

Enforceable Undertaking

This enforceable undertaking is given by Tiger Airways Holdings Limited pursuant to section 38 of the Spam Act.

1. Definitions and interpretation

1.1 In this Undertaking:

- (a) **ACMA** means the Australian Communications and Media Authority;
- (b) **Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Melbourne;
- (c) **CEM** means a commercial electronic message, as that phrase is defined in the Spam Act;
- (d) **CEM Campaign** means a CEM with distinct content sent by email to one or more recipients (whether or not sent at the same time), that has an Australian link within the meaning of section 7 of the Spam Act;
- (e) **Personnel** includes employees of a Tiger Entity and contractors substantially dedicated to the operations of a Tiger Entity;
- (f) **Spam Act** means the *Spam Act 2003* of Australia;
- (g) **Subsidiary** has the meaning given in section 46 of the *Corporations Act 2001* of Australia;
- (h) **Tiger Australia** means Tiger Airways Australia Pty Limited ACN 124 369 008;
- (i) **Tiger Holdings** means Tiger Airways Holdings Limited CRN 200701866W;
- (j) **Tiger Singapore** means Tiger Airways Singapore Pte. Limited ARBN 119 900 757;
- (k) **Tiger Entities** means any of Tiger Airways Holdings, Tiger Airways Australia or Tiger Airways Singapore; and
- (l) **Undertaking** means this enforceable undertaking.

1.2 Words and expressions defined in the Spam Act have the same meaning in this Undertaking, unless otherwise specified.

1.3 A reference to legislation includes any modification or re-enactment of it, and any regulations made under it.

2. Term of Undertaking

2.1 The Undertaking commences on the date the ACMA notifies Tiger Airways Holdings in writing that it has accepted Tiger Holdings' executed Undertaking (**Commencement Date**).

2.2 This Undertaking continues for a period of 24 months from the Commencement Date or until it is withdrawn or varied by Tiger Holdings, with the consent of the ACMA, pursuant to section 38(2) of the Spam Act, whichever is earlier.

3. Background

3.1 Tiger Entities

- (a) Tiger Holdings is incorporated and based in the Republic of Singapore and listed on the Singapore Exchange.
- (b) Tiger Australia is incorporated in Victoria, Australia, and is a wholly owned subsidiary of Tiger Holdings. Tiger Australia operates domestic flight services within Australia from bases in Melbourne and Sydney.
- (c) Tiger Singapore is incorporated and based in the Republic of Singapore, and is a wholly owned subsidiary of Tiger Holdings. Tiger Singapore operates a network of international flight services from a base in Singapore, servicing the Asia-Pacific region including destinations in Australia.
- (d) Tiger Holdings holds interests in other airline operating entities providing services in the Asia-Pacific region under other brand names.
- (e) Under the "Tiger Airways" brand, Tiger Holdings (through its subsidiaries) has customers throughout the Asia Pacific region, including in Australia. From time to time, Tiger Entities undertake CEM Campaigns that may be sent to Australian customers. This involves:
 - (i) Tiger Australia sending CEMs to its Australian customers from within Australia, and
 - (ii) Tiger Singapore sending CEMs to its Australian customers from outside Australia.

3.2 The ACMA's investigation

- (a) Under section 8 of the *Australian Communications and Media Authority Act 2005* of Australia, the ACMA is, among other things, responsible for performing functions under the Spam Act including, but not limited to, conducting investigations and taking civil action for the recovery of pecuniary penalties.
- (b) On 19 December 2011, the ACMA commenced investigations into allegations that Tiger Australia and Tiger Singapore may have breached the Spam Act.
- (c) The investigation concerned whether the Tiger Entities had contravened:
 - (i) section 16 of the Spam Act by sending, or causing to be sent, CEMs that were unsolicited;
 - (ii) section 17 of the Spam Act by sending, or causing to be sent, CEMs that did not contain clear and accurate sender information;
 - (iii) section 18 of the Spam Act by sending, or causing to be send, CEMs that did not have a functional unsubscribed facility; and
 - (iv) any other requirement of the Spam Act.
- (d) During the course of the investigation, Tiger Australia and Tiger Singapore provided information relating to the issues raised by ACMA and held discussions with the ACMA in order to understand its concerns.

- (e) On the basis of information provided to the ACMA during the course of the investigation, the ACMA formed a preliminary view that Tiger Australia sent or caused to be sent CEMs, with an Australian link, which were not designated CEMs, and without the consent of the electronic account-holder, potentially in contravention of section 16 of the Spam Act.

3.3 Acknowledgement of the ACMA's concerns

- (a) Tiger Holdings acknowledges the ACMA's concerns and has taken action to address these concerns. In particular, during the course of the investigation, Tiger Holdings has investigated the compliance with the Spam Act of Tiger Australia and Tiger Singapore and taken steps, including:
 - (i) placing a temporary halt on CEM campaigns of Tiger Australia so that the ACMA's concerns could be examined and process improvements made; and
 - (ii) re-engineering the unsubscribe facility for CEMs sent by Tiger entities, and the way that unsubscribe requests are processed by Tiger Entities and external service providers;
 - (iii) improving their internal processes relating to unsubscribe requests;
 - (iv) conducting training of call centre staff in relation to Tiger Entities' procedures for compliance with Spam Act obligations; and
 - (v) reviewed its systems and its training materials to ensure compliance with the Spam Act.
- (b) The Tiger Entities were cooperative throughout the course of the investigation and have been responsive to the ACMA's requests.

3.4 Undertaking

- (a) In response to the ACMA's concerns regarding the Tiger Entities' compliance with the Spam Act, Tiger Holdings offers this Undertaking to the ACMA pursuant to section 38 of the Spam Act.
- (b) In light of the Tiger Entities' cooperation and other matters the ACMA has taken into account, the ACMA has accepted this Undertaking as an appropriate outcome of its investigations.

4. Undertakings

4.1 Independent Consultant

- (a) Tiger Holdings undertakes to appoint an independent consultant (***Independent Consultant***) acceptable to the ACMA. (Tiger Holdings acknowledges that, to obtain the approval of the ACMA, the Independent Consultant must have demonstrated experience in reviewing policies, procedures and systems regarding compliance with the Spam Act or other relevant consumer protection laws.) The Independent Consultant will be engaged to review the current e-marketing activities (including any procedures, policies and systems relating to those activities) of the Tiger Entities with regard to their compliance with the requirements under the Spam Act **that:**
 - (i) all CEMs sent by Tiger Entities contain the information required by section 17 of the Spam Act;

- (ii) all CEMs sent by Tiger Entities contain a functional unsubscribe feature as required by section 18 of the Spam Act; and
- (iii) Tiger Entities handle all unsubscribe requests relating to CEMs in accordance with section 6 of Schedule 2 of the Spam Act

(together, **Spam Act compliance**), and to produce a report (**Report**) identifying any deficiencies and making recommendations as to:

- (iv) improvements to policies and procedures to ensure Spam Act compliance;
- (v) training for relevant Personnel;
- (vi) ongoing monitoring of Spam Act compliance measures; and
- (vii) procedures for quality assurance and implementation where changes are made to CEM campaign procedures or Spam Act compliance measures during the term of the Enforceable Undertaking,

(each a **Recommendation**).

- (b) Tiger Holdings may invite parties to tender for the role of Independent Consultant and will evaluate the tenders using its own criteria.
- (c) Tiger Holdings will notify the ACMA within 5 Business Days after the Commencement Date of the proposed Independent Consultant. The ACMA must notify Tiger Holdings whether it approves the Independent Consultant. If necessary, Tiger Holdings will repeat this process until it has the ACMA's approval.
- (d) Tiger Holdings will appoint the Independent Consultant within 10 Business Days after the ACMA has given its approval.
- (e) The Independent Consultant will provide the Report to Tiger Holdings, and at the same time to the ACMA, within 3 months of their appointment.
- (f) Subject to the ACMA's agreement, Tiger Holdings may remove the Independent Consultant at any time and replace the Independent Consultant with a new Independent Consultant approved by the ACMA.
- (g) Tiger Holdings may require the Independent Consultant to keep confidential any information relating to Tiger Holdings that is commercially sensitive information or confidential information of Tiger Holdings, but not such that this adversely affects the independent Consultant's ability to carry out its activities in compliance with this Undertaking. To avoid doubt, Tiger Holdings may not require the Independent Consultant to maintain confidence (as between Tiger Holdings, the Independent Consultant and the ACMA) in any information relating to CEM Campaigns conducted by Tiger Entities.

4.2 Implementation Plan

- (a) Within 1 month after receiving the Report, Tiger Holdings will produce an implementation plan (that plan, or the version that is enhanced as described in clause 4.2(d) below, being described as the **Implementation Plan**), setting out:
 - (i) the steps Tiger Holdings has taken or will take to implement all Recommendations made by the Independent Consultant in the Report, including

timeframes for each of the steps to be taken, unless the ACMA specifically agrees that any Recommendation need not be implemented; and

- (ii) any other matters Tiger Holdings sees fit.
- (b) The Implementation Plan should be:
- (i) limited to the implementation of any Recommendations, or to rectification of any deficiencies, identified in the Report;
 - (ii) limited to measures directly relating to compliance with the Spam Act by Tiger Entities;
 - (iii) practicable and reasonable having regard to the legal status and responsibilities of Tiger Entities; and
 - (iv) practicable and reasonable having regard to the nature and volume of CEMs handled and sent by Tiger Entities, and the manner in which CEMs are handled by Tiger Entities' systems.
- (c) The Independent Consultant must review the Implementation Plan to determine whether it addresses the Recommendations in the Report (having regard to any comments made by the ACMA) and formally approve the Implementation Plan (or the version that is updated as described in clause 4.2(d) below) within 1 month of its development. A copy of this formal approval will be promptly provided to the ACMA by Tiger Holdings.
- (d) Prior to the formal approval specified in clause (c), the Independent Consultant may be requested to review and provide interim recommendations on the Implementation Plan to Tiger Holdings. Tiger Holdings will seek to address these interim recommendations and update the Implementation Plan prior to the formal review and approval by the Independent Consultant.

4.3 Implementation

- (a) Tiger Holdings will (and will ensure that Tiger Australia and Tiger Singapore will) comply with the Implementation Plan, in the form that has formal approval referred to in clause (c) above) for the term of this Undertaking.
- (b) In particular, each Tiger Entity will carry out each of the steps to be performed by it under that Implementation Plan in accordance with the timeframes specified in the plan.
- (c) Tiger Holdings will report to the ACMA on the Tiger Entities' implementation of the Implementation Plan on a quarterly basis, not later than the last business day of each April, July, October and January, on steps taken in accordance with the Implementation Plan. If any items in the Implementation Plan have not been implemented at the expiry of this Undertaking, Tiger Holdings will continue to provide quarterly updates to the ACMA in respect of those items until they are implemented.

4.4 Audit and reporting

- (a) The Independent Consultant must determine an appropriate audit program (**Audit Program**) which will allow Tiger Holdings to detect Spam Act compliance issues. The Audit Program (and associated reporting templates) must be provided to Tiger Holdings and to the ACMA at the same time as the Report in clause 4.1 and should include the following measures:

- (i) a program for Tiger Holdings to conduct random audits of CEM campaigns during a 12 month period to assess compliance with sections 16, 17 and 18 of the Spam Act;
 - (ii) documentation of the approach, sample size methodology, mechanisms, ownership and frequency of controls testing (which frequency may reduce if there is a consistent pattern of compliant campaigns);
 - (iii) a process for communicating results and escalating exceptions within Tiger Holdings;
 - (iv) details of the frequency and mode of reporting audit results to the ACMA; and
 - (v) documented templates for reporting audit results to the ACMA
- (b) Audits in accordance with the Audit Program are to commence within 2 months of the Independent Consultant providing its recommendations for the Audit Program.
- (c) During the term of the Undertaking, Tiger Holdings to carry out the Audit Program with the frequency determined under the Audit Program.

4.5 Training

- (a) Within 2 months after the Independent Consultant provides its formal approval of the Implementation Plan as described in clause 4.2(c), Tiger Holdings will establish a training program (that program, or the version that is updated as described in clause 4.5(f) below, being described as the **Training Program**) in relation to its e-marketing activities.
- (b) The Training Program must be designed to be provided to all Tiger Entity Personnel involved in e-marketing or in dealing with complaints and enquiries about e-marketing, and must contain mechanisms to determine when each such staff member is to receive initial training and repeated training.
- (c) The Training Program must:
- (i) include an explanation of the Spam Act and the obligations under sections 16, 17 and 18 of the Spam Act;
 - (ii) include information about how Tiger Holdings, Tiger Australia and Tiger Singapore comply, or propose to comply, with Spam Act obligations;
 - (iii) provide information about the role of the ACMA and the ACMA website; and
 - (iv) include matters recommended by the Independent Consultant for inclusion in the Training Program, unless the ACMA specifically agrees that any recommendation need not be included.
- (d) The Training Program may include targeted content depending on the role and responsibilities of the Tiger Entity Personnel for whom the Training Program is designed, dealing with certain issues at a higher or lesser level of detail as appropriate to the role.
- (e) The Independent Consultant must review the Training Program to determine whether its design and content addresses the requirements of the Spam Act, (having regard to Recommendations in the Report and any comments made by the ACMA) and formally approve the Training Program (or the version that is updated as described in clause 4.5(f))

below) within 2 months of its establishment. A copy of this formal approval, and the timetable for implementation of the Training Program, will be promptly provided to the ACMA by Tiger Holdings.

- (f) Prior to the formal approval specified in clause 4.5(e), the Independent Consultant may be requested to review and provide interim recommendations on the Training Program to Tiger Holdings. Tiger Holdings will seek to address these interim recommendations and update the Training Program prior to the formal review and approval by the Independent Consultant.
- (g) Tiger Holdings will (and will ensure that Tiger Australia and Tiger Singapore will) comply with the Training Program for the term of this Undertaking.
- (h) If Tiger Holdings wishes to vary the Training Program during the term of this Undertaking, it must provide a copy of any proposed variation to the Training Program to the ACMA and the Independent Consultant at least 14 days before taking steps to implement a proposed variation to the Training Program, and if Tiger Holdings or the Independent Consultant (having regard to any comments made by the ACMA) believe the proposed variation is material;
 - (i) it must be made for purposes including a substantial purpose of improving its effectiveness in providing effective training to Tiger Personnel, having regard to their involvement in Tiger Entities' Spam Act compliance;
 - (ii) Tiger Holdings must request that the Independent Consultant conduct a review of the Training Program following the proposed variation and revision in the same terms as under clause 4.5(e) above, and provide a further formal approval; and
 - (iii) Tiger Holdings must not implement the proposed varied Training Program until it has obtained a formal approval mentioned in clause 4.6(f) and provided a copy to the ACMA.
- (i) To avoid doubt, Tiger Holdings may during the term of this Undertaking vary the content of training materials provided under the Training Program having regard to Personnel needs, changes in the law, relevant Tiger Entity policies and procedures and market developments. Tiger Holdings will provide a copy of any such revised training materials to the ACMA and the Independent Consultant 14 days before implementing them and agrees to have regard to any comments of the Independent Consultant or the ACMA in relation to the varied content.

4.6 Complaints Handling Policy

- (a) Within 6 weeks after the Independent Consultant provides its formal approval of the Implementation Plan as described in clause 4.2(c), Tiger Holdings will establish a complaints handling policy (that policy, or the version that is updated as described in clause 4.6(d) below, being described as the **Complaints Handling Policy**) in relation to its e-marketing activities.
- (b) The Complaints Handling Policy must:
 - (i) establish a process for identifying and responding to complaints about compliance with sections 16, 17 and 18 of the Spam Act;
 - (ii) include record keeping requirements in relation to complaints and responses, with records to be maintained for at least 12 months;

- (iii) include matters recommended by the Independent Consultant for inclusion in the Complaints Handling Program, unless the ACMA specifically agrees that any recommendation need not be included;
- (c) The Independent Consultant must review the Complaints Handling Policy to determine whether its design and content addresses requirements to effectively identify, track, and resolve complaints relating to e-marketing activities, having regard to any comments made by the ACMA) and must formally approve the Complaints Handling Policy (or the version that is updated as described in clause 4.6(d) below) within 6 weeks of its development. A copy of this formal approval and the timetable for implementation will be promptly provided to the ACMA by Tiger Holdings.
- (d) Prior to the formal approval specified in clause 4.6(c), the Independent Consultant may be requested to review and provide interim recommendations on the Complaints Handling Policy to Tiger Holdings. Tiger Holdings will seek to address these interim recommendations and update the Complaints Handling Policy prior to the formal review and approval by the Independent Consultant.
- (e) Tiger Holdings will (and will ensure that Tiger Australia and Tiger Singapore will) comply with the Complaints Handling Policy for the term of this Undertaking.
- (f) If Tiger Holdings wishes to vary the Complaints Handling Policy during the term of this Undertaking, it must provide a copy of any proposed variation to the Complaints Handling Policy to the ACMA and the Independent Consultant at least 14 days before taking steps to implement a proposed variation to the Complaints Handling Policy (such as by circulating revised procedures or providing training to affected Personnel), and if Tiger Holdings or the Independent Consultant (having regard to any comments made by the ACMA) believe the proposed variation is material;
 - (i) it must be made for purposes including a substantial purpose of improving its effectiveness in resolving complaints promptly, based on experience of the Complaints Handling policy in operation;
 - (ii) Tiger Holdings must request that the Independent Consultant conduct a review of the Complaints Handling Policy following the proposed variation and revision in the same terms as under clause 4.6(c) above, and provide a further formal approval; and
 - (iii) Tiger Holdings must not implement the proposed varied Complaints Handling Policy until it has obtained a formal approval mentioned in clause 4.6(f) and provided a copy to the ACMA.

4.7 General

- (a) In addition to the specific obligations set out in this Undertaking, Tiger Holdings undertakes to do all things reasonably necessary to give effect to this Undertaking.

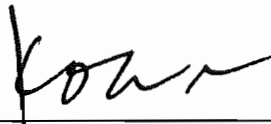
5. Acknowledgements of Tiger Holdings

Tiger Holdings acknowledges that:

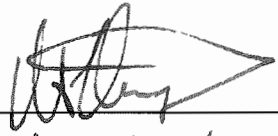
- (a) the ACMA may make this Undertaking available for public inspection; and

- (b) acceptance by the ACMA of this Undertaking does not derogate from any rights and remedies available to any other person arising from the conduct described in this Undertaking.

Signed by Tiger Airways Holdings Ltd

Signature: 
Name: Mr Koay Peng Yen
Designation: CEO
Date: 18 September 2012

The Undertaking is accepted by the Australian Communications and Media Authority pursuant to section 38 of the Spam Act 2003 of Australia, by its delegate:

Signature: 
Name: Vince Humphries
Designation: Executive Manager, Unsolicited Communications
Date: 22 October 2012