

**ENFORCEABLE UNDERTAKING GIVEN TO THE AUSTRALIAN COMMUNICATIONS AND  
MEDIA AUTHORITY BY PHOENIX SECURITIES Pty Ltd (ABN 23 626 463 616) 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. **Phoenix Securities** means Phoenix Securities Pty Ltd ABN 23 626 463 616.
  - 1.1.3. **CEM** means commercial electronic message and has the same meaning as the Spam Act 2003.
  - 1.1.4. **CEM complaint** means a complaint to Phoenix Securities that relates to a CEM sent, or alleged to have been sent, by Phoenix Securities and includes complaints notified to Phoenix Securities by the ACMA.
  - 1.1.5. **Commencement date** has the meaning given in clause 2.1.
  - 1.1.6. **independent consultant** means a qualified and independent consultant with expertise in audits relating to risk and compliance, processes, procedures, systems, governance and controls.
  - 1.1.7. **Managing Director** means the managing director of Phoenix Securities.
  - 1.1.8. **relevant period** means the period from:
    - a. 15 January 2021 to 31 January 2021 for all CEMs sent; and
    - b. 10 September 2020 to 11 March 2021 for CEMs sent to specific addresses.
  - 1.1.9. **report** means the report produced by the independent consultant referred to in clause 5.1.
  - 1.1.10. **Spam Act** means *Spam Act 2003* (Cth).

**2. Term of the Undertaking**

- 2.1. This Undertaking commences when:
- 2.1.1. it has been executed by Phoenix Securities; and
  - 2.1.2. so executed, it has been accepted by the ACMA and written notification of that acceptance has been provided to Phoenix Securities (**Commencement date**).
- 2.2. This Undertaking continues for a period of 24 months from the Commencement date or until it is withdrawn by Phoenix Securities, with the approval of the ACMA, pursuant to section 38 of the Spam Act, whichever is earlier.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 Phoenix Securities, with the consent of the ACMA, pursuant to subsection 38(2) of the Spam Act.

**3. Background**

- 3.1. On 26 July 2021, the ACMA notified Phoenix Securities that the ACMA has reasonable grounds to believe that, during the relevant period, Phoenix Securities sent, or caused to be sent, commercial electronic messages without consent, in contravention of subsection 16(1) of the Spam Act.
- 3.2. Phoenix Securities acknowledges the ACMA's findings, and in response to the ACMA's concerns regarding their compliance with the Spam Act, offers this Undertaking to the ACMA aimed at addressing future compliance with the Spam Act.

#### 4. Undertaking

- 4.1. Phoenix Securities undertakes to take the following specified actions to ensure Phoenix Securities complies with the Spam Act and does not contravene the Spam Act in the future.

#### 5. Independent Consultant

- 5.1. Phoenix Securities undertakes to appoint an independent consultant to:
  - 5.1.1. review Phoenix Securities current procedures, policies, training and systems relating to its compliance with the Spam Act and identify any deficiencies and/or improvements to ensure that:
    - a. all CEMs are sent, or caused to be sent, by Phoenix Securities with the consent of the relevant account holder
    - b. Phoenix Securities receives, records and actions all unsubscribe requests within the periods specified in Schedule 2 to the Spam Act for when withdrawal of consent takes effect
    - c. all CEMs sent, or caused to be sent, by Phoenix Securities contain the information required by paragraphs 17(1)(a) and (b) of the Spam Act
    - d. all CEMs sent, or caused to be sent, by Phoenix Securities contain a functional unsubscribe facility as required by subsection 18(1) of the Spam Act
    - e. Phoenix Securities classifies and analyses its records of CEM complaints to identify systemic and recurring problems and trends (**systemic problems**).
  - 5.1.2. produce a report (**the report**) making recommendations as to:
    - a. ensuring Phoenix Securities systems receive, record and action unsubscribe requests
    - b. improvements to policies and procedures that ensure compliance with the Spam Act, including but not limited to:
      - i. quality assurance procedures for ensuring the ongoing integrity and functionality of relevant systems
      - ii. procedures for ensuring Phoenix Securities personnel comply with policies and procedures
      - iii. procedures for ensuring continued compliance when process or system changes are implemented
    - c. ongoing training for Phoenix Securities personnel on Spam Act compliance
    - d. ongoing monitoring of Spam Act compliance measures
    - e. ensuring Phoenix Securities takes reasonable steps to address any identified systemic problems.
- 5.2. Phoenix Securities undertakes to seek written approval from the ACMA for the appointment of the proposed independent consultant within 20 business days after commencement of these undertakings. If the ACMA does not approve the choice of independent consultant, Phoenix Securities will repeat this process until it has the ACMA's written approval.
- 5.3. Phoenix Securities undertakes to appoint the independent consultant, and to provide written notification of that appointment to the ACMA, within 10 business days after the ACMA has given its written approval.

- 5.4. The independent consultant will provide the report to Phoenix Securities, and at the same time to the ACMA, within four months of their appointment.
- 5.5. The independent consultant will again review Phoenix Securities procedures, policies, training and systems relating to its Spam Act compliance 12 months after they provide their report to Phoenix Securities and the ACMA.
- 5.6. The independent consultant will provide the results of their review in writing to Phoenix Securities and the ACMA within 2 months of the commencement of the review, including a statement about whether they are satisfied that Phoenix Securities procedures, policies, training and systems are effective in ensuring compliance with the Spam Act.
- 5.7. Subject to the ACMA's written agreement, Phoenix Securities may remove the independent consultant at any time and replace the independent consultant with a new independent consultant approved by ACMA. If the ACMA does not approve the choice of independent consultant, Phoenix Securities will repeat this process until it has the ACMA's approval.

## **6. Implementation Plan, Audit & Reporting**

- 6.1. Within 40 business days of receiving the report Phoenix Securities will:
  - 6.1.1. develop an implementation plan setting out the steps Phoenix Securities has taken, or will take, to implement all recommendations made by the independent consultant in the report, including timeframes (unless the ACMA specifically agrees that any recommendation need not be implemented)
  - 6.1.2. provide a copy of the implementation plan (approved by Phoenix Securities' Managing Director) to the ACMA.
- 6.2. Phoenix Securities undertakes to comply with the approved implementation plan in accordance with the timeframes specified in the plan.
- 6.3. The implementation plan may be modified at any time subject to the ACMA's written approval.
- 6.4. At six, twelve and eighteen months from the date the approved implementation plan is provided to the ACMA, Phoenix Securities will provide a compliance report, approved by the Managing Director, to the ACMA that covers the previous 6 months that includes:
  - 6.4.1. the status of actions it will take under the implementation plan;
  - 6.4.2. a report of all de-identified consumer complaints made to Phoenix Securities about alleged non-compliance with the Spam Act, including the date of the complaint and a unique identifier for each complaint; and
  - 6.4.3. action Phoenix Securities has taken on each complaint the ACMA has notified Phoenix Securities about or Phoenix Securities has received directly from consumers.
- 6.5. Phoenix Securities will report to the ACMA all identified instances of non-compliance with the Spam Act within 10 business days of identifying an instance of non-compliance, including the cause of any identified compliance issues and remediation action taken or proposed to be taken and applicable dates.

## **7. Training**

- 7.1. Within 30 business days of the commencement date, Phoenix Securities 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 Spam Act.
- 7.2. Phoenix Securities undertakes to repeat the training, described in clause 7.1, every

12 months after Phoenix Securities has undertaken the training referred to in clause 7.1 for the term of this undertaking.

7.3. Phoenix Securities undertakes to provide the ACMA with written notice when it has undertaken training referred to in clauses 7.1 and 7.2.

**8. Record-keeping**

8.1. Phoenix Securities undertakes to:

8.1.1. keep accurate records of the consent given by electronic account-holders to the sending of CEMs by Phoenix Securities to those account-holders, including any terms and conditions associated with that consent

8.1.2. keep accurate records of CEM complaints

8.1.3. provide copies of records referred to in this clause 8 to the ACMA upon request by the ACMA.

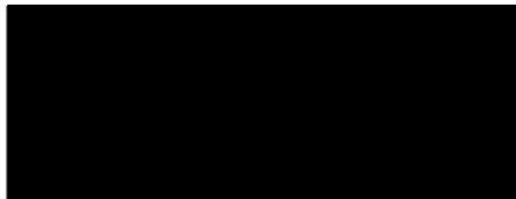
**9. Acknowledgment of publication**

9.1. Phoenix Securities acknowledges that the ACMA may publish these undertakings.

Signed by )  
Phoenix Securities Pty Ltd )  
In accordance with s127 of the )  
Corporations Act 2001 )



Director/ Sole Director



Director/ Secretary

Date of signing:

27/10/2021

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



Jeremy Fenton,  
Executive Manager  
Consumer, Consent and Numbers Branch

Date of signing: 17/12/2021