

# PROACTIVE COMPLIANCE DEED

Between

The Commonwealth of Australia

(as represented by the Office of the Fair Work Ombudsman)

and

La Porchetta Franchising Pty Ltd (ABN 48 146 228 471)

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## Schedule 1

### Details:

Parties	Office of the Fair Work Ombudsman (FWO) and La Porchetta Franchising Pty Ltd		
<b>FWO</b>	Name	Commonwealth of Australia (as represented by the Office of the Fair Work Ombudsman)	
	ABN	43 884 188 232	
	Address	The Fair Work Ombudsman GPO Box 9887 MELBOURNE VIC 3001	
	Telephone	02 8293 4940	
	Email	<a href="mailto:romit.tappoo@fwo.gov.au">romit.tappoo@fwo.gov.au</a>	
	Contact Person	Romit Tappoo Assistant Director, Strategic Partnerships	
	<b>Employer</b>	Name	La Porchetta Franchising Pty Ltd
		ABN	48 146 228 471
Address		192 Mahoneys Road Thomastown VIC 3074	
Telephone		03 9460 6700	
Fax		03 9460 3099	
Attention		Sara Pantaleo Chief Executive Officer	

## **1. Preamble**

- 1.1 The FWO is an independent statutory agency established under the FW Act. The FWO's chief functions are to promote harmonious, productive and cooperative workplace relations and compliance with Commonwealth workplace laws.
- 1.2 La Porchetta is an Australian-based restaurant franchise business. There are approximately 40 franchisees across Australia operating 45 restaurants.
- 1.3 La Porchetta and its Franchisees together employ approximately 700 employees in Australia.

## **2. Background to this Deed**

- 2.1 La Porchetta is committed to complying with all legal obligations towards its employees and doing everything it can to ensure that its Franchisees comply with all legal obligations towards their employees.
- 2.2 To show its commitment to compliance and to promote harmonious, productive and cooperative workplaces, La Porchetta entered into a Compliance Partnership with the FWO in April 2014. This partnership was formalised in a Proactive Compliance Deed.
- 2.3 At the core of this partnership were actions by La Porchetta to ensure compliance with workplace laws at sites operated by La Porchetta and those operated by Franchisees.
- 2.4 La Porchetta undertook these activities to demonstrate the importance of ensuring that all workers who contributed to the success of its brand were receiving their full employment entitlements.
- 2.5 Due to the results achieved to date as a consequence of the previous Compliance Partnership, La Porchetta wants to continue the formal partnership with FWO, maintain and enhance its systems and processes and publicly demonstrate its ongoing commitment to compliance with Commonwealth workplace laws at all La Porchetta branded sites.
- 2.6 Both parties are committed to the success of this partnership and look forward to using it as an example of the benefits of proactive compliance.
- 2.7 In accordance with this Deed, the FWO will provide assistance to La Porchetta where appropriate and La Porchetta will maintain, and enhance where appropriate, a number of proactive measures to promote and ensure compliance.
- 2.8 The parties agree as follows:

## Part I – Communication about our Compliance Partnership

### 3. *Internal communication*

- 3.1 As a sign of the commitment of both the FWO and La Porchetta to the Compliance Partnership, both parties will communicate its existence and its purpose to their employees.
- 3.2 Within 14 days of the commencement of this Deed, La Porchetta will provide to the FWO Contact Person a list of all La Porchetta restaurants within the La Porchetta network, including franchisor and franchisee sites. This list will include the franchisee entities (and associated ACN and ABN numbers if known by La Porchetta). This information will be considered confidential.

### 4. *Communication by La Porchetta to Employees*

- 4.1 La Porchetta will communicate the existence of the Deed (which formalises the terms of the Compliance Partnership) and make a copy of the Deed available to employees as follows:

**Table 4.1**

Item	Who	How	When
1	(a) all current employees of La Porchetta	via an internal communication method such as email, internal memo or intranet	within 14 days of the commencement of this Deed
2	(a) all future employees of La Porchetta	via an internal communication method such as email, internal memo or intranet	within 14 days of the commencement of each new employee's employment

- 4.2 The communication referred to in clause 4.1 is to be in the following form, or words as agreed to by the FWO:

“La Porchetta is committed to ongoing compliance with Commonwealth workplace laws throughout our franchise network, and so we have entered into a further Compliance Partnership with the Office of the Fair Work Ombudsman (**FWO**).

This is the second Compliance Partnership La Porchetta has entered into with the FWO (the workplace relations regulator) as we want to demonstrate to our staff and the broader community that we are committed to promoting harmonious, productive and cooperative workplaces. We believe, based on the success of our previous partnership that working with the FWO in this way has had a positive impact on our employees and our business.

To formalise this partnership, we have signed a new Proactive Compliance Deed (**Deed**) with the FWO. As with the previous Deed, this second Deed places obligations on both parties and demonstrates our commitment to compliance with workplace laws.

La Porchetta has made the Deed available to you through the intranet (on La Connected). You are also able to access information about entitlements and rights at work by contacting Dan Feldman of HR Legal, who has been appointed by La Porchetta as an **Employee Liaison Officer, on (03) 9948 2450 or by email at [dfeldman@hrlegal.com.au](mailto:dfeldman@hrlegal.com.au)**, or such other person as nominated by La Porchetta from time to time. You may also visit the FWO website at [www.fairwork.gov.au](http://www.fairwork.gov.au) or make an online enquiry by registering with the FWO My Account portal at [www.fairwork.gov.au/register](http://www.fairwork.gov.au/register)”.

## 5. **Communication by La Porchetta to Franchisees**

- 5.1 La Porchetta will communicate the existence of the Deed and make a copy of the Deed available to Franchisees as follows:

**Table 5.1**

Item	Who	How	When
1	all current franchisees	via an internal communication method such as email, internal memo or intranet	within 14 days of the commencement of this Deed
2	all future franchisees	via formal correspondence such as letter, email or fax	prior to either parties' execution of the franchise agreement

- 5.2 The communication referred to in clause 5.1 is to be in the following form, or words as agreed to by the FWO:

“La Porchetta is committed to ongoing compliance with Commonwealth workplace laws throughout our franchise network, and so we have entered into a further Compliance Partnership with the Office of the Fair Work Ombudsman (**FWO**).

This is the second Compliance Partnership La Porchetta has entered into with the FWO (the workplace relations regulator) as we want to demonstrate to our staff and the broader community that we are committed to promoting harmonious, productive and cooperative workplaces. We believe, based on the success of our previous partnership that working with the FWO in this way has had a positive impact on our employees and our business.

To formalise this partnership, we have signed a new Proactive Compliance Deed (**Deed**) with the FWO. As with the previous Deed, this second Deed places obligations on both parties and demonstrates our commitment to compliance with workplace laws.

La Porchetta requires all franchisees to commit to ensuring compliance with workplace laws and engage with the FWO on matters arising as a result of workplace complaints.

La Porchetta has made the Deed available to all franchisees through the intranet (on La Connected). You are also able to access information about entitlements and rights at work by contacting Dan Feldman of HR Legal, who has been appointed by La Porchetta as an **Employee Liaison Officer, on (03) 9948 2450 or by email at [dfeldman@hrlegal.com.au](mailto:dfeldman@hrlegal.com.au)**, or such other person as nominated by La Porchetta from time to time. You may also visit the FWO website at [www.fairwork.gov.au](http://www.fairwork.gov.au) or make an online enquiry by registering with the FWO My Account portal at [www.fairwork.gov.au/register](http://www.fairwork.gov.au/register)”

- 5.3 La Porchetta will actively encourage all franchisees to make the communication referred to in clause 5.2 available to all of their staff, including posting copies on any staff intranet or on notice boards.

## **6. *Communication by the FWO***

- 6.1 The FWO will publish an article on its intranet alerting its staff to the continuation of the Compliance Partnership between La Porchetta and the FWO. This article will include reference to the nominated FWO Contact Person and instruct that the FWO Contact Person be made aware of all FWO interactions with the La Porchetta network and/or their current, former and future employees.

- 6.2 The FWO will make a copy of the Deed available to its employees throughout the life of the Deed.
- 6.3 Nothing in this clause 6 is intended to limit the use that the FWO may make of the Deed, having regard to the acknowledgements in clause 28 below.

## **Part II – Systems and processes to promote compliance**

### **7. *La Porchetta employees***

- 7.1 La Porchetta will ensure that it complies at all times and in all respects with relevant Commonwealth workplace laws and will review and update its systems and processes to ensure ongoing compliance.

### **8. *La Porchetta Franchisees***

- 8.1 La Porchetta will take all reasonable steps to ensure compliance with relevant Commonwealth workplace laws by its Franchisees, including by reviewing and updating its systems and processes to help Franchisees comply with relevant Commonwealth workplace laws.

### **9. *FWO support***

- 9.1 Within six (6) weeks of the end of each financial year, La Porchetta will provide to the FWO details of:
- (a) its review of the systems and processes in place to ensure ongoing compliance with relevant Commonwealth workplace laws by La Porchetta and its Franchisees; and
  - (b) any updates required to its systems and processes as a result of the review, including the timing of implementing such updates.
- 9.2 The FWO will provide feedback to La Porchetta on the details provided by La Porchetta in accordance with clause 9.1. La Porchetta will seek to implement any feedback the FWO provides.
- 9.3 Upon request by La Porchetta, or on its own initiative, the FWO will provide guidance on issues that may arise from time to time in relation to compliance with Commonwealth workplace laws by La Porchetta or its Franchisees.

- 9.4 Should this Deed commence during the 2018/2019 financial year, La Porchetta will provide the details of their 2017/18 review within 6 weeks of commencement of this Deed.

### **Part III – Workplace Relations training**

#### **10. Annual Workplace Relations training**

- 10.1 La Porchetta will offer training concerning compliance with Commonwealth workplace laws on an annual basis in June each year (**Annual Training**) to its employees, and employees of its Franchisees, who perform human resources, payroll, managerial and supervisory duties (**Managerial Employees**).
- 10.2 Within 14 days of each Annual Training session provided by La Porchetta during the life of this Deed, La Porchetta will provide the FWO with: an outline of the course content; copies of any written materials provided; and to the extent possible, a list of participants in the Annual Training.
- 10.3 The FWO may provide feedback to La Porchetta on the details provided by La Porchetta in accordance with clause 10.2. La Porchetta will seek to implement any feedback the FWO provides at future Annual Training sessions.

#### **11. My Account**

- 11.1 La Porchetta will encourage its Franchisees and their Managerial Employees to establish a 'My Account' on the [FWO](#) website.

#### **12. FWO support**

- 12.1 The FWO may, upon request by La Porchetta or on its own initiative, provide appropriate workplace relations training materials that La Porchetta can use as a resource. The FWO will not be responsible for any errors that occur as a result of La Porchetta altering the materials.
- 12.2 The FWO will, upon request by La Porchetta, provide assistance to La Porchetta staff and its Franchisees to access the FWO online learning modules.

## **Part IV – Workplace enquiries and self-resolution of Requests for Assistance**

### **13. Enquiries**

- 13.1 If the FWO receives an enquiry (Enquiry) from a worker associated with La Porchetta and the person making the Enquiry has not previously raised the issue directly with La Porchetta, the FWO will refer the person to the La Porchetta Employee Liaison Officer or the La Porchetta Contact Person.
- 13.2 If the person making the Enquiry has previously contacted La Porchetta with the same Enquiry and believes the issue was not resolved, then the FWO will assist the relevant parties to resolve the issue in accordance with the FWO's ordinary processes.

### **14. Self-resolution of Requests for Assistance not alleging a Significant Contravention**

- 14.1 The FWO regularly and frequently receives requests for assistance from workers who may either not have received their full entitlements or may believe they have not received their full entitlements.
- 14.2 This Compliance Partnership seeks to handle those requests for assistance which don't involve significant contraventions in an efficient and effective manner as follows:
- (a) upon receiving a request for assistance, the FWO will review the request and assess as to whether it involves or alleges any significant contravention
  - (b) if an assessment is made that no significant contravention is involved, then the FWO will notify the La Porchetta Contact Person within 7 days (in accordance with clause 15 below)
  - (c) The FWO and La Porchetta expect that in the majority of cases these matters will be dealt with at the workplace level (see referral process below at clause 15).
- 14.3 In line with the FWO's Compliance and Enforcement Policy, the FWO reserves its right to investigate according to its ordinary processes any Request for Assistance that it considers alleges, or discloses conduct that may constitute, a Significant Contravention, or that is in the public interest to investigate. The FWO will notify La Porchetta of such an investigation when appropriate in accordance with its ordinary processes.

- 14.4 La Porchetta will abide by any confidentiality restrictions imposed by the FWO in relation to any information supplied under this Part, including any restriction which might be imposed by the FWO on notifying any Franchisee involved in the Request for Assistance (or the details of that request). The FWO retains the discretion not to provide information to La Porchetta under this Part where it would cause the FWO to breach any law, including the Privacy Act 1988 (Cth).
- 14.5 The FWO Compliance and Enforcement Policy is available on the [FWO website](#).

**15. FWO referrals**

- 15.1 The FWO will refer Requests for Assistance to La Porchetta in accordance with the processes set out in Table 15.1 below:

**Table 15.1**

Item	Trigger	FWO actions	Timeframe
1	Where FWO receives a Request for Assistance that does not allege or disclose a Significant Contravention by La Porchetta or a Franchisee	FWO will: <ul style="list-style-type: none"> <li>(a) notify La Porchetta of the Request for Assistance;</li> <li>(b) provide details of the alleged non-compliance supplied by the person making the request;</li> <li>(c) notify La Porchetta of the name of a nominated contact person for dealing with each Request for Assistance; and</li> <li>(d) provide a template to La Porchetta to be used in reporting back to the FWO on</li> </ul>	Within 7 days of the Trigger specified in Item 1 of this Table occurring

Item	Trigger	FWO actions	Timeframe
		the outcome of each Request for Assistance referred by the FWO	



Item	Trigger	La Porchetta actions	Timeframe
		similarly affected employees, have been resolved.	
3	The Request for Assistance cannot be resolved by agreement between La Porchetta and the employee or former employee within 8 weeks of the Referral	La Porchetta will provide the FWO with a written report addressing the steps taken to try and resolve the matter and the reasons why the Request for Assistance could not be resolved between the parties	Within 8 weeks of the date of the Referral

16.2 Where La Porchetta provides the report to the FWO as prescribed in Item 3 of Table 16.1 above, the FWO will consider the report and assess whether any compliance activity is warranted by the FWO.

**17. Self-resolution as a Franchisor**

17.1 La Porchetta will attempt to resolve Requests for Assistance referred by the FWO in accordance with the processes set out in Table 17.1 below:

**Table 17.1**

Item	Trigger	La Porchetta actions	Timeframe
1	La Porchetta receives from FWO details relating to a request for assistance from an employee or former employee of a Franchisee ( <b>Referral</b> )	La Porchetta will assist the Franchisee to: <ul style="list-style-type: none"> <li>(a) resolve the Request for Assistance;</li> <li>(b) rectify any identified underpayments; and</li> <li>(c) resolve any other non-compliance issues identified by</li> </ul>	<p>Within 8 weeks of the date of the Referral</p> <p>La Porchetta will inform the FWO of the progress of the investigations</p>

Item	Trigger	La Porchetta actions	Timeframe
		the FWO, La Porchetta or the Franchisee (including for any similarly affected employees identified)	within 4 weeks from the date of the Referral
2	La Porchetta and the Franchisee resolve the Request for Assistance	La Porchetta will provide the FWO with evidence that:  (a) the Request for Assistance has been resolved and any identified underpayments have been rectified; and  (b) any other issues identified by the FWO La Porchetta, or the Franchisee, including for any similarly affected employees, have been resolved.	Within 7 days of the Trigger specified in Item 2 of this Table occurring
3	The Request for Assistance cannot be resolved by agreement between the Franchisee and the employee or former employee within 8 weeks of the Referral	La Porchetta will provide the FWO with a written report addressing the steps taken to try and resolve the matter and the reasons why the Request for Assistance could not be resolved between the parties	Within 8 weeks of the date of the Referral

- 17.2 Where La Porchetta provides the report to the FWO as prescribed in Item 3 of Table 17.1 above, the FWO will consider the report and assess whether any compliance activity is warranted by the FWO.

## **Part V – Self-auditing of the La Porchetta network**

### **18. Self-Audits**

- 18.1 During the term of this Deed, La Porchetta will, at its own expense, undertake three self-audits of selected restaurants operated by La Porchetta and its Franchisees (**Restaurants**) to assess compliance with relevant Commonwealth workplace laws.
- 18.2 The self-audits will be conducted in accordance with the methodology set out in clauses 19 to 24 below.
- 18.3 If a Franchisee declines to participate in a self-audit, La Porchetta will notify the FWO in writing within 14 days of the refusal and provide the Franchisee's identity and reasons given for not participating. The FWO will consider if any form of compliance activity is warranted by the FWO.

### **19. Self-Audit Period**

- 19.1 The self-audit period will be a two week period that:
- (a) occurs within:
    - i. in the case of the first self-audit, one to three months after the commencement of this Deed (**First Audit Quarter**); and
    - ii. in the case of the second self audit, 12 to 15 months after the commencement of this Deed (**Second Audit Quarter**); and
    - iii. in the case of the third self audit, 27-30 months after the commencement of this Deed (**Third Audit Quarter**); and
  - (b) includes a public holiday (if one occurs during any of the Audit Quarters).
- 19.2 Each self-audit is to be completed within 3 months of the end of the relevant Audit Quarter (**Audit Completion Date**).

### **20. Restaurants to be Self-Audited**

- 20.1 Each self-audit will include 10% of La Porchetta Restaurants that operated during the relevant Audit Quarter, of which:

- (a) 80% will be Restaurants operated by Franchisees;
  - (b) 20% will be Restaurants operated by La Porchetta; and
  - (c) there will be a proportionate mix of state, metropolitan and regional sites.
- 20.2 The same Restaurant cannot be selected to participate in both self-audits, unless otherwise agreed between the FWO and La Porchetta.

**21. Scope of the Self-Audits**

- 21.1 Each self-audit will apply to no less than four employees, or 10% of the employees employed at each selected Restaurant (whichever is greater).
- 21.2 Each self-audit will assess, at a minimum, compliance by La Porchetta and its Franchisees with relevant Commonwealth workplace laws during the self-audit period, including:
- (a) classification and employment status of employees;
  - (b) accuracy and consistency of employee records, including hours worked;
  - (c) leave and termination payments; and
  - (d) minimum ordinary hourly rates, loadings, allowances and penalty rates (where relevant).

**22. Contraventions identified during Self-Audits**

*Contraventions by La Porchetta*

- 22.1 Within 14 days of each Audit Completion Date, La Porchetta will rectify any contraventions of relevant Commonwealth workplace laws identified in the self-audit, including any identified underpayments, relating to its employees.

*Contraventions by Franchisees*

- 22.2 La Porchetta will take all reasonable steps to ensure that a Franchisee rectifies any contraventions of Commonwealth workplace laws, including any identified underpayments, relating to employees of the Franchisee, within 14 days of each Audit Completion Date.
- 22.3 La Porchetta will notify the FWO of any Franchisee that does not rectify identified contraventions of Commonwealth workplace laws within 14 days of the relevant Audit Completion Date and provide:
- (a) reasons why the Franchisee did not make rectification; and

- (b) details of any steps taken by La Porchetta against the Franchisee in respect of the failure to rectify.

The FWO will consider whether any form of compliance activity is warranted by the FWO.

### **23. *Audit Proposal and FWO support***

- 23.1 Not less than 14 days before the commencement of each Audit Quarter, La Porchetta will determine the proposed self-audit period and will direct HR Legal (or such other person as nominated by La Porchetta from time to time) to randomly select the Restaurants to be audited.
- 23.2 Before each self-audit the FWO will, upon request by La Porchetta, or on its own initiative, provide recommendations about particular restaurants that it considers should be audited in the self-audit and assist La Porchetta by providing guidance on the workplace obligations or entitlements subject to the self-audit. La Porchetta will audit any particular restaurants nominated by the FWO.
- 23.3 If requested by La Porchetta, or on its own initiative, the FWO will provide a template to be used to report to the FWO on the outcome of each self-audit.

### **24. *Self-Audit Reporting***

#### *Audit Report certified by Independent Third Party*

- 24.1 Within 28 days of each Audit Completion Date, La Porchetta will provide the FWO with a signed audit report prepared by an Independent Third Party engaged by La Porchetta to validate and certify each self-audit process and outcomes.
- 24.2 The self-audit report will include:
  - (a) details of the methodology used in the self-audit, Restaurants audited, the categories of employees included in the sample;
  - (b) details of any contraventions identified in the self-audit, including any Significant Contraventions; and
  - (c) evidence of rectification of contraventions and/or underpayments identified in the self-audit
  - (d) information relating to any significant contraventions for the FWO's consideration.

#### *Report outlining corrective actions*

- 24.3 Within 28 days of each Audit Completion Date, La Porchetta will provide the FWO with a separate report that:

- (a) identifies the causes of any contraventions of relevant Commonwealth workplace laws;
- (b) details the steps taken by La Porchetta to:
  - i. redress the contraventions, including any underpayments identified outside the audit period and any contraventions additionally identified by the Independent Third Party;
  - ii. prevent future contraventions; and
- (c) includes an executive summary of observations and findings.

#### *Use of Reports*

- 24.4 The reports provided by La Porchetta may be published by the FWO, provided that any personal details or information which may identify individuals or individual Restaurants or information that is confidential or commercially sensitive relating to La Porchetta or its franchisees is redacted. The FWO will provide La Porchetta with an opportunity to comment on the same prior to the publication of any report.
- 24.5 The FWO reserves the right to conduct its own audit or investigation of any Restaurant, including if:
- (a) for any reason, the FWO is not satisfied with the conduct of the self-audit or with the accuracy of the audit reports;
  - (b) any Franchisee does not rectify identified contraventions within 14 days of the relevant Audit Completion Date; or
  - (c) the self-audit report discloses a Significant Contravention.

## **Part VI – Reporting**

### **25. Reporting**

#### *First Year Report*

- 25.1 La Porchetta will prepare a first year report regarding the operation of the Deed during the first twelve months of its operation (**First Year Reporting Period**) addressing the following matters:
- (a) the actions taken by La Porchetta to address the requirements of the Deed;

- (b) details as to the number of Enquiries and Requests for Assistance referred by the FWO to La Porchetta;
- (c) details of the outcomes of any Enquiries and Requests for Assistance referred by the FWO to La Porchetta;
- (d) a summary of issues raised by employees directly with the La Porchetta Liaison Officer and how they were addressed
- (e) a summary of any changes to systems and processes in place for promoting compliance with Commonwealth workplace laws;
- (f) a summary of any relevant workplace relations issues that arose, including the responses to them by La Porchetta;
- (g) a summary of any workplace relations compliance training conducted for appropriate personnel;
- (h) a summary of the self-audit outcomes;
- (i) any identified benefits from being involved in the Compliance Partnership; and
- (j) any learnings from the Compliance Partnership

25.2 La Porchetta will provide the first year report to the FWO no later than 28 days after the completion of the First Year Reporting Period.

*Second Year Report*

25.3 La Porchetta will prepare a second year report regarding the operation of the Deed during the second twelve months of its operation (**Second Year Reporting Period**) addressing the following matters:

- (a) the actions taken by La Porchetta to address the requirements of the Deed;
- (b) details as to the number of Enquiries and Requests for Assistance referred by the FWO to La Porchetta;
- (c) details of the outcomes of any Enquiries and Requests for Assistance referred by the FWO to La Porchetta;
- (d) a summary of issues raised by employees directly with the La Porchetta Liaison Officer and how they were addressed
- (e) a summary of any changes to systems and processes in place for promoting compliance with Commonwealth workplace laws;

- (f) a summary of any relevant workplace relations issues that arose, including the responses to them by La Porchetta;
- (g) a summary of any workplace relations compliance training conducted for appropriate personnel;
- (h) a summary of the self-audit outcomes;
- (i) any identified benefits from being involved in the Compliance Partnership; and
- (j) any learnings from the Compliance Partnership

25.4 La Porchetta will provide the second year report to the FWO no later than 28 days after the completion of the Second Year Reporting Period.

25.5 At the expiry of the Deed, La Porchetta will prepare a final report regarding the operation of the Deed during the final twelve months of its operation (**Final Reporting Period**) addressing the following matters:

- (a) the actions taken by La Porchetta to address the requirements of the Deed ;
- (b) details as to the number of Enquiries and Requests for Assistance referred by the FWO to La Porchetta;
- (c) details of the outcomes of any Enquiries and Requests for Assistance referred by the FWO to La Porchetta;
- (d) a summary of issues raised by employees directly with the La Porchetta Liaison Officer and how they were addressed;
- (e) a review of the systems and processes in place with an evaluation of their effectiveness in promoting compliance of workplace laws;
- (f) an analysis of the various workplace relations issues that presented including the responses to them undertaken by La Porchetta
- (g) the workplace relations training conducted for appropriate personnel including how training could be improved;
- (h) a summary of the self-audit outcomes;
- (i) any identified benefits from being involved in the Compliance Partnership; and
- (j) any learnings from the Compliance Partnership
- (k) observations on the overall operation of the Deed.

- 25.6 The final report will be provided to the FWO no later than 28 days after the completion of the Final Reporting Period.
- 25.7 The FWO may publish the reports but will redact any part of the reports that contain personal details or information which may identify individuals or individual stores or information that is confidential or commercially sensitive relating to La Porchetta or its franchisees. The FWO will provide La Porchetta with an opportunity to comment on the same prior to the publication of any report.
- 25.8 The FWO may publish its own report or other material regarding the Deed and will provide La Porchetta with an opportunity to comment on the same. The FWO is not under any obligation to amend such material in response to any comments received but commits to reporting accurately upon the Compliance Partnership.

## Part VII – Meetings

### 26. *Meetings between FWO and La Porchetta*

- 26.1 To support a collaborative and productive Compliance Partnership, the FWO and La Porchetta agree to meet formally at least once each year during the operation of the Deed, or more frequently as required. These meetings will, as far as reasonably practicable be:
- (a) in person; and
  - (b) attended by the La Porchetta Contact Person, the FWO Contact Person and other appropriate senior personnel.
- 26.2 Discussions at these meetings will include, but not be limited to, the following issues:
- (a) progress and feedback on the requirements of and activities associated with implementing the terms of the Deed;
  - (c) the ongoing compliance relationship between the FWO and La Porchetta;
  - (b) the number, nature and outcomes of workplace Enquiries and Requests for Assistance received by both parties during the period;
  - (d) workplace compliance issues and steps taken by La Porchetta to resolve any enquiries or Requests for Assistance from its workforce and the maintenance and improvement of its systems and processes to ensure compliance within its service network;
  - (c) review of the interim report and discussion of next steps and key learnings; and
  - (d) the self-audit process, Third Party Validation and outcomes.

## Part VIII – Resources

### 27. *Resources*

- 27.1 La Porchetta will commit all necessary resources, financial or otherwise, and meet all necessary expenses associated with the effective implementation of this Deed.
- 27.2 La Porchetta has identified a La Porchetta Contact Person to whom all queries from the FWO about the implementation of the Deed or any requests for assistance referred by the FWO should be directed. La Porchetta will notify the FWO in writing within 7 days of any change to the La Porchetta Contact Person.

- 27.3 La Porchetta will make available a specified person or people to act as La Porchetta Employee Liaison Officers to whom all queries from La Porchetta employees, or employees of Franchisees, about the self-audit process, workplace entitlements or any Requests for Assistance referred by the FWO, should be directed.
- 27.4 The FWO has identified a FWO Contact Person to whom all queries from La Porchetta should be directed. The FWO will notify La Porchetta in writing within 7 days of any change to the FWO Contact Person.

## Part IX – Other terms

### 28. **Acknowledgements**

28.1 La Porchetta acknowledges that:

- (a) there are opportunities for continuous improvement in relation to its workplace practices to ensure ongoing compliance with Commonwealth workplace laws;
- (b) the promises it has given in this Deed are reasonable in the circumstances;
- (c) the FWO may:
  - i. make this Deed available for public inspection, including by posting it on the FWO website at [www.fairwork.gov.au](http://www.fairwork.gov.au);
  - ii. release a copy of this Deed pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
  - iii. issue a media release(s) in relation to this Deed;
  - iv. promote the La Porchetta corporate logo on [www.fairwork.gov.au](http://www.fairwork.gov.au); and
  - v. from time to time, publicly refer to this Deed and its terms;
- (d) the FWO may use, and nothing in this Deed prevents the FWO from using, information or documents provided by La Porchetta under this Deed to pursue compliance or enforcement action in accordance with its ordinary processes, including relying on such information or documents as evidence in Court;
- (e) if La Porchetta contravenes any of the terms of this Deed the FWO may take any enforcement action the FWO considers appropriate.

### 29. **Commencement of Proactive Compliance Deed**

29.1 This Deed comes into effect when both La Porchetta and the FWO have executed this

Deed.

- 29.2 This Deed will expire at the end of three years after the commencement of this Deed, unless terminated earlier in accordance with its terms.

**30. *Publicity***

- 30.1 Subject to clause 28.1(d) above, the FWO will not publicise or release information provided by La Porchetta pursuant to this Deed to third parties, except where provided for in this Deed or required or authorised by law.
- 30.2 The FWO agrees to provide La Porchetta with at least one business day to view all FWO media releases (**Releases**) arising from this Deed prior to publication by the FWO.
- 30.3 Notwithstanding 30.2, La Porchetta agrees and acknowledges that, if La Porchetta makes any suggested edits or amendments to the Releases, the FWO is under no obligation to accept any of them.
- 30.4 FWO agrees and acknowledges that La Porchetta may, subject to clause 30.5 below, issue its own media releases in relation to this Deed.
- 30.5 La Porchetta agrees to provide the FWO with at least one business day to view all La Porchetta media releases arising under this Deed prior to publication by La Porchetta.

**31. *No inconsistent statements***

- 31.1 La Porchetta:
- (a) will not; and
  - (b) will ensure that each of its officers, employees or agents do not; and
  - (c) will use its reasonable endeavours to ensure that each of its Franchisees, and each of its Franchisees officers, employees or agents, do not;
- make any statement, orally, in writing, or otherwise which conveys or implies or reasonably conveys or implies anything inconsistent with the Acknowledgements made in this Deed.

**32. *Termination by the FWO***

- 32.1 At any time, without prejudice to any right or remedy it may have, the FWO may, by notice in writing, terminate this Deed (that is, immediately and without notice) if La Porchetta commits, in the opinion of the FWO, a serious or persistent breach or non-observance of a term or terms of this Deed.

**33. *Independent legal advice***

33.1 La Porchetta acknowledges that:

- (a) before executing this Deed, La Porchetta was given the opportunity to seek independent legal and other advice of its choice;
- (b) in light of any advice provided, La Porchetta considered its position; and
- (c) La Porchetta fully understands the effect of this Deed.

**34. *Continuing obligations***

34.1 The following clauses survive termination of this Deed for whatever reason (including termination by the FWO):

- (a) clause 25 (Reporting)
- (b) clause 28 (Acknowledgements); and
- (c) clause 31 (No inconsistent statements).

**35. *Legally binding***

35.1 The terms of this document are intended to have immediate effect on all parties upon commencement of this Deed.

**36. *Entire agreement***

36.1 This Deed constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter. No oral explanation or information provided by either party to the other:

- (a) affects the meaning or interpretation of this Deed; or
- (b) constitutes any collateral agreement, warranty or understanding between the FWO and La Porchetta.

**37. *Construction***

37.1 No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Deed or any part of it.

37.2 Unless expressed to the contrary in this document:

- (a) words in the singular include the plural and vice versa; and
- (b) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced.

**38. Severance**

38.1 If the whole or any part of a provision of this Deed is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this Deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this Deed or is contrary to public policy.

**39. Governing law**

39.1 This Deed shall be construed in accordance with the laws for the time being of the State of Victoria and the parties hereby submit to the jurisdiction of the Courts of that State and the Courts empowered to hear appeals from the Courts of that State.

**40. Counterparts**

40.1 This Deed may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one instrument.

**41. Costs in respect of this Deed**

41.1 The parties will pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this Deed and other related documentation.

**42. Notices**

42.1 Any notice, request or other communication to be given or served pursuant to this Deed will be in writing and dealt with as follows:

(a) if given by La Porchetta to the FWO at the address indicated in Schedule 1 or as otherwise notified by the FWO; or

(b) if given by the FWO to La Porchetta, marked for the attention of the La Porchetta Contact Person with the address indicated in Schedule 1 or as otherwise notified by La Porchetta.

42.2 Any notice, request or other communication is to be delivered by hand, sent by pre-paid post or transmitted electronically.

42.3 Any notice, request or other communication will be deemed to be received:

(a) if delivered by hand, upon delivery;

(b) if sent by pre-paid ordinary post within Australia, upon the expiration of 2 Business Days after the date on which it was sent; and

- (c) if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

**43. *Date of this Deed***

- 43.1 The date of this Deed is the date the parties execute the Deed, or, if it is executed on different dates, the date of last execution.

## **Part X – Definitions**

In this Deed:

**Commonwealth** means the Commonwealth of Australia, including, but not limited to where the context so admits, the Commonwealth as represented by the Office of the Fair Work Ombudsman or any successor, including, without limitation, the Fair Work Ombudsman.

**Commonwealth workplace laws** means:

- (a) the Fair Work Act 2009;
- (b) the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009;
- (c) the Fair Work Regulations 2009; and
- (d) the Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009.
- (e) Fair Work Instruments

**Deed** means this Proactive Compliance Deed, including any Schedules.

**Enquiry** means an enquiry regarding workplace conditions relating to La Porchetta or one of its Franchisees. An Enquiry does not include a Request for Assistance.

**Fair Work Instruments** means:

- (a) a modern award;
- (b) an enterprise agreement;
- (c) a workplace determination; and
- (d) a Fair Work Commission order.

**Franchisee** means an entity or person that has entered into a franchisee agreement, howsoever described, with La Porchetta to operate a franchised or licensed business under the La Porchetta brand.

**FW Act** means the *Fair Work Act 2009* (Cth).

**FWO** means the Fair Work Ombudsman.

**FW Regulations** means the *Fair Work Regulations 2009* (Cth).

**FWO Contact Person** means the person nominated by the Fair Work Ombudsman in Schedule 1 to this Deed, or any other person specified by the Fair Work Ombudsman in writing and notified to La Porchetta.

**Independent Third Party** may include a certified practicing accountant (**CPA**) and/or a specialist in workplace relations, including a registered organisation such as an employer association.

**La Porchetta** means La Porchetta Franchising Pty Ltd (ABN 48 146 228 471).

**La Porchetta Contact Person** means the person nominated by La Porchetta in Schedule 1 to this Deed, or any other person specified by La Porchetta in writing and notified to the FWO.

**La Porchetta Employee Liaison Officer/s** means any person nominated by La Porchetta to answer workplace relations and other enquiries from employees and from Franchisees and their employees.

**Request for Assistance** means a request made to the Fair Work Ombudsman using a Request for Assistance – Workplace dispute form or its current equivalent.

**Significant Contravention** means:

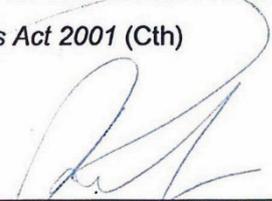
- (a) a contravention of any of the general protections provisions contained in Part 3-1 of the FW Act;
- (b) multiple or deliberate contraventions of an employer's record keeping obligations in relation to employee records contained in Part 3-6 Division 3 of the FW Act and FW Regulations;
- (c) one or more contraventions of the FW Act giving rise to underpayments of more than \$5,000 in total (not per employee);
- (d) a failure to comply with a Notice to Produce issued by a Fair Work Inspector under section 712 or a Compliance Notice issued under section 716 of the FW Act;

- (e) a Serious Contravention as defined in the FW Act;
- (f) any other contravention that the FWO considers serious.

**Third Party Validation** means the reports received by the FWO from an Independent Third Party that validate and certify the outcomes of the self-audit, in accordance with clause 24.

**Signing Page**

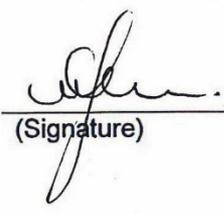
**EXECUTED BY** La Porchetta Franchising Pty Ltd in accordance with section 127(1) of the Corporations Act 2001 (Cth)

 _____ (Signature of Director/Secretary)	_____ (Signature of Director)
<u>ROSARIA PANTALEO</u> _____ (Name of Director/Secretary)	_____ (Name of Director)
<u>5/7/2018</u> _____ (Date)	_____ (Date)

**SIGNED FOR** and on behalf of the **COMMONWEALTH OF AUSTRALIA** as represented by the Office of the Fair Work Ombudsman

Kristen Hannah _____ (Printed Name)	 _____ (Signature)
Fair Work Ombudsman (Acting) _____ (Title)	6 July 2018 _____ (Date)

**In the presence of:**

<u>Natalie Maree SWANE</u> _____ (Name of witness in full)	 _____ (Signature)
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