

**ENFORCEABLE UNDERTAKING GIVEN TO THE AUSTRALIAN COMMUNICATIONS AND
MEDIA AUTHORITY BY LATITUDE FINANCE AUSTRALIA ACN 008 583 588 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 Board of Directors of Latitude Group Holdings Limited ACN 604 747 391.
 - 1.1.3. **LFA** means Latitude Finance Australia ACN 008 583 588.
 - 1.1.4. **CEM** means commercial electronic message and has the same meaning as the Spam Act.
 - 1.1.5. **Complaint** means a complaint to LFA by any person that relates to a CEM sent, or alleged to have been sent, or alleged non-compliance with the Spam Act, by LFA and includes complaints notified to LFA by the ACMA.
 - 1.1.6. **Commencement Date** has the meaning given in clause 2.1.
 - 1.1.7. **Implementation Plan** has the meaning given in clause 6.1.
 - 1.1.8. **Independent Consultant** means a qualified and independent consultant with expertise in audits relating to risk and compliance, processes, procedures, systems, governance and controls.
 - 1.1.9. **Initial Report** means the report produced by the independent consultant referred to in clause 5.1.
 - 1.1.10. **Personnel** means LFA employees or contractors.
 - 1.1.11. **Spam Act** means *Spam Act 2003* (Cth).
 - 1.1.12. **Subsequent Report** has the meaning given in clause 5.6.
 - 1.1.13. **Subsequent Review** has the meaning given in clause 5.5.
- 1.2. Words and expressions defined in the Spam Act have the same meaning in this Undertaking, unless otherwise specified.

2. Term of the Undertaking

- 2.1. This Undertaking commences when:
- 2.1.1. it has been executed by LFA; and
 - 2.1.2. so executed, it has been accepted by the ACMA (**Commencement Date**).
- 2.2. This Undertaking continues for a period of 36 months from the Commencement Date or until it is withdrawn by LFA, with the approval of the ACMA, pursuant to section 38(2) of the Spam Act, whichever is earlier.
- 2.3. This Undertaking may be varied by LFA, 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 23 March 2022, the ACMA notified LFA that the ACMA has reasonable grounds to believe that between June 2021 and 23 March 2022, LFA sent, or caused to be sent, commercial electronic messages without consent, in contravention of Sections 16(1) and 18(1) of the Spam Act.
- 3.2. The ACMA's investigation found that the alleged contraventions were due to LFA's mischaracterisation of the messages as 'designated'. LFA therefore believed the CEMs to be exempt from the obligations under sections 16 and 18 of the Spam Act.
- 3.3. LFA acknowledges the ACMA's findings, and in response to the ACMA's concerns regarding LFA'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. LFA undertakes to take the following specified actions to ensure LFA complies with the Spam Act and does not contravene the Spam Act in the future.

5. Independent Consultant

- 5.1. LFA undertakes to appoint an Independent Consultant to:
 - 5.1.1. Conduct a review (the **Initial Review**) of LFA'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. CEMs and designated CEMs are accurately characterised;
 - b. all CEMs are sent, or caused to be sent, by LFA with the consent of the relevant account holder;
 - c. all unsubscribe requests received by LFA are actioned within the periods specified in Schedule 2 to the Spam Act for when withdrawal of consent takes effect;
 - d. all CEMs sent, or caused to be sent, by LFA contain the information required by paragraphs 17(1)(a) and (b) of the Spam Act;
 - e. all CEMs sent, or caused to be sent, by LFA contain a functional unsubscribe facility as required by subsection 18(1) of the Spam Act; and
 - f. LFA classifies and analyses its records of CEM complaints to identify systemic and recurring problems and trends (**Systemic Problems**).
 - 5.1.2. Produce a report (the **Initial Report**) making recommendations as to:
 - a. accurately characterise CEMs and designated CEMs;
 - b. ensuring LFA actions all unsubscribe requests received;
 - c. 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 LFA personnel responsible for creating or sending CEMs comply with policies and procedures;
 - iii. procedures for ensuring continued compliance when process or system changes are implemented in systems used for sending CEMs;
- d. ongoing training for LFA personnel on Spam Act compliance;
 - e. ongoing monitoring of Spam Act compliance measures; and
 - f. ensuring LFA takes reasonable steps to address any identified Systemic Problems.
- 5.2. LFA undertakes to seek written approval from the ACMA for the appointment of the proposed Independent Consultant within 30 business days after the commencement of these undertakings. The approval request will include specific detail that sets out how the person or body meets the definition of an Independent Consultant. If the ACMA does not approve the choice of Independent Consultant, LFA will repeat this process until it has the ACMA's written approval.
- 5.3. LFA undertakes to appoint the approved 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.
- The approved Independent Consultant will provide the final Initial Report to LFA, including the Board, and at the same time to the ACMA, within six months of their appointment. Nothing in this Undertaking prevents the consultant from providing interim drafts of their Initial Report to LFA prior to finalisation, in order to confirm factual matters. These interim reports will also be provided to the ACMA for information by the Independent Consultant at the same time they are provided to LFA by the Independent Consultant.
- 5.4. The approved Independent Consultant will, every 12 months during the Term of the Undertaking, after the Initial Report is provided to LFA and the ACMA (each a **Subsequent Review**), review:
- 5.4.1. LFA's progress to address actions in the Implementation Plan; and
 - 5.4.2. any changes since their last review that LFA has made to procedures, policies, training and systems relating to its Spam Act compliance.
- 5.5. The independent consultant will provide the results of Subsequent Reviews in writing (**Subsequent Reports**) to LFA, including the Board, and, at the same time, the ACMA within 2 months of the commencement of each Subsequent Review, including a statement about whether they are satisfied that LFA procedures, policies, training and systems are effective in ensuring compliance with the Spam Act.
- 5.6. Subject to the ACMA's written agreement, LFA may remove the approved Independent Consultant at any time and replace them with a new Independent Consultant approved by ACMA. If the ACMA does not approve the choice of Independent Consultant, LFA will repeat this process until it has the ACMA's approval.

6. Implementation Plan, Audit & Reporting

- 6.1. Within three calendar months of receiving the Initial Report LFA will:
 - 6.1.1. develop an implementation plan setting out the steps LFA has taken, or will take, to implement all recommendations made by the independent consultant in the report, including timeframes (unless the ACMA agrees in writing that any recommendation need not be implemented); and
 - 6.1.2. provide a copy of the Board-approved implementation plan to the ACMA (the **Implementation Plan**).
- 6.2. LFA undertakes to comply with the 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 was provided to the ACMA, LFA 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 will take under the Implementation Plan;
 - 6.4.2. a report of all de-identified complaints made to LFA 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 LFA has taken on each complaint the ACMA has notified LFA about or LFA has received directly from consumers;
 - 6.4.4. details of training provided under clause 7 of this Undertaking; and
 - 6.4.5. all instances of identified non-compliance with the Spam Act, including the cause of any identified compliance issues and remediation action taken or proposed to be taken and applicable dates.

7. Training

- 7.1. LFA undertakes to train all personnel that may be, or are currently responsible for creating, sending, or directly causing to be sent, CEMs, and their direct line manager, to ensure compliance with the Spam Act, within three calendar months of the Commencement Date.
- 7.2. LFA 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. LFA undertakes to repeat the training, described in clause 7.1, every 12 months after LFA has undertaken the training referred to in clause 7.1 for the term of this Undertaking. If personnel have undertaken training set out at clause 7.2 within the past 6 months, they do not have to attend 12 monthly training.

8. Acknowledgment of publication

- 8.1. LFA acknowledges that the ACMA may publish these undertakings.

Execution

Signed for and on behalf of **Latitude Finance Australia** (ABN 42 008 583 588) by its authorised representative:

MARK BRUDENELL

Name of authorised representative

CHIEF RISK OFFICER

Title of authorised representative



Signature of authorised representative

22/08/2022

Date of signing

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

Matthew Anderson

Name of authorised representative

A/g Executive Manager
Consumer, Consent and Numbers Branch

Title of authorised representative



Signature of authorised representative

23 / 08 / 2022

Date of signing