

Deed Poll

Dated

Citigroup Pty Ltd (“**Citi**”)

Deed Poll

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Deed Poll

Details

Party		
Citi	Name	Citigroup Pty Ltd
	ACN	004 325 080
	Formed in	Australia
	Address	2 Park Street, Sydney NSW 2000
	Telephone	(02) 8225 0000
	Attention	General Counsel

Governing law	New South Wales	
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Business Day place (s)	Sydney	
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Background	A	As at the date of this deed, Wesfarmers Finance Pty Ltd (WF) is the credit provider for revolving credit facilities branded as “Coles MasterCard” or as “Coles Group Card” (the Products).
	B	WF was the original credit provider for some of the underlying credit facilities; for others WF became the credit provider for those products as a result of an assignment of those facilities to WF by the previous credit provider (First Credit Provider) on or about 1 April 2015.
	C	On 11 November 2016, Citigroup Pty Ltd (Citi) signed an agreement to purchase the Products from WF. On 1 February 2017, Citi completed the purchase of the Products (Completion).
	D	Notice of the assignment to Citi is scheduled to be provided to customers in early 2018. This will effect the legal assignment of the receivables and contracts comprising the Products on the relevant day (Effective Date).
	E	From the Effective Date, by virtue of the assignment of the credit contracts relating to the Products, Citi will have all rights to repayment under those contracts. As a result, it also assumes various present and future obligations under the NCCP Act.
	F	Citi is proposing on or about the Effective Date to make an offer to novate (Novation Offers) certain credit contracts with

the existing Coles credit card customers (this includes current credit card contracts or offers to enter into a credit card contract) (**Transferring Debtors**). The novation is to allow Citi to assume obligations under the credit contracts, for example to provide further credit, which are not transferred as a result of the assignment. The credit contract between the Transferring Debtor and Citi that results from the Transferring Debtor's credit contract being novated to Citi is referred to as a **Replacement Contract**.

- G** Citi has applied to ASIC for relief from certain requirements of Chapter 3 of the NCCP Act in respect of the offers being made to the Transferring Debtors to enter into the Replacement Contracts on the basis that, where applicable, a responsible lending assessment has already been carried out by WF or the First Credit Provider (each a **Previous Credit Provider**).
- H** If a Previous Credit Provider has breached any of the relevant requirements of Chapter 3 of the NCCP Act, the customer is entitled to seek compensation from that Previous Credit Provider for loss or damage suffered by the customer as a result of that breach.
- I** Some customers may have additional rights to compensation for such loss or damage against WF or Coles Supermarkets Australia Pty Ltd (**Coles**) under the WF Deed Poll signed by WF (**WF Deed Poll**) or under an additional Deed Poll signed by Coles(**Coles Deed Poll**).
- J** As a condition of granting relief to Citi, ASIC requires Citi to enter into this deed poll. The purpose of this deed poll is to provide additional rights against Citi to Transferring Debtors who accept a Novation Offer.
- K** If WF or another previous credit provider 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 WF or another Previous Credit Provider, as an alternative to seeking compensation from the Previous Credit Provider (or, where relevant, Coles), a Transferring Debtor who has accepted a Novation Offer can recover that part of any loss or damage as a result of that breach arising on or after the entry into, and in relation to, the replacement credit contract from Citi (if it has not already been recovered by the customer from a Previous Credit Provider or, where relevant, Coles).
- L** This Deed Poll sets out the rights of ASIC, and those customers whose contracts are novated after accepting a Novation Offer against Citi.

Deed Poll

General terms

1 Definitions

1.1 In this deed poll:

Coles has the meaning given in Background.

Coles Deed Poll has the meaning given in Background.

Citi has the meaning given in Background.

Credit Contract has the same meaning as in section 5 of the NCCP Act.

First Credit Provider has the meaning given in Background.

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)*.

Novation Offer has the meaning given in Background.

Previous Credit Provider has the meaning given in Background.

Products has the meaning given in Background.

Replacement Contract has the meaning given in Background.

Transferring Debtor has the meaning given in Background.

Unrecovered Loss has the meaning given in clause 2(a)(ii).

WF has the meaning given in Background.

WF Deed Poll has the meaning given in Background.

2 Compensation for Transferring Debtors

- (a) Citi 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 a Previous Credit Provider; and
 - (ii) the Transferring Debtor has not recovered from the Previous Credit Provider that caused the contravention, or where the WF Deed Poll or the Coles Deed Poll apply, from WF or Coles as the case may be, any such loss or damage (the **Unrecovered Loss**) that:

- (A) the Transferring Debtor has suffered as a result of that contravention; and
- (B) arises on or after the entry into the Replacement Contract and in relation to that Replacement Contract,

Citi will compensate the Transferring Debtor, in whole, for the Unrecovered Loss.

- (b) For the purposes of clause 2(a), Citi 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 a Previous Credit Provider in relation to a credit contract with, or an offer to enter into a credit contract by, a Previous Credit Provider 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 party 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.

5 General

5.1 Governing law

This deed poll is governed by and must be construed according to the law applying in New South Wales.

5.2 Jurisdiction

Citi irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales 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 5.2(a).

5.3 Amendment

Citi 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.

EXECUTED as a deed