**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**

1. 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****).*

1. [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**

1. [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:
   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
   2. executive and non-executive directors of [COMPANY NAME].
2. [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:
   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
   2. executive or non-executive directors of [COMPANY NAME].
3. [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**

1. 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**).
2. [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]**

1. [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**

1. [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:
   1. **Scope of Review** – the Review should be broad and rigorous enough to provide [COMPANY NAME] and the ACCC with:
      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
      2. the Compliance Reports detailed at paragraph 11 of this Annexure.
   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.
   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:
      1. the ability to make enquiries of any officers, employees, representatives, and agents of [COMPANY NAME];
      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
      3. any reports made by the Compliance Officer to [COMPANY NAME’s governing body] regarding [COMPANY NAME]’s Compliance Program.
   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**

1. [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**):
   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;
   2. whether the Staff Training and Induction is effective, and if not, what aspects need to be further developed;
   3. whether [COMPANY NAME]’s Complaints Handling System is effective, and if not, what aspects need to be further developed; and
   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**)[[1]](#footnote-1), and if so, recommendations for rectifying the Material Failure.

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

[**COMPANY NAME]’s Response to Compliance Report**

1. [COMPANY NAME] will ensure that the Compliance Officer, within 14 days of receiving the Compliance Report:
   1. provides the Compliance Report to [COMPANY NAME’s governing body]; and
   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.
2. [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**

1. Where a Material Failure has been identified by the Reviewer in the Compliance Report, [COMPANY NAME] will:
   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
   2. inform the ACCC of any steps that have been taken to implement the recommendations made by the Reviewer in the Compliance Report; or
   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**

1. [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].
2. 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:
   1. Staff Training and Induction materials;
   2. an outline of the Complaints Handling System;
   3. [DELETE IF NOT APPLICABLE] an outline of the Product Safety Procedures;
   4. the Compliance Report that has been completed at the time of the request; and
   5. copies of the reports to [COMPANY NAME’s governing body] referred to in paragraphs 9 and 12 of this Annexure.

**ACCC Recommendations**

1. [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.

1. 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). [↑](#footnote-ref-1)