

## Annexure A

### COMPETITION AND CONSUMER COMPLIANCE PROGRAM

#### LEVEL 2

[COMPANY NAME] will establish a competition and consumer compliance program (**Compliance Program**) that complies with each of the following requirements:

#### Appointments

1. Within [X] months of the undertaking under s 87B of the *Competition and Consumer Act 2010* (Cth) (**CCA**) provided by [COMPANY NAME] to the ACCC (**Undertaking**) coming into effect (**Commencement Date**), [COMPANY NAME] will appoint a director or a senior manager with suitable qualifications or experience in corporate compliance to be responsible for ensuring the Compliance Program is effectively designed, implemented and maintained (**Compliance Officer**).

#### Compliance Officer Training

2. Within [X] months of the Commencement Date, [COMPANY NAME] will ensure that the Compliance Officer attends practical training focusing on [INSERT\*: *CCA, ACL and/or relevant industry code*].

**\*DRAFTING NOTE** – *if compliance program relates to ACL/industry codes, ensure that they are defined here e.g., ‘the Australian Consumer Law being Schedule 2 to the CCA (ACL)’ or the ‘Competition and Consumer (Industry Codes—Franchising) Regulation 2014 (Franchising Code).*

3. [COMPANY NAME] will ensure that the training is conducted by a suitably qualified compliance professional with expertise in competition and consumer law.

#### Staff Training and Induction

4. [COMPANY NAME] will ensure that the Compliance Program includes a requirement for [INSERT: *CCA, ACL and/or relevant industry code*] compliance training at least once a year (**Staff Training**) for all:
  - 4.1. officers, employees, representatives and agents of [COMPANY NAME], whose duties could result in them being concerned with conduct that may contravene [INSERT: *CCA, ACL and/or relevant industry code*]; and
  - 4.2. executive and non-executive directors of [COMPANY NAME].
5. [COMPANY NAME] will ensure that the Compliance Program includes a requirement that awareness of [COMPANY NAME’s] obligations under the [INSERT: *CCA, ACL and/or relevant industry code*] forms part of the induction (**Induction**) of all new:

- 5.1. officers, employees, representatives and agents of [COMPANY NAME] whose duties could result in them being concerned with conduct that may contravene the [INSERT: CCA, ACL and/or relevant industry code]; and
- 5.2. executive or non-executive directors of [COMPANY NAME].
6. [COMPANY NAME] will ensure that the Staff Training and Induction is conducted by a suitably qualified compliance professional or legal practitioner with expertise in competition and consumer law.

### **Complaints Handling System**

7. Within [X] months of the Commencement Date, [COMPANY NAME] will develop and implement procedures for identifying, classifying, storing and responding to competition and consumer law complaints (**Complaints Handling System**).
8. [COMPANY NAME] will ensure that staff and customers are made aware of the Complaints Handling System.

**DRAFTING NOTE** – *Please see Level 3 or 4 templates for optional provisions on product safety.*

### **Reports to [Director(s)/COMPANY NAME's governing body]**

9. [COMPANY NAME] will ensure that the Compliance Officer reports to [COMPANY NAME's director(s)/COMPANY NAME's governing body] every [X] months on the continuing effectiveness of the Compliance Program.

### **Compliance Review**

10. [COMPANY NAME] 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:
  - 10.1. **Scope of Review** – the Review should be broad and rigorous enough to provide [COMPANY NAME] and the ACCC with:
    - 10.1.1. verification that [COMPANY NAME] has in place a Compliance Program that complies with each of the requirements detailed in paragraphs 1 to 9 of this Annexure; and
    - 10.1.2. the Compliance Reports detailed at paragraph 11 of this Annexure.
  - 10.2. **Reviewer** – [COMPANY NAME] will ensure that each Review is carried out by a suitably qualified compliance professional with expertise in competition and consumer law (**Reviewer**). The Reviewer can be the Compliance Officer, or an employee, representative or agent of [COMPANY NAME]. [COMPANY NAME] may engage an independent compliance professional if an internal suitably qualified compliance professional is not available.

10.3. **Evidence** – [COMPANY NAME] 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 [COMPANY NAME]’s possession or control, including without limitation:

10.3.1. the ability to make enquiries of any officers, employees, representatives, and agents of [COMPANY NAME];

10.3.2. documents relating to [COMPANY NAME]’s Compliance Program, including documents relevant to [COMPANY NAME]’s Complaints Handling System, and Staff Training and Induction; and

10.3.3. any reports made by the Compliance Officer to [COMPANY NAME]’s governing body] regarding [COMPANY NAME]’s Compliance Program.

10.4. [COMPANY NAME] will ensure that a Review is completed within one year of the Commencement Date, and that a subsequent Review is completed annually for [X] years.

## **Compliance Report**

11. [COMPANY NAME] will use its best endeavours to ensure that within [X] days of the completion of a Review, the Reviewer includes the following findings of the Review in a report to the Compliance Officer of [COMPANY NAME] (**Compliance Report**):

11.1. whether the Compliance Program of [COMPANY NAME] includes all the elements detailed in paragraphs 1 to 9 of this Annexure, and if not, what elements need to be included or further developed;

11.2. whether the Staff Training and Induction is effective, and if not, what aspects need to be further developed;

11.3. whether [COMPANY NAME]’s Complaints Handling System is effective, and if not, what aspects need to be further developed; and

11.4. whether there are any material deficiencies in [COMPANY NAME]’s Compliance Program, or whether there are or have been instances of material non-compliance with the Compliance Program (**Material Failure**)<sup>1</sup>, and if so, recommendations for rectifying the Material Failure.

**DRAFTING NOTE:** Footnote 1 may be included to assist interpretation.

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<sup>1</sup> Material Failures are intended to include non-trivial failures that are ongoing or continue for a significant period of time to:

- incorporate a requirement of the Undertaking in the design of the Compliance Program, (e.g., if the Complaints Handling System did not provide a mechanism for responding to complaints); or
- comply with a fundamental obligation in the implementation of the Compliance Program (e.g., if no Staff Training has been conducted within the Annual Review period).

## **[COMPANY NAME]'s Response to Compliance Report**

12. [COMPANY NAME] will ensure that the Compliance Officer, within 14 days of receiving the Compliance Report:

12.1. provides the Compliance Report to [COMPANY NAME's governing body]; and

12.2. where a Material Failure has been identified by the Reviewer in the Compliance Report, provides a report to [COMPANY NAME's governing body] identifying how [COMPANY NAME] can implement any recommendations made by the Reviewer in the Compliance Report to rectify the Material Failure.

13. [COMPANY NAME] will promptly and fully implement any recommendations made by the Reviewer in the Compliance Report to address a Material Failure.

## **Reporting Material Failures to the ACCC**

14. Where a Material Failure has been identified by the Reviewer in the Compliance Report, [COMPANY NAME] will:

14.1. provide a copy of the Compliance Report to the ACCC within [X] days of [COMPANY NAME's governing body] receiving the Compliance Report; and

14.2. inform the ACCC of any steps that have been taken to implement the recommendations made by the Reviewer in the Compliance Report; or

14.3. otherwise outline the steps that [COMPANY NAME] proposes to take to implement the recommendations and inform the ACCC once those steps have been implemented.

## **Provision of Compliance Program Documents to the ACCC**

15. [COMPANY NAME] will maintain copies of all documents relating to and constituting the Compliance Program for a period not less than [X years – being the number of years the Compliance Program is required + an additional 2 years].

16. If requested by the ACCC during the period of [X years - being the number of years the Compliance Program is required + an additional 2 years] following the Commencement Date, [COMPANY NAME] will, at its own expense, cause to be produced and provided to the ACCC copies of all documents constituting the Compliance Program, including:

16.1. Staff Training and Induction materials;

16.2. an outline of the Complaints Handling System;

16.3. [DELETE IF NOT APPLICABLE] an outline of the Product Safety Procedures;

16.4. the Compliance Report that has been completed at the time of the request; and

16.5. copies of the reports to [COMPANY NAME's governing body] referred to in paragraphs 9 and 12 of this Annexure.

### **ACCC Recommendations**

17. [COMPANY NAME] will promptly and fully implement any recommendations that the ACCC considers reasonably necessary to ensure that [COMPANY NAME] maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking.