

ENFORCEABLE UNDERTAKING

given to the Australian Communications and Media Authority
by MEDION Australia Pty Ltd ACN 106 611 330
under section 572B of the *Telecommunications Act 1997*

1 Definitions

1.1 In this document:

- (a) **acceptance testing** means testing (being systematic tests, routines, procedures and processes) carried out by a user of computer software, so as to verify that any changes to the way the software functions operate in compliance with the user's requirements (including, in relation to the company, its requirement to comply with the Determination).
- (b) **ACMA** means the Australian Communications and Media Authority.
- (c) **Act** means the *Telecommunications Act (Cth)*.
- (d) **board** means the company's board of directors.
- (e) **business** means the company's business of retailing prepaid mobile telephone services.
- (f) **business day** means any day other than:
 - (i) Saturday;
 - (ii) Sunday;
 - (iii) a gazetted public holiday in metropolitan Sydney, New South Wales;
 - (iv) any day between 20 December 2023 and 31 January 2024 (both inclusive).
- (g) **commencement date** has the meaning given in clause 2(a).
- (h) **company** means MEDION Australia Pty Ltd ACN 106 611 330.
- (i) **compliance functionality** means the functionality of the third party platform directed to ensuring compliance with the Determination.
- (j) **Determination** means the *Telecommunications Service Provider (Customer Identity Authentication) Determination 2022*.
- (k) **end date** has the meaning given by clause 2(b).
- (l) **independent consultant** means a qualified and independent consultant with expertise relating to risk and compliance, processes, procedures, systems, governance and controls.
- (m) **manual processing** means the carrying out of a high-risk customer transaction by staff as opposed to the transaction being carried out by the third party platform, without the involvement of staff.
- (n) **relevant period** means from 30 June 2022 to 11 January 2023 (both inclusive).
- (o) **report** means a report by the independent consultant making recommendations as to:
 - (i) improvements to policies and procedures that ensure compliance with section 8 or (when applicable) section 12 of the Determination, including but not limited to:

- (A) acceptance testing processes for ensuring the ongoing integrity and functionality of the third party platform's compliance functionality;
- (B) procedures for ensuring that staff comply with relevant policies and procedures;
- (C) acceptance testing processes for ensuring continued compliance when process or system changes are implemented in relation to the third party platform's compliance functionality;
- (ii) ongoing training for relevant staff on the Determination;
- (iii) ongoing monitoring of Determination compliance measures; and
- (iv) ensuring the company takes reasonable steps to address any identified systemic problems in relation to compliance with the Determination.
- (p) **review** means a review of the company's current training, policies, procedures, practices relevant to compliance with the Determination and acceptance testing processes relevant to compliance functionality, and identifying:
 - (i) any deficiencies; and
 - (ii) any recommendations for improvements –
 in relation to ensuring that the company complies with section 8 or (when applicable) section 12 of the Determination.
- (q) **Senior Executive Service** means the Senior Executive Service constituted by section 35(1) of the *Public Service Act 1999* (Cth).
- (r) **staff** means employee/s or agents of the company.
- (s) **term** means from the commencement date to the end date (both inclusive).
- (t) **third party platform** means the computerised telecommunications business enablement service used under licence by the company.
- (u) **undertaking** means this document.

1.2 Words and expressions defined in the Act or the Determination have the same meaning in this undertaking unless otherwise specified.

2 Term of the undertaking

- (a) This undertaking, having been executed by the company, commences on the day (**commencement date**) when the ACMA notifies the company in writing that the ACMA has executed it.
- (b) This undertaking ceases to have effect:
 - (i) at midnight at the start of the second anniversary of the commencement date; or
 - (ii) if it is withdrawn or varied by the company with the ACMA's consent under section 572B(3) of the Act; or
 - (iii) if it is cancelled by the ACMA under s 572B(4) of the Act –
 whichever is earliest (**end date**).
- (c) Any notice or approval required or permitted to be given by the ACMA under or in connection with 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 of the Senior Executive Service.

3 Background

- (a) On 10 January 2023, the company detected that in one respect the third party platform operated in a non-compliant manner with respect to section 8 of the Determination.
- (b) From 20 January 2023 to 30 June 2023, the ACMA made enquiries and undertook investigations about possible contraventions of the Determination and the Act.
- (c) On 25 September 2023, the ACMA notified the company that the ACMA has reasonable grounds to believe that, during the relevant period, the company contravened subsection 101(1) of the Act on 1,698 occasions by contravening section 8 of the Determination.
- (d) The company acknowledges:
 - (i) that it is responsible for its compliance with the Determination; and
 - (ii) the ACMA's findings,and in response to the ACMA's concerns regarding the company's compliance with the Determination, offers this undertaking to the ACMA aimed at addressing future compliance with the Determination.

4 Remedial actions taken by the company

Since the company detected on 10 January that in one respect the third party platform operated in a non-compliant manner with respect to section 8 of the Determination, it has taken the actions set out in this clause 4.

- (a) On 10 January 2023, the company immediately:
 - (i) commenced an investigation into the non-compliant operation;
 - (ii) directed the supplier of the third party platform to identify and correct the cause of the non-compliant operation.
- (b) On 11 January 2023, the cause of the non-compliant operation was identified and corrected.
- (c) The company has completed a project (commenced in 2022) to create an antifraud 'early warning system' based on a new reporting capability that enables the company to correlate data about every high-risk customer transaction with its record of customer identity verification in accordance with the Determination. This enables the company to more rapidly detect and react to emerging fraud techniques.
- (d) On 13 March 2023 (following a search commenced in September 2022) the company employed a reporting analyst, in a newly created role tasked with accelerating and maintaining the early warning system.

5 Undertaking

The company undertakes to take the following specified actions to ensure the company complies with the Determination and does not contravene the Determination in the future.

6 Independent consultant

6.1 Review and report

- (a) The company undertakes to appoint an independent consultant to conduct a review and deliver a report to the board, and at the same time to the ACMA:
 - (i) within four months of their appointment; and
 - (ii) again, within three months of the first anniversary of the commencement date.
- (b) The company 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, the company will repeat this process until it has the ACMA's written approval.
- (c) The company 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.
- (d) Subject to the ACMA's written agreement, the company 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, the company will repeat this process until it has the ACMA's approval.

6.2 Implementation plan & reporting

- (a) Within 40 business days of receiving each report the company will:
 - (i) develop an implementation plan setting out the steps the company has taken, or will take, to implement all recommendations made by the independent consultant in the report (unless the ACMA specifically agrees that any recommendation need not be implemented) including timeframes; and
 - (ii) provide a copy of the board-approved implementation plan to the ACMA.
- (b) The company undertakes to comply with the approved implementation plan in accordance with the timeframes specified in the plan.
- (c) The implementation plan may be modified at any time subject to the ACMA's written approval.
- (d) For the term, every 6 months from the date on which the board-approved implementation plan is provided to the ACMA, the company will provide to the ACMA a board-approved compliance report that covers the previous 6 months and includes:
 - (i) the status of actions it is required to take under the implementation plan;

- (ii) a report of all de-identified complaints received by the company in relation to the company's non-compliance with section 8 or section 12 of the Determination, including the date of the complaint and a unique identifier for each complaint;
 - (iii) action the company has taken on each such complaint.
- (e) Within 10 Business Days after the end of each calendar month during the Term, the company will report to the ACMA all identified instances of non-compliance with the Determination since:
- (i) in the case of the first such report – the commencement date; and
 - (ii) otherwise – the most recent report given –
- including the cause of any identified compliance issues and remediation action taken or proposed to be taken and applicable dates.

7 Training

- (a) The company undertakes to train all staff involved in manual processing and their direct line manager within 30 Business Days of the commencement date, to ensure compliance with the Determination.
- (b) The company undertakes to provide training similar to that described in clause 7(a), for all new staff involved in manual processing before they commence doing so.
- (c) The company undertakes to repeat the training, described in clause 7(a), every 12 months after the company has undertaken the training referred to in clause 7(a) for the term.
- (d) The company undertakes to provide the ACMA with written notice when it has undertaken training referred to in clauses 7(a) and 7(b).

8 Record-keeping

The company undertakes to:

- (a) maintain records of:
 - (i) any improvements made arising from a report;
 - (ii) training provided to staff pursuant to this undertaking;
 - (iii) steps taken in response to any systemic problems identified by a report; and
- (b) provide copies of records referred to in this clause 8 to the ACMA upon request by the ACMA.

9 Acknowledgment of publication

The company acknowledges that:

- (a) the ACMA will make this undertaking publicly available, including by publishing it on its website; and
- (b) the ACMA may, from time to time, make public comment about this undertaking, including by media release upon its execution.

Signed for and on behalf of
MEDION Australia Pty Ltd ACN 106 611 330
by its authorised representative

Derek Cummins
Director



27 December 2023

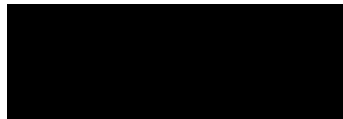
Name & title

Signature

Date

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

Evan Westmore
*Acting Executive Manager
Unsolicited Communications
and Scams Branch*



4 January 2024

Name & title

Signature

Date