchaser has been so refunded or notified.

b. Any future notice sent pursuant to this paragraph shall be sent by email to the email address associated with the order and (i) inform consumers, in both the subject line and body of the email, that the notice concerns a refund offer for the consumer's ticket order; (ii) identify with specificity the event and/or order to which the refund offer relates; and (iii) clearly and conspicuously inform the consumer how to claim a refund.

23. Within fourteen (14) days of the Effective Date of this Assurance, Respondent shall conduct a full review of the statements on their Resale Websites concerning refunds for canceled events and shall ensure that any and all such statements disclose that consumers may be entitled to refunds under applicable law.

24. In any communication occurring after the Effective Date of this Assurance that is made by Respondent to a consumer concerning a canceled event, Respondent shall clearly and conspicuously inform the consumer that he or she may be entitled to a refund under applicable law.

MISCELLANEOUS

25. Acceptance of this Assurance by NYAG is not an approval or endorsement by NYAG of any of Respondent's policies, practices, or procedures, and Respondent shall make no representation to the contrary.

26. Respondent expressly agrees and acknowledges that NYAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 33, and agrees and acknowledges that in such event:

a. any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance;

b. the NYAG may use statements, documents or other materials produced or provided by Respondent prior to or after the effective date of this Assurance;

c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Respondent irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue.

d. evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

27. If a court of competent jurisdiction determines that Respondent has violated the Assurance, Respondent shall pay to the NYAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

28. This Assurance is not intended for use by any third party in any other proceeding.

29. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of Respondent. Respondent shall include any such successor, assignment or transfer agreement a provision that binds the successor, assignee or transferee to the terms of the Assurance. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of NYAG.

30. Nothing contained herein shall be construed as to deprive any person of any private right under the law, nor to waive any legal argument or defense not expressly waived herein.

31. Any failure by the NYAG to insist upon the strict performance by Respondent of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the NYAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by Respondent.

32. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 21-051, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to Respondent, to:

Internet Referral Services, LLC
c/o Gian Brown, Esq.
Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

If to NYAG, to:

Bureau Chief
Bureau of Internet & Technology
New York State Office of the Attorney General
28 Liberty Street
New York, NY 10005

33. NYAG has agreed to the terms of this Assurance based on, among other things, the representations made to NYAG by Respondent and its counsel and NYAG's own factual investigation as set forth in Findings, paragraphs 1–15 above. Respondent represents and warrants that neither it nor its counsel has made any material representations to NYAG that are inaccurate or misleading. If any material representations by Respondent or its counsel are later found to be inaccurate or misleading, this Assurance is voidable by NYAG in its sole discretion.

34. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Respondent in agreeing to this Assurance.

35. Respondent represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved.

36. Unless a term limit for compliance is otherwise specified within this Assurance, the Respondent's obligations under this Assurance are enduring. Nothing in this Agreement shall relieve Respondent of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

37. Respondent agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in the Assurance or creating the impression that the Assurance is without legal or factual basis. Nothing in this paragraph affects

Respondent's right to take legal or factual positions in defense of litigation or other legal proceedings to which the NYAG is not a party.

38. Nothing contained herein shall be construed to limit the remedies available to NYAG in the event that Respondent violates the Assurance after its effective date.

39. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

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

41. Respondent acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

42. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

43. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

44. This Assurance may be executed in multiple counterparts by the Parties hereto. All counterparts so executed shall constitute one agreement binding upon all Parties, notwithstanding that all Parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the effective date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for

purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

45. The effective date of this Assurance shall be August 30, 2021.

LETITIA JAMES
Attorney General of the State of New York
28 Liberty Street
New York, NY 10005

By: _____

Ezra Sternstein
Assistant Attorney General
Bureau of Internet & Technology

Internet Referral Services, LLC

By: Gian Brown, Esq.

Title: Partner, Holland & Hart LLP
On Behalf of Internet Referral Services, LLC

August 18, 2021
Date