

# Deed Poll

This Deed Poll is made by:

**Coles Supermarkets Australia Pty Ltd**, ACN 004 189 708 of 800 Toorak Rd, Hawthorn East 3123 (**Coles**).

**In favour of:**

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

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

## Background

- A. On 3 December 2015, Wesfarmers Finance Pty Ltd entered into a deed poll in favour of ASIC and debtors transferring (**Transferring Debtors**) from GE Capital Finance Australia (**GE**), to Wesfarmers Finance Pty Ltd (**WF**).
- B. Coles and WF now desire that all obligations owed by WF to ASIC and the Transferring Debtors also be obligations of Coles.
- C. This deed poll sets out the rights Transferring Debtors and ASIC have against Coles.

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## OPERATIVE TERMS

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### 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)*.

**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.

**Transferring Debtors** has the meaning given in Background A.

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

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## 2. Compensation for Transferring Debtors

- (a) Coles irrevocably covenants with each Transferring Debtor and with ASIC that:
  - (i) if the Transferring Debtor suffered 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 WF or 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**),

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

- (b) For the purposes of clause 2(a), Coles acknowledges that a Transferring Debtor may suffer loss or damage which arose 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.

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## 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 in the Transferring Debtor has given their prior written consent to ASIC.
- (b) ASIC under it may only be enforced by ASIC.

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## 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**

Coles 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**

Coles 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.