

ENFORCEABLE UNDERTAKING

National Consumer Credit Protection Act 2009

Section 322(1)

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

AFFORDABLE CAR LOAN PTY LTD

ACN 098 491 484

Australian credit licence number 393709
Suite 10, 10 Cloyne Road, Southport QLD 4215

and

DTGN1 PTY LTD

ACN 099 333 132

Australian credit licence number 393711
Suite 10, 10 Cloyne Road, Southport QLD 4215

and

DTGQ1 PTY LTD

ACN 096 676 596

Australian credit licence number 393701
Suite 10, 10 Cloyne Road, Southport QLD 4215

and

DTGS1 PTY LTD

ACN 124 197 119

Australian credit licence number 393714
Suite 10, 10 Cloyne Road, Southport QLD 4215

and

DTGV1 PTY LTD

ACN 117 890 098

Australian credit licence number 393713
Suite 10, 10 Cloyne Road, Southport QLD 4215

1. Definitions

1.1 In this undertaking, a reference to the singular includes the plural and vice versa.

1.2 In addition to terms defined elsewhere in this undertaking and unless stated otherwise in this undertaking, the following definitions are used:

ACL means Affordable Car Leasing Pty Ltd (ACN 132 763 047).

Adjusted Remaining Principal means the principal amount calculated in accordance with paragraph 3.1.5(c)(iv)(B).

Adjusted Remaining Total Payments means the total amount calculated in accordance with paragraph 3.1.5(b)(iii)(B).

ASIC means the Australian Securities and Investments Commission.

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

Australian Consumer Law means the Australian Consumer Law contained in Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

Australian credit licence has the meaning given by subsection 35(1) of the National Credit Act.

Australian credit licensee means a person who holds an Australian credit licence.

Capacity to Repay means the figure determined using the calculation set out in paragraph 3.1.1(a).

Calculation Date means 31 January 2017.

Certification Report has the meaning given to that term in paragraph 3.1.20.

Commencement Date means the date this undertaking is accepted by ASIC.

Consultant has the meaning given to that term in paragraph 3.1.14.

Contracted Amount has the meaning given to that term in paragraph 3.1.1(b).

consumer has the meaning given by subsection 5(1) of the National Credit Act.

consumer lease has the meaning given by section 169 of the National Credit Code.

credit contract has the meaning given by section 4 of the National Credit Code.

credit legislation has the meaning given by subsection 5(1) of the National Credit Act.

credit provider has the meaning given by subsection 204(1) of the National Credit Code.

Daily Vehicle Use means:

- (a) in relation to a Relevant Contract which ended prior to the Calculation Date, the total number of days in the period starting from the date the Relevant Contract was entered into and ending when the contract ended (such data being as obtained from the MFW System and where the MFW System records more than one date that could be the date the Relevant Contract ended, the earliest of those dates), minus the total number of days the relevant consumer did not have use of the vehicle by reason of a Failure; and
- (b) in relation to a Relevant Contract which did not end prior to the Calculation Date, the total number of days in the period starting from the date the Relevant Contract was entered into and ending on the Calculation Date (such data being as obtained from the MFW System), minus the total number of days the relevant consumer did not have use of the vehicle by reason of a Failure.

Destroyed Vehicle Contract means a credit contract or consumer lease entered into by a Motor Finance Wizard entity in the Relevant Period concerning a vehicle which was destroyed or written off and for which there is an outstanding consumer liability under the contract (as recorded in the MFW System) as at the Calculation Date, which takes into account any amount recovered by the relevant Motor Finance Wizard entity from the relevant consumer's insurer.

Excluded Contract means a credit contract or consumer lease entered into by a Motor Finance Wizard entity in the Relevant Period which falls into at least one of the following categories:

- (a) paid in full or no amount is owed;
- (b) subject to an agreed settlement between the parties;
- (c) ended early to allow the consumer's purchase of the vehicle;
- (d) ended early to permit an upgrade to a new contract;
- (e) the consumer has stopped making payments under the contract and has not returned the vehicle, despite attempts to contact the consumer;

- (f) the vehicle was destroyed or written off and there is no outstanding consumer liability under the contract as at the Calculation Date, after taking into account any amount recovered by the relevant Motor Finance Wizard entity from the relevant consumer's insurer;
- (g) as at the date that is 12 months after the contract is entered into, the consumer has made Total Actual Payments that are equal to 90% or more of the Total Actual Payments required in respect of the first 12 months of the contract;
- (h) as at the date that is 15 months after the contract is entered into, the consumer has made Total Actual Payments that are equal to 90% or more of the Total Actual Payments required in respect of the first 15 months of the contract; and
- (i) financial hardship cases involving change in circumstances.

Failure means:

- (a) a major failure (as defined in the Australian Consumer Law);
- (b) a minor failure (as defined in the Australian Consumer Law) that cannot be fixed; or
- (c) a minor failure (as defined in the Australian Consumer Law) that can be fixed but is not fixed within a reasonable time.

Final Remediation Report has the meaning given to that term in paragraph 3.1.7(b).

First Compliance Report has the meaning given to that term in paragraph 3.1.18(a).

Independent Remediation Consultant has the meaning given to that term in paragraph 3.1.7.

Interim Remediation Report has the meaning given to that term in paragraph 3.1.7(a).

lessor has the meaning given by subsection 204(1) of the National Credit Code.

MFW Entitlement means the revised amount to which the Motor Finance Wizard entity is entitled under a Relevant Contract, calculated on a weekly basis in accordance with paragraph 3.1.2(a).

MFW System means, in respect of a Motor Finance Wizard entity, the electronic call centre platform and collections system that it uses to maintain records in respect of the credit contracts and consumer leases that it has entered into.

Motor Finance Wizard means each of the following Australian credit licensees:

- (a) Affordable Car Loan Pty Ltd (ACN 098 491 484);
- (b) DTGN1 Pty Ltd (ACN 099 333 132) (trading as MFW St. Marys);
- (c) DTGQ1 Pty Ltd (ACN 096 676 596) (trading as MFW Slacks Creek);
- (d) DTGS1 Pty Ltd (ACN 124 197 119); and
- (e) DTGV1 Pty Ltd (ACN 117 890 098) (trading as MFW Maidstone and MFW Dandenong).

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

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

Relevant Contract means a credit contract or consumer lease entered into by each Motor Finance Wizard entity in the Relevant Period other than an Excluded Contract.

Relevant Period means the period from 1 July 2010 to 16 July 2014 (inclusive).

Remaining Total Contract Repayments means the total amount calculated in accordance with paragraph 3.1.5(c)(i).

Remaining Total Lease Payments means the total amount calculated in accordance with paragraph 3.1.5(b)(i).

Remediation Entitlement means the total amount calculated in accordance with paragraph 3.1.2(b).

Remediation Period means the nine-month period commencing on the Commencement Date.

representative has the meaning given by subsection 5(1) of the National Credit Act.

Revised Future Payment has the meaning given to that term in paragraph 3.1.5.

Revised Principal means the revised principal figure determined using the calculation set out in paragraph 3.1.5(c)(ii).

Second Compliance Report has the meaning given to that term in paragraph 3.1.18(b).

Total Actual Payments means, in respect of a Relevant Contract and as at the Calculation Date, the sum of the following:

- (a) in respect of a credit contract, the total dollar amount of periodic payments on account of credit, including repayment of principal, interest, arrears payments and credit fees paid by the consumer under the credit contract;

- (b) in respect of a consumer lease, the total dollar amount of rental payments, arrears payments and lease fees paid by the consumer under the consumer lease;
- (c) in respect of a credit contract, any amount recovered by the relevant Motor Finance Wizard entity as the proceeds from the sale of the relevant vehicle upon realisation of that entity's security interest in the vehicle following any consumer default; and
- (d) in respect of a Destroyed Vehicle Contract, any amount recovered by the relevant Motor Finance Wizard entity from the relevant consumer's insurer,

(all figures being as obtained from the MFW System).

Trustee has the meaning given to that term in paragraph 3.1.8.

Vehicle Attribution means the weekly amount attributable to vehicles that are the subject of the Relevant Contracts according to the size of the vehicles as set out in the following table, where ASIC and each Motor Finance Wizard entity have agreed in writing the relevant vehicle size category for each type of vehicle.

Vehicle size	Vehicle Attribution
Small	\$70 per week
Medium	\$105 per week
Large	\$140 per week

Website means the website at www.mfw.com.au.

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 ASIC is responsible for, among other things, the administration and enforcement of the National Credit Act which regulates consumer credit in Australia.

ASIC's surveillance, including details of conduct

- 2.3 ACL wholly owns each of the Motor Finance Wizard entities but does not itself hold an Australian credit licence. ACL is the registrant of the Website.
- 2.4 Each Motor Finance Wizard entity holds an Australian credit licence authorising it to engage in credit activities as a credit provider and as a lessor.
- 2.5 During the Relevant Period, each Motor Finance Wizard entity, excluding DTGS1 Pty Ltd (ACN 124 197 119), offered consumer leases. From around November 2013, each Motor Finance Wizard entity also offered credit contracts.
- 2.6 In 2014, ASIC undertook a surveillance of each Motor Finance Wizard entity in relation to their compliance with the credit legislation, in particular focussing on their responsible lending practices.
- 2.7 As part of the surveillance, ASIC identified a number of concerns with each Motor Finance Wizard entity's responsible lending practices. Following a review of books and records produced by each Motor Finance Wizard entity, in late 2014 ASIC wrote to ACL raising, among other things, the following concerns:
 - (a) that the Motor Finance Wizard entities may not have been making reasonable inquiries about the consumer's financial situation;
 - (b) that the Motor Finance Wizard entities may not have been taking reasonable steps to verify the consumer's financial situation; and
 - (c) that the Motor Finance Wizard entities may have entered into unsuitable credit contracts and consumer leases because, at the time of entering into the credit contracts and consumer leases, it was likely that the consumer would have been unable to comply with the consumer's financial obligations under the credit contract or consumer lease, or could only comply with substantial hardship.

- 2.8 ASIC's review of each Motor Finance Wizard entity's policies and procedures and a review of a sample of credit contracts and consumer leases entered into by each Motor Finance Wizard entity during the Relevant Period, identified that each Motor Finance Wizard entity undertook the following steps in assessing the consumer's financial capacity to make repayments:
- (a) The relevant Motor Finance Wizard entity identified the consumer's income from their bank statements or other records.
 - (b) The relevant Motor Finance Wizard entity identified the consumer's liabilities. This amount was calculated by:
 - (i) allocating an amount for the consumer's estimated 'living expenses' by using a benchmark developed by the Motor Finance Wizard entities, which was \$185 per week for a single, \$280 per week for a couple, and \$35 per week for each dependent;
 - (ii) adding the consumer's periodic liabilities, as disclosed by the consumer to the relevant Motor Finance Wizard entity; and
 - (iii) if the consumer's disclosed periodic liabilities (referred to in paragraph 2.8(b)(ii)) included an amount used to calculate the benchmark (referred to in paragraph 2.8(b)(i)), subtracting an amount equal to the lowest of those amounts.

ASIC's review of credit contracts and consumer leases entered into identified that living expenses such as utilities, childcare, and transport may not have been included.
 - (c) The relevant Motor Finance Wizard entity then subtracted the consumer's liabilities and living expenses from the consumer's income to arrive at the 'surplus'. The consumer was eligible for a credit contract or consumer lease if the figure resulting from the above calculation was \$125 or more (with this figure being reduced from \$160 on 30 May 2011).
 - (d) The relevant Motor Finance Wizard entity then calculated the consumer's capacity to make repayments under a credit contract or consumer lease as being up to 65% of the surplus where the surplus was up to \$199, or up to 70% of the surplus where the surplus was \$200 or more.
- 2.9 In reviewing a sample of credit contracts and consumer leases entered into by the Motor Finance Wizard entities during the Relevant Period, ASIC found that, in some cases, a consumer's periodic repayments under a credit contract or consumer lease was close to or at the consumer's capacity to make repayments (as described at paragraph 2.8(d)).

- 2.10 Since ASIC commenced its surveillance, each Motor Finance Wizard entity has made changes to its business practices, including introducing measures directed to ensure that it does not enter into credit contracts and consumer leases on the basis that the consumer had the capacity to make repayments when they may not have had such capacity.

ASIC's views concerning the conduct

- 2.11 As a result of the surveillance, ASIC is concerned that during the Relevant Period, each Motor Finance Wizard entity:

- (a) contravened paragraphs 130(1)(b) and (c) of the National Credit Act by entering into credit contracts with consumers without making reasonable inquiries about each consumer's financial situation and/or taking reasonable steps to verify each consumer's financial situation;
- (b) contravened subsection 133(1) of the National Credit Act by entering into unsuitable credit contracts because, at the time of entering into the credit contracts, it was likely that consumers were unable to comply with their financial obligations under their credit contract, or could only comply with substantial hardship;
- (c) contravened paragraphs 153(1)(b) and (c) of the National Credit Act by entering into consumer leases with consumers without making reasonable inquiries about each consumer's financial situation and/or taking reasonable steps to verify each consumer's financial situation; and
- (d) contravened subsection 156(1) of the National Credit Act by entering into unsuitable consumer leases because, at the time of entering into the consumer leases, it was likely that consumers were unable to comply with their financial obligations under their consumer lease, or could only comply with substantial hardship.

Acknowledgement of ASIC's views

- 2.12 Each Motor Finance Wizard entity acknowledges that the views expressed by ASIC in relation to the alleged facts are reasonably held, but this acknowledgement does not constitute any admission by any Motor Finance Wizard entity.
- 2.13 Each Motor Finance Wizard entity together and separately have offered an enforceable undertaking in the terms of paragraphs 3.1.1 to 3.3 below.

3. Undertakings

- 3.1 Under subsection 322(1) of the National Credit Act, each Motor Finance Wizard entity have offered, and ASIC has agreed to accept, the undertakings in paragraphs 3.1.1 to 3.3 below, as an alternative to commencing proceedings, including civil penalty proceedings, against each Motor Finance Wizard entity, its officers, employees, agents and related entities, or taking action in relation to each Motor Finance Wizard entity's Australian credit licence, in respect of the Relevant Contracts and Excluded Contracts.

Remediation program – Methodology

- 3.1.1 Within the Remediation Period and in respect of each Relevant Contract, each Motor Finance Wizard entity will apply the remediation methodology comprised of the following steps:
- (a) Assess the consumer's revised estimated capacity to make repayments under their Relevant Contract (**Capacity to Repay**) calculated on a weekly basis using a calculation agreed in writing between ASIC and each Motor Finance Wizard entity for the purposes of this paragraph.
 - (b) Compare the consumer's Capacity to Repay to the amount the consumer contracted to pay (calculated on a weekly basis) under their Relevant Contract (**Contracted Amount**), and assess whether there will be some form of remediation for the consumer as follows:
 - (i) if the consumer's Capacity to Repay is greater than or equal to the consumer's Contracted Amount, then the consumer will not be entitled to any form of remediation, but will receive communication in accordance with paragraph 3.1.13; or
 - (ii) if the consumer's Capacity to Repay is less than the consumer's Contracted Amount, then the consumer will be entitled to remediation, which:
 - (A) may comprise a refund payable to the consumer and/or a write-off of amounts owed to the relevant Motor Finance Wizard entity (if the consumer is eligible in accordance with the steps set out in paragraph 3.1.2); and/or
 - (B) may (if relevant) include the offer of the option to terminate or remain in the Relevant Contract (in accordance with paragraph 3.1.4) and adjustments to the remaining payments for a Relevant Contract which remains on foot (in accordance with paragraph 3.1.5).

Remediation program – Assessing whether a refund is payable and/or a write-off will be made

3.1.2 To assess the form of remediation applicable, the following steps apply:

- (a) Compare the consumer's Capacity to Repay to the relevant Vehicle Attribution to calculate the revised weekly amount to which the Motor Finance Wizard entity is entitled (**MFW Entitlement**) as follows:
 - (i) subject to paragraph 3.1.2(a)(iii), if the consumer's Capacity to Repay is less than the relevant Vehicle Attribution, then the MFW Entitlement is equal to the consumer's Capacity to Repay;
 - (ii) if the consumer's Capacity to Repay is greater than or equal to the relevant Vehicle Attribution, then the MFW Entitlement is equal to the Vehicle Attribution; and
 - (iii) if the consumer's Capacity to Repay is less than \$35, then the MFW Entitlement is equal to \$35 per week.
- (b) Calculate the amount of the refund (if any) or write-off (if any) in respect of each Relevant Contract (**Remediation Entitlement**) using the following calculation:

$$\text{Total Actual Payments} - \left(\frac{\text{MFW Entitlement}}{7} \times \text{Daily Vehicle Use} \right)$$

- (c) If the Remediation Entitlement for a Relevant Contract is:
 - (i) greater than zero and, as at the Calculation Date:
 - (A) the Relevant Contract is a Destroyed Vehicle Contract, any amount owed by the consumer under the Destroyed Vehicle Contract will be written-off within the Remediation Period;
 - (B) the consumer has returned the vehicle to the Motor Finance Wizard entity and the Relevant Contract has ended (but is not a Destroyed Vehicle Contract), then:
 - (I) a refund is payable to the consumer for an amount equal to the Remediation Entitlement and will be paid in accordance with paragraph 3.1.3; and

- (II) any amount owed by the consumer under the Relevant Contract will be written-off within the Remediation Period;
- (C) the Relevant Contract is a consumer lease and is still on foot:
 - (I) the consumer will be given the option to terminate or remain in the Relevant Contract in accordance with paragraph 3.1.4; and
 - (II) if the consumer elects to terminate the Relevant Contract and return the vehicle, a refund is payable to the consumer for an amount equal to the Remediation Entitlement plus any amount paid by the consumer after the Calculation Date that is above the Revised Future Payment, and will be paid in accordance with paragraph 3.1.3, and the amount owed by the consumer under the Relevant Contract will be written-off; and
 - (III) if the consumer elects to remain in the Relevant Contract and keep the vehicle, then paragraph 3.1.5(b) will apply in relation to the amount of refund that is payable and any offsetting of that amount against future payments under the Relevant Contract;
- (D) the Relevant Contract is a credit contract and is still on foot:
 - (I) the consumer will be given the option to terminate or remain in the Relevant Contract in accordance with paragraph 3.1.4; and
 - (II) if the consumer elects to terminate the Relevant Contract and return the vehicle, a refund is payable to the consumer for an amount equal to the Remediation Entitlement plus any amount paid by the consumer after the Calculation Date that is above the Revised Future Payment, and will be paid in accordance with paragraph 3.1.3, and the amount owed by the consumer under the Relevant Contract will be written-off; and

- (III) if the consumer elects to remain in the Relevant Contract and keep the vehicle, then paragraph 3.1.5(c) will apply in relation to the amount of refund that is payable and any offsetting of that amount against future payments under the Relevant Contract; and

(ii) less than or equal to zero and, as at the Calculation Date:

(A) either:

- (I) the Relevant Contract has ended; or
- (II) the Relevant Contract is a Destroyed Vehicle Contract,

then the amount owed by the consumer under the Relevant Contract will be written-off within the Remediation Period;

(B) the Relevant Contract is a consumer lease and is still on foot:

- (I) the consumer will be given the option to terminate or remain in the Relevant Contract in accordance with paragraph 3.1.4;
- (II) if the consumer elects to terminate the Relevant Contract and return the vehicle, then the amount owed by the consumer under the Relevant Contract will be written-off within the Remediation Period; and

- (III) if the consumer elects to remain in the Relevant Contract and keep the vehicle, then paragraph 3.1.5(b)(iv) will apply in relation to adjusted future payments; and

(C) the Relevant Contract is a credit contract and is still on foot:

- (I) the consumer will be given the option to terminate or remain in the Relevant Contract in accordance with paragraph 3.1.4;
- (II) if the consumer elects to terminate the Relevant Contract and return the vehicle, then the amount owed by the consumer

under the Relevant Contract will be written-off within the Remediation Period; and

- (III) if the consumer elects to remain in the Relevant Contract and keep the vehicle, then paragraph 3.1.5(c)(v) will apply in relation to adjusted future payments.

Remediation program – Payments of refunds

- 3.1.3 If a refund is payable to a consumer in accordance with paragraph 3.1.2(c)(i)(B)(I), 3.1.2(c)(i)(C)(II), 3.1.2(c)(i)(D)(II), 3.1.5(b)(ii)(C), or 3.1.5(c)(iii)(C), the relevant Motor Finance Wizard entity will:
- (a) use its best endeavours (comprising steps agreed in writing between ASIC and each Motor Finance Wizard entity for the purposes of this paragraph) to pay that refund to the consumer within the Remediation Period; and
 - (b) if after using its best endeavours to pay that refund in accordance with paragraph (a) above, it is not able to do so, pay the refund to an organisation in accordance with paragraph 3.1.6(b).

Remediation program – Option to terminate or remain in the Relevant Contract

- 3.1.4 If a consumer is entitled to a form of remediation in accordance with paragraph 3.1.2(c)(i)(C), 3.1.2(c)(i)(D), 3.1.2(c)(ii)(B) or 3.1.2(c)(ii)(C), then the relevant Motor Finance Wizard entity will give the consumer the option to either:
- (a) terminate the Relevant Contract and return the vehicle; or
 - (b) remain in the Relevant Contract, keep the vehicle and make revised repayments calculated in accordance with paragraph 3.1.5(a).

Remediation program – Adjustment to refund amounts and future payments

- 3.1.5 If a consumer elects to remain in the Relevant Contract, the relevant Motor Finance Wizard entity will:
- (a) adjust refund amounts under this enforceable undertaking and/or future payments under the Relevant Contracts from the Calculation Date by reference to a payment amount (**Revised Future Payment**) determined as being:
 - (i) unless paragraph 3.1.5(a)(ii) applies, the greater of the Capacity to Repay and the Vehicle Attribution; or

- (ii) if the Vehicle Attribution is greater than the Capacity to Repay and also the Contracted Amount, the Contracted Amount;
- (b) if the Relevant Contract is a consumer lease:
 - (i) calculate the total amount remaining to be paid by the consumer (**Remaining Total Lease Payments**), by multiplying the number of remaining payments in the original lease term (but starting from the Calculation Date) by the Revised Future Payment, and then subtracting any amounts paid by the consumer since the Calculation Date;
 - (ii) if the Remediation Entitlement is greater than the Remaining Total Lease Payments:
 - (A) allow the consumer to keep the vehicle;
 - (B) remove the Motor Finance Wizard entity's registration against the vehicle on the Personal Property Securities Register; and
 - (C) a refund is payable to the consumer for an amount equal to the difference between the Remediation Entitlement and the Remaining Total Lease Payments;
 - (iii) if the Remediation Entitlement is greater than zero and less than the Remaining Total Lease Payments:
 - (A) write-off an amount equal to the Remediation Entitlement against the Remaining Total Lease Payments;
 - (B) allow the consumer to meet the balance of their payment obligations under the lease by making the Revised Future Payment until an adjusted total amount is reached, where that adjusted total amount (**Adjusted Remaining Total Payments**) is calculated by subtracting the Remediation Entitlement from the Remaining Total Lease Payments;
 - (C) upon the consumer paying an amount equal to the Adjusted Remaining Total Payments, allow the consumer to keep the vehicle and remove the Motor Finance Wizard entity's registration against the vehicle on the Personal Property Securities Register at the end of the lease term;

- (iv) if the Remediation Entitlement is less than or equal to zero:
 - (A) allow the consumer to meet their payment obligation under the lease by making the Revised Future Payments until the Remaining Total Lease Payments amount is reached; and
 - (B) upon the consumer paying an amount equal to the Remaining Total Lease Payments, allow the consumer to keep the vehicle and remove the Motor Finance Wizard entity's registration against the vehicle on the Personal Property Securities Register at the end of the lease term;
- (c) if the Relevant Contract is a credit contract:
 - (i) calculate the total amount remaining to be paid by the consumer (**Remaining Total Contract Repayments**), by multiplying the number of remaining payments in the original contract term (but starting from the Calculation Date) by the Revised Future Payment, and then subtracting any amounts paid by the consumer since the Calculation Date;
 - (ii) calculate the revised principal by calculating the present value of the Remaining Total Contract Repayments (**Revised Principal**) using the Revised Future Payment, the remaining payments in the original contract term (but starting from the Calculation Date) and the original contract interest rate;
 - (iii) if the Remediation Entitlement is greater than the Revised Principal:
 - (A) allow the consumer to keep the vehicle;
 - (B) remove the Motor Finance Wizard entity's registration against the vehicle on the Personal Property Securities Register; and
 - (C) a refund is payable to the consumer for an amount equal to the difference between the Remediation Entitlement and the Revised Principal;
 - (iv) if the Remediation Entitlement is greater than zero and less than the Remaining Total Contract Repayments:
 - (A) write-off an amount equal to the Remediation Entitlement against the Revised Principal;

- (B) allow the consumer to meet the balance of their principal payment obligations under the contract by making the Revised Future Payments until an adjusted principal amount, where that adjusted principal amount (**Adjusted Remaining Principal**) is calculated by subtracting the Remediation Entitlement from the Revised Principal; and
 - (C) upon the consumer paying an amount equal to the Adjusted Remaining Principal plus applicable interest at the original contract interest rate, allow the consumer to keep the vehicle and remove the Motor Finance Wizard entity's registration against the vehicle on the Personal Property Securities Register at the end of the revised contract term; and
- (v) the Remediation Entitlement is less than or equal to zero:
- (A) allow the consumer to meet their payment obligation under the contract by making the Revised Future Payments until the Revised Principal amount plus the applicable interest at the original contract interest rate is reached; and
 - (B) upon the consumer paying an amount equal to the Revised Principal plus applicable interest at the original contract interest rate, allow the consumer to keep the vehicle and remove the Motor Finance Wizard entity's registration against the vehicle on the Personal Property Securities Register at the end of the revised contract term.

Contribution to community benefit program

3.1.6 Within 28 days after the expiration of the Remediation Period, each Motor Finance Wizard entity undertakes to pay to an organisation, as directed by ASIC in writing, for the purposes of funding financial literacy programs, financial counselling, consumer education and research in Australia:

- (a) \$100,000; and
- (b) any amount that is required to be refunded under paragraph 3.1.1(b)(ii)(A) but which has not been refunded within the Remediation Period, other than by reason of:
 - (i) the consumer disputing the remediation offered after being contacted by the Motor Finance Wizard entity; or

- (ii) the refund being used to credit against future payments under a Relevant Contract rather than being paid to the consumer.

Independent overview of remediation program

3.1.7 The Motor Finance Wizard entities will engage KPMG (the **Independent Remediation Consultant**) to conduct reviews and prepare reports to ASIC and the Motor Finance Wizard entities in accordance with the following:

- (a) within 30 days after the six month period commencing on the Commencement Date (or such longer period as agreed to by ASIC), submit a written report to ASIC (**Interim Remediation Report**) that sets out the following information in respect of that six month period:
 - (i) the total number of credit contracts and consumer leases identified as Relevant Contracts in relation to which the Motor Finance Wizard entities have provided remediation;
 - (ii) the total dollar value of refunds paid by the Motor Finance Wizard entities;
 - (iii) the total dollar value of debt written-off by the Motor Finance Wizard entities;
 - (iv) the total number of consumers with whom the Motor Finance Wizard entities attempted to communicate in accordance with paragraph 3.1.11(b) and the number of consumers who responded to that communication;
 - (v) a statement as to whether or not the processes referred to in paragraphs 3.1.1 to 3.1.5 have been complied with (and if not, providing the reasons why) in relation to a sample of 30 consumers who were provided with a form of remediation on the basis that the Relevant Contract fell within the category at paragraph 3.1.1(b)(ii) (or such larger number that the Independent Remediation Consultant considers reasonable for the purposes of its review), which are randomly selected by the Independent Remediation Consultant; and

- (vi) a statement as to whether or not the Capacity to Repay has, in the Independent Remediation Consultant's opinion, been determined in accordance with the remediation methodology referred to in paragraph 3.1.1(a) (and if not, providing the reasons why) in relation to a sample of 30 consumers who were not provided with a form of remediation on the basis that the Relevant Contract fell within the category at paragraph 3.1.1(b)(i) (or such larger number that the Independent Remediation Consultant considers reasonable for the purposes of its review), which are randomly selected by the Independent Remediation Consultant;
- (b) within 30 days after the end of the Remediation Period, submit a written report (**Final Remediation Report**) to ASIC that sets out the following information in respect of the Remediation Period:
 - (i) the total number of credit contracts and consumer leases identified as Relevant Contracts in relation to which the Motor Finance Wizard entities provided remediation;
 - (ii) the total dollar value of refunds paid by the Motor Finance Wizard entities;
 - (iii) the total dollar value of debt written-off by the Motor Finance Wizard entities;
 - (iv) the total number of consumers with whom the Motor Finance Wizard entities attempted to communicate in accordance with paragraph 3.1.1(b) and the number of consumers who responded to that communication;
 - (v) the total number of credit contracts and consumer leases identified as Relevant Contracts where the consumer has elected to return the vehicle and terminate the credit contract or consumer lease;
 - (vi) the total number of credit contracts and consumer leases identified as Relevant Contracts where the consumer has elected to remain in the contract; and
 - (vii) the total amount paid by the Motor Finance Wizard entities under paragraph 3.1.6.

Establishing and maintaining trust account for consumer refunds

- 3.1.8 Motor Finance Wizard will transfer a total of \$500,000 to a trust account held by a trustee approved by ASIC (**Trustee**) within 10 business days after the Commencement Date. Where a Remediation Entitlement is payable to a consumer after applying the remediation process and methodology described in paragraphs 3.1.1 to 3.1.5, the Trustee will make the payment to the consumer on behalf of the relevant Motor Finance Wizard entity.
- 3.1.9 Motor Finance Wizard will maintain a minimum balance of \$100,000 in the trust account referred to in paragraph 3.1.8 until the day that is 30 days after the Final Remediation Report is provided to ASIC, unless ASIC advises otherwise in writing prior to this day. Where the balance is likely to fall below \$100,000, Motor Finance Wizard will, within five business days, transfer into the account either:
- (a) such amount that is necessary to bring the account balance to \$500,000 (or such lesser amount agreed in writing with ASIC); or
 - (b) where the total amount remaining to be paid under the remediation program described in this enforceable undertaking is less than the amount calculated at paragraph 3.1.9(a), the lesser amount.
- 3.1.10 Where there is an amount in the trust account on the day after the date that is 30 days after the Final Remediation Report is provided to ASIC, the Trustee will pay that amount to Motor Finance Wizard.

Consumer communication

- 3.1.11 Each relevant Motor Finance Wizard entity will:
- (a) within 14 days of the Commencement Date, publish information on the Website's homepage regarding the consumer remediation, including a link to the media release issued by ASIC in relation to this enforceable undertaking;
 - (b) as soon as practicable after the Commencement Date, send each consumer that is assessed as entitled to some form of remediation in accordance with paragraph 3.1.1(b)(ii), a letter to the last known address recorded in the MFW System (including where an email address is held, also sending a copy electronically to the last known email address recorded in the MFW System) in a form approved by ASIC in writing that sets out the following:

- (i) the concerns referred to in paragraph 2.11; and
- (ii) the steps that the Motor Finance Wizard entity is required to take in accordance with this undertaking, including:
 - (A) where appropriate, details of any remediation (whether in the form of a refund or write-off, and/or option to terminate or remain in the contract) to be provided by Motor Finance Wizard to that consumer (including all available options to the consumer); and
 - (B) in circumstances where the appropriate remediation is a refund payable to the consumer, how the consumer can access the refund.

3.1.12 Where the relevant Motor Finance Wizard entity does not receive a response to the communication referred to in paragraph 3.1.11(b) within one month of the date of that communication, the Motor Finance Wizard entity will attempt to contact the consumer again in a form and manner to be agreed by ASIC in writing.

3.1.13 For each credit contract or consumer lease that:

- (a) was entered into between a Motor Finance Wizard entity and a consumer during the Relevant Period; and
- (b) does not fall into any of the following categories:
 - (i) the relevant consumer is assessed as entitled to some form of remediation in accordance with paragraph 3.1.1(b)(ii);
 - (ii) ended early to allow the consumer's purchase of the vehicle;
 - (iii) the consumer has stopped making payments and has not returned the vehicle, despite attempts to contact the consumer;
 - (iv) subject to an agreed settlement between the parties; or
 - (v) ended early to permit an upgrade to a new contract;

the relevant Motor Finance Wizard entity must, as soon as practicable after the Commencement Date, send the relevant consumer a letter to the last known address recorded in the MFW System (including where an email address is held, also sending a copy electronically to the last known email address recorded in the MFW System) in a form approved by ASIC in writing that provides details about how the consumer can access internal and external dispute resolution processes should they wish to raise any concerns about the credit contract or consumer lease they entered into.

External compliance consultant

- 3.1.14 Within 30 days of the Commencement Date, the Motor Finance Wizard entities will engage an external compliance consultant (the **Consultant**) whose appointment and terms of reference are to be approved by ASIC in writing.
- 3.1.15 No Motor Finance Wizard entity will vary the terms of reference for the Consultant without advance written approval of ASIC.
- 3.1.16 The Motor Finance Wizard entities will require the Consultant to undertake a review of the compliance of the Motor Finance Wizard entities and its representatives with the credit legislation, including but not limited to a review of:
 - (a) general conduct obligations under section 47 of the National Credit Act;
 - (b) the responsible lending obligations under Chapter 3 of the National Credit Act;
 - (c) any advertising carried out by each Motor Finance Wizard entity to ensure that it complies with the relevant provisions contained in the credit legislation; and
 - (d) Division 2 of Part 2 of the ASIC Act.
- 3.1.17 The Motor Finance Wizard entities will require the Consultant to prepare a written report on the review undertaken for the purposes of paragraph 3.1.16, which must include:
 - (a) a description of the methods used in the review undertaken by the Consultant;
 - (b) the dates that the Consultant carried out the review;
 - (c) the Consultant's assessment of the compliance arrangements including a conclusion as to whether the compliance arrangements are adequate in respect of each of the matters referred to in paragraph 3.1.16;

- (d) details of all disputes made by consumers in relation to the credit activities engaged in by the Motor Finance Wizard entities and its representatives, including the outcome, and whether any disputes were lodged with an external dispute resolution scheme; and
 - (e) any recommendations made to the Motor Finance Wizard entities for changes to the compliance arrangements.
- 3.1.18 The Motor Finance Wizard entities will provide reasonable assistance to the Consultant to ensure that the Consultant carries out the review and prepares the written report as required by paragraphs 3.1.16 and 3.1.17, for the following periods:
 - (a) for the 6 month period commencing from the Commencement Date (**First Compliance Report**); and
 - (b) for the 6 month period commencing after the period of the First Compliance Report (**Second Compliance Report**).
- 3.1.19 Motor Finance Wizard will use reasonable endeavours to procure that the Consultant submits the:
 - (a) First Compliance Report to the Motor Finance Wizard entities and ASIC by 31 December 2017 (or by a later date as may be agreed between ASIC and the Motor Finance Wizard entities); and
 - (b) Second Compliance Report to the Motor Finance Wizard entities and ASIC by 31 July 2018 (or by a later date as may be agreed between ASIC and the Motor Finance Wizard entities).
- 3.1.20 Within 14 days after receiving each of the First Compliance Report and Second Compliance Report from the Consultant, the Motor Finance Wizard entities will lodge a signed report (**Certification Report**) with ASIC that:
 - (a) certifies which of the recommendations made by the Consultant have been implemented by the Motor Finance Wizard entities; and
 - (b) provides a response to, and if applicable a timetable for the implementation of, any recommendations in the Consultant's report which had, at the date of the report, not been implemented.

Reporting to ASIC

- 3.1.21 The Motor Finance Wizard entities will provide each of the Interim Remediation Report, Final Remediation Report, First Compliance Report, Second Compliance Report and each Certification Report to ASIC by email to DCI.referrals@asic.gov.au.
- 3.2 Each Motor Finance Wizard entity undertakes that it will pay the costs of its compliance with this enforceable undertaking.
- 3.3 Each Motor Finance Wizard entity will provide all documents and information requested by ASIC from time to time for the purpose of assessing the Motor Finance Wizard entity's compliance with the terms of this enforceable undertaking.

4. Additional acknowledgements

- 4.1 Each Motor Finance Wizard entity acknowledges that ASIC:
 - (a) 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;
 - (b) may from time to time publicly refer to this undertaking;
 - (c) will from time to time publicly report about compliance with this undertaking; and
 - (d) will make this undertaking available for public inspection.
- 4.2 Each Motor Finance Wizard entity acknowledges that in relation to the Interim Remediation Report, Final Remediation Report, First Compliance Report, Second Compliance Report and each of the Certification Reports, ASIC may:
 - (a) issue a media release referring to the contents of these reports;
 - (b) from time to time publicly refer to these reports or their contents; and
 - (c) make available for public inspection a summary of the contents of these reports.
- 4.3 ASIC acknowledges that it will not refer to any information from the Interim Remediation Report, Final Remediation Report, First Compliance Report, Second Compliance Report and each of the Certification Reports that:
 - (a) consists of personal information of an individual whose acts or omissions are not the subject of, or a concern mentioned in, the enforceable undertaking;


- (b) ASIC is satisfied would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of any Motor Finance Wizard entity or a third party otherwise than in a way that arises from the execution, implementation and reporting of the outcomes of the enforceable undertaking;
- (c) ASIC is satisfied should not be released because it would be against the public interest to do so; or
- (d) a Motor Finance Wizard entity has asked not to be released if ASIC is satisfied:
 - (i) it would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of the Motor Finance Wizard entity otherwise than in a way that arises from the execution, implementation and reporting of the outcomes of the enforceable undertaking; or
 - (ii) it should not be released because it would be against the public interest to do so.

4.4 Each Motor Finance Wizard entity acknowledges that:


- (a) 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
- (b) 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.

4.5 Each Motor Finance Wizard entity acknowledges that this undertaking has no operative force until accepted by ASIC, and each Motor Finance Wizard entity and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.

Executed by Affordable Car Loan Pty Ltd
ACN 098 491 484 in accordance with section
 127 of the *Corporations Act 2001*:



 Director



 Director/Company Secretary


SEISUKE NAKAJIMA

 Full name


KENT JAMES

 Full name

Executed by DTGN1 Pty Ltd
ACN 099 333 132 in accordance with section
 127 of the *Corporations Act 2001*:



 Director



 Director/Company Secretary


SEISUKE NAKAJIMA

 Full name


KENT JAMES

 Full name

Executed by DTGQ1 PTY LTD
ACN 096 676 596 in accordance with section
 127 of the *Corporations Act 2001*:



 Director



 Director/Company Secretary


SEISUKE NAKAJIMA

 Full name

KENT JAMES

 Full name


Executed by **DTGS1 PTY LTD**
ACN 124 197 119 in accordance with section
 127 of the *Corporations Act 2001*:

	
.....
Director	Director/Company Secretary
	
.....
Full name	Full name

Executed by **DTGV1 PTY LTD**
ACN 117 890 098 in accordance with section
 127 of the *Corporations Act 2001*:

	
.....
Director	Director/Company Secretary
	
.....
Full name	Full name

**Accepted by the Australian Securities and Investments Commission under
 section 322 of the National Credit Act by its duly authorised delegate:**



.....

Michael Saadat

Senior Executive Leader – Deposit Takers, Credit and Insurers

Delegate of Australian Securities and Investments Commission

Date: 23/5/2017