

ENFORCEABLE UNDERTAKING

National Consumer Credit Protection Act 2009

Section 322(1)

Australian Securities and Investments Commission Act 2001

Section 93AA

The commitments in this Enforceable Undertaking are offered to the Australian Securities and Investments Commission (ASIC) by:

HOME ESSENTIALS AUSTRALIA PTY LTD (ACN 146 947 444)

and

TRIPLE BAY GROUP PTY LTD (ACN 146 947 560)

and

I LOVE MY WATER PTY LTD (ACN 139 872 674)

and

TRIPLE BAY PTY LTD (ACN 139 872 692)

and

DANIEL SIMON TARABAY

and

TABET JOSEPH TARABAY

and

RONALD CARABAY

1. DEFINITIONS

- 1.1 In addition to terms defined elsewhere in this Enforceable Undertaking, the following definitions are used:

ASIC Act means the *Australian Securities and Investments Commission Act 2001* (Cth).

Australian Credit Licence has the same meaning as defined in section 35 of the NCCP Act.

Companies means Home Essentials, Triple Bay Group, I Love My Water and Triple Bay.

Corporations Act means the *Corporations Act 2001* (Cth).

Corporations Regulations means the *Corporations Regulations 2001* (Cth).

Credit Activities has the same meaning as defined in section 6 of the NCCP Act.

Credit Contract has the same meaning as defined in sections 4 and 9 of the National Credit Code.

Customer(s) means any natural person with whom any of the Companies entered into a Rent to Own Agreement.

Daniel Tarabay means Daniel Simon Tarabay, current director and secretary of Home Essentials and Triple Bay Group and director of I Love My Water and Triple Bay from 7 October 2009 to 14 November 2011.

Direct Debit Request means that portion of the Rent to Own Agreement authorising Linkspay (or other direct debit service provider) to electronically deduct funds from Customers' accounts in accordance with the Rent to Own Agreement and on behalf of Triple Bay Group or Triple Bay.

Enforceable Undertaking means this enforceable undertaking.

Estimated Fair Market Value means:

- (a) in relation to the Home Kit, \$227;
- (b) in relation to the Value Pack, \$433; and
- (c) in relation to the Water Cooler, \$725.

Goods means items hired and/or sold to Customers by the Companies including Home Kits, Value Packs and Water Coolers.

Home Essentials means Home Essentials Australia Pty Ltd (ACN 146 947 444).

Home Kit means the first aid kit containing approximately 133 items, hired and/or sold by or on behalf of the Companies for a minimum rental of:

- (a) \$280 plus \$29.95 set-up fee plus \$1 to purchase, between about 2 June 2011 and 23 November 2011; and
- (b) \$279 plus \$25.00 postage and handling and \$1 to purchase, between about 24 November 2011 and 31 October 2013.

I Love My Water means I Love My Water Pty Ltd (ACN 139 872 674).

Kits means Home Kit(s) and/or Value Pack(s).

Linkspay means Linkspay Pty Ltd (ACN 134 528 279).

National Credit Code means the National Credit Code contained in Schedule 1 to the NCCP Act.

NCCP Act means the *National Consumer Credit Protection Act 2009* (Cth).

Principal(s) means any or all of Daniel Tarabay, Teddy Tarabay and Ronnie Carabay.

Relevant Period means:

- (a) in respect of I Love My Water and Triple Bay, the period between 7 October 2009 and 31 October 2013; and
- (b) in respect of Home Essentials and Triple Bay Group, the period between 20 October 2010 and 31 October 2013.

Rent to Own Agreement(s) means any agreement entered into by Home Essentials, Triple Bay Group, I Love My Water and/or Triple Bay which:

- (a) provides for the hire of the Goods by the relevant Customer; and
- (b) entitles or obliges the relevant Customer to purchase the Goods.

Ronnie Carabay means Ronald Carabay, current director and secretary of I Love My Water and Triple Bay.

Teddy Tarabay means Tabet Joseph Tarabay, director of I Love My Water and Triple Bay from 7 October 2009 to 15 April 2010.

Transitional Act means the *National Consumer Credit Protection Act (Transitional and Consequential Provisions) Act 2009* (Cth).

Triple Bay means Triple Bay Pty Ltd (ACN 139 872 692).

Triple Bay Group means Triple Bay Group Pty Ltd (ACN 146 947 560).

Value Pack means the collection of first aid kits, comprising one Home Kit, two "Travel Kits" and two "Pocket Kits", hired and/or sold by or on behalf of the Companies for a minimum rental of:

- (a) \$560 plus \$29.95 set-up fee plus \$1 to purchase, between about 2 June 2011 and 23 November 2011; and
- (b) \$559 plus \$25.00 postage and handling and \$1 to purchase, between about 24 November 2011 and 31 October 2013.

Water Cooler means the water filtration and dispenser unit, hired and/or sold by or on behalf of the Companies for a minimum rental of:

- (a) \$1560 plus \$29.95 set-up fee plus \$1 to purchase, between about 2 June 2011 and 23 November 2011; and
- (b) \$1559 plus \$40.00 postage and handling and \$1 to purchase, between about 24 November 2011 and 31 October 2013.

Website means, in the case of Home Essentials, the website at the address: <http://www.homeessentialsaustralia.com.au>, and in the case of I Love My Water, the website at the address: <http://www.ilovemywater.com.au>.

- 1.2 Except so far as the contrary intention appears in this Enforceable Undertaking, the interpretation provisions in Part 1.2 of the Corporations Act and Part 2 of the ASIC Act apply for the purposes of this Enforceable

Undertaking as if the provisions of those acts were provisions of this Enforceable Undertaking.

2. BACKGROUND

ASIC's Role

- 2.1 Under section 1 of the ASIC Act, ASIC is charged with a statutory responsibility to perform its functions and to exercise its powers so as to promote the confident and informed participation of investors and consumers in the financial system.
- 2.2 From 1 July 2010, ASIC's responsibilities were expanded to include the administration and enforcement of the NCCP Act which regulates consumer credit in Australia.

Details of Conduct during the Relevant Period

- 2.3 The Companies have been involved in the sale and marketing of Goods to Customers pursuant to Rent to Own Agreements.
- 2.4 Under the Rent to Own Agreements:
 - 2.4.1 I Love My Water acts as agent for, performs the obligations and exercises the rights of Triple Bay; and
 - 2.4.2 Home Essentials acts as agent for, performs the obligations and exercises the rights of Triple Bay Group.
- 2.5 The Rent to Own Agreements were marketed in Queensland, New South Wales, Victoria, South Australia, Western Australia and the Northern Territory, in metropolitan, regional and remote areas, including remote Aboriginal communities.
- 2.6 The Rent to Own Agreements were marketed by means of door to door sales activities at residential premises, carried out by third parties (**Marketing Companies**) engaged by Home Essentials and/or I Love My Water.
- 2.7 The Marketing Companies employed or contracted sales representatives (**Sales Representatives**) to carry out the door to door sales activities across Australia.
- 2.8 I Love My Water and Home Essentials were responsible for:
 - 2.8.1 dealing with Customers in relation to:
 - (a) arranging delivery of the Goods;

- (b) payment of monies by Customers pursuant to Rent to Own Agreements and payment defaults;
 - (c) cancellation of Rent to Own Agreements;
 - (d) the purchase of Goods by Customers under Rent to Own Agreements; and
 - (e) complaints or issues arising from Rent to Own Agreements, the relevant Goods, payments and/or conduct of the Sales Representatives;
- 2.8.2 engaging, dealing with and instructing the Marketing Companies; and
- 2.8.3 engaging, dealing with and instructing Linkspay (or other direct debit service providers) in relation to the direct debit of payments from Customers' bank accounts.
- 2.9 Triple Bay and Triple Bay Group each received payments made by Customers pursuant to Rent to Own Agreements.
- 2.10 During the Relevant Period:
 - 2.10.1 on behalf of Triple Bay, I Love My Water entered into approximately 8900 Rent to Own Agreements;
 - 2.10.2 Triple Bay received approximately \$6.8m in payments pursuant to those Rent to Own Agreements;
 - 2.10.3 on behalf of Triple Bay Group, Home Essentials entered into approximately 7000 Rent to Own Agreements; and
 - 2.10.4 Triple Bay Group received approximately \$2.6m in payments pursuant to those Rent to Own Agreements.
- 2.11 Under the Rent to Own Agreements:
 - 2.11.1 Customers hire the Goods by paying weekly, fortnightly or monthly instalments (of varying amounts depending on the type of Goods hired) for an initial rental period (**Initial Rental Period**) of:
 - (a) 28 weeks in the case of the Home Kit;
 - (b) 56 weeks in the case of the Value Pack; and
 - (c) 24 months in the case of the Water Cooler.
 - 2.11.2 at the expiry of the Initial Rental Period, Customers have the option to purchase the Goods from the Companies by paying \$1.00 to the Companies; and
 - 2.11.3 if Customers do not exercise that option and do not terminate the agreement by giving written notice and returning the Goods, the

rental period is automatically extended (**Extended Rental Period**) for a further:

- (a) 28 weeks in the case of the Home Kit;
- (b) 56 weeks in the case of the Value Pack; and
- (c) 24 months in the case of the Water Cooler.

2.12 None of the Companies:

- 2.12.1 has ever held an Australian Credit Licence
- 2.12.2 complied with the registration requirements under the Transitional Act; nor
- 2.12.3 has engaged in Credit Activities as a credit representative of, and on behalf of, a principal who holds an Australian Credit Licence, as referred to in section 29(3) of the NCCP Act.

3. ASIC'S CONCERNS

Background

- 3.1 After receiving information that Sales Representatives had attended Parnpajinya Aboriginal Reserve, outside of Newman, Western Australia and caused a number of persons (whose sole source of income was social security benefits) to sign Rent to Own Agreements with Home Essentials, ASIC commenced an investigation into the activities of Home Essentials, I Love My Water, Triple Bay Group, Triple Bay, the Marketing Companies and associated persons.

Unlicensed Credit Activities

- 3.2 As a result of its investigation, , ASIC has formed the view that:
- 3.2.1 the amount payable for Goods under Rent to Own Agreements is greater than the Estimated Fair Market Value of the Goods;
 - 3.2.2 all the Rent to Own Agreements entered into by or on behalf of the Companies are Credit Contracts;
 - 3.2.3 the Companies have engaged in Credit Activities in that:
 - (a) Triple Bay Group and Triple Bay provide credit under the Rent to Own Agreements; and
 - (b) Home Essentials and I Love My Water perform the obligations or exercise the rights of Triple Bay Group and Triple Bay (respectively) in relation to Credit Contracts;

- 3.2.4 the Companies have not at any stage:
- (a) registered to engage in Credit Activities;
 - (b) applied for or held an Australian Credit Licence; or
 - (c) engaged in Credit Activities as an employee or credit representative of a person who holds an Australian Credit Licence.

3.3 In the circumstances, ASIC is of the view that :

- 3.3.1 in relation to all Rent to Own Agreements signed between March 2011 and 30 June 2011, the Companies engaged in Credit Activities while not registered or licensed to do so, in contravention of items 4 and 6 of Schedule 2 to the Transitional Act;
- 3.3.2 in relation to all Rent to Own Agreements signed on and from 1 July 2011, the Companies have engaged in Credit Activities while not licensed to do so, in contravention of section 29 of the NCCP Act;
- 3.3.3 the Companies have contravened section 32 of the National Credit Act by demanding, receiving or accepting any fee, charge or other amount from a consumer in connection with Rent to Own Agreements entered into in contravention of section 29 of the NCCP Act or items 4 or 6 of the Transitional Act;
- 3.3.4 each of the Principals has been involved in (as that term is defined in section 5 of the National Credit Act) the contraventions by the Companies, and pursuant to section 169 of the NCCP Act each of the Principals is therefore taken to have contravened the provisions set out in paragraphs 3.3.1 to 3.3.3 (inclusive) above.

Non-Disclosure

- 3.4 ASIC is of the view that the Companies have contravened sections 16 and 17 of the National Credit Code, being the requirements in relation to pre-contractual disclosure and matters that must be included in the contract document.

Unconscionable Conduct

- 3.5 ASIC is of the view that the persons who entered into Rent to Own Agreements at Parnpajinya Aboriginal Reserve were at a disadvantage in their dealings with the Sales Representatives by reason of one or more of the following factors:

- 3.5.1 they had a limited ability to understand written English;

- 3.5.2 they had limited or no ability to read or understand a legal or contractual document;
 - 3.5.3 they had limited or no experience in commercial matters;
 - 3.5.4 they felt undue pressure to enter into a Rent to Own Agreement; and
 - 3.5.5 they did know and had no opportunity to ascertain the fair market value of the Goods prior to entering into a Rent to Own Agreement.
- 3.6 In the circumstances, ASIC is of the view that:
- 3.6.1 the Companies have contravened:
 - (a) section 12CA of the ASIC Act, being the prohibition against unconscionable conduct within the meaning of the unwritten law of the States and Territories; and
 - (b) section 12CB of the ASIC Act, being the prohibition against unconscionable conduct in connection with financial services;
 - 3.6.2 each of the Principals has, directly or indirectly, been knowingly concerned in or party to the contraventions by the Companies set out in paragraph 3.6.1 above.

Unfair Contract Term

- 3.7 ASIC is of the view that the clause within the Rent to Own Agreements which provides for the Extended Rental Period, as referred to in paragraph 2.11.3 above, is an unfair contract term within the meaning of section 12BG of the ASIC Act.

Acknowledgement of Concerns

- 3.8 The Companies and the Principals acknowledge:
- 3.8.1 ASIC's concerns set out in paragraphs 3.1 to 3.7 (inclusive) above;
 - 3.8.2 that those concerns are reasonably held; and
 - 3.8.3 that they must comply with all of the requirements of this Enforceable Undertakings in order to address ASIC's concerns.

4. ACCEPTANCE OF ENFORCEABLE UNDERTAKING

- 4.1 Under section 322(1) of the NCCP Act and section 93AA of the ASIC Act, the Companies and the Principals have offered the undertakings in paragraphs 5.1 to 5.24 (inclusive) below, and ASIC has accepted those undertakings as an

alternative to commencing civil proceedings under the NCCP Act and the ASIC Act.

5. UNDERTAKINGS

Undertakings as to Rent to Own Agreements

5.1 The Companies undertake that they will:

- 5.1.1 not rely on or enforce any past or current Rent to Own Agreements, including relying on or enforcing any Extended Rental Period clause;
- 5.1.2 not demand, receive, recover or accept any fee, charge or other amount from Customers pursuant to Rent to Own Agreements, either:
 - (a) directly;
 - (b) through direct debit services provided by Linkspay or any other third party engaged for a similar purpose; or
 - (c) through the services of any debt collector or debt collection agency;
- 5.1.3 not recover or seek to recover any Goods delivered to Customers pursuant to any Rent To Own Agreements; and
- 5.1.4 give to every Customer, unfettered title to the Goods hired and/or purchased by the Customer under a Rent to Own Agreement, without requiring any further payment from the Customer;
- 5.1.5 in relation to Rent to Own Agreements for Water Coolers, despite paragraphs 5.1.1 to 5.1.4 above, honour all contractual warranties in favour of the Customer and the Customer's right to receive replacement filters.

5.2 The Companies and the Principals acknowledge that paragraph 5.1 above does not affect any statutory warranties to which Customers are entitled.

Notice to Customers

5.3 Within 21 days of the date of this Enforceable Undertaking:

- 5.3.1 Home Essentials will send a copy of a letter in the form of Annexure A1; and
- 5.3.2 I Love My Water will send a copy of a letter in the form of Annexure A2;

to every Customer who has a current Rent to Own Agreement or is otherwise making payments in respect of Goods.

Public Notices

Printed Media Public Notice

5.4 Within 21 days of the date of this Enforceable Undertaking, the Companies and the Principals will at their own expense cause to be published a notice in the form of Annexure B (**Printed Media Public Notice**) in each of the following newspapers:

- 5.4.1 The Australian;
- 5.4.2 The Pilbara Echo;
- 5.4.3 The Broome Advertiser;
- 5.4.4 The Kimberley Echo;
- 5.4.5 The Kalgoorlie Miner;
- 5.4.6 The Narrogin Observer;
- 5.4.7 The Bunbury Mail;
- 5.4.8 The Albany Advertiser;
- 5.4.9 The Cooktown Local News;
- 5.4.10 Toowoomba Chronicle;
- 5.4.11 The Cairns Post
- 5.4.12 Townsville Bulletin
- 5.4.13 Queensland Times; and
- 5.4.14 Northern Times;

using their best endeavours to ensure that such notice:

- 5.4.15 is published within the first 15 pages of the general news section of the newspaper;
- 5.4.16 is of a size at least 15cm high by 15cm wide;
- 5.4.17 has a black banner placed at the top with the words "I LOVE MY WATER PTY LTD and HOME ESSENTIALS AUSTRALIA PTY LTD" in uppercase in 14 point bold Times New Roman white font and centred;
- 5.4.18 below the banner has a heading with the words "PUBLIC NOTICE" in 12 point underlined Times New Roman black font and centred

- 5.4.19 includes the logo at least 20mm high as set out in Annexure B; and
- 5.4.20 has baseline text in at least 8 point Times New Roman black font and centred.

Website Public Notices

- 5.5 Within 21 days of acceptance of this Enforceable Undertaking by ASIC, on their respective Websites:
 - 5.5.1 Home Essentials will cause to be published a notice in the form of Annexure C1; and
 - 5.5.2 I Love My Water will cause to be published a notice in the form of Annexure C2,

(Website Public Notice(s)).
- 5.6 The Companies and the Principals will use their best endeavours to ensure that each of the Website Public Notices referred to in paragraph 5.5 above:
 - 5.6.1 is accessible by a prominent one-click hyper-link displayed in the top third of the homepage of the Website entitled "PUBLIC NOTICE" with the following minimum specifications:
 - (a) the words "PUBLIC NOTICE" to be in 18 point Times New Roman black font on a white background, centred and in a bordered box;
 - (b) the words "Click here for further information" to be in 14 point Times New Roman black font on a white background and centred below the words "PUBLIC NOTICE" in the same bordered box;
 - (c) the bordered box is to be at least 255 pixels wide by 60 pixels high; and
 - (d) the bordered box and its contents, including white space, is to operate in the form of a one-click hyper-link to the Website Public Notice;
 - 5.6.2 is legible and in plain English;
 - 5.6.3 is at least 540 pixels wide by 500 pixels high;
 - 5.6.4 has a banner at the top with the words "PUBLIC NOTICE" in not less than 14 point white font on a black background and centred;
 - 5.6.5 displays the body of the text in not less than 10 point font black Times New Roman font on a white background and justified left unless otherwise stated;
 - 5.6.6 has a black border 3 pixels wide;

- 5.6.7 is displayed on a stand-alone webpage that is coded in standard "HTML" format; and
 - 5.6.8 contains a hyperlink (details of which are to be provided by ASIC) to the media release which ASIC will publish on its website in relation to this Enforceable Undertaking.
- 5.7 The Website Public Notices will remain active for a period of 120 days, following which each of the Websites will be permanently decommissioned.

Undertakings as to Future Conduct

- 5.8 The Principals will not, for a period of 5 years from the date of this Enforceable Undertaking (and in any case unless they are lawfully able to do so under section 29 of the NCCP Act):
- 5.8.1 engage in any Credit Activities;
 - 5.8.2 act as a director of a company that engages in Credit Activities; or
 - 5.8.3 be involved in the management of a company or business that engages in Credit Activities;
- except as is strictly necessary to comply with paragraph 5.1.5 above.
- 5.9 The Companies will not, for a period of 5 years from the date of this Enforceable Undertaking (and in any case unless they are lawfully able to do so under section 29 of the NCCP Act):
- 5.9.1 enter into any new Rent to Own Agreements; or
 - 5.9.2 otherwise engage in Credit Activities or hold themselves out as carrying on a business of providing credit, except as is strictly necessary to comply with paragraph 5.1.5 above.
- 5.10 The Companies will forthwith instruct:
- 5.10.1 Linkspay and/or any other third party company engaged by or on behalf of the Companies to debit payments from Customers' bank accounts pursuant to Rent to Own Agreements to cease debiting all payments from Customers' accounts;
 - 5.10.2 any debt collectors and/or debt collecting agencies engaged by or on behalf of the Companies to cease all debt collection activities in connection with Rent to Own Agreements; and
 - 5.10.3 all Marketing Companies and Sales Representatives to cease all activities in relation to the sale and marketing of the Goods to Customers and prospective Customers.

Undertakings as to Payment of Lump Sum

- 5.11 The Companies and/or the Principals will pay a total of \$250,000, for the purpose of funding ongoing community legal services and financial assistance services, as follows (**Lump Sum**):
- 5.11.1 by 14 February 2014, payments of:
 - 5.11.1.1 \$25,000 to Pilbara Community Legal Service Inc., Newman House, 4/46 Iron Ore Parade, Newman WA 6753 (**PCLS**); and
 - 5.11.1.2 \$25,000 to Indigenous Consumer Assistance Network Ltd (ABN 62 127 786 092), 1/192 Mulgrave Road, Westcourt QLD 4870 (**ICAN**);
 - 5.11.2 by 17 March 2014, payments of \$25,000 to PCLS and \$25,000 to ICAN;
 - 5.11.3 by 9 June 2014, payments of \$25,000 to PCLS and \$25,000 to ICAN;
 - 5.11.4 by 8 August 2014, payments of \$25,000 to PCLS and \$25,000 to ICAN;
 - 5.11.5 by 8 October 2014, payments of \$25,000 to PCLS and \$25,000 to ICAN.
- 5.12 The Companies and the Principals acknowledge that their undertaking to pay the Lump Sum is in the nature of an order under section 180(1)(c) of the NCCP Act and/or section 12GLA(2)(a) of the ASIC Act.
- 5.13 The Companies and the Principals each agree that they will be jointly and severally liable to pay the Lump Sum.
- 5.14 The Companies and the Principals each agree that in the event there is a default in making any of the payments required to be made under paragraph 5.11 and the default continues for more than 14 days, the entire balance of the Lump Sum that remains outstanding will become due and payable on the next scheduled payment date.

Independent review of compliance with this Enforceable Undertaking

- 5.15 Within 30 days of acceptance of this Enforceable Undertaking by ASIC, or such further time as is agreed with ASIC, the Companies will engage an independent consultant (**Consultant**) approved by ASIC to conduct a review of and provide a written report to ASIC as to:
- 5.15.1 the Companies' and Principals' compliance with the terms of this Enforceable Undertaking; and

- 5.15.2 whether the Companies have made all reasonable efforts to dispatch to Customers all Goods (including replacement Goods) and replacement parts to which those Customers are entitled under a Rent to Own Agreement or statutory warranty, and where they have not, the reason/s why not.
- 5.16 For any instance identified by the Consultant pursuant to paragraph 5.15.2 above in which payments have been made by a Customer under a Rent to Own Agreement but the Customer has not received the Goods to which they are entitled, the Companies and the Principals will:
- 5.16.1 in the case of Rent to Own Agreements for Water Coolers, attempt to refund to the Customer all payments made, less \$40 in respect of postage and handling costs (**Refund Amount**) if a Water Cooler has been dispatched but not delivered to the Customer and returned to the relevant Company;
- 5.16.2 in the case of Rent to Own Agreements for Home Kits or Value Packs, attempt to refund to the Customer all payments, less \$40 in respect of postage and handling costs (**Refund Amount**) if a Home Kit or Value Pack has been dispatched but not delivered to the Customer and returned to the relevant Company.
- 5.17 For the purposes of paragraphs 5.16.1 and 5.16.2 above, in attempting to refund a Customer, the Companies and the Principals will at a minimum do the following:
- 5.17.1 where the Customer's bank account details are known to the Companies, the Principals or Linkspay, deposit the Refund Amount into the Customer's bank account and send a letter in the form of Annexure D to the Customer's last known address by 21 April 2014; or
- 5.17.2 where the Customer's bank account details are not known to the Companies, the Principals or Linkspay, either Home Essentials or I Love My Water (as the case may be) will by 14 March 2014 send a letter in the form of Annexure D to the Customer's last known address and where requested by a Customer in accordance with the procedure set out in the letter at Annexure D, will pay the Refund Amount to the Customer by 14 May 2014.
- 5.18 The Companies and the Principals will do all things reasonably necessary to enable the Consultant to conduct the review and prepare the report.
- 5.19 The Consultant must provide his or her report to ASIC by 28 May 2014, at the following address:

Antony Cowan
Senior Lawyer
Australian Securities and Investments Commission
Level 3, 66 St Georges Terrace
Perth WA 6000.

- 5.20 All remuneration and costs associated with the Consultant must be borne by the Companies and/or the Principals.

General

- 5.21 The Companies and/or the Principals will pay the costs of their compliance with this Enforceable Undertaking.
- 5.22 The Companies and the Principals will provide all documents and information requested by ASIC from time to time for the purpose of assessing their compliance with the terms of this Enforceable Undertaking.
- 5.23 The Companies, including employees and servants whilst acting in the course of their duties, and the Principals will do all acts reasonably necessary to ensure compliance with this Enforceable Undertaking and refrain from doing any acts which are inconsistent with the terms and objectives of this Enforceable Undertaking.
- 5.24 The Companies and the Principals will take all practicable steps to ensure that subsidiaries, associates, related parties, contractors, and agents or any other persons acting on the instructions of either of the Companies do all acts reasonably necessary to ensure the Companies' compliance with this Enforceable Undertaking and refrain from doing any acts which are inconsistent with the terms and objectives of this Enforceable Undertaking.
- 5.25 Without limiting the generality of the previous paragraph, a reference to acts which are inconsistent with the terms and objectives of this Enforceable Undertaking includes publishing or making any statement which is derogatory of, denigrates or trivialises the terms, objectives or any other aspect of this Enforceable Undertaking.

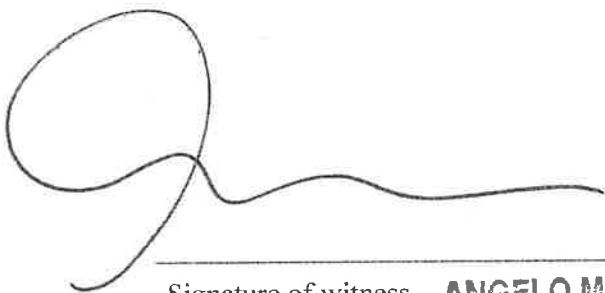
6. ACKNOWLEDGEMENTS

- 6.1 The Companies and the Principals acknowledge that ASIC:
- 6.1.1 will issue a media release on execution of this Enforceable Undertaking referring to its terms and to the concerns of ASIC which led to its execution;

- 6.1.2 may from time to time publicly refer to this Enforceable Undertaking; and
 - 6.1.3 will make this Enforceable Undertaking available for public inspection.
- 6.2 The Companies and the Principals further acknowledge that:
 - 6.2.1 ASIC's acceptance of this Enforceable Undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue a criminal prosecution or its power to lay charges or seek a pecuniary civil order in relation to any contravention not the subject of ASIC's concerns in this Enforceable Undertaking or arising from future conduct;
 - 6.2.2 this Enforceable Undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this Enforceable Undertaking or arising from future conduct.
- 6.3 The Companies and the Principals acknowledge that ASIC had reason to be concerned as to the alleged facts and has offered an Enforceable Undertaking in the terms of paragraphs 5.1 to 5.24 (inclusive) above.
- 6.4 The Companies and the Principals acknowledge that should ASIC form the view that if either party has failed to comply with this Enforceable Undertaking, ASIC may take additional action including (but not limited to) seeking court orders under section 322 of the NCCP Act and/or section 93AA of the ASIC Act requiring the party to comply with the terms of this Enforceable Undertaking.
- 6.5 The Companies and the Principals acknowledge that this Enforceable Undertaking has no operative force until accepted by ASIC, and the Companies and ASIC acknowledge that the date of the Enforceable Undertaking is the date on which it is accepted by ASIC.

**EXECUTED BY HOME ESSENTIALS
AUSTRALIA PTY LTD** in accordance with
section 127(1) of the *Corporations Act 2001*
(Cth) in the presence of:

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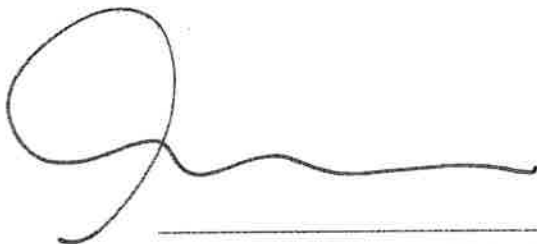


Signature of witness **ANGELO MINAS VENARDOS**
Date: 24/1/14 **SOLICITOR**


Daniel Simon Tarabay
Sole Director and Company Secretary

**EXECUTED BY TRIPLE BAY GROUP
PTY LTD** in accordance with section 127(1)
of the *Corporations Act 2001* (Cth) in the
presence of:

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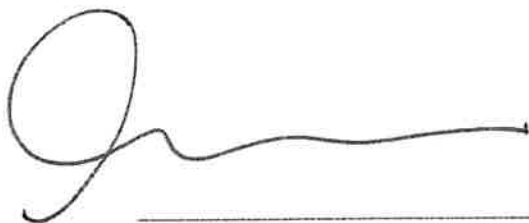


Signature of witness **ANGELO MINAS VENARDOS**
Date: 24/1/14 **SOLICITOR**


Daniel Simon Tarabay
Sole Director and Company Secretary

**EXECUTED BY I LOVE MY WATER
PTY LTD** in accordance with section 127(1)
of the *Corporations Act 2001* (Cth) in the
presence of: 2

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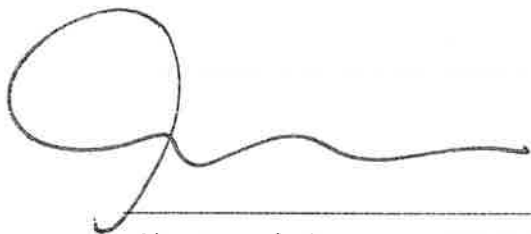


Signature of witness **ANGELO MINAS VENARDOS**
SOLICITOR


Ronald Carabay
Sole Director and Company Secretary


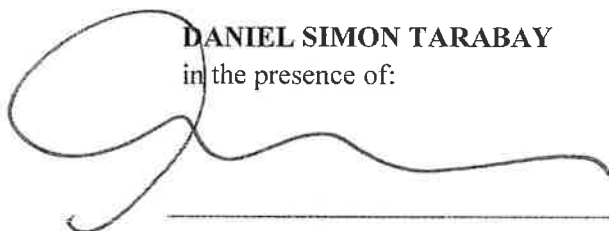
Date: 24/1/14

EXECUTED BY TRIPLE BAY PTY LTD)
in accordance with section 127(1) of the)
Corporations Act 2001 (Cth) in the presence
of:



Signature of witness **ANGELO MINAS VENARDOS**
SOLICITOR

Date: 24/1/14

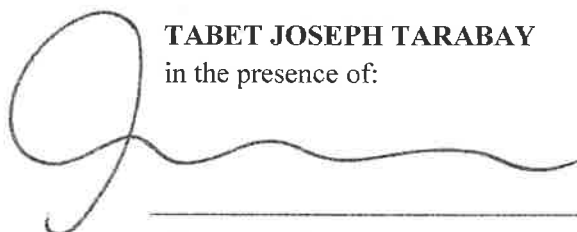

Ronald Carabay
Sole Director and Company Secretary

DANIEL SIMON TARABAY
in the presence of:

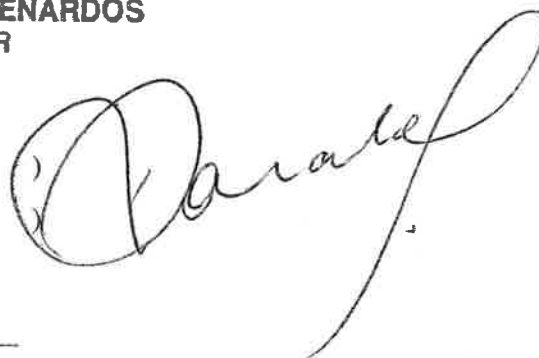


Signature of witness **ANGELO MINAS VENARDOS**
SOLICITOR

Date: 24/1/14

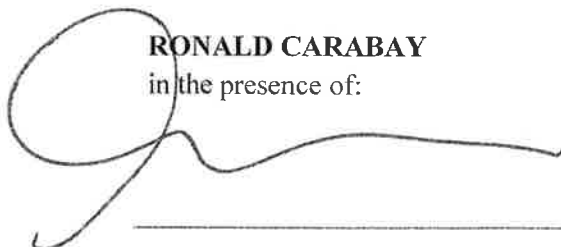


TABET JOSEPH TARABAY
in the presence of:




Signature of witness **ANGELO MINAS VENARDOS**
SOLICITOR

Date: 28/1/14



RONALD CARABAY
in the presence of:



Signature of witness **ANGELO MINAS VENARDOS**
SOLICITOR

Date: 24/1/14

Accepted by the Australian Securities and Investments Commission under section 322
of the NCCP Act and section 93AA of the ASIC Act by its duly authorised delegate:



David McGuinness

Senior Executive, Enforcement

Delegate of the Australian Securities and Investments Commission

Date: 3 February 2014

ANNEXURE A – Print Media Public Notice

Notice to customers of Home Essentials Australia Pty Ltd and I Love My Water Pty Ltd

The Australian Securities and Investments Commission (**ASIC**) has accepted an enforceable undertaking (**EU**) from Home Essentials Australia Pty Ltd, I Love My Water Pty Ltd, Triple Bay Group Pty Ltd and Triple Bay Pty Ltd (**Companies**).

The EU was entered into after an ASIC investigation found that by entering into 'rent to own' agreements with consumers for the hire/purchase of either water cooler units or first aid kits, the Companies engaged in credit activities while not licensed to do so, in breach of the *National Consumer Credit Protection Act 2009* (Cth). ASIC also found that "Ongoing Rental Advantage" and "Extended Rental Term" clauses in the agreements were unfair contract terms.

Under the EU, the Companies have agreed:

- a) not to collect any further payments from customers under existing rent to own agreements;
- b) to give to all customers unfettered title in the goods hired under rent to own agreements;
- c) not to enforce any rent to own agreements, including enforcement of any "Ongoing Rental Advantage" or "Extended Rental Term" clauses;
- d) to honour all contractual and statutory warranties to which customers are entitled;
- e) not to enter into any further rent to own agreements with consumers.

Any person who entered into a rent to own agreement with one or more of the Companies may wish to seek legal advice about their rights.

Further details of the EU are available at [www.asic.gov.au/... **details to be advised**]

ANNEXURE B1 – Letter to Customers

[Home Essentials Australia letterhead

– showing company's full name and the address of its registered office.

All type to be 10pt Arial]

[Name]

[Address]

Dear [Name]

On [date of entering into Rent to Own Agreement], Home Essentials Australia Pty Ltd, on behalf of Triple Bay Group Pty Ltd, entered into a Rent to Own Agreement with you whereby we agreed to hire a first aid kit [and/or water cooler and dispenser unit], with an option for you to purchase those goods at the expiry of the rental period.

Unlawful Credit Activities

The Australian Securities and Investments Commission (ASIC) is concerned that:

- The Rent to Own Agreement is a credit contract regulated by the *National Consumer Credit Protection Act 2009* (Cth)
- By entering into the Rent to Own Agreement, both Home Essentials Australia Pty Ltd and Triple Bay Group Pty Ltd engaged in credit activities while they did not hold a licence to do so and in doing so contravened the National Consumer Credit Protection Act.

Enforceable Undertaking

Home Essentials Australia Pty Ltd and Triple Bay Group Pty Ltd have entered an enforceable undertaking with ASIC, and have agreed:

- a) not to collect any further payments from customers under existing Rent to Own Agreements;
- b) to give to all customers unfettered title in the goods hired under Rent to Own Agreements;
- c) not to enforce any Rent to Own Agreements, including enforcement of any "Ongoing Rental Advantage" or "Extended Rental Term" clauses;
- d) to honour all contractual and statutory warranties to which customers are entitled;
- e) not to enter into any further Rent to Own Agreements with consumers.

ANNEXURE B2 – Letter to Customers

[I Love My Water letterhead

– showing company's full name and the address of its registered office.

All type to be 10pt Arial]

[Name]

[Address]

Dear [Name]

On [date of entering into Rent to Own Agreement], I Love My Water Pty Ltd, on behalf of Triple Bay Pty Ltd, entered into a Rent to Own Agreement with you whereby we agreed to hire a water cooler and dispenser unit, with an option for you to purchase those goods at the expiry of the rental period.

Unlawful Credit Activities

The Australian Securities and Investments Commission (ASIC) is concerned that:

- the Rent to Own Agreement is a credit contract regulated by the National Consumer Credit Protection Act 2009 (Cth)
- by entering into the Rent to Own Agreement, both Home Essentials Australia Pty Ltd and Triple Bay Group Pty Ltd engaged in credit activities while they did not hold a licence to do so and in doing so contravened the National Consumer Credit Protection Act.

Enforceable Undertaking

Home Essentials Australia Pty Ltd and Triple Bay Group Pty Ltd have entered an enforceable undertaking with ASIC, and have agreed:

- a) not to collect any further payments from customers under existing Rent to Own Agreements;
- b) to give to all customers unfettered title in the goods hired under Rent to Own Agreements;
- c) not to enforce any Rent to Own Agreements, including enforcement of any "Ongoing Rental Advantage" or "Extended Rental Term" clauses;
- d) to honour all contractual and statutory warranties to which customers are entitled;
- e) not to enter into any further Rent to Own Agreements with consumers.

What this means for you

As you have a current Rent to Own Agreement, this means:

- you are not required to make any further payments under your Rent to Own Agreement;
- you now own the goods outright – they are yours to keep;
- you have no further obligations under your Rent to Agreement;
- you still have the benefit of any contractual warranties provided under your Rent to Own Agreement and any statutory warranties.

You may wish to seek legal advice about your rights.

If you have any questions about this letter, please direct them to a lawyer or other professional advisor.

Yours sincerely

[Signature of Director]

Ronald Carabay

Director

I Love My Water Pty Ltd and Triple Bay Pty Ltd

ANNEXURE C1 – Website Corrective Notice

NOTICE

Notice to Customers of Home Essentials Australia Pty Ltd

The Australian Securities and Investments Commission (ASIC) (www.asic.gov.au) is concerned that certain business activities engaged in by Home Essentials Australia Pty Ltd and Triple Bay Group Pty Ltd breached provisions of the *National Consumer Credit Protection (Transitional and Consequential Provision) Act 2009* (Cth) and *National Consumer Credit Protection Act 2009* (Cth) (**National Credit Legislation**).

The National Credit Legislation prohibits persons from engaging in certain credit activities involving consumers without a licence. It also prohibits unlicensed persons from demanding, receiving or accepting any fee, charge or other amount from consumers in exchange for engaging in the relevant credit activity, and from entering into credit contracts without first providing customers with both a required pre-contractual statement and information statement.

ASIC is concerned that, during the period from 1 January 2011 to 6 November 2013, Home Essentials Australia Pty Ltd and/or Triple Bay Group Pty Ltd engaged in the following credit activities without being licensed to do so:

- a) Acting as a credit provider and providing credit to consumers by way of Rent to Own Agreements which provided for the hire of consumer goods with an option to purchase; and/or
- b) Performing the obligations or exercising the rights of a credit provider in relation to the Rent to Own Agreements; and/or
- c) Acting as an intermediary between a credit provider and a consumer wholly or partly for the purposes of securing a provision of credit for the consumer.

ASIC is also concerned that, in the same period, Home Essentials Australia Pty Ltd and Triple Bay Group Pty Ltd:

- demanded, received or accepted fees, charges or other amounts pursuant to the Rent to Own Agreements in exchange for engaging in the credit activities whilst unlicensed; and
- entered into credit contracts without first providing customers with both a pre-contractual statement and an information statement outlining the customer's

statutory rights and statutory obligations.

Home Essentials Australia Pty Ltd and Triple Bay Group Pty Ltd have entered an enforceable undertaking with ASIC, and have agreed:

- a) not to collect any further payments from customers under existing Rent to Own Agreements;
- b) to give to all customers unfettered title in the goods hired under Rent to Own Agreements;
- c) to not enforce any Rent to Own Agreements, including enforcement of any "Ongoing Rental Advantage" or "Extended Rental Term" clauses;
- d) to honour all contractual and statutory warranties to which customers are entitled;
- e) not to enter into any further Rent to Own Agreements with consumers.

Further details of the enforceable undertaking are available at www.asic.gov.au/ - **details to be provided]**

Persons who entered into Rent to Own Agreements with Home Essentials Australia Pty Ltd and Triple Bay Group Pty Ltd may wish to seek legal advice about whether they may have a right of relief against those companies, including compensation, refund of monies or cancellation of the contract.

ANNEXURE C2 – Website notice

CORRECTIVE NOTICE

Notice to Customers of I Love My Water Pty Limited

The Australian Securities and Investments Commission (ASIC) (www.asic.gov.au) is concerned that certain business activities engaged in by I Love My Water Pty Ltd and Triple Bay Pty Ltd breached provisions of the *National Consumer Credit Protection (Transitional and Consequential Provision) Act 2009* (Cth) and *National Consumer Credit Protection Act 2009* (Cth) (**National Consumer Protection Legislation**).

The National Consumer Protection Legislation prohibits persons from engaging in certain credit activities involving consumers without a licence. It also prohibits unlicensed persons from demanding, receiving or accepting any fee, charge or other amount from consumers in exchange for engaging in the relevant credit activity, and from entering into credit contracts without first providing customers with both a required pre-contractual statement and information statement.

ASIC is concerned that, during the period from 1 January 2011 to 6 November 2013, I Love My Water Pty Ltd and/or Triple Bay Pty Ltd engaged in the following credit activities without being licensed to do so:

- a) acting as a credit provider and providing credit to consumers by way of Rent to Own Agreements which provided for the hire of consumer goods with an option to purchase; and/or
- b) performing the obligations or exercising the rights of a credit provider in relation to the Rent to Own Agreements; and/or
- c) acting as an intermediary between a credit provider and a consumer wholly or partly for the purposes of securing a provision of credit for the consumer.

ASIC is also concerned that, in the same period, I Love My Water Pty Ltd and Triple Bay Pty Ltd:

- demanded, received or accepted fees, charges or other amounts pursuant to the Rent to Own Agreements in exchange for engaging in the credit activities whilst unlicensed; and
- entered into credit contracts without first providing customers with both a pre-

contractual statement and an information statement outlining the customer's statutory rights and statutory obligations.

I Love My Water Pty Ltd and Triple Bay Pty Ltd have entered an enforceable undertaking with ASIC, and have agreed:

- a) not to collect any further payments from customers under existing Rent to Own Agreements;
- b) to give to all customers unfettered title in the goods hired under Rent to Own Agreements;
- c) not to enforce any Rent to Own Agreements, including enforcement of any "Ongoing Rental Advantage" or "Extended Rental Term" clauses;
- d) to honour all contractual and statutory warranties to which customers are entitled;
- e) not to enter into any further Rent to Own Agreements with consumers.

Further details of the enforceable undertaking are available at www.asic.gov.au/ - **details to be provided]**

Persons who entered into Rent to Own Agreements with I Love My Water Pty Ltd and Triple Bay Pty Ltd may wish to seek legal advice about whether they may have a right of relief against those companies, including compensation, refund of monies or cancellation of the contract.

ANNEXURE D – Letter to Customers

[I Love My Water] or [Home Essentials] letterhead

– showing company's full name and the address of its registered office.

All type to be 10pt Arial]

[Name]

[Address]

Dear [Name]

On [date of entering into Rent to Own Agreement], [Home Essentials Australia Pty Ltd, on behalf of Triple Bay Group Pty Ltd] **or** [I Love My Water Pty Ltd, on behalf of Triple Bay Pty Ltd], entered into a Rent to Own Agreement with you whereby we agreed to hire to you a first aid kit [**and/or** water cooler and dispenser unit].

Despite our attempt to send the goods to you at your nominated address, they were returned to us undelivered.

Although you did not receive the goods, an amount of \$[insert amount] in instalment payments was deducted from your nominated bank account pursuant to the terms of the Rent to Own Agreement.

[Insert this paragraph for customers whose bank account details are known and refund by direct debit is successful] Accordingly, we have now refunded by direct deposit to your bank account the instalment payments previously deducted, less \$40 for the postage and handling costs of attempting to send the goods to you.

[Insert this paragraph for customers whose bank account details are known but debit attempt is unsuccessful] We have attempted to refund the amount deducted from your account, less \$40 for the postage and handling costs of attempting to send the goods to you (**Refund Amount**), directly to your bank account. In order to receive the Refund Amount, you must **by 21 April 2014** contact us in one of the following ways and request your refund:

- by mail to the above address;
- by telephone on [insert active telephone number];
- by email at [insert active email address].

Yours sincerely

[Signature of Director]

Ronald Carabay

Director

I Love My Water Pty Ltd and Triple Bay Pty Ltd

Or

Daniel Tarabay

Director

Home Essentials Australia Pty Ltd and Triple Bay Group Pty Ltd

