

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and Consumer Act 2010* (Cth)
by Mable Technologies Pty Ltd ACN 162 890 379

1. Person(s) Giving the Undertaking

- 1.1. This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Mable Technologies Pty Ltd ACN 162 890 379 (**Mable**), for the purposes of section 87B of the *Competition and Consumer Act 2010* (**CCA**) (**Undertaking**).

2. Background

Mable

- 2.1. Mable provides an online platform that connects people looking for care support (**Clients**) with independent support workers (**Support Workers**) (together, **Members**). Support services provided through Mable include social support, domestic support, nursing services and allied health services. Approximately half of Mable's Clients are participants of the National Disability Insurance Scheme (**NDIS**).
- 2.2. There is no charge to sign up to the Mable platform. When signing up, Clients and Support Workers must agree to Mable's Terms of Use. Clients and Support Workers can then connect directly on the Mable platform and enter into a Service Agreement by which the Support Worker provides care services to the Client as an independent contractor. The Service Agreement is completed through the Mable platform, but Mable is not a party to the agreement.
- 2.3. Once the support services are provided, the Client's payment to the Support Worker is made through Mable's online platform. Mable collects the payment, deducts its fees, and remits the balance to the Support Worker using its online platform. Fees are charged as a percentage of the support cost (per hour).

3. ACCC Concerns

Unfair contract terms

- 3.1. From 9 November 2023 to 22 August 2024 Mable entered into standard form Terms of Use with Members.
- 3.2. The Terms of Use described at paragraph 3.1 contained terms that provided for:
 - (a) deemed acceptance of service logs of the support services provided by Support Workers to Clients, when Clients do not review and accept the service log within 24 hours of its submission by the Support Worker, with no contractual right to opt-out or to dispute the invoice issued following deemed acceptance of the service log. This triggered the processing of payments without the express approval by the Client of what services were provided to them;

- (b) unilateral variation of fees by Mable at any time as notified on Mable's platform, without also providing a reasonable period of notice to Members prior to the change of fees taking effect;
- (c) unilateral amendments to the Terms of Use by Mable, without also providing a reasonable period of notice to Members prior to the amendments taking effect;
- (d) Mable to receive a minimum penalty fee of \$5,000 from Clients and Support Workers for avoiding fees that would otherwise be payable to Mable. Support Workers are liable to pay the fee if they provide, or seek to provide, support services to a Client outside the Mable platform within 12 months of the Support Worker's introduction to that Client or within 12 months of the Support Worker providing services to that Client through the Mable platform (the specified avoidance conduct);
- (e) Mable to receive a minimum penalty fee of \$5,000 from Members for encouraging or soliciting the specified avoidance conduct or failing to immediately notify Mable of attempts to engage in specified avoidance conduct;
- (f) Mable's liability to be excluded for any claim or loss incurred by a Member related to the Member's use of, access to, or transactions involving Mable's platform (regardless of the basis of the claim or loss) and Mable's liability to be otherwise limited to a refund of the amounts paid by the Member in the 12 months preceding when the liability arose, without also providing an equivalent limitation of liability for Members;
- (g) Members to indemnify Mable against all third-party claims and liabilities incurred by Mable in any way in connection with the Member's use of Mable's platform and services and the provision of support services (regardless of the basis of the claim or loss);
- (h) Mable to rely on the Terms of Use to refuse any claim brought by a Member against Mable in breach of Mable's liability exclusion and limitation and indemnity clauses at paragraphs 3.2(f) and (g); and
- (i) Mable to require Members to pay costs reasonably incurred by Mable in enforcing its rights under the Terms of Use,

(collectively, the **Terms of Concern**).

3.3. The ACCC considers that the Terms of Concern are unfair contract terms within the meaning of sections 23 and 24 of the Australian Consumer Law (**ACL**), Schedule 2 of the CCA.

4. Admissions and Resolution

4.1. In response to the ACCC's concerns, Mable:

- (a) admits that the Terms of Concern are unfair within the meaning of sections 23 and 24 of the ACL;
- (b) has amended its website and Terms of Use to amend or remove the Terms of Concern;

(c) has cooperated with the ACCC during its investigation; and

(d) has offered this Undertaking to the ACCC to address the ACCC's concerns.

5. Commencement of this Undertaking

5.1. This Undertaking comes into effect when:

(a) this Undertaking is executed by Mable; and

(b) this Undertaking so executed is accepted by the ACCC,

(Commencement Date).

5.2. This Undertaking has effect for three (3) years from the Commencement Date (**Term**).

5.3. From the Commencement Date, Mable undertakes to assume the obligations set out in paragraphs 6.1 and 6.2 of this Undertaking for the purposes of section 87B of the CCA.

6. Undertaking

6.1. Mable undertakes that:

(a) it will not enter into Terms of Use with Members that contain any of the Terms of Concern or terms to that effect, or enforce or rely on any of the Terms of Concern;

(b) it will clearly and prominently communicate the material terms of its Terms of Use to Clients and Support Workers prior to and during the sign up process on its website, including but not limited to terms relating to:

(i) the deemed approval process and all options and recourse available to Clients in relation to the deemed approval function; and

(ii) what constitutes the specified avoidance conduct and the consequences of engaging in the specified avoidance conduct, making clear the conduct that is prohibited under Mable's Terms of Use and that it relates to arranging support services with another Member off Mable's platform or otherwise avoiding fees that could be payable to Mable,

by, within 90 days of signing this Undertaking:

(iii) publishing this information on Mable's website on the FAQs web page located at the URL '<http://mable.com.au/faqs/>' in the same size and font used on the FAQs web page as at the date of this Undertaking, but otherwise headings are to be in a font of no less than 14 point and remaining text is to be in a font of no less than 12 point, both in a strong colour and clear font on a white background; and

(iv) publishing this information during the online sign up process by way of an explanatory statement that Clients and Support Workers will be required to acknowledge before creation of an account on the Mable platform. The explanatory

statement will be displayed with headings to be in a clear font size so that Clients and Support Workers understand the Terms.

Compliance Program

6.2. Mable undertakes to, at its own expense:

- (a) establish and implement a Level 3 compliance program (**Compliance Program**) in accordance with the requirements and timelines set out in **Annexure A**, being a program designed to minimise Mable's risk of future contraventions of the ACL and to ensure its awareness of the responsibilities and obligations in relation to the requirements of the ACL; and
- (b) maintain and continue to implement the Compliance Program for the Term of this Undertaking.

7. Administration

- 7.1. The ACCC may authorise a member of the ACCC or an ACCC staff member to exercise a decision making function under this Undertaking on its behalf.
- 7.2. The ACCC may, from time to time, extend the date by which any of the obligations in this Undertaking is to be satisfied. Any request for an extension must be express and in writing. Any extension granted by the ACCC will be communicated in writing.
- 7.3. Information and documents required under this Undertaking will be provided via the ACCC's Undertakings Portal whenever possible.

8. ACCC Enquiries

- 8.1. For the purpose of monitoring compliance with this Undertaking, the ACCC may make reasonable enquiries with Mable, and Mable will, at its own expense, respond to such enquiries within a reasonable time.
- 8.2. If requested by the ACCC during the Term of this Undertaking, Mable will, at its own expense, provide to the ACCC copies of such documents (excluding legally privileged documents) in its power, possession or control evidencing Mable's compliance with the obligations set out in this Undertaking.

9. Acknowledgments

9.1. Mable acknowledges that:

- (a) the ACCC will make this Undertaking publicly available including by publishing it on the [Section 87B Undertakings Register](#) on the ACCC's website;
- (b) the ACCC will, from time to time, make public reference to this Undertaking including in news media statements and in ACCC publications;

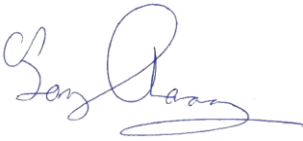

(c) the ACCC may, from time to time, publicly report on compliance with this Undertaking;
and

(d) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

9.2. Nothing in this Undertaking is intended to restrict the right of the ACCC to take action under the ACL and the CCA for penalties or other remedies in the event Mable does not fully implement and/or perform its obligations under this Undertaking or in relation to any other event.

Executed as an Undertaking

Executed by Mable Technologies Pty Ltd ACN 162 890 379 pursuant to section 127(1) of the *Corporations Act 2001* by:

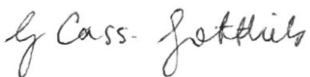
	
Signature of director	Peter Scutt (Jun 4, 2025 13:12 GMT+10) Signature of a director
Tony Charara	Peter Scutt
Name of director (print)	Name of director
04-Jun-2025	04-Jun-2025
Date	Date

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

12 June 2025

Date

and signed on behalf of the Commission:



[Insert as applicable Chair/Deputy Chair]

12 June 2025

Date

Annexure A

COMPETITION AND CONSUMER COMPLIANCE PROGRAM

LEVEL 3

Mable Technologies Pty Ltd ACN 162 890 379 (**Mable**) will establish a competition and consumer compliance program (**Compliance Program**) that complies with each of the following requirements:

Appointments

1. Within 2 months of the undertaking under s 87B of the *Competition and Consumer Act 2010* (Cth) (**CCA**) provided by Mable to the ACCC (**Undertaking**) coming into effect (**Commencement Date**), Mable will appoint a director or a senior manager with suitable qualifications or experience in corporate compliance to ensure the Compliance Program is effectively designed, implemented and maintained (**Compliance Officer**).
2. Within 2 months of the Commencement Date, Mable will appoint a suitably qualified, internal or external, compliance professional with expertise in competition and consumer law (**Compliance Advisor**).

Risk Assessment

3. Mable will instruct the Compliance Advisor to conduct a consumer law risk assessment within 3 months of being appointed as the Compliance Advisor (**Risk Assessment**) and to provide a written report outlining their findings (**Risk Assessment Report**) to Mable within 2 months of conducting the Risk Assessment.
4. Mable will use its best endeavours to ensure that the Risk Assessment Report:
 - 4.1. identifies the areas where Mable is at risk of breaching the Australian Consumer Law (**ACL**), taking into account but not limited to areas which are the subject of the ACCC's concerns against Mable as set out in the Undertaking;
 - 4.2. assesses the likelihood of these risks occurring;
 - 4.3. identifies where there may be gaps in Mable's existing procedures for managing these risks; and
 - 4.4. provides recommendations for any action to be taken by Mable based on the Risk Assessment.

Compliance Policy

5. Mable will, within 30 days of the Commencement Date, issue a policy statement outlining Mable's commitment to compliance with the CCA (**Compliance Policy**).
6. Mable will ensure the Compliance Policy contains:
 - 6.1. a statement of commitment to compliance with the ACL;
 - 6.2. an outline of how the commitment to ACL compliance will be achieved within Mable;

- 6.3. a requirement for all staff to report any Compliance Program related issues and ACL compliance concerns to the Compliance Officer; and
 - 6.4. a clear statement that Mable will take action internally against any persons who are involved in a contravention of the ACL and will not indemnify them in the event of any court proceedings in respect of that contravention.
7. Mable will ensure that all executive or non-executive directors and officers, employees, representatives and agents of Mable are made aware of the Compliance Policy when it is issued and that it forms part of the Staff Training and Induction outlined at paragraphs 10 to 12 of this Annexure.

Complaints Handling System

- 8. Mable 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 Mable's circumstances.
- 9. Mable will ensure that staff and customers are made aware of the Complaints Handling System.

Staff Training and Induction

- 10. Mable will ensure that the Compliance Program includes a requirement for ACL compliance training at least once a year (**Staff Training**) for all:
 - 10.1. officers, employees, representatives and agents of Mable, whose duties could result in them being concerned with conduct that may contravene the ACL; and
 - 10.2. executive and non-executive directors of Mable.
- 11. Mable will ensure that the Compliance Program includes a requirement that awareness of Mable's obligations under the ACL forms part of the induction (**Induction**) of all new:
 - 11.1. officers, employees, representatives and agents of Mable whose duties could result in them being concerned with conduct that may contravene the ACL; and
 - 11.2. executive or non-executive directors of Mable.
- 12. Mable will ensure that the Staff Training and the CCA compliance training component of Induction is presented by a suitably qualified compliance professional or legal practitioner with expertise in competition and consumer law.

Reports to Director

- 13. Mable will ensure that the Compliance Officer reports to Mable's directors every 6 months on the continuing effectiveness of the Compliance Program.

Compliance Review

- 14. Mable 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:
 - 14.1. **Scope of Review** – the Review should be broad and rigorous enough to provide Mable and the ACCC with:

14.1.1. verification that Mable has in place a Compliance Program that complies with each of the requirements detailed in paragraphs 1 to 13 of this Annexure; and

14.1.2. the Compliance Reports detailed at paragraph 15 of this Annexure.

14.2. Independence of Review – Mable 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 they:

14.2.1. did not design or implement the Compliance Program;

14.2.2. is not a present or past staff member or director of Mable;

14.2.3. has not acted and does not act for, and does not consult and has not consulted to, Mable in any competition and consumer law matters, other than performing Reviews and Risk Assessment Reports; and

14.2.4. has no significant shareholding or other interests in Mable.

14.3. Evidence – Mable 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 Mable's possession or control, including without limitation:

14.3.1. the ability to make enquiries of any officers, employees, representatives, and agents of Mable;

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

14.3.3. documents relating to Mable's Compliance Program, including documents relevant to Mable's Compliance Policy, Complaints Handling System, and Staff Training and Induction; and

14.3.4. any reports made by the Compliance Officer to Mable's directors regarding Mable's Compliance Program.

14.4. Mable will ensure that a Review is completed within one year of the Commencement Date, and that a subsequent Review is completed annually for three years.

Compliance Report

15. Mable will use its best endeavours to ensure that within 30 days of the completion of a Review, the Reviewer includes the following findings of the Review in a report to the Compliance Officer of Mable (**Compliance Report**):

15.1. whether the Compliance Program of Mable includes all the elements detailed in paragraphs 1 to 13 of this Annexure and if not, what elements need to be included or further developed;

15.2. whether the Compliance Program adequately covers areas identified in the Risk Assessment, and if not, what needs to be further addressed;

- 15.3. whether the Staff Training and Induction is effective, and if not, what aspects need to be further developed;
- 15.4. whether Mable's Complaints Handling System is effective, and if not, what aspects need to be further developed; and
- 15.5. whether there are any material deficiencies in Mable's Compliance Program, or whether there are or have been instances of material non-compliance with the Compliance Program (**Material Failure**)¹, and if so, recommendations for rectifying the Material Failure.

Mable's Response to Compliance Report

16. Mable will ensure that the Compliance Officer, within 14 days of receiving the Compliance Report:
 - 16.1. provides the Compliance Report to Mable's directors; and
 - 16.2. where a Material Failure has been identified by the Reviewer in the Compliance Report, provides a report to Mable's directors identifying how Mable can implement any recommendations made by the Reviewer in the Compliance Report to rectify the Material Failure.
17. Mable 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

18. Where a Material Failure has been identified by the Reviewer in the Compliance Report, Mable will:
 - 18.1. provide a copy of the Compliance Report to the ACCC within 7 days of Mable's directors receiving the Compliance Report; and
 - 18.2. inform the ACCC of any steps that have been taken to implement the recommendations made by the Reviewer in the Compliance Report; or
 - 18.3. otherwise outline the steps that Mable 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

19. Mable will maintain copies of all documents relating to and constituting the Compliance Program for a period not less than 5 years from the Commencement Date and if requested by the ACCC during this period, Mable will, at its own expense, cause to be produced and provided to the ACCC copies of all documents constituting the Compliance Program, including:
 - 19.1. the Compliance Policy;
 - 19.2. the Risk Assessment Report;
 - 19.3. an outline of the Complaints Handling System;

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).

- 19.4. Staff Training and Induction materials;
- 19.5. the Compliance Report that has been completed at the time of the request; and
- 19.6. copies of the reports to Mable's directors referred to in paragraphs 13 and 16 of this Annexure.

ACCC Recommendations

- 20. Mable will promptly and fully implement any recommendations that the ACCC considers reasonably necessary to ensure that Mable maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking.









Mable Technologies Pty Ltd - DRAFT Section 87B Undertaking - TG 3 June 2025 (91405090v5).DOCX

Final Audit Report

2025-06-04

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-  Signer peter.scutt@mable.com.au entered name at signing as Peter Scutt
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