

## CANASA DIRECTORY ANTI-SPAM GUIDE

### **1.0**     Purpose

The purpose of this Guide is to provide guidance to Members of the Canadian Security Association (“CANASA”) regarding use of the Directory to send CEMs in light of the requirements set forth in the Canadian Anti-Spam Legislation (“CASL”).

This Guide is not intended to replace legal advice: in case of a doubt with respect to any CASL requirement, each Member is responsible for seeking independent legal advice. CANASA cannot be held liable for any violation of CASL by a Member or by any entity acting on behalf of a Member.

### **2.0**     Scope

This Guide applies to the sending of CEMs by electronic means, including email, text messages, messages on social media websites, or any other channel.

Messages sent by electronic means as described above which do not have as a purpose to encourage participation in a commercial activity (i.e. personal messages) are not considered CEMs under CASL and do not fall within the scope of and are not subject to this Guide.

### **3.0**     Guide

- 3.1     Members using the Directory must comply with CASL requirements when communicating with Recipients.
- 3.2     Members’ Employees may not send CEMs to any Recipient unless express consent to receive CEMs has been obtained from such Recipient (see **Section 6.2**), or the message is not considered a CEM for the purpose of CASL ((see **Section 5.0**) or implied consent exists for sending CEMs to the particular Recipient (see **Section 6.3**).
- 3.3     Failure to comply with this Guide may lead to sanctions, up to and including termination of the Member’s membership in CANASA.

### **4.0**     Definitions

**Commercial Electronic Message (“CEM”)** means any electronic message (not just email) where one of the purposes of the message is to encourage participation in a commercial activity (i.e. a Member’s commercial activity or the commercial activity of one of a Member’s business partner) sent to a Recipient. The purpose of an electronic message takes into account the content of the message, as well as any hyperlinks and contact information contained in the message. CEMs do not include two-way voice communications (i.e. voice recordings sent to a telephone account, telephone calls) or faxes.

Some examples of a “commercial purpose” include making an offer to purchase or sell a product or service, to provide a business or investment opportunity, initial contacts to prospective customers, new offerings, invitations to events, promotions, contests, newsletters and even season’s greetings. An electronic message requesting express consent to receive CEMs is also considered a CEM and can only be sent if the Recipient has provided implied consent or if an exemption applies.

**Directory** means the database managed by CANASA which includes contact details of Members’ Employees, including their electronic addresses (e-mail).

**Member** means any organisation which is a member of CANASA.

**Member’s Employee** means any employee, consultant or representative of a Member.

**Recipient** means any individual whose contact details are included in the Directory.

**Recipient’s Organisation** means the Member for which a Recipient is working or of which (s)he is an authorised representative.

**Transactional Message** means an electronic message which solely contains order confirmations, quotes, information about a guarantee or a security feature of a Member’s products or services, information on the use of a Member’s products and services or ongoing commercial contracts, or services currently provided by a Member to the Recipient’s Organisation (including updates and modifications).

### **5.0**     When an Electronic Message is not covered by the Anti-Spam Guide

- 5.1     **Message is not a CEM.** Messages sent by electronic means (i.e. email, instant messages, social media, text message, etc.) which do not have as a purpose to encourage participation in a commercial activity (i.e. an invitation to lunch,

forwarding an article about a current event, etc.) are not CEMs and do not fall within the scope of this Anti-Spam Guide.

5.2 **Message is an Exempt CEM.** If the message does encourage participation in a commercial activity, but one of the below exemptions applies, the electronic message in question is equally not covered by this Anti-Spam Guide. All exemptions below must be interpreted narrowly.

5.3 **Exemptions – When is a CEM an Exempt CEM.** The provisions of the Anti-Spam Guide do not apply to the following electronic messages sent by Members:

- **CANASA membership:** electronic messages sent by a Member to CANASA relating to its membership. A message of a commercial nature sent to a CANASA employee or representative that is unrelated to the activities of CANASA does not qualify for this exemption.
- **B2B Communications:** a CEM that is sent by an Employee, contractor or franchisee of a Member to another employee, representative, contractor or franchisee of another Member, if the organizations have a business relationship at the time the message was sent and the message concerns the affairs of the other Member or the Recipient’s role, functions or duties within or on behalf of the other Member.
- **Responses to enquiries:** electronic messages sent in response to a Recipient who has contacted the Member to enquire about its products, services or activities.
- **Personal Relations:** electronic messages sent to a Recipient with whom the Member’s Employee has a “personal relationship” and with whom the Recipient has previously communicated voluntarily and bilaterally; “Personal relationship” means a relationship where the parties have directly communicated before, and neither party has indicated they do not wish to communicate with the other party, and it is reasonable to conclude overall that it is a personal relationship.
- **Legal Communications:** electronic messages sent to a Recipient to satisfy a legal obligation or to provide notice of a legal right or to enforce a legal right.

## 6.0 **Consent Requirements**

6.1 Where an electronic message is considered a CEM and none of the Exemptions in **Section 5.0** above apply, consent to send a CEM to a Recipient must be obtained by the Member before sending a CEM to the Recipient,.

6.2 As a general rule, “**express consent**” of the Recipient must be obtained before sending a non-exempt CEM. “Express Consent” means a voluntary response to a request for consent, provided positively and purposefully, actively granted to the Member (i.e. opt-in), not deducted from behaviour.

6.3 However, “**implied consent**” of a Recipient to receive a CEM can be relied upon at the time of sending the CEM, meaning a CEM can be sent without having acquired express consent, in the following circumstances:

- The Member has had a **business relationship** with the Recipient’s Organisation that terminated within the two (2) years prior to the date of the CEM, or the Recipient’s Organisation has purchased products or services from the Member within the two (2) years prior to the date of the CEM. For clarity, there is a “business relationship” between a Member and the Recipient’s Organisation when there is any commercial exchange between such Member and the Recipient’s Organisation, including one party selling a product or service to the other party.
- The Recipient has made **enquiries** about the Member’s products or services within the six (6) months prior to the date of the CEM.
- The Recipient has disclosed its **business card** or business contact details by any means to a Member’s Employee without indicating that (s)he does not wish to be contacted for promotional purposes, and the CEM relates to the Recipient’s job or business.
- The CEM **solely** consists in an **enquiry** made by the Member to a Recipient in relation to the activities, products and offerings of such Recipient’s Organisation. A CEM sent on this basis cannot include any additional commercial content (i.e. the CEM cannot contain a question about pricing about the Recipient’s Organisation product, and then in the same email offer or advertise a Member’s product).

or

- The electronic message is the **first CEM** that is sent by a Member’s Employee for the purpose of contacting the Recipient following a **referral** by one or more individuals who have an existing business relationship, a personal relationship or a family relationship with the Member’s Employee, as well as any of those

relationships with the Recipient; provided that the CEM discloses the full name of the individual or individuals who made the referral and states that the message is sent as a result of the referral. These individuals (making the referral) must have an *existing business relationship* with the Member which Employee is contacting the Recipient.

## 7.0 Exemption to Consent Requirement - Transactional Messages

7.1 It is not necessary to obtain consent to send an electronic message whose sole purpose is to send a **Transactional Message** (as defined below), provided that the message includes the required content, described in **Section 8.0** below.

7.2 However, if the Transactional Message includes any additional unrelated information of a commercial nature, consent of the Recipient must be obtained before sending the Transactional Message in question.

7.3 Common **Transactional Messages** which may be sent by a Member to a Recipient by way of electronic message, without previously acquiring Recipient's consent to receive CEMs from such Member, include messages which solely contain:

- order confirmations, quotes;
- information about a guarantee or a security feature of Member's products or services;
- information on the use of Member's products and services;
- information about ongoing contracts between Member and the Recipient's Organisation;
- information about products and services currently provided by Member to the Recipient's Organisation (including updates and modifications).

## 8.0 Content Requirements

8.1 All CEMs sent by Members must include the mandatory content required under CASL.

## 9.0 False and Misleading Representations

No false or misleading representation in the subject line or content of any electronic message (including CEMs) may be included, even if the representation is clarified in the content of the electronic message.

## 10.0 Handling Unsubscribe Requests

10.1 Each Member must provide a free, accessible and efficient **unsubscribe mechanism** to all Recipients of its CEMs, whether sent by the Member or by a third party acting on the Member's behalf.

10.2 Within 10 business days following the receipt of an unsubscribe request, no CEMs should be further sent to the Recipient who has unsubscribed (except for Transactional Messages and exempt CEMs).

## 11.0 Compliance and Enforcement

11.1 CANASA is not responsible, and hereby excludes all liability, for use of the Directory by Members.

11.2 Any breach of this Privacy Guide can be reported to CANASA at [nospam@canasa.org](mailto:nospam@canasa.org).

11.3 Any Member's Employee wishing to have his/her contact details updated or electronic address removed from the Directory should send an email to that effect to CANASA at [nospam@canasa.org](mailto:nospam@canasa.org). CANASA will proceed to the update or removal within 10 business days following the receipt of such request.

11.4 Any breach of this Privacy Guide by a Member may be reviewed by CANASA's Ethics Committee, who may sanction such Member, including by suspending or terminating such Member's membership into CANASA.

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