

## Annexure A

### COMPETITION AND CONSUMER COMPLIANCE PROGRAM

#### LEVEL 4

[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 as responsible for ensuring the Compliance Program is effectively designed, implemented and maintained (**Compliance Officer**).
2. Within [X] months of the Commencement Date, [COMPANY NAME] will appoint a suitably qualified, external compliance professional with expertise in competition and consumer law (**Compliance Advisor**).

#### Risk Assessment

3. [COMPANY NAME] will instruct the Compliance Advisor to conduct a [competition and/or consumer] law risk assessment within [X] months of being appointed as the Compliance Advisor (**Risk Assessment**) and to provide a written report outlining their findings (**Risk Assessment Report**) to [COMPANY NAME] within [X] months of conducting the Risk Assessment.
4. [COMPANY NAME] will use its best endeavours to ensure that the Risk Assessment Report:
  - 4.1. identifies the areas where [COMPANY NAME] is at risk of breaching [INSERT\*: *CCA, ACL and/or relevant industry code*], taking into account but not limited to areas which are [INSERT AS APPROPRIATE: *the subject of the e.g., ACCC's concerns/allegations in Federal Court proceedings brought against COMPANY NAME and which are*] set out in the Undertaking;

**\*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).*

- 4.2. assesses the likelihood of these risks occurring;
- 4.3. identifies where there may be gaps in [COMPANY NAME]'s existing procedures for managing these risks; and

- 4.4. provides recommendations for any action to be taken by [COMPANY NAME] based on the Risk Assessment.

### **Compliance Policy**

5. [COMPANY NAME] will, within [X] days of the Commencement Date, issue a policy statement outlining [COMPANY NAME]'s commitment to compliance with the CCA (**Compliance Policy**).
6. [COMPANY NAME] will ensure the Compliance Policy:
  - 6.1. contains a statement of commitment to compliance with the [INSERT: CCA, ACL and/or relevant industry code];
  - 6.2. contains an outline of how commitment to [INSERT: CCA, ACL and/or relevant industry code] compliance will be realised within [COMPANY NAME];
  - 6.3. contains a requirement for all staff to report any Compliance Program related issues and [INSERT: CCA, ACL and/or relevant industry code] compliance concerns to the Compliance Officer;
  - 6.4. contains a guarantee that whistleblowers with competition and consumer law compliance concerns will not be prosecuted or disadvantaged in any way and that their reports will be kept confidential and secure; and
  - 6.5. contains a clear statement that [COMPANY NAME] will take action internally against any persons who are knowingly or recklessly concerned in a contravention of the [INSERT: CCA, ACL and/or relevant industry code] and will not indemnify them in the event of any court proceedings in respect of that contravention.

### **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 use its best endeavours to ensure the Complaints Handling System is consistent with the Australian/New Zealand Standard *AS/NZS 10002:2022 Guidelines for complaint management in organizations*, as in force or existing at the Commencement Date, tailored as required to [COMPANY NAME]'s circumstances.
9. [COMPANY NAME] will ensure that staff and customers are made aware of the Complaints Handling System.

### **Whistleblower Protection**

10. [COMPANY NAME] will:

- 10.1. ensure that it has whistleblower protection mechanisms to protect those coming forward with competition and consumer law complaints.
- 10.2. use its best endeavours to ensure that these mechanisms are consistent with good practice guidance identified in *ASIC Regulatory Guide 270: Whistleblower policies*, as in force or existing at the Commencement Date, tailored as required to [COMPANY NAME]'s circumstances.<sup>1</sup>

### **Staff Training and Induction**

11. [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:
  - 11.1. 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
  - 11.2. executive and non-executive directors of [COMPANY NAME].
12. [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:
  - 12.1. 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
  - 12.2. executive or non-executive directors of [COMPANY NAME].
13. [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.

**DRAFTING NOTE** – *the following paragraphs may be considered if the matter is related to product safety issues.*

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### **Product Safety Testing and Compliance**

14. [COMPANY NAME] will:
  - 14.1. maintain up-to-date copies, at its business premises, of all mandatory safety and information standards made or declared under the ACL that relate to products that [COMPANY NAME] supplies (**Standards**);

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<sup>1</sup> These requirements do not replace any obligations relating to whistleblowing that may arise under the *Corporations Act 2001* (Cth).

- 14.2. ensure that products supplied that are subject to one or more Standards, comply with the relevant Standard [INSERT: *any requirements re audit and/or testing by suitably qualified compliance professionals to ensure products comply with relevant Standards*]; and
- 14.3. in the event of any material change in the design or manufacture of any existing [PRODUCT SUBJECT TO STANDARD] model or the introduction of any new [PRODUCT SUBJECT TO STANDARD] model to which the [STANDARD] applies, [COMPANY NAME] will, prior to supplying any new [PRODUCT SUBJECT TO STANDARD] model, obtain an independent testing report (or reports) as to the [PRODUCT SUBJECT TO STANDARD] model's compliance with the [STANDARD].

### **Product Safety Procedures**

15. [COMPANY NAME] will ensure that the Compliance Program includes procedures that enable it to address, in a timely manner, any safety issues that it becomes aware of that affect the safe use of the products it supplies (**Product Safety Procedures**), whether by way of:
  - 15.1. actions unrelated to [COMPANY NAME] products themselves (e.g., amending instructions in user manuals and websites as appropriate); and/or
  - 15.2. recall corrective actions involving [COMPANY NAME] products, ranging from issuing an immediate, direct and prominent safety alert or warning to consumers, through to the efficient and effective withdrawal of the relevant product from the market, including notification to the Commonwealth Minister in accordance with obligations under section 128 of the ACL, as appropriate to the circumstances.

### **Injury Reporting System – Mandatory Reports**

16. [COMPANY NAME] will ensure that the Compliance Program includes a mandatory injury reporting process to ensure compliance with section 131 of the ACL (**Injury Reporting System**), including but not limited to:
  - 16.1. recording continuous tracking of injury reports;
  - 16.2. appropriate call centre scripts and instructions; and
  - 16.3. appropriate online and in-app contact forms.
17. [COMPANY NAME] will ensure that staff are made aware of the Injury Reporting System.

18. Where requested by the ACCC to provide an update to any mandatory injury report submitted by [COMPANY NAME] and/or its legal advisors, [COMPANY NAME] will:

18.1. seek the affected consumer's consent for their name and contact details to be provided to the ACCC; and

18.2. use its best endeavours to provide the following information within a reasonable timeframe:

18.2.1. the name and the contact details of the affected consumer, provided that the affected consumer has consented to [COMPANY NAME] and/or its legal advisors disclosing their name and contact details to the ACCC; and

18.2.2. description of the affected consumer's actions leading up to the incident.

**[DRAFTING NOTE: Renumber subsequent paragraphs accordingly]**

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

14. [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**

15. [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:

15.1. **Scope of Review** – the Review should be broad and rigorous enough to provide [COMPANY NAME] and the ACCC with:

15.1.1. a verification that [COMPANY NAME] has in place a Compliance Program that complies with each of the requirements detailed in paragraphs 1 to 14 of this Annexure; and

15.1.2. the Compliance Reports detailed at paragraph 16 of this Annexure.

15.2. **Independence of Review** – [COMPANY NAME] 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:

15.2.1. did not design or implement the Compliance Program;

15.2.2. is not a present or past staff member or director of [COMPANY NAME];

- 15.2.3. has not acted and does not act for, and does not consult and has not consulted to, [COMPANY NAME] in any competition and consumer law matters, other than performing Reviews; and
  - 15.2.4. has no significant shareholding or other interests in [COMPANY NAME].
- 15.3. **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:
- 15.3.1. the ability to make enquiries of any officers, employees, representatives and agents of [COMPANY NAME];
  - 15.3.2. documents relating to the Risk Assessment, including the Risk Assessment Report;
  - 15.3.3. documents relating to [COMPANY NAME]’s Compliance Program, including documents relevant to [COMPANY NAME]’s Compliance Policy, Complaints Handling System, and Staff Training and Induction; and
  - 15.3.4. any reports made by the Compliance Officer to [COMPANY NAME]’s governing body] regarding [COMPANY NAME]’s Compliance Program.
- 15.4. [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**

16. [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**):
- 16.1. whether the Compliance Program of [COMPANY NAME] includes all the elements detailed in **paragraphs 1 to 14 of this Annexure**, and if not, what elements need to be included or further developed;
  - 16.2. whether the Compliance Program adequately covers areas identified in the Risk Assessment, and if not, what needs to be further addressed;
  - 16.3. whether the Staff Training and Induction is effective, and if not, what aspects need to be further developed;
  - 16.4. whether [COMPANY NAME]’s Complaints Handling System is effective, and if not, what aspects need to be further developed;

- 16.5. whether [COMPANY NAME] is able to provide protections consistent with good practice guidance referred to in **paragraph 10.2 of this Annexure** for competition and consumer law whistleblowers, and whether staff are aware of the whistleblower protection mechanisms; and
- 16.6. 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>2</sup>, and if so, recommendations for rectifying the Material Failure.

**DRAFTING NOTE:** *Footnote 2 may be included to assist interpretation.*

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

17. [COMPANY NAME] will ensure that the Compliance Officer, within 14 days of receiving the Compliance Report:
- 17.1. provides the Compliance Report to [COMPANY NAME]'s governing body]; and
- 17.2. 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.
18. [COMPANY NAME] will promptly and fully implement any recommendations made by the Reviewer in the Compliance Report to address a Material Failure.

### **Reporting to the ACCC**

19. [COMPANY NAME] will:
- 19.1. provide a copy of the Compliance Report to the ACCC within [X] days of [COMPANY NAME]'s governing body] receiving the Compliance Report; and
- 19.2. where a Material Failure is identified by the Reviewer in the Compliance Report:
- 19.2.1. inform the ACCC of any steps that have been taken by [COMPANY NAME] to implement the recommendations made by the Reviewer in the Compliance Report; or
- 19.2.2. otherwise outline the steps that [COMPANY NAME] proposes to take to implement the recommendations and inform the ACCC once those steps have been implemented.

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<sup>2</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).

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

20. [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].
21. 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:
  - 21.1. the Compliance Policy;
  - 21.2. the Risk Assessment Report;
  - 21.3. an outline of the Complaints Handling System;
  - 21.4. Staff Training and Induction materials;
  - 21.5. [DELETE IF NOT APPLICABLE] an outline of the Product Safety Procedures;
  - 21.6. the Compliance Report that has been completed at the time of the request; and
  - 21.7. copies of the reports to [COMPANY NAME's governing body] referred to in paragraphs 14 and 17 of this Annexure.

## **ACCC Recommendations**

22. [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.