

Deed Poll

This Deed Poll is made by:

Wesfarmers Finance Pty Ltd ACN 601 282 455 of Wesfarmers House, 40 The Esplanade, Perth, WA 6000 (**WF**)

In favour of:

The **Australian Securities and Investments Commission (ASIC)**; and

Each **person** who is or was a Transferring Debtor

Background

- A. Prior to 1 April 2015, GE Capital Finance Australia (**GE**) was the credit provider for a revolving credit facility branded as the 'Coles MasterCard' suite of credit card products (the "**Products**").
- B. On 1 April 2015, GE sold and assigned its legal rights to the receivables under the Products, as well as the contracts relating to the Products to WF. The equitable rights in the receivables were assigned to WFPL SPV Pty Ltd as Trustee for the WFPL SPV Trust, which is the ultimate funding entity.
- C. WF has by virtue of the assignment of contract, all rights to repayment under the credit contracts relating to the Products.
- D. GE and WF are proposing to make offers to novate all credit contracts with existing Coles MasterCard customers (Transferring Debtors) in 2016.
- E. WF has applied to ASIC for relief from certain requirements of Chapter 3 of the NCCP Act (which Chapter relates to responsible lending conduct), including Sections 128, 130, 131 and 133, in respect of the offers being made to the existing Coles MasterCard customers to enter into the Replacement Contracts on the basis that, where applicable, a responsible lending assessment has already been carried out by GE;
- F. If GE has breached any of the relevant requirements of Chapter 3 of the NCCP, the customer is entitled under the NCCP to seek compensation from GE for all of the loss or damage suffered by the customer as a result of that breach. The customer can do that by exercising rights under the NCCP or by making a complaint to the Financial Ombudsman Scheme, an external dispute resolution scheme.
- G. As a condition of granting relief to WF, ASIC requires WF to enter into this deed poll. The purpose of this deed poll is to ensure that, if GE has breached any of Division 3 or Division 4 of Part 3.2 of the NCCP Act (as modified by regulation 25K of the NCCP Regulations) in

relation to the customer's credit card contract with GE, as an alternative to seeking compensation from GE, customers can recover that part of any loss or damage as a result of that breach arising on or after entry into, and in relation to, the replacement credit contract from WF (if it has not already been recovered by the customer from GE).

- H. This deed poll sets out the rights those customers whose credit contracts are novated, and ASIC have, against WF.

OPERATIVE TERMS

1. Definitions

1.1 In this deed poll:

credit contract has the same meaning as in section 5 of the NCCP Act.

GE has the meaning given in Background A.

NCCP Act means the *National Consumer Credit Protection Act 2009 (Cth)* as affected by the NCCP Regulations.

NCCP Regulations means the *National Consumer Credit Protection Regulations 2010 (Cth)*.

Products has the meaning given in Background A.

Replacement Contract means, in relation to a Transferring Debtor, the credit contract between the Transferring Debtor and WF that resulted from the Transferring Debtor's credit contract on the same terms being novated from GE to WF.

Unrecovered Replacement Contract Loss and Damage has the meaning given in clause 2(a)(ii).

2. Compensation for Transferring Debtors

- a) WF irrevocably covenants with each Transferring Debtor and with ASIC that:
- i. if the Transferring Debtor suffers loss or damage as a result of a contravention of Division 3 or Division 4 of Part 3-2 of the NCCP Act (as modified by regulation 25K of the NCCP Regulations) by GE; and
 - ii. the Transferring Debtor has not recovered from GE any loss or damage that the Transferring Debtor has suffered as a result of that contravention that arises on or

after the entry into the Replacement Contract and in relation to that Replacement Contract (the **Unrecovered Replacement Contract Loss and Damage**),

WF will compensate the Transferring Debtor, in whole, for the Unrecovered Replacement Contract Loss and Damage.

- b) For the purposes of clause 2(a), WF acknowledges that a Transferring Debtor may suffer loss or damage which arises on or after entry into the Replacement Contract as a result of a contravention of Division 3 or Division 4 of Part 3-2 of the NCCP Act (as modified by regulation 25K of the NCCP Regulations) by GE in relation to a credit contract with, or an offer to enter into a credit contract by, GE in respect of a Product notwithstanding:
- i. the Transferring Debtor having entered into the Replacement Contract; and
 - ii. the loss or damage being suffered in relation to the Replacement Contract.

3. Benefit of deed poll

This deed poll is for the benefit of each Transferring Debtor and ASIC and the rights of:

- a) a Transferring Debtor under it may only be enforced by:
 - i. the Transferring Debtor; or
 - ii. ASIC on behalf of the Transferring Debtor if the Transferring Debtor has given their prior written consent to ASIC; and
- b) ASIC under it may only be enforced by ASIC.

4. Waiver

The failure of ASIC or a Transferring Debtor to require performance of any obligation under this deed poll is not a waiver of the right of ASIC or the Transferring Debtor:

- a) to insist on performance of, or claim damages for breach of, that obligation unless such acknowledges in writing that the failure is a waiver; and
 - b) at any other time to require performance of that or any other obligation under this deed poll.
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5. General

5.1 Governing law

This deed poll is governed by and must be construed according to the law applying in Victoria

5.2 Jurisdiction

WF irrevocably:

- a) submits to the non-exclusive jurisdiction of the courts of Victoria and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed poll; and
- b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause (a).

5.3 Amendment

WF may modify, vary or amend this deed poll only with the prior written consent of:

- a) ASIC; and
- b) if the modification, variation or amendment affects or may affect the rights of a Transferring Debtor under the deed poll, the Transferring Debtor.