

**ENFORCEABLE UNDERTAKING GIVEN TO THE AUSTRALIAN COMMUNICATIONS AND
MEDIA AUTHORITY BY CIGNO PTY LTD (ACN 612 373 734) UNDER SECTION 38 OF THE
SPAM ACT 2003**

1. Definitions

- 1.1. In this Undertaking:
- 1.1.1. **ACMA** means the Australian Communications and Media Authority.
 - 1.1.2. **Appropriately Qualified Independent Person** means a qualified and independent person with expertise in risk and compliance, processes, procedures, systems, governance and controls.
 - 1.1.3. **Board** means the Cigno Board of Directors.
 - 1.1.4. **Cigno** means Cigno Pty Ltd ACN 612 373 734.
 - 1.1.5. **CEM** means commercial electronic message and has the same meaning as in the Spam Act.
 - 1.1.6. **CEM complaint** means a complaint to Cigno that relates to a CEM sent, or alleged to have been sent, by Cigno and includes complaints notified to Cigno by the ACMA.
 - 1.1.7. **Commencement date** has the meaning given in clause 2.1.2
 - 1.1.8. **relevant period** means the period commencing 1 December 2019 and ending on 31 July 2020.
 - 1.1.9. **report** means the report produced in accordance with clause 7.1.2.
 - 1.1.10. **Spam Act** means *Spam Act 2003* (Cth).
 - 1.1.11. **unsubscribe request** means a message to the effect that the relevant electronic account-holder does not want to receive any further CEMs at that electronic address, as described in subsection 18(9) of the Spam Act. This includes, but is not limited to, requests made by SMS, email, orally over the phone, through an unsubscribe link in a CEM, or through account preference changes.

2. Term of the Undertaking

- 2.1. This Undertaking commences when:
- 2.1.1. it has been executed by Cigno
 - 2.1.2. so executed, it has been accepted by the ACMA and written notification of that acceptance has been provided to Cigno (**Commencement date**).
- 2.2. This Undertaking continues for a period of 36 months from the Commencement date or until it is withdrawn by Cigno, with the approval of the ACMA, pursuant to section 38 of the Spam Act, whichever is earlier.
- 2.3. This Undertaking may be varied by Cigno, with the consent of the ACMA, pursuant to subsection 38(2) of the Spam Act.

3. Background

- 3.1. On 29 June 2021, the ACMA notified Cigno that the ACMA asserts that there are reasonable grounds to believe that, during the relevant period, Cigno sent, or caused to be sent, commercial electronic messages without consent, in contravention of subsection 16(1) of the Spam Act.
- 3.2. The ACMA has made findings against Cigno and in response to the ACMA's

concerns regarding Cigno's compliance with the Spam Act, Cigno offers this Undertaking to the ACMA aimed at satisfying the ACMA's concerns and ensuring ongoing compliance with the Spam Act.

4. Undertaking

- 4.1. Cigno undertakes to take the following specified actions.

5. Training

- 5.1. Within 30 business days of the commencement date, Cigno undertakes to train all personnel that may be, or are currently responsible for creating or sending CEMs, and their direct line manager, to ensure compliance with the terms of the Spam Act.
- 5.2. Cigno undertakes to repeat the training, described in clause 5.1, every 12 months after Cigno has undertaken the training referred to in clause 5.1 for the term of this undertaking.
- 5.3. Cigno undertakes to provide the ACMA with written notice within 10 business days of delivering the training referred to in clauses 5.1 and 5.2.

6. Record-keeping

- 6.1. Cigno undertakes to keep accurate records of:
 - 6.1.1. all CEMs sent, or caused to be sent, by Cigno including the date and time sent and the electronic address that received each CEM;
 - 6.1.2. the consent applicable to all CEMs at clause 6.1.1 including the terms and conditions associated with that consent
 - 6.1.3. all unsubscribe requests received by Cigno including the date and time the request was received and the date and time the request was actioned by Cigno
 - 6.1.4. all CEM complaints.

7. Business Review

- 7.1. Cigno undertakes to engage an Appropriately Qualified Independent Person to:
 - 7.1.1. conduct a review (**Review**) into its current oversight arrangements, procedures, policies, training and systems relating to its compliance with subsection 16(1) of the Spam Act and identify any deficiencies and/or improvements to ensure that:
 - a. all CEMs are sent, or caused to be sent, by Cigno with the consent of the relevant account-holder
 - b. Cigno classifies and analyses its records of CEM complaints to identify systemic and recurring problems and trends (**Systemic Problems**)
 - 7.1.2. produce a report (**Report**) making recommendations (**Recommendations**) as to:
 - a. improvements to policies and procedures that ensure compliance with subsection 16(1) of the Spam Act, including but not limited to:
 - i. ensuring that when relying on a person's express consent to send CEMs Cigno does so only where it can demonstrate the person has permitted the sending of CEMs and has been informed of the marketing arrangements (such as a person accepting terms and

- conditions)
 - ii. oversight and quality assurance processes
 - iii. quality assurance procedures for ensuring the ongoing integrity and functionality of relevant systems
 - iv. procedures for ensuring Cigno personnel comply with relevant policies and procedures
 - v. procedures for ensuring continued compliance when process or system changes are implemented
 - b. ongoing monitoring of Spam Act compliance measures
 - c. ensuring Cigno takes reasonable steps to address any identified Systemic Problems.
- 7.2. Cigno undertakes to seek written approval from the ACMA for the appointment of the Appropriately Qualified Independent Person within 20 business days after Commencement date. If the ACMA does not approve the choice of Appropriately Qualified Independent Person, Cigno will repeat this process until it has the ACMA's written approval.
- 7.3. Cigno undertakes to appoint the Appropriately Qualified Independent Person, and to provide written notification of that appointment to the ACMA, within 10 business days after the ACMA has given its written approval.
- 7.4. Cigno undertakes to instruct the Appropriately Qualified Independent Person to produce the Report and to provide the report to Cigno, its Board and at the same time to the ACMA, within six (6) months of their appointment.
- 7.5. Cigno undertakes to instruct the Appropriately Qualified Independent Person to commence a review (**Subsequent Review**) of Cigno's procedures, policies, training and systems relating to its compliance with subsection 16(1) of the Spam Act within 12 months, after the Report is provided to Cigno and the ACMA in accordance with clause 7.4.
- 7.6. Cigno undertakes to instruct the Appropriately Qualified Independent Person to provide the results of the Subsequent Review in writing to Cigno, its Board and at the same time to the ACMA, within three (3) months of the commencement of the Subsequent Review, including a statement about whether they are satisfied that Cigno procedures, policies, training and systems are effective in ensuring compliance with the Spam Act.

8. Implementation Plan, Audit & Reporting

- 8.1. Cigno undertakes to implement the Recommendations within six (6) months from the day that the Report was provided to Cigno (**Implementation Date**).
- 8.2. The amount of time allocated for Cigno to implement the Recommendations in accordance with clause 8.1, may be extended at any time subject to the ACMA's written approval.
- 8.3. Cigno undertakes to provide a compliance report to its Board and the ACMA within one (1) month of the Implementation Date that covers the six (6) months preceding the Implementation Date that includes:
 - 8.3.1. confirmation of the Recommendations that have been implemented in accordance with clause 7.1.2.
 - 8.3.2. details of any Recommendation that has not been implemented and the relevant

reasons.

- 8.3.3. all de-identified consumer complaints made to Cigno about alleged non-compliance with the Spam Act, including the date of the complaint and a unique identifier for each complaint.
- 8.3.4. action Cigno has taken on all complaints the ACMA has notified Cigno about or received by Cigno directly from consumers.
- 8.3.5. all identified instances of non-compliance with the Spam Act including the cause of any identified compliance issues and remediation action taken or proposed to be taken.

Signed by Cigno Pty Ltd



Signature of Director

MARK SWAVEPOEL

Name of Director

23/11/2021

Date of signing

The undertaking offered by Cigno Pty Ltd is accepted by the Australian Communications and Media Authority pursuant to section 38 of the *Spam Act 2003* (Cth) by the ACMA's delegate:

Date accepted by ACMA: 26 November 2021



Signature of ACMA delegate

Jeremy Fenton, Executive Manager

Name and position of ACMA delegate