

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and Consumer Act 2010* (Cth)
by hipages Group Pty Ltd
ACN 112 872 009

1. Person giving the Undertaking

- 1.1 This undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by hipages Group Pty Ltd (**hipages**) (ACN 112 872 009) for the purposes of section 87B of the *Competition and Consumer Act 2010* (**CCA**) (**Undertaking**).

2. Background

- 2.1 hipages is an Australian online sales lead generation platform connecting consumers and tradespeople in the home improvement industry. Tradespeople (**Subscribers**) pay a monthly subscription fee to hipages and in return, receive 'sales leads' and access to a range of services and other benefits for their businesses. The 'sales leads' allow Subscribers to obtain information about jobs that prospective customers post on the hipages platform, for the purposes of quoting to win the job.
- 2.2 hipages' contracts with its Subscribers (**Subscription Contracts**) are for initial terms of 6 or 12 months. Subscribers enter into a Subscription Contract during a sign-up phone call with a hipages representative (**Sign-up Call**). During the Sign-up Call, which is recorded, the Subscriber must verbally agree to be bound by the terms in the Subscription Contract. Shortly after the Sign-up Call, hipages sends a summary email (**Summary Email**) which includes a link to the Subscription Contract (containing its full terms). hipages provides all Subscribers with a cooling off period (currently 7 days, or 2 business days for contracts entered into before January 2022), during which the Subscribers can cancel their Subscription Contract at no cost to them.
- 2.3 The Subscription Contract contains a provision which enables hipages to automatically renew the Subscription Contract for a further 12 months (**Automatic Renewal Provision**). Two weeks before a Subscriber's automatic renewal date, hipages sends an email to notify the Subscriber that the automatic renewal will occur (**Renewal Email**). Until 8 March 2023, no other form of notification was given ahead of automatic renewal. The Renewal Email includes a link to the full terms of the renewed Subscription Contract. The cooling-off period referred to in paragraph 2.2 also applies to each renewal during which Subscribers can cancel their Subscription Contract at no cost to them.
- 2.4 The Subscription Contract also contains an early termination fee provision (**ETF Provision**). If a Subscriber wants to terminate their Subscription Contract after the cooling-off period has expired and before the end of its term, the ETF Provision makes the Subscriber liable to immediately pay out the balance of their subscription fee for the remainder of their Subscription Contract term. The ETF Provision is also contained in a Subscription Contract that has been automatically renewed (pursuant to the Automatic Renewal Provision) for another 12 months.

3. ACCC Concerns

- 3.1 The ACCC is concerned that hipages did not disclose, or did not adequately disclose, in the period between October 2018 and 13 January 2022, the existence and/or effect of the Automatic Renewal Provision and the ETF Provision to Subscribers during the Sign-up Call, in

the Summary Email or in the Renewal Email. The ACCC has received complaints that Subscribers were not aware that if they did not opt out of the Automatic Renewal Provision prior to the automatic renewal date, or did not cancel their Subscription Contract before the cooling-off period of the renewed contract expired, they would be liable to immediately pay out the remaining balance of their Subscription Contract if they cancelled their Subscription Contract.

3.2 The ACCC is concerned that the Renewal Email to Subscribers is easily missed, particularly if it is automatically sorted into junk email folders or does not send correctly due to administrative or system errors. Due to the combined effect of the Automatic Renewal Provision and ETF Provision, the consequences of missing the Renewal Email are significant and costly for Subscribers who do not want to renew their Subscription Contract.

3.3 Specifically, in respect of the period between October 2018 and 13 January 2022, the ACCC has the following concerns regarding hipages' practices and conduct in its communications with Subscribers regarding the Automatic Renewal Provision and ETF Provision:

hipages' failure to provide adequate disclosure - Misleading or deceptive conduct

3.4 The ACCC is concerned that between at least October 2018 and 13 January 2022:

- a. hipages did not disclose, or did not adequately disclose, to Subscribers during the Sign-up Call or in the Summary Email, the existence and/or effect of the Automatic Renewal Provision and/or the ETF Provision, including the way these provisions operated together, which made a Subscriber liable to immediately pay out the remaining balance of their Subscription Contract if they wished to cancel their Subscription Contract after the cooling-off period had expired, including for contracts that had been automatically renewed; and
- b. hipages' Renewal Emails did not disclose, or did not adequately disclose, how Subscribers could stop their Subscription Contract from automatically renewing, or that the consequences of failing to cancel their Subscription Contract before the automatic renewal date would result in the Subscription Contract being automatically renewed for a further term of 12 months. Consequently, if a Subscriber wished to cancel their Subscription Contract once it had been automatically renewed (and after the cooling-off period had expired) they would be liable to immediately pay out the remaining balance of their Subscription Contract, pursuant to the Automatic Renewal Provision and ETF Provision.

3.5 The ACCC considers that by engaging in the conduct outlined in paragraph 3.4 above, hipages engaged in conduct that was misleading or deceptive, or was likely to mislead or deceive, in contravention of section 18 of the Australian Consumer Law (**ACL**).

hipages' conduct towards particular Subscribers – False or misleading representations

3.6 The ACCC is concerned that between at least 18 April 2020 and 16 April 2021, hipages informed particular Subscribers, via emails and in phone calls with those Subscribers, that:

- a. they needed to take additional steps to cancel their initial Subscription Contract or the automatically renewed contract (as the case may be); and/or
- b. hipages had the right to enforce payment for a further Subscription Contract term;

when this was not the case because the Subscriber had already given valid notice of cancellation before the automatic renewal date and in accordance with the Subscription Contract's terms.

- 3.7 The ACCC considers that by making the representations and engaging in the conduct outlined in paragraph 3.6 above, hipages engaged in conduct that was misleading or deceptive, or was likely to mislead or deceive, and made false or misleading representations in its communications with particular Subscribers, in contravention of sections 18 and 29(1)(m) of the ACL.

4. Admissions

- 4.1 As a result of the ACCC's investigation, and in response to the ACCC's concerns, hipages admits that:
- a. by engaging in the conduct outlined in paragraph 3.4 above, hipages engaged in conduct that was likely to mislead or deceive, in contravention of section 18 of the ACL; and
 - b. by making the representations and engaging in the conduct outlined in paragraph 3.6 above, hipages engaged in conduct that was likely to mislead or deceive, and was likely to have made false or misleading representations in its communications with particular Subscribers, in contravention of sections 18 and 29(1)(m) of the ACL.

5. Resolution

- 5.1 hipages has cooperated with and assisted the ACCC during its investigation.
- 5.2 As a result of the ACCC's investigation, and in response to the ACCC's concerns, hipages has taken steps to improve transparency and disclosure regarding the cooling-off period, ETF Provision and Automatic Renewal Provision, including by:
- a. updating the scripts it uses during the Sign-up Call, and its Summary Email and Renewal Email templates;
 - b. since 8 March 2023, implementing updated staff training and processes, including to ensure that Subscribers' requests that their Subscription Contract not be automatically renewed are actioned as soon as practicable, or otherwise within 5 business days; and
 - c. since 8 March 2023, providing additional reminders to Subscribers of any upcoming automatic renewal date as follows:
 - i. day 14 before a Subscriber's renewal date: first reminder Renewal Email;
 - ii. day 12 before a Subscriber's renewal date: first SMS reminder;
 - iii. day 7 before a Subscriber's renewal date: second Renewal Email; and
 - iv. day 5 before a Subscriber's renewal date: second SMS reminder.
- 5.3 Hipages offers this Undertaking to the ACCC as resolution for the conduct referred to in paragraph 4.1 above.

6. Commencement and term of this Undertaking

- 6.1 This Undertaking comes into effect when:
- a. this Undertaking is executed by hipages, and
 - b. this Undertaking so executed is accepted by the ACCC (**Commencement Date**).
- 6.2 This Undertaking has effect for three (3) years from the Commencement Date (**Term**).
- 6.3 Upon the Commencement Date, hipages undertakes to assume the obligations set out at section 7 for the purposes of section 87B of the CCA.

7. Undertakings

Updates to hipages' call scripts, Summary Emails and Renewal Emails

- 7.1 hipages undertakes that it will, from the Commencement Date, ensure that each of hipages' scripts used during the Sign-up Call, as well as the templates used in the Summary Emails and Renewal Emails, clearly and prominently state:
- a. that the ETF Provision applies when a Subscriber chooses to cancel the Subscription Contract for any reason (unless a valid exception applies) at any time outside the cooling-off period and before the end of the Subscription Contract term, including when the contract is automatically renewed, and that the Subscriber will be liable to immediately pay out the entire remaining balance of their Subscription Contract;
 - b. the methods by which a Subscriber can elect not to automatically renew their Subscription Contract, including at any time before the automatic renewal date, and not just when they receive the Renewal Email; and
 - c. the methods by which a Subscriber can cancel the Subscription Contract at any time.
- 7.2 hipages undertakes that it will, from the Commencement Date, in addition to the undertakings outlined above in paragraph 7.1, update its:
- a. Summary Email templates, to clearly state that if a Subscriber accepts a lead during the cooling-off period, they waive their right to cancel the contract during the cooling-off period and will become liable to immediately pay out the remaining balance of their Subscription Contract if they wish to cancel their Subscription Contract (including for contracts that are automatically renewed); and
 - b. Renewal Email templates, to clearly state any key changes to the terms that will apply in the automatically renewed Subscription Contract, compared to the initial Subscription Contract.

Review outstanding complaints and offer remediation

- 7.3 hipages undertakes that it will, within 4 months of the Commencement Date, review and resolve (including by offering suitable remediation to affected Subscribers) any outstanding Subscriber complaints (for example, complaints marked 'open' in hipages' customer relationship management system as at the Commencement Date) relating to the period from

January 2019 to the Commencement Date that relate to the Automatic Renewal Provision and/or the ETF Provision. This includes, but is not limited to, Subscribers who made a complaint to hipages about being automatically renewed in circumstances where the Subscriber alleges they:

- a. gave prior valid notice of cancellation;
- b. requested (irrespective of when) that automatic renewal be switched off; or
- c. did not receive the Renewal Email, including where it is alleged that the Renewal Email was automatically sorted into their junk email folders.

7.4 hipages undertakes that it will, within 5 months of the Commencement Date, provide to the ACCC a list of affected Subscribers identified in the process outlined in paragraph 7.3, along with the following details in respect of each such Subscriber:

- a. contact details;
- b. what remediation was offered (if any) or why remediation was not offered; and
- c. the outcome of any offer.

Compliance Program

7.5 hipages undertakes to, at its own expense:

- a. within 4 months of the Commencement Date, establish and implement a Competition and Consumer Compliance Program (**Compliance Program**) in accordance with the requirements set out in Annexure A, being a program designed to minimise hipages' risk of future contraventions of the ACL and to ensure hipages' awareness of its responsibilities and obligations in relation to the requirements of the ACL;
- b. maintain and continue to implement the Compliance Program for the Term of this Undertaking; and
- c. provide a copy of any documents required by the ACCC in accordance with this Undertaking, including Annexure A.

ACCC enquiries

7.6 For the purpose of monitoring compliance with this Undertaking, the ACCC may make reasonable enquiries with hipages, and hipages will respond to such enquiries at its own expense within a reasonable time.

7.7 hipages will implement promptly and with due diligence any recommendations that the ACCC may make that the ACCC deems reasonably necessary to ensure that hipages complies with the requirements of this Undertaking, including paragraph 7.3.

7.8 If requested by the ACCC during the Term of this Undertaking, hipages will, at its own expense, provide to the ACCC copies of documents evidencing its implementation of obligations set out in this Undertaking, excluding any documents protected by legal professional privilege.



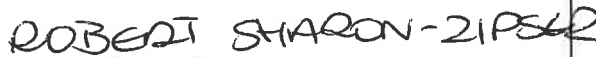

8. Acknowledgements

8.1 hipages acknowledges that:

- a. the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of section 87B undertakings on the ACCC's website;
- b. the ACCC will, from time to time, make public reference to this Undertaking including in news media statements and in ACCC publications; and
- c. this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

Executed as an Undertaking

Executed by hipages Group Pty Ltd ACN 112 872 009 pursuant to section 127(1) of the *Corporations Act 2001* by:

| | |
|---|--|
|  |  |
| Signature of director | Signature of a director company secretary (delete as appropriate, or entire column if sole director company) |
|  |  |
| Name of director (print) | Name of director company secretary (print) |
| Date 25 MAY 2023 | Date 25 May 2023 |

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

28 May 2023

Date

and signed on behalf of the Commission:



Chair

28 May 2023

Date

ANNEXURE A

COMPETITION AND CONSUMER COMPLIANCE PROGRAM

hipages will establish a Competition and Consumer Compliance Program (**Compliance Program**) that complies with each of the following requirements:

Appointments

1. Within 3 months of the Commencement Date, hipages will appoint a director or a senior manager with suitable qualifications or experience in corporate compliance as a Compliance Officer with responsibility for ensuring the Compliance Program is effectively designed, implemented and maintained (**Compliance Officer**).

Compliance Policy

2. hipages will, within 3 months of the Commencement Date, issue a policy statement outlining hipages' commitment to compliance with the ACL (**Compliance Policy**).
3. hipages will ensure that the Compliance Policy:
 - a. contains a statement of commitment to compliance with the ACL;
 - b. contains an outline of how commitment to ACL compliance will be realised within hipages;
 - c. contains a requirement for all staff to report any Compliance Program related issues and ACL compliance concerns to the Compliance Officer; and
 - d. contains a clear statement that hipages will take action internally against any persons who are knowingly or recklessly concerned in a contravention of the ACL and will not indemnify them in the event of any court proceedings in respect of that contravention.

Complaints Handling System

4. Within 4 months of the Commencement Date, hipages will review its internal complaint handling procedure for recording, storing and responding to complaints from Subscribers (**Complaints Handling System**).
5. For the purposes of paragraph 4, a complaint includes complaints from affected Subscribers who were automatically renewed in circumstances where the Subscriber:
 - a. gave prior valid notice of cancellation;
 - b. requested (irrespective of when) that automatic renewal be switched off; or
 - c. complained to hipages that they did not receive the Renewal Email or similar communications.
6. hipages will make any changes necessary to ensure that its Complaints Handling System records, for each complaint, the information below:

- a. Subscriber's name and preferred contact details;
 - b. the date and method in which the complaint was made;
 - c. the nature of the complaint;
 - d. the steps taken to verify and respond to the complaint;
 - e. how the complaint was resolved; and
 - f. any review, if appropriate, that hipages will take to improve processes following the complaint.
7. hipages will ensure that staff and Subscribers are made aware of the Complaints Handling System.
 8. hipages will, within ensure all complaints are catalogued and resolved within 30 days of being filed, and in accordance with the policies and protocols of the revised Complaints Handling System.

Staff Training

9. Within 60 days of the Commencement Date, hipages must ensure that ACL training is provided to all directors, officers, employees, representatives and agents of hipages whose duties could result in them being concerned with conduct that may contravene the ACL, or who is responsible for such persons as part of their role at hipages. This training will explain hipages' obligations and responsibilities under the ACL, including its obligation not to contravene ss 18, and 29.
10. hipages will also ensure that the Compliance Program provides for regular (at least once a year) training for all directors, officers, employees, representatives and agents of hipages whose duties could result in them being concerned with conduct that may contravene the ACL, including sections 18 or 29.
11. hipages must ensure that the training is conducted by a suitably qualified compliance professional or legal practitioner with expertise in the ACL.
12. hipages will ensure that the Compliance Program includes a requirement that awareness of ACL issues forms part of the induction of all new directors, officers, employees, representatives and agents, whose duties could result in them being concerned with conduct that may contravene the ACL, including sections 18 and 29.

Reports to Board/Senior Management

13. hipages will ensure that the Compliance Officer reports to the Board and/or senior management every 6 months on the continuing effectiveness of the Compliance Program.

Compliance Review

14. hipages will, at its own expense, cause an annual review of the Compliance Program (**Review**) to be carried out in accordance with each of the following requirements:
 - a. **Scope of Review**– the Review should be broad and rigorous enough to provide hipages and the ACCC with:

- i. a verification that hipages has in place a Compliance Program that complies with each of the requirements detailed in paragraphs 1 – 13 above; and
 - ii. the Compliance Reports detailed at paragraph 15 below.
 - b. **Independent Reviewer** – hipages will ensure that each Review is carried out by a suitably qualified, independent compliance professional with expertise in competition and consumer law (**Reviewer**). The Reviewer will qualify as independent on the basis that he or she:
 - i. did not design or implement the Compliance Program;
 - ii. is not a present or past staff member or director of hipages;
 - iii. has not acted and does not act for, and does not consult and has not consulted to, hipages in any ACL related matters, other than performing Reviews under this Undertaking; and
 - iv. has no significant shareholding or other interests in hipages.
 - c. **Evidence** – hipages will use its best endeavours to ensure that each Review is conducted on the basis that the Reviewer has access to all relevant sources of information in hipages' possession or control, including without limitation:
 - i. the ability to make enquiries of any officers, employees, representatives and agents of hipages;
 - ii. documents relating to hipages' Compliance Program, including documents relevant to hipages' Compliance Policy, Complaints Handling System, Staff Training and induction program; and
 - iii. any reports made by the Compliance Officer to the Board or senior management regarding hipages' Compliance Program.
 - d. hipages will ensure that a Review is completed within one year of the Commencement Date, and that a subsequent Review is completed within each year thereafter for the remaining Term of this Undertaking.

Compliance Reports

15. hipages will use its best endeavours to ensure that within 30 days of the completion of a Review, the Reviewer includes the following findings of the Review in a report provided to hipages (**Compliance Report**):
 - a. whether the Compliance Program of hipages includes all the elements detailed in paragraphs 1 – 13 above, and if not, what elements need to be included or further developed;
 - b. whether the Staff Training and induction is effective and if not, what aspects need to be further developed;

- c. whether hipages' Complaints Handling System is effective and if not, what aspects need to be further developed;
- d. whether there are any material deficiencies in hipages' Compliance Program, or whether there are or have been any instances of material non-compliance with the Compliance Program, (**Material Failure**), and if so, recommendations for rectifying the Material Failure/s.¹

hipages' response to Compliance Reports

16. hipages will ensure that the Compliance Officer, within 14 days of receiving the Compliance Report:
- a. provides the Compliance Report to the Board or relevant governing body;
 - b. where a Material Failure has been identified by the Reviewer in the Compliance Report, provides a report to the Board or relevant governing body identifying how hipages can implement any recommendations made by the Reviewer in the Compliance Report to rectify the Material Failure in order to ensure compliance with the ACL.
17. hipages will implement promptly and with due diligence any recommendations made by the Reviewer in the Compliance Report to address a Material Failure in order to ensure compliance with the ACL.

Reporting Material Failures to the ACCC

18. Where a Material Failure has been identified by the Reviewer in the Compliance Report, hipages will:
- a. provide a copy of that Compliance Report to the ACCC within 14 days of the Board or relevant governing body receiving the Compliance Report; and
 - b. inform the ACCC of any steps that have been taken to implement the recommendations made by the Reviewer in the Compliance Report; or
 - c. otherwise outline the steps hipages proposes to take to implement the recommendations and will then inform the ACCC once those steps have been implemented.

Provision of Compliance Program documents to the ACCC

19. hipages will maintain a record of and store all documents relating to and constituting the Compliance Program for a period not less than 5 years.
20. If requested by the ACCC during the period of 5 years following the Commencement Date, hipages will, at its own expense, cause to be produced and provided to the ACCC copies of all documents constituting the Compliance Program, including:

¹ Material Failure means a failure, that is non-trivial and which is ongoing or continued for a significant period of time, to:
incorporate a requirement of the Undertaking in the design of the Compliance Program, for example if the Complaints Handling System did not provide any mechanism for responding to complaints; or
comply with a fundamental obligation in the implementation of the Compliance Program, for example, if no Staff Training has been conducted within the Annual Review period.

- a. the Compliance Policy;
- b. an outline of the Complaints Handling System;
- c. Staff Training materials and induction materials;
- d. all Compliance Reports that have been completed at the time of the request; and
- e. copies of the reports to the Board and/or senior management referred to in paragraph 13 and paragraph 16.

ACCC Recommendations

21. hipages will implement promptly and with due diligence any recommendations that the ACCC may make that the ACCC deems reasonably necessary to ensure that hipages maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking.