

## ENFORCEABLE UNDERTAKING

*National Consumer Credit Protection Act 2009*

Subsection 322(1)

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

***Future Holiday Finance Pty Ltd***

**ACN 108 475 298**

Australian Credit Licence 383982

'Central 240' Suite 17, 240 Varsity Parade, VARSITY LAKES QLD 4227

### 1. Definitions

In addition to terms defined elsewhere in this undertaking, the following definitions are used:

**Affected Customer** is a person who entered into a credit contract with FHF:

- (a) in the period from 1 January 2015 to the Commencement Date and:
  - i. the person's loan repayments to FHF went into arrears for 30 days or more during the first 12 months of the term of the credit contract; and/or
  - ii. the person provided FHF with a hardship notice under s72 of the National Credit Code during the first 12 months from the commencement of the credit contract; or
- (b) in the period from 1 July 2012 to 31 December 2014 and:
  - i. the person's loan repayments to FHF went into arrears for 30 days or more during the first 12 months of the term of the credit contract; and/or
  - ii. the person provided FHF with a hardship notice under s72 of the National Credit Code during the first 12 months from the commencement of the credit contract; and

the person contacts FHF during the Remediation Period stating that they are experiencing difficulty meeting their obligations under the credit contract or requesting a reassessment of their credit contract; and/or
- (c) in the period from 1 July 2012 to the Commencement Date and the person contacts FHF during the Remediation Period stating that they are experiencing difficulty meeting their obligations under the credit contract or requesting a reassessment of their credit contract.

*Note: For the avoidance of doubt, the definition of Affected Customer has no effect on FHF's obligations under s72 of the National Credit Code.*

**ASIC** means the Australian Securities and Investments Commission.

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

**Australian Credit Licence** has the meaning given in s35.<sup>1</sup>

**Authorised Representatives** means the authorised representatives of the Promoter as defined by s761A of the Corporations Act.

**Business Days** means business days in the State of Queensland where FHF operates its business.

**Certification Report** has the meaning given to that term in paragraph 3.5.10 of this enforceable undertaking.

**Club** means ULTIQA Lifestyle (ARSN 097 961 174), a points based timesharing scheme which is a type of managed investment scheme for the purposes of Chapter 5C of the Corporations Act.

**Commencement Date** means the date of acceptance by ASIC of this enforceable undertaking.

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

**Credit activity** has the meaning given in s6.

**Credit application** means the form used by customers to apply for a credit contract with FHF.

**Credit contract** has the meaning given in s4 of the National Credit Code.

**Credit provider** has the meaning given in s5.

**Credit representative** has the meaning given in ss64(2) and 65(2).

**Developer** means ULTIQA Developments Pty Ltd (ACN 096 169 274).

**FHF** means Future Holiday Finance Pty Ltd (ACN 108 475 298).

**Independent Expert** means the independent external consultant proposed to be engaged by FHF in accordance with paragraph 3.5 of this enforceable undertaking.

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

**National Credit Code** means Schedule 1 to the National Credit Act.

---

<sup>1</sup> In this enforceable undertaking, references to sections are references to sections of the National Credit Act unless otherwise stated.

**Promoter** means ULTIQA Lifestyle Promotions Limited (ACN 096 169 256), AFSL 238855.

**Remediation Period** means the period commencing from the Commencement Date until 31 December 2018, or as agreed between ASIC and FHF in writing.

**Remediation Program** is defined in paragraphs 3.4.2 to 3.4.12 and is the plan in accordance with which FHF will make remediation payments to Affected Customers in accordance with the terms of this enforceable undertaking.

**Reports** mean the Quarterly Remediation Reports and the Final Remediation Report, the Initial Compliance Report and the Quarterly Compliance Reports collectively.

**Responsible Entity** means ULTIQA Lifestyle Points Limited (ACN 090 475 719), AFSL 246784, the responsible entity for the Club.

**Review Period** means the period commencing on the date the Independent Expert is appointed and ending 12 months after the appointment date.

**Unsuitability assessment** means an assessment for the purposes of s129.

## 2. Background

### 2.1 ASIC's role

**2.1.1** Under s1 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.

**2.1.2** ASIC is responsible for the administration and enforcement of the National Credit Act, which regulates consumer credit in Australia, s12A(1) of the ASIC Act.

### 2.2 Details of conduct

#### *FHF*

**2.2.1** Since 23 December 2010, FHF has held an Australian Credit Licence, number 383982, which authorises it to engage in credit activities as a credit provider.

**2.2.2** The only credit contracts FHF offers are loans to finance the purchase of memberships in the Club, a timeshare scheme.

#### *FHF and ULTIQA*

**2.2.3** The Club is promoted by the Promoter, and its Authorised Representatives run seminars to sell interests in the Club.

**2.2.4** FHF and the Promoter have the same ultimate shareholders.

- 2.2.5 The Promoter, the Responsible Entity, the Developer and FHF share a common director.
- 2.2.6 The Authorised Representatives' administrative assistants are FHF credit representatives. When a customer wishes to obtain credit from FHF to purchase an interest in the Club at the sales seminar, the Authorised Representatives' administrative assistants help customers to complete credit applications and sign credit contracts with FHF.

### ***The Loan Contract***

- 2.2.7 Between 1 January 2011 and 31 December 2017, FHF entered into credit contracts for the purposes of the National Credit Act which are subject to obligations under Part 3-2 of the National Credit Act.
- 2.2.8 After customers signed credit contracts with FHF, FHF assessed the credit application.
- 2.2.9 If FHF approved the credit application, it paid the loan amount to the Developer.
- 2.2.10 The customer then repaid the loan amount to FHF under the terms of the credit contract.

### **2.3 ASIC's surveillance and analysis**

- 2.3.1 ASIC carried out surveillance into FHF's credit activities from 1 January 2015 to 29 May 2017.
- 2.3.2 As part of this surveillance, ASIC reviewed FHF's processes in relation to the credit contracts, FHF's offers to customers and the unsuitability assessments for these credit contracts. ASIC also reviewed a number of FHF's customer files.
- 2.3.3 ASIC's surveillance identified a number of concerns regarding FHF's conduct.

### **2.4 ASIC's views concerning the conduct**

#### ***FHF's obligations under Part 3-2 of the National Credit Act***

- 2.4.1 With respect to the customer files reviewed by ASIC, it appeared to ASIC that:
  - (a) FHF entered into credit contracts with customers without first assessing whether the credit contract was unsuitable for the customer;

- (b) FHF failed to detect miscalculations in its assessments of whether a credit contract would be unsuitable for a customer because its quality assurance processes were inadequate;
- (c) where customers applied for credit as joint applicants, FHF failed to verify the income and liabilities of both customers;
- (d) in some instances, FHF failed to make reasonable inquiries about the customer's actual living expenses;
- (e) FHF failed to undertake further inquiries and verification of a customer's financial situation in circumstances where the customer's declared living expenses were significantly lower than the expenses benchmark FHF used to verify the customer's expenses;
- (f) FHF's use of the Henderson Poverty Index expenses benchmark, without an additional margin, to verify a customer's actual living expenses (in cases where actual expenses had been obtained) may have led to FHF failing to verify and underestimating the actual and realistic living costs of customers;
- (g) FHF's records of discussions with employers of customers contained insufficient information to substantiate that customers' incomes had been verified; and
- (h) prior to November 2016, FHF used gross, rather than after-tax income, in its assessments of whether a credit contract would be unsuitable for a customer.

***FHF's obligations under Part 2-2 of the National Credit Act***

**2.4.2** FHF's explanation about the tasks the Authorised Representatives' administrative assistants undertake to help customers to apply for credit contracts, together with the lack of training these personnel received, led ASIC to the view that FHF failed to ensure that its representatives were adequately trained and competent to provide credit assistance.

***Unfair contract term***

**2.4.3** FHF's credit contract provided that the consumer had not relied on any other promise or representation by any person when deciding to enter into the transaction, other than the contract terms.

**2.5 ASIC's concerns**

**2.5.1** In light of the conduct and circumstances outlined in paragraph 2.4 of this enforceable undertaking, ASIC has concerns that FHF may have in some cases:

- (a) entered into credit contracts with consumers, without in the last 90 days, assessing whether the credit contract was unsuitable for the consumer, in accordance with s129 and in contravention of s128;
- (b) where there was a joint application, failed to make reasonable inquiries about, and verify, both applicants' financial situation, in contravention of ss128(d) and 130(1)(b) and (c);
- (c) failed to assess credit contracts as unsuitable, in contravention of s131(1);
- (d) entered into credit contracts that were unsuitable for the relevant consumers, in contravention of s133(1)(a) (see also Regulatory Guide 209: Credit licensing: Responsible lending conduct);
- (e) failed to ensure that its representatives were adequately trained and competent to engage in the credit activities authorised by the licence, as required by s47(1)(g) (see also Regulatory Guide 206: Credit licensing: Competence and training); and/or
- (f) entered into credit contracts with consumers that included an unfair contract term within the meaning of Subdivision BA of Part 2 of Division 2 of the ASIC Act.

## **2.6 Acknowledgment of ASIC's views**

- 2.6.1** FHF acknowledges that the views expressed by ASIC in relation to the alleged facts are reasonably held and has offered an enforceable undertaking in the terms of paragraphs 3.3 to 3.6 below.

## **3. Undertakings**

- 3.1** Under s322(1), FHF has offered, and ASIC has agreed to accept as an alternative to commencing civil proceedings against FHF, the undertakings in paragraphs 3.3 to 3.6 below.
- 3.2** Prior to the Commencement Date, FHF committed to and has commenced addressing ASIC concerns outlined in paragraph 2.5 of this enforceable undertaking.
- 3.3** FHF has stopped the conduct outlined in paragraph 2.4 of this enforceable undertaking and FHF undertakes not to recommence the conduct.
- 3.4 Remediation of Affected Customers**
  - 3.4.1** FHF undertakes to comply with the processes, procedures and timelines and remediate the Affected Customers (as defined in

paragraph 1) in accordance with the Remediation Program as set out in paragraphs 3.4.2 to 3.4.12 of this enforceable undertaking.

***Remediation Program***

**3.4.2** For persons who fall within paragraph (a) of the definition of Affected Customer, within two months of the Commencement Date, FHF will assess each corresponding credit contract to determine whether FHF met its obligation to make reasonable inquiries about, and took reasonable steps to verify, the customer's financial situation and its obligation to assess the unsuitability of the credit contract, as required by ss129, 130 and 131. If FHF finds that it:

- (a) did not meet its obligations, then FHF will rescind the existing credit contract and refund to the customer all money paid by the customer under the credit contract; or
- (b) met its obligations, then the credit contract will continue.

**3.4.3** For persons who fall within paragraph (b) of the definition of Affected Customer, within two months of the customer stating to FHF during the Remediation Period that they are experiencing difficulty meeting their obligations under the credit contract or requesting a reassessment of their credit contract, FHF will assess the credit contract. This is to determine whether FHF met its obligation to make reasonable inquiries about, and took reasonable steps to verify, the customer's financial situation and its obligation to assess the unsuitability of the credit contract, as required by ss129, 130 and 131. If FHF finds that it:

- (a) did not meet its obligations, then:
  - (i) if the contract is continuing at the date of the assessment, FHF will rescind the existing credit contract and refund to the customer all money paid by the customer under the credit contract; or
  - (ii) if the contract has been cancelled or terminated at the date of the assessment, FHF will refund to the customer all money paid by the customer under the credit contract plus interest on the refund which is calculated as follows:

$$\frac{\text{refund amount} \times \text{days interest payable} \times \text{interest rate}}{\text{days in the financial year}}$$

where 'refund amount' is all money paid by the customer under the credit contract;

'days interest payable' is the number of days from the date the contract was cancelled or terminated to the date the refund is paid;

the interest rate is based on the percentage change in the Consumer Price Index so that the interest rate for

2012/2013 was 2.28% or 0.0228

2013/2014 was 2.71% or 0.0271

2014/2015 was 1.71% or 0.0171

2015/2016 was 1.38% or 0.0138

2016/2017 was 1.71% or 0.0171

2017/2018 is 2.30% or 0.0230

and

'days in the financial year' is 365

or

(b) met its obligations, then the credit contract continues.

**3.4.4** For persons who fall within paragraph (c) of the definition of Affected Customer, within two months of the customer stating to FHF during the Remediation Period that they are experiencing difficulty meeting their obligations under the credit contract or requesting a reassessment of their credit contract, FHF will assess whether a credit contract for the outstanding loan amount is unsuitable for the customer. This will be done by having regard to the customer's current financial situation, subject to the customer providing FHF with the information and documentation that is required to undertake such assessment. If FHF assesses the credit contract as:

- (a) being unsuitable under the current assessment, FHF will rescind the existing credit contract and refund to the customer all money paid by the customer under the credit contract; or
- (b) not being unsuitable, FHF will offer the customer the option of continuing under their existing credit contract or entering into a new credit contract for the outstanding loan amount.

If a person who falls within paragraph (c) of the definition of Affected Customer does not provide FHF with the information and documentation that is required to assess whether a credit contract for the outstanding loan amount is unsuitable for the customer



having regard to the customer's current financial situation, then FHF will not be required to assess whether a credit contract for the applicable Affected Customer for their outstanding loan amount is unsuitable and the existing credit contract between the parties will continue.

- 3.4.5** For the avoidance of doubt, FHF must meet its obligations under Part 3-2 of the National Credit Act before entering into a new credit contract with a customer in accordance with the Remediation Program and follow the guidance of Regulatory Guide 209: Credit licensing: Responsible lending conduct.
- 3.4.6** If FHF arranged for a default to be listed on a consumer's credit report in relation to a credit contract, and FHF finds that it did not meet its obligations as required by ss129, 130 or 131, within 10 Business Days of making this finding, FHF will request that the relevant credit reporting body remove the default listing. A copy of such request will be sent to the customer at the same time as the request is given to the relevant credit reporting body.
- 3.4.7** FHF acknowledges that because of the timeframes in the definition of Affected Customer in paragraph 1 of this enforceable undertaking, persons may fall within two definitions of an Affected Customer; that is, both paragraph (a) and (c) or (b) and (c). If this occurs, FHF undertakes that it will first apply the methodology in either paragraph 3.4.2 or 3.4.3 above.
- 3.4.8** If as a result of applying either the methodology in paragraph 3.4.2 or 3.4.3, as provided for in paragraph 3.4.7 above, FHF finds that it met its obligations under ss129, 130 and 131, FHF will then, within 10 Business Days of making its finding, ask the Affected Customer in writing whether the Affected Customer wants FHF to undertake the methodology in paragraph 3.4.4. If the Affected Customer responds in the affirmative, then FHF will apply the methodology within two months after receiving the Affected Customer's response.

If the Affected Customer does not provide FHF with the information and documentation that is required to assess whether a credit contract for the outstanding loan amount is unsuitable for the customer having regard to the customer's current financial situation, then FHF will not be required to assess whether a credit contract for the applicable Affected Customer for their outstanding loan amount is unsuitable and the existing credit contract between the parties will continue.

*Note: The process in paragraphs 3.4.7 and 3.4.8 ensures that persons who fall within paragraph (a) or (b) of the definition of Affected Customer are afforded the same opportunity as persons in the broader category of paragraph (c) of the definition of Affected*

*Customer to request that FHF assess whether a credit contract for the outstanding loan amount is not unsuitable.*

- 3.4.9** FHF undertakes to make payments to Affected Customers as provided by paragraphs 3.4.2 to 3.4.4 above within 10 Business Days of FHF finding it did not meet its obligations as set out in paragraph 3.4.2 and 3.4.3 or finding the contract was unsuitable as set out in paragraph 3.4.4 above.
- 3.4.10** FHF undertakes to rescind the existing credit contract and refund to the customer all money paid by the customer under the credit contract with FHF if the Independent Expert has provided a written opinion to do so as referred to in paragraph 3.5.7(a)(v).

***Customer communication***

- 3.4.11** Within four weeks of the Commencement Date, FHF undertakes to:
- (a) publish on the Internet homepage of FHF (**FHF's Website**), which is maintained under the domain name <http://www.futureholidayfinance.com.au>, for the duration of the Remediation Program, a notice, displayed in a box in a prominent position on FHF's Website in a typeface of at least 14 point Times New Roman, stating the following text:

**IMPORTANT NOTICE ABOUT YOUR LOAN:**

FHF has agreed with the Australian Securities and Investments Commission (ASIC), Australia's consumer credit regulator, that due to ASIC's concerns, FHF will undertake a remediation program. This may mean you are entitled to a refund.

This is because FHF may have assessed your loan as suitable for you when it was not.

Please contact FHF on (07) 5556 3000 or write to us at [accounts@futureholidayfinance.com.au](mailto:accounts@futureholidayfinance.com.au) or PO Box 469, Mudgeeraba, QLD 4213 to request a reassessment of your loan, including if you are having difficulty repaying your loan.

You may need to provide us with income and expenses documents, such as a pay slip, to reassess your loan.

If you get a refund, this will not affect your timeshare membership.

You have until 31 December 2018 to request an assessment. Therefore, we suggest you contact us as soon as possible.

- (b) use its best endeavours to bring about the publication of a notice on the Club's website with the domain name <http://www.Ultiqalifestyle.com.au>, which provides Club members with information about the Remediation Program and how to request a reassessment of their credit contract. This notice will remain published for the duration of the Remediation Period; and
- (c) contact persons falling within paragraph (b) of the definition of Affected Customer by at least post and, if the address is known to FHF, by email to inform them about the Remediation Program and offer to conduct a reassessment of their credit contract.

#### **3.4.12 Within:**

- (a) four weeks of the Commencement Date, FHF is to give copies of draft communications to Affected Customers, including templates of letters, emails, SMSs and telephone call scripts, and
- (b) two weeks of the Commencement Date, FHF is to give draft content for publication on FHF's Website,

to ASIC for approval prior to being communicated to Affected Customers or published on FHF's Website. ASIC's approval will not be unreasonably withheld.

### **3.5 Engagement of an Independent Expert**

#### ***Appointment of Independent Expert***

**3.5.1** FHF undertakes to request ASIC to approve, within 15 Business Days of the Commencement Date or within such longer period as may be agreed by ASIC and FHF:

- (a) the appointment of an Independent Expert that meets the criteria in paragraph 3.5.3 below; and
- (b) draft terms of engagement for that expert that meet the requirements of this enforceable undertaking and as set out in paragraph 3.5.4 and 3.5.5.

**3.5.2** If ASIC approves the draft terms of engagement and the Independent Expert following a request by FHF under paragraph 3.5.1, FHF undertakes to appoint the approved Independent Expert on the terms approved by ASIC, within 10 Business Days of

receiving ASIC's approval, or within such longer period as may be agreed by ASIC and FHF.

**3.5.3** FHF undertakes to nominate, under paragraph 3.5.1(a) above, an Independent Expert who:

- (a) has the necessary expertise, experience and operational capacity to perform the role contemplated by this enforceable undertaking; and
- (b) is independent of FHF, its officers, the Club, the Promoter, the Responsible Entity, the Developer and FHF's related bodies corporate, as defined in section 50 of the Corporations Act, at the time of the appointment, and who will at all material times be capable of exercising objective and impartial judgement.

***Terms of engagement***

**3.5.4** FHF undertakes to ensure the terms of the Independent Expert's engagement provided to ASIC for approval under paragraph 3.5.1(b):

- (a) include a statement to the effect that the work of the Independent Expert is being carried out for FHF and ASIC, and acknowledging that ASIC is relying on the work of the Independent Expert;
- (b) include a statement that, upon request by ASIC, ASIC is to be copied into all or some communications between FHF and the Independent Expert;
- (c) require the Independent Expert to notify ASIC where a conflict of interest arises during the engagement or when the Independent Expert becomes aware of information that adversely affects its ability to exercise objective and impartial judgement;
- (d) include acknowledgement that in relation to the Reports to be provided to ASIC and FHF as described in paragraphs 3.5.6 to 3.5.9, ASIC may from time to time publicly refer to the content of the Reports, and may make a summary of the content of the Reports or a statement that refers to the content of the Reports publicly.

**3.5.5** FHF undertakes to ensure that the Independent Expert's terms of engagement include requirements that the Independent Expert will:

- (a) set out the steps that the Independent Expert has taken to fulfil the engagement, including but not limited to:

- i) the people who have assisted the Independent Expert and in what way;
  - ii) the personnel who have been interviewed;
  - iii) the documents that have been assessed; and
  - iv) recording any decisions the Independent Expert made not to interview certain personnel, or assess certain documents, and the reasons for these decisions;
- (b) set out any limitations or qualifications to the Independent Expert's Reports;
  - (c) list those documents or extracts of documents relevant in producing the Independent Expert's Reports; and
  - (d) otherwise comply (to the extent applicable) with those paragraphs of the Federal Court of Australia's Expert Evidence Practice Note, Annexure A: 'Harmonised Expert Witness Code of Conduct' that fall under the subheading 'Content of Report'.

***Independent oversight of Remediation Program, compliance review and Reports***

**3.5.6** FHF undertakes to engage the Independent Expert:

- (a) to provide independent oversight of the Remediation Program as set out in paragraph 3.4; and
- (b) over a 12 month period commencing on the date the Independent Expert is appointed, or as extended by agreement between ASIC and FHF, to review FHF's compliance with its obligations under the National Credit Act and to review whether FHF has entered credit contracts that include unfair terms within the meaning of Subdivision BA of Division 2 of Part 2 of the ASIC Act; and
- (c) to provide Reports to ASIC as set out in paragraphs 3.5.7 to 3.5.9.

***A - Independent oversight of Remediation Program***

**3.5.7** FHF undertakes to engage the Independent Expert to:

- (a) monitor and assess whether the Affected Customers are being remediated in accordance with the Remediation Program as set out in paragraph 3.4 above, and where necessary, make reasonable recommendations to ensure compliance with the Remediation Program. This will include but is not to be limited to:

- i) reviewing a random sample of at least 10% of FHF's assessments referred to in paragraph 3.4.2 of this enforceable undertaking and selected by the Independent Expert; and
  - ii) reviewing a random sample of at least 10% of FHF's assessments of the unsuitability of credit contracts referred to in paragraph 3.4.3 of this enforceable undertaking and selected by the Independent Expert; and
  - iii) reviewing a random sample of at least 10% of FHF's assessments of the unsuitability of credit contracts referred to in paragraph 3.4.4 of this enforceable undertaking and selected by the Independent Expert; and
  - iv) for the samples referred to in paragraphs 3.5.7(a)(i) to (iii), if the Independent Expert is of the opinion that more than 10% of the sample does not comply with the Remediation Program, then the Independent Expert will:
    - A) immediately notify ASIC; and
    - B) conduct a review of a further random sample of at least 10% of the original number of FHF's assessments carried out pursuant to paragraphs 3.4.2 to 3.4.4, that were not included in the first random samples referred to in paragraphs 3.5.7(a)(i) to (iii), selected by the Independent Expert, on each occasion that the circumstances described in paragraph 3.5.7(a)(iv) occur; and
  - v) within 20 Business Days of the review described in 3.5.7(a)(i) to (iv) being completed, provide a written opinion to FHF, with a copy to ASIC, of the existing credit contracts that should be rescinded and the customers who should receive a refund of money paid by the customer under the credit contract pursuant to, as applicable, paragraphs 3.4.2(a), 3.4.3(a) or 3.4.4(a); and
- (b) submit the following reports to ASIC:
- i) within one month after the end of each three month period commencing on the date the Independent Expert is appointed, a report (**Quarterly Remediation Report**) that sets out the following information in respect of the relevant past three month period:
    - A) how many Affected Customers contacted FHF;
    - B) the total number of Affected Customers:
      - (1) whose credit contracts were assessed;

- (2) with whom credit contracts were rescinded; and
    - (3) to whom remediation amounts were paid;
  - C) the total dollar value of the credit contracts rescinded; including interest and fees incurred by the customer and the amount refunded to the customer; and
  - D) whether, in the opinion of the Independent Expert, the Remediation Program requires any modification to address any concerns (including whether the Affected Customers are receiving consistent outcomes under the application of the Remediation Program) that may have arisen during the three month period;
- ii) within one month after the end of the Remediation Period, a report (**Final Remediation Report**) covering the Remediation Period that sets out the following information:
  - A) the total number of customers who had credit contracts with FHF where a loan amount remained to be paid as at the Commencement Date and the number of Affected Customers who contacted FHF;
  - B) the total number of Affected Customers:
    - (1) whose credit contracts were assessed;
    - (2) with whom credit contracts were rescinded by FHF; and
    - (3) to whom remediation amounts were paid;
  - C) the total dollar value of the credit contracts rescinded; including interest and fees incurred by the customer and the amount refunded to the customer; and
  - D) whether, in the opinion of the Independent Expert, FHF has complied with the Remediation Program and if not why not;
- (c) within 30 days of the Final Remediation Report, provide a statement to ASIC about whether in the Independent Expert's opinion all requirements and obligations set out in the Remediation Program have been completed and if not why not.

**B - Compliance review****3.5.8** FHF will undertake to engage the Independent Expert to:

- (a) within one month of the appointment of the Independent Expert, or such other period as agreed with FHF and ASIC:
  - i) comprehensively review the changes FHF has made to its credit contracts and compliance policies, procedures and processes (**Compliance Framework**) to assess FHF's current compliance with its obligations under the National Credit Act;
  - ii) comprehensively review FHF's credit contracts to determine whether, in the Independent Expert's view, any of the terms would be unfair contract terms within the meaning of Subdivision BA of Part 2 Division 2 of the ASIC Act;
  - iii) recommend to FHF, with a copy to ASIC, improvements to FHF's Compliance Framework that the Independent Expert is of the opinion are necessary;
  - iv) provide a report to FHF and ASIC regarding FHF's Compliance Framework's compliance with Parts 2-2 and 3-2 of the National Credit Act and whether FHF has entered credit contracts with unfair terms within the meaning of Subdivision of BA of Division 2 of Part 2 of the ASIC Act and addressing the matters detailed in paragraphs 3.5.8(a)(i) to 3.5.8(a)(iii) (**Initial Compliance Report**); and
- (b) for every three month period commencing on the date the Independent Expert is appointed and ending 12 months after the date the Independent Expert is appointed, or such extended period agreed to by ASIC and FHF:
  - i) comprehensively review and assess a random sample of at least 10 of FHF's customer files selected by the Independent Expert, where the credit contracts were entered into within the three month period, to evaluate FHF's ongoing compliance with its obligations in Part 3-2 of the National Credit Act;
  - ii) review details of all complaints notified to FHF and made within the three month period by customers in relation to the credit activities engaged in by FHF and its representatives, including the outcome and whether any complaints were lodged with an external dispute resolution scheme;



- iii) monitor and assess whether FHF is meeting its general conduct obligations in Part 2-2 of the National Credit Act, particularly to ensure that FHF has in place adequate arrangements to ensure that customers are not disadvantaged by any conflict of interest that may arise wholly or partly in relation to credit activities engaged in by FHF and its credit representatives and that FHF's representatives are adequately trained and competent;
  - iv) recommend to FHF, with a copy to ASIC, improvements to the Compliance Framework that the Independent Expert is of the opinion are necessary; and
  - v) within one month after the end of each three month period, provide a report to FHF and ASIC regarding FHF's compliance with its obligations under the National Credit Act and addressing the matters detailed in paragraphs 3.5.8(b)(i) to 3.5.8(b)(iv) (**Quarterly Compliance Report**);
- (c) immediately refer any significant breach identified by the Independent Expert to ASIC for consideration.

### ***C - Reports***

**3.5.9** If the Initial Compliance Report or any Quarterly Compliance Report falls due within one month of a Quarterly Remediation Report or the Final Remediation Report, the reports may be combined.

**3.5.10** Within 10 Business Days after receiving each of the Reports, FHF will lodge a report signed by FHF's Managing Director (**Certification Report**) with ASIC that:

- (a) certifies which of the recommendations made by the Independent Expert have been implemented by FHF; and
- (b) provides a response to, and if applicable a timetable for the implementation of, any recommendation in the Independent Expert's Report which had, at the date of the Certification Report, not been implemented.

### ***Access to information***

**3.5.11** FHF undertakes to:

- (a) permit the Independent Expert, to the extent that it is reasonable having regard to the requirements of this enforceable undertaking, to have access to its books and to interview current staff and officers;

- (b) give the Independent Expert any information or explanation reasonably requested by the Independent Expert of any matter in any way connected with the Reports required to be prepared by the Independent Expert under this enforceable undertaking; and
- (c) otherwise reasonably assist the Independent Expert in carrying out the terms of its engagement and producing the Reports required to be prepared by the Independent Expert under this enforceable undertaking.

#### ***Appointment of an alternative Independent Expert***

**3.5.12** FHF undertakes to seek approval under paragraph 3.5.1 of this enforceable undertaking for the appointment of a new Independent Expert, within 15 Business Days of becoming aware that the appointed Independent Expert is unable to continue its appointment.

### **3.6 Other matters**

**3.6.1** FHF undertakes that it will pay the costs of its compliance with this enforceable undertaking, including the remuneration and costs associated with the engagement of the Independent Expert. FHF will not seek reimbursement of, contribution towards or otherwise directly or indirectly pass on the costs of compliance with this enforceable undertaking or any proportion of those costs.

**3.6.2** FHF will provide all documents and information requested by ASIC from time to time for the purpose of assessing FHF's compliance with the terms of this enforceable undertaking.

**3.6.3** In addition to any other reports or documents prepared under this enforceable undertaking, FHF undertakes to provide ASIC within one month after the first anniversary of the Commencement Date, or such other period as agreed between ASIC and FHF, a statement as to whether the undertakings in paragraphs 3.3 to 3.6 have been complied with.

**3.6.4** FHF will notify ASIC as soon as reasonably practicable, and in any event within 10 Business Days of becoming aware, of any failure by FHF to comply with a term of this enforceable undertaking.

## **4. Acknowledgements**

**4.1** FHF acknowledges, and will also ensure that the Independent Expert's terms of engagement includes an acknowledgement, that ASIC:

- 4.1.1** may issue a media release on execution of this undertaking referring to its terms and to the concerns of ASIC which led to its execution;
  - 4.1.2** may from time to time publicly refer to this undertaking;
  - 4.1.3** will from time to time publicly report about compliance with this undertaking;
  - 4.1.4** will make this undertaking available for public inspection;
  - 4.1.5** may issue a media release referring to the content of the Reports and/or the Certification Reports;
  - 4.1.6** may from time to time publicly refer to the content of the Reports and/or the Certification Reports;
  - 4.1.7** will make available for public inspection a summary of the content of the Reports and/or the Certification Reports, or a statement that refers to the content of those Reports and/or the Certification Reports; and
  - 4.1.8** may request from the Independent Expert all relevant documents and information from time to time for the purpose of assessing FHF's compliance with the terms of this enforceable undertaking.
- 4.2** ASIC acknowledges that it will not refer to any information from the Reports or the Certification Reports that:
- 4.2.1** consists of personal information of an identified natural person whose acts or omissions are not the subject of, or a concern mentioned in, the enforceable undertaking;
  - 4.2.2** ASIC is satisfied would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of FHF or a third party otherwise than in a way that arises from the execution, implementation and reporting of the outcomes of the enforceable undertaking;
  - 4.2.3** ASIC is satisfied should not be released because it would be against the public interest to do so; or
  - 4.2.4** FHF has asked not to be released if we are satisfied:
    - (a) it would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of FHF otherwise than in a way that arises from the execution, implementation and reporting of the outcomes of the enforceable undertaking; or
    - (b) it should not be released because it would be against the public interest to do so.

**4.3** Further FHF acknowledges that:

**4.3.1** ASIC's acceptance of this 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; and

**4.3.2** this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking or arising from future conduct.

**4.4** FHF acknowledges that this undertaking has no operative force until accepted by ASIC, and FHF and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC (the **Commencement Date**).

**4.5** The address for providing ASIC with any document or certification that the enforceable undertaking requires to be provided is:

Australian Securities and Investments Commission

GPO Box 9827

MELBOURNE VIC 3001

Attention: Senior Manager – Deposit Takers, Credit & Insurers

Or by email to: [DCI.referrals@asic.gov.au](mailto:DCI.referrals@asic.gov.au).

**4.6** The address for providing FHF with any document or notification required by this enforceable undertaking is:

'Central 240' Suite 17, 240 Varsity Parade

VARSIY LAKES QLD 4227


Or by email to: [cjw0101@gmail.com](mailto:cjw0101@gmail.com) and  
[manager@futureholidayfinance.com.au](mailto:manager@futureholidayfinance.com.au)

)  
**SIGNED SEALED AND DELIVERED by )**  
**Future Holiday Finance Pty Ltd**  
**ACN 108 475 298 by:**

  
..... Director

  
..... ~~Director~~/Company Secretary

**Accepted by the Australian Securities and Investments Commission under  
subsection 322(1) of the *National Consumer Credit Protection Act 2009* by its duly  
authorised delegate:**

  
.....

David McGuinness

Delegate of Australian Securities and Investments Commission

Date *30 August* 2018