

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 coming into effect, [COMPANY NAME] 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 (**the Compliance Officer**).
2. Within [x] months of the Undertaking coming into effect, [COMPANY NAME] will appoint a suitably qualified, internal or external, compliance professional with expertise in competition and consumer law (**the Compliance Advisor**).
3. [COMPANY NAME] will instruct the Compliance Advisor to conduct a competition and consumer law risk assessment within [x] months of being appointed as the Compliance Advisor (**Risk Assessment**).
4. [COMPANY NAME] will use its best endeavours to ensure that the Risk Assessment covers the following matters, to be recorded in a written report (**Risk Assessment Report**):
 - 4.1. identifies the areas where [COMPANY NAME] is at risk of breaching [INSERT: *relevant sections or parts*] of the *Competition and Consumer Act 2010 (Cth)* (CCA);
 - 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] having regard to the above assessment.

Compliance Policy

5. [COMPANY NAME] will, within [x] days of the Undertaking coming into effect, issue a policy statement outlining [COMPANY NAME]'s commitment to compliance with the CCA (**the Compliance Policy**).
6. [COMPANY NAME] will ensure that the Compliance Policy:

- 6.1. contains a statement of commitment to compliance with the CCA;
- 6.2. contains an outline of how commitment to CCA compliance will be realised within [COMPANY NAME];
- 6.3. contains a requirement for all staff to report any Compliance Program related issues and CCA 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 CCA and will not indemnify them in the event of any court proceedings in respect of that contravention.

Complaints Handling System

7. [COMPANY NAME] will ensure that the Compliance Program includes a competition and consumer law complaints handling system (**the Complaints Handling System**).
8. [COMPANY NAME] will use its best endeavours to ensure this system is consistent with AS/NZS 10002:2014 *Guidelines for complaint management in organizations*, 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 ensure that the Compliance Program includes whistleblower protection mechanisms to protect those coming forward with competition and consumer law complaints.
11. [COMPANY NAME] will use its best endeavours to ensure that these mechanisms are consistent with AS 8004:2003 *Whistleblower protection programs for entities*, tailored as required to [COMPANY NAME]'s circumstances.

Staff Training

12. [COMPANY NAME] will ensure that the Compliance Program provides for regular (at least once a year) training for all directors, officers, employees, representatives and agents of [COMPANY NAME], whose duties could result in them being concerned with conduct that may contravene [INSERT: *the relevant parts or sections*] of the CCA.

13. [COMPANY NAME] must ensure that the training is conducted by a suitably qualified compliance professional or legal practitioner with expertise in competition and consumer law.
14. [COMPANY NAME] will ensure that the Compliance Program includes a requirement that awareness of competition and consumer compliance 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 [INSERT: *the relevant parts or sections*] of the CCA.

[INSERT 15. ONLY IF THE MATTER IS RELATED TO PRODUCT SAFETY ISSUES]

Product Safety

15. [COMPANY NAME] will:
 - 15.1. 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, schedule 2 to the CCA that relate to products [COMPANY NAME] supplies (**the Standards**);
 - 15.2. ensure that the products supplied that are subject to the Standards, comply with the relevant standard; and
 - 15.3. 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 Board/Senior Management

16. [COMPANY NAME] will ensure that the Compliance Officer reports to the Board and/or senior management every [x] months on the continuing effectiveness of the Compliance Program.

Compliance Review

17. [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:
 - 17.1. **Scope of Review**– the Review should be broad and rigorous enough to provide [COMPANY NAME] and the ACCC with:
 - 17.1.1. a verification that [COMPANY NAME] has in place a Compliance Program that complies with each of the requirements detailed in paragraphs 1 – 16 above; and

17.1.2. the Compliance Reports detailed at paragraph 18 below.

17.2. **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:

17.2.1. did not design or implement the Compliance Program;

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

17.2.3. 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 related matters, other than performing Reviews under this Undertaking; and

17.2.4. has no significant shareholding or other interests in [COMPANY NAME].

17.3. **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:

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

17.3.2. documents relating to the Risk Assessment, including the Risk Assessment Report;

17.3.3. documents relating to [COMPANY NAME]'s Compliance Program, including documents relevant to [COMPANY NAME]'s Compliance Policy, Complaints Handling System, Staff Training and induction program ; and

17.3.4. any reports made by the Compliance Officer to the Board or senior management regarding [COMPANY NAME]'s Compliance Program.

17.4. [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

18. [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 provided to [COMPANY NAME], (**the Compliance Report**):

- 18.1. whether the Compliance Program of [COMPANY NAME] includes all the elements detailed in paragraphs 1 – 16 above, and if not, what elements need to be included or further developed;
- 18.2. whether the Compliance Program adequately covers the parties and areas identified in the Risk Assessment, and if not, what needs to be further addressed;
- 18.3. whether the Staff Training and induction is effective and if not, what aspects need to be further developed;
- 18.4. whether [COMPANY NAME]'s Complaints Handling System is effective and if not, what aspects need to be further developed;
- 18.5. whether [COMPANY NAME] is able to provide confidentiality and security to competition and consumer law whistleblowers, and whether staff are aware of the whistleblower protection mechanisms;
- 18.6. whether there are any material deficiencies in [COMPANY NAME]'s 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/s¹.

[COMPANY NAME] response to Compliance Reports

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

- 19.1. provides the Compliance Report to the Board or relevant governing body;
- 19.2. 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 [COMPANY NAME] can implement any recommendations made by the Reviewer in the Compliance Report to rectify the Material Failure.

20. [COMPANY NAME] will implement promptly and with due diligence any recommendations made by the Reviewer in the Compliance Report to address a Material Failure.

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.

Reporting Material Failures to the ACCC

21. Where a Material Failure has been identified by the Reviewer in the Compliance Report, [COMPANY NAME] will:
 - 21.1. provide a copy of that Compliance Report to the ACCC within [x] days of the Board or relevant governing body receiving the Compliance Report; and
 - 21.2. inform the ACCC of any steps that have been taken to implement the recommendations made by the Reviewer in the Compliance Report; or
 - 21.3. 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

22. [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].
23. 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] following the Undertaking coming into effect, [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:
 - 23.1. the Compliance Policy;
 - 23.2. the Risk Assessment Report;
 - 23.3. an outline of the Complaints Handling System;
 - 23.4. Staff Training materials and induction materials;
 - 23.5. all Compliance Reports that have been completed at the time of the request;
 - 23.6. copies of the reports to the Board and/or senior management referred to in paragraphs 16 and paragraph 19.

ACCC Recommendations

24. [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.

