

## **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:

**SIV Capital Limited**

ACN 011 045 828

13 Kurilpa St, West End, QLD 4101

and

**GoGetta Equipment Funding Pty Ltd**

ACN 124 102 647

13 Kurilpa St, West End, QLD 4101

### **1. Definitions**

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

**ABN** means Australian Business Number.

**ACL** means Australian Credit Licence.

**AFCA** (short for the Australian Financial Complaints Authority) means the operator of the AFCA scheme.

**AFCA scheme** has the same meaning given by s 761A of the *Corporations Act 2001* (Cth).

**Affected Customer** means a High Risk Customer, Medium Risk Customer or Other Customer who qualifies for remediation in accordance with the Remediation Program.

**Affected Lease** means a Motor Vehicle Lease entered into by an Affected Customer.

**Arrears** means all outstanding monetary amounts due under a Motor Vehicle Lease at the time it is assessed for remediation under the Remediation Program.

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

**Books** has the meaning given by section 9 of the Corporations Act.

**Business Day** means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place concerned.

**Centrelink Benefit** means any payment set out in the relevant historical version of the Guide to Australian Government Payments at <https://www.humanservices.gov.au>.

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

**Consumer Lease** means a consumer lease to which Part 11 of the National Credit Code applies (as defined in section 5 of the National Credit Act).

**Consumer Lease Risk Factor** is any one of the following:

- (a) the Customer was 25 years of age or younger;
- (b) the Customer held a Learner's Permit;
- (c) the Customer was receiving a Centrelink Benefit;
- (d) the Customer's lease application was submitted to GoGetta by a High Risk Broker;
- (e) the Customer's postcode was 2832;
- (f) the Customer was not registered for GST; or
- (g) the Customer's stated occupation was an Uber driver and the Customer or Motor Vehicle Lease failed to meet the Minimum Uber Requirements in the Customer's location.

**Consumer Purpose** means provided or intended to be provided wholly or predominantly (that is, with respect to credit, more than half of the value of the credit, and, with respect to goods or services, intended to be most used) for a personal, domestic or household purpose.

**Customer** means a natural person who entered into a Motor Vehicle Lease with GoGetta during the Relevant Period.

**Customer Dispute** has the meaning set out in paragraph 3.5.11.

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

**Credit Activity** has the meaning given by section 6 of the National Credit Act.

**Documentary Evidence** means any document or record in the possession of GoGetta or SIV Capital, or its agent or representative, or from a publicly available source.

**Ernst & Young Interim Report** is the interim report provided to SIV Capital by Ernst & Young dated 20 February 2018.



**GoGetta** means GoGetta Equipment Funding Pty Ltd (ACN 124 102 647).

**GST** means the Goods and Services Tax.

**High Risk Broker** is a broker or car dealership determined to be a High Risk Broker in accordance with paragraph 4.14 of the Remediation Program.

**High Risk Customer** is a Customer who held an ABN for less than 90 days before the Motor Vehicle Lease was entered into, and the Customer had one or more Consumer Lease Risk Factors.

**Independent Remediation Consultant** means the independent external consultant engaged by GoGetta and SIV Capital in accordance with paragraphs 3.13 to 3.17 of this enforceable undertaking, or a new Independent Remediation Consultant engaged by GoGetta and SIV Capital in accordance with paragraphs 3.20 to 3.22 of this enforceable undertaking.

**Learner's Permit** means a permit under a law of an Australian state or Territory given to a person who is learning to drive but has not yet satisfied the requirements to obtain a restricted or unrestricted driver's licence.

**Medium Risk Customer** is a Customer who held an ABN for more than 90 days before the Motor Vehicle Lease was entered into, and the Customer had one or more Consumer Lease Risk Factors.

**Minimum Uber Requirements** are the minimum customer and vehicle requirements applicable at the relevant time to qualify as an Uber driver in the Customer's location.

**Motor Vehicle** means a vehicle the subject of a Motor Vehicle Lease.

**Motor Vehicle Lease** means a rental or lease agreement for a motor vehicle entered into between GoGetta and a Customer from 1 July 2014 to the Commencement Date.

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

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

**Other Customer** is a Customer who is not a High Risk Customer or a Medium Risk Customer.

**Proceedings** means proceedings commenced or to be commenced by ASIC against GoGetta in the Federal Court of Australia alleging that GoGetta contravened sections 29 and 32 of the National Credit Act in relation to Motor Vehicle Leases entered into with ten Customers and seeking orders for civil penalties in relation to those contraventions. It does not include any subsequent appeal of the final judgment or orders in the Proceedings. For the avoidance of doubt, an appeal of any interlocutory judgement or orders in the Proceedings remains part of the Proceedings.

**Relevant Period** means the period from 1 July 2014 to the Commencement Date.

**Relevant Statutory Declaration** means a statutory declaration made by a Customer, in the form relevant to the place where the Customer resides, declaring that the Customer entered into the Motor Vehicle Lease intending that the Motor Vehicle be wholly or predominantly used for a personal, domestic or household purpose.

**Remaining Payments** means any amount remaining to be paid by the Customer under a Motor Vehicle Lease at the time it is assessed for remediation under the Remediation Program.

**Remediation Payment** means the monetary amount that GoGetta and/or SIV Capital will pay to the Affected Customer pursuant to the Remediation Program.

**Remediation Program** is the arrangement for remediation set out in the document to be entered into by ASIC, GoGetta and SIV Capital as required by paragraphs 3.4 to 3.9 of this enforceable undertaking.

**SIV Capital** means SIV Capital Limited (ACN 011 045 828) (formerly Silver Chef Pty Ltd).

## 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 also responsible for, among other things, the administration and enforcement of the National Credit Act.

### Details of Conduct

- 2.3 SIV Capital is a business equipment finance company, which primarily finances commercial catering equipment.
- 2.4 GoGetta is a wholly owned subsidiary of SIV Capital.
- 2.5 GoGetta acquired assets, such as engineering equipment, with the intention of making a profit by leasing the assets for business purposes.
- 2.6 From 1 July 2014, GoGetta expanded its asset leasing business to include Motor Vehicle Leases. GoGetta required each Customer who applied for a Motor Vehicle Lease to provide an ABN as part of their application.
- 2.7 From 1 July 2014 to the Commencement Date, GoGetta and SIV Capital did not hold an ACL.
- 2.8 On 20 July 2017, ASIC commenced an investigation into GoGetta under s247 of National Credit Act regarding concerns that some of the Motor



Vehicle Leases which GoGetta entered into during the Relevant Period may have been Consumer Leases.

- 2.9 GoGetta and SIV Capital have told ASIC that, from 6 October 2017, GoGetta ceased receiving applications for Motor Vehicle Leases.
- 2.10 On or around 19 December 2017, GoGetta's solicitors engaged Ernst & Young to review a sample of Motor Vehicle Leases.
- 2.11 Ernst & Young provided SIV Capital with an Interim Report (**Ernst & Young Interim Report**) on or around 20 February 2018. The Ernst & Young Interim Report indicated that:
  - 2.11.1 GoGetta's operating model, systems, processes and controls were designed to deliver vehicle leasing to business customers for non-Consumer Purposes;
  - 2.11.2 GoGetta did not adequately contemplate the risk that Customers might seek a Motor Vehicle Lease for a Consumer Purpose and did not adopt appropriate measures to address such a risk;
  - 2.11.3 GoGetta relied on information from brokers and placed a high degree of trust in brokers;
  - 2.11.4 most files contained insufficient evidence to conclude whether the purpose of the Motor Vehicle Lease was for a business purpose or for a Consumer Purpose;
  - 2.11.5 a number of the Motor Vehicle Leases had risk attributes that suggest that it was likely that they were sought for a Consumer Purpose, rather than a business purpose;
  - 2.11.6 Ernst & Young identified a number of brokers and/or car dealers who they considered were likely to have submitted Motor Vehicle Leases to GoGetta which were for a Consumer Purpose; and
  - 2.11.7 the Ernst & Young Interim Report provided the following indicative segmentation of Customers (pending completion of Uber assessments):
    - (a) total Customers: 5183;
    - (b) total High Risk Customers: 207;
    - (c) total Medium Risk Customers: 844; and
    - (d) total Other Customers: 4132.
- 2.12 On 28 February 2018, SIV Capital issued an ASX announcement stating that it had made a decision to exit its entire GoGetta asset financing business and would put the GoGetta business into run-down.

- 2.13 GoGetta and SIV Capital have informed ASIC that they have not entered into any new Motor Vehicle Leases from 28 February 2018.
- 2.14 As at the Commencement Date, GoGetta and SIV Capital estimate that there are:
- 2.14.1 207 High Risk Customers who, pursuant to the Remediation Program, may receive Remediation Payments totalling approximately \$1,918,088, and that GoGetta may waive approximately \$6,071,521 in Arrears, and \$5,611,588 in Remaining Payments;
  - 2.14.2 844 Medium Risk Customers who, pursuant to the Remediation Program, may receive Remediation Payments totalling approximately \$7,574,842, and that GoGetta may waive approximately \$18,041,303 in Arrears, and \$16,755,387 in Remaining Payments; and
  - 2.14.3 4,132 Other Customers.
- 2.15 The final total of Remediation Payments made to Affected Customers, under the Remediation Program, and the final total of Arrears and Remaining Payments waived by GoGetta, will depend upon the remediation process set out in the Remediation Program.

**ASIC's views concerning the conduct**

- 2.16 As a result of ASIC's investigation and the Ernst & Young Interim Report, ASIC is concerned that:
- 2.16.1 GoGetta's operating model, systems, processes and controls were not adequate to ensure that Customers obtained Motor Vehicle Leases for predominantly business purposes, and not for Consumer Purposes;
  - 2.16.2 when expanding its asset leasing business to include Motor Vehicle Leases, GoGetta failed to contemplate or take any steps, alternatively adequate steps, to address the risk that Customers were obtaining Motor Vehicle Leases for Consumer Purposes;
  - 2.16.3 GoGetta did not obtain business purpose declarations from Customers for the purpose of section 172(2) of the National Credit Code;
  - 2.16.4 the attributes of a number of Customers suggests that there was considerable risk that they had obtained the Motor Vehicle Leases for Consumer Purposes rather than for a predominantly business purpose; and



- 2.16.5 notwithstanding that risk, GoGetta relied on limited information from its brokers and failed to carry out any independent inquiries, other than confirming the existence of the Customer ABNs provided to it by brokers, to verify that Customers entered into the Motor Vehicle Leases for predominantly business purposes, and not for Consumer Purposes.

2.17 By reason of the matters set out in paragraph 2.16, ASIC considers that:

- 2.17.1 GoGetta has contravened sections 29 and 32 of the National Credit Act on multiple occasions during the Relevant Period;
- 2.17.2 GoGetta contravened section 29 of the National Credit Act by engaging in a Credit Activity whilst not holding an ACL, in respect of a number of Motor Vehicle Leases entered into during the Relevant Period which were in fact Consumer Leases; and
- 2.17.3 GoGetta contravened section 32 of the National Credit Act by demanding and receiving a fee, charge or other amount pursuant to the Motor Vehicle Leases which were Consumer Leases during the Relevant Period.

#### **Admissions and offer of Enforceable Undertaking**

2.18 GoGetta and SIV Capital:

- 2.18.1 admit the conduct identified in paragraph 2.16;
- 2.18.2 admit the contraventions and other matters set out in paragraph 2.17; and
- 2.18.3 have offered an enforceable undertaking in the terms of paragraph 3 below.

### **3. Undertakings**

- 3.1 Under section 322(1) of the National Credit Act, GoGetta and SIV Capital have offered, and ASIC has agreed to accept, the undertakings in this paragraph 3. Further, ASIC has indicated that it intends to commence the Proceedings.
- 3.2 GoGetta and SIV Capital each agree that they will be jointly and severally liable to perform all of the undertakings set out in this paragraph 3.
- 3.3 GoGetta and SIV Capital undertake that they will do whatever is necessary from time to time to comply with, and to ensure that each of them are able to comply with, the undertakings set out in this paragraph 3, including but not limited to providing each other with:

- 3.3.1 access to their Books and access to interview current employees to the extent that it is reasonable having regard to the requirements of this enforceable undertaking and/or the Remediation Program;
- 3.3.2 any information or explanation reasonably requested of any matter connected with this enforceable undertaking and/or the Remediation Program;
- 3.3.3 access to all Customer data required to enable either of them to fulfil the obligations under this enforceable undertaking and the Remediation Program; and
- 3.3.4 reasonable assistance to each other in carrying out the terms of this enforceable undertaking and the Remediation Program.

### **Remediation Program**

- 3.4 GoGetta and SIV Capital undertake to provide to ASIC, within five Business Days of the Commencement Date (or such longer period as may be agreed in writing between ASIC, GoGetta and SIV Capital) a Remediation Program which sets out the methodology and processes to be used by GoGetta and/or SIV Capital to identify, and remediate, Affected Customers.
- 3.5 In addition to the matters set out elsewhere in this paragraph 3, GoGetta and SIV Capital undertake that the Remediation Program will include the following:
  - 3.5.1 The Remediation Program will be available to all Customers;
  - 3.5.2 GoGetta and SIV Capital will not profit from an Affected Lease, will not seek to retain any form of interest, or a fee or charge under an Affected Lease, and will not seek to recover Arrears or Remaining Payments from an Affected Customer;
  - 3.5.3 Except as provided for by the process set out in the Remediation Program, GoGetta and/or SIV Capital, as the case may be, will accept the position advanced by a Customer;
  - 3.5.4 Access to the Remediation Program will be free of cost, simple and accessible for Customers;
  - 3.5.5 Reasonable attempts to contact Customers will be made, using different modes of communication, for example, email, telephone calls and post, as set out in the Remediation Program;
  - 3.5.6 GoGetta and SIV Capital will appoint an Independent Remediation Consultant in accordance with this Enforceable Undertaking;



- 3.5.7 GoGetta, SIV Capital and the Independent Remediation Consultant will maintain adequate records to allow both independent assessment (by the Independent Remediation Consultant and/or ASIC, where appropriate) and for future reference;
- 3.5.8 ASIC will approve the content of all material template communications which GoGetta, SIV Capital or the Independent Remediation Consultant intend to send to or have with Customers, including but not limited to emails, letters, call scripts and text messages, before they are sent;
- 3.5.9 GoGetta, SIV Capital and the Independent Remediation Consultant will monitor and revise the population of High Risk Customers, Medium Risk Customers and Other Customers throughout the life of the Remediation Program, and will advise ASIC of any such revisions by the reporting required pursuant to paragraph 3.19;
- 3.5.10 Applications under the Remediation Program will be dealt with as follows;
- (a) GoGetta and/or SIV Capital will not require evidence from a High Risk Customer as to whether or not the High Risk Customer entered into the Motor Vehicle Lease for a Consumer Purpose;
  - (b) GoGetta and/or SIV Capital will assess a Medium Risk Customer's claim to remediation in accordance with the Remediation Program if the Medium Risk Customer states, verbally or in writing, words to the effect that the Medium Risk Customer entered into the Motor Vehicle Lease intending that the Motor Vehicle be wholly or predominantly used for a personal, domestic or household purpose;
  - (c) GoGetta and/or SIV Capital will assess an Other Customer's claim to remediation in accordance with the Remediation Program if that customer provides a Relevant Statutory Declaration;
  - (d) If GoGetta or SIV Capital provide Documentary Evidence (other than the existence of an ABN held by the relevant customer) to the Independent Remediation Consultant, which GoGetta and/or SIV Capital reasonably consider to be relevant to establishing whether a Medium Risk Customer or Other Customer entered into a Motor Vehicle Lease for a Consumer Purpose, the Independent Remediation Consultant may

make requests for further information from any of GoGetta, SIV Capital and/or the relevant customer, and will then determine the matter in accordance with the Remediation Program;

- 3.5.11 Where a Customer disputes any aspect of a remediation offer under the Remediation Program, including the Customer's eligibility for a remediation offer (a **Customer Dispute**), GoGetta and/or SIV Capital will forthwith refer the matter to the Independent Remediation Consultant for determination in accordance with the Remediation Program; and
- 3.5.12 Customers have the right to not participate in the Remediation Program and to have their individual circumstances dealt with in a manner of their choosing, including through external dispute resolution such as through AFCA.
- 3.6 GoGetta and SIV Capital undertake to request that ASIC approves the Remediation Program within five Business Days of receiving the proposed Remediation Program (or such longer period as may be agreed between ASIC, GoGetta and SIV Capital). ASIC's approval will not be unreasonably withheld.
- 3.7 GoGetta and SIV Capital undertake to make changes to the proposed Remediation Program where:
  - 3.7.1 requested by ASIC in writing; or
  - 3.7.2 requested by GoGetta, SIV Capital and/or the Independent Remediation Consultant in writing and agreed to by ASIC in writing.
- 3.8 GoGetta and SIV Capital undertake to contact Customers in accordance with this enforceable undertaking and the Remediation Program within the timeframes set out in the Remediation Program.
- 3.9 GoGetta and SIV Capital undertake to use their best endeavours to identify and remediate all Affected Customers within eight months of the Commencement Date.
- 3.10 GoGetta and SIV Capital will, forthwith upon receiving a request from ASIC, provide all documents and information requested by ASIC from time to time for the purpose of assessing GoGetta's, SIV Capital's and the Independent Remediation Consultant's compliance with the terms of this enforceable undertaking and/or the Remediation Program.
- 3.11 GoGetta, SIV Capital and the Independent Remediation Consultant will notify ASIC in writing as soon as reasonably practicable, and in any event within two Business Days of becoming aware, of any failure by GoGetta, and/or SIV Capital and/or the Independent Remediation Consultant to



comply with a term of this enforceable undertaking and/or the Remediation Program.

- 3.12 GoGetta and/or SIV Capital will provide a copy of this enforceable undertaking and the Remediation Program to any person who claims to be a Customer or an agent, solicitor, adviser or representative of a Customer, and who requests a copy of the Enforceable Undertaking and/or the Remediation Program from GoGetta, SIV Capital, the Independent Remediation Consultant and/or ASIC.

### **Independent overview of the Remediation Program**

- 3.13 GoGetta and SIV Capital undertake to request that ASIC approves, within five Business Days of the Commencement Date (or such longer period as may be agreed between ASIC, GoGetta and SIV Capital):

3.13.1 the appointment of an Independent Remediation Consultant that meets the criteria in paragraph 3.15 below, and

3.13.2 draft terms of engagement for that Independent Remediation Consultant that meet the requirements of this enforceable undertaking.

- 3.14 If ASIC approves the draft terms of engagement and the Independent Remediation Consultant following a request by GoGetta and SIV Capital under paragraph 3.16, GoGetta and SIV Capital undertake to appoint the approved Independent Remediation Consultant on the terms approved by ASIC, within five Business Days of receiving ASIC's approval, or within such longer period as may be agreed in writing by ASIC, GoGetta and SIV Capital.

- 3.15 GoGetta and SIV Capital undertake to nominate, under paragraph 3.13 above, an independent remediation consultant who, in GoGetta and SIV Capital's opinion:

3.15.1 has the necessary expertise, experience and operational capacity to perform the role contemplated by this enforceable undertaking; and

3.15.2 is independent of GoGetta and SIV Capital, and their related bodies corporate and officers at the time of the appointment, and who will at all material times be capable of exercising objective and impartial judgement.

- 3.16 GoGetta and SIV Capital undertake to ensure that the terms of the Independent Remediation Consultant's engagement provided to ASIC for approval under paragraph 3.13:

3.16.1 include a statement to the effect that the work of the Independent Remediation Consultant is being carried out for

GoGetta, SIV Capital and ASIC, and acknowledging that ASIC is relying on the work of the Independent Remediation Consultant;

- 3.16.2 include a statement that upon ASIC's request, ASIC is to be copied into all or some of the communications between GoGetta and/or SIV Capital and the Independent Remediation Consultant;
  - 3.16.3 require the Independent Remediation Consultant to notify ASIC if a conflict of interest arises during the engagement or when the Independent Remediation Consultant becomes aware of information that adversely affects its ability to exercise objective and impartial judgement; and
  - 3.16.4 include acknowledgement that in relation to the written reports to be provided to ASIC and GoGetta and SIV Capital as described in paragraph 3.17, 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 public.
- 3.17 GoGetta and SIV Capital will engage the Independent Remediation Consultant to do the following in accordance with the Remediation Program:
- 3.17.1 where appropriate, make recommendations to ASIC regarding any necessary amendments to the number and identity of High Risk Brokers;
  - 3.17.2 monitor and assess whether Customers are correctly categorised as being High Risk Customers, Medium Risk Customers, or Other Customers, and change the classification of a Customer or Customers where appropriate;
  - 3.17.3 monitor and assess whether Customers are correctly assessed as being Affected Customers, and whether Affected Customers are being remediated in accordance with the Remediation Program;
  - 3.17.4 where appropriate, identify and seek ASIC's agreement to add any additional Consumer Lease Risk Factors;
  - 3.17.5 where necessary, make recommendations to ensure compliance with the Remediation Program;
  - 3.17.6 review all proposed material templates which GoGetta, SIV Capital and/or the Independent Remediation Consultant intend to send or have with Customers, including but not limited to emails, letters, call scripts and text messages, and then submit same to ASIC for approval;



- 3.17.7 ensure that all communications with Customers are made in accordance with the templates as agreed with ASIC, and otherwise are made in accordance with the terms of this enforceable undertaking and the Remediation Program;
  - 3.17.8 monitor, assess and where necessary make recommendations to amend and improve the effectiveness of customer communications;
  - 3.17.9 correspond with Customers;
  - 3.17.10 where the methods of calculating remediation set out in the Remediation Program are not suitable for a particular Customer's circumstances, reach agreement with ASIC regarding an alternative method for calculating remediation;
  - 3.17.11 where GoGetta or SIV Capital provide Documentary Evidence to the Independent Remediation Consultant with respect to a Medium Risk Customer or Other Customer, if considered necessary by the Independent Remediation Consultant, the Independent Remediation Consultant may make requests for any further information and determine whether the relevant customer entered into the Motor Vehicle Lease for a purpose other than a Consumer Purpose;
  - 3.17.12 determine all Customer Disputes;
  - 3.17.13 review any settlement or resolution of, or proposed settlement or resolution of, a dispute or claim between GoGetta and/or SIV Capital and a Customer outside of the Remediation Program in relation to a Motor Vehicle Lease to assess whether the Customer's compensation pursuant to that settlement or resolution or proposed settlement or resolution was at least as good as that which would have been available to the Customer under the Remediation Program and, if not, assess what further remediation is necessary to compensate the Customer to the level the Customer would have been entitled to under the Remediation Program, and direct GoGetta and/or SIV Capital to make that further remediation to the Customer; and
  - 3.17.14 submit the written reports set out in paragraph 3.19.
- 3.18 GoGetta and SIV Capital undertake to adopt all approved amendments concerning the Remediation Program within ten Business Days of receiving the approval from ASIC.

#### **Reporting by the Independent Remediation Consultant**

3.19 GoGetta and SIV Capital undertake to ensure that the terms of the Independent Remediation Consultant's engagement include a requirement that:

- 3.19.1 within 15 Business Days after the end of each consecutive 60 day period from the Commencement Date; and
- 3.19.2 within 15 Business Days of the Remediation Program being at an end in accordance with the terms of the Remediation Program;

the Independent Remediation Consultant is to provide a report to ASIC, GoGetta and SIV Capital stating:

- 3.19.3 the total number of Customers identified (by High Risk Customer, Medium Risk Customer and Other Customer);
- 3.19.4 the total number of Affected Customers who have accepted a remediation offer (by High Risk Customer, Medium Risk Customer and Other Customer);
- 3.19.5 the total number and value of Remediation Payments sent to Affected Customers (by High Risk Customer, Medium Risk Customer and Other Customer);
- 3.19.6 the total value of Arrears and Remaining Payments waived by GoGetta and/or SIV Capital with respect to Affected Customers (by High Risk Customer, Medium Risk Customer and Other Customer);
- 3.19.7 the total number of Customers (by High Risk Customer, Medium Risk Customer and Other Customer) who have been unable to be contacted or who have not responded to Customer Communications, and the number of attempts made and nature of attempts made to contact those Customers;
- 3.19.8 the total number of Customers who have rejected a remediation offer and if known, the reason why;
- 3.19.9 the total number of Customers in relation to whom GoGetta and/or SIV Capital have provided Documentary Evidence to the Independent Remediation Consultant and the status of each of those matters;
- 3.19.10 the total number of Customer Disputes and the status of each Customer Dispute; and
- 3.19.11 a summary of each Customer whose individual circumstances have been settled or resolved, or are otherwise being dealt with outside of the Remediation Program, including the name of the Customer, the forum in which the matter was (or is) being dealt



with, and a summary of the outcome, including any compensation paid to the Customer.

### **Appointment of replacement Independent Remediation Consultant**

- 3.20 GoGetta and SIV Capital undertake that if they, or either of them, become aware that the Independent Remediation Consultant is unable to continue its appointment, within 15 Business Days of becoming aware they will seek ASIC's approval to:
- 3.20.1 the appointment of a new Independent Remediation Consultant; and
  - 3.20.2 the proposed terms of engagement of the new Independent Remediation Consultant.
- 3.21 The new Independent Remediation Consultant nominated under paragraph 3.20:
- 3.21.1 must have the necessary expertise, experience and operational capacity to perform the role contemplated by this enforceable undertaking and the Remediation Program; and
  - 3.21.2 unless otherwise agreed with ASIC, must be independent of GoGetta and SIV Capital and their related bodies corporate and officers at the time of the appointment.
- 3.22 If ASIC approves the new Independent Remediation Consultant and the terms of engagement following a request by GoGetta or SIV Capital under paragraph 3.20, GoGetta and SIV Capital undertake to engage the approved new Independent Remediation Consultant on the approved terms within five Business Days of receiving ASIC's approval (or within such longer period as may be agreed between ASIC and GoGetta and SIV Capital).

### **Access to Information**

- 3.23 GoGetta and SIV Capital undertake to:
- 3.23.1 provide the Independent Remediation Consultant with access to their Books and to interview current employees of either of them, and approval to interview former employees, to the extent that it is reasonable having regard to the requirements of this enforceable undertaking and/or the Remediation Program;
  - 3.23.2 give the Independent Remediation Consultant any information or explanation requested by the Independent Remediation Consultant in relation to any matter connected with this enforceable undertaking and/or the Remediation Program;

- 3.23.3 provide the Independent Remediation Consultant with access to all Customer data required to enable it to fulfil its obligations under this enforceable undertaking and/or the Remediation Program; and
- 3.23.4 give reasonable assistance to the Independent Remediation Consultant in carrying out the terms of its engagement and in producing all reports.

#### **Removal of default listing**

3.24 GoGetta and SIV Capital undertake to:

- 3.24.1 within 15 Business Days of a Customer being found to be an Affected Customer, ask the relevant credit reporting body(ies) to remove any default listing(s) made in relation to a Motor Vehicle Lease from that Affected Customer's credit report; and
- 3.24.2 take all reasonable further steps to ensure that any default listing(s) is/are removed promptly.

#### **AFCA Scheme**

- 3.25 GoGetta undertakes to be a member of the AFCA scheme until the completion of the Remediation Program in accordance with the Remediation Program.
- 3.26 If, for any reason, GoGetta ceases to be a member of the AFCA scheme prior the completion of the Remediation Program, SIV Capital undertakes that:
  - 3.26.1 it will forthwith become a member of the AFCA scheme; and
  - 3.26.2 any Customer may bring a claim or dispute against SIV Capital under the AFCA scheme if that Customer would have been able to bring the claim or dispute against GoGetta had it remained a member of the AFCA scheme.

#### **Winding up of GoGetta**

- 3.27 Subject to the Corporations Act, SIV Capital and GoGetta undertake that, unless otherwise agreed with ASIC in writing, they will not to take any step to voluntarily wind up GoGetta or SIV Capital under section 513B of the Corporations Act until SIV Capital and GoGetta have complied with all undertakings in this enforceable undertaking and the Remediation Program has been completed.



### **Costs**

- 3.28 GoGetta and SIV Capital undertake to pay the costs of their compliance with this enforceable undertaking and the Remediation Program, including, but not limited to, all costs associated with the engagement of the Independent Remediation Consultant.
- 3.29 In any Proceedings brought by ASIC against GoGetta, GoGetta will consent to orders being made that GoGetta will pay ASIC's costs of and incidental to those Proceedings.
- 3.30 In any Proceedings brought by ASIC against GoGetta, GoGetta will not seek any order for costs against ASIC.
- 3.31 In any Proceedings brought by ASIC against GoGetta, GoGetta will bear its own costs of and incidental to those Proceedings, unless ASIC is otherwise ordered to pay such costs.
- 3.32 GoGetta and SIV Capital undertake to pay:
  - 3.32.1 any order made under s319 of the National Credit Act; and
  - 3.32.2 ASIC's legal costs which GoGetta is ordered to pay to ASIC in any Proceedings (whether the quantum of costs is determined by the Court, or is determined by taxation, or is agreed between the parties).

## **4. Acknowledgements**

- 4.1 GoGetta and SIV Capital acknowledge that ASIC:
  - 4.1.1 may issue a media release on execution of this enforceable undertaking referring to its terms, the terms of the Remediation Program, and to the concerns of ASIC which led to their execution;
  - 4.1.2 may from time to time publicly refer to this enforceable undertaking and/or the Remediation Program;
  - 4.1.3 will from time to time publicly report about compliance with this enforceable undertaking and/or the Remediation Program;
  - 4.1.4 will make this enforceable undertaking available for public inspection;
  - 4.1.5 may issue a media release referring to the content of any report from the Independent Remediation Consultant;
  - 4.1.6 may from time to time publicly refer to the content of any report from the Independent Remediation Consultant; and
  - 4.1.7 will make available for public inspection a summary of the content of any report from the Independent Remediation

Consultant, or a statement that refers to the content of those report(s).

4.2 ASIC acknowledges that it will not refer to any information from a report from the Independent Remediation Consultant 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 and/or the Remediation Program;
- 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 GoGetta, SIV Capital or a third party otherwise than in a way that arises from the execution, implementation and reporting of the outcomes of the enforceable undertaking and/or the Remediation Program;
- 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 GoGetta or SIV Capital has asked not to be released if ASIC is satisfied:
  - (a) it would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of GoGetta or SIV Capital otherwise than in a way that arises from the execution, implementation and reporting of the outcomes of the enforceable undertaking and/or the Remediation Program; or
  - (b) it should not be released because it would be against the public interest to do so.

4.3 GoGetta and SIV Capital acknowledge that:

- 4.3.1 ASIC's acceptance of this enforceable undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue a criminal prosecution or its power to lay charges or seek a pecuniary civil order in relation to any contravention not the subject of ASIC's concerns in this enforceable undertaking or arising from future conduct;
- 4.3.2 ASIC's acceptance of this enforceable undertaking does not affect ASIC's power to pursue the Proceedings; and
- 4.3.3 this enforceable undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this enforceable undertaking or arising from future conduct.



- 4.4 GoGetta and SIV Capital acknowledge that this enforceable undertaking has no operative force until accepted by ASIC, and GoGetta and SIV Capital and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.

## **5. Notification**

- 5.1 Unless otherwise notified in writing by ASIC, the address for providing ASIC with any document or notification required by this enforceable undertaking is:

Senior Manager, Credit, Retail Banking & Payments  
Level 7, 120 Collins Street, Melbourne, Victoria 3000

- 5.2 Unless otherwise notified in writing by GoGetta and/or SIV Capital, the address for providing GoGetta and SIV Capital with any document or notification required by this enforceable undertaking is:

General Manager, GoGetta Equipment Funding Pty Ltd  
13 Kurilpa St, West End, Queensland 4101

**Executed by SIV Capital Limited ACN 011 )**  
**045 828 in accordance with subsection 127(1) )**  
of the *Corporations Act 2001*:



Director



~~Director~~/Company Secretary

.....  
**ANDREW PETER KEMP**

Full name

.....  
**DONALD CHARLES MACKENZIE**

Full name

**Executed by GoGetta Equipment Funding )**  
**Pty Ltd ACN 124 102 647 in accordance with )**  
subsection 127(1) of the *Corporations Act*  
2001:



Director



~~Director~~/Company Secretary

.....  
**ANDREW PETER KEMP**

Full name

.....  
**DONALD CHARLES MACKENZIE**

Full name

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



.....  
Senior Executive Leader – Financial Services Enforcement

Delegate of Australian Securities and Investments Commission

Date: 7 August 2020