

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

In the Matter of

Assurance No. 21-032

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

**OPT-INTELLIGENCE, INC., and
JOSEPH BROUMAND, as an individual,**

Respondents.

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 (“GBL”) § 349 into the collection and sale of consumers’ information, and use of consumers’ identities in public comments to the government, by Opt-Intelligence, Inc. (“Opt-Intelligence”) and its Chief Executive Officer Joseph Broumand (“Broumand,” and collectively “Respondents”). This Assurance of Discontinuance (“Assurance”) contains the findings of NYAG’s investigation and the relief agreed to by NYAG and Opt-Intelligence, whether acting through its respective directors, officers, employees, representatives, agents, affiliates, or subsidiaries, and Broumand, as an individual (collectively, the “Parties”).

FINDINGS OF OAG

1. Opt-Intelligence provides internet marketing and opt-in advertising services, including lead generation. Lead generation entails identifying consumers interested in a client product or service. In 2017, Opt-Intelligence was hired to collect public comments for submission to a government rulemaking proceeding by showing consumers a form-letter

comment authored by an advocacy group and asking the consumers to agree to have their names and addresses used to endorse the comment for submission to the government. After Opt-Intelligence collected and delivered comments to its client, the client refused the vast majority of them and demanded Opt-Intelligence collect them anew, this time using a different advocacy message from a different non-profit. Opt-Intelligence agreed to show the new message to consumers and ask them to endorse it.

2. However, Opt-Intelligence proved unable to secure a sufficient number of new public comments within the deadline, so it fabricated them. Respondents took information collected from hundreds of thousands of consumers in the old, rejected collection and provided them to its client, misrepresenting that consumers had expressly consented to having their names and addresses used to sign the new public comment from the new advocacy group. These individuals had neither been shown the new message sent using their identities, nor been told such message would be sent on their behalf.

Background

3. Respondent Opt-Intelligence is a New York corporation with a principal place of business at 487 East Main St, Suite 282, Mount Kisco, NY 10549. Respondent Joseph Broumand is the Chief Executive Officer of Opt-Intelligence.

4. Opt-Intelligence provides digital lead-generation services. A lead generator collects personal information from consumers and then sells that information to third parties who want to use the leads to generate business.

5. To obtain leads, Opt-Intelligence used a form of lead generation known as “co-registration.” With co-registration, a consumer is presented with advertisements or solicitations from one or more third-party marketers. Typically, users are shown large numbers of these

advertisements in succession. To encourage consumers to provide their information and enroll in the third-party marketers' programs, consumers are typically offered incentives, such as gift cards or sweepstake entries.

6. Opt-Intelligence obtained leads primarily by embedding advertisements in third-party partners' websites.

7. In addition to generating leads for use in business-to-consumer marketing campaigns, Opt-Intelligence offered its services to generate leads to attach to public comments that could be submitted to the government in support of, or opposition to, a regulation or law under consideration.¹

8. In early 2017, the Federal Communications Commission ("FCC") made public statements signaling its intention to issue a notice of proposed rulemaking to substantially modify the FCC's oversight of broadband internet, most prominently allowing Internet Service Providers ("ISPs") to prioritize certain traffic on their networks. Pursuant to rulemaking procedures, the public would be invited to submit comments about any proposed rule to the FCC. In such instances, the FCC asks commenters to provide their name and contact information with their submission.

RE Hires Opt-Intelligence for FCC Rulemaking Advocacy

9. In April 2017, in anticipation of the upcoming FCC rulemaking, a political advocacy consulting firm, **RE**, engaged Opt-Intelligence for a co-registration campaign (the "April Campaign"). The goal of the campaign was to solicit and obtain consent from two million individuals for the submission of public comments to the FCC on their behalf once the

¹ Public comments generated through co-registration sites have been described as "low-affinity," because responding individuals usually have little connection, if any, to the advocacy issue, and are instead simply clicking through a long list of questions and advertisements in an attempt to obtain a free gift card or other commercial incentive.

public comment period commenced. [REDACTED] was itself working under the direction and supervision of [REDACTED], a lobbying firm.

10. [REDACTED] provided Opt-Intelligence with an advertisement, referred to as a “creative,” to be shown to individuals.

11. The creative included a message urging individuals to send a comment to the FCC and showing the full comment text. The creative also identified the political interest group sponsoring the campaign, American Commitment Foundation (“American Commitment”).

12. Opt-Intelligence was expected to show the creative to consumers, and for each person willing to have a message sent to the FCC on their behalf, Opt-Intelligence was expected to collect that person’s name and contact information (i.e., the lead), and provide collected leads to [REDACTED]. [REDACTED]’s client [REDACTED] would in turn submit comments to the FCC using the lead information collected through the campaign.

13. After [REDACTED] hired Opt-Intelligence, Opt-Intelligence in turn engaged lead-generation publishers to help reach the two million leads ordered by [REDACTED]. Opt-Intelligence provided the creative to these lead-generation publishers for display via their own technology on their own websites. The services would ultimately send the leads they collected to Opt-Intelligence, and Opt-Intelligence would then pass the leads to [REDACTED] to pass to [REDACTED] for submission to the FCC.

14. The majority of leads in the April Campaign were collected by [REDACTED], and Fluent, Inc. (“Fluent”). Those two vendors provided these leads to Opt-Intelligence, which in turn provided them to [REDACTED].

[REDACTED] Requires Opt-Intelligence to Redo Early Opt-Ins from the April Campaign

15. On or around May 1, [REDACTED] conveyed to Opt-Intelligence that [REDACTED] had concerns over the manner in which leads had been collected in the April Campaign.

16. [REDACTED] was upset that their instructions had not been followed closely enough with regards to the contents of, and disclaimers in, the creative that Opt-Intelligence displayed to consumers.

17. Ultimately [REDACTED] decided that all or most of the collected leads would not be used, and [REDACTED] asked Opt-Intelligence to run a new campaign to collect two million “make good” leads with a revised creative to replace the leads from the April Campaign.

18. The creative for this new campaign (the “May Campaign”) differed from that used in the April Campaign in several respects. Among other things, the message to the FCC that users were asked to endorse was different, and a different political interest group – the Center for Individual Freedom (“CFIF”) – was sponsoring it in lieu of American Commitment, which had sponsored the April Campaign.

19. Due to [REDACTED]’s concerns over the process used to collect leads in April, and the use of a new creative in the May Campaign, Opt-Intelligence was not permitted to re-use the April leads for the May Campaign. Broumand knew that the collection of new leads was fundamental to the new campaign. Indeed, in an email to Fluent on May 5, Broumand wrote that “it is critical that EVERY lead generated from this moment on is generated with the new creative I sent”

20. Opt-Intelligence began collecting leads for the May Campaign on Friday, May 5. At the outset of the campaign, the two firms responsible for the majority of leads in the April Campaign, [REDACTED] and Fluent, were not supplying Opt-Intelligence with any leads. The pace of collection was therefore slow. By the evening of Sunday, May 7, only 3,126 total leads had been collected.

21. Opt-Intelligence came under increasing pressure to deliver leads in a greater volume and more quickly. On May 7, [REDACTED] told Opt-Intelligence that [REDACTED] was “stressing over

the numbers” and that it was “really important” to collect 50,000 leads the following day. Over the next several days, [REDACTED] wrote numerous emails requesting frequent updates and information on the campaign’s progress in generating more leads at a quicker pace.

22. Opt-Intelligence turned to Fluent for help obtaining more leads. In an email to Fluent the morning of May 8, Broumand stated that “Our goal is to get 50k leads from you before the end of the day.” Ultimately, however, Fluent did not begin sending leads to Opt-Intelligence until late in the day, and the total supplied by midnight on May 8 was fewer than 15,000 leads, well under the 50,000-lead target Opt-Intelligence had been given the preceding day.

23. In the meantime, [REDACTED] continued to push Opt-Intelligence to deliver even more leads. By the afternoon of May 8, [REDACTED] had raised the goal for the day from 50,000 leads to “65-70k.”

Opt-Intelligence Fabricates Leads to Meet [REDACTED] Goals

24. Under pressure from its client, [REDACTED], to provide leads that Opt-Intelligence did not have and could not obtain in time, the company fabricated leads. Over the course of May 8, Opt-Intelligence took more than 50,000 leads collected in the April Campaign, adjusted the timestamp associated with each lead’s creation such that it appeared to have been created that day, and submitted the leads to [REDACTED] as leads obtained in the May Campaign. Opt-Intelligence then falsely reported to [REDACTED] that it had generated 71,557 total leads that day after showing the new creative to consumers, slightly exceeding the target set by [REDACTED].

25. The following day, Tuesday, May 9, [REDACTED] informed Opt-Intelligence that the end date of the campaign would be moved up five days, from May 17 to May 12. Opt-Intelligence was expected to deliver the same number of leads – 2 million leads in total – in this much

shorter period.

26. Broumand emailed Fluent repeatedly on May 9, seeking additional leads. But Fluent again failed to generate the volume of leads that Opt-Intelligence needed. By the end of the day, Fluent had provided Opt-Intelligence with only 55,000 leads.

27. To meet RE DA's expectations, Opt-Intelligence again fabricated leads. Opt-Intelligence took an additional 200,000 to 250,000 leads from the April Campaign, replaced the timestamp associated with each lead with a time on May 9. Opt-Intelligence then reported to RE DA – falsely – that these 200,000 to 250,000 leads had been collected from consumers on May 9 after they had seen the new creative.

28. At all times, Broumand knew of and approved Opt-Intelligence's fabrication of these leads, and that these fabricated leads would be attached to comment text and submitted to the government.

Respondents' Violations

29. Respondents' conduct violated, *inter alia*, Executive Law § 63(12), which authorizes the NYAG to pursue repeated fraudulent or illegal acts, and GBL §§ 349 and 350, which prohibit deceptive acts and practices and false advertising.

30. Respondents neither admit nor deny NYAG's findings in paragraphs 1-29 above.

31. Opt-Intelligence submitted a Statement of Financial Condition, dated May 1, 2021, and supporting materials to NYAG documenting and certifying under penalty of perjury its financial circumstances.

32. 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.

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

RELIEF

33. For the purposes of this Assurance, the following definitions shall apply:

a. “Advocacy Campaign” shall mean services that Respondent was engaged to provide concerning the solicitation and collection of Advocacy Campaign Consent from a consumer.

b. “Advocacy Campaign Consent” shall mean a person’s affirmative act, such as a click of a button or a checking of a checkbox, giving unambiguous assent to having an Advocacy Message attributed to him or her.

c. “Advocacy Campaign Sponsor” shall mean any Individual or Entity that engages, or on whose behalf Respondent is engaged, in connection with an Advocacy Campaign.

d. “Advocacy Lead Information” for a consumer shall mean any information from or about a consumer that Respondent obtains for, or is engaged to provide to, a third party in an Advocacy Campaign.

e. “Advocacy Message” shall mean any letter, email, text message, note, petition, image, chart, summary, or other memorialization of information, whether memorialized in writing, audio or video recording, or any other medium, that is intended to be transferred or disclosed to a Government Entity or Official and explicitly or implicitly expresses any opinion.

f. “Clear(ly) and Conspicuous(ly)” shall mean that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers,

including in all of the following ways:

i. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure (“Triggering Representation”) is made through only one means.

ii. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

iii. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.

iv. In any communication using an interactive electronic medium, such as the internet or software, the disclosure must be unavoidable.

v. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the Triggering Representation appears.

vi. The disclosure must not be contradicted or mitigated by, or inconsistent with, any other representation(s).

vii. The disclosure must not be combined with other marketing or promotional text or information that is unrelated or immaterial to the subject

matter of the disclosure or not legally required.

g. “Close Proximity” shall mean that the disclosure is next to the Triggering Representation. A disclosure made through a hyperlink, pop-up, interstitial, or other similar technique is not in Close Proximity to the Triggering Representation.

h. “Government Entity or Official” shall mean any: (i) agency, instrumentality, subdivision or other body of any national, regional, local or other government; (ii) commercial or similar entities owned or controlled by such government, including any state-owned and state-operated companies; (iii) public international organization; and (iv) any official, member, or employee of the foregoing acting in his or her official capacity, or any candidate or nominee to serve thereat.

i. “Personal Information” shall mean information from or about an individual consumer, including, but not limited to: (1) first and last name; (2) a home or other physical address, including street name and name of city or town; (3) an e-mail address or other online contact information, such as an instant messaging user identifier or a screen name; (4) a telephone number; (5) a Social Security number; (6) a driver’s license or other government-issued identification number; (7) a financial institution account number; (8) credit or debit card information; (9) precise geolocation data of an individual or mobile device, including but not limited to GPS-based, Wi-Fi-based, or cell-based location information; (10) an authentication credential, such as a username and password; (11) a persistent identifier, such as a customer number held in a cookie, a MAC address, a mobile device ID, or an internet browser ID; or (12) an Internet Protocol (“IP”) address.

j. “Public Advocacy Campaign” means an Advocacy Campaign that results

in the submission of an Advocacy Message to a Government Entity or Official that will be made publicly available, or that the Government Entity or Official has stated may be made publicly available.

k. “Third-Party Vendor” means any person or entity that a Respondent uses to collect or assist in collecting Advocacy Campaign Consent from a consumer.

l. “Fourth-Party Vendor” means any person or entity that a Third-Party Vendor has used to collect or assist in collecting Advocacy Campaign Consent from a consumer.

34. Respondents shall comply with Executive Law § 63(12), and GBL §§ 349 and 350 in connection with the solicitation and collection of Advocacy Campaign Consent.

35. Advocacy Campaign Consent shall only be obtained through solicitation that:

a. Clearly and Conspicuously discloses the sponsor of the Advocacy Campaign, the intended recipient of the Advocacy Message, and the means by which the Advocacy Message would be submitted, using the following or substantially similar language: “[Advocacy Campaign Sponsor] would like your consent to send [submission type, such as “a public comment” or “an email”] on your behalf to [full name of Government Entity or Official]”;

b. Clearly and Conspicuously discloses the full text of the Advocacy Message for which Advocacy Campaign Consent is being solicited. Either the full text of the Advocacy Message, or a readily noticeable hyperlink to the full text of the Advocacy Message and the following statement or substantially similar language, shall be Clearly and Conspicuously disclosed: "Click here to see the full text of your [submission type, such as "public comment" or "email"] to [name of Government Entity or Official]";

c. requires the user to (i) enter in his or her email address into a field in Close Proximity to the mechanism to obtain Advocacy Campaign Consent, even if such email address was previously obtained, or (ii) confirm his or her email address in a field in Close Proximity to the mechanism to obtain Advocacy Campaign Consent; and

d. Clearly and Conspicuously discloses, in Close Proximity to the mechanism for obtaining Advocacy Campaign Consent, the following or substantially similar language: “I consent to having this message sent to [Government Authority or Official] identifying me as the author or signer, using my full name and other contact information.”

36. Each Respondent shall ensure that, in connection with any Advocacy Campaign, each Government Entity or Official receives a disclosure as follows:

a. Respondent shall not provide services related to a Public Advocacy Campaign without first entering into a written agreement with the Advocacy Campaign Client requiring that the Advocacy Campaign Client disclose conspicuously and contemporaneously with the submission of any Advocacy Message to a Government Entity or Official Respondent’s identity and that Respondent obtained consent for submission of the Advocacy Message (the “Collection Disclosure”). The Collection Disclosure shall be made either (i) in text inserted within, or appended at the end of, each Advocacy Message that states, “Opt-Intelligence, Inc. obtained consent for submission on behalf of [individual’s name or ‘the signer(s),’ or substantially similar language meaning signer(s)].” or (ii) in another format that ensures it is publicly available in association with the Advocacy Message; and

b. in connection with each Advocacy Campaign that is not a Public

Advocacy Campaign, Respondent shall disclose the following in writing, within three (3) business days after the Public Advocacy Campaign concludes, to each Government Entity or Official that receives an Advocacy Message: Respondent's identity, the Advocacy Campaign Client's identity, that Respondent obtained consent for submission of the Advocacy Message, and for each different Advocacy Message used in the given campaign one copy of that Advocacy Message and the number of each such Advocacy Message for which it obtained consent.

37. Each Respondent, or Third-Party Vendor or Fourth-Party Vendor if such Vendor solicited Advocacy Campaign Consent, shall send a confirmation email message to each consumer that has provided Advocacy Campaign Consent within twenty-four (24) hours of the consumer having provided such Advocacy Campaign Consent. The email subject line shall state only the following or substantially similar language: "Confirmation of Your Message to [Government Entity or Official]." The body of the email shall Clearly and Conspicuously: (a) state at the top of the body section the following or substantially similar language: "This email confirms that you have given your consent to have the following message sent to [Government Entity or Official] identifying you as the author or signer."; (b) display below the prior statement the full text of the Advocacy Message; and (c) state below the prior text the following or substantially similar language: "If you did not agree to have this message sent on your behalf, click here to report abuse" with a link to a webpage or email address that will collect and provide notice to, or Third-Party Vendor or Fourth-Party Vendor if such Vendor solicited Advocacy Campaign Consent, of the user's report of abuse. The requirements of this paragraph may be satisfied if the Advocacy Campaign Client represents to Respondent in writing that it will send a confirmation email that conforms to the requirements of this paragraph in all respects.

38. Each Respondent shall use reasonable measures designed to ensure that any Third-Party Vendor or Fourth-Party Vendor that solicits or obtains Advocacy Campaign Consent on behalf of Respondent does so consistent with the requirements of paragraphs 35 and 37.

These measures shall include, at a minimum, that the Respondent enter into a written contract with each Third-Party Vendor that mandates that the Third-Party Vendor:

- a. solicit and obtain Advocacy Campaign Consent in accordance with the requirements of paragraph 35;
- b. require any Fourth-Party Vendor that solicits and obtains Advocacy Campaign Consent to do so in accordance with the requirements of paragraphs 35 and 37;
- c. provide to Respondent, before any Advocacy Campaign Consent is solicited by the Third-Party Vendor or Fourth-Party Vendor, a mock-up or mock-ups depicting each version of the solicitation that will be used, including all disclosures, text, and images;
- d. obtain Respondent's written approval for use of the mock-up or mock-ups prior to their use;
- e. provide to Respondent an unaltered image (such as a screenshot) or images depicting all of the solicitations for Advocacy Campaign Consent used by the Third-Party Vendor or Fourth-Party Vendor, including all disclosures, text, and images, within a reasonable amount of time after use for a given campaign; and
- f. obtain and provide to Respondent, for each Advocacy Campaign Consent:
 - i. the date and time that the consumer provided the Advocacy Campaign Consent;
 - ii. the IP address and/or device identifier in use by the consumer

when providing such Advocacy Campaign Consent;

iii. the date and time each item of Advocacy Lead Information was obtained from the consumer (including Personal Information obtained prior to the Advocacy Campaign);

iv. the IP address and/or device identifier of each item of Advocacy Lead Information was obtained from the consumer (including Personal Information obtained prior to the Advocacy Campaign);

v. the web address or other location information of the solicitation through which the Advocacy Campaign Consent was obtained; and

vi. the name and contact information of the Fourth-Party Vendor, if any, that solicited and obtained the Advocacy Campaign Consent and each item of Advocacy Lead Information.

39. Each Respondent shall verify that each Third-Party Vendor and Fourth-Party Vendor that solicits or obtains Advocacy Campaign Consent in an Advocacy Campaign does so consistent with the requirements of paragraphs 35 and 37, including at a minimum:

a. review of all mock-ups provided by the Third-Party Vendor or Fourth-Party Vendor in advance of the Advocacy Campaign;

b. use reasonable measures to review all live versions of the solicitation for Advocacy Campaign Consent to confirm it is consistent with all mock-ups;

c. regular review of materials provided by the Third-Party Vendor or Fourth-Party Vendor as required in subparagraphs 38.f; and

d. investigate all consumer complaints it receives concerning an Advocacy Campaign.

40. Respondent shall designate an officer to receive and investigate all reports concerning a failure to obtain Advocacy Campaign Consent and any other consumer complaints concerning an Advocacy Campaign.

41. Respondents shall not represent, expressly or by implication, that a consumer has provided Advocacy Campaign Consent unless it was obtained in a manner consistent with the requirements of paragraph 35.

42. Respondents shall not misrepresent, expressly or by implication, any aspect of an Advocacy Campaign, including the actions taken or consent given by a consumer, the date and time when a consumer took such actions or gave such consent, the information solicited or obtained from a consumer, and the circumstances and manner in which consent or information was solicited or obtained from a consumer.

43. Respondents shall not transfer or disclose to a third party Advocacy Lead Information without transferring or disclosing the date and time each item of Advocacy Lead Information was obtained from the consumer.

44. Respondents shall not transfer or disclose to a third party Advocacy Lead Information solicited and obtained by a Third-Party Vendor or Fourth-Party Vendor unless the Third-Party Vendor complied with the contractual requirements in paragraph 38.

45. Except where prohibited by law, each Respondent shall create and retain for a period of no less than four (4) years from the conclusion of a campaign the following records:

a. the following data for each Advocacy Campaign Consent obtained by Respondent or by a Third-Party Vendor or Fourth-Party Vendor:

i. the date and time that the consumer provided the Advocacy Campaign Consent;

ii. the IP address and/or device identifier in use by the consumer when providing such Advocacy Campaign Consent and, where different, each item of Advocacy Lead Information (such as where Personal Information was obtained before the Advocacy Campaign);

iii. the date and time each item of Advocacy Lead Information was obtained from the consumer (such as Personal Information that was obtained before the Advocacy Campaign);

iv. the web address or other location information of the solicitation through which the Advocacy Campaign Consent was obtained; and

v. the name and contact information of the Fourth-Party Vendor, if any, that solicited and obtained the Advocacy Campaign Consent and, where different, each item of Advocacy Lead Information.

b. copies of each version of a solicitation used, by Respondent or by a Third-Party Vendor or Fourth-Party Vendor, to obtain Advocacy Campaign Consent, including for each such solicitation copies of all disclosures required in paragraphs 35 and 37 as they were displayed to consumers (such as screenshots or archived webpages);

c. records of Respondent's review and/or approval of all solicitations used to obtain Advocacy Campaign Consent for compliance with the requirements in paragraphs 35 and 37;

d. records of each confirmation email message sent as required in paragraphs 35 and 37, including the email recipient, the date and time the email was sent, and whether the email message was delivered to the recipient, and records of all complaints/reports of abuse by consumers in response thereto; and

e. all records necessary to demonstrate full compliance with each provision of this Assurance, including all submissions to NYAG.

46. Opt-Intelligence shall pay to the State of New York \$150,000 in penalties and disgorgement (the “Monetary Relief Amount”), as follows:

a. a first payment of \$25,000 shall be paid in full within fourteen (14) days of the effective date of this Assurance;

b. a second payment of \$25,000 shall be paid in full within ninety days (90) days of the effective date of this Assurance;

c. \$100,000 shall be suspended; provided however, that the suspended amount will be immediately due and payable if the NYAG finds that Opt-Intelligence has materially misstated its financial condition in the Statement of Financial Condition, dated May 1, 2021, and supporting materials, that Respondent provided to NYAG

47. Payments shall be made by wire transfer in accordance with instructions provided by a NYAG representative.

48. Respondents shall fully and promptly cooperate with NYAG in the course of NYAG's investigation of other entities involved in the solicitation, collection, use, sale, offering for sale, transfer, and/or submission of Advocacy Campaign Consent or Advocacy Lead Information obtained from Respondents. Such cooperation shall include but not be limited to: providing truthful written or verbal testimony including through in-person appearance at depositions or trial in New York State; providing additional documents and other physical evidence within ten (10) days of NYAG's request; and complying with any future directives or requests of NYAG.

49. Respondents shall provide NYAG with a certification affirming their compliance with the requirements set forth in this Assurance, paragraphs 35-45, to be submitted to NYAG within sixty (60) days of the effective date of this Assurance. This certification shall be in writing and be signed by the Chief Executive Officer of Respondent Opt-Intelligence, or such other officer (regardless of title) that is designated in Respondent Opt-Intelligence's bylaws or by resolution of the Board of Directors as having the duties of the principal executive officer of Respondent. Thereafter, a certification of compliance shall be submitted to NYAG on an annual basis for the following ten (10) years. In any case where the circumstances warrant, NYAG may require Respondents to file an interim certification of compliance upon thirty (30) days notice.

50. Respondents shall deliver a copy of this Assurance to (a) all current and future principals, officers, directors, and managers of Respondent Opt-Intelligence; (b) all current and future employees, agents, and representatives having supervisory responsibilities relating to the subject matter of this Assurance; and (c) any business entity resulting from any change in structure. Respondents shall deliver this order to the personnel identified above within thirty (30) days.

Miscellaneous

51. Respondents expressly agree and acknowledge 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 58, 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 Respondents 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 Respondents irrevocably and unconditionally waive 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).

52. If a court of competent jurisdiction determines that Respondent has violated the Assurance, Respondents 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.

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

54. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of Respondents. Respondents 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.

55. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

56. Any failure by the NYAG to insist upon the strict performance by Respondents 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 Respondents.

57. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No.21-032, 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 Respondents, to:

Joseph Broumand
Opt-Intelligence
487 East Main St, Suite 282
Mount Kisco, NY 10549

If to NYAG, to:

Noah Stein, Assistant Attorney General, or in his/her absence, to the person holding the title of Bureau Chief
Bureau of Internet & Technology
28 Liberty Street
New York, NY 10005

58. NYAG has agreed to the terms of this Assurance based on, among other things, the representations made to NYAG by Respondents and their counsel and NYAG's own factual investigation as set forth in Findings, paragraphs 1-29 above. Respondents represent and warrant that neither it nor its counsel has made any material representations to NYAG that are inaccurate or misleading, including but not limited to in the Statement of Financial Condition, dated May 1, 2021, and supporting materials, that Opt-Intelligence provided to NYAG. If any material representations by Respondents or their counsel are later found to be inaccurate or misleading, this Assurance is voidable by NYAG in its sole discretion.

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

60. Respondents represent and warrant, through the signature below, that the terms and conditions of this Assurance are duly approved. Respondents further represent and warrant that Joseph Broumand as the signatory to this Assurance, is a duly authorized officer acting at the direction of the Board of Directors of OPT-INTELLIGENCE, INC.

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

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

63. Nothing contained herein shall be construed to limit the remedies available to NYAG in the event that Respondents violate the Assurance after its effective date.

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

65. 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.

66. Respondents acknowledge that they have entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

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

68. 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.

69. 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.

70. The effective date of this Assurance shall be May 6, 2021.

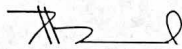
LETITIA JAMES
ATTORNEY GENERAL OF THE
STATE OF NEW YORK



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5/6/21
Date

OPT-INTELLIGENCE, INC.

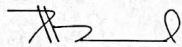


By: Joseph Broumand

05/02/2021

Date

JOSEPH BROUMAND



By: Joe Broumand

05/02/2021