

Enforceable Undertaking

Australian Securities & Investment Commission Act 2001

Section 93AA

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

ExploreltAll Technology Pty Ltd ACN 091 910 360
c/- Webb & Co Services Pty Ltd, 381 Tooronga Road, Hawthorn East,
Victoria 3123
("**EIA**")

and

The Lifestyle Planner Pty Ltd ACN 104 418 957
c/- Webb & Co Services Pty Ltd, 381 Tooronga Road, Hawthorn East,
Victoria 3123
("**TLP**")

in relation to conduct of EIA and TLP between 11 March 2002 and December 2004.

1. Background

- 1.1 On 7 July 2004 ASIC commenced an investigation into the conduct of EIA and TLP pursuant to section 13(1) of the *Australian Securities & Investment Commission Act 2001* ("**ASIC Act**") regarding suspected contraventions of section 911A of the *Corporations Act 2001* ("**Corporations Act**") from 11 March 2002.
- 1.2 As a result of these investigations, ASIC is concerned to ensure that EIA and TLP comply with their obligations under the Corporations Act, and in particular that EIA and TLP do not carry on a financial services business without a licence. EIA and TLP are similarly concerned to ensure that they comply with their obligations under the Corporations Act.
- 1.3 EIA was incorporated on 8 March 2000. EIA developed an Australian version of a financial modelling tool that allowed users to compare the effects of various financial products ("~~the~~ **Software**"). At that time, the Software contained the details of financial products available from the National Australia Bank, and facilitated

comparisons between a retail client's existing financial products and the array of products available from the National Australia Bank.

- 1.4 In or around October 2001, EIA began to distribute a trial version of the Software at a post and handling cost of \$49.95 per disc. EIA distributed approximately 600 trial discs to retail clients. The purpose of distributing the trial discs was to encourage people to purchase a licence to access the complete version of the Software.
- 1.5 On 11 March 2002, certain amendments to the Corporations Act came into effect. One such amendment was that an Australian Financial Services Licence ("**AFSL**") would now be required to provide financial services.
- 1.6 Between 11 March 2002 and December 2002, EIA sold fifty two (52) licences to retail clients to use the Software ("**Customers**"). The price charged for the licence was \$179.90. On or around December 2002, EIA ceased to promote and sell the Software.
- 1.7 In 2004, EIA transferred all its rights and interest in the Australian version of the Software together with related intellectual property to TLP. Since then, TLP has promoted and distributed a trial version of the Software.
- 1.8 As a result of the investigation, ASIC was concerned that EIA and TLP had contravened section 911A of the Corporations Act by conducting a financial services business without an AFSL during the period from 11 March 2002 to December 2004 ("**Relevant Period**"). ASIC was concerned that the Software provided financial service advice to consumers by producing a report that may have been relied on by consumers in making a decision about a financial product. Further, ASIC was concerned that by providing the Software to consumers EIA and TLP were conducting a business of providing financial advice during the Relevant Period.
- 1.9 EIA and TLP acknowledge ASIC's concerns that the Software provided financial service advice.
- 1.10 EIA and TLP admit that they did not have an AFSL during the Relevant Period. However at the time they believed that they did not require an AFSL to distribute the Software as, in EIA and TLP's view, the Software was merely an evaluation tool and did not provide advice. EIA and TLP now acknowledge that this view was incorrect.

- 1.11 In deciding to accept this enforceable undertaking, ASIC has taken into account that:
- 1.11.1 No customers of EIA or TLP have complained to ASIC
 - 1.11.2 The cooperation of the entities with ASIC during its investigation.
 - 1.11.3 Until contacted by ASIC, EIA and TLP were not aware that they were conducting a financial services business in contravention of Section 911A of the Corporations Act 2001
- 1.12 All activities involving the sale and distribution of the Software now occur in accordance with the Australian Financial Services licence number 253103 issued on 31 May 2004 to Lifestyle Planning Capital Limited ACN 106 362 663.

2. Undertakings

- 2.1 To address ASIC's concerns, EIA and TLP have offered, and ASIC has agreed to accept, the enforceable undertakings set out below.
- 2.2 EIA and TLP do not currently, and will not in the future, carry on a business of selling and distributing the Software without holding an AFSL.
- 2.3 By 30 November 2005 EIA and TLP undertake to advertise, in a national newspaper that circulates in every major capital city in Australia, inviting any person who has purchased the Software or a licence to use the Software to contact either of EIA and TLP to seek a full refund of the postage and handling and licence fee paid. The advertisement will be approved by ASIC prior to publication and will refer to this undertaking and provide details of where a copy of this undertaking may be obtained.
- 2.4 By 30 January 2006 EIA and TLP undertake to send a written notice to:
- 2.4.1 each of the respective customers of EIA and TLP whose contact details are known to either EIA or TLP at the date of giving this undertaking, and
 - 2.4.2 all other persons who contact EIA or TLP in response to the advertisement referred to at paragraph 2.3 above, where the person can provide documentary

evidence to EIA and TLP of purchase of the software within 8 weeks of the date of the written notice

in the form attached at Annexure A, offering to refund the full amount of the postage and handling fee and the licence fee paid to purchase a licence to use the Software.

- 2.5 EIA and TLP undertake to refund to the Customer the full amount paid for the licence to use the Software within 14 days of:
 - 2.5.1 a Customer accepting the offer of a refund by contacting EIA or TLP, or
 - 2.5.2 in the case of person referred to at paragraph 2.4.2 providing EIA or TLP with evidence of the purchase of a licence to use the Software.

3. Acknowledgements

- 3.1 EIA and TLP acknowledge ASIC's concerns set out in this undertaking.
- 3.2 EIA and TLP acknowledge that ASIC:
 - 3.2.1 may issue a media release on execution of this undertaking referring to its terms, the concerns of ASIC which led to its execution and all the circumstances involved in this matter;
 - 3.2.2 may from time to time publicly refer to this undertaking; and
 - 3.2.3 will make this undertaking available for public inspection.
- 3.3 EIA and TLP acknowledge that:
 - 3.3.1 ASIC's acceptance of this enforceable undertaking does not affect ASIC's power to investigate a contravention arising from future conduct;
 - 3.3.2 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 enforceable undertaking; and

3.3.3 this undertaking has no operative force until accepted by ASIC.

EXECUTED on:

**Signed by ExploreltAll
Technology Pty Ltd ACN 091 910 360**
in accordance with section 127
of the Corporations Act 2001



Director

IAN MOFFITT

Name

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Company Secretary

IAN JACKMAN

Name

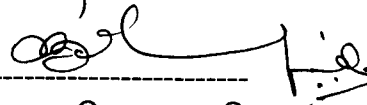
**Signed by The Lifestyle
Planner Pty Ltd ACN 104 418 957**
in accordance with section 127
of the Corporations Act 2001



Director

IAN MOFFITT

Name

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Company Secretary

IAN MOFFITT

Name

ACCEPTED BY THE AUSTRALIAN SECURITIES AND INVESTMENTS
COMMISSION PURSUANT TO SECTION 93AA OF THE ASIC ACT BY
ITS DULY AUTHORISED DELEGATE



.....
Mark Steward
Deputy Executive Director, Enforcement
ASIC

Date 25/10/05

Annexure A

[letterhead of EIA]

[letterhead of TLP]

[date]

[recipient]

Dear Sir/ Madam,

ExploreITall/The Lifestyle Planner

We note from our records [or You have contacted us in response to our advertisement and informed us], that you acquired a Licence that was formerly referred to as an 'Access Pass' to access the full use of the software known as 'The Lifestyle Planner' (formerly known as 'ExploreITall').

We have subsequently become aware that this Software should have been provided to you under an Australian Financial Services Licence.

We have entered into an Enforceable Undertaking with the Australian Securities & Investments Commission ("**ASIC**") in relation to these matters. A copy of this undertaking can be obtained from www.asic.gov.au or by contacting either of EIA or TLP on the telephone number below.

As a consequence, we will be pleased to refund you the full cost of the licence you acquired in addition to any postage and handling fee paid by you. To accept this offer please contact EIA or TLP in writing at the above address by [date].

We would also advise that we now provide the software via representatives who are authorised under an Australian Financial Services license number 253103 issued on 31 May 2004 to Lifestyle Planning Capital Limited ACN 106 362 663.

We apologise for this inconvenience and look forward to your response in the time provided.

Should you have any questions please telephone [telephone number].

Yours sincerely,