

**ENFORCEABLE UNDERTAKING GIVEN TO THE AUSTRALIAN COMMUNICATIONS AND MEDIA
AUTHORITY BY TICKETEK PTY LIMITED (ABN 92 010 129 110) 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. **Additional Review** has the meaning given in clause 6.5.
- 1.1.3. **Board** means the board of directors of Ticketek.
- 1.1.4. **Business Day** means a day that is not a Saturday, Sunday, or public holiday in Sydney or Melbourne, Australia.
- 1.1.5. **CEM** means "commercial electronic message" as defined in section 6 of the Spam Act 2003.
- 1.1.6. **CEM complaint** means a complaint to Ticketek that relates to a CEM sent, or alleged to have been sent, by Ticketek and includes complaints notified to Ticketek by the ACMA.
- 1.1.7. **Commencement Date** has the meaning given in clause 2.1.
- 1.1.8. **Implementation Plan** has the meaning given in clause 7.1.2.
- 1.1.9. **Independent Consultant** means a qualified and independent consultant with expertise in audits relating to risk and compliance, processes, procedures, systems, governance and controls.
- 1.1.10. **Initial Report** has the meaning given in clause 6.1.2.
- 1.1.11. **Spam Act** means Spam Act 2003 (Cth).
- 1.1.12. **Ticketek** means Ticketek Pty Limited (ABN 92 010 129 110).
- 1.1.13. **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, consolidation, replacement or re-enactment of it, and any regulations made under it.

2. Term of the Undertaking

2.1. This Undertaking commences when:

- 2.1.1. it has been executed by Ticketek; and
- 2.1.2. so executed, it has been accepted by the ACMA and written notification of that acceptance has been provided to Ticketek (**Commencement Date**).

2.2. This Undertaking continues for a period of 36 months from the Commencement Date or until it is withdrawn by Ticketek, with the approval of the ACMA, pursuant to section 38 of the Spam Act, whichever is earlier.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 Ticketek, with the consent of the ACMA, pursuant to subsection 38(2) of the Spam Act.

2.4. Any notice or approval required or permitted to be given by the ACMA under this Undertaking must be in writing and may be given by any ACMA Authority member or by any ACMA staff member who is a member, or acting member, of the Senior Executive Service.

3. Background

- 3.1. On 28 July 2023, the ACMA notified Ticketek that the ACMA has reasonable grounds to believe that between 1 February 2022 and 18 October 2022, Ticketek sent, or caused to be sent, CEMs without consent, in contravention of subsection 16(1) of the Spam Act.
- 3.2. Some of the contraventions were due to Ticketek's characterisation of some messages as 'designated' CEMs. Ticketek therefore believed those specific CEMs to be exempt from the obligations under section 16(1) of the Spam Act. The ACMA found that those messages did not meet the definition of a designated message under the Spam Act, and therefore were not compliant with the Act.
- 3.3. Ticketek acknowledges the ACMA's findings, and in response to the ACMA's concerns regarding Ticketek's compliance with the Spam Act, offers this Undertaking to the ACMA aimed at addressing future compliance with the Spam Act.

4. Undertaking

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

5. Remedial Action Already Undertaken

- 5.1. Ticketek operates a complex integrated marketing platform with multiple databases and comprehensive opt-in and unsubscribe processes. Ticketek migrated to a new marketing platform throughout 2021.
- 5.2. Prior to the commencement of the ACMA's investigation, Ticketek's systems included regular monitoring and quality assurance processes which are designed to ensure all Ticketek CEM systems operate as expected. Such processes remain ongoing.
- 5.3. In addition, each time Ticketek is notified by the ACMA of an alleged non-compliance with the Spam Act, it reviews the information provided, conducts checks of system integrity and undertakes manual remedial actions where required.
- 5.4. Both prior to and during the ACMA's investigation, Ticketek has conducted systems reviews and deep data analysis and testing with the goal of ensuring compliance with the Spam Act. Ticketek has undertaken several remedial actions prior to offering this Undertaking including:
 - 5.4.1. Improvements to operating systems so unsubscribe requests sent by account holders with multiple accounts linked to one electronic address are automatically processed across all accounts linked to that address;
 - 5.4.2. Verification of SMS opt-out systems to ensure unsubscribe requests are applied across all Ticketek systems;
 - 5.4.3. Activation of manual and automatic exclusion lists to assist in opt-out integrity; and
 - 5.4.4. Amendments to the format of CEMs sent by Ticketek.

6. Independent Consultant

- 6.1. Ticketek undertakes to appoint an Independent Consultant to:

6.1.1. review Ticketek's current procedures, policies, training and systems relating to Ticketek's 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 Ticketek with the consent of the relevant account holder;
- b. Ticketek receives, records and actions all CEM 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 Ticketek 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 Ticketek contain a functional unsubscribe facility as required by subsection 18(1) of the Spam Act, and, by reference, the *Spam Regulations 2021*; and
- e. Ticketek classifies and analyses records of CEM complaints to identify systemic and recurring problems and trends (**Systemic Problems**).

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

- a. ensuring Ticketek CEM systems receive, record and action unsubscribe requests;
- b. improvements to policies and procedures that ensure Ticketek's compliance with the Spam Act, including but not limited to:
 - i. quality assurance procedures for ensuring the ongoing integrity and functionality of relevant systems used for sending CEMs;
 - ii. procedures for ensuring Ticketek's relevant personnel comply with policies and procedures used for sending CEMs and that there is appropriate management oversight and assurance of the policies and procedures; and
 - iii. procedures for ensuring Ticketek's continued compliance when process or system changes are implemented in systems used for sending CEMs;
- c. ongoing training for relevant personnel of Ticketek who create or send CEMs on Spam Act compliance;
- d. Ticketek's ongoing monitoring of Spam Act compliance measures; and
- e. ensuring Ticketek takes reasonable steps to address any identified Systemic Problems.

6.2. Ticketek undertakes to seek written approval from the ACMA for the appointment of the proposed Independent Consultant within 20 Business Days after the Commencement Date. If

the ACMA does not approve the choice of Independent Consultant, Ticketek will repeat this process until it has the ACMA's written approval.

- 6.3. Ticketek 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 provide the Initial Report to Ticketek, including the Board, and at the same time to the ACMA, within 6 months of their appointment. Nothing in this Undertaking prevents the consultant from providing interim drafts of their Initial Report to Ticketek prior to finalisation in order to confirm factual matters.
- 6.5. Ticketek undertakes to instruct the Independent Consultant to, during the term of this Undertaking, every 12 months from the date the Implementation Plan is provided to the ACMA, conduct a review (each an **Additional Review**) of:
 - 6.5.1. Ticketek's progress to address actions in the Implementation Plan; and
 - 6.5.2. Any changes since their last review that Ticketek has made to procedures, policies, training and systems relating to its Spam Act compliance.
- 6.6. Ticketek undertakes to instruct the Independent Consultant to provide the results of each Additional Review in writing to Ticketek, including the Board, and, at the same time, the ACMA, within 2 months of the commencement of each Additional Review, including a statement as to whether they are satisfied that Ticketek's relevant procedures, policies, training and systems are effective in ensuring compliance with the Spam Act.
- 6.7. Subject to the ACMA's written agreement, Ticketek 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, Ticketek will repeat this process until it has the ACMA's approval.

7. Implementation Plan, Audit & Reporting

- 7.1. Within three calendar months of receiving the Initial Report, Ticketek will:
 - 7.1.1. develop an implementation plan, that is approved by the Board, setting out the steps Ticketek has taken, or will take, to implement all recommendations made by the Independent Consultant in the Initial Report, including timeframes (unless the ACMA agrees in writing that any recommendation need not be implemented); and
 - 7.1.2. provide a copy of the Board-approved implementation plan to the ACMA in confidence, such plan to be treated as confidential and commercially sensitive and not for public disclosure (**the Implementation Plan**).
- 7.2. Ticketek undertakes to comply with the 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. While this Undertaking remains in force, every 6 months from the date the Implementation Plan is provided to the ACMA, Ticketek will provide a compliance report, approved by the Board, to the ACMA that covers the previous 6 months that includes:
 - 7.4.1. the status of actions it has taken/will take under the Implementation Plan;
 - 7.4.2. a report of all de-identified CEM complaints which have alleged non-compliance with the Spam Act, including the date of the complaint and a unique identifier for each complaint, and all actions taken in relation to such complaints.

8. Training

- 8.1. Within 2 calendar months of the Commencement Date, Ticketek undertakes to train all relevant Ticketek personnel responsible at the date of training for creating or sending CEMs, and their direct line manager, to ensure Ticketek's compliance with the Spam Act.
- 8.2. Ticketek undertakes to provide training similar to that described in clause 8.1, for all new relevant Ticketek personnel that are responsible for creating or sending CEMs, within 6 weeks of their commencement in such roles.
- 8.3. Ticketek undertakes to repeat the training, described in clause 8.1, within 12 months after Ticketek has undertaken the training referred to in clause 8.1 for the term of the Undertaking. If personnel have attended training set out at clause 8.2 above within the past 6 months, they will not be required to attend the 12 monthly repeat training.
- 8.4. Ticketek undertakes to keep records of such training (including the names and roles of personnel who undertook the training, and the date and content of training) during the term of this Undertaking.
- 8.5. Ticketek undertakes to provide copies of training records described at item 8.4 to the ACMA with their compliance reports provided in accordance with clause 7.4.

9. Record-keeping

- 9.1. Ticketek undertakes to:
 - 9.1.1. keep accurate records to enable the identification of electronic account-holders who have consented to the sending of CEMs by Ticketek for those account-holders, including the terms and conditions associated with that consent;
 - 9.1.2. keep accurate records of CEM withdrawal of consent requests received by Ticketek;
 - 9.1.3. keep accurate records of CEM complaints; and
 - 9.1.4. provide copies of records referred to in this clause 9 to the ACMA upon request by the ACMA.

10. Acknowledgment of publication

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

Execution

Signed for and behalf of the **Ticketek Pty Limited** (ABN 92 010 129 110) by its authorised representative:

Cameron Hoy

Name of authorised representative

Managing Director

Title of authorised representative



Signature of authorised representative

13 October 2023

Date of signing

Signed for and behalf of the **Australian Communications and Media Authority** by its authorised representative:

TANYA FARRELL

Name of authorised representative

A/G EXECUTIVE MANAGER, UNSOLICITED COMMS & SCAMS

Title of authorised representative



Signature of authorised representative

16/10/23

Date of signing