

Enforceable Undertakings

These enforceable undertakings are given by Oneflare Pty Ltd (ABN 26 154 482 283) (**Oneflare**) to the Australian Communications and Media Authority (the **ACMA**) pursuant to section 38 of the Spam Act 2003 (Cth)

1. Definitions and interpretation

1.1. In these Undertakings:

- 1.1.1. **the ACMA** means the Australian Communication and Media Authority;
- 1.1.2. **Appropriately qualified person** means a qualified trainer;
- 1.1.3. **Business day** means a day that is not a Saturday or Sunday, or public holidays in NSW (where Oneflare is based);
- 1.1.4. **CEM** means 'commercial electronic message' and has the same meaning as defined in section 6 of the Spam Act;
- 1.1.5. **CEM campaign** means CEMs, as defined in section 6 of the Spam Act, sent to one or more recipient/s (whether or not at the same time), that contains the same substantive content;
- 1.1.6. **commencement date** is the day the ACMA notifies Oneflare of the acceptance of these undertakings;
- 1.1.7. **Independent consultant** means a qualified and independent compliance consultant specialized in auditing, compliance or CEM processes, procedures and systems;
- 1.1.8. **Oneflare** means Oneflare Pty Ltd (ABN 26 154 482 283) of Level 7, 120 Sussex Street, Sydney NSW 2000;
- 1.1.9. **Oneflare personnel** include Oneflare employees and any person contracted directly or indirectly to undertake activities concerning commercial electronic messages for or on behalf of Oneflare;
- 1.1.10. **Spam Act** means the *Spam Act 2003* (Cth);
- 1.1.11. **undertakings** mean these Enforceable Undertakings;
- 1.1.12. **written record** includes a screenshot, other electronic image capture or any other record, that includes a time and date stamp,

that demonstrates whether Oneflare met all the elements of conspicuous publication as set out at clause 4(2) of Schedule 2 of the Spam Act.

- 1.2. Words and expressions defined in the Spam Act have the same meaning in these undertakings, unless otherwise specified.
- 1.3. A reference to legislation includes any modification or re-enactment of it, and any regulations made under it.

2. Term of the undertakings

- 2.1. These undertakings commence when the ACMA notifies Oneflare of its acceptance of these undertakings.
- 2.2. These undertakings continue for a period of 24 months from the commencement date, or a period until these undertakings are withdrawn or varied by Oneflare with the consent of the ACMA pursuant to section 38 of the Spam Act, whichever period ends earlier.

3. Background

- 3.1. Oneflare carries on a business in Australia of providing an online matching service for consumers in search of, and businesses providing, trade and professional services and related services.
- 3.2. On 24 September 2019, the ACMA notified Oneflare that the ACMA has reasonable grounds to believe that Oneflare sent certain CEMs:
 - 3.2.1. without the consent of the relevant account holders in contravention of section 16(1) of the Spam Act.
 - 3.2.2. that did not include an unsubscribe statement, in breach of section 18(1) of the Spam Act.
- 3.3. Oneflare acknowledges the ACMA's findings and, in response to the ACMA's concerns regarding Oneflare's compliance with the Spam Act, Oneflare offers these undertakings to the ACMA.

4. Undertakings

- 4.1. Oneflare gives these undertakings to take the following specified actions to ensure Oneflare complies with the Spam Act and does not contravene the Spam Act in the future.

5. Process and System Improvements

5.1. Oneflare undertakes that it will cease to send CEMs on the basis that consent of the relevant account holder is inferred by conspicuous publication, as set out at clause 4(2) of Schedule 2 to the Spam Act. Oneflare will not recommence to send any CEMs on the basis that consent of the relevant account holder is inferred by conspicuous publication until:

5.1.1. Oneflare has removed electronic addresses from its systems, that were captured before the commencement date, where consent of the relevant account holder was inferred by conspicuous publication (for clarity, this does not include electronic addresses where the relevant electronic account holder has provided express or inferred consent, as defined in clause 2 of Schedule 2 of the Spam Act, records of unsubscribe requests, or any other information Oneflare is required to maintain to ensure its compliance with the Spam Act).

5.1.2. Oneflare has appointed an independent consultant to review Oneflare's current procedures, policies, training and systems relating to its compliance with the Spam Act and identify any deficiencies or improvements to ensure that:

- a. In circumstances where Oneflare sends CEMs where the relevant electronic account holder has provided express or inferred consent, as defined in clause 2 of Schedule 2 of the Spam Act:
 - i. All CEMs are sent, or caused to be sent by Oneflare with the consent of the relevant account holder;
 - ii. all unsubscribe requests are actioned in accordance with Schedule 2 of the Spam Act.
 - iii. Oneflare records evidence of consent (both express and inferred) for each recipient, including the terms and conditions of any such consent.
- b. In circumstances where Oneflare sends CEMs on the basis that consent of the relevant account holder is inferred by

conspicuous publication:

- i. All CEMs that are sent, or caused to be sent, meet all elements of the conspicuous publication, as set out at clause 4(2) of Schedule 2 of the Spam Act;
- ii. all unsubscribe requests are actioned in accordance with Schedule 2 of the Spam Act;
- iii. Oneflare maintains written records to demonstrate it met all elements of conspicuous publication as set out at clause 4(2) of the Spam Act, at the time the message is sent;

5.1.3. all CEMs sent, or caused to be sent, by Oneflare contain the information required by subsection 17(1)(a) and (b) of the Spam Act;

5.1.4. all CEMs sent, or caused to be sent, by Oneflare contain a functional unsubscribe facility required by subsection 18(1) of the Spam Act; and

5.1.5. Oneflare will seek approval from the ACMA for the appointment of an independent consultant at least 60 days before Oneflare proposes to recommence to send CEMs as contemplated in this clause 5.1. If the ACMA does not approve the independent consultant, Oneflare will repeat this process until it has the ACMA's approval. Subject to the ACMA's agreement, Oneflare may remove the independent consultant at any time and replace the independent consultant with a new independent consultant approved by ACMA.

5.1.6. The independent consultant will provide a written report to Oneflare, copied to the ACMA, that makes recommendations as to:

- a. improvements to policies, procedures and systems to ensure compliance with the Spam Act;
- b. training for Oneflare personnel on Spam Act compliance;
- c. ongoing monitoring of Spam Act compliance measures; and

- d. procedures for quality assurance and implementation where changes are made to CEM campaign procedures or Spam Act compliance measures during the terms of the undertakings.

6. Training for Oneflare personnel

- 6.1. Within 20 business days of the commencement date, Oneflare will ensure Oneflare personnel that may be authorised to send CEMs are all trained by an appropriately qualified person on the obligations under the Spam Act and trained on the requirements within these undertakings.
- 6.2. All new Oneflare personnel that may be authorised to send CEMs must receive this training as part of their induction process.
- 6.3. All new Oneflare personnel that may be authorised to send CEMs must undertake refresher training every 12 months for the period that these undertakings remain in force.

7. Implementation Plan and Reporting

- 7.1. Within 20 business days of receiving the report contemplated in clause 5.1 Oneflare will develop an implementation plan setting out the steps Oneflare 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).
- 7.2. Oneflare will submit the reviewed implementation plan to the ACMA for approval within 10 business days of its development. If the ACMA does not approve the implementation plan, Oneflare will repeat this process until it has the ACMA's approval.
- 7.3. Oneflare must comply with the approved implementation plan in accordance with the timeframes specified in the plan.
- 7.4. Oneflare will report to the ACMA on the status of actions it must take under the implementation plan every 6 months, and at the cessation of the undertakings.
- 7.5. At least once every 12 months for the period that these undertakings remain in force, the independent consultant must provide written assurance to the ACMA that she or he has reviewed Oneflare's systems, processes and operational procedures and she or he is satisfied that

Oneflare has fully complied with these undertakings for the period preceding 12 month period.

8. Acknowledgment of Oneflare

8.1. Oneflare acknowledges that the ACMA may publish these undertakings.

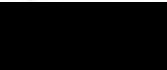
Date given by Oneflare Pty Limited:

17 October 2019

Name and position of Oneflare Pty Ltd representative authorised to give this Undertaking:

Brett Kaplan, Company Secretary

Signature of Oneflare Pty Ltd representative authorised to give this Undertaking:



Witness:

William Tucker



The Undertakings offered by Oneflare Pty Ltd are 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:

18 October 2019

Name and position of ACMA delegate:

G.C. FENTON, EXECUTIVE MANAGER

Signature of ACMA delegate:

