Formal Warning

Section 41 of the *Spam Act 2003*

**To:** ACN 609 977 326 Pty Ltd (formerly We Fix Credit (Australia) Pty Ltd)

ACN 609 977 326

**Of:** Suite 4

36-38 Bayswater Road

 Potts Point NSW 2011

**Attention:** Mr John Codrington, Director

I, Jeremy Fenton, delegate of the Australian Communications and Media Authority (ACMA), being satisfied that ACN 609 977 326 Pty Ltd (formerly We Fix Credit (Australia) Pty Ltd) ACN 609 977 326 (We Fix Credit), has contravened subsection 16(1) of the *Spam Act 2003* (Spam Act):

**HEREBY** issue We Fix Credit a formal warning under section 41 of the Spam Act, for 17 contraventions of subsection 16(1) of the Spam Act, being a civil penalty provision (see Attachment A).

**ACMA Investigation**

On 5 December 2017, the ACMA commenced an investigation into We Fix Credit for alleged contraventions of the Spam Act, following receipt of complaints by the ACMA.

### Details of the contraventions

As a result of its investigation into this matter, and taking into account information in complaints made to the ACMA, the ACMA made findings (set out in its letter to We Fix Credit dated 28 March 2018) that:

* 1. We Fix Credit sent, or caused to be sent, 17 email messages between 31 January and 12 December 2017 (the relevant messages);
	2. the relevant messages were for the purpose of offering to supply We Fix Credit’s services and thus were ‘commercial electronic messages’ within the meaning of the Spam Act;
	3. the relevant messages had an Australian link; and
	4. the relevant messages were sent without the consent of the relevant electronic account-holders, in contravention of subsection 16(1) of the Spam Act.

Dated this 16th of May 2018

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**Jeremy Fenton**

**Delegate of the Australian Communications and Media Authority**

### Attachment A - Relevant provisions of the Spam Act

Section 16 of the Spam Act relevantly provides:

1. A person must not send, or cause to be sent, a commercial electronic message that […] has an Australian link […]
2. Subsection (1) does not apply if the relevant electronic account-holder consented to the sending of the message.

…

1. Subsections (1), (6) and (9) are civil penalty provisions.

Section 41 of the Spam Act provides:

The ACMA may issue a formal warning if a person contravenes a civil penalty provision.

‘Commercial electronic message’ is defined in section 6 of the Spam Act.

‘Australian link’ is defined in section 7 of the Spam Act.

‘Consent’ is defined in Schedule 2 to the Spam Act.