

**ENFORCEABLE UNDERTAKING GIVEN TO THE AUSTRALIAN COMMUNICATIONS AND
MEDIA AUTHORITY BY Outdoor Supacentre Pty Ltd (ACN 609 212 624) 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. **Board** means the **Outdoor Supacentre Pty Ltd** Board of Directors.
 - 1.1.3. **OSC** means Outdoor Supacentre Pty Ltd (ACN 609 212 624).
 - 1.1.4. **CEM** means commercial electronic message and has the same meaning as the Spam Act 2003.
 - 1.1.5. **CEM complaint** means a complaint to Outdoor Supacentre Pty Ltd that relates to a CEM sent, or alleged to have been sent, by Outdoor Supacentre Pty Ltd and includes complaints notified to Outdoor Supacentre Pty Ltd by the ACMA.
 - 1.1.6. **Commencement date** has the meaning given in clause 2.1.
 - 1.1.7. [REDACTED].
 - 1.1.8. **relevant period** means 1 December 2022 to 4 May 2023.
 - 1.1.9. **Report** means the report produced by the independent consultant referred to in clause 5.1.
 - 1.1.10. **Review Report** means the report produced in response to the review conducted pursuant to clause 5.4.
 - 1.1.11. **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 OSC.
 - 2.1.2. so executed, it has been accepted by the ACMA and written notification of that acceptance has been provided to OSC (**Commencement date**).
- 2.2. This Undertaking continues for a period of 36 months from the Commencement date or until it is withdrawn by OSC, with the approval of the ACMA, pursuant to section 38 of the Spam Act, whichever is earlier.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 OSC, 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 4 May 2023, the ACMA commenced an investigation into OSC's compliance with the Spam Act during the relevant period.
- 3.2. On 24 November, the ACMA notified OSC that the ACMA has made findings that, during the relevant period, OSC sent, or caused to be sent, commercial electronic messages without consent, in contravention of Subsection 16(1) of the Spam Act.

- 3.3. OSC acknowledges the ACMA's findings, and in response to the ACMA's concerns regarding OSC'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. OSC undertakes to take the following specified actions to ensure OSC processes, procedures and systems complies with the Spam Act so that OSC does not contravene the Spam Act in the future.

5. Independent Consultant

- 5.1. OSC undertakes to appoint [REDACTED] as an independent consultant to:
- 5.1.1. review OSC'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:
- a. all CEMs are sent, or caused to be sent, by OSC with the consent of the relevant account holder
 - b. OSC 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 OSC 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 OSC contain a functional unsubscribe facility as required by subsection 18(1) of the Spam Act, and, by reference, the *Spam Regulations 2021*, and
 - e. OSC classifies and analyses its records of CEM complaints to identify systemic and recurring problems and trends.
- 5.1.2. produce the Report making recommendations as to:
- a. ensuring OSC 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 OSC 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 continued compliance when process or system changes are implemented
 - c. ongoing training for OSC personnel on Spam Act compliance
 - d. ongoing monitoring of Spam Act compliance measures
 - e. ensuring OSC takes reasonable steps to address any identified systemic problems and recurring problems and trends.
- 5.2. OSC undertakes to appoint [REDACTED] within 5 business days of the Commencement date.
- 5.3. [REDACTED] will provide the Report to OSC, and at the same time to the ACMA, within six

months of their appointment.

- 5.4. █████ will again review OSC's procedures, policies, training and systems relating to OSC's Spam Act compliance every 12 months after they provide the Report to OSC and the ACMA.
- 5.5. █████ will provide the Review Report to OSC, including the Board, and at the same time, the ACMA within 2 months of the commencement of each review (save for the review referred to at 5.4), including a statement about whether they are satisfied that OSC procedures, policies, training and systems are effective in ensuring compliance with the Spam Act. The Review Report should include recommendations as to that specified at clause 5.1.2.
- 5.6. Subject to the ACMA's written agreement, OSC may remove █████ at any time and replace █████ with a new independent consultant approved by ACMA. If the ACMA does not approve the choice of independent consultant, OSC 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 and each Review Report OSC will:
 - 6.1.1. develop an implementation plan setting out the steps OSC has taken, or will take, to implement all recommendations made by the independent consultant in the Report/Review Report, including timeframes (unless the ACMA specifically agrees that any recommendation need not be implemented upon request in writing from OSC)
 - 6.1.2. provide a copy of the Board-approved implementation plan to the ACMA.
- 6.2. OSC 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. Every six months from the date the Board-approved implementation plan is provided to the ACMA, OSC will provide a compliance report, approved by the Board, to the ACMA that covers the previous 6 months that includes:
 - 6.4.1. the status of actions it has taken under the implementation plan
 - 6.4.2. a report of all de-identified consumer complaints made to OSC about alleged non-compliance with the Spam Act, including the date of the complaint and a unique identifier for each complaint
 - 6.4.3. action OSC has taken on all complaints the ACMA has notified OSC about or received by OSC directly from consumers.
 - 6.4.4. Records of training for all staff trained in accordance with the requirements set out at clause 7.
- 6.5. OSC 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.

7. Training

- 7.1. Within 30 business days of the Commencement date, OSC 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. OSC undertakes to provide training similar to that described in clause 7.1, for all new personnel that may be, or are currently responsible for creating or sending CEMs

within 6 weeks of their commencement in such roles.

- 7.3. OSC undertakes to repeat the training, described in clause 7.1, every 12 months after OSC has undertaken the training referred to in clause 7.1 for the term of this undertaking.
- 7.4. OSC undertakes to retain records of all staff trained in accordance with clause 7 for the duration of the EU.

8. Record-keeping

- 8.1. OSC undertakes to:
 - 8.1.1. keep accurate records of the consent given by electronic account-holders to the sending of CEMs by OSC to those account-holders, including the terms and conditions associated with that consent
 - 8.1.2. keep accurate records of withdrawal of consent requests
 - 8.1.3. keep accurate records of CEM complaints
 - 8.1.4. provide copies of records referred to in this clause 8 to the ACMA upon request by the ACMA.

9. Acknowledgment of publication

- 9.1. OSC acknowledges that the ACMA may publish these undertakings.

SIGNED by Luke Moon
as authorised representative for **OUTDOOR
SUPACENTRE PTY LTD (ACN 609 212 624)**

Signature of Authorised Representative

Director

Title of Authorised Representative

8 JANUARY 2024
Date of signing

SIGNED by
as authorised representative for the **AUSTRALIAN
COMMUNICATIONS AND MEDIA AUTHORITY**

Signature of Authorised Representative

A/g Executive Manager, Unsolicited
Communications and Scams Branch

Title of Authorised Representative

10 January 2024
Date of signing