

**ENFORCEABLE UNDERTAKING  
TO BE GIVEN TO THE AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY  
BY NOAH ROSE TRADING AS BETDELUXE (ABN 66 578 068 647)  
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. **CEM** means commercial electronic message and has the same meaning as the *Spam Act 2003*.
  - 1.1.3. **Commencement date** has the meaning given in clause 2.1.
  - 1.1.4. **independent consultant** means a qualified and independent consultant with expertise in audits relating to risk and compliance, processes, procedures, systems, governance, and controls.
  - 1.1.5. **investigation periods** means 22 to 29 December 2021, 4 to 17 January 2022, and 3 to 11 February 2022.
  - 1.1.6. **Spam Act** means *Spam Act 2003* (Cth).
  - 1.1.7. **BetDeluxe** means Noah Rose trading as BetDeluxe (ABN 66 578 068 647).

**2. Term of the Undertaking**

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 This Undertaking continues for a period of 24 months from the Commencement date or until it is withdrawn by BetDeluxe, with the approval of the ACMA, pursuant to section 38 of the Spam Act, whichever is earlier.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

**3. Background**

- 3.1. BetDeluxe carries on business throughout Australia as a wagering provider.
- 3.2. On 21 September 2022, the ACMA notified BetDeluxe that the ACMA made investigative findings that, BetDeluxe sent:
  - 3.2.1. 2 CEMs without consent, in contravention of subsection 16(1) of the Spam Act in the investigation periods;
  - 3.2.2. 822,549 CEMs that did not contain sufficient contact details of the sender, in contravention of paragraph 17(1)(b) of the Spam Act, in the investigation periods; and
  - 3.2.3. 104,567 CEMs without a functional unsubscribe facility, in contravention of subsection 18(1) of the Spam Act.

3.3. BetDeluxe acknowledges the ACMA's findings. In response to the ACMA's concerns regarding BetDeluxe's compliance with the Spam Act, BetDeluxe offers this Undertaking to the ACMA aimed at addressing future compliance with the Spam Act.

#### 4. Undertaking

4.1. BetDeluxe undertakes to take the following specified actions so that BetDeluxe complies with the Spam Act and does not contravene the Spam Act in the future.

#### 5. Third-Party Marketing Lists

5.1. BetDeluxe undertakes not to send direct marketing CEMs to any person/s that does not hold a BetDeluxe account unless that person has provided express consent directly to BetDeluxe to receive direct marketing.

#### 6. Independent Consultant

6.1. BetDeluxe undertakes to appoint an independent consultant to:

6.1.1. review BetDeluxe's current procedures, policies, training, and systems relating to its compliance with the Spam Act and identify any deficiencies and/or improvements to ensure that:

- i. all CEMs are sent, or caused to be sent, by BetDeluxe with the consent of the relevant account holder;
- ii. BetDeluxe actions all unsubscribe requests within the periods specified in Schedule 2 to the Spam Act for when withdrawal of consent takes effect;
- iii. all CEMs sent, or caused to be sent, by BetDeluxe contain the information required by paragraphs 17(1)(a) and (b) of the Spam Act; and
- iv. all CEMs sent, or caused to be sent, by BetDeluxe contain a functional unsubscribe facility as required by subsection 18(1) of the Spam Act.

6.1.2. produce a report (**Report**) to BetDeluxe making recommendations as to:

- i. ensuring BetDeluxe systems action all unsubscribe requests;
- ii. improvements to policies and procedures that ensure compliance with the Spam Act, including but not limited to:
  - a) quality assurance procedures for ensuring the ongoing integrity and functionality of relevant systems;
  - b) procedures for ensuring BetDeluxe personnel comply with policies and procedures; and
  - c) procedures for ensuring continued compliance when process or system changes are implemented.
- iii. ongoing training for BetDeluxe personnel on Spam Act compliance and complaint handling;
- iv. ongoing monitoring of Spam Act compliance measures; and
- v. any other measures that, in the opinion of the independent consultant, are appropriate in the circumstances.

6.2. BetDeluxe undertakes to seek written approval from the ACMA for the appointment of the proposed independent consultant within 25 business days after the Commencement

date. If the ACMA does not approve the choice of independent consultant, BetDeluxe will repeat this process until it has the ACMA's written approval.

- 6.3. BetDeluxe 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.
- 6.4. The independent consultant will be instructed to commence the review within 10 business days of their appointment under clause 6.3.
- 6.5. The independent consultant will be instructed to provide the report in writing to BetDeluxe, and at the same time to the ACMA, within 1 month of the commencement of the review, including a statement about whether they are satisfied that BetDeluxe's procedures, policies, training, and systems are effective in ensuring compliance with the Spam Act.
- 6.6. Subject to the ACMA's written agreement, BetDeluxe may remove the independent consultant at any time and replace the independent consultant with a new independent consultant if approved by ACMA. If the ACMA does not approve the choice of independent consultant, BetDeluxe will repeat this process until it has the ACMA's approval.

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

- 7.1. Within 40 business days of receiving the Report, BetDeluxe will:
  - 7.1.1. develop an implementation plan (**Implementation Plan**) setting out the steps BetDeluxe 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); and
  - 7.1.2. provide a copy of the Implementation Plan to the ACMA.
- 7.2. BetDeluxe undertakes to comply with the approved Implementation Plan in accordance with the timeframes specified in the plan.
- 7.3. The Implementation Plan may be modified at any time subject to the ACMA's written approval.
- 7.4. The independent consultant will, 12 months after the Implementation Plan is provided to the ACMA, review (**Subsequent Review**):
  - 7.4.1. BetDeluxe's progress to address actions in the Implementation Plan; and
  - 7.4.2. any changes since their review that BetDeluxe has made to procedures, policies, training and systems relating to its Spam Act compliance.
- 7.5. The independent consultant will provide the results of the Subsequent Review in writing (**Subsequent Report**) to BetDeluxe, and at the same time to the ACMA, within 2 months of the commencement of the Subsequent Review, including a statement about whether they are satisfied that BetDeluxe's procedures, policies, training and systems are effective in ensuring compliance with the Spam Act.
- 7.6. Within 40 business days of receiving the Subsequent Report, BetDeluxe will provide a compliance report to the ACMA that covers the previous 12 months that includes:
  - 7.6.1. the status of actions under the Implementation Plan
  - 7.6.2. a report of all de-identified complaints made to BetDeluxe about alleged non-compliance with the Spam Act, including the substance and date of the

complaint, and a unique identifier for each complaint

- 7.6.3. action(s) taken by BetDeluxe in response to any and all complaints, including complaints the ACMA has notified BetDeluxe of
  - 7.6.4. details of the second round of training provided under clause 8 of this Undertaking; and
  - 7.6.5. any and all instances of identified non-compliance with the Spam Act, including the cause and remediation action(s) taken or proposed to be taken and applicable dates.
- 7.7. BetDeluxe will report to the ACMA all identified instances of non-compliance with the Spam Act within 10 business days of it making such an identification, including the cause of any identified compliance issues and remediation action taken or proposed to be taken.

## **8. Training**

- 8.1. Within 25 business days of the Commencement date, BetDeluxe undertakes to train all personnel responsible for creating or sending CEMs on compliance with the Spam Act, including those that have already received additional training following ACMA's investigation and subsequent investigation report.
- 8.2. BetDeluxe undertakes to repeat the training, described in clause 8.1, for all new personnel that may be responsible for creating or sending CEMs within 6 weeks of their commencement in such roles.
- 8.3. BetDeluxe undertakes to repeat the training, described in clause 8.1, within 12 to 14 months after the Commencement date. If personnel have undertaken training set out at clause 8.2 within the past 6 months of the repeat training date, they do not have to attend the repeat training.

## **9. Record-keeping**

- 9.1. BetDeluxe undertakes to:
  - 9.1.1. keep accurate records of all requests to unsubscribe, including when requests were made and when they were actioned;
  - 9.1.2. keep accurate records of all consumer complaints made to BetDeluxe about alleged non-compliance with the Spam Act, including the date of the complaint; and
  - 9.1.3. provide copies of records referred to in this clause 9 to the ACMA upon request by the ACMA.

## **10. Acknowledgement of publication**

- 10.1. BetDeluxe acknowledges that the ACMA may publish these undertakings.

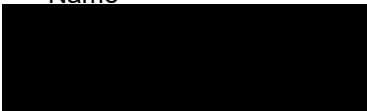
## EXECUTION

Date 27 January 2023

Signed by Noah Rose trading as BetDeluxe (ABN 66 578 068 647)

Noah Rose

Name



Signature

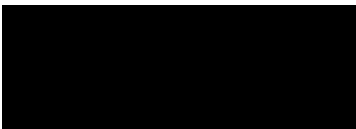
24/01/2023

Date of signing

Signed for and on behalf of the  
Australian Communications and  
Media Authority by its authorized  
representative:

Matthew Anderson, A/g Executive Manager  
Consumer Consent and Numbers Branchh

Name and title of the ACMA delegate



Signature of the ACMA delegate