

ENFORCEABLE UNDERTAKING GIVEN TO THE AUSTRALIAN  
COMMUNICATIONS AND MEDIA AUTHORITY BY SEEK THE DEAL PTY  
LTD ACN 629 388 920 UNDER SECTION 572B OF THE  
*TELECOMMUNICATIONS ACT 1997*

This enforceable undertaking is given by SEEK THE DEAL PTY LTD ACN 629 388 920 to the Australian Communications and Media Authority pursuant to section 572B of the *Telecommunications Act 1997*.

## 1 Definitions and interpretation

1.1. In this Undertaking:

- 1.1.1. **ACMA** means the Australian Communications and Media Authority;
- 1.1.2. **business day** means a day that is not a Saturday, Sunday, or Public Holiday in Brisbane, Australia;
- 1.1.3. **call script** means any document or record that contains call flow directions including use of wording and call flow instructions to assist Seek the Deal staff in handling telemarketing calls;
- 1.1.4. **commencement date** has the meaning given to it in clause 2.1;
- 1.1.5. **Do Not Call Register Act** means the *Do Not Call Register Act 2006*;
- 1.1.6. **independent consultant** means a qualified and independent individual/s with expertise in internal audits relating to risk and compliance, processes, procedures, systems, governance and controls;
- 1.1.7. **quality assurance process** means a process to monitor and verify the effectiveness of any compliance procedures, policies and systems;
- 1.1.8. **Seek the Deal** means Seek the Deal Pty Ltd ACN 629 388 290;
- 1.1.9. **Telecommunications Act** means the *Telecommunications Act 1997*;
- 1.1.10. **telemarketing** has the same meaning as in the *Do Not Call Register Act 2006*;
- 1.1.11. **telemarketing campaign start date** means the date Seek the Deal starts conducting a telemarketing campaign;
- 1.1.12. **Telemarketing Industry Standard** means the Telecommunications (Telemarketing and Research Calls) Industry Standard 2017;
- 1.1.13. **Undertaking** means this enforceable undertaking.

- 1.2. Words and expressions defined in the Do Not Call Register Act, the Telecommunications Act and the Telemarketing Industry Standard have the same meaning in this Undertaking, as they have in the respective Act or in the Industry Standard unless otherwise specified.
- 1.3. A reference to legislation includes any modification or re-enactment of it, and any regulations made under it.

## **2. Commencement and Duration of the Undertakings**

- 2.1. This Undertaking commences when:
  - 2.1.1. it has been executed by Seek the Deal; and
  - 2.1.2. so executed, it has been accepted by the ACMA and written notification of that acceptance has been sent to Seek the Deal (**commencement date**).
- 2.2. This Undertaking continues for a period of 36 months from the commencement date. The Undertaking applies to any telemarketing campaign or activities carried out by Seek the Deal following the date of the Undertaking.
- 2.3. The Undertaking may cease to be in force earlier where:
  - 2.3.1. it is withdrawn or varied by Seek the Deal, with the consent of the ACMA, pursuant to section 572B(3) of the Telecommunications Act in which case the Undertaking ceases to have effect on the day that written notice of the ACMA's consent is sent to Seek the Deal; or
  - 2.3.2. the ACMA gives written notice to Seek the Deal cancelling the Undertaking in accordance with subsection 572B(4) of the Telecommunications Act, in which case the Undertaking ceases to have effect on the day that written notice of the cancellation is sent to Seek the Deal, whichever is earlier.
- 2.4. This Undertaking may be varied by Seek the Deal, with the consent of the ACMA, pursuant to section 572B(3) of the Telecommunications Act.

## **3. Background**

- 3.1. Seek the Deal provided energy comparison services and made telemarketing calls offering to provide energy and gas comparison services to customers between February 2019 and approximately February 2020.
- 3.2. On 27 November 2020 the ACMA notified Seek the Deal that it found that, from 20 January 2020 to 22 January 2020 (inclusive), Seek the Deal made telemarketing calls to Australian numbers on the Do Not Call Register without the consent of the relevant account holder, in contravention of section 11(1) of the Do Not Call Register Act.
- 3.3. Seek the Deal acknowledges the ACMA's finding. In response to the ACMA's concerns regarding Seek the Deal's compliance with the Do Not Call Register Act, Seek the Deal offers this Undertaking to the ACMA.

## **4. Undertakings**

- 4.1. Under section 572B of the Telecommunications Act, Seek the Deal has given, and the ACMA has accepted, the following undertakings to ensure the company Seek the Deal does not contravene the Do Not Call Register Act and the Telecommunications Act and is unlikely to contravene that legislation in future.

## **5. Commencing telemarketing**

- 5.1. Seek the Deal will not commence any telemarketing campaign without documented Do Not Call Register Act compliance measures that have been reviewed by an independent consultant.
- 5.2. Seek the Deal will seek approval from the ACMA for the appointment of the proposed independent consultant to review Seek the Deal's Do Not Call Register Act compliance measures. If the ACMA does not approve Seek the Deal's choice of independent consultant, Seek the Deal will repeat this process until it has the ACMA's approval.
- 5.3. Seek the Deal will ensure its Do Not Call Register Act compliance measures include a quality assurance process.
- 5.4. Seek the Deal will notify the ACMA if Seek the Deal intends to commence any telemarketing campaign at least 20 business days before the telemarketing campaign start date, and provide the following information:
  - 5.4.1. the telemarketing campaign start date;
  - 5.4.2. A description of the nature of the proposed telemarketing campaign; and
  - 5.4.3. A detailed description of how Seek the Deal will comply with its obligations under the Do Not Call Register Act regarding the telemarketing campaign, including the independent consultant approved Do Not Call Register Act compliance processes and details relating to how it will monitor the effectiveness of its Do Not Call Register Act compliance processes.

## **6. Record keeping**

- 6.1. Seek the Deal undertakes to keep accurate records of consumer consent to make, or cause to make, telemarketing calls for at least two years and be able to provide specific evidence of consumer consent to the ACMA if required.
- 6.2. Seek the Deal undertakes to keep accurate records of any telemarketing campaigns, including:
  - 6.2.1. all telemarketing calls made or caused to be made by Seek the Deal, and

- 6.2.2. all requests for consent to be withdrawn and any action taken to address the requests.

## **7. Independent Consultant**

- 7.1. Seek the Deal undertakes that as and from the telemarketing campaign start date (and only if Seek the Deal commences telemarketing activities) it will appoint a qualified independent consultant to review Seek the Deal's current training, procedures, policies, quality assurance processes and systems relating to compliance with the Do Not Call Register Act and the Telemarketing Industry Standard and identify any deficiencies or improvements to ensure that all calls comply with these requirements.
- 7.2. This review will include (but is not limited to) the following:
  - 7.2.1. reviewing Seek the Deal's procedures and systems for checking numbers to be called against the Do Not Call Register;
  - 7.2.2. reviewing Seek the Deal's internal auditing procedure for outbound calls, including outbound calls made by any third-parties Seek the Deal engages to make calls on its behalf;
  - 7.2.3. advising on a process for Seek the Deal to keep accurate records of consumer consent and outbound call audits, and a way to review the efficacy of this process, including records made by any third-parties Seek the Deal engages to make calls on its behalf;
  - 7.2.4. reviewing the content of its call scripts; and
  - 7.2.5. reviewing the content and frequency of its training procedures, including induction training for new staff members and refresher training for existing staff members, and training undertaken by any third-parties Seek the Deal engages to make calls on its behalf.
- 7.3. Seek the Deal will seek approval from the ACMA for the appointment of the proposed independent consultant at least 20 business days before the telemarketing campaign start date. If the ACMA does not approve the choice of independent consultant, Seek the Deal will repeat this process until it has the ACMA's approval.
- 7.4. Seek the Deal will appoint the independent consultant within 10 business days after the ACMA has given its approval.
- 7.5. Within 40 business days of their appointment, the independent consultant will provide a report (the Report) to Seek the Deal and the ACMA, making recommendations as to:
  - 7.5.1. any improvements to policies, procedures and systems to ensure Seek the Deal's compliance with the Do Not Call Register Act and the Telemarketing Industry Standard;

- 7.5.2. training for Seek the Deal staff on compliance with the Do Not Call Register Act and the Telemarketing Industry Standard; and
- 7.5.3. ongoing monitoring of Do Not Call Register Act and Telemarketing Industry Standard compliance measures.
- 7.6. Seek the Deal undertakes to implement all recommendations in the Report within 90 business days of receipt of the Report, or such other time as is agreed by the ACMA.
- 7.7. Subject to the ACMA's agreement and where it is reasonable to do so, Seek the Deal may remove the independent consultant at any time and replace the independent consultant with a new independent consultant approved by the ACMA.

## **8 Reporting to the ACMA**

- 8.1. Seek the Deal will provide a written report to the ACMA on the implementation of the recommendations in the Report six months after receiving the Report.
- 8.2. Seek the Deal will provide written reports about all complaints it has received, including the numbers allegedly called by Seek the Deal, alleging telemarketing calls have been made by it without the consent of the call recipient. The reports will be provided at the following points in time:
  - 8.2.1. six months after receiving the Report; and
  - 8.2.2. at the cessation of this Undertaking.
- 8.3. Every three months from the date of the Report until the date that this Undertaking ceases to have effect, Seek the Deal will provide compliance reports that covers the previous three months that include:
  - 8.3.1. a list of all brand or trading names used in Seek the Deal's telemarketing calls;
  - 8.3.2. a list of all call line identification numbers used in Seek the Deal's telemarketing calls;
  - 8.3.3. a report about all complaints it has received, including the numbers allegedly called by Seek the Deal, alleging telemarketing calls have been made by it without the consent of the call recipient; and
  - 8.3.4. a report about action Seek the Deal has taken on all complaints the ACMA has notified Seek the Deal, or received directly from consumers, including the cause of any identified compliance issues and remediation action taken, or proposed to be taken.
- 8.4. Seek the Deal will report to the ACMA all suspected instances of non-compliance with the Do Not Call Register Act or Telemarketing Industry Standard within 10 business days of identifying a suspected instance of non-compliance, including the cause of any identified compliance issues and remediation action taken or proposed to be taken.

## **9. Record keeping**

- 9.1. Seek the Deal undertakes to keep accurate records of consumer consent for the term of this Undertaking, including call back requests.
- 9.2. Seek the Deal undertakes to provide specific evidence of consumer consent to the ACMA if required within 10 days of any ACMA request.
- 9.3. Seek the Deal undertakes to keep accurate records of any internal audits of outbound calls for the term of this Undertaking.
- 9.4. Seek the Deal undertakes to retain call recordings for at least two years of the date of the call.

## **10. Acknowledgments**

- 10.1. Seek the Deal acknowledges that the ACMA may:
  - 10.1.1. in accordance with the terms of the Undertaking, issue a media release on execution of this Undertaking;
  - 10.1.2. in accordance with the terms of this Undertaking, publish this Undertaking or make this Undertaking available for public inspection; and
  - 10.1.3. in accordance with the terms of the Undertaking, refer to this Undertaking publicly from time to time.
- 10.2. Seek the Deal and the ACMA agree that if there is a change in any legislation, regulations, determinations and standards that affects this Undertaking or Seek the Deal's ability to comply with the Undertaking, the parties will negotiate reasonably appropriate amendments in good faith.
- 10.3. Seek the Deal also acknowledges that:
  - 10.3.1. the ACMA's acceptance of this Undertaking does not affect the ACMA's power to investigate and take compliance and enforcement action arising from conduct that is not the subject of this Undertaking or arising from future conduct; and
  - 10.3.2. this Undertaking does not affect the rights and remedies that another party may have regarding the conduct of Seek the Deal referred to in the Undertaking or regarding Seek the Deal's future conduct related to the Undertaking.

Date given by Seek the Deal 02 / 02/ 2021

Name and position of Seek the Deal representative authorised to give this Undertaking

**Manav Arora-Financial Controller**

Signature of Seek the Deal representative authorised to give this Undertaking



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Witness

**Gaurav Chandoke**



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The Undertaking offered by Seek the Deal is accepted by the Australian Communications and Media Authority pursuant to section 572B(2) of the *Telecommunications Act* by its delegate

Date accepted by the ACMA 2 / 2 / 2021

Name and position of ACMA delegate

**Jeremy Fenton, Executive Manager**

Signature of ACMA delegate



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