

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 coming into effect, [COMPANY NAME] will appoint a director or a senior manager of the business to be responsible for the development, implementation and maintenance of the Compliance Program (**the Compliance Officer**).

Compliance Officer Training

2. Within [x] months of the Undertaking coming into effect, [COMPANY NAME] will ensure that the Compliance Officer attends practical training focusing on [INSERT: *relevant sections or parts*] of the Competition and Consumer Act 2010 (CCA).
3. [COMPANY NAME] will ensure that the training is administered by a suitably qualified compliance professional or legal practitioner with expertise in competition and consumer law.

Staff Training

4. [COMPANY NAME] will cause all employees of [COMPANY NAME] whose duties could result in them being concerned with conduct that may contravene [INSERT: *relevant sections or parts of the CCA*] to receive regular (at least once a year) training administered by the Compliance Officer (once trained) or a qualified compliance professional or legal practitioner with expertise in competition and consumer law, that focuses on [INSERT: *relevant sections or parts*] of the CCA.

Complaints handling

5. Within [x] months of the Undertaking coming into effect [COMPANY NAME] will develop procedures for recording, storing and responding to competition and consumer law complaints (**Complaints Handling System**).

[INSERT 6. **ONLY IF THE MATTER IS RELATED TO PRODUCT SAFETY ISSUES**]

Product Safety

6. [COMPANY NAME] will:
 - 6.1. maintain up-to-date copies, at its business premises, of all consumer product safety standards and consumer information standards made or declared under the Australian Consumer Law (ACL), schedule 2 to the CCA that relate to products [COMPANY NAME] supplies (**the Standards**).
 - 6.2. ensure that the products supplied that are subject to the Standards comply with the relevant standard.
 - 6.3. develop, implement and maintain recall procedures that enable products supplied by [COMPANY NAME] that do not comply with the Standards to be efficiently and effectively withdrawn from the market and returned to [COMPANY NAME].

Reports to Directors/Governing Body

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

Compliance Review

8. [COMPANY NAME] will, at its own expense, cause an annual review of the Compliance Program (**the Review**) to be carried out in accordance with each of the following requirements:
 - 8.1. Scope of Review** – the Review should be broad and rigorous enough to provide [COMPANY NAME] and the ACCC with:
 - 8.1.1. verification that [COMPANY NAME] has in place a Compliance Program that complies with the requirements of the Undertaking and is suitable for the size and structure of [COMPANY NAME];
 - 8.1.2. the Compliance Reports detailed at paragraph 9 below.
 - 8.2. Independent Reviewer** – [COMPANY NAME] will ensure that each Review is carried out by a suitably qualified, independent compliance professional with expertise in competition and consumer law (**the Reviewer**). The Reviewer will qualify as independent on the basis that he or she:
 - 8.2.1. did not design or implement the Compliance Program;

- 8.2.2. is not a present or past staff member or director of [COMPANY NAME];
 - 8.2.3. has not acted and does not act for, and does not consult and has not consulted to, [COMPANY NAME] in any competition or consumer law related matters, other than performing Reviews under this Undertaking, and
 - 8.2.4. has no significant shareholding or other interests in [COMPANY NAME].
- 8.3. **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 the [COMPANY NAME]'s possession or control, including without limitation:
- 8.3.1. the ability to make enquiries of any officers, employees, representatives, and agents of [COMPANY NAME];
 - 8.3.2. documents relating to [COMPANY NAME]'s Compliance Program, including documents relevant to [COMPANY NAME]'s Complaints Handling System, and competition and Staff Training;
 - 8.3.3. any reports made by the Compliance Officer to [COMPANY NAME]'s governing body regarding [COMPANY NAME]'s Compliance Program.
- 8.4. [COMPANY NAME] will ensure that a Review is completed within one year of this Undertaking coming into effect and that a subsequent review is completed within each year for [x] years.

Compliance Reports

9. [COMPANY NAME] will use its best endeavours to ensure that within [x] days of a Review, the Reviewer includes the following findings of the Review in a report to [COMPANY NAME] (**the Compliance Report**):
- 9.1. whether the Compliance Program of [COMPANY NAME] includes all the elements detailed in paragraphs 1-7 above, and if not, what elements need to be included or further developed;
 - 9.2. whether the Staff Training is effective, and if not, what aspects need to be further developed;
 - 9.3. whether [COMPANY NAMES]'s Complaints Handling System is effective, and if not, what aspects need to be further developed;
 - 9.4. 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**), and if so, recommendations for rectifying the Material Failure/s¹.

[COMPANY NAME] Response to Compliance Reports

10. [COMPANY NAME] will ensure that the Compliance Officer, within 14 days of receiving the Compliance Report:
 - 10.1. provides the Compliance Report to the governing body of [COMPANY NAME];
 - 10.2. 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.
11. [COMPANY NAME] will implement promptly and with due diligence any recommendations made by the Reviewer in the Compliance Report to address a Material Failure.

Reporting Material Failures to the ACCC

12. Where a Material Failure has been identified by the Reviewer in the Compliance Report, [COMPANY NAME] will:
 - 12.1. provide a copy of that Compliance Report to the ACCC within [X] days of [COMPANY NAME]'s governing body receiving the Compliance Report; and
 - 12.2. inform the ACCC of any steps that have been taken to implement the recommendations made by the Reviewer in the Compliance Report; or
 - 12.3. otherwise outline the steps [COMPANY NAME] 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

13. [COMPANY NAME] will maintain a record of and store all documents relating to and constituting the Compliance Program for a period not less than [x years – being the number of years compliance training is required and an additional 2 years following that period].

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 a 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

14. If requested by the ACCC during the period of [x years - being the number of years compliance training is required and an additional 2 years following that period] [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:

14.1. an outline of the Complaints Handling System;

14.2. Staff Training materials;

14.3. all Compliance Reports that have been completed at the time of the request;

14.4. copies of the reports to the governing body referred to in paragraph 7 and paragraph 10.

ACCC Recommendations

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