

## **AGREEMENT AND UNDERTAKING**

### **The Competition and Consumer Protection Commission**

**-and-**

### **McCormack's Car Sales Limited**

This Agreement and Undertaking is made by and between the Competition and Consumer Protection Commission ("the CCPC") and McCormack's Car Sales Limited on the date set forth below. The Undertaking contained herein is accepted by the CCPC pursuant to Section 73 of the Consumer Protection Act 2007. The CCPC and McCormack's Car Sales Limited are referred to collectively herein as the "Parties."

#### **WHEREAS:**

- A. McCormack's Car Sales Limited makes available in the course of its business used cars for sale to members of the public.
- B. It is a function of the CCPC pursuant to Section 10 of the Competition and Consumer Protection Act 2014 ("the Act") to, *inter alia* -
  - (i) Promote and protect the interests and welfare of consumers;
  - (ii) Enforce the relevant statutory provisions of the Act;
  - (iii) Encourage compliance with the relevant statutory provisions of the Act;  
and
  - (iv) Investigate instances of suspected offences under any of the relevant statutory provisions of the Act.
- C. On or about 16 October 2015 the CCPC commenced an investigation into a complaint concerning an alleged misleading /unfair commercial practice in respect of the sale and offer for sale of a used car by McCormack's Car Sales Limited.

- D. In its investigation, the CCPC considered whether the sale and offer for sale by McCormack's Car Sales Limited of a certain used car and the furnishing of false and misleading information to a consumer about the usage and prior history of the car constituted a breach of the Consumer Protection Act 2007.
- E. The CCPC considered whether or not the said practice on the part of McCormack's Car Sales Limited constituted a misleading commercial practice as described by Section 43 of the Consumer Protection Act 2007.
- F. As a result of its investigation, the CCPC has reason to believe that McCormack's Car Sales Limited has committed or engaged in a misleading commercial practice prohibited under Section 42 and contrary to Section 47 of the Consumer Protection Act 2007
- G. In view of the remedies McCormack's Car Sales Limited has offered and implemented and as an alternative to criminal prosecution for this misleading commercial practice, the Parties have reached an agreement, as more particularly described below, wherein the CCPC accepts an undertaking of certain obligations by McCormack's Car Sales Limited in respect of used cars intended for sale in the course of its business.

**IT IS HEREBY AGREED AS FOLLOWS:**

1. McCormack's Car Sales Limited undertakes that: -
  - (a) It will comply with the prohibition on engaging in a misleading commercial practice as provided by section 42 of the Consumer Protection Act 2007;
  - (b) It will refrain from engaging in misleading commercial practices in the course of its business as described by section 43 of the Consumer Protection Act 2007.
2. In consideration of the undertaking furnished by McCormack's Car Sales Limited as set out herein, the CCPC agrees that it will not initiate criminal proceedings against McCormack's Car Sales Limited, pursuant to Part 5 of the Consumer Protection Act 2007. For avoidance of doubt, the CCPC reserves the right to institute criminal proceedings against McCormack's Car Sales Limited in respect of any matter. Nothing in this agreement shall be construed so as to impair the CCPC's right to institute criminal proceedings for any matter not specifically described herein.
3. The Undertaking provided herein shall be binding on the directors, officers, employees, servants, agents, and successors and assignees of McCormack's Car Sales Limited.
4. The terms "and" and "or" as used herein have both conjunctive and disjunctive meanings.
5. The Agreement will take effect on the date specified below.

**AGREED TO AND ACCEPTED BY:**

Signed: \_\_\_\_\_

Director/manager/secretary or other officer\* for and on behalf McCormack's  
Car Sales Limited

Signed: \_\_\_\_\_

( )  
Member for and on behalf of the Competition and Consumer Protection  
Commission

\* (Delete as appropriate)

Dated this 28 day of February 2016