

## VARIATION TO ENFORCEABLE UNDERTAKING

*Australian Securities and Investments Commission Act 2001 (Cth), section 93AA*

and

*Competition and Consumer Act 2010 (Cth), section 87B*

This is a variation to the enforceable undertaking given to the Australian Securities and Investments Commission (ASIC) and the Australian Competition and Consumer Commission (ACCC) by Malouf Group Enterprises Pty Ltd and Jordan Francis Malouf and executed on 24 April 2018 (**the Enforceable Undertaking**).

### 1. **Definitions**

This variation adopts the definitions in the Enforceable Undertaking, and in this variation “*Ecstra*” means Ecstra Foundation Limited ABN 16625525162.

### 2. **Background**

2.1 Clause 4.2 of the Enforceable Undertaking is an undertaking that the Malouf Entities make a community benefit payment within 30 days of the expiration of the Remediation Period, of the difference between the total aggregate refunded to Entitled Consumers and \$1,100,000 to Financial Literacy Australia Limited.

2.2 Financial Literacy Australia Limited was deregistered on 22 April 2019, before the expiration of the Remediation Period, so the undertaking in Clause 4.2 of the Enforceable Undertaking cannot be complied with.

### 3. **Variation**

3.1 Under s93AA of the ASIC Act and s87B of the CCA, ASIC and the ACCC respectively, agree to accept the following variation to the Enforceable Undertaking:

(a) In paragraph 4.2:

- (i) omit “, within 30 days of the expiration of the Remediation Period, make a community benefit payment of the remainder (that is, the difference between the total aggregate refunded to Entitled Consumers and \$1,100,000) to Financial Literacy Australia to support the financial capability of vulnerable people.”; and
- (ii) substitute for the omitted words referred to in 3.1(a)(i) “make a community benefit payment of the remainder (that is, the difference between the total

aggregate refunded to Entitled Consumers and \$1,100,000) to The Trustee of the Financial Counselling Foundation (ABN 8519 5456 873) to support the financial capability of vulnerable people as follows:

- (A) the sum of \$500,000, within 14 days of the Malouf Entities receiving that amount in cleared funds from Ecstra; and
  - (B) the balance sum of \$250,605 by 23 November 2020.”
- (b) in paragraph 5.3 omit the words “30 days after the end of the Remediation Period” and substitute “23 December 2020”.

#### **4. Acknowledgements**

##### **4.1 The Malouf Entities acknowledge that ASIC:**

- (a) may issue a media release on execution of this variation of the Enforceable Undertaking referring to its terms and to the reasons which led to its execution;
- (b) may from time to time publicly refer to this variation;
- (c) will make this variation available for public inspection; and
- (d) will from time to time publicly report about compliance with the Enforceable Undertaking, as varied.

##### **4.2 The Malouf Entities acknowledge that this variation in no way derogates from the rights and remedies available to ASIC, the ACCC or any other person or entity arising from any conduct described in this variation of undertaking or the Enforceable Undertaking.**

##### **4.3 The Malouf Entities acknowledge that ASIC and the ACCC’s acceptance of this variation 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 or all of the conduct described in this variation undertaking or the Undertakings or any contravention arising from future conduct.**

##### **4.5 The Malouf Entities acknowledge that the acceptance by ASIC and the ACCC of the variation in section 3 above modifies the Enforceable Undertaking but does not affect the validity of the Enforceable Undertaking and does not prejudice ASIC’s or the ACCC’s ability to take any action in relation to the Enforceable Undertaking.**

##### **4.6 The Malouf Entities acknowledge that this variation of undertaking has no operative force until accepted by ASIC and the ACCC.**

Executed by **MALOUF GROUP** )  
**ENTERPRISES PTY LTD** in accordance )  
with section 127(1) of the *Corporations Act* )  
2001 (Cth) )

.....  
Jordan Francis Malouf

Sole Director and Company Secretary

In the presence of:

.....  
Name: KYLIE KING

Date: 15/6/20

Executed by **Jordan Malouf** )

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) .....

Jordan Francis Malouf

Sole Director and Company Secretary

In the presence of:

.....  
Name: KYLIE KING  
Date: 15/6/20



**Accepted by the Australian Securities and Investments Commission under s93AA of the ASIC Act and by the Australian Competition and Consumer Commission under section 87B of the CCA:**



.....  
**Melissa Smith**

Senior Executive, Financial Services Enforcement,  
Delegate of the Australian Securities and Investments Commission  
Delegate of the Australian Competition and Consumer Commission<sup>1</sup>

Date: 16 June 2020

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<sup>1</sup> Pursuant to a delegation provided by the ACCC to ASIC staff members on 23 July 2014 under s26 of the *Competition and Consumer Act 2010*.